



ZONING BOARD OF APPEALS

Decision of the Scituate Zoning Board of Appeals on the application of Michael K. Borgen, Trustee of the Lot 2 Brook Street Realty Trust, 220 Adams Circle, Hanson, Massachusetts (hereinafter, collectively, the "Applicant") requesting the Board to modify or amend the Special Permit previously granted to the applicant's predecessor in interest, filed with the Scituate Town Clerk on February 21, 2006 and recorded at the Plymouth County Registry of Deeds at Book 32355, Page 132. The Applicant is seeking to modify the Special Permit in order to utilize the existing driveway currently on the Applicant's property as access to and from Brook Street for a dominant property shown as Lot 1 on a Plan of Land recorded with the Plymouth County Registry of Deeds as Plan No. 395 of 2006 at Plan Book 51, Page 621.

The Applicant's request to modify a condition imposed by this Board in an earlier decision is permissible under our by-laws and by law. Huntington v. Zoning Board of Appeals of Hadley, 12 Mass.App.Ct. 710, 715-717 (1981). This is a somewhat unique situation as amendments and/or modifications are far and few between.

The application was received, advertised and a public hearing was held on November 16, 2006. The following members were present at the public hearing and voted at the regularly scheduled hearing on November 16, 2006:

John F. Danehey, Chairman
Albert Bangert
Agnes Rona

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At the meetings, the Applicants were represented by Attorney Jeffrey A. De Lisi of Ohrenberger Associates of Scituate, Massachusetts. In attendance was Michael K. Borgen.

The decision of this Board (referenced above) discusses the history of the property and how the property was subdivided. (That decision is incorporated herein by reference). The applicant seeks to modify the previous Special Permit decision in order for Lot 1 to use the way that exists for Lot 2. This was the original driveway to 80 Brook Street prior to the subdivision under Section 610.2 (B) and 1020.2(B) of the Scituate Zoning Bylaws.

Health and safety concerns were raised due to the potential water runoff if another impervious surface was mandated for Lot 1 for the residences down gradient. At present, the location is known for drainage problems, which naturally flow down gradient toward Satuit Brook. Testimony at the hearing and the prior hearing, as well as a Chapter 40B hearing on a project directly behind the properties, raised concerns over water flow. The Zoning Enforcement Office also raised concerns at the hearing of mandating another impervious surface for Lot 1, which would only further exacerbate the drainage flow.

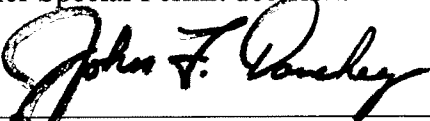
Due to the health and safety concern raised, the Board was persuaded to amend its prior decision so as to remove the mandatory language on page one of its decision, that the Applicant "will install a driveway from Brook Street over Lot 1 for access to said Lot 1."

Instead, the Board amends its earlier decision so that the Lot 1 will obtain access by using the way, which is used by Lot 2. This decision by the Board does not confer any legal right to Lot 1 over Lot 2, however, Lot 1 will need to obtain any and all legal rights, i.e., easement, from Lot 2 in order to pass and re-pass. The Applicant was fully aware of this and has subsequent to the hearing of this application obtained the necessary legal right.

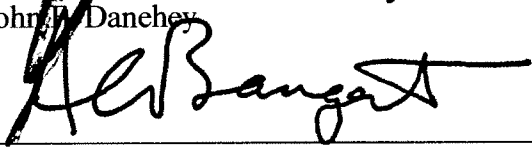
Additionally, to clarify a point raised at the initial hearing and not fully elaborated in the decision, the Applicant understands that he is required to install a perimeter drain around the foundation of the new dwelling, which he shall connect to the town's storm drain on Brook Street provided the DPW grants permission.

Finally, this modification is consistent with the law in that it is not a substantive modification of the prior zoning decision.

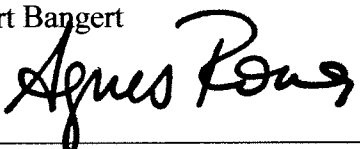
For the foregoing reasons, the Board unanimously voted to GRANT an Amendment to its earlier Special Permit decision.



John F. Danehey



Albert Bangert



Agnes Rona

Filed with the Town Clerk: 2-13-07

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 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.