

**TOWN OF SCITUATE
ZONING BOARD OF APPEALS
MEETING MINUTES**

SEPTEMBER 19, 2019

TOWN OF SCITUATE
TOWN CLERK

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The Scituate Zoning Board of Appeals held a public hearing on September 19, 2019 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: Brian Sullivan, Acting Chairman, Ed Tibbetts and Tom Cavanagh
Also Present: Bob Vogel, Building Commissioner and ZEO

First Application: **Bradford Merritt of 493 Country Way, Scituate MA** requests a Special Permit/ Finding in accordance with Section 470.9 of the Scituate Zoning Bylaw that the Board of Appeals make a Determination of Suitability for a unified parcel known as **0 and 483 Country Way, Scituate, MA (Assessor's Map 32, Block 7, Parcels 13A, 14, 15, 16, 21).**

Mr. Sullivan moved for a continuance to October 17, 2019.

Mr. Tibbetts seconded the motion.

All in favor, unanimous.

Second Application: **Douglas and Lisa Roeder of 4 Fox Hill Road, Durham, NH, 03824** request a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and/or Section 810.2 of the Scituate Zoning Bylaw and/or any other relief that the Board of Appeals may grant to raze and reconstruct the pre-existing, nonconforming single family dwelling at **20 Cliff Road South, Scituate, MA (Assessor's Map 68, Block 4, Parcel 10)** increasing the gross floor area by more than 20%.

Representing the Applicant: Greg Morse of Morse Engineering
Also Present: Doug and Lisa Roeder, Applicants

Mr. Morse described the project as a 2.5 story home with 2,851 sq. feet, which is an increase in size of 246%. The left side setback will be corrected from 7.9 ft. to 8.1 feet. The front right and rear setbacks will be maintained.

Mr. Cavanagh asked if it was going to be elevated. Mr. Morse stated that although not required it will be 3- 4 feet above grade level.

Mr. Cavanagh asked what they would be filing with Conservation.

Mr. Morse stated that they would be filing notice of intent w/conservation. A majority of the property is within the 100-foot wetland buffer zone to the top of the coastal bank. Therefore, they will need to file a notice of intention. The project is not disturbing any resources so he expects that he will get approval from them.

Mr. Tibbetts commented that there is nothing they can do about the non- conformities and that they are reducing the size of one of the setbacks. In addition, a significant increase in size to a

smaller home, it is not out of sorts with the neighborhood and he stated that he does not see any issues with it.

Mr. Sullivan that he is familiar with the area and that the home is a modest 814 sq. ft. commented that the size of the home is reasonable and keeping with the needs of the family. He also stated that the home is keeping with the Zoning Bylaw 40.A, Section 6.

Mr. Tibbets explained that the way the height is determined puts the Roeder's below the required height.

Mr. Morse stated that the revised plan shows the total 2,851 square feet, an increase of gross floor area by 246%.

Open to Public:

Carol Cashion- 22 Cliff Road, Scituate, MA

Ms. Cashion first stated that she supports the Roeder's decision to reconstruct their home as they have had a long history of friendship with the Roeders. Ms. Cashion asked the board to consider the impact on abutters for the proposed height and stated that although it is within the requirements for height it is on the higher end. She stated that it would impact her home regarding air, light, views and privacy.

Mr. Sullivan stating that the home met all the requirements of Zoning Bylaw 40A, Section 6. Therefore, legally there is nothing the board can do about the height.

Alicia Flaherty of 10 Silver Avenue, Scituate - Ms. Flaherty was concerned about the height and was looking for clarification as to whether or not the home needed to be on stilts and if it was in the flood plain.

Mr. Morse confirmed it is not in a flood plain.

Mr. Sullivan confirmed it is not in a flood plane and that they would be putting it on pilings that would be approx. 3 feet above ground.

Mr. Cavanagh made a motion on the application for a Special Permit from Douglas and Lisa Roeder of 4 Fox Hill Road, Durham, NH finding in accordance with Mass General Law Chapter 40A, Section 6 and 810.2 of the Scituate zoning Bylaw on the application for 20 Cliff Road South that the raze and reconstruct does not create any new nonconformities or intensify existing nonconformities to the extent that it does it is not substantially detrimental as has been submitted on the plan drawn by Morse Engineering dated 7/23/19 and revised 9/16/19.

Second Mr. Tibbets

All in Favor - Unanimous

Third Application: Kieran Whelan of 57 Seaside Road, Scituate, MA requests a Special Permit/ Finding in accordance with M.G.L. Chapter 40A, Section 6 and/or Section 810.2 of the Scituate Zoning Bylaw to construct a third floor addition to the pre-existing, nonconforming single family dwelling at **57 Seaside Road, Scituate, MA (Assessor's Map 28, Block 5, Parcel 6)** increasing the gross floor area by more than 20%.

Present: Keiran Whelan, Applicant and sister-in-law Judy McGrady

Mr. Whelan stated there would be no increase in the footprint of the home and that he would be adding a third floor.

Mr. Vogel questioned whether or not it would meet the height requirements and requested an elevation certificate.

Mr. Sullivan stated there would be no increase in the footprint of the home, just in square footage.

Open to Public:

Peter Maki of 59 Seaside Road- Mr. Maki stated that the addition would diminish his enjoyment of his own living space, result in a loss of light and reduce parking.

The Board explained that they rule according to Chapter 40A Section 6 as to whether the proposed changes will be more substantially detrimental to the neighborhood than the current improvements on the property and that a neighborhood is not a single home, we look at the neighborhood as a whole.

Mr. Vogel explained the height requirements.

Mr. Tibbetts moved to find that on the application of Keiran Whelan of 57 Seaside Road, Scituate, MA for a Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 810.2 of the Scituate Zoning Bylaw that the proposed additional changes for a third floor addition will not create any new non-conformities or extend any existing non-conformities to the extent that they are considered not more substantially detrimental to the neighborhood and with the provision that the applicant provide a stamped plan that supports the evidence of the February 2, 2017 plan prepared by Ross Engineering that we have in the packet.

Second: Mr. Cavanagh
All in favor, unanimous.

Fourth Application: Elizabeth Magee of 28 Standish Avenue, Scituate MA requests a Special Permit/ Finding pursuant to M.G.L. Chapter 40A, Section 6 and/or Section 810.2 of the Scituate Zoning Bylaw, to allow the razing and reconstruction of the pre-existing, nonconforming single family dwelling at **28 Standish Avenue, Scituate, MA (Assessor's Map 34, Block 11, Parcel 12)** increasing the gross floor area by more than 20%.

Representing Applicant: Paul Mirabito of Ross Engineering

Presentation: Mr. Mirabito described the home as being built in 1900, the increase in size is 194% and they will be reducing the side and rear setbacks. The reason for the positioning of the home this way is because the owner is concerned with preserving the neighbor's view.

Open to Public:

Katherine Hogan of 12 Standish Ave, Scituate, MA -Ms. Hogan was originally concerned with the height of the home but was happy to hear that it would not impact her views.

Mr. Tibbetts moved to find the raze and reconstruct of the home on 28 Standish Ave on the application of Elizabeth Magee will not increase any existing non-conformities, in fact it will reduce some, and to the extent that it does, it is not substantially more detrimental to the neighborhood and find under Section 810.2 of the Scituate Zoning Bylaw that the increase in square footage will not be detrimental to the neighborhood.

Second: Mr. Cavanagh
All in favor, unanimous.

Fifth Application: Paul M. Rodrigues of 20 Gate Street, Carver, MA 02330 requests a Variance from the required 30-foot front set back in the R-3 District, pursuant to M.G.L. Chapter 40A, Section 10 and Scituate Zoning Bylaw Section 620.3, to allow an encroachment of 1.8 feet into the required 30-foot front setback of the single family dwelling at **36 Barker Road, Scituate, MA (Assessor's Map 46, Block 9, Parcel 7).**

Present: Paul M. Rodrigues
Also present: Katlin and Andrew McGlynn, Homeowners

Mr. Rodrigues asked the board to grant him a retro variance for the 1.8 ft. encroachment into the front setback.

Mr. Sullivan questioned Mr. Rodrigues as to whether or not he had property surveyed.

Mr. Rodrigues stated that they had poured the garage foundation and then re-poured to increase the size to accommodate the McGlynn's boat.

Mr. Sullivan asked Mr. Rodrigues to describe any hardship regarding correcting the garage and Mr. Rodrigues responded there were none.

Mr. Sullivan stated that it would be outside the scope of the law to grant the variance and that they had created their own non-conformity.

Open to Public:

Barbara Connaughton 32 Barker Road, Scituate- Ms. Connaughton thanked the Board for denying the variance.

Rita Sandner 15 Bay Ridge Rd, Scituate -Ms. Sandner also thanked the Board for denying the Variance.

Mr. Sullivan moved to deny the request for a variance as it does not comply with M.G.L 40. A Section 10.

Second: Mr. Tibbets

All in favor, unanimous.

Sixth Application: William Slocum of 48 Town Way Extension, Scituate MA 02066 requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and/or Sections 470.6F, 810.2, 830 of the Scituate Zoning Bylaw and/or any other relief that the Board of Appeals may grant to raze and/or substantially improve a pre-existing, nonconforming single family residential structure that had been damaged by accidental causes on a pre-existing nonconforming lot in the Flood Plain & Watershed Protection and Residence R-3 Zoning Districts at **47 Town Way Extension, Scituate MA (Assessor's Map 55, Block 06, Parcel 43)** and to reconstruct, extend, and/or alter the said dwelling by replacing it with a structure to be moved from **48 Town Way Extension, Scituate MA (Assessor's Map 55, Block 08, Parcel 01)** such that the resulting reconstructed structure will be less nonconforming, and will not be substantially more detrimental or injurious to the neighborhood than the damaged and/or existing nonconforming structure(s) or use(s).

Representing Applicant: Greg Morse of Morse Engineering and Attorney Jeff De Lisi
Also present: Mr. & Mrs. Slocum, Applicants

Attorney De Lisi : Decision should reference applies to two lots and the notification and application concern both lots. The specific raze and reconstruct is on 47 Town Way Ext. The home at 47 Town Way Extension, which is on the west side of Town way Ext. was constructed in 1935 and it presently sits on the sand at Peggoty Beach. The house has been boarded up and has been through a series of storms and it is in tough shape. In August of 2018 the Building Inspector sent a letter to the owners for the purpose of demonstrating **that it may** qualify for a grant because it is a damaged structure. Under the building code if a building requires repairs that exceed more than half of the value then it is necessary/required to bring the home up into compliance with the building code. That requirement requires the home to be brought onto piles and removed outside of the flood plain the first floor has to be a foot or two

above the FEMA set flood plain elevation. The owners of 47 also own 48 Town Way Extension- it is two cottages connected by a covered porch and is considered one structure. The concept is to have a win/win to raze 47, drive the piles and remove the eastern portion of the eastern cottage at 48 and move it across the street and drop it onto new piles. We believe we are eliminating some problems and creating some solutions in a thoughtful way. The size of the home after the after the reconstruction will be slightly over 20% larger than it is presently, it will be 1,168 ft. and comply with all dimensional yard and height requirements. Therefore, we are requesting a Special Permit under the flood plain bylaw for a substantial improvement to an existing structure and we need a Finding under Section 810.2 and Section 40A.6.

Open to the Public:

Art Gibbs of 34 Inner Harbor Road, Scituate Mr. Gibbs stated that he is in support of the project but was confused about what portion of the house is being moved.

Mr. Tibbets explained what is going to take place that the Easterly portion of the house is being moved to the other side.

Attorney De Lisi: The portion of the house that is remaining at 48 has a stairway and a deck on the southerly side and the plan inadvertently leaves them where they are and they are actually going to be pushed westerly so the end of the deck meets the end of the house but it does affect the issue before the Board.

Drew Scheele of 15 Town Way, Scituate -Mr. Scheele asked for clarification regarding the lots.

Mr. Cavanagh made a motion on the application of William Slocum of 48 Town Way Extension, Scituate MA for a Special Permit/Finding in accordance with Chapter 40A as well as Sections 470.6F, 810.2 and 830 of the Scituate Zoning Bylaw that the request to move a portion of a dwelling at 48 Town Way Ext. and raze the property at 47 Town Way Ext and thereby replacing a section of 48 Town Way Ext. as depicted on the plan by Morse Engineering dated 8/7/19 and revised 9/17/19 will not create any new nonconformities or intensify an existing nonconformities to the extent that it would not be substantially more detrimental to the neighborhood in accordance with 470.6 A-F that the Board issue a Special Permit as well.

Second: Mr. Tibbets

All in favor, unanimous.

Seventh Application: Toll MA Land III Partnership requests a Special Permit/Finding in accordance with Scituate Zoning Bylaw Section 710.2 and/or any other relief that the Board of Appeals may grant to allow the installation of signage at **Assessor's Parcel Numbers 39-2-1-E, 39-2-1-D and 34-15-1** in the R-3 District.

Representing the Applicant: Attorney Jeff De Lisi
Also, present: Dave Buckley, Toll Bros Project Mgr.

Attorney De Lisi stated the project has an entrance on Tilden Road and Hatherly Road, for the 142 residences on 70 acres of the 70 acres about 55 acres lies between Tilden and Hatherly Road. There will be one road with two access points one on Hatherly Road and one on Tilden Road. Part of the Special Permit process it was considered by the Planning Board and the Design Review Committee the issue of signage and the final approved plans by the Planning Board contained details about signage and actually the Special Permit condition 45 contained language that said the signage shall be as shown on the plans and that all temporary signage shall be removed at the completion of the project unless approved by the Building Inspector that it can remain. Under Section 710.2, the Zoning Board has specific jurisdiction to issue a Special Permit for signage. Toll Brothers is seeking approval for 4 signs on the southerly and northerly sides of the sites.

Dave Buckley provided a description of the signs, with a mock example and explained what materials the signs would be made of.

No Public Comments.

Mr. Sullivan made a motion that the Board grant the relief requested by Toll MA Land III Partnership in accordance with the plan dated 4/20/17 as submitted by the applicant.

Second: Mr. Tibbets

All in favor, unanimous.

Eighth Application: Adria Gallagher of 54 Collier Road, Scituate MA 02066 requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and/or Section 810.2 of the Scituate Zoning Bylaw to construct an addition to the pre-existing, nonconforming single family dwelling, increasing the gross floor area by more than 20 percent and to allow the reconstruction of a nonconforming accessory shed at 54 Collier Road, Scituate, MA (Assessor's Map 64, Block 9, Parcel 15).

Representing the applicant: Paul Mirabito of Ross Engineering.
Also present: Adria Gallagher, Applicant

Mr. Mirabito stated that the applicant is looking to raze a portion of the dwelling and construct additions to the rear of the home. The proposed additions will result in a 49% increase in the gross floor area. Ms. Gallagher is also requesting the Board to allow the existing shed to be reconstructed in a location that is less non-conforming.

Joseph Farley, Scituate, MA Mr. Farley stated that the home has been in the family for a long time and he is glad to see it staying with the family and that the changes are not going to affect the character and he supports the changes.

Brian Kelly of 16 Collier Road- Mr. Kelly stated he is 100% behind the project.

Mr. Cavanagh made a motion on the application from Adria Gallagher of 54 Collier Road for a request for a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and/or Section 810.2 of the Scituate Zoning Bylaw for her addition increasing the gross floor area by more than 20% to the property at 54 Collier Rd as depicted on the plan drawn by Paul Mirabito of Ross

Engineering dated 8/12/19 that the proposed addition does not create any new non-conformities or intensify any existing nonconformities and to the extent it is not more detrimental to the existing neighborhood.

Second Mr. Tibbetts

All in favor, unanimous.

Ninth Application: Matt Shanley of 28 Inner Harbor Road, Scituate, MA request a Special Permit/ Finding in accordance with M.G.L. Chapter 40A, Section 6 and Sections 470.6 and 810.2 of the Scituate Zoning Bylaw to raze and reconstruct the pre-existing, nonconforming single family dwelling at 28 Inner Harbor Road, Scituate, MA (Assessor's Map 55, Block 7, Parcel 5) increasing the gross floor area by more than 20%.

Representing the Applicant: Dick Rockwood of Rockwood Design

Mr. Rockwood stated the intent is to tear down the existing dwelling and build a new home on pilings. The home is on Peggoty Beach.

Mr. Tibbetts: Reviewed the existing and new setbacks.

Open to Public:

Arthur Gibbs of 34 Inner Harbor Road –Mr. Gibbs stated that the neighborhood supports the project.

Mr. Cavanagh: Make a motion on the application of Matt Shanley of 28 Inner Harbor Road, Scituate MA request a Special Permit/ Finding in accordance with M.G.L. Chapter 40A, Section 6 and Sections 470.6 and 810.2 of the Scituate Zoning Bylaw to raze and reconstruct the property as depicted on the plan prepared by Ross Engineering dated 9/11/19 that the proposed raze and reconstruct does not create any new nonconformities and in fact reduces a number of existing nonconformities and to the extent that it does increase or intensify it is not substantially more detrimental and pursuant to Section 470.6 A-F that we issue the Special Permit.

Second: Mr. Tibbetts

All in favor, unanimous.

Grantham Group, LLC requests a Modification to the Comprehensive Permit for Lawson Green Apartments pursuant to M.G.L. Chapter 40B, Sections 20-23. The request for insubstantial administrative changes is on file with the ZBA for the project located at 0 Central Park Drive, Scituate, MA (Assessor's Map 38, Block 1, Parcel 16).

Present: Michael Cucchiara of the Grantham Group

Mr. Cucchiara stated that they are requesting amendments to the decision dated February 2018 of the Comprehensive Permit as it relates to the sequencing of events as laid out in the Comprehensive Permit.

Mr. Cavanagh requested Mr. Cucchiara to explain the order of operations/requirements for the project.

Mr. Cucchiara explained the process and requirements.

Mr. Vogel asked what would materials would accompany the building permit application.

Mr. Cucchiara explained all information that would be included and the sequence of events/requirements for the project to move forward.

Mr. Sullivan asked Mr. Cucchiara to submit some proposed language as to how he would like to amend the decision and supporting information regarding the changes.

Mr. Cucchiara agreed to submit it to the board.

Mr. Tibbetts moved to approve the minutes submitted via email:

March 21, 2019

April 25, 2019

May 16, 2019

August 8, 2019

Second: Mr. Cavanagh.

All in favor, unanimous.

Meeting adjourned at 9:05 pm.

Respectfully submitted,

Beth Heneghan