



Decision of the Scituate Zoning Board of Appeals on the application of Joseph M. Donnelly and Christine M. Donnelly of 140 Jericho Road, Scituate, Massachusetts 02066 for a finding under MGL 40A § 6 and a special permit to allow the construction of a farmer's porch to the front and side of their pre-existing nonconforming single family dwelling located at 140 Jericho Road, Scituate Massachusetts.

The application was received, advertised and a public hearing was duly held on April 18, 2013, and continued to May 16, 2013 and June 12, 2013 with the following members of the Zoning Board of Appeals hearing the application:

Peter Morin, Chairman  
John Hallin  
Edward C. Tibbetts

At the time of the application, title to the premises was in the name of Joseph M. Donnelly and Christine M. Donnelly, Husband and Wife, Tenants by the Entirety, by way of a deed dated September 5, 2008, and recorded with the Plymouth County Registry of Deeds in Book 36347 Page 221.

The single family dwelling that is the subject matter of the Application is located within Scituate's R-3 Residential District. The premises consist of a lot that contains a total of 4,360 square feet, more or less. The lot contains 39.00 feet of frontage along said Jericho Road, a public way in the Town of Scituate.

Property located in the R-3 Residential District requires 10,000 square feet lot area, 100 feet of lot width, 100 feet of frontage, 8 feet side yard set backs, and 30 feet front and 20 feet rear yard setback for a dwelling (8 feet for a one story detached accessory structure).

The lot was created by a plan dated September 1907 and the pre-existing nonconforming beach cottage located on the lot was damaged in the Blizzard of 1978, razed and re-built in 1980. The dwelling meets front and rear yard setbacks. The dwelling meets the Easterly side yard setback but is located 3.65 feet from the Westerly lot line. The Lot does not meet lot area, lot width and frontage requirements. The lot and single family dwelling are therefore pre-existing and nonconforming to the Scituate Zoning Bylaw.

At the three public hearings, the Board reviewed with the Applicant a plan entitled "Plan Showing Existing House Location and Proposed Addition" dated March 27, 2013 prepared by Morse Engineering Co., Inc., Scituate, Massachusetts, showing both existing and proposed conditions. The Board also reviewed the Scituate Assessor's card, deed to the property, and a rendering of the proposed addition.

The plans call for an addition of a farmer porch to the front of the dwelling which would also extend by wrapping around the front Easterly corner of the dwelling and cover an existing deck along the Easterly front side of the dwelling. That deck is located approximately 5 feet from the Easterly lot line. The Board expressed concern that the deck was covered with a roof by a previous owner without a building permit or relief from the Board and was therefore currently illegal.

The Board, however, acknowledged that the Applicants could remove the existing roof and make a new application for the exact same proposal as the one before the Board. If the Board grants the relief sought, then the town and neighborhood would benefit from transforming an illegal structure to a legal structure.

The proposal, while meeting front yard setback requirements, would extend the nonconformity of the dwelling on the Westerly side by the eight feet of the proposed porch (and as the plans show, increase said nonconformity by 0.20 feet); in addition, by completing the porch as a wrap-around on the Westerly side of the dwelling a new nonconformity would be created.

Over the course of the three public hearings, the Board discussed with the Applicants whether relief could be granted by way of a finding under M.G.L. c. 40A § 6 and Special Permit or whether the proposed creation of new nonconformities required a Variance. Over the course of the three public hearings, the Board discussed with the Applicants the evolving nature of the case law as it relates to Chapter 40A § 6 and specifically the cases of Willard v. Board of Appeals of Orleans, 25 Mass.App. Ct. 15 and Gale v. Zoning Board of Appeals of Gloucester, 80 Mass. App. Ct. 331.

The Board discussed the interpretive framework developed by the Massachusetts case law needed to interpret the first paragraph of Chapter 40A § 6 which to date culminates in the Gale decision.

That framework, as quoted in Gale, quoting Bransford v. Zoning Board of Appeals of Edgartown “provides that under the second ‘except’ clause of the first paragraph of the statute, as concerns single or two family residential structures, the permit granting authority must first ‘identify the particular respect or respects in which the existing structure does not conform to the present by-law and then determine whether the proposed alteration or addition would intensify the existing nonconformities or result in additional ones. If the answer to that question is in the negative, the applicant will be entitled to the issuance of a special permit; and, quoting Willard v. Board of Appeals of Orleans, ‘if the answer is in the affirmative, a finding of no substantial detriment under the second sentence is required.’”

Gale concluded with the following: “This two part framework does not include application of a local by-law or ordinance as an additional step when proceeding to the no substantial detriment finding under the second sentence. That finding stands alone as sufficient to proceed with the proposed project, if the permit granting authority deems no substantial detriment will result from the extension or alteration. This conclusion is in

keeping with special treatment explicitly afforded to single or two-family residential structures under the statute.”

The Gale decision changes the way the Board reviews applications such as this proposal before it.

No one in attendance at the public hearing spoke in opposition to or in favor of the project; however, the Applicants provided the Board with a letter signed by ten (10) neighbors, including both direct abutters stating their full support for the application.

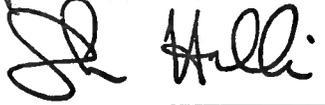
Based upon the evidence presented, the Board finds that the lot is pre-existing and nonconforming to the Bylaw, by way of deficient lot area, lot width and frontage. The pre-existing single family dwelling is nonconforming to the Bylaw by way of the Westerly setback. The Applicants’ proposal is therefore entitled to review pursuant to the terms of MGL c. 40A § 6. The Board specifically finds that the addition proposed will increase the non-conforming nature and use of the property to persons, property and improvements in the neighborhood by extending the Westerly nonconformity of the dwelling eight feet (and which, due to the shape of the lot, increase the nonconformity by 0.20 feet at the point of the extension closest to the street) and by completing the wrap-around porch over the existing deck on the Easterly side of the dwelling within approximately 5 feet of the lot line. The Board, however, further specifically finds that said extension and increase in the nonconformities are not substantially more detrimental than the existing nonconforming nature and use of the property to persons, property and improvements in the neighborhood.

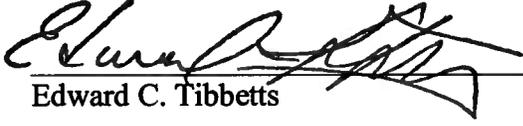
Pursuant to Section 950.3 of the Bylaw, the lot is appropriate for a single family dwelling. The use of the dwelling as proposed should not adversely affect the neighborhood, nor create any undue nuisance or hazard to vehicles or pedestrians. The town’s Board of Health and the Building Commissioner will ensure that appropriate facilities are provided to assure the proper operation of the single family dwelling. The proposed use of the dwelling will not have a significant impact on any public or private water supply. In addition, the Board finds that the use reflects the nature and purpose of the use prevailing when the Bylaw took effect, that there is no difference in the quality or character, as well as the degree of use, and the proposed use is not different in kind in its effect on the neighborhood.

For the foregoing reasons, the Board unanimously voted to GRANT the Applicant’s request for a finding under MGL Chapter 40A § 6 and for a Special Permit to allow the proposed addition, extension or structural change to the single family dwelling at 140 Jericho Road, subject, however to the condition that the porch on the Easterly side of the dwelling shall not be converted to living space or a foundation constructed capable of supporting a second floor over said porch.

ZONING BOARD OF APPEALS

  
Peter Mori, Chairman

  
John Hallin

  
Edward C. Tibbetts

Filed with the Town Clerk on: June 18, 2013.

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. 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.