

# 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 ("Board") on the application of South River Partners, LLC, 9 Stonebridge Lane, Milton, MA 02186 ("the Applicant") for a Finding under Massachusetts General Law ("MGL") 40A, Section 6 and a Special Permit under Scituate Zoning By-Law ("SZB") Sections 820, 1020.2 and 1030 to allow:

- (a) the razing of the existing structures upon the premises known as 8 Dartmouth Street, bounded by Central Avenue, Webster Street, Dartmouth Street and the South River (the "subject property"), and the reconstruction of five buildings containing a total of fourteen residential town house units on the subject property; and
- (b) the reconfiguration of the existing marine float system at the subject property.

The application was received, advertised, and a public hearing was opened on December 20, 2007, continued from time to time, and closed on April 17, 2008 with the following members of the Zoning Board of Appeals hearing the application:

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

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

**DESCRIPTION OF THE PROPERTY:** At the time of the application, title to the subject property was in the name of the Applicant with a title reference of Plymouth County Registry of Deeds, Book 33448, Page 221 and Plymouth County Registry District of the Land Court Certificate of Title No. 109673.

The subject property is located in the GB District and lies within the Town of Scituate Flood Zone AE as shown on FIRM Map Panel #250282 0007 E revised October 16, 2003. It does not lie within the Town of Scituate Water Protection District. Currently on the subject property there are a 300-seat restaurant, a 20-slip marine float system, a boat launch, a boat storage yard and three accessory buildings. The property is serviced by the town's public water system and relies upon an on-site septic system. The Assessor's Field Card shows that the primary building on the property was constructed in 1905.

**DETERMINATION ON ZONING BYLAW CONFORMITY:** The Dimensional Regulations for lots and structures in the GB District are as follow-

- Lot area – not less than 10,000 square feet of upland;
- Lot frontage on a street or way – lot less than 60 feet for nonresidential uses;
- Lot width at the building – not less than 100 feet;
- Setback from any street or way – not less than 30 feet;
- Side yard setback – not less than 8 feet;

- Rear yard depth – not less than 20 feet for dwellings or less than 8 feet for all other buildings.

The existing primary structure does not conform to current zoning requirements with respect to –

- Setback from any street or way - 12 feet from Dartmouth Street.

The allowed uses of property in the GB District are specified in SZB Sections 340 and 430. The use of the property as a boat storage yard is not permitted as of right in the GB District (SBZ 430.1).

Based upon evidence and testimony presented at the hearing the Board determined that the two nonconformities outlined above were in existence prior to the adoption of the relevant Zoning Bylaw by the Town of Scituate. Therefore, the Board finds that the property enjoys pre-existing, non-conforming status and the protections afforded by MGL 40A, Section 6.

**PROPOSED PROJECT:** The Board reviewed the following documents provided by the Applicant –

1. Site plan drawn by Merrill Associates, 427 Columbia Road, Hanover, MA, dated November 13, 2007 and revised March 4, 2008 (6 sheets)
2. Architectural plan prepared by Axiom Architects, 2048 Washington Street, Hanover, MA, dated March 6, 2008 (7 sheets)
3. Pictorial representation of the project's profile as viewed from the South River prepared by Axiom Architects dated February 13, 2008
4. Plan for proposed float system revisions prepared by Tetra Tech Rizzo, 10 Forbes Road, Braintree, MA dated February 4, 2008 (6 sheets.)

~~The Applicant proposes to raze all existing buildings on the property, reduce the size of the marine float system and cease the operation of the boat storage yard. In their place, the Applicant proposes to construct 14 town house style residential units in 5 buildings and a reconfigured 16-slip marine float system which shall conform to all pertinent requirements of SZB including Section 570 adopted by Scituate Town Meeting on March 29, 2008.~~

Residents, business owners and abutters at the hearing provided input to the Board and spoke in favor of the proposed project.

Pursuant to Section 1030.2 of the Scituate Zoning Bylaw, the Board finds that a) the lot is appropriate for the proposed multi-family dwelling and marine float uses, b) the reconstructed dwellings shall comply with current zoning bylaw and should not adversely affect the neighborhood, c) the uses 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 multi-family dwellings, e) the proposed use of dwellings will not have a significant impact on any public or private water supply, and f) the subject property is not located within the Water Resource Protection District.

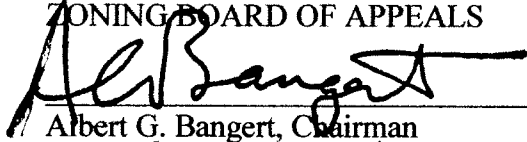
In addition, the Board finds that the uses reflects the nature and purpose of the uses prevailing when the relevant bylaw took effect, that there is no difference in the quality or character, as well

as the degree of uses, and the proposed uses are not different in kind in its effect on the neighborhood.

**THEREFORE**, the Board unanimously voted to GRANT the Applicant a Special Permit under SZB Sections 820, 1020.2 and 1030 and a Finding under MGL Chapter 40A Section 6 that the proposal to raze all of the buildings located at the subject property known as 8 Dartmouth Street, Scituate, Massachusetts and replace them 14 town house style residential units in 5 buildings and a 16-slip marine float system as presented by the Applicant is not substantially more detrimental or injurious to persons, property or improvements in the vicinity. Accordingly, the Board determined that the Applicant may construct said dwellings and marina provided that they are constructed as proposed at the hearing and completed within two years following the razing of the buildings with the following conditions-

1. There shall be no change to the buildings and marine float system as proposed at the hearing without an amendment of the Board's decision.
2. The Applicant shall make the following improvements to the existing public boat ramp
  - a. ramp side slope stabilization (rip rap or other)
  - b. maintenance dredging and landscaping
  - c. perpetual public access passage to and from said launch and ramp and to and from and over a stairway to the pier for passive waterfront viewing and access to the Applicant's strip of land bounded by the South River all as more particularly described in the Applicant's Chapter 91 Waterways License Application (a copy of which is on file with the Board).
3. The Applicant shall provide one off-site affordable housing unit, priced and deed-restricted as provided for by SZB Section 560.7 B and C. Said affordable housing unit shall be ready for occupancy prior to the issuance of the occupancy permit for the first market rate unit.
4. ~~The Applicant shall remove the existing stockade fence along the rear lot line and shall eliminate and not replace the seasonal boat storage operation.~~
5. The Applicant shall site the buildings as proposed at the hearing so as to enhance the South River views from the adjacent streets.
6. The Applicant shall provide in addition to the 28 garage parking spaces 39 exterior parking spaces and shall maintain such exterior parking spaces and driveways as unpaved in accordance with the requirements of the Conservation Commission.
7. The Applicant shall require that weekly trash collection to be provided as part of the condominium common area maintenance service agreement so as to eliminate the need for an on-site trash dumpster.

TONING BOARD OF APPEALS

  
Albert G. Bangert, Chairman



Brian B. Sullivan



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Sara J. Trezise

Filed with the Town Clerk on: May 27, 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.