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**Scituate Zoning Board of Appeals  
Meeting Minutes  
February 18, 2016**

**PRESENT:** Sara Trezise, Chairman, Ed Tibbetts, Frank Lynch, John Hallin and Anthony Bucchere.

**Also Present:** Neil Duggan, Building Commissioner and Zoning Enforcement Officer.

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The Scituate Zoning Board of Appeals held a public hearing on February 18, 2016 at the Scituate Town Hall located at 600 Chief Justice Cushing Highway, Scituate. The meeting was called to order at 7:00 P.M.

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**First Application: Jonathan Aprea of 23 Shipyard Drive, Hingham, MA** requests a M.G.L. Chapter 40A, Section 6 Finding/ Special Permit on behalf of John M. Creedon to raze a single story non-conforming garage and construct a two story garage in a larger footprint keeping the same non-conforming setbacks. The property is located at **4 Grasshopper Lane, Scituate, MA (Assessor's Map 7, Block 7, Parcel 2)**.

The Applicant requested to continue the hearing until the March 17, 2016 meeting per a letter dated February 11, 2016 (see file).

**Mr. Tibbetts moved to allow the Applicant to continue the hearing to the March 17, 2016 meeting, seconded by Mr. Lynch. All in favor, unanimous.**

**Second Application: Kenton L. Bongarzone of 17 Gates Circle, Scituate, MA** requests a Special Permit/ Finding in accordance with Scituate Zoning Bylaw Sections 810, 820 and M. G. L. Chapter 40A, Section 6 to permit the extension, alteration and/ or intensification of a pre-existing non-conforming use and structure at **5 Williamsburg Lane, Scituate, MA (Assessor's Map 37, Block 2, Parcel 4A)**.

The Applicant requested to continue the hearing until the March 17, 2016 meeting per a letter dated February 17, 2016 (see file).

**Mr. Tibbetts moved to allow the Applicant to continue the hearing to the March 17, 2016 meeting, seconded by Mr. Hallin. All in favor, unanimous.**

**Third Application: Scituate Rod and Gun Club, Inc. of 965 Chief Justice Cushing Highway, Scituate, MA** request a Special Permit/ Finding pursuant to Section 810.1, 810.3, 820, Section 420 section 3N and/ or M.G.L. Ch. 40A Section 6 of the Scituate Zoning Bylaws to approve an existing shed and 50 yard preexisting nonconforming shooting range and to construct a baffle system over the entirety of said 50 yard range as approved by the Plymouth Superior Court at **965 Chief Justice Cushing Highway, Scituate, MA (Assessor's Map 12, Block 6, Parcel 1)**.

**Representing the Applicant:** Steven Guard, Esq. and Phil Lennon, President Scituate Rod and Gun Club.

Attorney Guard described the application and provided an explanation of the history to the Board. The Club was established in 1929 and has been in its present location since 1948 as preexisting, nonconforming until 1956 when the allowed use as a non-profit civic organization. In 1977 it became a legal preexisting, nonconforming use after a change in use allowing for a club or lodge. In 2003 a shooting shed was constructed without a building permit and added to the firing end of the range. The Rod and Gun Club came before the ZBA as the culmination of litigation in Superior Court. The Club was subject to an injunction whereby handguns and rifles were no longer allowed to be discharged on the premises. The case was fully vetted throughout litigation and a trial on the merits was held. The Judge found in favor of the plaintiffs and awarded damages for trespass as well as allowing and maintaining the injunction to remain in place until such time that the Club came back to the Court with an acceptable plan to reopen the range. That plan is the plan included in the ZBA application before the Board. A Motion to Vacate the injunction was put forth by the Gun Club and was fully vetted between the plaintiffs and attorneys for the gun club. The gun club has recently achieved court approval to reopen the club for such rifle and handgun shooting with certain restrictions and implementation requirements. The plan, by Clark Vargas & Associates, LTD includes a baffle system to extend the length of the range and berms 22' above grade on each end with 16-17' above grade on the sides. The foundation plan includes pilings on which the baffle system would be placed. The pavilion is an open structure with a roof and no walls. Within its footprint there is a 3' x 11' closet for storage. The area where the proposed baffle system and shed is proposed was an open path within a wooded area historically used for all types of target shooting. The Gun Club serves a need in the community. A fire arm safety course is offered and has been well attended. The club is a pistol range. Rifles are allowed provided they only shoot pistol ammunition and with the stipulation that two individuals will be present to confirm firing of pistol ammunition only.

Ms. Trezise stated the order from the Court was clear and concise. She did not anticipate it would be difficult for members to understand and/or follow.

Mr. Hallin stated the safety issue had been addressed and was supported by the Superior Court Judge.

Mr. Duggan clarified the application by stating that the application in front of the ZBA includes plans which have been fully vetted by the parties involved and approved by Judge Hely in Plymouth Superior Court.

Ms. Trezise opened the meeting for public comment.

Mindy Connelly of 8 Heritage Trail spoke on behalf of her husband Chris and their neighbors. Ms. Connelly told the Board that in 2004 and 2005 two bullets struck her property. In 2008 Miss Norton's house was struck. Ms. Connelly said to the extent that zoning is more restrictive than the injunction standards applied by the Superior Court Judge; this issue had not been debated or vetted. Judge Hely refused to discuss, review or deal with any zoning matters. Following a

January 2009 inspection of the 50 yard firing range per the request of Ms. Connelly and her neighbors, a cease and desist order was sent to the Gun Club by Mr. Duggan for construction of the range without issuance of a building permit. Mr. Duggan determined the 50 yard firing range was outside of grandfathered status. There was no appeal of this order by the Gun Club. Based on that, Ms. Connelly stated the application was defective as it was not a preexisting nonconforming use, but rather unlawful.

Ms. Connelly argued the 50 yard range is detrimental to the residents of Heritage Trail and the surrounding neighborhood. Heritage Trail lies in the middle of the surface danger zone (SDZ). The bullet range of a rifle is three (3) miles. The bullet range of a pistol is one (1) mile. Ms. Connelly argued that the baffle plans submitted by Clark Vargas, ballistics expert for the Gun Club and author of National Rifle Association Range Design Book, was inadequate.

Ms. Trezise asked if experts for the plaintiffs and the defendants presented at trial.

Ms. Connelly stated yes, experts on both sides presented at trial.

Mr. Duggan stated the Cease and Desist Order was issued on the preexisting nonconforming use. The Board discussed Judge Hely's ruling and whether the ZBA is bound by his decision or if they can make their own determination of what is more detrimental to the neighborhood than what was preexisting.

Mr. Duggan felt the Board should consider if the intensification of the range with baffling is substantially more detrimental to the neighborhood than the range that was preexisting.

Alan Norton of 17 Heritage Trail (a plaintiff) stated that a bullet came in to his mudroom. He told the Board the injunction had not been lifted and would not be unless the ZBA grants the Special Permit. Mr. Norton stated if the Board grants the Special Permit they would be assuming any liability for any further damage.

Ms. Trezise stated the bullets hit before this plan. Standards of the plan must be met.

Chris Connelly of 8 Heritage Trail stated that an engineered stamped plan would be presented to the Building Commissioner if the Special Permit is granted. This plan will not specify how a bullet will be stopped. The "blue sky" plan will destabilize a bullet, but not stop it.

Mr. Tibbetts explained the role of the ZBA is not to litigate this case, but rather to discuss whether or not the plan before the Board meets zoning.

Ernie Foster of 109 Clapp Road was in favor of the range. He felt it would be safer to have people shooting in the range rather than the woods.

David Ronan, a member of the Gun Club, stated that concrete construction of the baffle would cause a ricochet, whereas the 1 1/2" pine would absorb the impact.

Ken Loring of 11 Conroy Terrace spoke in support of the plan.

Peter Fryling of 62R Booth Hill Road asked if the Gun Club would consider raising the berm to reduce noise.

Ms. Connelly spoke again and asked the Board to consider the materials and documents she presented prior to making a decision relevant to whether or not the addition of a 50 yard range is substantially more detrimental to the neighborhood. Additionally, the Surface Danger Zone (SDZ) ballistics expert was not refuted.

Mike Kinahan of 287 Tilden Road told the Board he shoots with his 15 year old daughter at the range. This is an interest they share together. He supports the plan and knows the club has worked hard to come up with the plan. It will be safer than it has been.

Attorney Guard referred to Mr. Duggan's letter of 2008 and stated the Gun Club is not changing use, but rather asking the Board to approve the modification of nonconforming use. The dynamic range has been approved. The baffle system was reviewed and approved by the Plymouth Superior Court and annual inspections are required as part of the plan. The Club would be open to a Special Permit condition requiring more frequent inspections.

Ms. Trezise closed the meeting to further public comments.

The Board discussed the plan presented, the safety requirements and security protocol. Attorney Guard confirmed the plan presented was per order of the Superior Court. Full compliance with the order is required by the Gun Club. Failure to do so could result in contempt of court and sanctions imposed.

**Mr. Lynch moved to close the public hearing and allow 24 hours for submission of documents presented for the Board's review prior to voting at the March 18, 2016 ZBA meeting. Motion seconded by Mr. Tibbetts, all in favor, unanimous.**

**Fourth Application: Arthur V Jr. and Debra Cote of 92 Cross Street, Marshfield, MA request M.G.L. Chapter 40A, Section 6 Finding/ Special Permit to raze and reconstruct their pre-existing non-conforming single family dwelling located at 135 Humarock Beach Road, Scituate, MA (Assessor's Map 71, Block 5, Parcel 12).**

The Applicant explained the background of the application to the Board stating Mr. Cronin owned both lots. Originally the property existed as one lot which was later divided with easements located on both properties.

After reviewing the submitted plan the Board discussed the necessity of further documentation required in order to thoroughly review the application and make a ruling. The Applicant was asked to submit a Land Court plan, a certificate of title, an easement document as well as a revised site plan to include the existing and proposed setbacks. The Applicant agreed to provide said documents and requested to continue the hearing until the March 17, 2016 meeting.

**Mr. Lynch moved to allow the Applicant to continue the hearing to the March 17, 2016 meeting, seconded by Mr. Bucchere. All in favor, unanimous.**

**Fifth Application: Paul Sheerin of 48 Ocean Avenue, Scituate, MA** requests a Special Permit/Finding pursuant to Sections of the Zoning Bylaw: Section 470.6F- for the substantial improvement of an existing structure located in the Town of Scituate Flood Plain and Watershed District, which legally existed prior to March 2, 1992 and Section 810.2A- for the razing and reconstruction of the single family dwelling with a greater than 20 percent increase in the gross floor area at **39 Otis Road, Scituate, MA (Assessor's Map 40, Block 5, Parcel 20)**.  
Representing the Applicant: Paul Mirabito, C.P.E. Ross Engineering.

Mr. Mirabito explained to the Board the existing home was constructed in 1953 and is in the R3 zone. The square footage is currently 936. Pre-existing nonconformities are in the front yard and left side yard setbacks at 22' and 6.5' respectively. The current 2012 FEMA map shows the property to be in the AE10 zone. The proposed 2015 FEMA map shows the property to be in the AE16 zone. The property also lies within the Town of Scituate Flood Plain and Watershed Protection District.

The proposed new dwelling would be constructed in accordance with the proposed 2015 FEMA maps and would have a square footage of 2390. This represents a 155% increase over the existing square footage.

Mr. Tibbetts inquired about the 100' buffer zone.

Mr. Mirabito stated the existing dwelling is within the 100' buffer zone.

Ms. Trezise requested a copy of the purchase and sale agreement for the file. Mr. Mirabito confirmed a copy would be submitted to the file.

Ms. Trezise opened the meeting for public comment.

Jackie Boudreau of 37 Otis Road asked to have the existing and proposed square footage clarified and stated her concern over drainage. It would be favorable to remove the hedge currently located on her property during demolition.

Steve Bjorkland of 38 Ladds Way confirmed the existing structure has a full basement, and the foundation has sustained damage during storms.

Chuck Welch of 37 Otis Road expressed his support for the proposed plan and made mention of drains in the road filling with water. He would like this problem addressed.

Mr. Duggan encouraged Mr. Welch to contact DPW with regard to his concern.

**Mr. Tibbetts moved to grant the Special Permit pursuant to Section 470.6F for substantial improvement of an existing structure located in the Town of Scituate Flood Plain and Watershed District and that it does represent a substantial improvement, is nonconforming with respect to front yard and left side yard setbacks. The proposed structure will alleviate the left side yard setback and improve the conformity of the front yard setback and will not**

**increase in any additional nonconformities and that therefore a Special Permit be granted. Motion seconded by Mr. Hallin, all in favor, unanimous.**

**Sixth Application: Jacqueline Murphy of 91 Humarock Beach Road, Scituate, MA** requests M.G.L. Chapter 40A, Section 6 Special Permit/ Finding to raze and reconstruct the nonconforming single family dwelling and add more than 20% to the pre-existing gross floor area at **91 Humarock Beach Road, Scituate, MA (Assessor's Map 72, Block 4, Parcel 18)**. Representing the Applicant: Paul Mirabito, C.P.E Ross Engineering.

Mr. Mirabito discussed the application with the Board stating the existing dwelling which is located in the R3 zone, was constructed in 1915 and is has preexisting nonconformities with respect to lot area, lot width, frontage, side yard setbacks and rear yard setback. Existing gross floor area is 1228 sq. ft. The property is located in the 2012 FIRM Map Zone VE19 and AO2. The proposed 2015 FIRM map shows the property to be in VE16 and AE13. The proposed dwelling would be constructed on wood pilings in accordance with the 2015 proposed FIRM map. The proposed square footage would be 3475, representing an increase of 183%. Existing side yard setbacks are 7.9' and 3.3' where 8' are required. The proposed side yard setbacks are 8.4' and 3.6'. The proposed front yard setback would be 56.8' where 30' are required.

Mr. Duggan stated that in accordance with the demolition delay bylaw, the Historical Commission must review and make a determination with respect to the historical significance of any structure 100 years or older. No demolition permit can be issued prior to this determination.

There were no comments from the public.

**Mr. Lynch made a motion on the application of Jacqueline Murphy to raze and reconstruct the structure at 91 Humarock Beach Road and moved the Board find that the existing property is nonconforming with respect to lot area, lot width, frontage and setbacks on both sides and that the proposed structure will reduce the nonconforming setback of 7.9' to 8.4' on one side and the nonconforming setback of 3.3' to 3.6' and further move to find the proposed structure will be an increase in the gross floor area of 183% and may be an intensification of lot area nonconformity and the proposed structure will not be a substantial detriment to the neighborhood compared to the existing structure and that the criteria under section 950.3A-F are all satisfied and that the Board grant the Special Permit. Motion seconded by Mr. Tibbetts, all in favor, unanimous.**

**Seventh Application: Diamond Development, P.O. Box 1480, Duxbury, MA** request a Special Permit/ Finding under Section 6-10.2B of the Scituate Zoning Bylaws to construct a single family dwelling on a lot with 50' of frontage at **105 Hatherly Road, Scituate, MA (Assessor's Map 39, /block 6, Parcel 17)**. Representing the Applicant: Mr. Stephen Bjorkland, Partner at Diamond Development.

Mr. Bjorkland discussed the application telling the Board the existing structure which was constructed in 1910 will be removed. The Applicant has a purchase and sale agreement for the property. Lot 1 has 23,409 sq. ft. of upland where 20,000 are required and is the lot for which a

Special Permit under Section 610.2B is requested. An application for a Special Permit for a common driveway will be filed through the Planning Board. The common driveway is to be located on Lot 1 would provide access to lots 2, 3 and 4. An existing driveway on Lot 1 is planned to be widened with every effort being put forth to avoid wetlands.

Mr. Tibbetts stated the lot cannot be further subdivided.

There were no comments from the public.

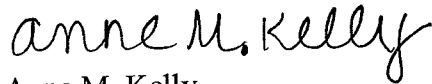
**Mr. Tibbets moved to grant the Special Permit application under Section 610.2B of the Scituate Zoning Bylaws to allow construction of a 50' frontage lot according to the plan dated January 14, 2016 by Ross Engineering with the condition that the final plan reflects the property shall not be further subdivided. Motion seconded by Mr. Lynch, all in favor, unanimous.**

Minutes from November 2015, December 2015 and January 2016 presented for approval.

**Mr. Lynch moved to approve said minutes. Motion seconded by Mr. Tibbetts, all in favor, unanimous.**

Meeting adjourned at 10:45pm.

Respectfully Submitted,



Anne M. Kelly