

Scituate Zoning Board of Appeals

Meeting Minutes

December 15, 2016

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**PRESENT:** John Hallin, Chairman, Sara Trezise, Ed Tibbetts and Anthony Bucchere.

**Also Present:** Robert Vogel, Acting Building Commissioner and Zoning Enforcement Officer.

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The Scituate Zoning Board of Appeals held a public hearing on December 15, 2016 at the Scituate Town Hall located at 600 Chief Justice Cushing Highway, Scituate. The meeting was called to order at 7:05 P.M.

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**First Application: Elaine A. Riddle of 37 Shoals Avenue, Plymouth, MA** requests a Special Permit pursuant to Sections 610.2B and 950.3 of the Scituate Zoning Bylaws, and/or M.G.L. Ch. 40A, Section 6, and/or any other relief the Board of Appeals may grant to construct a single family dwelling on a lot which has a width of less than one hundred feet at any point between the frontage or way and the nearest part of the dwelling erected to or to be erected on said lot, but which has a width of at least 50 feet at every point between frontage street or way and the nearest part of the dwelling to be created on said lot. The subject property is located at **Torrey's Lane, Lot 2, Scituate MA (Assessor's Map 55, Block 3, Parcel 26-A).**

Representing the Applicant: Attorney Mike Hayes, Ohrenberger, DeLisi and Harris LLP

Mr. Hayes reviewed the history of the prior Special Permit issued in 2005 and was subsequently extended by way of the permit extension law. As a condition of the first Special Permit the applicant agreed to deed land (parcel 3) to the Town in 2009. The proposed plan shows a dwelling to be located in the rear portion of the lot which would be accessed through the 50' of frontage. The Applicant did not act on the permit due to a restriction placed on the property precluding building on the property. At the 2005 Town Meeting an article to remove the restriction to build was voted and approved. Acting on the request of the Board of Selectmen, DPW reviewed water wells and concluded they were outside the approved Zone 2 well protection areas and therefore posed no danger to any town wells. Lot 2 was determined by DPW to be approximately one mile from both wells. Water and electricity would need to be brought to the lot. Alternatively, a well would need to be constructed on the lot.

Mr. Hallin asked Mr. Hayes if he anticipated the use of public water for the property.

Mr. Hayes stated he believes that is preferable. Issues relating to water and electricity access would need to be addressed at a later point in time. The first step in the process is the ZBA issuance of a Special Permit.

Ms. Trezise asked if the nature of the deed restriction was related to the wells.

Mr. Hayes stated he believes that was the case. The town wanted to ensure the safety of the wells. When the deed restriction was removed in 2005 it was not recorded with the Registry of Deeds. Recently Mr. Hayes received a certificate from the Town Clerk which will be recorded with the Registry prior to an application for a Building permit being submitted.

There were no comments from the public.

**Ms. Trezise moved that the Board find the property located at Lot 2 Torrey's Lane as shown on Assessor's Map 55-3-26A be found that the lot abuts Torrey's Lane for a distance of at least 50', has at least 50' at every point between frontage street and the nearest point of the dwelling to be erected and that the property has at least two times the required upland required for the zoning district and that the application of Elaine Riddle for a Special Permit to construct a single family dwelling on the lot as shown on plan #04-101 by Merrill Associates, last revised on 11-11-2005 be granted. Motion seconded by Mr. Tibbetts. All in favor, unanimous.**

**Second Application: Peter Zaccardi of 37 Moorland Road, Scituate, MA** requests a Special Permit/ Finding pursuant to Section 810.2 and 470.6F of the Scituate Zoning Bylaws, and/or M.G.L. Ch. 40A, Section 6, and/or any other relief the Board of Appeals may grant to allow reconstruction of a single family dwelling on a preexisting, nonconforming lot at **40 Peggotty Beach Road, Scituate, MA (Assessor's Map 55, Block 7, Parcel 10).**  
Representing the Applicant: Greg Morse, Registered Engineer, Morse Engineering.  
Documents Presented: Revised Plan dated 10/27/16, revised 12/15/16.

Mr. Morse described the application to raze and reconstruct the existing structure built in 1930. The property is located in the R3 residential zone as well as the Flood Plain and Watershed Protection district. The existing structure is 1212 sq. ft. on a lot of 7206 sq. ft. The property is nonconforming with respect to the front setback, left side setback, lot width and lot area. The proposed plan shows a 2732 sq. ft. four bedroom dwelling to be constructed on pilings in accordance with the 2016 FEMA flood maps. The plan represents an increase in the gross floor area of 125%. Mr. Mirabito explained to the Board that nine properties within 100 feet of the Applicants have an average floor area of 2362.

The criterion under the bylaw 470.6F was reviewed and the Board agreed the application met said criterion for a Flood Plain Special Permit.

Mr. Hallin inquired about the first floor elevation, existing and proposed.

Mr. Morse stated the existing first floor elevation is 8', and the proposed is 20'. Parking would be located under the deck and structure on the left side. A section of hedges would be removed to accommodate parking access.

Mr. Bucchere asked for clarification of the proposed height.

Mr. Morse explained the proposed height of the new dwelling would be 42' as measured from grade to ridge height with the first floor elevation to ridge being approximately 32'. Photos of abutting properties were presented for height and size reference.

Mr. Hallin opened the meeting for public comment.

Joe Armstrong of 31 Peggotty Beach Road restated the letter submitted to the Board and expressed his strong opposition to the plan as the proposed reconstruction will negatively impact his view. He also informed the Board of his belief that section 810.2 of the bylaws had been misinterpreted by the Board. Mr. Armstrong stated his neighbor at #29 shares his concerns, although unavailable to attend the meeting.

Mr. Hallin explained the application requires ZBA relief due to the proposed increase in square footage exceeding 20% as stated in 810.2.

Mr. Bucchere further stated the Applicant is within his right of use to maintain the nonconformities.

Mr. Armstrong then referred to section 820A and stated the proposed structure would be substantially more detrimental to the neighborhood. He inquired whether the use is nonconforming or not.

Mr. Tibbetts explained the Applicant is limited to the nonconformities at the time. The nonconformities may be reduced or maintained. An existing nonconformity may be intensified, but no new nonconformities may be created. The use is currently a residential dwelling and proposed reconstruction would be a residential dwelling. Therefore, no change in use is proposed.

Ms. Trezise explained under Mass. Law a property owner does not have a right to a view unless a view restriction had been placed on the deed.

John Mahoney of 4 Peggotty Beach Road expressed his concern with the proposed 6.8' setback and the negative impact on his incoming natural light as well as privacy.

Nicky Cronin of 36 Peggotty Beach Road stated her concerns with the flow of water and the negative impact on Peggotty Beach parking lot.

Mr. Tibbetts explained the present structure blocks water, while the proposed structure will allow water to flow through as it would be elevated.

Erin Morel of 43 Peggotty Beach Road expressed her concern regarding accessibility of parking for the proposed plan.

Maura White of 35 Peggotty Beach Road asked if the Applicant intended to live in the new dwelling or sell it.

The Applicant informed Ms. White that has yet to be determined.

Bob Morel of 43 Peggotty Beach Road asked if the right side was proposed to expand outward and further stated his concern with the proposed size of the dwelling on the small lot, the impact on views from his property and the change in water flow. Furthermore, Mr. Morel expressed his displeasure with the idea of a developer buying a property, razing and reconstructing of the existing structure and then selling the property. The cohesive integrity of the neighborhood would be compromised under such circumstances.

Mr. Bucchere explained that because Scituate has no density restriction a property owner is within his or her right to construct the dwelling provided the plan is within the zoning bylaws and setbacks are met. Additionally, the ZBA cannot restrict a property owner's right to buy and sell.

Mr. Tibbetts encouraged the neighbors to consider collectively purchasing the property which would eliminate the disruption of their views, concern with water flow and other objections to the proposed plan.

Joe Tamulevis of 38 Peggotty Beach Road stated he will not permit the Applicant to access the property at any point during the demolition or reconstruction of the project and was concerned about the possibility of damage to his driveway. Further, the lot line shown on the plan as 13.1' was questioned for accuracy.

Bob Morel asked the Board if they have any moral compass and stated this should not happen as the project is no more than a "money grab".

Ms. Trezise explained the Town presently has no lot coverage bylaw. She encouraged residents to seek change in the bylaws for the inclusion of such bylaw.

Erin Moral expressed further concern over increased fire risk given the close proximity of the homes and detriment to the neighborhood.

Mr. Vogel reiterated the Board's explanation of a property owners rights and the Applicant's requirement to elevate the structure in accordance with the 2016 FEMA guidelines.

Mr. Morse explained the property lines have been established in Land Court in 1930 and would not change.

**Mr. Tibbetts moved that the Board find that the property at 40 Peggotty Beach Road as described on the plan by Morse Engineering dated and revised 12-15-16 is nonconforming with respect to lot size, lot width, front yard setback and southerly side setback, further that the property is located in a velocity zone, that the proposed structure will not increase any existing nonconformity and to the extent that the proposed structure is an intensification of any nonconformity it is not substantially more detrimental to the neighborhood than the existing structure and as such, under Section 810.2 and Chapter 40A, Section 6 that the proposed reconstruction shall be allowed. Motion seconded by Mr.**

**Bucchere. All in favor, unanimous. Also, that the Board grant a Special Permit under 470.6F citing same plan and reasons and that the three criteria under said bylaw have been met. Motion seconded by Mr. Bucchere. All in favor, unanimous.**

**Third Application: Gerald F. Schinder of 54 Stetson Shrine Lane, Norwell, MA 02061** requests a Special Permit/ Finding in accordance with M.G.L. Chapter 40A, Section 6 to raze and reconstruct a pre-existing nonconforming dwelling adding more than 20% gross square footage and a Flood Plain Special Permit under Section 470.6 of the Scituate Zoning Bylaws at **15 Tenth Avenue, Scituate, MA (Assessor's Map 39, Block, 4, Parcel 12).**  
Representing the Applicant: Mike Salamondo.

Mr. Salamondo reviewed the application with the Board explaining the property, located in the R3 residential zone, was built in 1950 on a 9000 sq. ft. lot where 10,000 are required. The property is nonconforming with respect to lot size, lot frontage and front yard setback. The existing structure is 2148sq. ft. and is located in the Flood Plain district. The proposed plan shows a 2302 sq. ft. two story dwelling to be constructed in accordance with the 2016 FEMA flood map. Side and rear yard setbacks will be conforming. The existing front yard setback is 13.2', while the proposed is 15.5'. Mr. Salamondo noted the average on the street is 15.4'.

The meeting was opened for public comment.

Joseph Burns of 13 Tenth Avenue asked if the footprint would be pushed back and what the proposed height is.

Kate Burns of 13 Tenth Avenue requested to view renderings of the proposed structure.

Mr. Salamondo stated the structure would be pushed back 7' and elevation is proposed to be 18.5 and passed renderings to Ms. Burns.

Mr. Vogel explained the property lies in the AE 15 flood zone. The proposed plan shows the floor to be elevated so the first floor us no concern. Crushed stone will cover the crawl space.

**Mr. Bucchere motioned the Board find that the proposed dwelling at 15 Tenth Avenue shown on the plan by Hoyt Land Surveying dated 9-29-2016 is nonconforming with respect to lot area, frontage and front yard setback and that the proposed dwelling would eliminate the front yard setback nonconformity and cause no change to the lot area and frontage nonconformity, further that the proposed new dwelling would not create any new nonconformity and to the extent that it results in an intensification, said intensification would not be substantially more detrimental to the surrounding neighborhood. Motion seconded by Mr. Tibbetts, All in favor, unanimous.**

**Mr. Tibbetts moved to grant the Special Permit under Section 470.6F to construct the building as proposed and that the proposed structure meets the three criteria of said section. Motion seconded by Ms. Trezise. All in favor, unanimous.**

**Fourth Application: Christian M. Holmblad and Margaret Hudlin of 74 Fisher Road, Southboro, MA 01772** request a Special Permit/ Finding pursuant to Section 810.2A of the

Scituate Zoning Bylaws, and/or M.G.L. Ch. 40A, Section 6, and/or any other relief the Board of Appeals may grant for an increase in the gross floor area of 31.1% at **20 Collier Road, Scituate, MA (Assessor's Map 64, Block 5, Parcel 1)**.

Representing the Applicant: Paul Mirabito, Ross Engineering and Steve Noonan of Steve Noonan of Axiom Architects.

Mr. Mirabito summarized the application for the property located in the R3 residential zone with is nonconformities in lot area (5712 sq. ft. where 10,000 are required) and front yard setback (1.4' currently where 30' are required). The existing structure was built in 1900 and has a square footage of 2572. The proposed plan shows a reduction in the nonconforming front yard setback from 1.4' to 1.8' with a proposed dwelling of 3373 sq. ft., representing an increase of 31.1%. Proposed setbacks on Cliff Ave. would be less nonconforming. The proposed garage would be set back further from the pavement than the existing garage.

Ms. Trezise inquired about the driveway dimensions.

Mr. Mirabito responded to the inquiry stating the dimensions are 24-25' approximately.

The meeting was opened for public comment.

John McIntyre of 22 Collier Road asked if the front porch would extend further out.

Mr. Mirabito stated the proposed porch would be open and extend further than the existing porch facing Cliff Avenue. The open deck facing Collier Road as shown on the plan is to be located on the second floor and above a grass area.

**Mr. Tibbetts moved that the Board find the structure as outlined on the plot plan for 20 Collier Road prepared by Ross Engineering and dated November 15, 2016 represents a property that is nonconforming in lot area and front yard setback off Cliff Avenue, that the proposed new structure will not create any new nonconformities and to the extent that the proposed structure intensifies any existing nonconformities it will not be substantially more detrimental to the neighborhood than the existing structure and that undersection 810.2 the increase of 31.1% in the square footage will not be substantially more detrimental to the neighborhood than the existing structure. Motion seconded by Mr. Bucchere. All in favor, unanimous.**

**Fifth Application: Paul Sheerin of 48 Ocean Avenue, Scituate, MA** requests a Special Permit/ Finding in accordance with Sections 470.6F, 810.2B of the Scituate Zoning Bylaws and/ or M.G.L. Chapter 40A, Section 6 and/or any other relief that the Board of Appeals may grant that the razing of a pre-existing nonconforming single family dwelling at **25 Bayberry Road, Scituate, MA (Assessor's Map 5, Block 1, Parcel 41)** and reconstruction of a single family dwelling thereon will be less nonconforming, and will not be substantially more detrimental or injurious to the neighborhood than the destroyed and/ or existing nonconforming structure(s) or use(s).

Representing the Applicant: Paul Mirabito, Registered Engineer at Ross Engineering.

Mr. Mirabito summarized the application for the Board stating the property, located in the R2 zone, is nonconforming with respect to front yard setback. The existing front yard setback is 7.4' in a zone where 30' are required. The existing structure has 2891 sq. ft. and was built in 1910. The proposed plan shows a 4315 sq. ft. dwelling (an increase of 49%) to be constructed in accordance with the 2016 FEMA regulations which identify the property in the AE15 flood zone as well as the Scituate Flood Plain and Watershed district. The front yard setback will be less non-conforming at 13.8'. The property shares a septic service with #25, 29 and the next house down on Bayberry Road. A sewer easement is also located on the property. Additionally, Mr. Mirabito explained to the Board the submitted site plan was based on a survey of the perimeter. The land is registered based on a Land Court plan dated in 1922 and 1929.

The Board discussed Section 810.2B of the Scituate Zoning bylaws prior to opening the meeting for public comment.

John Baron of 14 Bayberry Road expressed his disagreement with the Conservation Commission findings and further contended the submitted site plan is not the same plan as that which was submitted to the Conservation Commission. Further, the subject property, in fact, is two lots and is located within the Salt Marsh District, though not noted on the plan. Mr. Baron expressed great concern with the water plane and that flooding on the property will disturb the natural flow of water.

Mr. Bucchere clarified there was no discrepancy in the plans, but rather different information on different plans presented to respective boards. Further, he explained a neighborhood can be laid out in a particular manner although the property owner is under no obligation to maintain the linear layout as each property on any given roadway is later sold and purchased.

Mr. Tibbetts further explained no zoning existed when the home was built 13' from the road in 1910. Zoning does not force compliance of existing structures for nonconformities which existed before zoning. The property was grandfathered when zoning was enacted to provide relief for the pre-existing nonconformity, as were all property's with non-conformities. Further, Mr. Tibbetts explained that ownership in land changes so do the rights with each parcel. An individual parcel has rights in frontage and access.

Mr. Baron discussed the history of Bayberry Road and subsequent changes following the addition of a side street which enabled the property owner to use as frontage. Mr. Baron objected to the proposed change in the design and nature of Bayberry Road as it would change the look and feel of the street.

The Board asserted the given rights of each property owner explaining that if the proposed plan is within the allowable building envelope the Board would grant the appropriate relief sought by an Applicant.

**Mr. Tibbetts moved that the Board find in accordance with M.G.L. Chapter 40A, Section 6 and Section 810.2 that the property at 28 Bayberry Road, Scituate is nonconforming as to front yard setback and that the proposed construction will reduce that nonconformity from 7.4' to 13.8', that the proposed structure will not create any new nonconformities and to the extent that the proposed structure is an intensification it is not substantially more detrimental to the neighborhood than the existing structure. Motion seconded by Mr. Bucchere. All in favor, unanimous. In addition, move that the Board grant a Special Permit under Section 470.6F acknowledging that the application meets the three criteria. Motion seconded by Mr. Bucchere. All in favor, unanimous. In Addition, move that the Board grant a Special Permit under Section 460.2, that the application meets requirements listed there and that the proposed work will not adversely affect the natural character of the area in which the land referred to in the application is located. Motion seconded by Mr. Bucchere. All in favor, unanimous.**

**Sixth Application: Dana Sceviour of 25 Irving Street, Canton, MA 02021 requests (I) a M.G.L. Chapter 40A, Section 6 Finding in accordance with Scituate Zoning Bylaw Section 810.2 and 950.2D to raze a dimensionally conforming single family dwelling at 24 Lynda Lane, Scituate, MA (Assessor's Map 54, Block 1, Parcel 36) on a lot which is pre-existing, nonconforming as to lot width, and the reconstruction of a single family dwelling thereon having an increase of more than 20% in the gross floor area, and (II) a Special Permit pursuant to Scituate Zoning Bylaw Sections 470.6F, 950.2B and 950.3 for the substantial improvement to an existing structure at 24 Lynda Lane in the Flood Plain and Watershed Protection District and/or (III) any other relief the Board of Appeals may grant. Representing the Applicant: Attorney Jeff DeLisi. Also present: Dana Sceviour, owner.**

Attorney DeLisi described the application stating the property, located in the R2 residential zone, is the first property on Lynda Lane which falls in the Flood Plain and Watershed Protection Overlay District The property is non-conforming with respect to lot width (114' where 125' are required). The existing structure was built in 1900 and has 1231 sq. ft. The plan shows a proposed 2760 sq. ft. single family dwelling and would meet all setback requirements, with the exception of lot width.

There were no comments from the public.

**Mr. Tibbetts moved the Board find the application for 24 Lynda Lane, Scituate as represented on the plan by Collins Civil Engineering, dated 11-16-2016, is nonconforming in lot width, that the proposed razing and reconstruction will not increase the existing nonconformity or create any new nonconformities and to the extent the proposed structure is an intensification, it is not substantially more detrimental to the neighborhood than the existing structure. Motion seconded by Mr. Bucchere. In addition, that the Board grant a Special Permit under Section 470.6F, that the proposed razing and reconstruction complies with the provisions of said section of the bylaw. Motion seconded by Mr. Bucchere. All in favor, unanimous.**

Minutes from November 17 and November 29 meetings presented for approval.

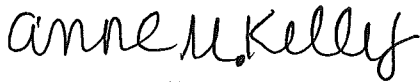
**Mr. Tibbetts moved to approve November 17 as presented. Motion seconded by Mr. Bucchere. (Ms. Trezise abstained from vote) Vote in favor: Mr. Hallin, Mr. Tibbetts, Mr. Bucchere.**

**Mr. Tibbetts moved to approve November 29 minutes as presented. Motion seconded by Mr. Bucchere. All in favor, unanimous.**

**Mr. Bucchere moved to adjourn. Motion seconded by Mr. Tibbetts. All in favor, unanimous.**

Meeting adjourned at 10:00pm.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Anne M. Kelly". The signature is written in dark ink and is positioned above the printed name.

Anne M. Kelly