

MASSACHUSETTS  
JUL 12 2013  
4:13 PM -11 A.M. 52  
103.

## TOWN OF SCITUATE



600 Chief Justice Cushing Highway  
Scituate, Massachusetts 02066  
Phone: 781-545-8741  
FAX: 781-545-8704

### Zoning Board of Appeals

Decision of the Scituate Zoning Board of Appeals on the application of J. Stephen Bjorklund, Trustee of Atlantis Nature Study Realty Trust, Scituate MA, under Mass. Gen. Laws Ch. 40A, Section 6, to allow construction of a single family dwelling on vacant property located at 141 Turner Road and for a Flood Plain Special Permit under Scituate Zoning By-Laws Section 470.

The application was received, advertised, and a public hearing was duly opened on June 12, 2013. The applicant was represented at the hearing by Attorney Michael C. Hayes of Scituate, MA. Board members present included then Chair Peter Morin, voting members Sara Trezise, Ed Tibbetts and John Hallin and alternate Frank Lynch. After opening remarks by the applicant, and some discussion with the Board, the applicant requested a continuance, citing for reasons that the Zoning Enforcement Officer was unavailable for the night's hearing due to medical issues. The Board voted to grant the request to continue the hearing until the next meeting, July 18, 2013.

On July 18, 2013, prior to any further discussion on the matter, the applicant requested a continuance, citing for reasons that the Zoning Enforcement Officer was again unavailable for the night's hearing due to medical issues. Board members present included newly elected Chair Sara Trezise, voting members Ed Tibbetts and John Hallin as well alternate Frank Lynch and newly appointed alternate Anthony Bucchere. The Board voted to grant the request to continue the hearing until the next meeting, August 15, 2013.

On August 15, 2013, prior to any further discussion on the matter, the applicant requested another continuance citing for reasons that the Zoning Enforcement Officer

was again unavailable for the night's hearing. Board members present included Sara Trezise, Ed Tibbetts and Frank Lynch. The Board voted to grant the request to continue the hearing until the next meeting, September 19, 2013.

On September 19, 2013, prior to any further discussion on the matter, the applicant requested another continuance citing for reasons that voting member John Hallin was unavailable for the night's hearing. Board members present included Sara Trezise, Edward Tibbetts, Frank Lynch and Anthony Bucchere. The Board voted to grant the request to continue the hearing until the next meeting, October 17, 2013.

On October 17, 2013, prior to any further discussion on the matter, the applicant requested another continuance citing that voting member Edward Tibbetts was unavailable for the night's hearing. Board members present included Sara Trezise, John Hallin Frank Lynch and Anthony Bucchere. The Board voted to grant the applicant the request to continue the hearing until the next meeting, November 21, 2013.

On November 21, 2013, the hearing was held with the following voting members of the Zoning Board of Appeals hearing the application:

Sara Trezise, Chairman  
Edward Tibbetts  
John Hallin

The Zoning Enforcement Officer was also in attendance. Both alternates Frank Lynch and Anthony Bucchere were also present.

The subject property is located at 141 Turner Road and is owned by Stephen Bjorklund, Trustee of Atlantis Nature Study Realty Trust who acquired the property from Stephen Bjorklund, individually, by deed dated October 3, 1996. (See Deed recorded on October 22, 1996 in Book 14731 at page 16 in the Plymouth County Registry of Deeds.)

The property originally had a single family dwelling located on it which was built in 1890, which predated the adoption of zoning by-laws in Scituate. The land is presently vacant and has been since the original dwelling was damaged and /or destroyed in the Blizzard of 1978 and razed in 1980.

In 1991, Mr. Bjorklund purchased the property individually. Bjorklund transferred the property to himself as Trustee in 1996. Bjorklund, as Trustee now asks this Board to issue him a permit to build a new single family dwelling on the premises. The application seeks approval to build a new structure in accord with site plans submitted by the applicant and drawn by Ross Engineering Company Inc. dated January 29, 2013, and design plans drawn by Kuendig Design dated March 7, 2013.

The property is located in the A-3 residential zoning district. The existing lot size, lot frontage, and lot width are all non-conforming. While the original structure on the property was built in 1890, that structure was damaged / destroyed in 1978 and demolished in 1980. There has not been any structure on the property since 1980.

The following table illustrates the existing and proposed non-conformities relative to current applicable dimensional requirements contained in Section 600 – Dimensional Regulations.

	<b>Lot Area (sq. ft.)</b>	<b>Lot Width</b>	<b>Frontage</b>	<b>Property Line Front Setbacks</b>	<b>Property Line Side Setbacks</b>	<b>Property Line Rear Setbacks</b>
<b>Required</b>	10,000	100'	100'	30'	8'	20'
<b>Existing</b>	3,428	37.60'-	37.60	Vacant land	Vacant land	Vacant land
<b>Proposed</b>	3,428	37.60	37.60	25'	8.7/8.5	24.5'

The property lays in the Scituate Flood Plain and Watershed Resource Protection Zoning District. Although not specifically requested, the applicant would require a Flood Plain Special Permit under Scituate Zoning By-Laws 470. Since the application also included a request for “any other relief the Board finds necessary”, it is assumed that the application included a request for a Flood Plain Special Permit.

The applicant seeks to build a new structure on the property which will comply with current front, side and rear setbacks. The lot area, width and frontage will not change.

The Applicant has argued that as Scituate Zoning By-Laws have changed and that Massachusetts case law has evolved over the years and with the case of Gale v Zoning Board of Appeals of Gloucester, 80 Mass. App.Ct. 331 (2011), the ZBA is precluded from applying any provision of the By-Laws, particularly Sections 810.1 or 830.00. For those reasons, the applicant argues that he is entitled to a ch. 40A, sec. 6 special permit /finding and that his application should be granted.

Since the mid 1980's, this property has been the subject of multiple applications for zoning relief all of which has been previously denied and either not appealed or which have been affirmed by the Land Court and /or the Superior Court. Both the Land Court and the Superior Court found that the property lost its grandfathered protection as a legal nonconforming lot due to the extended period of abandonment and/or non-use and the owner's failure to reconstruct the dwelling in a timely manner in accord with the applicable By-Laws.

The Scituate Zoning By-laws in effect in 1978, the year the dwelling was destroyed, in Section 7, provided that:

“A. Buildings and Uses Already in Existence

Any lawful building or structure, or any lawful use of land, building or structure, existing at the effective date of this By-law or any amendment thereto, subject to the limitations established at Section 6, Chapter 40A, G.L., as amended, . . . may be continued, although not in conformity with the provision thereof, unless or until abandoned or not used for a period of two (2) years of more.

C. Repair and Restoration of Non-Conformity Use

A non-conforming building, structure or use damaged or destroyed by accidental causes may be repaired, reconstructed or restored within the same portion of the lot and used as before, provided that such repair, reconstruction or restoration is completed within two (2) years of said damage or destruction.”

Scituate Zoning/Building Code Rules and Regulation 1978, Section 7, A and C., pages 22 and 23.

It is undisputed that the owner of the property did not repair, reconstruct or restore the structure within 2 years of the damage or destruction as required by the Zoning By-Laws in effect at the time of said damage and/ or destruction. Because of this, the Board felt that in accord with the prior Land Court and /or Superior Court decisions regarding this property, the applicant could not establish he was entitled to the protection of the Scituate Zoning By-Laws regarding construction (or “reconstruction”) of a new single family home on the non-conforming lot located at 141 Turner Road. The Board further felt that the applicant had also failed to establish he was entitled to his permit under any revised Scituate Zoning By-Law, under any applicable Massachusetts General Law, or any applicable decision of the State Supreme Court or the Appeals Court including but not limited to Gale v Zoning Board of Appeals of Gloucester, 80 Mass. App.Ct. 331 (2011).

For the foregoing reasons, the Board voted 2 to 1 to deny the application to permit the construction of a new single family dwelling on the non-conforming lot located at 141 Turner Road as proposed on the plans as described above. Trezise and Hallin voted to deny the permit and in favor of the Motion. Tibbetts voted in opposition to the Motion. (Alternate Lynch supported the Motion; Alternate Bucchere opposed the Motion.) The Motion to deny the application carried.

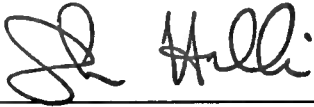
The applicant requested to withdraw the request for a Floodplain Special Permit without prejudice. The Board voted unanimously to allow this Motion.

SCITUATE ZONING BOARD OF APPEALS



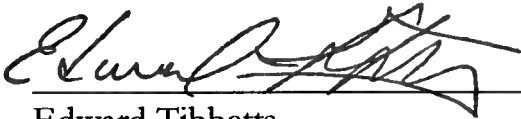
---

Sara Trezise



---

John Hallin



---

Edward Tibbetts

Filed with the Town Clerk and the Planning Board on: December 4, 2013.

This Special Permit/Finding will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County 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. 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.