

# Town of Scituate

ZONING BOARD OF APPEALS

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



2007 SEP 17 P 3:19

Decision of the Scituate Zoning Board of Appeals (hereinafter referred to as the "Board") on the application of John E. and Patricia A. Conway, Trustees of JPC/Scituate Realty Trust of 137 Washington Street, Norwell, Massachusetts (hereinafter referred to as "the Applicants") for:

1. a Finding under Massachusetts General law (MGL) 40A Section 6 and Scituate Zoning Bylaw (SZB) Section 810 that the reliance upon and use of Cole Parkway for tenant, staff and customer parking pre-dates the SZB requirement for on-site parking, and
2. a Finding/Special Permit under MGL 40A Section 6 and SZB 820 that the razing and reconstruction and use of a building at 80 Front Street and that the continuation of the use of Cole Parkway for tenant, staff and customer parking, will not be substantially more detrimental to the neighborhood than the existing structure and use.

The application was received, advertised, and a public hearing was duly held on June 21, 2007, with the following members of the Zoning Board of Appeals hearing the application:

Albert G. Bangert, Chairman  
Brian B. Sullivan  
Sara J. Trezise

At the time of the application, title to the subject property was in the name of JPC/Scituate Realty Trust, John E. and Patricia A. Conway Trustees, by way of a deed dated March 29, 2002 and recorded with the Plymouth County Registry of Deeds in Book 21884 Pages 128-129 and filed with the Plymouth Registry District of the Land Court as Document No. 503774 and noted on Certificate of Title No. 101068. The Applicants originally purchased the subject property on December 11, 1968 as recorded with Plymouth Deeds in Book 3493, Page 174 and filed with the Plymouth Registry District of the Land Court as Document No. 122404 and noted on certificate of Title No. 43227.

Attorney Walter Sullivan of 80 Washington Street, Norwell, MA represented the Applicants at the hearing.

The subject property is located in the HB "Harbor Business" District. The property lies neither in the Town of Scituate Flood Plain and Watershed Protection District nor in the Town of Scituate Water Resource Protection Zoning District. The subject property lies in Zone AE (elevation 12) as shown on FIRM Map Panel #250282 0004 E, dated October 16, 2003. The property is currently serviced by the town's public water and sewer systems, and there is on file with the Board the January 30, 2007 letter from the Scituate Selectmen authorizing the connection of the proposed reconstructed building to said systems.

The Assessors card 050-007-018 shows that there are 4 buildings constructed on the subject property:

- Building A - 3 stories tall with a total of 6,372 square feet - built in 1977
- Building B - 1 story tall with a total of 3,992 square feet - built in 1900
- Building C - 3 stories tall with a total of 11,550 square feet - built in 1970

- Building D – 2 stories tall with a total of 5,466 square feet – built in 1977

The subject property provides no off-street parking as required in SZB 760 (Parking Requirements) enacted in 1988. The Board determined that the buildings on the subject property were built prior to the establishment of the parking requirements and are nonconforming due to the absence of off-street parking. Therefore, the Board made the Finding that the subject property and buildings thereon pre-exist the adoption of parking requirements in Scituate and are nonconforming to SZB 760 and, therefore enjoy pre-existing, nonconforming status and the protections afforded by MGL 40A, Section 6 and SZB 820.

At the public hearing the Applicants presented their proposal to raze Building B and replace it with a three-story, 11,393-square foot structure consisting of retail space on the first floor and office space on the second and third floors. The Board reviewed 1) Architectural Plans submitted by DRL Associates, INC, 2 West Street, Weymouth, MA dated April 11, 2007 as revised June 8, 2007; 2) a Site Plan prepared by Ross Engineering, 683 Main Street, Norwell, MA, dated February 22, 2007; and 3) an Average Setback Plan by Ross Engineering dated March 5, 2007. The Board determined that the proposed reconstructed Building B would conform to SZB Section 620 (height limitation), Section 620.3 (sideline requirements) and Section 620.4 (average setback requirements).

Several members of the public present at the public hearing (Dr. Gordon Price, Mr. William Verge, Mr. Michael Hayes, Mr. Joseph Hayes) spoke in favor of the Applicants' project. One member of the public (Ms. Doreen Close) spoke in opposition.

Under the SZB 1020 (Powers) the Board may grant a Special Permit to change or alter a nonconforming use as provided in SZB 820. Under SZB 820, the Board may authorize a nonconforming use to be changed to a more restricted use or to a specified use not substantially different in character or more detrimental or injurious to persons, property or improvements in the vicinity. Under MGL 40A Section 6 the Board is empowered to grant a special permit for the extension or alteration of the use of a pre-existing, non-conforming structure, provided that such change is determined by the Board to be not more detrimental to the neighborhood than the existing nonconforming use.

The Board determined that the proposed retail and office uses of the building are consistent with the designated uses of the Harbor Business District and that the reconstructed building will bring a substantial improvement to the neighborhood. The existing Building B is substandard in terms of current building, flood plain, fire, and safety codes, and it is not compliant with current requirements for handicap accessibility. The building lends no historic character to the HB District. The Applicants worked diligently with the Town's Design Review Committee to develop a design for the proposed building, which would, in the Committee's opinion, be an improvement to the Harbor. The Applicants offered to provide in perpetuity an eight-foot wide walkway to improve the public's access to Cole Parkway and the waterfront from Front Street.

The Board examined testimony and evidence (Traffic and Parking Analysis dated April 18, 2007 by GPI, 105 Central Street, Stoneham, MA) concerning the impact that the proposed new building and increased uses would have on public parking and traffic in the Harbor. According to SZB 760.6, the proposed project would require an additional 24 parking spaces. Testimony at the Hearing and personal experience of Board members indicated that the currently available public parking facilities

in the Harbor would support this level of increased demand. The proposed use would add needed office space in the Harbor Business District. Office space generates weekday, 9-to-5 demand for parking and does not conflict with other uses such as weekend boating, evening entertainment, and overnight parking. Additionally, the Applicants' attorney pointed out that in 2002, the Applicant voluntarily reduced his property's parking requirements by 57 spaces when he converted Building D from Restaurant use to Office use. The Board determined that the increased parking demand created by the addition of office space to Building B would not be substantially detrimental to the neighborhood.

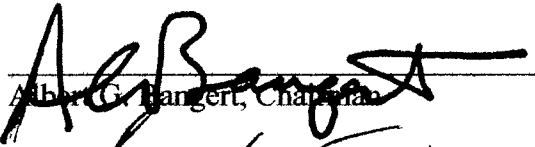
Under SZB 1030.2 (Procedures Under Zoning Bylaw) the Board is required to assure that project for which a Special Permit is granted meets specific requirements. The Board determined that a) the site is an appropriate location for the proposed reconstructed building, b) the use of the reconstructed building will not adversely affect the neighborhood, c) the proposed building will not be an undue nuisance or serious hazard to vehicles or pedestrians, d) the Board of Health and the Building Commissioner will ensure that adequate and appropriate facilities will be provided to assure the proper operation of building, e) the proposed building will not have a significant impact on the public water supply, and f) the site is not located in the Water Protection District.


Under SZB 1030.3 (Conditions of Approval) the Board may impose conditions it deems reasonable to protect the neighborhood when granting a Special Permit.


**THEREFORE**, the Board unanimously voted to GRANT the Applicants a Special Permit under Scituate Zoning Bylaw Section 820 and Section 1020.2 and a Finding under MGL Chapter 40A Section 6 that the proposal to raze the pre-existing, nonconforming Building B at 80 Front Street, Scituate, Massachusetts and replace it with a new building as presented by the Applicants is not substantially more detrimental or injurious to persons, property or improvements in the vicinity than the existing structure. Accordingly, the Board determines that the Applicants may construct said building provided that it is constructed as proposed at the hearing, is completed within two years following the razing of the existing Building B, and that the following conditions are met:

1. There shall be no change in proposed retail and office use without an amendment of the Board's decision.
2. The 8-foot wide walkway connecting Front Street with Cole Parkway as described on architectural drawing sheet A-13 shall be available for public access in perpetuity.
3. The Applicant will provide a recordable agreement for the maintenance of and payment for water and sewer services shared by the four buildings on the subject property, whether or not such buildings remain in common ownership.
4. The issuance of a building permit shall be subject to a post-demolition site inspection and the submission of an amended site plan providing information concerning a) on-site surface drainage, b) the existing domestic water distribution system, and c) existing and proposed flows to the sanitary sewer.
5. The Applicant shall use cedar shingles or materials that are similar in appearance to cedar shingles.
6. The Applicant shall construct the building with third floor setbacks in compliance SZB 620.1.

ZONING BOARD OF APPEALS

  
Albert G. Bangert, Chairman

  
Sarah J. Trezise

  
Brian B. Sullivan

Filed with the Town Clerk on 9/17/2007

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.