

# 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 John K. Tedeschi of 17 Northey Farm Road, Scituate, MA (hereinafter, the "Applicant") for a hearing after a remand from Superior Court in response to a challenge of the issuance of a December 11, 2012 Special Permit issued pursuant to Scituate Zoning Bylaw (the "Bylaw") Section 470.9 to construct a single family home on property in the Town of Scituate Flood Plain and Watershed Protection District.

The application was received, advertised and a public hearing was duly held on June 18, 2015, with the following members of the Zoning Board of Appeals hearing the application:

Edward C. Tibbetts, Chairman  
Francis M. Lynch  
Anthony J. Bucchere

The subject property (the "Subject Property") at Lot 295, 0 Foam Road, Map 46, Block 13, Parcel 16-0-R is owned by John T. Stonefield and Jane C. Stonefield of 137 Warren Road, Townsend, MA (See Certificate of Title No. 77407 filed with the Plymouth County Registry of Deeds, Book 387, Page 7). It is located in Residence R-3 Zoning District, and is not located within the Water Resources Protection District. The Subject Property is 5,908.1  $\pm$  SF has 54.59  $\pm$  feet of frontage on Foam Road and an average lot width of 59  $\pm$  feet. The Applicant has provided a copy of the Owner's Duplicate Certificate and associated Plan which indicates that the Subject Property is an isolated lot in existence prior to 1951 and the adoption of zoning in the Town of Scituate. The Applicant further represented that the property has been in the ownership of the same family since the 1930's. The pre-existing nonconformities of the Subject Property are (a) lot frontage of 54.59  $\pm$  feet is less than the required 100', (b) lot width is 54.59  $\pm$  feet, less than the required 100', (c) lot area is 5,908.1  $\pm$  square feet, less than the required 10,000 square feet.

The subject property is located in the Town of Scituate Flood Plain and Watershed Protection District as shown on a map entitled "Town of Scituate Flood Plain and Watershed Protection District", dated 1972. In addition, the Subject Property is located in a Special Flood Hazard Area (Flood Zone AE) as shown on National Flood Insurance Rate Map 2502820004C, dated July 17, 2012.

The Applicant was represented by Richard A. Henderson, Esq., Henderson & Henderson, P.C., 76 South Main Street, Cohasset, MA and Greg Morse, P.E., Morse Engineering Co., Inc., P.O. Box 92, Scituate, MA.

In response to Judge Gaziano's remand order in *Walsh v. ZBA and Tedeschi*, the Board reviewed the Special Permit in light of the § 470.9 "subject to flooding" definition established by the SJC in *Doherty v. Planning Bd. of Scituate*, 467 Mass. 560, 569-70 (2014). In addition, the Board considered whether development of the proposed dwelling would be inconsistent with the purposes of the FWPW district set forth in § 470.1, and whether development of the proposed dwelling would violate any of the following public policy concerns: (1) the protection of individuals who develop or occupy land on a flood plain; (2) the protection of other landowners from damage resulting from development in the flood plain; (3) the obstruction of the flood flow; and (4) the protection of the community from land use which requires subsequent expenditures for public works and/or disaster relief.

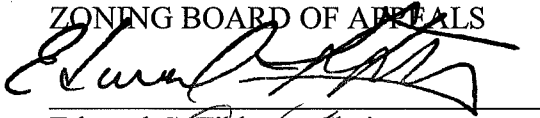
The Board considered testimony of the applicant, applicant's attorney, applicant's engineer, neighbors, neighbor's attorney and members of the public present at the hearing.

Based upon the application materials, the information provided at the public hearing, and the foregoing, the Board of Appeals finds:

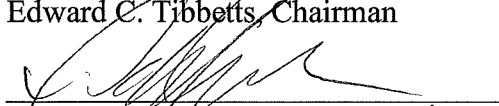
- (1) The subject property is "subject to flooding" in light of the § 470.9 "subject to flooding" definition established by the SJC in *Doherty v. Planning Bd. Of Scituate*, 467 Mass. 560, 569-70 (2014). Vote 3-0
- (2) The proposed dwelling would NOT violate the protection of individuals who develop or occupy land on a flood plain. Vote 2-1
- (3) The proposed dwelling would NOT violate the protection of other landowners from damage resulting from development in the flood plain. Vote 2-1
- (4) The proposed dwelling would NOT violate the obstruction of the flood flow. Vote 3-0
- (5) The proposed dwelling would NOT violate the protection of the community from land use which requires subsequent expenditures for public works and/or disaster relief. Vote 2-1

Thereafter a motion was made to reconsider the Board's 2012 decision to issue the Special Permit. The motion was seconded. There was one vote in favor of the motion and two opposed.

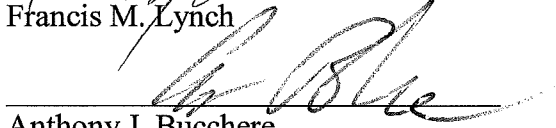
ZONING BOARD OF APPEALS



Edward C. Tibbetts, Chairman



Francis M. Lynch



Anthony J. Bucchere

Filed with Town Clerk and Planning Board on July 17, 2015.

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.