

Town of Scituate

ZONING BOARD OF APPEALS

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Decision of the Scituate Zoning Board of Appeals on the Application of Fred Caffrey and John Barron Appealing the Issuance of a Building Permit on May 5, 2021 – Building Permit #B-21-470 for the Premises Located at 8 Bayberry Road Scituate, MA (hereinafter premises), owned by Joseph P. Joyce, Trustee 5212 Bayberry Road Realty Trust (hereinafter Joyce)

The Application was received, advertised and a public hearing was opened on July 15, 2021. The following members were present and voted at the July 15, 2021 public hearing:

Anthony J. Bucchere, Chairman
George Xixis
Susan Harrison

The Co-Applicant, Fred Caffrey was present at the public hearing and was represented by his attorney, Gene J. Guimond of Baker, Braverman and Barbadoro, P.C. of 300 Crown Colony Drive, Suite 500, Quincy, MA 02169. Such Co-Applicant is the owner of an abutting property located at 21 Bailey's Causeway by virtue of a deed recorded with the Plymouth County Registry District of the Land Court as Document No. 433955 in Certificate of Title No. 94093. The other Co-Applicant, John Barron, owns an abutting property located at 14 Bayberry Road as indicated in a deed recorded with the Plymouth County Registry of Deeds in Book 15228, Page 73. The Co-Applicants are appealing the issuance of the building permit for a single family home with four (4) bedrooms, 3.5 bathrooms and a two car detached garage. The premises is located in the R-2 District and contains 21,286 square feet of land. The premises also has 100 feet of frontage upon Bayberry Road.

The Co-Applicants are seeking a rescission of the building permit referenced above arguing, inter alia, that the premises is not controlled by the owner for the full 125 feet of the lot width as required by section 610.1; that the owner of the premises deposited fill upon the site and is thereby exceeding the height limits for the construction of the proposed single family home; and

there was insufficient detail in the plans to determine the impact of certain proposed retaining walls.

Section 610.1 states in its entirety as follows:

“610.1 Lot Area Width Requirements

a. In all districts, except as herein provided, no dwelling shall hereafter be erected on a lot having less area, exclusive of any part of said lot within the line of a street or way or below mean high water, than the “Required Lot Area” or having less width measured through that part of the dwelling erected, or to be erected, thereon, where said lot is the narrowest, than the “Required Lot Width”, specified in the following table for the district in which said lot is located. Lot width shall be measured between side lot lines and parallel to the lot frontage, or as close to parallel to lot frontage as is practicable on irregularly shaped lots.”

District: R-2

Required Lot Area: 20,000

Required Width Area: 125 feet

The materials provided to the Board at the public hearing indicate that on June 18, 2004, the Co-Applicant Fred Caffrey and his wife Jill Caffrey conveyed a rectangular portion of their property to Joyce which contained 1,250 square feet of land for \$60,000.00 in order to make the premises a buildable lot pursuant to the requirements of Section 610.1. Caffrey then retained an easement over such conveyed premises. The Co-Applicants submit that because such rectangular area (the easement area) of the premises is subject to the easement for the benefit of the Caffrey property that Joyce does not control the required 125 feet of width to make the premises a buildable lot. The Co-Applicants cite no case law nor identifies any language in the by-law which supports this proposition. Indeed, the by-law specifically refers to ownership, not control.

With respect to the argument that fill has been deposited upon the land making the proposed structure upon the premises beyond the height limitations of the Zoning By-Laws, the same is not supported by any persuasive documentation. Moreover, with respect to the fill, the same was brought on site many years ago when Joyce was issued an on-site sanitary waste disposal system and installed such system upon the site and obtained a certificate of completion for the same in 2009. Hence, any complaint as to the fill deposited on the site is untimely and there is no evidence that the proposed structure will exceed height limitations.

With respect to the claim that there was insufficient detail in the plans regarding the retaining walls, such argument was not advanced at the public hearing by the Co-Applicants. Nevertheless, the Board finds that there was sufficient detail set out in the plans regarding the retaining wall construction. The same is also provided for in the stormwater permit in Condition #14, which includes the requirement that an as-built plan be submitted prior to obtaining a certificate of completion for the stormwater permit and the work must be found to be in compliance with the approved permit.

The Board finds further that sufficient detail regarding the retaining wall installation is set out in the Ross Engineering Plan of November 17, 2017 that was submitted with the stormwater discharge permit which the Applicants did not Appeal.

Upon review of the application, consideration of the materials submitted and the hearing testimony from the Co-Applicants and the Co-Applicants' representatives, and counsel for Joyce, and the owner and certain abutters:

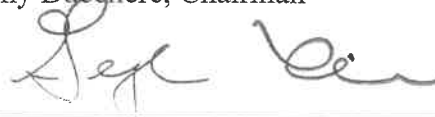
Accordingly, the Board of Appeals voted unanimously to deny the Co-Applicants' appeal of the building inspector's issuance of a building permit to Joyce.

Based on the foregoing, the Board unanimously voted to deny the Co-Applicants' appeal.

SCITUATE ZONING BOARD OF APPEALS



Anthony Buechere, Chairman



George Xixis



Susan Harrison

This decision was filed with the Town Clerk on September 1, 2021