

TOWN OF SCITUATE

Planning Board



600 Chief Justice Cushing Hwy
Scituate, Massachusetts 02066
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Accessory Dwelling Special Permit 9 Ocean Avenue
Decision: APPROVED with Conditions

Owner: Jennifer Foley

Applicant: Jennifer Foley

Date: September 15, 2023

Location: 9 Ocean Avenue

Assessor's Map: #8-3-13

Plans: plans submitted with the application by Custom Home Designs dated 11/29/2020 consisting of Foundation Layout, Front and Rear Elevations, Left and Right-Side Elevations, 2nd Floor Plan, Foundation, Foley Garage, 9 Ocean Ave., Scituate, MA 02066; Septic System Design Plan for 9 Ocean Ave. in Scituate, MA by Morse Engineering Co., Inc. dated 10/16/20 with revisions 10/19/20.

Members Hearing Special Permit Application: Ann Burbine, Robert MacLean, Patricia Lambert, Rebecca Lewis and Stephen Pritchard.

Background: The property is located in the Residential R-3 Zoning District on a lot of approximately 11,262 sq. ft. according to the Assessor's records. The accessory dwelling is proposed in a single-family home as a garage addition with living space on the first and second floors of the garage addition. The proposed accessory dwelling will have one bedroom and one bathroom with an open living/kitchen area. There is an entrance to the accessory dwelling through the garage and from the living space on the first floor. Based on a floor plan submitted by the applicant, the floor area of the accessory dwelling is approximately 679 sq. ft. It is proposed to be authorized as a legal living unit through approval of an accessory dwelling special permit by the Planning Board. The total area of the primary dwelling is 2,174 sq. ft. according

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to the application. The accessory dwelling at 679 sq. ft. is 31.23 % of the size of the primary dwelling which is allowed as it is 750 sq. ft. or 40% of the total floor area of the primary dwelling, whichever is greater. The Assessor's Office indicates the primary dwelling is 2,367 sq. ft. and the accessory dwelling is 872 sq. ft. which is 36.7% of the primary dwelling and still allowed as it is less than 40%. The owner has signed a notarized statement that she will continue residing at the premises upon completion of the project.

Procedural Summary: This request for a Special Permit was filed with the Town Clerk and the Planning Board on June 26, 2023. 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 August 24, 2023 where testimony was taken. The hearing was continued until September 14, 2023 when the hearing 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 August 24, 2023 with Jennifer Foley present. Ms. Foley presented the history of the property and what she would like for an accessory dwelling. She indicated she did not know a special permit was required to have a kitchenette with a stove. It was indicated the accessory dwelling was already constructed and is the same materials as the primary dwelling and is being used. The Board inquired if it had been inspected. It was indicated that Ms. Foley received a violation from the Building Department and filed for the accessory dwelling within a reasonable time after receiving the violation. The Board indicated any lighting would need to be down lighting and Ms. Foley agreed to dim the intensity of the existing flood lights. There is parking in the garage and in the driveway. The chair read a comment from Karen Maguire expressing concern of building first and asking for forgiveness later. In response to public comment, the Board suggested the hearing be continued so the Town Planner could find out if the setback requirement had been met, the status of inspections and if there was an occupancy permit.

At the September 14, 2023 hearing session, the Town Planner reported that the setback was indeed correct as the lot was a corner lot with a radial rear setback, inspections had been made for the finished accessory dwelling and there is no occupancy permit yet as the accessory dwelling needs to be approved to be a second legal living unit. After the unit is approved and the appeal period has expired, the decision can be recorded and an occupancy permit can be obtained. She indicated the building permit plans did not include a kitchen or upstairs living area as they had been crossed off the plan. The Board approved the accessory dwelling with conditions.

Public Comment: William Branton indicated that there is no town sewer at this location. Eric Langlan of the Water Division indicated the accessory dwelling is accounted for by the meter in the main dwelling so the Water Department is all set with the plan. Amy Walkey indicated that the project is not jurisdictional to the Conservation Commission.

At the public hearing session on August 24, 2023, Ms. Fargo of 5 Ocean Ave. indicated that she was concerned about the building from the start as the garage was torn down and replaced. She was concerned if the unit met the setbacks, that the unit was permitted as a garage and not an

accessory dwelling, and there is no as-built on file in the Building Department. She indicated there was no occupancy permit and after the violation was received the unit was still being occupied. Ms. Maguire indicated she submitted a letter which the chair read and this is the second time this area has seen the situation of an accessory dwelling being built and used prior to it being permitted. She was concerned about that as well as that the property is being rented. The Board indicated accessory dwellings in the Town of Scituate can be rented as long as the owner occupies the primary or accessory dwelling. Ms. Foley asserted that the unit has not been continuously occupied and hopes to use it for an au pair. Ms. Fargo asked for clarification of the rental of legal accessory dwelling units. It was reiterated that accessory dwellings can be rented as indicated above and the Town has no requirements about Airbnb's. The Board indicated any changes to the bylaws would need to go before Town Meeting. Mr. Steve Bjorklund, a local developer, indicated that the Board can condition a special permit and if it meets the bylaw requirements, the permit should be granted.

There was no public comment at the public hearing session on September 14, 2023.

Findings of Fact: A motion was duly made and seconded to make the following Findings of Fact concerning the accessory dwelling at 9 Ocean Avenue:

1. On June 26, 2023 applicant Jennifer Foley applied for a special permit for an accessory dwelling in a single-family home at the property at 9 Ocean Avenue.
2. According to the Town of Scituate Assessor's records and the deed, the property at 9 Ocean Avenue is owned by Jennifer Foley.
3. Based on a floor plan submitted with the application, the Planning Board finds the floor area of the Accessory Dwelling to be 679 sq. ft. The floor area of the primary dwelling is 2,174 sq. ft. according to the application. The accessory dwelling is 31.23% of the floor area of the primary dwelling. This meets the size requirements of 530.2F of the zoning bylaw for accessory dwellings as the bylaw allows 750 sq. ft. or 40% of the total floor area of the primary dwelling, whichever is greater. The Assessor's Office indicates the primary dwelling is 2,367 sq. ft. and the accessory dwelling is 872 sq. ft. which is 36.7% of the primary dwelling and still allowed as it is less than 40%. The accessory dwelling is subordinate to the existing single-family home.
4. The Accessory dwelling unit will be a complete separate housekeeping unit and there will be only one accessory dwelling on the lot.
5. The property is in the Residential R-3 Zoning District. The proposed accessory dwelling structure meets all the required setbacks, building height and yard requirements for a primary dwelling.
6. The proposed accessory dwelling is to be located in a recent garage addition to the single-family home. Access will be via a door at the side of the house and a second door through the garage.
7. The appearance of the accessory dwelling will be in keeping with the appearance of the primary dwelling.

8. The Septic System Design Plan for 9 Ocean Avenue in Scituate, MA by Morse Engineering Co., Inc. dated 10/16/20 with revisions through 12/9/20 shows the location of the existing primary dwelling and the existing garage addition. The plan shows an existing bituminous driveway which appears to fit four parking spaces and the garage is able to house two cars. This appears adequate to provide two parking spaces for the primary dwelling and two spaces for the accessory dwelling. Ample parking appears to be provided.
9. The applicant/owner have submitted a signed, notarized statement that she will occupy one of the dwellings upon completion of the project.
10. The accessory dwelling will be serviced by Town water and private septic. The Water Department has commented that they have no comments. The Sewer Department has no comments as there is no sewer for the house.
11. The application meets the standards of the Scituate Zoning Bylaw for an Accessory Dwelling Special Permit.

I move to approve the Special Permit for an accessory dwelling at 9 Ocean Avenue with the following conditions in addition to the standard conditions for accessory dwellings approved by the Planning Board after a public hearing on 12/17/15:

1. Except for any changes necessary to meet these conditions, any construction shall substantially conform to plans submitted with the application by Custom Home Designs dated 11/29/2020 consisting of Foundation Layout, Front and Rear Elevations, Left and Right-Side Elevations, 2nd Floor Plan, Foundation, Foley Garage, 9 Ocean Ave., Scituate, MA 02066; Septic System Design Plan for 9 Ocean Ave. in Scituate, MA by Morse Engineering Co., Inc. dated 10/16/20 with revisions 10/19/20.
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.
3. No further expansion of the accessory dwelling floor area is allowed without further review by the Planning Board.
4. Upon occupancy of the accessory dwelling, the applicant shall provide a notarized affidavit that an owner is living in one of the dwelling units. A yearly certification that the owner occupies one of the dwelling units must be provided by March 1 yearly.
5. All requirements of the Board of Health, Building Department, Zoning Board of Appeals, Department of Public Works, Fire Department and other Town agencies must be met prior to occupancy of the accessory dwelling.
6. The accessory dwelling shall conform to all applicable standards in the building, plumbing, electrical, mechanical, fire and health codes and bylaws.
7. Water connection must meet all requirements of the DPW Water Division for the accessory

dwelling.

8. Any lighting installed shall be down lighting to not shed light on abutting properties.
9. Construction work shall not begin prior to 7:00 am weekdays and 8:00 am on Saturdays and shall cease no later than 7:00 pm or sunset whichever is earlier. No construction shall take place on Sundays or legal state and federal holidays. Construction includes idling of vehicles, delivery of materials to the site and all other construction activities.
10. Runoff from the proposed accessory dwelling shall not be increased from the property.
11. Erosion and sedimentation control devices shall be installed to prevent any erosion or sedimentation from leaving the site during construction. Silt sock shall be used as necessary.
12. The appearance of the accessory dwelling will be in keeping with the primary dwelling unless otherwise required by the Massachusetts Building Code and new exterior stairs needed to provide primary or secondary means of egress for the accessory dwelling shall be located on the side or rear of the building.
13. At least two private off-street parking spaces shall be available for use by the occupants of the accessory dwelling in addition to those parking spaces required for the primary dwelling.

The standard conditions for accessory dwellings approved by the Planning Board on 12/17/15 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 any 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 9 Ocean Avenue with the conditions noted above.

September 14, 2023

Date

SCITUATE PLANNING BOARD

Patricia A. Lambert
John P. Pulitano
Ann Burroughs
Rebecca J. [Signature]

This decision was filed with the Town Clerk on September 15, 2023
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

