

# Town of Scituate

ZONING BOARD OF APPEALS

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



2008 APR -2 P ID: 55

A public hearing was scheduled for 7:30 PM on February 21, 2008 at the Scituate Town Hall and was continued due to a lack of quorum to March 6, 2008 at the Scituate High School Library, pursuant to notices published in the Scituate Mariner on February 7, 2008 and February 14, 2008. Sitting for the Zoning Board of Appeals were Brian Sullivan, Acting Chairman, Sara Trezise and Peter Morin. The Applicants, Rosalie Lucki and Peter J. Collins owners of the real property known as and numbered 425 South Main Street, Cohasset, Massachusetts sought a variance to a special permit previously granted relating to a common driveway for the benefit of three Scituate residents. The Applicants' Property abuts the Scituate Town line and portions of the properties that are serviced by the common driveway.

The property, which is the subject of this petition, is located in the Town of Cohasset and its southerly property line abuts the Scituate Town line. The Cohasset property owned by the Applicants and the Scituate properties serviced by the common driveway are all in residentially zoned neighborhoods.

At the time of the purchase of the Applicants' property, it accessed a public way in Cohasset, Massachusetts known as South Main Street over a private way entitled Lincoln Lane. Lincoln's Lane intersects the Applicants' Property at its northeasterly boundary and ran in a generally northerly direction to South Main Street. At the intersection of Lincoln Lane and the Applicants' Property, the abandoned railroad bed of the Old Colony Railroad bisected Lincoln Lane.

During the planning stages and during the restoration of the Greenbush Railroad Line from Boston to Scituate, no provision was made for a crossing gate along Lincoln Lane and following the installation of the railroad the Applicants' Property was severed from South Main Street.

Although there had been prolonged negotiations, no provision was made by the MBTA for the Applicants to reach any public way from the Applicants' Property. In August of 2007, the MBTA disavowed responsibility for the Applicants access problems and did not participate further in a solution. The Applicants' Property now has only one avenue of access to a public way and that is along an existing common driveway to Gannett Pasture Road and from Gannett Pasture Road to Route 3A. A common driveway special permit issued by the Town of Scituate in 1994, a copy of which was filed with the application, authorizes the common driveway.

The three (3) families who reside in the Town of Scituate and have the benefit of the common driveway special permit are Michael C. Sheehan and Gretchen M. Sheehan, both of 46 Gannett Pasture Road, Scituate, Massachusetts; Thomas M. McCusker and Joyce G. McCusker, both of 50 Gannett Pasture Road, Scituate, Massachusetts; and

Two of Five/425 South Main Street, Cohasset

Robert J. Collari and Jacqueline P. Collari, both of 48 Gannett Pasture Road, Scituate, Massachusetts. A special permit was granted November 22, 1994 to use a common driveway which is depicted on a plan submitted with the Applicants' application on file with the Board, which common driveway begins at the intersection of the Collari driveway within the area defined as "existing bit driv" and running in generally northerly direction to the Scituate/Cohasset Town line and then running in a generally westerly direction to Gannett Pasture Road.

The Collaris, Sheehans, McCuskers and their predecessors in title have enjoyed the use of the common driveway uninterrupted and without incident from November, 1994 until contacted sometime in 2005 by representatives of the MBTA who indicated their desire to create a second driveway in the area of the common driveway to benefit the Applicants' Property.

While the participants in the common driveway have no objection to the Applicants having access to Gannett Pasture Road over a portion of the common driveway, they objected to any further construction, or widening to the common driveway or to the creation of any barrier separating their common driveway from any driveway to be created for the benefit of the Applicants and running to Gannett Pasture Road.

Thereafter, the MBTA agreed with those individuals having the benefit of the common driveway not to create a new driveway for the Applicants' access Gannett Pasture Road which new driveway was to have been separated from the existing common driveway by a barrier providing essentially two roadways onto Gannett Pasture Road; and the MBTA further agreed to work with the neighbors to assist in the entering into of a common driveway agreement with the Applicants, and encouraged the Applicants and the participants in the common driveway to retain counsel to arrange for a variance to the existing special permit which would allow the fourth residence to be added to the common driveway.

Following this agreement, title issues were raised with respect to the Applicants right to use the common driveway, negotiations ensued and the Applicants eventually acquired easements. The Scituate residents who had the benefit of the common driveway and the Applicants entered into a common driveway maintenance agreement. A copy of the common driveway maintenance agreement was filed with the application, and is now on file with this Board. The agreement insures plowing and maintenance of the common driveway and is consistent with the requirements of the Scituate Zoning By-law.

The Applicants own no adjacent property and have no interest in any easements other than those that have been negotiated to provide access over the common driveway and

Three of Five/425 South Main Street, Cohasset

have no other way to exit their property except over the common driveway and through Gannett Pasture Road. Without the benefit sought in this case, the Applicants' Property will be land locked.

Decision:

The Scituate Zoning By-law, Section 1020.3 does provide that this Board has authority to grant variances in accordance with the standards set forth in Massachusetts General Laws, Chapter 40A, Section 10.

Chapter 40A, Section 10 sets forth the following criteria for the granting of a variance which the Board must specifically find exists with respect to the subject property and with respect to the deficiency for which relief is sought:

- (a) owing to circumstances relating to the soil conditions, shape, or topography of such land or structures but not no affecting generally the zoning district in which it is located;
- (b) a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise to the .... applicants; and
- (c) that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or by-law.

This Board will consider each of the conditions separately:

The Board does find that the Applicants' property is unique in that it is land locked. The Applicants' property has absolutely no access to any public way unless it is allowed to utilize the common driveway, which has been authorized by a special permit since 1994.

No other property within the zoning district in the Town of Scituate in which the other houses on the common driveway are located nor any residences in the zoning district in which the Applicants' Property is located in Cohasset are similarly land locked or prevented access to a public or private way by virtue of the construction of the railroad. Moreover, there is no other property similarly affected in either neighborhood or in any other part of Scituate or Cohasset as the result of the construction of the railroad.

By virtue of its land locked status, the Applicants' Property eventually will be rendered a financial nullity. Currently, the Applicant, Rosalie Lucki is accessing Gannett Pasture Road with the permission of the individuals who own the intervening land between her

Four of Five/425 South Main Street, Cohasset

property and Gannett Pasture Road but this is a temporary measure and permanent easements which have been negotiated are of no value if the Town of Scituate does not permits access over this common driveway.

Moreover, because the Applicants' Property has no frontage on a public way and no deeded rights other than the easement negotiated with respect to the common driveway to provide access to a public way, it does not meet secondary market standards for mortgage loans and therefore could not be financed by any one seeking a mortgage loan. Essentially, the property's value is substantially impaired by its lack of access and its inability to obtain financing under current secondary market standards. Accordingly, the unique location of the property and its lack of access to any public or private way constitutes a financial hardship for which there appears to be no remedy other than the variance.

In reviewing the Applicants situation in granting the relief the Board finds that there would be no derogation from the intent or purpose of the By-law or substantial detriment to the public good.

If the relief is granted, the addition of one house to the common driveway currently used by three families in a very rural and sparsely populated portion of Scituate would not result in any congestion in the streets or even congestion on the common driveway.

There would be no health problems associated with the grant because whatever residential dwellings exist will continue to exist, no new septic systems will be created and there will be no taxing of utilities particularly in the Town of Scituate.

There is no increase in the number of structures, no increase in the number of families and in granting the variance it will not create circumstances which would exacerbate threats of fire, flood, or contribute to congestion of housing or overcrowding in the neighborhood. The neighborhood is what it is and will remain so.

There will be no taxing of Scituate's utilities. Whatever utilities currently service the Applicants' Property in Cohasset will continue to do so and therefore there will be no effect on transportation, water, supply, drainage, sewerage, schools, parks, open space and other public facilities within Scituate.

Under the circumstances, the Board grants the variance sought subject to the following conditions:

- (a) The common driveway will be configured as depicted on the plan filed with this Application entitled "Plan of Land in Scituate, Massachusetts prepared for Robert J. Collari and Josephine Plante Collari" dated October 6, 2006.

Five of Five/425 South Main Street, Cohasset

- (b) The easements granted to Rosalie Collins and Peter J. Collins to use the common driveway by the owners of the fee interest in the property will be recorded with the Plymouth County Registry of Deeds and the Norfolk County Registry of Deeds and the title references with respect thereto will be added to the common driveway maintenance agreement relating to the common driveway.

ZONING BOARD OF APPEALS



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Brian Sullivan, Acting Chairman



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Sara Trezise



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Peter Morin

Filed with the Town Clerk on: April 2, 2008

This Special Permit/Finding will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County 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 40A, 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.