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Scituate Zoning Board of Appeals Meeting Minutes April 19, 2018

The Scituate Zoning Board of Appeals held a public hearing on April 19, 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, Anthony Bucchere and Tom Cavanagh.

Also Present: Bob Vogel, Building Commissioner and ZEO.

First Application: Peter Martin of 11 Paige Street, Hingham, MA requests (i) a Special Permit pursuant to Scituate Zoning Bylaw Sections 460.2, 470.6F and 950.2B, (ii) a M.G.L. Chapter 40A, Section 6 Finding in accordance with Scituate Zoning Bylaw Sections 810.2 and 950.2D, (iii) and/or any other relief that the Board of Appeals may grant, to raze a dimensionally conforming single family dwelling in the R-2 residential zone, the Saltmarsh & Tideland Conservation, and the Flood Plain and Watershed Protection Zoning Districts at **67 Border Street, Scituate, MA (Assessor's Map 6, Block 2, Parcel 8A)** on a lot which is pre-existing, nonconforming as to lot frontage, and the reconstruction of a dimensionally conforming single family dwelling thereon having an increase by more than 20% in the gross floor area.

Representing the Applicant: Attorney Jeff DeLisi, Ohrenberger, DeLisi and Harris LLC and Paul Mirabito, P.E. Ross Engineering.

Attorney DeLisi explained the application initially requested relief to raze and reconstruct the existing conforming dwelling on a nonconforming lot and was subsequently amended in an abundance of caution to include relief under Sections 460.2 and 470.6F.

Mr. Mirabito explained the submitted amended site plan delineating the Saltmarsh and Tideland overlay contour and the 10' contour line of the Flood Plain and Watershed Protection district. The existing dwelling, located in the R2 residential zone, was constructed in 1958 and has 3,731 sq. ft.. The lot is nonconforming with respect to lot frontage (50.54' where 100' are required). The proposed plan shows a 5,509 sq. ft. dwelling (an increase of 47.6% in gross floor area) which will be fully compliant with zoning requirements, excluding lot frontage. Further, a fully compliant proposed detached garage is shown on said site plan.

Ms. Trezise stated that 50' of lot frontage was allowed under the bylaw at the time the house was constructed. A subsequent change to the zoning bylaw required 100' of lot frontage, therefore the property assumed a preexisting nonconforming status.

Mr. Cavanagh proposed the Applicant amend the submitted site plan to omit the statement "does not lie within the Flood Plain and Watershed Protection district".

The Applicant assented to the request.

There were no further questions from the Board, nor any public comments.

Mr. Bucchere moved on the application for a Special Permit for the property at 67 Border Street that the Board find the property is nonconforming with respect to lot frontage and that the structure is otherwise conforming, and further find and that the proposed raze and reconstruction of the dwelling as shown on the amended plan by Ross Engineering dated 3/17/2018 will not create any new nonconformities and to the extent that it intensifies any existing nonconformities such intensification is not substantially more detrimental to the neighborhood, further move that the Board grant a Special Permit in compliance with Section 950.2 for the reconstruction under Section 470.6 and 460.2 with the condition that the plan be further amended to state that the property lies within the Flood Plain and Watershed Protection District. Motion seconded by Ms. Trezise. All in favor, unanimous.

Second Application: Diamond Development, P.O. Box 1480, Duxbury, MA requests a Special Permit/Finding pursuant to M.G.L. Chapter 40A, Section 6 to raze and reconstruct the preexisting nonconforming single family dwelling at **53 Border Street, Scituate (Assessor's Map 2, Block 2, Parcel 6)** increasing the gross floor area by more than 20%. In accordance with Section 32050 8B of the Scituate General Bylaw, storm water issues may be discussed as part of Public Hearings on the project.

Representing the Applicant: Steven Bjorkland of 38 Ladd's Way, Scituate.

Mr. Bjorkland explained the application and stated the nonconformities of the property as a side setback (14.4' where 15' are required) and lot frontage (50' where 100' are required). The existing shed as shown on the submitted site plan would be removed. A new septic system has been approved by the Board of Health.

Mr. Vogel stated the subject property lies within the AE12 and X FEMA flood zones and suggested delineating such on the site plan.

The meeting was opened for public comment.

Jim Spelman of 49 Border Street stated that his property directly abuts the subject property on the eastern and southern sides. Mr. Spelman read his prepared remarks stating it was incumbent upon the ZBA to preserve the neighborhood and references the Conservation Commission hearings on the same application. Considerable concern was expressed over the proposed 1,000 cubic yards of fill to the site, blasting in to bedrock and the removal of mature trees on the property. Mr. Spelman further stated concerns related to the finished height of the proposed structure after regrading and added fill, disturbance of wetlands and tidal estuary abutting the property. As a former president and present member of the Gulf River Association Mr. Spelman spoke about the importance of preserving the fragile ecosystem within the Gulf River. He further urged the Board to carefully consider the S.J.C. 2008 decision in Norwell v. Bjorkland and requested the same standard be applied to this application.

Adam Whitman of 61 Border Street stated his willingness to accept whatever the ZBA decides and is in support of Mr. Spelman and Mr. Bjorkland as neighbors.

Mr. Bucchere thanked Mr. Spelman for his well said remarks and explained that the issues brought forth are not those before the ZBA. The proposed size of the structure is rather standard for a new house, and is in keeping with those on Border Street. Mr. Spelman's complaints with regard to his potential loss of views and privacy are a distant second to the Applicant's right to build on a property he owns.

Mr. Cavanagh stated the lot is very large; houses on the street are also large. The proposed dwelling is an appropriate size for the neighborhood.

Mr. Bjorkland informed the Board that the Con. Comm. hearing was continued pending the ZBA hearing and subsequent decision.

Ms. Trezise informed Mr. Spelman there are no rights to maintain a view and reminded him that without the approval of the Con. Comm. the project cannot move forward.

Mr. Bucchere requested clarification of the building height restriction

Mr. Vogel referred to Section 620.1 of the bylaw and stated the height as required under the bylaw will conform according to the plan.

Mr. Spelman expressed his misgivings about the cited square footage and nonconformities of the lot and again implored the Board to give careful consideration to the larger issues involved with the application before the Board.

Mr. Hallin explains that the jurisdiction of the ZBA does not extend beyond matters related to zoning.

Mr. Bjorkland informed the Board that a stormwater permit would not be required unless the proposed plan shows a disturbance in excess of 15,000 sq. ft. The submitted site plan states a disturbance area of 14,600 sq. ft. however; the Applicant stated his willingness to collaborate with his neighbor to address any related issues.

Mr. Spellman refuted the proposed square footage of disturbance.

Mr. Hallin stated the map and professionally engineered and stamped plan as presented are those the Board has accepted as part of the application.

The meeting was closed for further public comment.

The Board discussed the application while giving consideration to parameters set forth in a decision.

Mr. Cavanagh moved on the application for the property at 53 Border Street that the Board find the existing property is nonconforming with respect to lot frontage and side westerly setback; further that the Board find that the proposed reconstruction of the structure as shown on the plan by Ross Engineering dated 3/15/2018 will eliminate the nonconforming side setback and that in all other respects the structure will conform with current zoning bylaws; move further to find that the proposed reconstruction is not substantially more detrimental to the neighborhood than the existing structure, and that in all other respects it conforms to Section 950.3 of the Scituate Zoning Bylaw and that a Special Permit be granted with the condition that reconstruction not exceed an increase of 66.4% in the gross floor area in accordance with the submitted site plan, and further state that the building may be reconstructed anywhere on the property so long as it is constructed within the building envelope on the site. Motion seconded by Ms. Trezise. All in favor, unanimous.

Minutes presented for approval.

Mr. Bucchere moved to approve February 12, 2018 minutes as presented via email. Motion seconded by Ms. Trezise. All in favor, unanimous.

Mr. Bucchere moved to approve February 15, 2018 minutes as presented via email. Motion seconded by Ms. Trezise. All in favor, unanimous.

Ms. Trezise moved to approve March 1, 2018 minutes as presented via email. Motion seconded by Mr. Bucchere. All in favor, unanimous.

Ms. Trezise moved to approve March 15, 2018 minutes as presented via email. Motion seconded by Mr. Bucchere. All in favor, unanimous.

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

Meeting adjourned at 8:45pm.

Respectfully Submitted,

A handwritten signature in cursive script that reads "anne m Kelly".

Anne M. Kelly