

Town of Scituate

ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY
SCITUATE, MASSACHUSETTS 02066
(781) 545-8716



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Decision of the Scituate Zoning Board of Appeals on the application of Douglas Smith of 1 Cole Parkway, Scituate, MA (hereinafter, the “**Applicant**”) for a finding in accordance with Scituate Zoning Bylaw Sections 820, 950.2D, and/or G.L. Ch. 40A, Section 6, and/or any other relief that the Board of Appeals may grant, to authorize the change of the pre-existing, nonconforming use(s) of 1 Cole Parkway (hereinafter, the “**Property**”) to a specified use not substantially different in character or not substantially more detrimental or injurious to the neighborhood than the existing nonconforming use(s) (hereinafter, collectively, the “**Requested Relief**”).

The application was received, advertised, and a public hearing was held on September 20, 2018. The following members were present and voted at the public hearing:

Edward C. Tibbetts
Anthony J. Bucchere
Thomas J. Cavanagh

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, Massachusetts.

The Property is owned by the Applicant as Manager of ASNENY, LLC, by deed filed with the Plymouth Country Registry of Deeds at Book 36827, Page 332, and is laid out on a plan recorded at the said Registry in Plan Book 6, Page 117 (hereinafter, the “**1939 Plan**”). The commercial building on the Property was constructed in 1920 according to tax assessor records. The 1939 Plan depicts that the building contained a “bowling alley” prior to the adoption of zoning as early as 1939, and that the bowling alley building on the Property is nonconforming to all dimensional setback requirements in the Harbor Business Zoning District. The building is three stories in height; the first story contains a hardware store and a coffee shop, the second story contains the bowling alley which is owned and operated by the Applicant, and the third story contains a 1,280 sq. ft. office that is a part of the business of the bowling alley. There are no on-site parking spaces

available, and patrons and employees of the various businesses use parking spaces located on Front Street and Cole Parkway, respectively.

The Applicant proposes to convert the third-floor bowling alley's office into a dwelling unit to be used by the Applicant and his wife. Section 420 of the Scituate Zoning Bylaw was recently amended so as to provide that bowling alleys are not permitted uses in the Harbor Business Zoning District (Bylaw Section 420(3)(Z)). Therefore, the use of the Property, and in particular the bowling alley's office on the third floor, is pre-existing, nonconforming. Additionally, Zoning Bylaw Section 760.2 provides that "structures and land uses in existence on January 1, 1988, are not subject to [off-street parking requirements] so long as they are not enlarged or changed in a manner that increases their parking needs." The proposed conversion of the third-floor office to a dwelling unit would decrease the net parking demand by three parking spaces, and therefore the Property is pre-existing, nonconforming as to the Zoning Bylaw's parking requirements.

Section 820 of the Zoning Bylaw allows the Board of Appeals to issue a finding under G.L. Ch. 40A, Section 6 to authorize a nonconforming use to be changed to a specified use not substantially different in character, or not substantially more detrimental or injurious to the neighborhood than the existing nonconforming use. Section 820 further authorizes the Board of Appeals to issue a Section 6 finding to authorize an extension or alteration of a pre-existing, nonconforming use.

G.L. Ch. 40A, Section 6 provides, in relevant part, that zoning ordinances or bylaws shall not apply to lawful pre-existing nonconforming structures or uses, but shall apply to any reconstruction, extension or structural change to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent. Said Section 6 further provides that "pre-existing nonconforming structures and uses may be extended or altered, provided, that no such extension or alteration be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming [structure or] use to the neighborhood."¹

The conversion of the nonconforming bowling alley's office into a dwelling unit to be used by the proprietor of the business in a building that contains two other businesses is likely to have no noticeable or detrimental effect on the neighborhood whatsoever, which is a walking village consisting of a mix of a variety of businesses, residential condominiums, and dwellings. Therefore, the change in the nonconforming bowling alley/office use to this specified dwelling use will not be substantially more detrimental or injurious to the neighborhood than the existing nonconforming use.

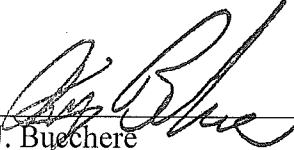
The Board discussed whether the Applicant should be seeking an accessory dwelling special permit, but that question was not before the Board and therefore the Board did not have jurisdiction to act on that question.

¹ The words "structure or" appearing in the brackets in the quoted sentence were supplied by Willard v. Board of Appeals of Orleans, 25 Mass. App. Ct. 15, 21, 514 N.E.2d 369 (1987), and later noted and applied in Rockwood v. Snow Inn Corp., 409 Mass. 361, 363 n.4, 364, 566 N.E.2d 608 (1991).

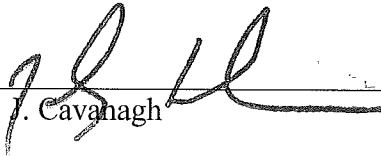
Based upon the application materials, the information provided at the public hearing, and the foregoing, the Board of Appeals FINDS by majority vote that the proposed conversion on the nonconforming bowling alley's office into a dwelling unit to be used by the proprietor of the bowling alley will not be substantially more detrimental or injurious to the neighborhood than the existing nonconforming use.



Edward C. Tibbetts



Anthony J. Buechere



Thomas J. Cavanagh

Filed with the Town Clerk and Planning Board:

10/19/18

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.