

Town of Scituate

ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY
SCITUATE, MASSACHUSETTS 02066
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Decision of the Scituate Zoning Board of Appeals on the application of Amy Ferrie and John Ferrie, of 36 Grasshopper Lane, Scituate, Massachusetts 02066 for a finding under MGL 40A § 6 and a special permit to allow the alteration to their the pre-existing nonconforming single family dwelling located at 36 Grasshopper Lane, Scituate Massachusetts, which alteration would increase the gross floor area by more than twenty percent.

The application was received, advertised and a public hearing was duly held on November 17, 2010 with the following members of the Zoning Board of Appeals hearing the application:

Peter Morin, Chairman
Brian B. Sullivan
Edward C. Tibbetts

The property that is the subject matter of this application is located in the R-3 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 John Ferrie and Amy Webber, by way of a condominium unit deed dated July 21, 2008, recorded with the Plymouth County Registry of Deeds in Book 36214 Page 117. The applicants have since married and reside on the property.

The dwelling that is the subject matter of the Application is one dwelling of two located upon a lot containing approximately 15,571 square feet of land. In 2008 a condominium was created whereby the Applicants own the subject property, 36 Grasshopper Lane and Mrs. Ferrie's brother and his wife own the dwelling 36A Grasshopper Lane. The condominium documents state dwelling unit 36 is located upon 10,000 square feet of the total lot, while dwelling unit 36A is located upon approximately 5,571 square feet of the total lot. The lot contains 90 feet of frontage along Grasshopper Lane, a public way. The dwelling known as and numbered 36 Grasshopper Lane (the subject matter of the Application) is a three story, four bedroom home with no garage. The second dwelling unit is a two story, two bedroom cottage known as and numbered 36A Grasshopper Lane. While the condominium form of ownership was created in 2008, the Board determined that the lot and both dwellings located thereon pre-date the adoption of subdivision control in the Town of Scituate. The Board further noted that separate condominium units on a single parcel of land are entitled to single and two family dwelling protection afforded by MGL Chapter 40A § 6. In addition, the Board noted that the two dwellings, since they were standing when the Subdivision Control Law went into effect in the Town

of Scituate are protected both by Section 610.4 of the Bylaw and MGL Chapter 41 § 81K and § 81L.

The dwelling that is the subject matter of the application is set back from Grasshopper Lane approximately 42 feet; and is set in excess of 90 feet from the rear lot line; it is currently located 28.5 feet from its westerly sideline and approximately 20 feet from its easterly sideline.

The R-3 Residential District requires 10,000 square feet lot area, 100 feet of frontage, 20 foot rear yard set back for dwellings and 8 foot side yard setback. The current single family dwelling, while it meets all lot area, setback and height requirements, is located upon a lot that contains less than the required frontage.

At the November 17, 2010 public hearing, the Board reviewed with the Applicant's attorney The Condominium Site Plan dated July 21, 2008 prepared by J. Lowell Associates of Pembroke, Massachusetts, which plan is recorded with the Plymouth County Registry of Deeds in Plan Book 54 Page 605, and which plan shows the lot and current location of the condominium units and its setbacks. In addition, the Board reviewed architectural plans and a computer generated rendering of the proposal, photographs of the site and photographs of other dwellings in the neighborhood.

The plans call for a complete renovation of the entire interior of the dwelling with a small bump out addition to the kitchen/breakfast room on the easterly side of the dwelling, the addition of a two car garage to the rear of the dwelling and a second floor master bedroom. The second floor will be renovated, adding an open, two-level family room/office, but the dwelling shall remain a four bedroom home. The proposal also calls for the removal of the paved driveway and replacing same with pervious material. The net result of the project will be an increase in the gross floor area of the dwelling of approximately 2332 square feet, which is more than 20 percent of the existing floor area.

The proposal will also increase the net impervious area of the lot by approximately 670 square feet. However, the removal of the pavement on the driveway will reduce 1,752 square feet of impervious material, so there will be a net reduction of over 1,000 square feet of impervious lot area. The project as proposed is therefore exempt from the Scituate Stormwater Bylaw.

The Board noted that proposed alteration to the dwelling is in compliance with all setback and height requirements of the Bylaw, and specifically that the dwelling currently is and as proposed, will be a conforming dwelling. None of the proposed work will affect the lot's pre-existing nonconforming characteristics (90 feet of frontage).

The direct easterly abutter, though counsel, spoke in opposition to the proposal, expressing concerns as to the proposed dwelling's size, location, height, and the potential for increased noise and light. In addition, counsel expressed concerns as to drainage, and questioned whether the proposal would change the topography of the Applicants' lot.

Two abutters present at the public hearing spoke in favor, and a letter of support for the project, signed by another three abutters, was placed in the record.

Based upon the evidence presented, the Board finds that both the lot and existing single family dwelling located at 36 Grasshopper Lane pre-exist the adoption of subdivision control in Scituate. While the Board finds that the dwelling and the lot area both conform to the Bylaw, the lot is nevertheless nonconforming as to lot frontage. Both the lot and the dwelling are therefore pre-existing and nonconforming. The Applicants' proposal is therefore entitled to review pursuant to the terms of MGL c. 40A § 6 and Section 810 of the Scituate Bylaw. The Board further finds that the proposed increase in size, pursuant to Section 810 of the Bylaw, is an intensification of the nonconforming nature of the dwelling, but said intensification is 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 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.

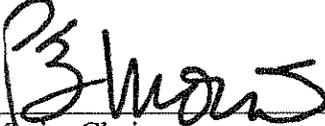
For the foregoing reasons, the Board unanimously voted to GRANT the Applicants' request for a finding under MGL Chapter 40A § 6 and for a Special Permit with the conditions listed below pursuant to Section 950.4 of the Bylaw to allow the proposed alteration, reconstruction, extension or structural change to the single family dwelling at 36 Grasshopper Lane.

Conditions

1. Prior to the issuance of a building permit the Applicants shall file with the Building Inspector a surveyed plan consistent with the Application showing the existing and proposed location of the dwelling including existing and proposed setbacks;
2. There shall be no change to the topography of the lot, except routine grading around the foundation of the proposed dwelling;
3. All excavated material shall be removed from the site after completion of the project, but temporary stockpiling of excavated material shall be permitted during construction;
4. The pavement on the driveway shall be removed and replaced with pervious material.

5. A vegetated swale along the easterly side line of the property, sufficient to keep normal stormwater runoff flowing onto the easterly abutting property, shall be constructed.

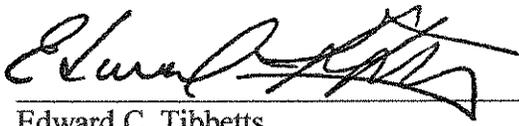
ZONING BOARD OF APPEALS



Peter Morin, Chairman



Brian B. Sullivan



Edward C. Tibbetts

Filed with the Town Clerk on: November 23, 2010

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 A, 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.