

Town of Scituate

ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY
SCITUATE, MASSACHUSETTS 02066
(781) 545-8716



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Decision of the Scituate Zoning Board of Appeals on the application of Ashley and Michael Warner of 20 Dayton Road, Scituate, MA (hereinafter the "**Applicant**") for a special permit and finding, pursuant to the Scituate Zoning Bylaws, and specifically Section 810.2 thereof, and/or G.L. Ch. 40A, Section 6, to allow for the construction of an addition, which will increase the existing gross habitable floor area by more than 20%, to a pre-existing, nonconforming single family dwelling at 20 Dayton Road, Scituate, MA (hereinafter, the "**Requested Relief**").

The application was received, advertised and a public hearing was held on July 21, 2016. The following members were present and voted at the public hearing:

Sara J. Trezise, Chairman
Anthony J. Bucchere
John Hallin
Francis M. Lynch
Edward C. Tibbetts

The Applicant, Michael E. Warner and Ashley S. Warner of 20 Dayton Road, Scituate, MA, owns the property by Certificate of Title #118063 recorded with the Plymouth County Registry of Deeds at Book 580, Page 63 (hereinafter, the "**Property**"). The Applicant filed a copy of an Assessor's Card from the Scituate Assessor showing that the buildings on the Property were constructed in 1989. Town records show that a pre-existing structure on the property built in 1910 was destroyed by fire on May 28, 1988 and the dwelling was demolished by permit issued June 1, 1988. and the Applicant submitted a plot plan showing the proposed addition entitled "20 Dayton Road, Scituate, MA, Warner Residence" dated June 7, 2016, Scale 1"= 20', prepared by Aprea Design, Residential Design, 23 Shipyard Drive, Hingham, MA (hereinafter, the "**Plot Plan**").

The Property is located in the Residence R-3 zoning district and contains a single-family dwelling thereon. The Property is a corner lot fronting on Dayton Road and Nelson

Road. The Applicant represents that the existing single-family dwelling replaced a pre-existing, nonconforming dwelling and is nonconforming as to the front yard setback (13.0± ft. in a 30 ft. zone), frontage on Dayton Road (75.0± ft. in a 100 ft. zone), and lot area (7,500 sq. ft. in a 10,000 sq. ft. zone).

The Applicant proposes to construct a 2-story addition to the dwelling on the property increasing the gross floor area by 52% (existing 1,774 sq. ft., proposed 2,698 sq. ft.) and extending the 13.0± ft. front yard setback nonconformity along Dayton Road for 21'.

The Board of Appeals considered the zoning relief requested, and specifically the last paragraph of Zoning Bylaw Section 810.2 of the Scituate Zoning Bylaw that provides as follows:

In all other instances of alteration, reconstruction, extension or structural change to single or two family dwellings, the applicant may petition the Board of Appeals for a finding under General Laws Chapter 40A, Section 6 to allow the proposed repair, alteration, reconstruction, extension or structural change.

M.G.L. Ch. 40A Section 6, as interpreted by the Massachusetts Appeals Court in *Gale v. Zoning Board of Appeals of Gloucester*, 80 Mass. App. Ct. 331 (2011), and other cases, requires the Board to identify the particular respect or respects in which the existing lot or 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 is in the negative, the Board is required to grant the Special Permit. If the answer is in the affirmative, the Board may find the proposed increase of existing nonconformities is not substantially more detrimental to the neighborhood than the existing nonconformities and the Board is required to grant the Special Permit.

The Board specifically FINDS that the Property is pre-existing, nonconforming as to front yard setback, frontage and lot area and that the proposed addition will intensify the existing nonconformity. The Board also FINDS that the proposed addition will not be substantially more detrimental to the neighborhood than the existing structure.

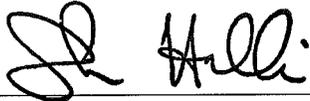
Based upon the application materials, the information provided at the public hearing, and the foregoing, the Board of Appeals finds that the Applicant has demonstrated that he is entitled to the Requested Relief. For the foregoing reasons, the Board unanimously voted to GRANT the application for a Special Permit to construct a 2-story addition to the dwelling on the property as set forth on the plot plan showing the proposed addition entitled "20 Dayton Road, Scituate, MA, Warner Residence" dated June 7, 2016, Scale 1"= 20', prepared by Aprea Design, Residential Design, 23 Shipyard Drive, Hingham, MA.

The Board conditions this Special Permit on the following:

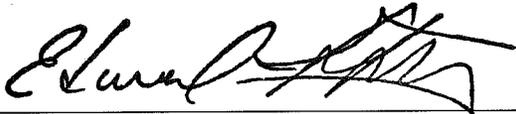
1. Submission by the Applicant of a Plot Plan stamped by a Registered Professional Engineer showing the existing dimensions and setbacks plus the proposed addition's dimensions and setbacks, which shall not be substantially different than the Plot Plan submitted with the application, which was prepared by a Registered Architect, and which dimensions and setbacks shall not exceed those set forth in the Plot Plan prepared by the Architect.
2. Submission by the Applicant of evidence that the structure demolished in 1988 on the Property was pre-existing and nonconforming with respect to front yard setbacks.



Sara J. Trezise, Chairman



John Hallin



Edward C. Tibbetts

Filed with the Town Clerk and Planning Board: AUGUST 15, 2016

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