

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

NOVEMBER 21, 2019

TOWN OF SCITUATE

TOWN CLERK

2021 DEC 23 AM 10:57

RECEIVED

The Scituate Zoning Board of Appeals held a public hearing on November 21, 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: Anthony Bucchere, Chairman, Brian Sullivan, Ed Tibbetts and Tom Cavanagh
Also Present: Bob Vogel, Building Commissioner and ZEO

First Application: (Continued from October 17, 2019) 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).

Present: Attorney Jeff DeLisi, Kevin Grady of Grady Consulting and Bradford Merritt, Applicant

Attorney DeLisi- Mr. Merritt owns approximately 10 acres of land in the area of the Egypt Garage. Mr. Merritt is currently before the Planning Board for a Special Permit project called a residential compound development, which is something this Board does not have jurisdiction over. It is essentially the concept that is the alternative to a conventional subdivision, which encourages larger lots and less density in exchange for not having to comply with the subdivision rules and regulations as it applies to roads and utilities.

The reason he is in front of the board is technically we are in a flood plain overlay zone, which is a zoning overlay but in respect to the FEMA flood zone overlay it does not match up. We are seeking a Determination of Suitability under Scituate Zoning Bylaw Section 470.9. The Planning Board has referred us to the ZBA for a Special Permit/Finding that the land is not in fact subject to flooding and not unsuitable because of drainage conditions and for the use that is permitted, which is a residential use. Noteworthy, is that we have laid out a conventional sketch that would have allowed for nine buildable lots but we are proposing five lots in a very large area of green space that would be preserved.

Mr. Grady—One of the main criteria for the open space compound development, actually just to qualify it there must be four times the area of the underlying zone. That is why we want to do five lots in a large space, 3 acres for the lots in a 6-acre space. That is the idea behind the design, Mr. Merritt intends on living there. As far as the suitability within the Flood Plain Water Shed District, the land is not located in the FEMA flood zone; it is in Flood Zone X. The ground water is significantly below ground level.

Mr. Sullivan – Questioned as to whether the land perked.

Mr. Grady- Confirmed. Several locations on the property were tested and the all locations were well drained.

Mr. Bucchere- Questioned what type of relief they are looking for from the Board.

Attorney DeLisi – Read Section 470.9 of the Scituate Zoning Bylaw to the Board.

Mr. Bucchere- The Code says that because this land falls in the protection district, you can't build here unless and you're here because you believe you qualify for the "unless".

Attorney DeLisi- Even though were in this overlay district we do not have any of the characteristics that would otherwise exempt us from being able to construct dwellings here.

Mr. Sullivan clarified that they are before the Zoning Board for a Finding of suitability.

Attorney DeLisi- Disagrees with the Planning Board's request that they go before the ZBA because their intended use is allowed under section 420.

Mr. Sullivan- In all the time I have been with the Board and even when I was not on the Board over approximately the past 22 years, we have never had the determination of suitability come before the Board.

Attorney DeLisi- It is not often that the Planning Board is acting as a Special Permit granting authority in this overlay zone.

Mr. Tibbets – Stated that in looking at the contours of the lots he does not see how it can be subject to flooding.

Mr. Sullivan- I know we have received letters in opposition of any development of this land, however, Mr. Merritt owns the land and is free to develop this land as the law permits him to do.

Mr. Tibbets- It is a modest use of the large parcel of land and the determination we are being asked to make subject to flooding, according to the plan I have in front of me stamped by an engineer, I can't see how the water is going to flow over this from anywhere, it's a hill.

Mr. Bucchere – From time to time this board and the section that Mr. DeLisi read us mentioned referral under section 940 and the Town Planner reached out with a relatively short email. (Read email) I received the email yesterday at 4pm. I apologize the applicant was not included on this email but I am reading it here and I have heard from an engineer that I have no reason to disagree with.

Mr. Sullivan – You have to always consider the bias from the Applicant's engineer but in this case however that does not mean you check common sense at the door. Mr. Tibbets and I are familiar with the land.

Mr. Bucchere – I am not as familiar with the land but I can understand what has been brought before me.

Mr. Bucchere opened to the public- no public comments.

Mr. Vogel – I would agree with everything that has been said.

Mr. Sullivan – Move to find that the subject parcel as shown in the application and on Assessor's Map 32 is suitable for development.

Mr. Tibbetts – Second

All in favor – unanimous.

Second Application: Anne Marie and Peter Huie of 86 Humarock Beach Road, Scituate MA request a Special Permit/Finding pursuant to 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, non-conforming single family dwelling increasing the gross floor area by more than 20%, and to allow the razing and reconstruction of a pre-existing, non-conforming accessory structure. The property is located at **86 Humarock Beach Road, Scituate MA 02060 (Assessors Map 72, Block 5, Parcel 16F).**

Representing the Applicant – Attorney Robert Galvin

Also present: Heidi Condon, Designer, Bob Crawford, Engineer and the applicants Peter and Ann Marie Huie

Mr. Galvin- The lot is non-conforming as to frontage area, width, depth and the home is non-conforming as to all setbacks. This is similar to many lots in the Humarock Beach area. I would like to have Ms. Condon explain the project.

Ms. Condon- Started with the site plan. Explained the existing structure and the proposed additions/changes. The North and South side will not increase in the non-conformities. The proposed increase is approximately 30 % increase in living size. They intend to demolish existing garage, new garage is larger and we already have approval from the Conservation Commission. We are intensifying an existing non-conformity by adding a second floor to the garage but not creating a new non-conformity. We do have 14 approval letters from the neighbors.

Mr. Tibbets- The portion to the Southerly side that is currently a covered porch and is going to become a two story walled –in addition. Is increased square footage including both floors?

Ms. Condon – Yes.

Mr. Tibbets – Is the addition to the Westerly side that small area for small addition and small proposed covered porch, is that a proposed covered porch or a walled-in addition?

Ms. Condon- I am proposing a 7.6 ft. by 5ft. It is going to be a covered porch.

Mr. Bucchere- Currently that is an uncovered deck. So that is new footprint of home but it is entirely within the current footprint.

Ms. Condon- The existing home was built in 1920 and in 2004 the Huie's put the entire home on piers so the current home conforms to current flood plain codes. Anything new we are doing will also be on piers.

Mr. Tibbets – I do not believe it is before us with this application but the section you have proposed raised deck on piles in the Easterly side that is not part of this application?

Ms. Condon- There currently is a wooden deck that is on grade.

Mr. Tibbets – Typically that would not be our purview.

Mr. Bucchere – Asked Mr. Vogel if in his opinion, would they need relief for the proposed deck.

Mr. Vogel – No, an open deck can extend to the property line, even though it may be raised on piles, there are no setbacks for open decks.

Mr. Tibbets – There are aspects to this proposal that are there to address conservation concerns not just zoning. The plan includes many other aspects. For example, the garage is completely within zoning although it is on an undersized lot. The deck the same way, the deck comes off the table. Therefore, the only thing I am looking at is filling in the covered porch, which is the existing building envelope and the small addition to the building envelope, which is within setbacks.

Mr. Vogel- On the existing floor plan about half of that is infill area is indicated as open deck as opposed to covered porch.

Mr. Tibbets – You are extending the porch about 10 feet on the Westerly side about ½ way around the house.

Ms. Condon- It is being extended 12 feet.

Open to Public:

Attorney DeLisi representing James Ford and Mona Bonin of 31 Hawthorne Street -Questions regarding some clarification on the plans. The existing setbacks I thought that I read that the house was 2.19 ft off of the property line.

Mr. Bucchere- There is a covered deck on the west side that is 2 feet from the property line.

Attorney DeLisi - The figure that is 1.8 feet is not the house. It is a set of stairs not the house. The proposed house is further than 2 feet away from the property line.

Ms. Condon - Clarified the locations.

Attorney DeLisi - Questioning whether they would need a variance.

Mr. Bucchere - An increase in a non-conformity and not a new non-conformity. It is not a new non-conformity but an increase in the existing one and does not require a variance.

Attorney DeLisi- What is the use of the garage and I want to clarify what the use is of the second floor and that is not going to be used for a dwelling.

Ms. Condon - There will be unfinished space for storage in the garage.

Mr. Sullivan - Are there going to be utilities going to that structure?

Ms. Condon- There will be electricity.

Mr. Tibbetts - You have gas and water there too.

Ms. Condon - There are utilities in the existing garage.

Mr. Tibbets - The gas and water are not for the garage, the garage is a conduit to get them to the house?

Ms. Condon - Yes, I believe so.

Attorney DeLisi - What is the increase in gross floor area for both additions?

Ms. Condon - We have increased the living area by 30% and the garage is being increased 182 sq ft.

Mr. Sullivan- Move to find that the proposed addition found in the plan from Rockwood Engineering stamped by Robert Crawford dated October 3, 2019 will not be more substantially detrimental to the neighborhood than the current pre-existing non-conforming structures located in the lot and the proposed garage may not be used as dwelling space for human occupation absent the granting of an accessory dwelling special permit from the planning board.

Mr. Tibbetts – Second

All in favor – Unanimous.

Third Application: Melanie and Jason Lelio of 9 Ash Street, Cohasset, MA request a Special Permit/Finding in accordance w/ M.G.L. Chapter 40A, Section 6 and Section 810.2 of the Scituate Zoning Bylaw to allow the construction of an addition to the second floor and a covered rear entry increasing the gross floor area by more than 20%. The property is located at **16 Gannett Road, Scituate, MA (Assessor's Map 8, Block 4, Parcel 10).**

Present: Applicant and Richard Rockwood of Rockwood Engineering

Mr. Rockwood- Described the project. The reason they are before the Board is due to the amount of frontage.

Mr. Bucchere - Looks like we have a mistake on the zoning chart.

Mr. Vogel - The front porch cannot be included in the living space.

Christopher Daly - 18 Gannett Road

We live next door and it is a very condensed area. The previous owner told all the abutters that the structure they built in the back was going to be a garage and in fact he created living space. When we complained to the town, he was told to remove the range. The listing described it as a living space and was listed with a separate number.

Mr. Bucchere - The prior owner had more than a garage, was there anyone living in it?

Mr. Daly - The garage was just completed in the last year so no one has lived in it yet.

Mr. Bucchere - Does the code say you can't have a garage with a function room with a range in it or does it become an accessory dwelling once you use it as one

Mr. Vogel - It is defined as an accessory dwelling once it has a range in it. This building has gone quite a ways towards that but to my knowledge it does not have a range in it.

Mr. Tibbetts - It wouldn't be a legal accessory dwelling without the permit from the Planning Board.

Mr. Tibbets - Move to find the proposed addition as shown on the plan dated October 8, 2019 does not increase any existing non-conformities or create any new non-conformities and to the extent that it does it is not substantially detrimental to the neighborhood.

Mr. Sullivan - Second

All in favor - Unanimous.

Fourth Application: The Estate of Charles R. Bartlett, in c/o Thomas Bartlett of 277 Clapp Road, Scituate, MA requests a Special Permit/Finding pursuant to Scituate Zoning Bylaw Section 610.2 to allow the creation of a lot with less than 100 feet of frontage. The property is located at **275 Clapp Road, Scituate MA (Assessor's Map 23, Block 1, Parcel 4).**

Representing the Applicant: Attorney Michael Loring, also present Thomas Bartlett, Applicant

Attorney Loring- Reviewed the dimensions of the land and what they intend to do with the lot as it does not have the required amount of frontage.

Mr. Vogel - Questioned a square on the drawing that looked like a building.

Attorney Loring - It was a shed that had been knocked down.

Mr. Vogel - Confirm it is just a footprint of what was there.

Attorney Loring - Confirmed.

Open to the Public - No comments.

Mr. Bucchere - Move to find on the application of the Estate of Charles Bartlett that Lot B as shown on the plan prepared by Michael Cole dated July 12, 2019 and last revised on 11/13/19 stamped by Ralph Cole complies with Section 610.2B of the Scituate Zoning Bylaw and will grant the Special Permit.

Mr. Sullivan - Second.

All in Favor - Unanimous.

Fifth Application: Paul M. Holland, Jr, Trustee of 67 French Avenue, Braintree, MA requests a Special Permit/Finding in accordance with Scituate Zoning Bylaw Sections 470.6F, and a finding in accordance with Scituate Zoning Bylaw Sections 810.2 and M.G.L. Ch. 40A, Section 6, and/or any other relief that the Board of Appeals may grant, to raze a dimensionally conforming single-family dwelling on a pre-existing non-conforming lot at **236 Central Avenue (Assessor's Map 69, Block 1, Parcel 37)** and to reconstruct a single family dwelling thereon which will be an approximately 48% increase in gross floor area, will comply with all dimensional zoning setback and height requirements, and will not be substantially more detrimental than the existing structure or use to the neighborhood.

Representing the Applicant- Attorney Jeff DeLisi, also present Paul Holland, Applicant and Dick Rockwood of Rockwood Engineering.

Attorney DeLisi- In the year 2018 the Board issued a Finding/Special Permit to raze and reconstruct the structure shown on this plan and that relief was granted for the current owner of the property. Mr. Holland is not the owner of the property presently. Mr. Holland is under agreement to buy the property. After the Board issued a Special Permit a year ago the house was razed. Presently at the site there is a partial foundation that is a structure. I defer to the Board should I be requesting a modification to the current Special Permit or should I be asking for new relief.

Mr. Bucchere - I don't think there is anything stopping you from seeking new relief. I do not see any concern of abandonment.

Mr. Sullivan - Agreed with Mr. Bucchere.

Attorney DeLisi - I would like to request that the decision reflect that you have granted relief under Section 810.2 and that you have let us swap out the plan.

Mr. Tibbets - Under Section 810.2 we need to have an understanding of what square footage existed and that the original structure was taken down under another Special Permit.

Attorney DeLisi - Reviewed the old square footage and proposed square footage.

Open to the Public - No comments.

Mr. Bucchere - Move to find on the application of Paul Holland Jr., Trustee to grant a Finding that the proposed 2 ½ story building as shown on a Stenback and Taylor plan dated October 11, 2019 does not create any new nonconformities, it does not increase any nonconformities and to the extent it intensifies such intensifications are not substantially more detrimental to the surrounding neighborhood. And further that the Board find that said proposed building complies with the requirements of 470.6 F of the Scituate Zoning Bylaw.

Mr. Sullivan - Second.

All in Favor - Unanimous.

Sixth Application: Bruce and Kathy Beagley of 68 Collier Road, Scituate MA request a Special Permit/Finding pursuant to 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, non-conforming single family dwelling increasing the gross floor area by more than 20 %. The property is located at **68 Collier Road, Scituate MA 02066 (Assessor's Map 64, Block 9, Parcel 10).**

Representing Applicant- Attorney Jeff DeLisi, also present Bruce Beagley, Applicant.

Attorney DeLisi - The home is nonconforming on the right side but otherwise conforming. The lot area is less than the required area and the lot frontage and width are less than required. The proposed addition would be a garage with additional living space giving the applicant a more flowing floor plan.

Mr. Bucchere - No change in footprint close to the sideline set.

Attorney DeLisi - Confirmed. The side of the proposed addition now has a deck and the deck will be eliminated and addition constructed.

Open to the Public-

Mike Benning of 74 Collier Road- Wants to confirm that it does not encroach on the setbacks.

Mr. Bucchere - Confirmed that it does not.

Mr. Tibbets - Move to find that the proposed addition does not increase any existing nonconformities and to the extent that it does it is not substantially more detrimental to the neighborhood, including the greater than 20% increase in gross floor area, per a plan by Ross Engineering dated October 9, 2019.

Mr. Sullivan - Second.

All in favor- Unanimous.

Mr. Bucchere - Motion to adjourn.

Mr. Sullivan - Second.

All in Favor - Unanimous.

Meeting adjourned at 8:37 p.m.

Respectfully submitted by,

Beth Heneghan