



FINDINGS AND DECISION ON REQUEST FOR AMENDMENT TO SPECIAL PERMIT/FINDINGS UNDER G.L. c. 40A, SECTION 6

PERMITEE: Richard Massey

PROPERTY: 134 Humarock Beach Road (the "Property")

DATE: January 28, 2010

SCITUATE, MASS.

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I. PROCEDURAL HISTORY AND JURISDICTIONAL FINDINGS

1. A decision of the Scituate Zoning Board of Appeals was issued on July 8, 2004 upon the application of Richard Massey for a Special Permit/Finding under M.G.L. Chapter 40A, Section 6, allowing the then-existing, non-conforming dwelling located at the Property to be torn down and replaced with an entirely new dwelling. The decision indicated that the applicant may construct said dwelling as a matter of right, provided that in accordance with Section 810 of the Zoning Bylaw, reconstruction of the dwelling is completed within two years following the razing of the existing dwelling.
2. Richard Massey razed the structure on or about January 2005.
3. On or about March 9, 2004, Richard Massey filed with the Scituate Conservation Commission ("the Commission") a Notice of Intent to reconstruct the structure within resource areas within the jurisdiction of both the Massachusetts Wetlands Protection Act ("Act") under M.G.L. c. 131 § 40 and the Scituate Wetland Bylaw ("Bylaw"). On September 9, 2004, the Commission denied reconstruction of the structure under the Act and the Bylaw.
4. Richard Massey Richard Massey appealed the Commission's denial under the Act to the Department of Environmental Protection ("DEP"), seeking a Superseding Order of Conditions ("SOC") and requested that the Commission reconsider its denial under the Bylaw. The DEP approved Massey's reconstruction project on or about March 24, 2006. Neighbors of Richard Massey then appealed the DEP approval on or about April 6, 2006. This appeal was resolved by a settlement agreement and DEP issued a final approval July 2, 2007.
5. The Commission denied Massey's request for reconsideration under the Bylaw on August 23, 2005. On October 5, 2005 Massey appealed the Commission's denial to Plymouth Superior Court. This appeal was resolved on January 19, 2007 by agreement with the Commission that it would issue an amended approval under the Bylaw, which it did on October 1, 2007.
6. Neighbors appealed the Commission's amended order to Plymouth Superior Court. On May 4, 2009 the Superior Court dismissed the neighbors appeal. On June

3, 2009, the neighbors appealed the dismissal, but then withdrew their appeal on August 3, 2009, rendering the Commission's amended approval final and effective.

7. On or about August 28, 2009, Richard Massey submitted a request to the Zoning Board of Appeal to modify the Special Permit issued on July 8, 2004 by tolling the two-year time limit for reconstruction of his dwelling, recognizing that litigation over other necessary permits has denied him the benefit of the Special Permit.

8. On November 19, 2009, the Zoning Board of Appeals held a public hearing regarding Richard Massey's request to Amend his Special Permit. The Board voted unanimously to approve Richard Massey's request.

I. FINDINGS

1. The prolonged litigation described herein imposed a practical impediment to the use of the benefit of the zoning relief provided by the Board's July 8, 2004 Special Permit. As such, the two-year time limit to reconstruct the razed structure was tolled from the time of issuance of the Special Permit to the time the litigation described herein was resolved on August 3, 2009.

2. The Special Permit is hereby amended by deleting the second to last paragraph in the July 8, 2004 Special Permit and replacing it with the following language:

In view of the foregoing, the Board FINDS that, based on the applicant's representations, the new dwelling to be constructed on the property will not be substantially more detrimental to the neighborhood than the existing dwelling. Accordingly, the Board determines that the applicant may construction said dwelling as a matter of right.

Except as explicitly modified by this decision, the Special Permit remains in full force and effect.

Any person aggrieved by this decision may appeal to a court of competent jurisdiction within 20 days as provided by G.L. c. 40A, § 17.

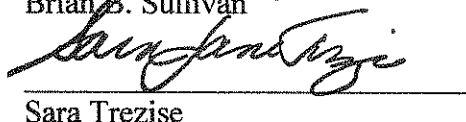
III. DECISION

Upon motion, duly seconded, the Board unanimously voted to approve the changes of the Special Permit as set forth in Section II.2, above.

SCHUATE ZONING BOARD OF APPEALS


Peter Morin, Chairman


Brian B. Sullivan


Sara Trezise