

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 (hereinafter referred to as "the Board") on the application of the Town of Scituate (hereinafter referred to as the "the Applicant") for a Finding under Massachusetts General Law (MGL) 40A Section 6 that the building and land uses at 117 Edward Foster Road (hereinafter referred to as "subject property") are pre-existing non-conforming and a Special Permit under Scituate Zoning Bylaw (SZB) Sections 820 and 1020.2 to allow the razing and reconstruction of the boat-yard building.

The application was received, advertised and a public hearing was duly held on 17 January 2008 with the following members of the Zoning Board of Appeals hearing the application:

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

Howard S. Kreutzberg of 143 Edward Foster Road, Scituate, MA, acting in his capacity as the Chairman of the Town of Scituate Waterways Commission, represented the Applicant at the hearing.

At the time of the application, title to the subject property was in the name of the Town of Scituate by way of a deed dated 28 October 2004 and recorded with the Plymouth County Registry of Deeds in Book 29345, Pages 284-288.

The subject property is located in the A-3 Residential District. The property does not lie in the Town of Scituate Water Resource Protection Zoning District. It is located within the Town of Scituate Flood Plain and Watershed Protection overlay district. The subject property consists of two adjacent parcels totaling approximately 139,808 square feet. In addition to several small out buildings on the property, there is a 3024 square foot enclosed building used for boat rigging, repair, material storage, retail sales of boat repair sundries, office and rest room. The Assessor's field card does not state the year in which the building was constructed, however testimony at the hearing indicated that the building was erected prior to the 1940's and the property has been used for boat maintenance, storage and dockage since that time.

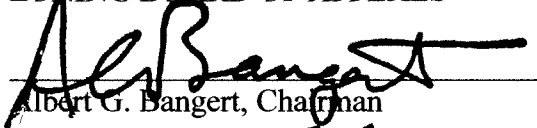
The Board made the determination that the buildings and uses of the subject property were in existence prior to the establishment of the restrictions on uses in the A-3 District (SZB Section 420) and parking lot requirements (SZB Section 760) and therefore, enjoys pre-existing, non-conforming status and the protections afforded by MGL 40A Section 6. The Board further determined that the proposed expansion of the parking lot and Marina facility as shown on the plan by CLE Engineering (15 Creek Road, Marion, MA) dated November 30, 2007, although not in complete conformance with the provisions of the Scituate Zoning Bylaw, is permissible based on the Board's finding that the proposed expansion will not be substantially more detrimental to the neighborhood than the pre-existing non-conformities.


The Applicant proposes to raze the existing boatyard building and reconstruct a new one at a new location on the property. The Board determined that the proposed structure, which will not exceed 25 feet in height measured from the average finish grade adjacent to the building to the top of the ridge and which will meet all setback requirements of the A-3 District, will not be substantially more detrimental to the neighborhood than the pre-existing structure.


Pursuant to Section 1030.2 of the Bylaw, the Board finds that a) the site is appropriate for the proposed continued non-conforming uses and expansion of the Marina facility, b) the reconstructed building will be smaller in size than the existing structure and therefore will not adversely affect the neighborhood, c) the proposed continued use of the structure will not create any undue nuisance or hazard to vehicles or pedestrians, d) the Town's Board of Health and the Building Commissioner will ensure that appropriate facilities are provided to assure the proper operation of the reconstructed boatyard building, e) the proposed use of structure will not have a significant impact on any public or private water supply, and f) 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 relevant 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, the Board unanimously voted to GRANT the Applicants a Special Permit under SZB Section 1020.2 and Section 820 and a Finding under MGL Chapter 40A Section 6 that the proposal to raze the boatyard building and expand the parking lot and Marina facility located at 117 Edward Foster Road, Scituate, Massachusetts and replace the boatyard building with a temporary structure followed by a new structure not to exceed 2500 square feet nor 25 feet in height as presented by the Applicants is not substantially more detrimental or injurious to persons, property or improvements in the vicinity. Accordingly, the Board determines that the Applicants may construct said structure provided that it is constructed as proposed at the hearing.

ZONING BOARD OF APPEALS


Albert G. Bangert, Chairman


Brian B. Sullivan


Sarah J. Trezise

Filed with the Town Clerk on: February 7, 2008

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.