

## **Scituate Zoning Board of Appeals, February 16, 2011**

Scituate Zoning Board of Appeals

Meeting Minutes

February 16, 2011

PRESENT: Peter Morin, Chairman, Brian Sullivan, Sara Trezise, Edward Tibbetts and John Hallin.

The Scituate Zoning Board of Appeals held a public hearing on February 16, 2011 at the Selectmen's Chambers located at 600 Chief Justice Cushing Highway, Scituate. The meeting was called to order at 7:00 P.M.

First Application: Robert A. Jacobucci of 50 Irving Road requests M.G.L. c40A, section 6 special permit/finding to raze and reconstruct pre-existing non-conforming single-family dwelling at 50 Irving Road.

Attorney Michael Hayes represented the applicant.

Robert Jacobucci and Edward McLaughlin were also present.

Michael Hayes- Mr. Jacobucci would like to raze and reconstruct the dwelling on his 4,000 square foot lot with 50-feet of frontage. The field card states the house was built in 1955. Mr. Hayes went through the old bylaws. The 1953 zoning bylaw grandfathered lots that had been duly laid out prior to 1953. So, the lot is a pre-existing non-conforming lot. Property is on town sewer, current setback 29.8 feet; rear is 15.9 feet from rear lot line. The lot size, frontage, front setback and northeasterly side yard and the rear are all non-conforming. They would make the front and side yards conforming and adding a bulkhead out to 21 feet, which will be conforming. The house would be a small cape.

Ed Tibbetts- this was his grandfather's house years ago.

Mike Hayes- ran through the findings, considerations and the Powers Test.

Edward Tibbetts was a voting member.

Trezise moved to grant the application as presented by the applicant and to allow the raze and reconstruction, the Board finds that the reconstruction would not be more substantially detrimental, seconded by Tibbetts, all in favor, unanimous.

Second Application: John McNamara of 54 Garrison Drive requests M.G.L c40A, Sec 6 special permit/finding to add more than 20% gross floor area to pre-existing non-conforming single-family dwelling at 75 Moorland Road.

Paul Mirabito from Ross Engineering represented the applicant.

John McNamara was present.

Paul Mirabito- the applicant was proposing to improve the house that would increase the gross floor area by 56%. The only non-conformity was the garage, which they will push back to make conforming. A portion of the existing dwelling would be removed. Mr. Mirabito submitted gross floor area calculations the Board (see file).

Mr. McNamara- they were trying to preserve the existing cape but will add onto it.

Brian Sullivan- felt the proposed was a big house.

Paul Mirabito- they did go in front of the North River Commission.

Sullivan moved to grant the finding and special permit in accordance with the application and plan dated 1-12-10 and architectural renderings submitted by the applicant, seconded by Tibbetts, all in favor, unanimous.

Third Application: Carla Litchfield of 297 Tilden Road requests M.G.L c40A, Sec 6 special permit/finding to raze and reconstruct pre-existing non-conforming single-family dwelling at 46 Gilson Road.

Doug Freezin of Duxborough Design represented the applicant.

Mr. Freezin- they were in front of the Board last month but were back because they changed their minds regarding the design. They now have decided to change the footprint and have made the dwelling smaller but the footprint is larger from the previous one. The only setback he was changing would be the rear. Mr. Freezin will put in writing that they would be withdrawing the previous application.

Sullivan moved to find that the raze and reconstruct would not be substantially more detrimental to the neighborhood and the Board would grant the special permit per the plan dated by 1-27-11, seconded by Trezise, all in favor, unanimous.

Fourth Application: Request from Mary Ann Doherty of 89 Edward Foster Road for the Board to reopen the public hearing on the 114 and 118 Edward Foster Road applications and reconsider the vote taken at the close of the public hearing on January 19, 2011.

Peter Morin- there was a roster of mistakes that happened at the hearing the previous month when the Board heard this application. As he was preparing a decision he was reviewing case law and found a case on point to this application. He read from part of the bylaw under section of 470.9. He asked if the Board it could reopen the application. He thinks the special permitting authority may take this action before the decision is written, signed and filed with the Town Clerk. He did verify this with several Town Counsels.

Sara Trezise- wanted to know if notice would need to be given for this action.

Peter Morin- no, he didn't think so. He was more concerned with what they did. He felt that 470.9 was a two-step process, the Board first needs make a determination that the property is not subject to flooding and then they need to move to the second step under section 950.3 and go through the special permit findings that they need to make. The Board voted on the findings and the motion to grant the special permit failed. The Board then was operating on the notion that application had failed. Procedurally he felt that filing a decision would not be a good

idea, it would give the applicant grounds for appeal. Mr. Morin suggested reopening the hearing. It hadn't occur to him that the black lines have notations that mark contour lines, which these lines were different in many places. Mr. Maribto made this argument in his cover letter in the applications (see file). One of the possibilities was for the Board to say that this is not in the floodplain district, which causes difficulty for the Town. He felt that this was worth a discussion and it was only fair to property ownersto clarify these issues.

Edward Tibbetts- asked about time frames for decisions.

Peter Morin- the applicant would allow an extension. The clock had started to run; the Board had 90 days to write the decision.

Edward Tibbetts- did not want to jeopardizes constructive approval.

Peter Morin- the decision he wrote reflects the three opinions of each of the voting members.

Brian Sullivan moved to reopen the hearing, seconded by Morin

John Hallin- had no opinion on the finding.

Sara Trezise- was not clear on the reasons for reopening. She felt that everything he hit on was discussed at the previous meeting.

Peter Morin- the motion was made that the lots were subjected to flooding, the motion was two to one. It was his opinion that the Board should make the finding under 470.9 and then consider those issues.

Sara Trezise- she would not change her decision on the findings. She wanted know if Mr. Morin now thought they needed to grant a special permit.

Peter Morin- the Board would need to go through 950 individually.

Sara Trezise- her decision would not change so were they prolonging the inevitable.

Brian Sullivan- this was a house keeping issue. Mr. Sullivan would

educate himself on the research that Peter has done and he feels the applicant deserves to have the hearing reopened.

Edward Tibbetts- didn't see a downside.

Sara Trezise- would not make a premature notion or decision. She felt that the applicant did nothing with her property for 40 years and now the laws had changed.

Peter Morin- suggested she read the case laws and review his research before she make the statement that she would not change her mind.

Sara Trezise- she will not change her mind from the last hearing.

Sullivan moved reopen the hearing, seconded by Morin, all in favor, Sullivan and Morin yes, Trezise nay. The motion carried.

Sullivan moved to adjourn at 9:40 P.M., seconded by Trezise, all in favor, unanimous.

Respectfully Submitted,

Nicole Harris  
Inspections/Zoning Department