

# Town of Scituate

ZONING BOARD OF APPEALS

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2009 OCT 19 P 3:51

Decision of the Scituate Zoning Board of Appeals on the application of Diamond Development Realty Trust of Duxbury, Massachusetts 02331 (hereinafter referred to as the "Applicant") for a finding under MGL 40A § 6 and a special permit to allow the reconstruction of the pre-existing nonconforming single family dwelling known as and numbered 102 Scituate Avenue, Scituate Massachusetts.

The application was received, advertised and a public hearing was duly held on October 15, 2009 with the following members of the Zoning Board of Appeals hearing the application:

Peter Morin, Chairman  
Sara J. Trezise  
Brian B. Sullivan

The property that is the subject matter of this application is located in the A-3 Residential District. The property lies in the Town of Scituate Flood Plain and Watershed Protection District; it does not lie within the Town of Scituate Water Resource Protection Zoning District. The property lies in both AE EL 11 and AO Depth 2 as shown on FIRM Community Map Panel #250282 0004 E, dated October 16, 2003. The property is currently serviced and will continue to be serviced by the town's public sewer system and the public water supply.

At the time of the application, title to the premises was in the name of Leonard E. Harris, Stephen G. Harris and Richard F. Harris by way of a deed recorded the Plymouth County Registry of Deeds in Book 30303 Page 128. The Applicant is the contract purchaser of that portion of the premises known as 102 Scituate Avenue. The owners of the property have authorized the Applicant to present the Application to the Board.

The premises contain 7,360 square feet of land and contain 40.00 feet of frontage along Turner Road and 127.00 feet of frontage along Scituate Avenue. The A-3 Residential District requires 10,000 square feet lot area and 100 feet of frontage. The setback requirements in the A-3 Residential District require thirty (30) feet front setback, eight (8) feet side setbacks and rear setback of twenty (20) feet for a dwelling.

The Assessor's field cards state that two single-family dwellings located upon the lot were built in 1900. The dwelling known as and numbered 154 Turner Road is set back from Turner Road one (1) foot and four (4) feet from Scituate Avenue. The dwelling known as and numbered 102 Scituate Avenue lies seven (7) feet into the layout of Scituate Avenue and lies fourteen (14) feet from its rear lot line.

Both dwellings and the lot are therefore pre-existing and nonconforming as Section 420.1 of the Bylaw requires not more than one dwelling on any lot, and this property contains

two dwellings. In addition, the lot does not meet the lot size requirements of Section 610.1. Neither dwelling meets all of the setback requirements set forth in Section 620.3 of the Bylaw. The dwelling known as and numbered 102 Scituate Avenue specifically does not meet front and rear setbacks.

Attorney Michael C. Hayes represented the Applicant at the October 15, 2009 public hearing. At that time, the Board reviewed with the Applicant the site plan submitted drawn by Ross Engineering Company, Inc, 683 Main Street, Norwell, Massachusetts, dated August 31, 2009. In addition, the Board reviewed a rendering of the proposed single family dwelling drawn by Kuendig Design dated September 2, 2009 and the structural engineering plan for the dwelling drawn by Structures Engineering, 1020 Plain Street, Marshfield, Massachusetts dated September 16, 2009. The plans call for the razing of the existing dwelling known as and numbered 102 Scituate Avenue and reconstructing it on the southerly portion of the lot. The proposed reconstruction will meet side and rear setback requirements. The proposed reconstruction calls for the dwelling to be setback twelve (12) feet from Scituate Avenue, a vast improvement from the seven (7) feet into the layout of the street that currently exists. In addition, the plans call for the razing and elimination of the existing garage located upon the premises. There is no proposed change to the dwelling known as and numbered 154 Turner Road.

During the course of the public hearing, the Board discussed the fact that Section 610.4 of the Bylaw allows, pursuant to the Subdivision Control Law, M.G.L. Ch. 41, Section 81 K/L, the division of a lot upon which two or more dwelling were standing when the Subdivision Control Law went into effect in the Town of Scituate into separate lots, on each of which one such dwelling remains standing even if said division results in nonconforming setbacks for one or more of the existing dwellings. The Applicant intends to seek Planning Board approval for said subdivision of the property and will file an application for a Flood Plain Special Permit. In addition, the Applicant has filed a Notice of Intent with the Scituate Conservation Commission for their review.

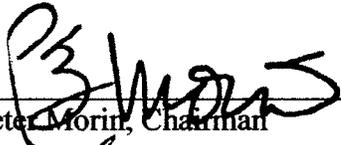
Three abutting property owners were present at the Public Hearing and indicated that the proposed changes were an improvement to the existing conditions. No one present at the Public Hearing spoke in opposition of the proposal.

Based upon the evidence presented, the Board finds that both the lot and both existing single family dwellings, one known as and numbered 154 Turner Road and the other known as and numbered 102 Scituate Avenue pre-exist the adoption of subdivision control in Scituate and are nonconforming to the bylaw. The Applicant's proposed razing of the single family dwelling known as and numbered 102 Scituate Avenue and its reconstruction on the southerly portion of the lot is a reconstruction pursuant to the provisions of MGL c. 40A § 6. The Board further finds that the proposal does not increase the nonconforming nature of the existing single-family dwelling. The Board further finds the proposal calls for the reconstructed dwelling to be less nonconforming than the existing dwelling and is not substantially more detrimental to the neighborhood than the existing nonconformity.

Pursuant to Section 1030.2 of the Bylaw, the lot is appropriate for a single-family dwelling. The use of the reconstructed dwelling 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 dwelling will not have a significant impact on any public or private water supply, and the property is not located within the Water Resource Protection District. There will not be any significant or cumulative impact upon municipal water supplies as the property is serviced by the public sewer system. 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 Applicants' request for a finding under MGL Chapter 40A § 6 and for a Special Permit to allow the reconstruction of the single-family dwelling.

ZONING BOARD OF APPEALS

  
Peter Morin, Chairman

  
Sara J. Trezise

  
Brian B. Sullivan

Filed with the Town Clerk on: October 19, 2009

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.