



Town of Scituate
Planning Board

Accessory Dwelling Special Permit – 5 Third Avenue

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Decision: APPROVED with Conditions
Owner: Robert P. Nadeau
Applicant: Robert P. Nadeau
Date: January 13, 2012
Location: 5 Third Avenue
Assessor's Map # 34-09-001
Plans: 28 X 43 Custom Colonial Single Family Dwelling, Sheets 2 - 1st Floor, 2A - 2nd Floor, 2B - Attic, and 3 – Elevations, by Keiser Industries Inc. of Oxford, Maine, for Nadeau, dated 1/14/05, with revisions through 2/16/05

Members Hearing Special Permit Application: William Limbacher, Chairman; Daniel Monger, Dr. Nico Afanasenko and Eric Mercer.

Background: The property is located in the Residential A-3 Zoning District. It contains an affordable accessory dwelling of approximately 445 square feet approved January 13, 2005. The floor area of the primary dwelling is approximately 1,914 sq. ft. including the first and second floor and attic. This Special Permit application is intended to change the status of the affordable accessory dwelling to a standard accessory dwelling of the same square footage approved in 2005. The applicant's proposed buyer has signed an affidavit stating that he will occupy the primary dwelling or the accessory dwelling.

Procedural Summary: This request for a Special Permit was filed with the Town Clerk and the Planning Board on December 6, 2011. A Public Hearing before the Planning Board was duly advertised and notices sent to all abutters in accordance with MGL Chapter 40A. The hearing was opened January 12, 2012 and also closed on this date, when the Planning Board approved the Special Permit with conditions.

Hearing Summary: The applicant, Robert P. Nadeau, the owner of the property was present with his attorney, Michael Hayes. Mr. Nadeau explained he wants to change the affordable accessory dwelling to an accessory dwelling as he plans on relocating and the prospective buyer's parents do not qualify for an affordable unit. Mr. Hayes explained that there was a deed restriction requiring the unit to remain affordable but this could be removed with a vote of the Board of Selectmen. He provided the Board with a copy of the Massachusetts General Law Ch. 184 S. 32 regarding release of affordability restrictions.

Public Comment: No one spoke in favor or against the application.

Findings of fact: A motion was duly made and seconded to make the following Findings of Fact concerning the accessory dwelling at 5 Third Avenue:

1. On January 13, 2005 the Planning Board approved a site plan administrative review authorizing construction of an affordable accessory dwelling at 5 Third Avenue.
2. On December 6, 2011, the owner of the property applied for approval of a special permit for an

accessory dwelling where the income of the occupant would not be restricted. This accessory dwelling would have the same footprint as the affordable accessory dwelling previously approved.

3. The plans submitted with the application are entitled 28 X 43 Custom Colonial Single Family Dwelling and include Sheets 2 - 1st Floor, 2A - 2nd Floor, 2B - Attic, and 3 - Elevations. The title block identifies them as prepared by Keiser Industries Inc. of Oxford, Maine, for Nadeau, dated 1/14/05, with revisions through 2/16/05. Sheet 2 shows the location of the approved affordable accessory dwelling as it was constructed. Based on these plans the affordable accessory dwelling is approximately 445 sq. ft. in area.
4. The area of the proposed accessory dwelling will be the same area as that of the affordable accessory dwelling, 445 sq. ft. This is less than 750 sq. ft., so the area meets the requirements of 530.2 F for accessory dwellings.
5. A site plan for 5 Third Avenue by Ross Engineering Co. shows a 20' driveway and 22' wide garage on the property. This appears adequate to provide two parking spaces for the accessory dwelling and ample parking for the primary dwelling.
6. The applicant has agreed that he and his successors in title will live on the property.
7. The application meets the standards of Scituate Zoning Bylaw Section 530 for an Accessory Dwelling Special Permit.

Decision: A motion was duly made and seconded to approve the Accessory Dwelling Special Permit for 5 Third Avenue with the following conditions:

1. The applicant shall meet all requirements of the Building Department, Board of Health, Department of Public Works, Fire Department and other town agencies.
2. The property at 5 Third Avenue shall contain a maximum of two dwelling units, the existing dwelling and the accessory dwelling as proposed. The footprint, number of bedrooms and/or square footage shall not be increased without prior approval of the Planning Board.
3. The owners of the property shall reside on the property as long as it contains an accessory dwelling unit.
4. Except for any changes necessary to meet these conditions, any construction shall conform to the Sheet 2 of plans entitled 28 X 43 Custom Colonial Single Family Dwelling by Keiser Industries Inc. of Oxford, Maine, for Nadeau, dated 1/14/05, with revisions through 2/16/05 submitted with this application.
5. No on-street parking shall be permitted.
6. This Special Permit shall be void if it is not recorded at the Registry of Deeds within 90 days of the date of filing with the Town Clerk. The owner shall provide proof of this recording to the Planning Board.
7. This Special Permit shall lapse within two years from the date of its issuance unless substantial use or construction has commenced prior to that time in accordance with MGL Chapter 40A, Section 9.
8. This Special Permit shall be conditioned upon the applicant taking all steps necessary under Massachusetts General Law to remove the current affordability restriction on the accessory unit.

Vote:

Based on the Findings of Fact and the evidence and information provided by the applicant and obtained through the public hearings, the members of the Planning Board hearing this application voted unanimously to approve the special permit for an accessory dwelling at 5 Third Avenue with the conditions noted above. William Limbacher, Daniel Monger, Dr. Nico Afanasenko and Eric Mercer voted in favor of the motion to approve with the conditions listed above.

January 12, 2012
Date

SCITUATE PLANNING BOARD

William Limbacher
[Signature]
[Signature]
[Signature]
[Signature]

This decision was filed with the Town Clerk on January 18, 2012
date

Appeal of this special permit 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.

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 expiration of the appeal period of twenty (20) days.

The Planning Board certifies that it has complied with all statutory requirements of MGL Chapter 40A, Sections 9 and 11, and will file copies of this decision with the Town Clerk. The Planning Board further certifies that it has taken into consideration all testimony rendered at the Public Hearing, the comments and suggestions of other boards which have reviewed and made comments on the plans, and all plans and documents submitted by the applicant.