

Town of Scituate

ZONING BOARD OF APPEALS

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



RECEIVED
2021 APR 12 AM 10:23
TOWN OF SCITUATE
TOWN CLERK

Decision of the Scituate Zoning Board of Appeals on the application of Scituate Harbor Development, LLC (hereinafter, the “**Applicant**”) of 146 Front Street, Scituate, MA 02066, for (1) finding pursuant to Scituate Zoning Bylaw Section 820, and/or any other relief which the Board of Appeals may grant, to change the pre-existing, nonconforming theatre use, and adjacent retail and other space, of the interior of the building at 1 Mill Wharf Plaza (Assessor Map 50, Block 7, Parcel 101-S) (the “**Property**”), to four condominium units containing a total of seven bedrooms, and to combine approximately 900 sf of such theatre use into retail space, which is a specified use not substantially different in character, or not substantially more detrimental or injurious to the neighborhood than the existing nonconforming use, and (2) a finding, and/or any other relief which the Board of Appeals may grant, that the parking demand created by such change in use is substantially reduced and is exempt from, or does not constitute an intensification of, parking requirements under Scituate Zoning Bylaw Section 760. The said requested relief shall hereinafter collectively be referred-to as the “**Requested Relief**.”

The application was complete and was received, advertised and a public hearing was held on February 25, 2021. The following members were present and voted at the public hearing:

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

The Applicant was represented at the public hearing by his attorney, Jeffrey A. De Lisi, of Ohrenberger, De Lisi & Harris, LLP, of Scituate, MA. Attorney De Lisi was accompanied at the hearing by his client, Robert H. Warner, who also provided testimony.

1 Mill Wharf Plaza is one of three buildings that comprise the mixed-use condominium in Scituate Harbor known as “Scituate Harbor Condominium” (the “**Condominium**”), created pursuant to Master Deed recorded with the Plymouth County Registry of Deeds in Book 26933, Page 176. In particular, 1 Mill Wharf Plaza is shown as Building 1 on the plan entitled “Phase II Condominium Site Plan” dated April 8, 2004, prepared by BSC Group, and recorded with the said Registry as Plan No. 274 of 2004 in Plan Book 47, Page 1113. The Applicant is the owner of the entire first floor of the building at 1 Mill Wharf Plaza, which contains three commercial units known as S11, S12, and S14, respectively (collectively, the “**First Floor**”). Said Unit S12 contains approximately 5,407 SF and is used as a movie theatre (the “**Theatre**”). Unit S14 contains approximately 366 SF of retail space in the west portion of the building.

The Property is located in the Harbor Business zoning district. In 2001, the Scituate Board of Appeals granted a special permit recorded with the said Registry at Book 20600, Page 134 (the “**Special Permit**”) to allow for the demolition of five then-existing buildings which at the time had been used as a theatre, a lumber sales business, a marine storage business, retail space, and a one dwelling unit. In its place, the Special Permit allowed for the reconstruction of three buildings comprised of the Condominium, and containing retail shops, offices, a reduced capacity theatre, and 28 residential units. At the time of the 2001 Special Permit, the nonconforming uses consisted of the theatre use, the lumber sales business, and the marine storage business. The Special Permit authorized the elimination of the nonconforming lumber sales and marine storage uses altogether, and the significant reduction in the nonconforming theatre use from four screens having 679 total seats to two screens having 218 total seats. Presently, the Condominium consists of 24 residential units (though 28 are permitted by the Special Permit) and 22,626 SF of commercial space, which includes the reduced capacity, two-screen Theatre. The Theatre, albeit reduced in scope, remains a nonconforming use, while retail, office, and residential uses are allowed uses as-of-right in the HB zoning district.

As a consequence of significant changes in the movie industry, combined with the COVID-19 Pandemic, the Theatre has been inoperable for over a year. Mr. Warner explained that the Theatre had been struggling prior to the pandemic, and regrettably is no longer a viable business in this location. While many landlords and businesses are struggling in the post-pandemic world, in contrast the residential real estate market in Scituate Harbor is thriving. The Commonwealth of Massachusetts has passed legislation seeking for towns to create housing, and the Scituate Master Plan encourages a mixture of residential and commercial uses in Scituate Harbor. In this particular time, while the Board would prefer the use of the first floor of the building to remain solely commercial, it also recognizes the reality that the alternative to granting the Requested Relief is the continuation of a large vacant movie theatre, which is not a desirable situation.

The Applicant is proposing to eliminate the nonconforming Theatre use altogether, and to combine a portion of its space with an adjacent commercial unit to create four residential condominium units having a total of seven bedrooms. This brings the total number of residential units of the Condominium to twenty-eight, which is the number that was originally allowed by the Special Permit. The Applicant further proposes to re-purpose the remaining portion of the Theatre as another type of commercial space. The Applicant explained that the building’s foundation will not change, and any change to the exterior façade will be minor in nature.

The Board was provided with a letter from the Scituate Harbor Condominium Trust, which identified many concerns with the logistics of the Applicant's proposal. At the hearing, the Applicant's attorney informed the Board that the Applicant had met with association members who did not express that they are opposed to the project. The parties will continue to collaborate to ensure minimal disruption to the associations' residents and guests.

The Board questioned the parking. Section 760.2 of the Scituate Zoning Bylaw provides that "land uses in existence on January 1, 1988 are not subject" to parking requirements "so long as they are not enlarged or changed in a manner that increases their parking needs." In this case, there is no question that the uses which the Applicant seeks to alter were in existence since well prior to the adoption of zoning in the Town of Scituate. Nonetheless, it is apparent that the elimination of the Theatre use will significantly reduce the required parking associated with the Property. The Table of Parking Uses set forth in Zoning Bylaw Section 760.6 requires one parking space per every three theatre seats. Thus, the 218-seat Theatre requires 73 parking spaces to accommodate its use. The Applicant's proposal to replace that 218-seat Theatre with four residential units having seven bedrooms and the creation of approximately 900 SF of retail space would be a significant net reduction in parking demand in Scituate Harbor by about 61 parking spaces. However, the site, which is comprised of mostly buildings, sidewalks, and existing parking spaces, cannot accommodate additional parking spaces. As it exists, patrons of the Theatre and the other commercial businesses are forced to use the public parking lot in Cole Parkway, and the spaces along Front Street, for their needs. A member of the public who spoke at the hearing noted to the Board that the Town of Scituate presently does not allow overnight parking on Cole Parkway. The Board urges the Town of Scituate to consider different options to alleviate the continuing parking issues in the Harbor. Nonetheless, the Applicant provided the Board with a copy of an "Access and Parking Easement", along with an easement plan, that specifically allows the grantee, the Condominium unit owners, tenants, guests and invitees the right and easement over approximately 20,206 SF of land belonging to the abutting Welch Company Condominium for purposes of parking passenger vehicles.¹ While the configuration shown on the easement plan differs than its layout, this easement will allow for the utilization of at least 20 parking spaces, well exceeding the twelve required spaces for this proposed use.

The Board also discussed whether Site Plan Review is necessary. Zoning Bylaw Section 770.2 requires site plan review where "a structure ... is constructed, externally altered, or externally enlarged", when "a building or commercial use ... [is] expanded in ground area, changed from one type of business or commercial use to a different type of business or commercial use", and in the case where a business or commercial use is proposed to be "established in an existing structure not theretofore used" as such. The Board noted that the Planning Board had provided a Memorandum to the Board that indicated that it believes that Site Plan Review is warranted because the Theatre use is proposed to be changed to residential use. However, Zoning Bylaw Section 770 does not confer site plan jurisdiction in the case where a use is being changed from commercial to residential. The Zoning Enforcement Officer, Robert Vogel, participated in this discussion and indicated that he would not require site plan review in the case where the Board makes findings that the proposal is not substantially more detrimental to the neighborhood, and that the parking requirements are not being intensified. The Board also noted that, as concerns

¹ The Access and Parking Easement is recorded with the Plymouth County Registry of Deeds at Book 34203, Page 53, and the said Easement Plan is recorded at the said Registry as Plan No. 137 of 2007 in Plan Book 52, Page 1043.

the site and parking, the 2001 Special Permit focused the public benefit on the fact that parking demand for public spaces in the Scituate Harbor area was being reduced. Following that logic, a reduction in parking demand from 73 spaces to 12 spaces is significant.

It is noteworthy that the Board was also provided with, and made aware of, an analogous decision by the Board in 2009 with respect to a change in a nonconforming use of the abutting Welch Company Building.² In that case, the Board determined that site plan review was not necessary because the parking requirements were exempt under Bylaw Section 760.2 (above), and the change in use did not intensify a parking nonconformity.

Pursuant to Section 820 of the Scituate Zoning Bylaws, the Board of Appeals “may by a finding under General Laws Chapter 40A Section 6 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,” subject to certain limitations which are not relevant in this case because the Property is not located in the Water Resources Protection District. Section 820 also provides that “[p]re-existing nonconforming uses may be extended or altered provided that there is a finding by the Board of Appeals that the extension or alteration shall not be substantially more detrimental to the neighborhood.”


Beginning with St. 1920, c. 601, § 7, with only minor changes in language until present, the Commonwealth’s zoning statute applies to “any alteration of a building to provide for its use for a purpose, or in a manner, substantially different from the use to which it was put before the alteration.” See Opinion of the Justices, 234 Mass. 597, 603 (1920). Specifically, the current zoning statute, G.L. Ch. 40A § 6, provides in relevant part as follows:

“... Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall 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 use to the neighborhood...”

Following submission and presentation of written evidence and oral testimony addressing the relevant provisions of the Scituate Zoning Bylaws and G.L. Ch. 40A, Section 6, and after deliberation, the Board found that the Applicant’s application, and the conversion of the Theatre to four units as provided in the application plans, (1) does not increase parking demand from what was present on the site previously, and (2) is not substantially more detrimental to the surrounding neighborhood.

For the foregoing reasons, the Board unanimously voted to grant the Applicant the finding/special permit and Requested Relief under Sections 820, and 950 of the Scituate Zoning Bylaws, and a finding under G.L. Ch. 40A, § 6.

² The said 2009 decision of the Board of Appeals is recorded with the Plymouth County Registry of Deeds at Book 37860, Page 30.



Anthony J. Bucchere, Chairman



Edward C. Tibbets



Thomas J. Cavanagh

Filed with the Town Clerk: April 12, 2021

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 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.