

TOWN OF SCITUATE



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Planning Board

**Accessory Dwelling Special Permit – 113 Arborway Drive
Decision: APPROVED with Conditions**

Owner: Russell E S and Nancy Williams
Applicant: Russell E Williams
Date: September 16, 2014
Location: 113 Arborway Drive
Assessor's Map: # 26-6-2

Plans: Proposed Accessory Dwelling 113 Arborway Scituate, MA Revised September 4, 2014 by Floor Planner showing First Floor; Lower Level; Second Floor Primary Dwelling; First Floor with parking outside for 5 cars; Chart of Floor areas, rooms and their sizes and square feet; Proposed Addition and Disposal System 113 Arborway Drive by CCR Associates dated 2/28/1989 with revision through 7/24/1989; Existing Condition Floor Plans 1989 and Proposed Addition Floor Plans A-4 through A-6 dated 1989

Members Hearing Special Permit Application: William Limbacher, Chairman; Stephen Pritchard, Richard Taylor, Robert Vogel and Robert Greene.

Background: The property is located in the Residential R-1 Zoning District as well as the Water Resource Protection District, Zone II and Wireless Communication Overlay District. The lot area of the property is 40,032 sq. ft. The existing dwelling located on the property known as 113 Arborway Drive has 2,401 sq. ft. of floor area according to the application submitted. The application indicates the primary dwelling is 1,482 sq. ft. The proposed accessory dwelling will be a one bedroom unit located in the existing structure. Based on a floor plan submitted by the applicant, the interior floor space of the proposed accessory dwelling will be 747.2 sq. ft. It is proposed to be authorized as a

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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 747.2 sq. ft. which is less than the 750 sq. ft. allowed by the bylaw. The applicant has signed a notarized statement that he will occupy one of the dwelling units on the property, but has acknowledged that the house is for sale and under agreement. While the property is listed in two names, Mrs. Nancy Williams is known to be deceased.

A four bedroom house was constructed in 1959. A two bedroom addition with additional living space and garage was added in 1989. There is no record of an accessory dwelling special permit being granted. The Williams' applied for an Accessory Dwelling Special Permit in 1998, but withdrew their application because of questions about the maximum area permitted.

Procedural Summary: This request for a Special Permit was filed with the Town Clerk and the Planning Board on June 24, 2014. 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 July 25, 2014 and was continued until August 28, 2014 and September 11, 2014 when the hearing was closed and the Planning Board approved the Special Permit with conditions.

Hearing Summary: The public hearing was opened on July 25, 2014 and immediately continued at the request of the applicant. No evidence or testimony was taken. On August 28, 2014, Attorney Michael Hayes and Russell Williams were present for the hearing. Attorney Hayes indicated the Williams' purchased the house in 1997. It was originally built in the 1950's and an addition added in 1989 with a valid building permit. Mr. Hayes said approval of a two bedroom accessory dwelling with 918.7 sq. ft. is sought and the unit is 38% of the total existing living area. He said that Section 530.1.E. would apply to legitimize the situation for code compliance. Attorney Hayes said the proposal met the requirements of Scituate Zoning Bylaw Section 530.2 Paragraphs A, C, D, E, G, H, and I. He said Paragraph B was not applicable.

Attorney Hayes said there are two standards for 530.2 F. The first is the accessory dwelling must be subordinate to the primary dwelling. The second is that the size of the accessory dwelling is limited to 750 sq. ft. or 40% of the total square footage of the primary dwelling, whichever is greater. He maintained that the accessory dwelling of 918.7 sq. ft. is 38% of the total square footage of the house which is the primary dwelling in his opinion. He acknowledged that under a different interpretation 918 sq. ft. would be 62% of the primary dwelling area of 1,482 sq. ft. and not the total house area of 2401 sq. ft. He indicated that the Building Inspector supports the first interpretation and has not changed his opinion since 1998 when he originally wrote a memorandum on the topic.

The Board felt that they did not want to change the way accessory dwelling sizes are calculated for this one where all the other units permitted in the Town are calculated based on 40% of the primary dwelling. The Board felt that a reconfiguration of the space could likely be achieved to fall below 750 square feet. The applicant asked for a continuance to investigate reconfiguration of the accessory dwelling.

At the continued public hearing on September 11, 2014, a different plan for the accessory dwelling was shown to the Board with a footprint of 747.2 sq. ft. The second bedroom in the accessory

dwelling was removed and replaced by a storage area for the primary dwelling. The applicant maintained that the storage area could be locked and the accessory unit conditioned to be one bedroom. The Board questioned if the storage unit could be accessed from the exterior, but that was not possible. The Board concurred that there could be a locked door and a deed restriction that the storage area cannot become habitable space.

Public Comment: The Planning Board received two comment letters from the Director of Public Health who indicated that the Board of Health has several requirements that must be addressed for the system to be Title V compliant. Ms. Harbottle, Town Planner received an email from the Building Commissioner on 8/15/14 confirming that he has not changed his mind on the 60/40 accessory dwelling split since 1998. In a letter dated 8/21/14, Jenny W Laughlin of 102 Arborway said she was opposed to the accessory dwelling as Mr. Williams will not occupy the dwelling since the house is for sale. In an email dated 7/24/14, Rich McDonald indicates that granting of the special permit would lead to a "slippery slope" as the permit is not for a family situation, but to increase the selling price of the house. Pam Mullin of 89 Arborway Drive indicates in a letter dated 7/10/14 that the accessory dwelling has been occupied for several years without proper permitting and permits are being sought as the house is for sale.

At the public hearing on August 28, 2014, Kathy McDonald, Eileen Jacobucci and Tom Lee, all neighbors from Arborway Drive, voiced their concern that the accessory dwelling could be rented out to anyone and that had potential to change the character of the single family neighborhood as the house is for sale. Mr. William's daughter said that they would like to obtain a separate legal living unit with kitchen amenities and privacy.

At the continued public hearing on September 11, 2014, Ed Tibbetts, friend of Mr. Williams and husband of the real estate broker for the house, expressed his opinion that the bylaw is in place to legitimize conversions and bring them under control of the Town. He said that clarifying the apartment space as an accessory dwelling gives a buyer knowledge of exactly what they are purchasing. He indicated the house is not fully suitable for rental property now.

Rich McDonald, of 108 Arborway Drive, indicated that people have rented the unit before and was concerned that changing the name of a bedroom to storage may not change the use as enforcement will be an issue. Kelly Saluti, of 121 Arborway Drive, thinks that bringing a rental unit to the area is not appropriate for small children especially with a school in the area. She was concerned about who would enforce the storage restriction. Jenny Loughlin of 102 Arborway Drive was concerned that the house was purchased as a single family dwelling which has previously been partially rented out and now it could be a duplex. She believes that money is a factor in the decision to seek the accessory unit by a person who will not live there in the future. Mr. McDonald said if the accessory dwelling would have no added value to the house, why is it being sought now.

Julie Paul of 122 Arborway said Mr. Williams has no vested interest as he is selling the house. Patrick Paul of 122 Arborway was concerned that other homes would depreciate in value because they are not two units. Eileen Jacobucci said that realtors are representing the property as an income property. The neighbors were all concerned that future occupants of the accessory dwelling may not be responsible and that could affect the neighborhood. They were concerned that the closet and

windows in the storage room would still make the room a bedroom. Joe Joyce offered that when a person spends over \$500,000 for a home, they are careful who they would rent to. He offered that the value of the other homes would not change.

Findings of fact: A motion was duly made and seconded to make the following Findings of Fact concerning the accessory dwelling at 113 Arborway Drive:

1. According to Town of Scituate Assessor's records, the property at 113 Arborway Drive is owned by Russell E S and Nancy M Williams. The property is located in the Residential R-1 zoning district as well as the Water Resource Protection District, Zone II to a public water supply well and Wireless Communication Overlay District on a lot of 40,032 sq. ft.
2. On June 24, 2014, Russell E Williams applied for a special permit for an accessory dwelling within a single family house on property at 113 Arborway Drive.
3. According to the plan, the floor area of the primary dwelling is 1,482 sq. ft. The floor area of the accessory dwelling as shown on the revised plan dated September 4, 2014 is approximately 747.2 sq. ft. The floor area of the accessory dwelling will be less than 750 sq. ft. It meets the size requirements of 530.2F of the zoning bylaw for accessory dwellings.
4. The accessory dwelling blends with the architectural style and is of similar materials to the existing primary dwelling.
5. The accessory dwelling is less than 750 sq. ft. in size and has one bedroom. It is subordinate to the primary dwelling.
6. The proposed plan shows the dwelling to have a 2 car garage. Outside the garage there is room for 3 parking spaces in the driveway. This appears adequate to provide two parking spaces for the accessory dwelling and ample parking for the primary dwelling.
7. The property is for sale. The applicant has submitted a signed, notarized statement that he will live on the property. The special permit will be recorded. A future new owner will need to file an affidavit with the Planning Board that he occupies the property.
8. The Board of Health has several issues regarding the septic system operation. A certification that the septic system is compliant with Title V must be provided to the Board of Health prior to the accessory dwelling special permit being recorded.
9. One accessory dwelling unit is contained on the lot in a single family house. It will be a separate housekeeping unit.
10. There are no new exterior stairs.
11. The application meets the standards of 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 113 Arborway Drive with the following conditions:

1. The applicant shall meet all requirements of the Building Department, Board of Health, Department of Public Works, Fire Department, Water Department and other town agencies.
2. Except for any changes necessary to meet these conditions, any construction shall conform to the plans entitled Proposed Accessory Dwelling Application 113 Arborway Drive Scituate, MA 02066 revised September 4, 2014: First Floor, Lower Level, Second Floor Primary Dwelling, Proposed Accessory Dwelling First Floor and Chart of floor area.
3. The property at 113 Arborway Drive 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 of the accessory dwelling shall not be increased without prior approval of the Planning Board. The number of bedrooms in the accessory dwelling is limited to one, in the location and size indicated on the lower level plan submitted with the application and attached to this decision. A deed restriction shall be recorded by the applicant noting the one bedroom and storage room conditions, and shall state that the storage area for the primary dwelling cannot ever become habitable space for the accessory dwelling unit. The storage room should be locked and under the control of the primary dwelling. The Planning Board shall be provided with a copy of the deed restriction along with the recorded decision.
4. The windows shall be removed from the storage area or completely blocked prior to the issuance of the occupancy permit for the accessory dwelling. Documentation of the completed work shall be provided to the Planning Board and Building Department within seven days of completion.
5. The owner of the property shall reside on the property as long as it contains an accessory dwelling unit. Any prospective buyers of the property shall be advised of this condition. An Accessory Dwelling Special Permit Certification of Ownership and Occupancy from the new owner shall be completed at the closing of the sale of the house and a copy provided to the Planning Board within seven days.
6. The Planning Board will require an on-site inspection for conformance to the approved plans and these conditions prior to a Certificate of Occupancy being issued for the accessory dwelling.
7. Future purchasers shall be notified at the signing of purchase and sale for this house of the requirements of Zoning Bylaw Section 530, including the requirement that they live on the site and the requirements of this special permit and its conditions. The Planning Board shall be provided with an affidavit from the owners within one week of the closing of the sale of the house stating that they will live on the property.
8. No on-street parking shall be permitted at any time.

9. 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.
10. This Special Permit shall lapse within two years from date of its issuance unless substantial use or construction has commenced prior to that time in accordance with MGL Chapter 40A, Section 9.
11. The Planning Board reserves the right to review compliance with this special permit at any time. At the request of the Planning Board, an affidavit shall be provided that either the primary or accessory unit is owner occupied.
12. At each transfer of ownership of the property, a new affidavit that the owner resides on the property shall be provided to the Planning Board within seven days of the closing of the sale of the house.
13. This Special permit shall terminate if the use is not in accordance with this decision and its conditions or upon the request of the owners of the property on the approval of the Planning Board, with the removal of the stove.

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 113 Arborway Drive with the conditions noted above.

September 11, 2014

Date

SCITUATE PLANNING BOARD

William Strobacher
Robert B. Koch
Robert J. Brown
Steve R. Puleo
Richard W. Taylor

This decision was filed with the Town Clerk on September 17, 2014
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.

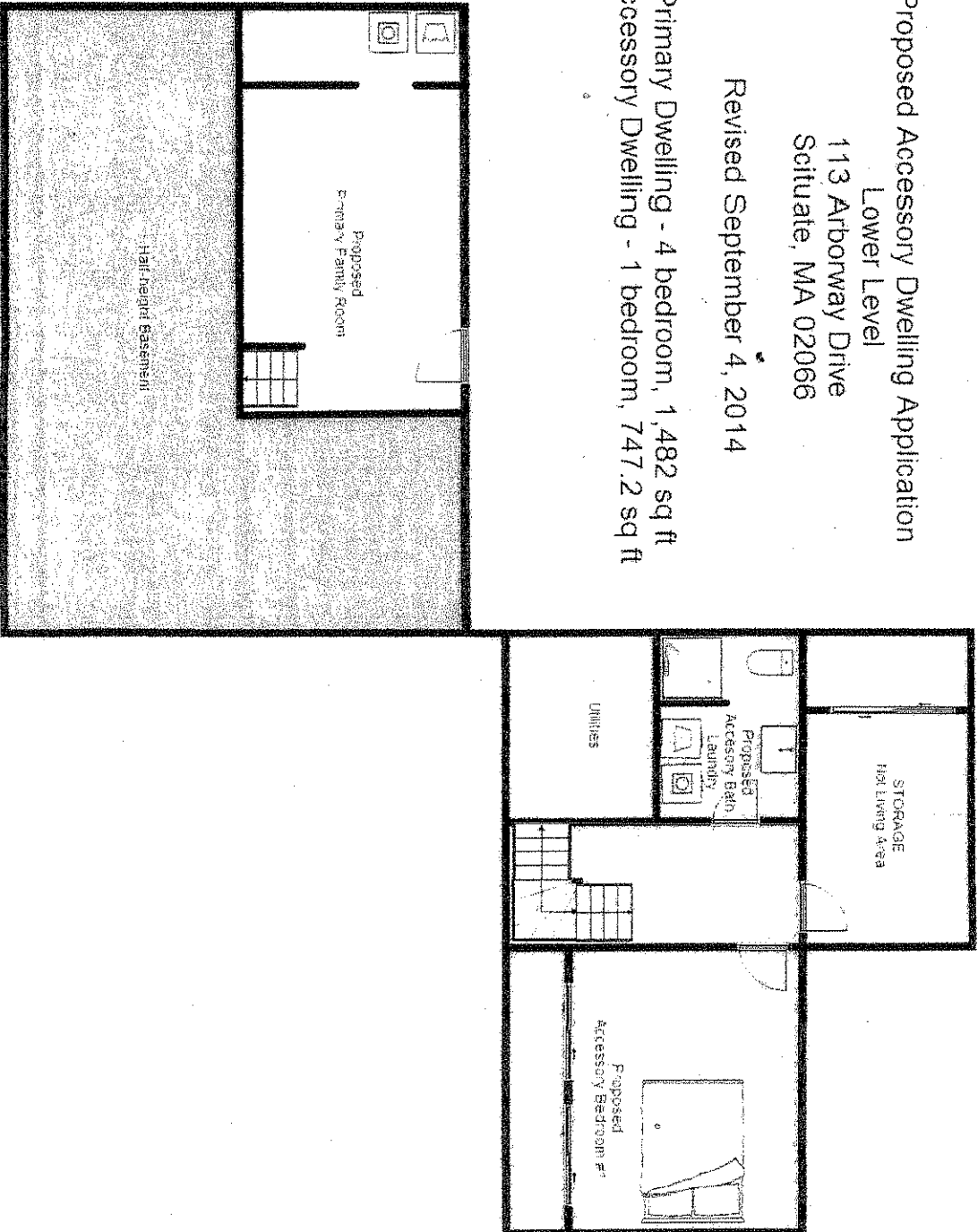
This special permit will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County Registry of Deeds, after the expiration of the appeal period of twenty (20) days.

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.

Proposed Accessory Dwelling Application
Lower Level
113 Arborway Drive
Scituate, MA 02066

Revised September 4, 2014

Primary Dwelling - 4 bedroom, 1,482 sq ft
Accessory Dwelling - 1 bedroom, 747.2 sq ft



feet



12ft



24ft



36ft