



ZONING BOARD OF APPEALS

Decision of the Scituate Zoning Board of Appeals on the application of Michael and Colleen Geary of 19 Lynda Lane, Scituate, MA (hereinafter, collectively, the "**Applicant**") for a finding and/or special permit by the Zoning Board of Appeals pursuant to Scituate Zoning Bylaw (hereinafter, the "**Bylaw**") Sections 810.2, 950.2(B), 950.2(D), 950.3, and/or all other applicable provisions of the Bylaw, and/or G.L. Ch. 40A, Section 6, that the reconstruction/extension/alteration by razing and reconstructing a pre-existing, nonconforming single-family dwelling on a pre-existing, nonconforming lot at 23 Parker Avenue, Scituate, MA will not be substantially more detrimental to the neighborhood than the existing nonconforming single-family dwelling at 23 Parker Avenue, Scituate, MA.

The application was received, advertised and a public hearing was duly held on March 21, 2013, with the following members of the Zoning Board of Appeals hearing the application:

Mr. Peter Morin, Chairman
Ms. Sara Trezise
Mr. Edward Tibbetts

The Applicant, Michael Geary, was present along with his attorney, William H. Ohrenberger, III, of Ohrenberger Associates, Scituate, Massachusetts, and with his land surveyor, Paul Mirabito of Ross Engineering Company, Inc. (hereinafter, "**Ross Engineering**"), 683 Main Street, Norwell, MA 02061.

The subject property at 23 Parker Avenue, Scituate, MA (hereinafter, the "**Subject Property**") is owned by David McHugh as is evidenced in a certain deed dated March 2, 2010, recorded with the Plymouth County Registry of Deeds at Book 38341, Page 320. The Subject Property is located in Residence R-2 Zoning District, and is not located within any of the Town of Scituate overlay districts. The application package consisted of, amongst others, a plan by Ross Engineering entitled "Plot Plan for 23 Parker Avenue in Scituate, Mass." dated February 26, 2013, Scale 1" = 20' (hereinafter, the "**Plot Plan**") showing the existing and proposed conditions, and photographs of the existing single-family dwelling. The Applicant also provided a copy of the FY 2013 tax assessment from the Town of Scituate that indicates that the single-family dwelling on the Subject Property was constructed in 1920 prior to the adoption of zoning in the Town of Scituate.

The pre-existing nonconformities of the Subject Property which has frontage on Parker Avenue are currently as follows: (i) lot area of approximately 14,217 square feet (20,000 square feet is required); (ii) lot frontage of approximately 93.14 feet on Parker Avenue (100 feet is required), (iii) lot width of approximately 95 feet (100 feet is required), (iv)

front yard setback of 14.4 feet (30 feet is required); and westerly side yard setback of 7.4 feet (15 feet is required).

The Applicant proposes to raze and reconstruct the single-family dwelling on the Subject Property in a manner that decreases nonconformities on the Subject Property; (i) on the front yard setback the existing detached shed which is located approximately on the boundary line will be completely removed and the reconstructed dwelling's closest point will be further from the frontage road than is the current dwelling, and (ii) the reconstructed dwelling will be further from the westerly side yard than is the current dwelling. Additionally, the easterly side yard setback and the rear yard setback will continue to be in conformity with the dimensional requirements of the Bylaw, and the existing lot area, frontage on Parker Avenue, and lot width will remain unchanged.

Many of the building lots and homes in the vicinity of the Subject Property appear to have nonconformities as to the dimensional requirements of the Bylaw. The Board determined that the Applicant's proposal would not be inconsistent with the other lots and structures in the neighborhood.

M.G.L. Ch. 40A Section 6 provides that "pre-existing nonconforming structures and uses may be extended or altered, provided, that no such extension or alteration be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming [structure or] use to the neighborhood."

The Board specifically finds that the existing single-family dwelling on the Subject Property is a pre-existing nonconforming structure and that its use is entitled to the protection afforded in M.G.L. Ch. 40A Section 6 and section 810.2 of the Bylaw.

In addressing whether the proposed use of the new structure will be substantially more detrimental to the neighborhood than the existing nonconforming use or structure, the Board considers the guidelines set forth in Powers v. Building Inspector of Barnstable, 363 Mass. 648 (1973), Derby Refining Company v. City of Chelsea, 407 Mass. 703 (1990), and Building Commissioner of Medford v. McGrath, 312 Mass. 461 (1942).

Based on the information presented the Board finds that the proposed structure and use will not be substantially more detrimental to the neighborhood than the existing nonconforming structure and use, and that the proposed structure and use will not be substantially different in character or substantially more detrimental or injurious to persons, property, or improvements in the vicinity.

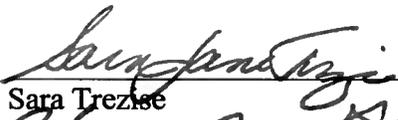
The Board is also satisfied that the criteria set forth in Section 950.3 of the Bylaw have been met, and specifically that (i) the Subject Property is an appropriate location for the proposed structure or use, (ii) the proposed use as developed will not adversely effect the neighborhood, (iii) there will not be an undue nuisance or serious hazard to vehicles or pedestrians as a result of the proposed use or structure, (iv) adequate and appropriate

facilities will be provided to ensure the proper operation of the proposed use or structure, and (v) there will not be any significant impact on the public or private water supply.

For the foregoing reasons, the Board unanimously voted to grant the Applicant a special permit and the requested findings to raze and reconstruct a single-family dwelling in accordance with the Plot Plan. This Special Permit and these findings are issued pursuant to Bylaw Sections 810.2, 950.2, and 950.3, respectively, and G.L. Ch. 40A, Section 6.

ZONING BOARD OF APPEALS


Peter Merin


Sara Trezise


Edward Tibbetts

Filed with Town Clerk on: March 26, 201.

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.