

TOWN OF SCITUATE



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Planning Board

**Accessory Dwelling Special Permit – 7 Elm Park
Decision: APPROVED with Conditions**

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Owner: Michael and Tara Reynolds
Applicant: Michael and Tara Reynolds
Date: May 10, 2018
Location: 7 Elm Park

Assessor's Map: # 54-1-25B & 54-1-23-0

Plans: Site Plan to Accompany Special Permit 7 Elm Park Scituate, MA by Cavanaro Consulting Sheet 1 of 1 dated 1/12/18 with revisions including 4/19/18; Plan of Land 7 Elm Park Scituate, MA by Cavanaro Consulting Sheet 1 of 1 dated 3/15/2018 (Plymouth County Registry of Deeds Plan 197 Book 62 Page 217); Letter, calculations and Certification from Cavanaro Consulting dated 4/25/18 indicating accessory dwelling improvements as shown on the plan dated 4/19/18 will not increase the peak flows or volume of runoff from the site in all storm events, i.e. 2, 10, and 100 year storm events; Reynolds - Accessory Dwelling 7 Elm Park, Scituate, MA, Planning Board Review Set by Tiryaki Architectural Design, LLC dated January 3, 2018 consisting of the following plans: AO.0 Cover & Drawing List, AE1.1 Existing House – First Floor Plan, AE1.2 Existing House – Second Floor Plan, A1.1 Accessory Dwelling – First Floor Plan, A1.2 Accessory Dwelling – Second Floor Plan, A2.1 Proposed Exterior Elevations, A2.2 Proposed Exterior Elevations;

Members Hearing Special Permit Application: Stephen Pritchard, Ann Burbine, Benjamin Bornstein, Richard Taylor and William Limbacher.

Background: The property is located in the Residential R-2 Zoning District and the rear corner of the lot is in the Water Resource Protection District. The lot area of the property is 146,000 sq. ft.

The proposed accessory dwelling will be 1,617 sq. ft. and be located in a detached structure from the primary dwelling. The proposed accessory dwelling will be a one bedroom unit with a den that is considered a bedroom for Title 5 purposes. It will have a two car garage, an unheated porch and an attic that will not be counted as habitable space. It is proposed to be authorized as a second legal living unit on the same lot through approval of an accessory dwelling special permit by the Planning Board. The floor area of the accessory dwelling will be 39.95% of the floor area of the primary dwelling which is 4,048 sq. ft. which is less than 40% as allowed in the zoning by law. The applicants have signed a notarized statement that they will occupy one of the dwelling units on the property.

Procedural Summary: This request for a Special Permit was filed with the Town Clerk and the Planning Board on January 18, 2018. 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 on February 22, 2018 and continued until March 22, 2018 and April 26, 2018 when it was closed and the Planning Board approved the Special Permit with conditions including the Planning Board standard conditions.

Hearing Summary: The public hearing was opened on February 22, 2018 with engineer Brendan Sullivan and Michael Reynolds present for the applicant. Mr. Sullivan outlined that the home on 7 Elm Park has been recently built and the applicant recently acquired adjacent land and would like to create a detached accessory dwelling. He indicated that the total land area is now about 3.5 acres. He indicated the accessory dwelling would be one level at 1,617 sq. ft. and would have a garage and unheated porch and attic and be one bedroom with a den. He indicated the septic system was being designed for three bedrooms. Mr. Sullivan indicated they have done percolation tests throughout the site as the soils are variable and the water table is located between 24 and 30 inches down. He indicated there would be a gravel driveway and a swale that would connect into the swale for the existing house which hadn't been installed yet. The Board indicated they wanted an 81X plan done to combine the lots into one ownership as an accessory dwelling was proposed. Mr. Sullivan indicated a portion of the lot has a septic easement for the benefit of an adjacent property. He indicated there are no dimensions on the easement and the owners are willing to set aside some area for the easement. Mr. Sullivan said there will be an infiltration system for the roof water. He indicated the project is not putting more water in Elm Park. Ms. Joseph indicated there is a Stormwater Permit and Order of Conditions through the Conservation Commission who have provided no written comments, although the agent has indicated the drainage swales are not in place. The Board continued the meeting and requested more information on what was included in the square footage calculations for habitable space, the 81 X Plan, an architectural view comparing the accessory dwelling to the primary dwelling and closure on the easement issue.

On March 22, 2018, the applicant and his architect and engineer were present. The engineer indicated the 81X plan had not been recorded yet. The Chairman indicated there would not be a discussion on the septic easement as the applicant and Mr. Nisbet had both submitted legal letters and the Board was seeking an opinion from Town Counsel if the easement would restrict the Board's ability to act. The engineer indicated more details have been added to the plan on the swale. The Board confirmed that the drainage calculations submitted were based on post construction conditions. The Board confirmed that the drainage swale had not been constructed yet.

On April 26, 2018, the Town Planner indicated to the Board that Town Counsel opined, after reviewing legal letters and deeds written on behalf of both the applicant and the abutter, that the septic easement does not impact the Board's ability to act on the accessory dwelling special permit. She opined that it would likely be a land use dispute between the two parties. The Board reviewed the drainage information and applicant's certification that the accessory dwelling project would not increase the peak flows or volume of runoff from the site in all storm events, i.e. 2, 10, and 100 year storm events. The Board found that the accessory dwelling square footage is below 40% and there can be conditions limiting the habitable area. The same night, the Planning Board approved the accessory dwelling special permit with conditions.

Public Comment: Michael Nisbet of 27 Cedar Hill was present at the first hearing session. He opined that the deed needs to be cleared up with respect to the septic easement prior to the Board acting. Mary Fagan of 3 Elm Park expressed concern about the drainage as her property was without its septic system for three days due to previous runoff from the primary dwelling property. She said water was running off the property going into Elm Park since January and there is a berm which keeps surface runoff off her property to a limited degree. She said she has observed standing water in the general vicinity of the proposed accessory dwelling location. Several Board members opined that they would like to see the primary dwelling finished prior to the start of the accessory dwelling. The Board said the accessory dwelling looks like another house and they wanted to see that it was subordinate to the primary dwelling.

On March 22, 2018, Cara Littlewood of 11 Elm Park said that despite the berm behind her home, water is coming into her barn and she has multiple sump pumps running and they were told that there would be a swale which is not there. She indicated she complained to the Conservation Commission several times. She expressed concern about the scale of the accessory dwelling and the water. Mr. Michael Reynolds said there is confusion about groundwater and stormwater and Ms. Littlewood had sump pumps running prior to any development on the entire property. Mary Fagan of 3 Elm Park said that when the driveway was installed, a berm was installed instead of the permitted swales. She said she has been receiving water now and was during construction of the primary dwelling. She said water is running into Elm Park and making a mess of the road as the applicant is not in compliance with his conservation permit. Ms. Fagan was concerned about additional water being discharged to the swale.

On April 26, 2018, Mr. Nisbet asked for the case law that Town Counsel based her opinion on as the applicant's engineer found the ideal locations for the accessory dwelling and its septic components. It was indicated that Town Counsel did not provide a written opinion, but indicated the easement does not limit the Board's ability to act. Mary Fagan of 3 Elm Park said that the swales have now been installed and they help tremendously. She said she is still concerned about the size of the accessory dwelling even though the property size can accommodate it and it is still close to her property.

Findings of fact: A motion was duly made and seconded to make the following Findings of Fact concerning the accessory dwelling at 7 Elm Park:

1. On January 18, 2018, Michael and Tara Reynolds applied for a special permit for an accessory dwelling in a detached structure on the property at 7 Elm Park.

2. Based on a floor plan submitted by the applicant, the interior floor space of the proposed accessory dwelling will be approximately 1,617 sq. ft. This includes one bedroom and a den. The attic space, garage space or enclosed unheated porch are not counted as living space. This is 39.95 % of the total square footage of the primary dwelling which is 4,048 sq. ft. and meets the size requirements of 530.2F of the zoning bylaw for accessory dwellings.
3. The appearance of the accessory dwelling is similar in appearance to the primary dwelling.
4. The Site Plan to Accompany Special Permit 7 Elm Park revised dated 4/19/18 shows a two car garage and space for two cars outside the accessory dwelling in the gravel driveway. This appears adequate to provide two parking spaces for the accessory dwelling and ample parking for the primary dwelling as the primary dwelling has its own three car garage and parking area.
5. The owners have submitted a signed, notarized statement that they will live in the primary dwelling.
6. An 81X plan has been recorded at the Plymouth County Registry of Deeds as Plan 00000197 in Book 62 Page 217. The lot is approximately 146,000 sq. ft. and 3.3 acres +/- in size.
7. The accessory dwelling unit is a separate housekeeping unit and there is only one accessory unit on the lot.
8. The detached accessory dwelling unit complies with all required setback, building height and yard requirements for a primary structure.
9. The main dwelling is serviced by its own septic system. The accessory dwelling will be serviced by its own septic system to be approved by the Board of Health.
10. The deed indicates an easement exists on part of the property formerly known as Lot 4 for the purpose of maintaining and repairing a leaching bed for the premises and dwelling house situated on Lot 4. The deed indicates a driveway easement for the benefit of Lot 1 (11 Elm Park) exists on a portion of 50 foot frontage.
11. The roof drainage for the detached accessory dwelling will be handled through an underground infiltration system. A swale system will direct water away from the accessory dwelling into the driveway swale which has adequate capacity and does not increase the rate or volume of the runoff for the developed areas from existing conditions to post-development conditions from the site to Elm Park and a certification of this has been received from the engineer.
12. The application meets the standards of the Scituate Zoning Bylaw for an Accessory Dwelling Special Permit.

Decision: A motion was duly made and seconded to approve the Special Permit for an accessory dwelling at 7 Elm Park with the following conditions and standard conditions for accessory dwellings approved by the Planning Board after a public hearing on 6/8/17:

1. Except for any changes necessary to meet these conditions, any construction shall conform to the plans entitled Site Plan to accompany Special Permit 7 Elm Park Scituate, MA by Cavanaro Consulting dated 1/12/18 with revisions through 4/19/18; Reynolds – Accessory Dwelling 7 Elm Park Scituate, MA Planning Board Review Set dated 1/3/2018 by Tiriyaki Architectural Design, LLC consisting of drawings A0.0, AE1.1, AE1.2, A1.1, A1.2, A2.1 and A2.2 and the drainage calculations revised dated 4/25/2018 by Cavanaro Consulting.
2. The number of bedrooms in the accessory dwelling is limited to one in the location and size indicated on the floor plan submitted with the application. The den is considered a bedroom for Title 5 purposes. Any changes to the floor plan must be approved by the Planning Board.
3. No further expansion of the accessory dwelling floor area is allowed as the size limit is at the maximum allowed. The attic space or garage space cannot be converted to additional living space. The attic space shall have collar ties less than or equal to 7 feet high or a truss system with the result that the attic space is not considered legal habitable space per the building code definition. The enclosed porch cannot be used as a year round room or ever have any heating devices installed. A perpetual deed restriction shall be recorded by the applicant with a copy to the Town Planner stating that the accessory dwelling may not be expanded in size from 1617 sq. ft. as shown on the plan as it is at the maximum allowed by the zoning bylaw and any changes to the floorplan must be approved by the Planning Board.
4. The Applicant has indicated he will provide a deed restriction for two bedrooms for the house as the den will be considered a bedroom for Title 5 purposes.
5. An evergreen and deciduous screen consisting of no less than twelve plants shall be placed between the swale and the northeast property line of the accessory dwelling. The screen plantings shall be submitted to the Town Planner for review prior to planting.
6. The drainage swales for the property must be installed and maintained per the plan and drainage calculations with no increase in rate or volume of runoff. The swale to the rear of the accessory dwelling must be revised to add additional spot grades and extent further south prior to the permit being released for recording. A stone lined sump shall be installed at the end of the driveway to help keep runoff on site until the site is stabilized and prevent erosion and sedimentation from going into Elm Park. After construction is completed, the Town Planner should be consulted to determine if the sump should be left in place as stone or turned into a rain garden. It may be necessary to install stone check dams in the drainage swales along the driveway to slow runoff down.
7. A siltation barrier is to be provided along the north side of the property. Stormwater must be maintained on-site during and after construction. Siltation sumps and other erosion control methods may be necessary to contain construction runoff and for dewatering contents.

8. The stormwater calculations revised dated 4/25/2018 and the revised site plan must be submitted to the Conservation Agent for inclusion as part of the Stormwater Permit for the site prior to the special permit being released for recording.
9. The accessory dwelling shall conform to all applicable standards in the building, plumbing, electrical, mechanical, fire and health codes and bylaws.
10. The standard conditions for accessory dwellings approved by the Planning Board shall be conditions of this decision and shall be included for recording at the Registry of Deeds.
 - A. The applicant shall meet all requirements of the Building Department, Board of Health, Department of Public Works, Fire Department, Water Department, Conservation Commission and other town agencies.
 - B. The property shall contain a maximum of two dwelling units, the primary 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.
 - C. The owner of the property shall reside on the property as long as it contains an accessory dwelling unit.
 - D. The Planning Board may require an on-site inspection for conformance to the approved plans and these conditions prior to the issuance of a Certificate of Occupancy for the accessory dwelling.
 - E. An Accessory Dwelling Special Permit Certification of Ownership and Occupancy signed by the new owner shall be provided to the Planning Board within seven days of the closing of the sale of the house. It is recommended that this be signed at the closing.
 - F. At any time, at the request of the Planning Board the owner shall provide a notarized affidavit indicating that either the primary or accessory unit is owner occupied.
 - G. No on-street parking by occupants of the primary or accessory dwelling shall be permitted at any time.
 - H. Construction vehicles/equipment shall not idle, be parked, stored, loaded or unloaded in the street.
 - I. 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.

- J. 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.
- K. The Planning Board reserves the right to review compliance with this special permit at any time. This Special Permit shall terminate if the use is not in accordance with this decision and its conditions.

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 7 Elm Park with the conditions noted above.

4/26/2018

Date

SCITUATE PLANNING BOARD

Steve R. Pritchard

Anna Barbone

William L. Barber

Richard W. Taylor

[Signature]

This decision was filed with the Town Clerk on May 10, 2018
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