

Town of Scituate

ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY
SCITUATE, MASSACHUSETTS 02066
(781) 545-8716



Decision of the Scituate Zoning Board of Appeals on the application of the Estate of Louis Amato, Joseph P. Ippolito, Executor, for a finding under MGL 40A § 6 and a special permit to raze and reconstruct the pre-existing nonconforming single family dwelling located at 17B Beaver Dam Road, Scituate Massachusetts.

The application was received, advertised and a public hearing was duly held on July 20, 2006, continued to August 17, 2006, and November 16, 2006 with the following members of the Zoning Board of Appeals hearing the application:

John F. Danehey, Chairman
Albert Bangert
Agnes Rona

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The property that is the subject matter of this application is located in the A-3 Residential District. The property does not lie in the Town of Scituate Flood Plain and Watershed Protection District, nor does the property lie in the Town of Scituate Water Resource Protection Zoning District. The property lies in Zone C as shown on FIRM MAP COMMUNITY PANEL 3250282 0003 E. dated October 16, 2003.

At the time of the application, title to the premises was in the name of Louis Amato, by way of a deed recorded with the Plymouth County Registry of Deeds in Book 3007 Page 94.

The premises contain 14,652 square feet of land, more or less by instrument survey of Aaberg Associates, Inc., Professional Land Surveyors, 80 Washington Street, Norwell, Massachusetts. The lot has no frontage, however access thereto is over a right of way on the abutting land known as 19 Beaver Dam Road, owned in common by the late Louis Amato. The A-3 Residential District requires 10,000 square feet lot area and 100 feet of frontage and 100 feet of lot width. It is believed the single family dwelling located upon the lot was built in the late 19th century and is found on the town's Assessors' records as a dwelling from at least 1948 to date. The deed description for the lot has remained unchanged from at least 1921. The dwelling is set back 10.5 feet from the property of Edward and Linda Vitiello and approximately 177 feet from Beaver Dam Road. The current single-family dwelling is therefore nonconforming as to its setback from the Vitiello property. The lot and dwelling are therefore both pre-existing and nonconforming.

This Application was made and the public hearing heard in conjunction with abutting property known as 19 Beaver Dam Road, also owned by the late Louis Amato. While the Applications are separate, each hearing was conducted one after the other and the Board, the Applicant and especially the neighborhood see the proposed changes as an opportunity to create a positive result for the town and the neighborhood while taking

into account the Applicant's property rights under the state zoning enabling act and the bylaw. This long established neighborhood at the Easterly end of Beaver Dam Road, overlooking Scituate Harbor, contains many beautiful nineteenth and early twentieth century homes in close proximity to each other.

The Board acknowledges that the cooperation between the Applicant and the neighbors has been unique and both sides worked diligently over many months to achieve an end result that is beneficial to the Applicant and the neighborhood. The Board also acknowledges the Zoning Enforcement Officer's diligence, wisdom and expertise which greatly assisted in forging this alliance.

At the public hearings, the Board reviewed with the applicant the plans submitted drawn by Aaberg Associates, Inc. and various renderings of the proposed single-family dwelling proposed to be constructed. The plans call for the razing of the existing dwelling and reconstruction of a three bedroom two story plus attic single-family dwelling with an attached two car garage. As presented, the single family dwelling will be located at least 30 feet from the Vitiello property and meet all other applicable set backs required within the District.

Based upon the evidence presented, the Board finds that both the lot and existing single family dwelling located at 17B Beaver Dam Road pre-exist the adoption of subdivision control in Scituate and are nonconforming to the bylaw. The Applicant's proposed reconstruction of the single family dwelling on the lot is a reconstruction pursuant to the terms of MGL c. 40A § 6. The Board further finds that the proposal does not increase the nonconforming nature of the existing single-family dwelling.

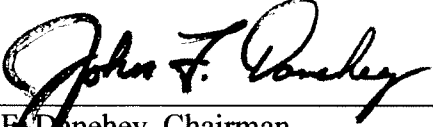
Pursuant to Section 1030.2 of the Bylaw, the lot is appropriate for a single-family dwelling. The use of the reconstructed dwelling should not adversely affect the neighborhood, nor create any undue nuisance or hazard to vehicles or pedestrians. The town's Board of Health and the Building Commissioner will ensure that appropriate facilities are provided to assure the proper operation of the single-family dwelling. The proposed use of dwelling will not have a significant impact on any public or private water supply, and the lot is not located within the Water Resource Protection District. In addition, the Board finds that the use reflects the nature and purpose of the use prevailing when the bylaw took effect, that there is no difference in the quality or character, as well as the degree of use, and the proposed use is not different in kind in its effect on the neighborhood.

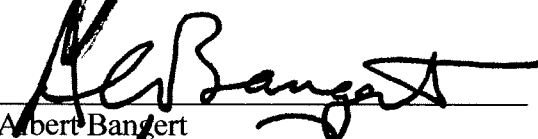
THEREFORE, based upon the information presented, the Board unanimously voted to grant the Applicant a Special Permit under Scituate Zoning Bylaw § 820 and § 1020.2 (D) and a Finding under MGL c. 40A, § 6 that the proposal to raze and reconstruct a pre-existing nonconforming single family dwellings at 17B Beaver Dam Road, Scituate, Massachusetts as presented by the Applicant is not substantially more detrimental or injurious to persons, property or improvements in the vicinity. Accordingly, the Board determines that the Applicant may construct said dwelling provided that it is constructed in accordance with the Zoning Bylaws, that the reconstruction of the dwelling is

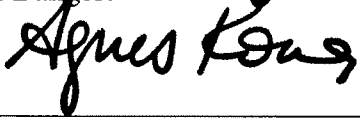
completed within two years following the razing of the existing dwelling, and that the following Conditions are met:

1. The height of the dwelling shall be limited to 30 feet. Height to be determined consistent with the Zoning Bylaws of the Town of Scituate.
2. The dwelling shall not exceed 2,800 square feet of habitable floor space which shall include potentially habitable unfinished spaces above the garage, in the attic, and in any walk-out basement that constitute a "story above grade" as defined by the State Building Code.
3. The dwelling shall be at least 30 feet from the rear property line of Parcel 50-112-6 (the Vitiello property) and shall meet all other applicable set back requirements in the A-3 residential district.
4. No building permit shall issue until approval of the Board of Health and/or Conservation Commission, if necessary, are obtained.
5. No building permit shall issue unless the plans submitted reflect the character, style, scale and age of abutting dwellings.

ZONING BOARD OF APPEALS


John F. Danehey, Chairman


Albert Bangert


Agnes Rona

Filed with the Town Clerk on 1-24-07

This Special Permit will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County Registry of Deeds after the appeal period of twenty (20) days.

Appeal of any decision of the Zoning Board of Appeals may be made pursuant to M.G.L. Chapter 40, Section 17, and shall be filed in a court of competent jurisdiction. Proof of that filing shall be provided to the Town Clerk within twenty (20) days of the date of the filing of the decision with the Town Clerk.