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**Scituate Zoning Board of Appeals
Meeting Minutes
October 15, 2015**

PRESENT: Sara Trezise, Chairman, Ed Tibbetts, Frank Lynch and Anthony Bucchere.
Also Present: Neil Duggan, Building Commissioner and Zoning Enforcement Officer.

The Scituate Zoning Board of Appeals held a public hearing on October 15, 2015 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: Continued from September 17, 2015 **Marvell Homes, LLC, Paul Sheerin, Manager of 48 Ocean Avenue, Scituate, MA** request a Special Permit/Finding pursuant to M.G.L. Ch. 40A Section 6 and for any other relief the Board deems necessary to raze and reconstruct the pre-existing, non-conforming single family dwelling at **12 Pond View Extension, Scituate, MA (Assessor's Parcel 14, Block 1, Parcel 8)**.
Representing the Applicant: Mr. Michael Hayes, Esq.
Documents Presented: updated site plan submitted by Ross Engineering dated August 11, 2015, Revision 2.

Mr. Hayes gave the Board an overview of the updated site plan which reflects the removal of an entrance overhang and a chimney. The updated site plan also indicates the present square footage of 1512 as well as the proposed square footage of 2600. The existing dwelling on the property was constructed in 1850 and is nonconforming in lot area and frontage. The existing front setback is also nonconforming at 17.5'. The revised plan submitted September 29, 2015 shows the removal of the entrance overhang thus reducing the nonconformity to 18'. Side setbacks will be conforming and rear setback will be conforming at 20'. The proposed new structure will reduce existing nonconformities.

Mr. Duggan noted the submission of a certified full scale plot plan as well as the modest size of the proposed structure.

Ms. Trezise opened the meeting to public comment.

David Klein of 9 Pond View Ave. Ext. reiterated points he made in a letter delivered to the Board on October 15, 2015 by referencing Scituate Zoning Bylaw 810.1. Mr. Klein interpreted the bylaw as not allowing the razing and reconstruction of an unoccupied residential dwelling which has been unoccupied for two or more years.

Mr. Duggan explained the Board routinely grants Special Permits to owners of unoccupied residential dwellings as the Board interprets the bylaw as not allowing reconstruction of a nonconforming use of a structure. Although the structure itself is nonconforming, the use is conforming. It has not been abandoned as a building. The Board's interpretation is consistent with the intent of the bylaw and prevents a tremendous hardship that would be caused for many property owners, particularly in situations where protracted estate issues are involved.

Ms. Trezise clarified the property has been a residential structure and the Applicant proposes to reconstruct a residential dwelling. If it were a business it could be abandoned, but because this is a residential use it is not an abandonment issue.

Marybeth Klein of 9 Pond View Ave. Ext. expressed concern over the size of the proposed dwelling referring to it as a "McMansion" and would like the applicant to scale back the size of the proposed dwelling.

Ms. Trezise stated it is not a "McMansion" and also noted the home across the street, which is owned by Mary Beth and David Klein, appears to be larger than the proposed dwelling. The proposed structure is similar in size to the other homes on the street.

Mr. Tibbetts explained the proposed dwelling is well within the 7000 sq. foot lot area. He then explained M.G.L. Ch. 40A Section 6, as interpreted by the Massachusetts Appeals Court in *Gale v. Zoning Board of Appeals of Gloucester* requires the Board to identify the particular respect or respects in which the existing lot or structure does not conform to the present by-law and then determine whether the proposed alteration or addition would intensify the existing nonconformities or result in additional ones. If the answer is in the negative, the Board is required to grant the Special Permit.

Mr. Lynch made a motion on the application of Marvel Homes for a Special Permit to raze and reconstruct the pre-existing, non-conforming single family dwelling at 12 Pond View Extension, Scituate. Mr. Lynch moved that the Board find the existing property is nonconforming with respect to lot area, frontage and front setback, that the proposed structure will not increase any existing nonconformities and will not intensify any existing nonconformities, and that the applicant be granted a Special Permit in accordance with the plan prepared by Ross Engineering dated August 11, 2015 with a final revision dated October 15, 2015. The motion was seconded by Mr. Bucchere, all in favor, unanimous.

Second Application: George and Maureen Allman of 3 Jawl Avenue, Scituate, MA request a Special Permit/Finding pursuant to M.G.L. Ch. 40A Section 6 and/or Section 810.2 of the Scituate Zoning Bylaw to raze and reconstruct the pre-existing, non-conforming single family dwelling and detached accessory dwelling at 3 Jawl Avenue, Scituate, MA (Assessor's Map 22, Block 7, Parcel 6).

Representing Applicant: Bill Ohrenberger, Esq., Paul Mirabito, Registered Engineer, Ross Engineering and Julie Johnson, Home Designer.

Mr. Ohrenberger gave a brief description of the property and the Applicant's proposed new garage and dwelling. All setbacks would be less nonconforming than the existing structure. The garage, which presently rests on the line, would be razed and replaced with a smaller shed and meet the side setback. The Existing square footage is 1450, with a proposed square footage of 4246 which represents an increase of 192%.

Mr. Mirabito reviewed submitted plans and provided further description to the Board.

Mr. Lynch observed there would be no intensification of any nonconformities.

Mr. Tibbetts expressed concern over the increase in gross floor area.

There were no comments from the public.

Mr. Lynch made a motion on the application of George and Maureen Allman to raze and reconstruct their home at 3 Jawl Avenue and for a Special Permit to do so in accordance with the plan from Ross Engineering dated September 22, 2015. Mr. Lynch further moved that the Board find the proposed new construction will not increase any of the existing nonconformities and will not intensify any existing nonconformities and that therefore the Applicant is entitled to a Special Permit. The motion was seconded by Mr. Tibbetts, all in favor, unanimous.

Third Application: : Joyce Mahn of 5 Cynthia Road, Canton, MA requests a Special Permit/ Finding pursuant to M.G.L. Ch. 40A Section 6 6 and/or Section 810.2 of the Scituate Zoning Bylaw to raze and reconstruct the pre-existing, non-conforming single family dwelling at 9 Driftway, Scituate, MA (Assessor's Map 64, Block 3, Parcel 2). Representing the Applicant: Paul Mirabito, Registered Engineer, Ross Engineering.

Mr. Mirabito gave the Board a brief background of the property constructed in 1920 and the Applicant's proposed plan to raze and reconstruct the existing structure. Proposed setbacks would be less nonconforming, and there would be no intensification of any existing nonconformities. The proposed increase in gross floor area would be 72%.

Ms. Trezise inquired about moving the foundation further back from the street.

Mr. Mirabito explained the Applicant's unwillingness to do so due to the loss of their view.

Mr. Tibbetts expressed concern about the setback and encouraged Mr. Mirabito to further discuss moving the proposed structure back, as the opportunity to reduce the nonconformity would be present.

Mr. Duggan expressed further concern and noted a safety issue being so close to the street.

Mr. Lynch made a motion on the application of Joyce Mahn for a Special Permit to raze and reconstruct the single family dwelling at 9 Driftway in Scituate and moved that the Board find the existing property is nonconforming in lot frontage, front yard setback and one side yard setback, that the proposed new construction will not increase any existing nonconformities and, therefore, that the Applicant is entitled to a Special Permit under the Gale decision. He moved the Board grant a Special Permit to reconstruct the home in accordance with a plan by Ross Engineering dated July 29, 2015. The motion was seconded by Mr. Tibbetts, all in favor, unanimous.

Fourth Application: Susan A. Phippen Trust of 10 New Driftway, Suite 202, Scituate, MA requests the Board of Appeals to issue an amended Decision of a decision granted for a 50' frontage lot at 35 Dreamwold Road, Scituate dated March 16, 2015 to reference revised plan prepared by MEC entitled "Plan of Land in Scituate,

Massachusetts Showing a Division of Parcels 33-6-31, 33-6-16, 33-16-16A- 35
Dreamwold Road” dated December 30, 2014 and revised August 14, 2015.
Representing the Applicant: Greg Morse, Registered Engineer, Morse Engineering.

Mr. Morse explained to the Board the Applicant is seeking to modify the decision dated March 16, 2015 due to a shift in the 50’ frontage lot from Lot 2 to Lot 3.

The Board discussed the best course of action and decided a new decision was more appropriate than a modification of the decision filed on March 16, 2015.

Mr. Tibbetts moved to amend the decision filed March 16, 2015 to reflect changes to the plan revised August 14, 2015 by Morse Engineering, seconded by Mr. Lynch, all in favor, unanimous.

Minutes from ZBA September 17, 2015 meeting presented for approval.

Mr. Lynch moved to approve minutes, seconded by Mr. Bucchere, all in favor, unanimous.

Meeting adjourned at 9:30pm.

Respectfully Submitted,


Anne M. Kelly