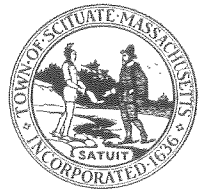


# Town of Scituate

ZONING BOARD OF APPEALS

600 Chief Justice Cushing Hwy.  
Scituate, Massachusetts 02066  
(781)545-8716



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Decision of the Scituate Zoning Board of Appeals on the application of Bradford A. Merritt of 493 Country Way, Scituate, MA (hereinafter, the "Applicant") for a special permit/finding in accordance with Scituate Zoning Bylaw Section 470.9, and/or any other relief that the Board of Appeals may grant, to render a determination of suitability for a unified parcel known as 0 and 483 Country Way, Scituate, MA (Assessor's Map 32, Block 7, Parcels 13A, 14, 15, 16, and 21) (hereinafter, collectively, the "Requested Relief").

The application was received, advertised, and a public hearing was opened on September 19, 2019, immediately continued to October 17, 2019, and immediately continued and held on November 21, 2019. The following members were present and voted at the November 21, 2019 public hearing:

Anthony J. Bucchere, Chairman  
Brian B. Sullivan  
Edward C. Tibbetts

The Applicant was present at the public hearing and was represented by attorney Jeffrey A. De Lisi, of Ohrenberger, De Lisi & Harris, LLP of 28 New Driftway, Scituate, MA 02066, and by Kevin Grady, P.E., of Grady Consulting, L.L.C. of 71 Evergreen Street, Suite 1, Kingston, MA 02364.

The Applicant, individually and as beneficiary of the Princess Pine Realty Trust, is the owner of a tract of land having an area of approximately 431,048 Sq. Ft. by virtue of deeds recorded with the Plymouth County Registry of Deeds in Book 4635, Page 438 and 46974, Page 266, respectively (collectively, the "Tract"). The Tract is located in the R-2 Residential zoning district, the Water Resource Protection overlay-zoning district, and in the Flood Plain and Watershed Protection overlay zoning district.

The Applicant has filed an application with the Scituate Planning Board as the special permit granting authority to create a Residential Cluster Development on the Tract pursuant to Scituate Zoning Bylaw Section 610.2D. The proposal is to create five single-

family dwelling lots on the Tract using a private access road to and from Country Way. The Applicant was referred to the Zoning Board of Appeals due to the fact that the Tract is located in the Flood Plain and Watershed Protection (the "**FPWP**") overlay district. Specifically, the Applicant has requested that the Board consider issuing a special permit determination of suitability pursuant to Zoning Bylaw Section 470.9, which is essentially a finding from the Board of Appeals that the Tract is not subject to flooding and not unsuitable because of drainage conditions.

Section 470.9 states in its entirety as follows:

**"470.9 DETERMINATION OF SUITABILITY**

If any land in the Flood Plain and Watershed Protection District is proven to the satisfaction of the Board of Appeals, after referral as required under Section 940, as being in fact not subject to flooding and not unsuitable because of drainage conditions for any use otherwise permitted under the applicable provisions of the zoning bylaw, but not specifically listed under Section 420, the Board of Appeals may issue a special permit for the proposed use. Such use shall be consistent with all other applicable local bylaws and state regulations and shall not interfere with the purposes of the Flood Plan and Watershed Protection District or pose a threat to the public health, safety or welfare."

The Board discussed that while the Applicant's Tract is located in the FPWP overlay district its upland areas are not known to have any characteristics of flooding. In particular, the Board noted the fact that the topography does not lend to flooding; the Tract is essentially a hill sloping toward Country Way, and hills are not subject to flooding or poor drainage conditions. Additionally, the Applicant's engineer provided testimony that test pits were dug in multiple areas of the Tract and that none of these test pits were indicative of anything other than sandy, well-draining soils with normal groundwater levels. The Applicant's engineer also indicated that the perc levels of the Tract were sufficient to enable Title 5 septic systems on each of the five house lots to be created.

Accordingly, the Board of Appeals specifically voted to find (i) that the Tract is not subject to flooding, and (ii) not unsuitable because of drainage conditions for any use otherwise permitted under the applicable provisions of the Scituate Zoning Bylaw, but not specifically listed under Zoning Bylaw Section 420.

Based upon the application materials, the presentation, and the information provided at the public hearing, and the foregoing, the Board of Appeals finds that the Applicant has demonstrated that he is entitled to the Requested Relief.

For the foregoing reasons, the Board unanimously voted to GRANT the special permit, Zoning Bylaw Section 470.9 finding(s), and the Requested Relief.



Anthony J. Bucchere



Brian B. Sullivan



Edward C. Tibbetts

Filed with the Town Clerk and Planning Board: \_\_\_\_\_

1/2/20

This Finding 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 appeal period of twenty (20) days.

Appeal of any decision of the Zoning Board of Appeals may be made pursuant to M.G.L. Ch. 40, Section 17, and shall be filed within twenty (20) days of the date of filing the decision with the Town Clerk.