

**Scituate Zoning Board of Appeals
Meeting Minutes
September 15, 2016**

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

Also Present: Robert Vogel, Acting Building Commissioner and Zoning Enforcement Officer.

The Scituate Zoning Board of Appeals held a public hearing on September 15, 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.

First Application: Michael McCarron of 133 Glades Road, Scituate, MA request a Special Permit/ Finding pursuant to M.G.L Chapter 40A, Section 6 to enclose a first level porch and add a second story open deck over that enclosure on the front of the existing dwelling on a preexisting, nonconforming lot at **133 Glades Road, Scituate, MA (Assessor's Map 5, Block 3, Parcel 53)**.

The Applicant requested to continue the hearing to the October 20, 2016 meeting in a letter dated September 12, 2016 received via email.

Mr. Hallin motioned to grant the Applicant's request to continue the hearing to the October 20, 2016 meeting. Motion seconded by Mr. Tibbetts, all in favor, unanimous.

Second Application: Gardner and Maureen Oleson of 144 Turner Road, Scituate, MA request a Special Permit/ Finding and/or any other relief the Board of Appeals may grant in accordance with the Scituate Zoning Bylaws and/or the M.G.L. Chapter 40A, Section 6 to construct an approximately 10' x 26.5' addition onto a pre-existing nonconforming single family dwelling on a pre-existing nonconforming lot in the R-3 zone and Flood Plain and Watershed Protection Overlay District, which addition will increase the gross habitable floor area by more than 20% at their home located at **144 Turner Road in Scituate (Assessor's Map 40, Block 2, Parcel 2)**.

Representing the Applicant: Mr. Jeff DeLisi, Esq. and Mr. Jeff Hassett, Registered Engineer, Morse Engineering.

Mr. DeLisi explained to the Board the Applicant's proposed plan to construct an addition using a portion of the existing rear deck. The property, located in the R3 zone, is non-conforming with respect to lot area, lot frontage, lot width, side line setback (4.6' where 8' is required) and front yard setback. The existing structure, built in 1930, is elevated on pilings.

Mr. Hassett further explained the proposed addition would be constructed in accordance with the 2016 FIRM map requirements. The existing square footage is 1612. The proposed square footage is 2142, representing an increase of 33%.

Ms. Trezise noted the lot stair steps 10' as shown on the site plan and asked the Board to consider whether the line is a side line or rear setback.

Mr. Bucchere stated the deed dated 1945 shows the rear lot line. The Board agreed the proposed side line and rear setbacks would be an extension of a pre-existing nonconformity.

Mr. Vogel reminded the Applicant of the FIRM map requirement that the first floor must be 1' above the base flood elevation. Although not impacting the ZBA issuance of a Special Permit, the Applicant should be aware of the requirement.

There were no comments from the public.

Mr. Lynch made a motion that the Board grant a Special Permit at 144 Turner Road, Scituate. He further moved that the Board find the existing property is preexisting, nonconforming as to lot area and frontage and structure dimensions, that the proposed addition will increase, minimally, side line setback from 4.6' to 4.4' and that the rear nonconformity will increase, but find that both increases will not be a substantial detriment to the neighborhood compared to the existing structure, and that therefore the Special Permit be granted. Motion seconded by Mr. Bucchere, all in favor, unanimous.

Third Application: Alfred Boyajian of 94 Marion Road, Scituate, MA requests a Special Permit/ Finding pursuant to M.G.L. Chapter 40A, Section 6 and/or Section 810.2A of the Scituate Zoning Bylaw to construct an addition which will increase the gross floor area of the dwelling by 102% on a pre-existing nonconforming lot at **94 Marion Road, Scituate, MA (Assessors Map 40, Block 11, Parcel 3).**

Representing the Applicant: Paul Mirabito, Registered Engineer, Ross Engineering.

Mr. Mirabito described the application to lift the house vertically and enclose the existing deck. Although the property is not located in the flood zone, it has been subject to flooding in the basement. Lifting the structure would eliminate further flooding with the garage proposed to be at 15.5' elevation. The subject property, located in the R3 zone, was built in 1957 and is nonconforming with respect to lot area, side setbacks and lot frontage. The existing square footage of the dwelling is 1368 with proposed square footage of 2756, an increase of 102%. The proposed height of the structure is 33'5.75" which is within the maximum height restriction of 35'. The finished grade will not change as no fill be will forthcoming and the impervious area will increase by 10%, thus not requiring a storm water permit.

The average setback in the neighborhood is 27.3'. The subject property has an existing front setback of 29.1' with a proposed front yard setback of 27.3'.

Ms. Trezise asked Mr. Mirabito why Kenneth Road was used to establish the average front yard setback.

Mr. Mirabito explained the 200' each way from the same side of the street.

The meeting was opened for public comment.

Ellen Culhane of 80 Marion Road asked where the "Lion's Den" would be connected to the proposed dwelling, explaining to the Board the name given to the adjacent property in rental advertisements.

Ms. Trezise stated the adjacent property at 92 Marion Road is not before the ZBA.

Mr. Tibbetts explained to the audience each of the two properties as well as the structure on each is protected under the bylaws. The Board is hearing the application on 94 Marion Road. Any and all issues involving 92 Marion Road are not before the Board this evening.

Mark Hamacher of 95 Marion Road told the Board a catch basin had existed on the property before the 1960's which the Applicant removed last October and filled with loose gravel and grain above street level. Mr. Hamacher discussed at great length the drainage and grade changes as a result of the Applicant's action. Subsequent to a discussion earlier in the week with DPW, Mr. Hamacher could not definitively say where the catch basin drains.

Mr. Bucchere stated the property is registered land. The Town has no rights to the drain.

Mr. Tibbetts explained if it were a town drain there would be an easement.

Mr. Vogel further explained where a driveway slopes down it is very typical to have an area drain in front of a garage door.

Ms. Trezise stated the ZBA has no authority over drains. The town has no right to allow drainage on private property.

Mr. Hamacher questioned the width of Marion Road and pointed out a scrivener's error on a site plan as presented during the Applicants ZBA hearing in 2009 on the adjacent property.

Mr. Bucchere stated the Land Court plan states 30' width, to which the Town is bound by. Additionally, the bar scale shown on said site plan clearly shows 30'.

Al Goodman of 58 Kenneth Road told the Board the neighbors do not want a repeat of what happened at 92 Marion Road. Merely assessing fines is not likely to deter the Applicant from unpermitted work as his financial state is such that fines will not impact him. It is not the job of the neighbors to stand outside and oversee on going work. The job of overseeing and enforcing falls on the Town government.

Mr. Vogel explained when building plans are submitted to the Building Department they will be closely examined. Any deviations will be addressed at that time. After a Building Permit is issued the Building Department will monitor and inspect the job at each step.

Mr. Tibbetts elucidated the ZBA must protect the rights of the landowner. Scituate does not have an architectural by-law of which to enforce. The site plan is before the Board with proposed architectural plans. The Applicant is not bound by the architectural plans submitted, though the structure must be dimensionally compliant and remain within the footprint presented.

Damien Grozier of 72 Kenneth Road questioned whether the foundation of the existing structure would support the proposed structure. In the event it would not, could the Applicant pour a new foundation without a new ZBA application?

Roland Barry of 87 Marion Road asked the Board to condition the Special Permit to what has been presented tonight and for a definition of "gross square footage increase of 102%".

Mr. Bucchere explained the existing square footage is 1368. The proposed square footage is 2756 which represents an increase of 102%.

Helen Jablonski of 166 Jericho Road asked if the structure has to conform to the properties around it.

Mr. Tibbetts explained the land cannot be changed, but the structure on which it sits can be altered as long as those changes are in compliance with the Scituate Zoning Bylaws.

Mr. Hamacher asked when the grade measurements as stated on the site plan submitted with the application were taken.

Mr. Tibbetts stated the plan states the grades. Those grades must be adhered to.

Damian Grozier asked if there is a restriction for use and if the proposed structure could be rented?

Mr. Tibbetts explained that the bylaws define allowed uses.

Ms. Trezise closed the public comment period.

The Board had a lively and lengthy discussion whether or not referencing the submitted architectural plans in the Special Permit/ Finding would be appropriate. Members of the Board were not in agreement.

Mr. Mirabito reminded the Board that the submission of architectural plans is not required with the ZBA application.

Attorney DeLisi referred to Section 810.2 of the Scituate Zoning Bylaws pointing out the Applicant may petition the Board for a finding under M.G.L. Chapter 40A, Section 6 to allow the proposed repair, alteration, reconstruction, extension or structural change.

The Board unanimously agreed the application requires relief as specified under a Special Permit.

Mr. Bucchere motioned regarding the application for 94 Marion Road that the Board find the proposed improvements per a plan submitted by Ross Engineering and dated 7-29-2016 do not create new nonconformities and do not propose an extension of existing nonconformities, further that the Board condition it's finding on proposed improvements on the site being built in a manner not to exceed the proposed side, front and rear setbacks,

height and existing grade as noted on written application and to the extent that there is any intensification of lot area, the Board finds it is not substantially more detrimental. Motion seconded by Mr. Tibbetts.

Ms. Trezise requested a discussion.

The Board discussed language to further define the Special Permit and conditions attached thereto. Following a lengthy and lively discussion the Board encouraged the Applicant to consider requesting a continuance with the understanding public discussion had been closed and no further evidence would be accepted, thus enabling the Board further opportunity to establish language protecting the land use of the Applicant as well as surrounding abutters. After conferring with his client, Mr. Mirabito requested to continue the hearing to the October 20, 2016 meeting.

Mr. Tibbetts moved to table motion as presented and continue the hearing to October 20, 2016. Motion seconded by Mr. Lynch, all in favor, unanimous.

Fourth Application: David Comeau of 6619 S. Dixie Highway, Unit 376, Miami, FL 33143 requests a Special Permit/ Finding in accordance with the Scituate Zoning Bylaw sections 470.6F, 810.2, 830, 950.2B, 950.2D and/or M.G.L. Chapter 40A, Section 6 and/or any other relief that the Board of Appeals may grant that the razing of a pre-existing nonconforming single family dwelling and an accessory structure, on a pre-existing nonconforming lot **at 169 Jericho Road, Scituate, MA (Assessor's Map 46, Block 14, Parcel 10)** and reconstruction of a single family dwelling thereon will be less non-conforming, and will not be substantially more detrimental or injurious to the neighborhood, than the existing non-conforming structure(s) or use(s).

Representing the Applicant: Mr. Jeff DeLisi, Esq. and Paul Mirabito, Registered Engineer, Ross Engineering.

Documents presented: Site plan by Ross Engineering stamped and dated August 15, 2016.

Attorney DeLisi explained the application to the Board stating the two existing structures on the property would be razed and a single family dwelling is proposed to be reconstructed. The existing left side yard nonconformity would be eliminated, the right side yard setback would comply with the 8' requirement, and the rear yard setback would comply with the 20' requirement in the R3 residential zone. The Applicant did not have architectural plans available for presentation. Nevertheless, as the owner of the adjacent property at 167 Jericho Road, the Applicant assured the Board the proposed dwelling would complement the home on the said adjacent property. The existing lot coverage is 592 square feet. The proposed structure would have 1320 square feet of lot coverage and a footprint of approximately 40' x 23'. After comparing buildings in the neighborhood Mr. DeLisi noted the size of the proposed structure would be in accordance with the neighborhood additionally noting the average lot coverage being 47% in the neighborhood. The Applicant proposes a structure with 39% lot coverage.

Mr. Mirabito discussed the site plan presented. The property is located a flood zone and would be constructed in accordance with the 2016 FIRM map and FEMA requirements. The

Conservation Commission requires the structure be 1' above base flood elevation. The property is nonconforming with respect to lot size and frontage. The average setback on the street is 3.1'.

Attorney DeLisi referred to Section 810.2 of the Scituate Zoning Bylaws and stated a finding is necessary to raze and reconstruct under Chapter 40A, Section 6

The Board discussed safety issues inherent to the proximity of the structure to the roadway. Specifically, the lack of visibility of a car entering or exiting a garage/ parking area on the ground level of the structure was of the greatest concern to the Board.

Mr. Mirabito explained the structure must be close to the roadway in order to meet the rear setback requirement.

Ms. Trezise expressed further concerns regarding pedestrian safety and traffic in the area and requested the Applicant submit a proposed rendering of the structure in order to better understand how the safety issues would be addressed. The lot is very small and the proposed home is very large. The ZBA has a duty to consider what is detrimental to the neighborhood. Ms. Trezise inquired about the proposed square footage of the structure.

Attorney DeLisi stated the footprint had been presented. The ZBA application does not require submission of an architectural rendering. Proposed square footage of both the first and second floor is 1320, the third floor proposed to be 900 square feet. The proposed total square footage is 3540 which represents an increase of 719.4%.

Mr. Bucchere stated concern regarding the proposed large increase in lot coverage as well as the location of a garage door at the lot line.

Mr. Tibbetts offered the suggestion of a condition attached to the Finding/ Special Permit that the midpoint of the garage door not be closer than 8' off the roadway.

The Board had a lively and lengthy discussion whether or not architectural renderings would be appropriate for review prior to issuance of a Finding/ Special Permit. Members of the Board were not in agreement.

The meeting was opened for public comment.

Tim Williamson of 153 Jericho Road stated he backs his car out frequently and has never had an issue.

Jane Analetto of 152 Jericho Road was concerned with the safety of pedestrians and cars travelling at excessive speeds from Turner, Lighthouse and Rebecca Roads and asks that DPW reviews the situation. She has lived there since 1977 and feels the neighborhood has been destroyed. She would like to maintain the character of neighborhood.

Elaine Bongarzone of 17 Gates Circle expressed concern with visibility in backing out. Additionally, Ms. Bongarzone noted the Board has given conflicting information to Applicants

with regard to the necessity of architectural renderings and encouraged the Board to be consistent.

Rose O'Neil of 148 Jericho Road stated concern over safety and the possibility of stepping off the asphalt sidewalk into the road. She has lived there over 70 years.

Cecelia Comeau, Applicant and owner of 167 and 169 Jericho Road wanted to reassure the Board and neighbors that a tasteful home would be constructed with due consideration of all safety concerns.

Helen Jablonski of 166 Jericho Road fully supports the project and feels it would be a significant improvement to the neighborhood than the existing structure.

The meeting was closed to further public comment.

Attorney DeLisi stated the application is not difficult and encouraged the Board to vote subject to DPW making a determination on the garage, but is not supportive of submission of architectural plans as part of the Board's review and determination. Mr. DeLisi referenced section 810.2 of the Scituate Zoning Bylaws defining criteria for a Finding versus a Special Permit. A Finding is appropriate for this application thus necessitating a majority vote. Subsequently, he referenced 950.2 reading aloud the four powers of the ZBA and restating only a Finding would be required by the Board. Mr. DeLisi encouraged the Board to initiate a straw polling.

Mr. Hallin stated the Applicant has demonstrated due diligence to the project.

Mr. Tibbetts discussed the adjacent properties and did not believe the ZBA has any place weighing in on aesthetics.

Mr. Lynch stated his agreement with Mr. Tibbetts.

Mr. Hallin stated that if renderings are required the application should be revised to state such.

Ms. Trezise stated her strong belief that Town Counsel should be consulted, renderings presented to the Board for review and consideration and DPW review of the driveway configuration.

Mr. Vogel explained he is unaware of D.P.W. ever weighing in on single family driveways.

Mr. Bucchere moved that the Board find in regard to the application for 169 Jericho Road that the Board find the existing property is nonconforming as to lot area, frontage and front setback and that the proposed improvements shown on the plan prepared by Ross Engineering and dated 8/15/2016 shall create no new conformities, shall reduce front yard setback nonconformity and to the extent the proposed improvements create an intensification of the front yard setback or the lot area nonconformity that such intensification is not substantially more detrimental to the neighborhood than the existing structure conditioned upon the requirement that any garage door located on the ground

level or sub first floor of the premises be set back from the front boundary so that the center point of said door or enclosed parking space is at least 8' back from the center point of the vertical plane. Motion seconded by Mr. Hallin.

Mr. Tibbetts requested the Board members be polled and the votes recorded. Those in favor: Mr. Hallin, Mr. Tibbetts, Mr. Bucchere and Mr. Lynch. Those opposed: Ms. Trezise.

Request for As Built Approval: Walden Woods LLC Comprehensive Permit submittal of As-Built plans for approval.

Representing the Applicant: Anthony Esposito, Registered Civil Engineer.

Documents presented: Site As-Built Plan dated September 11, 2016 as prepared by Ross Engineering and letter to the Board from Anthony Esposito, dated August 22, 2016.

Mr. Esposito confirmed the Board's receipt of the letter from Amory Engineering following the site visit of Pat Brennan. In Mr. Brennan's letter dated September 13, 2016 he confirmed the plan accurately represents the construction "as-built". As such, the Applicant has requested the release of the \$55,000 and \$10,000 bonds having met all conditions.

Mr. Hallin motioned to approve the As-Built plan as sent via email dated 9-11-2016 and sealed and certified on September 13, 2016 and the release of \$55,000 bond and the \$10,000 bond. Motion seconded by Mr. Bucchere, all in favor, unanimous.

Minutes from the July 21, 2016 and August 18, 2016 presented for approval.

Mr. Bucchere moved to approve July 21, 2016 and August 18, 2016 minutes as amended. Motion seconded by Mr. Tibbetts, all in favor, unanimous.

Mr. Hallin moved to adjourn. Motion seconded by Mr. Bucchere, all in favor, unanimous.

Meeting adjourned at 11:30pm.

Respectfully Submitted,



Anne M. Kelly