

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 19 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 2684 Page 405. The deed description has remained unchanged since the Amato family originally took title to the property in 1952.

The premises contain 22,150 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 93.32 feet of frontage and lot width according to said survey. The A-3 Residential District requires 10,000 square feet lot area and 100 feet of frontage and 100 feet of lot width. The lot and structure thereon, are therefore pre-existing and non-conforming.

During the course of the public hearings, the long history of this property was discussed among the Board, the Applicant and the neighbors and a brief synopsis of same is relevant to the Boards decision making process. Testimony from the Applicant and neighbors at the public hearing and research provided by the Applicant from the town achieves show that from at least 1952 two dwellings were located upon the lot. The currently existing single family dwelling located at the rear of the lot meets the yard requirements of the Bylaw. However, this dwelling was previously located in close proximity to the rear and Easterly side line, and was renovated and moved to its current conforming location with a valid building permit in 1978. Once those renovations were complete, the late Mr. Amato moved into this dwelling with the intent of reconstructing the dwelling located at the front of the lot. That dwelling, a pre-existing two family

dwelling was destroyed in a gas explosion in 1982. Mr. Amato intended to reconstruct that dwelling immediately, and received a building permit to so reconstruct. A controversy with the Gas Company and insurance company resulted in litigation which left Mr. Amato without the necessary funds to reconstruct. Mr. Amato renewed his building permit until 1986 and was then informed he would need Board of Appeals relief to maintain his right to reconstruct. In 1987, Mr. Amato was granted relief from the Board of Appeals to reconstruct his two family dwelling as a single family dwelling that would meet the Bylaw's yard requirements. Still without settlement of his litigation, with the imposition of a sewer moratorium, and without the funds to reconstruct, Mr. Amato renewed his 1987 Special Permit yearly until 1992. At that time he was told by the then Building Inspector and in writing from the Board of Appeals that he no longer needed to so renew, and that when the then imposed sewer moratorium was lifted could go directly to the Building Inspector for a building permit. Mr. Amato relied upon these representations until his decease.

While this Board and the Applicant agree that the Board in 1992 exceeded its authority by informing Mr. Amato he did not need to renew the Special Permit, the history of the property is relevant to this Board's decision on the Application before it.

This Application was made and the public hearing heard in conjunction with abutting property known as 17B 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 dwellings to be constructed. The plans call for the razing of the existing dwelling at the rear of the lot and reconstruction of a three bedroom two story plus attic single family dwelling with an attached two car garage and for the reconstruction of the dwelling at the front of the lot also as a three bedroom two story plus attic single family dwelling. Both dwellings will meet the yard requirements of the Bylaw in the A-3 Residential Zoning District.

During the course of the public hearings, alternative building plans were presented and reviewed by the Board. These plans involved one structure upon the lot: a two family

“Condex” which would also meet all yard requirements. The Board noted that the lot, containing more than twice the land area required for a single family dwelling could be subject to relief and allow this alternative. The Board, the Applicant and the neighbors all agreed that this alternative would be massive in scale, utilize the entire building envelope and could be three stories or thirty-five feet in height. It was also noted that the structure could, using allowable setback averaging, be much closer to Beaver Dam Road than 30 feet. The Board, the Applicant and the neighbors all agreed that two single family dwellings, properly located and in scale and in general harmony of style to the surrounding homes would be more appropriate relief.

Based upon the evidence presented, the Board finds that both the lot and existing reconstructed 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. The Board further finds that the second dwelling is preferable to an allowable two family structure, and constitutes a change or extension to a pre-existing nonconforming structure or use and is not substantially more detrimental than the existing nonconforming use to the neighborhood.

Pursuant to Section 1030.2 of the Bylaw, the lot is appropriate for a single or two family dwelling. The proposed use 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 dwellings. The proposed use of dwellings 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.

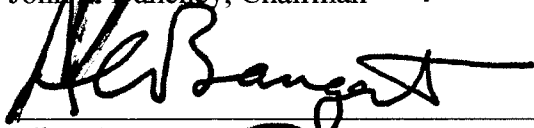
THEREFORE, based upon the information presented, the Board unanimously voted to grant the Applicant a Special Permit under Scituate Zoning Bylaw § 820 and § 1020.2 (D) and a Finding under MGL c. 40A, § 6 that the proposal to reconstruct two single-family dwellings at 19 Beaver Dam Road, Scituate, Massachusetts 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 dwellings provided that they are constructed in accordance with the Zoning Bylaws, that the reconstruction of the dwellings is completed within two years following the razing of the existing dwelling, and that the following Conditions are met:

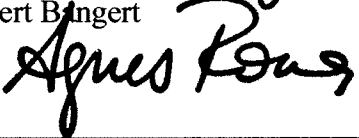
1. The height of the dwellings shall be limited to 30 feet. Height to be determined consistent with the Zoning Bylaws of the Town of Scituate.

2. Neither dwelling shall 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 dwellings shall meet all set back, side and rear yard requirements of the Bylaw in the A-3 residential district. No dwelling shall be located within 30 feet of Beaver Dam Road and the dwellings shall be no closer to each other than 30 feet at their closest point.
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 B. Ingert


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 within twenty (20) days of the date of the filing of the decision with the Town Clerk.