

Town of Scituate

ZONING BOARD OF APPEALS

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TOWN OF SCITUATE
PLANNING DEPARTMENT

Decision of the Scituate Zoning Board of Appeals on the application of Andrew and Kristin Fitzsimmons for a finding under MGL 40A § 6 and a special permit in accordance with Section 810.2 of the Scituate Zoning Bylaw to allow the extension of the pre-existing non-conforming single family dwelling at 11 Chet Way, Scituate, Massachusetts.

The application was received, advertised and a public hearing was duly held on March 17, 2016 with the following members of the Zoning Board of Appeals hearing the application:

Edward C. Tibbetts, Acting Chairman
John Hallin
Francis M. Lynch
Anthony Bucchere

The property that is the subject matter of this application is located in the R-2 Residential District. The property does not lie in the Town of Scituate Flood Plain and Watershed Protection District, nor does the property lie in the Town of Scituate Water Resource Protection Zoning District.

At the time of the application, title to the premises was in the name of Andrew R. and Kristin L. Fitzsimmons by way of a deed dated December 8, 2011 and recorded with the Plymouth County Registry of Deeds in Book 40696 Page 287.

The premises contain 19,098, more or less, square feet of land and contain 118.40 feet of frontage along Chet Way, a public way, and lot width of 111 feet. The R-2 Residential District requires 20,000 square feet lot area and 100 feet of frontage and 125 feet of lot width. In addition, the R-2 Residential District requires a 30 feet front setback, 15 feet side yard setbacks, 8 feet rear yard setback for detached accessory structures and 30 feet rear yard setback for all other buildings.

The lot was created by a plan dated March 14, 1942, which plan is recorded with the Plymouth County Registry of Deeds in Plan Book 6 Page 477.

The existing dwelling located upon the lot was constructed in 1900. The existing dwelling currently is nonconforming for front yard setback (22.8 feet) requirements of the Town of Scituate Zoning Bylaw; and the lot upon which the dwelling sits is nonconforming as to lot area and lot width. Both the lot and the existing dwelling therefore, are pre-existing and non-conforming to the bylaw as to its lot area and lot width and front yard setback.

The Board reviewed with the Applicant a plan drawn by Morse Engineering Company, Inc. of Scituate, Massachusetts dated February, 22, 2016. The proposal calls for the construction of a two story addition on the westerly side of the dwelling that will be less nonconforming for front yard setback (24.8 feet) requirements of the bylaw than the existing structure; and the construction of a 4'x5' covered entryway on the northerly side of the building within the existing nonconforming front yard setback. After discussion about the proposed new covered entryway, the Applicant agreed to the condition that the entryway never be enclosed.

At the public hearing, no one spoke in favor or in opposition to the Application.

The case of Gale v. Zoning Board of Appeals of Gloucester (2012), allows the addition to a pre-existing non-conforming single family dwelling if the Board first identifies the particular respect or respects in which the existing structure does not conform to the present Bylaw and then determine whether the proposed reconstruction, alteration or addition would intensify the existing nonconformities or result in additional ones. If the answer to that inquiry is in the negative a finding under Chapter 40A § 6 and Special Permit would be required. If the answer to the inquiry is affirmative, then the Board must determine whether the proposed changes would be substantially more detrimental to the neighborhood than the existing structure. If the Board finds the proposed additions are not substantially detrimental to the neighborhood, than a Special Permit may be granted.

Based upon the evidence presented, the Board finds that the both the lot and existing single family dwelling located at 11 Chet Way are pre-existing and nonconforming to the bylaw as to lot area and lot width and front yard setback. The Applicant's proposal to construct a two story addition to the single family dwelling is entitled to be reviewed by the Board pursuant to the terms of MGL c. 40A § 6, paragraph one.

The existing floor area of the dwelling is 2,128 square feet, and the proposed floor area of the renovated dwelling is 3,008 square feet, a 41.4% increase. Under Section 810.2 of the Scituate Bylaw, the alteration, reconstruction, extension or structural change to a nonconforming single or two family dwelling that increases the gross floor area by more than 20% requires a Board of Appeals finding under General Laws Chapter 40A, Section 6.

The Board found that the lot and single family dwelling located thereon is preexisting and nonconforming to the Scituate Zoning Bylaw as to lot area and lot width and front yard setback. The Board further found that the proposed new entryway is an intensification and/or increase of the existing front yard setback nonconformity. The Board found the proposed changes would not be substantially more detrimental to the neighborhood than the existing structure.

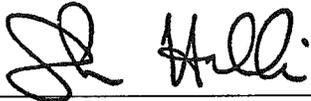
Pursuant to Section 1030.2 of the Bylaw, the lot is appropriate for a single family dwelling. The use of the dwelling should not adversely affect the neighborhood, nor create any undue nuisance or hazard to vehicles or pedestrians. The town's Board of Health and the Building Commissioner will ensure 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 lot is not located within the Water Resource Protection District. 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 construct an addition to the single family dwelling by adding a two story addition and entryway as shown on the Application Plan. The Board conditions that the entryway shall never be enclosed.

ZONING BOARD OF APPEALS



Edward C. Tibbetts



John Hallin



Francis M. Lynch

Filed with the Town Clerk and Planning Board on April 15, 2016

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 40, Section 17, and shall be filed within twenty (20) days of the date of the filing of the decision with the Town Clerk.