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**Scituate Zoning Board of Appeals
Meeting Minutes
February 15, 2018**

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The Scituate Zoning Board of Appeals held a public hearing on February 15, 2018 at the Scituate Town Hall located at 600 Chief Justice Cushing Highway, Scituate. The meeting was called to order at 7:00 P.M.

Present: John Hallin, Chairman, Sara Trezise, Ed Tibbetts and Anthony Bucchere.

Also Present: Bob Vogel, Building Commissioner and ZEO.

First Application: (Continued from Dec. 21, 2017) 14 & 16 Old Country Way, LLC of 14 and 16 Old Country Way, Scituate, MA requests a Finding in accordance with Scituate Zoning Bylaw Sections 820 and 950.2D, 520 and M.G.L. Chapter 40A, Section 6, and/or such other relief which the Board of Appeals may grant to change, extend or alter the pre-existing, nonconforming use of the maximum impervious area at **14-16 Old Country Way, Scituate, MA (Assessor's Map 49, Block 2, Parcels 56 & 57)** which presently contains two separate single family dwellings and accessory structures, to a use which will not be substantially more detrimental to the neighborhood and which will contain less impervious area and two buildings containing allowable commercial uses in the business and the water resource protection overlay zoning districts.

Representing the Applicant: Attorneys Bill Ohrenberger and Jeffrey DeLisi of Ohrenberger, DeLisi and Harris LLC. and Paul Mirabito, P.E. of Ross Engineering

Ms. Trezise recused herself explaining that her office property at 5 Old Country Way is a direct abutter of the Applicant's property. She had taken no position privately with other Board members or publicly with respect to being either for or against the application.

Mr. Hallin explained that he too is a direct abutter, but under the Rule of Necessity he will hear the application. Without Mr. Hallin the Board would not have a quorum. Further, a disclosure of Conflict of Interest has been filed with the Town Clerk.

Attorney Ohrenberger stated the Applicant had no objection to Mr. Hallin hearing the application.

Sharon Harrington of 15 Jenkins Place asked what would happen if members of the public objected.

Attorney Ohrenberger stated that the objection would result in constructive approval with no action of the Board.

Ms. Harrington stated her support in proceeding with the hearing.

With no further questions from the public Attorney Ohrenberger proceeded to review the application before the Board. He stated this is the first step of a multi step process. The Applicant is not before the Board to have contractor offices approved as that is an allowed use of the property. Further, there are two residential homes on the property. That too is an allowed use of the zone. The Applicant is before the Board seeking relief under Section 820 to allow the alteration of the preexisting condition of impervious surface located in the Water Resources Protection District which shall not be substantially more detrimental to the neighborhood. The proposed alteration of the existing impervious surface would result in a decrease of the impervious surface the first step of the considerable process ahead including site plan review, design review, storm water permitting and a Notice of Intent from the Conservation Commission. Mr. Ohrenberger stated it was the intent of the Applicant to meet with neighbors in advance of the Planning Board hearing.

Mr. Bucchere asked Attorney Ohrenberger if he intended to address the 150' non disturbance buffer zone from a tributary.

Mr. Ohrenberger stated that under Sections 810.3 and 820 the preexisting nonconforming use and structure are allowed, and therefore would not be addressed. He further stated the property is within the radius although the condition was preexisting prior to the bylaw. The proposed plan would reduce the impervious surface from 44% to 28%.

Mr. Bucchere asked if the Applicant believed the property had grandfathered status.

Mr. Ohrenberger replied "Yes, in essence".

Mr. Bucchere stated the Board must determine where the line is drawn for intensification.

Attorney DeLisi explained no increase in the impervious surface is proposed. A chart in the Scituate Zoning Bylaw shows prohibitive uses; none of which apply to this application.

Mr. Ohrenberger cited the example of Morning Glories project in Zone 2 of the Water Resource Protection District and further cited Phase Two of the Scituate sidewalk project which goes over the same culvert. In the event the Applicant's proposed project would not be allowable nor should the sidewalk project.

Mr. Mirabito reviewed the submitted site plan stating the subject property contains 29,249sq. ft. and has two single family dwellings, three out buildings, existing pavement, concrete and a small gravel area. A fence surrounds three sides of the property; access to the property is on Jenkins Place. A 24" pipe runs below the property approximately 2 ½-3' below grade. The proposed site plan shows the construction of three structures and pervious pavement. The existing drain pipe will remain in its current location. Green space will be on the outside area of the property. The impervious area will decrease from 44% to 28%. Architectural renderings show the front elevation as having four doors on the front. No parking would be located on the front of the area. The rear side shows garage doors with windows on top.

Attorney Ohrenberger added the conceptual drawings showing contractors shop space, something of which the town has a great need for.

Mr. Bucchere asked if maintenance is required to prevent permeable pavement from becoming impermeable.

Attorney Ohrenberger referred to correspondence received from the chairperson of the Water Resource Committee and asked how the Committee Chair could write a letter on behalf of the committee when the minutes make no reference to a discussion or vote on the issue.

Greg Tansey of Ross Engineering explained the longevity and maintenance of porous pavement stating the reduction in sanding and salting deicing measures are far less than pavement. Permeable pavement will require being swept or vacuumed 1-2 times per year. It can be cleaned by power washing prior to vacuuming.

Attorney Ohrenberger stated the Town has used permeable pavement, further stating the co-jurisdictional storm water permitting will be required by Planning and Conservation.

Mike Clark of 103 Stockbridge Road stated he has no relationship with the Applicant and that he is a professional civil engineer. The two porous pavement areas installed by the Town include the parking lot on the Driftway near Dunkin Donuts. Although it has not been maintained it remains to be well working.

Mr. Bucchere asked how permeable pavement compares to the lawn currently on the site.

Mr. Mirabito explained pervious pavement is more permeable than grass. The voids are open to accept more water faster than grass.

Mr. Tibbetts inquired about permeable pavement at Widow's Walk.

Mr. Mirabito stated the industry standards ensure uniformity in the mix. The on-site treatment includes roof water. All water that falls on site will remain on site.

The meeting was opened for public comment.

Curtis Parker of 26 Jenkins Place stated the area has never been a business district. Originally farmland before being a residential area. Further, the pipe is not a culvert. It is Clapp Brook and it feeds down before emptying out to the reservoir. The pipes were illegally placed approximately 50 years ago. He further stated the purpose of the overlay district is to attract people to the area and to promote taxes. The proposed plan would lower the property values of surrounding homes and create light pollution. This plan does not belong in this area which is surrounded by residences.

Attorney Ohrenberger stated it is a tributary, but it is located within the pipe. The Applicant is not proposing any use which is not allowed in this zoning district.

Mr. Hallin stated the property is located in a business zone.

Mr. Tibbetts further explained the area was zoned for maintenance and the promotion of business. The proposed use is allowable in the zone. Property owners are taxed for the use, not the zone.

Mr. Bucchere explained business is allowed in this zoning district, whether we like it or not.

Steve Monteiro of 9 Jenkins Place stated his displeasure with the development in the area; that the neighborhood is being wiped out, and that safety concerns as a result of increased traffic and trucks have been brought to the attention of the Scituate Police and Fire departments. The proposed project does not belong in the neighborhood, and would, in fact, be detrimental to the neighborhood.

Renee Monteiro of 9 Jenkins Place expressed concern for the safety and wellbeing of her grandchildren.

Mr. Bucchere explained though the stated concerns are valid and important they are not within the jurisdiction of the ZBA. Business is allowed on this property. Residents should understand that the Scituate Zoning Bylaw can be changed, but it is not within the Board's jurisdiction to make changes. He further stated that the Board appreciates the neighbors do not want the proposed project in their neighborhood, but a property owner has the right to do what is allowed under the Scituate Zoning Bylaw for the respective zoning district. In this zoning district the proposed use is allowed.

Mr. Tibbetts further explained the ZBA acts within the ZBA jurisdiction. Opinions are not relevant. Residents are encouraged to present an article at Town meeting with proposed changes to the zoning bylaw.

Joseph Andrade of 27 Jenkins Place explained he recently built his house. Two pumps run nonstop on his property as a result of the brook. The proposed project would bring more water with nowhere to go.

Sharon Harrington of 15 Jenkins Place inquired about the proposed 21-24 proposed parking spaces.

Maria Marcelino of 33 Garden Road stated she used to play in the brook and asked if SFD could determine the site is not compliant and who would incur the cost of any necessary road accommodations? She further stated the preference for a neighborhood business such as a hair salon in the proposed location over the Applicant's proposed plan.

Mr. Hallin stated the Applicant would incur any associated costs.

Tom Keenan of 16 Jenkins Place stated concern over the impervious area and the proposed pervious pavement and questioned the math involved in the engineering. He further asked about allowed uses and determining what is "substantially more detrimental" to the neighborhood.

Mr. Bucchere explained that according to the bylaw the use is allowed. The ZBA would not make the determination of what would be "not substantially more detrimental to the neighborhood" because the proposed use is allowed.

Mr. Tibbetts moved to close the hearing. Motion seconded by Mr. Bucchere. All in favor, unanimous.

Members of the Board discussed the application and permeable surface proposed therein.

Mr. Tibbetts moved that the Board find that the proposed plan of alterations to the lot at 14-16 Old Country Way as shown on a plan by Ross Engineering dated 11/11/2017 represents a change in permeable material which is not more detrimental than the existing condition and further find that the permeable area of this lot shall not be less than 40% going forward and that any permeable material be maintained in a way that permeability is not compromised. Motion seconded by Mr. Bucchere. All in favor, unanimous.

Second Application: Jennifer Young Watts of 516 Central Avenue, Needham, MA 02494 requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and/or Section 810.2A of the Scituate Zoning Bylaw to construct an addition to the nonconforming dwelling at **18 Lowell Street, Scituate, MA (Assessor's Map 71, Block 6, Parcel 5)** increasing the gross floor area by more than 20%.

Representing the Applicant: Tim Burke, Architect

Mr. Burke explained that significant damage as a result of a burst pipe has prompted the proposed addition. The existing dwelling was constructed in 1970 and is nonconforming with respect to the left side setback. The proposed addition and elevation of the structure in accordance with FEMA regulations will comply with all zoning requirements for the R3 zone.

The meeting was opened for public comment.

Lawrence Gianinno of 24 Lowell Street stated his two concerns as being the rear deck encroaches 9" on the easement and the encroachment of the power line for which no easement exists.

Ms. Trezise explained the power line encroachment is an issue to pursue with the power company. The deck encroachment is not within the jurisdiction of the ZBA.

Mr. Burke stated the Applicant has assented to pull the deck to eliminate the encroachment.

The Board discussed the application, the Building Commissioners interpretation of the bylaw as well as the intent of such.

The Applicant stated his wish to err on the side of caution and as such, requested the granting of relief from the Board.

Brian Sullivan of 11 Sherman Drive encouraged the Applicant to consider the protection afforded to the preexisting nonconforming status under Chapter 40A, Section 6. That status would remain in place if the Applicant reduced, not eliminated the nonconforming side setback.

Mr. Bucchere explained that information Mr. Sullivan offered borders on legal advice and the Board is not in the business of giving legal advice.

There were no further comments or questions from the public or the Board.

Mr. Tibbetts moved to find the Applicant's proposed renovations to the property at 18 Lowell Street, Scituate and shown on the plan by Keefe Associates dated June 16, 2017, revised Jan. 10, 2018 will not create any nonconformities and will result in an entirely conforming structure on an entirely conforming lot. Motion seconded by Mr. Bucchere. All in favor, unanimous.

Third Application: Bob Burwick of 17 New Driftway, Scituate, MA requests a Special Permit under Section 610.2B of the Scituate Zoning Bylaws to allow the creation of a 50 foot frontage lot at 25 and 31 Torrey's Lane, Scituate, MA (Assessor's Map 55, Block 1, Parcels 26A & 26B).

Representing the Applicant: Gregory Morse and James Garfield, Registered Engineers of Morse Engineering.

Mr. Garfield reviewed the application for the creation of a 50' frontage lot and explained the history of the previous applications in 2005 and 2016. The 2005 application for the creation of a 50' frontage lot was approved and a permit was granted. The submitted site plan did not show wetlands now found to exist in the property. The 2005 permit expired and was reissued in 2016 subsequent to the second application for such. The present application and submitted site plan propose shifting the 50' right of way above Lot 2 and to re divide the lot line to comply with local wetlands regulations.

Mr. Hallin reviewed Section 610.2B of the bylaw and restated that no further subdivision of Lot 2 would be allowed, and the deed must state such.

The meeting was opened for public comment.

Mike Mulcahy of 21 Torreys Lane stated his concern with more water on his property which may be a result of building on the property and said the area is very wet.

Mr. Morse explained that topography is considered in any plan for storm water mitigation.

John Harris of 9 Torreys Lane asked the location of the driveway on the 2016 plan and why it was approved in 2016.

Mr. Hallin explained the application was approved in 2005. The permit subsequently expired and was reissued in 2016. Wetlands were not noted on the 2005 plan thus the reasoning for the proposed new lot lines.

Mike Mulcahy asked why the Applicant opted to flip the lot line delineation.

Mr. Garfield stated the location of the wetlands on the property and a more aesthetically pleasing view to the golf course was the rationale.

Mr. Morse stated the developer has agreed to assume the expense of installation of a fire hydrant and water main.

There were no further comments from the public or from the Board.

Mr. Tibbetts moved to grant the Applicant's request for a 50' frontage lot as shown on the plan dated 1/11/18 by Morse Engineering showing the subdivision of lots 55-1-26A and 55-1-26B off Torrey's Lane. Motion seconded by Ms. Trezise. All in favor, unanimous.

Minutes presented for approval.

Mr. Tibbetts moved to approve December 7, 2017 minutes as emailed. Motion seconded by Ms. Trezise. All in favor, unanimous.

Mr. Tibbetts moved to approve December 21, 2017 minutes as emailed. Motion seconded by Mr. Bucchere. All in favor, unanimous.

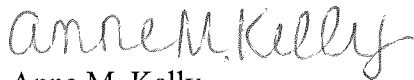
Mr. Tibbetts moved to approve January 18, 2018 minutes as emailed. Motion seconded by Ms. Trezise. All in favor, unanimous.

Mr. Tibbetts moved to approve January 25, 2018 minutes as emailed. Motion seconded by Mr. Bucchere. All in favor, unanimous.

Mr. Tibbetts moved to adjourn. Motion seconded by Mr. Bucchere. All in favor, unanimous.

Meeting adjourned at 10:15pm.

Respectfully Submitted,



Anne M. Kelly