Town of Scituate

ZONING BOARD OF APPEALS

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

2011 OCT 19 A 10:13

Decision of the Scituate Zoning Board of Appeals on the application of Scott Simmons of 5 Winthrop Avenue, Ayer, MA (hereinafter, the "Applicant") for a Special Permit/Finding pursuant to M.G.L. Chapter 40A, Section 6, and Scituate Zoning Bylaw (the "Bylaw") Sections 810.2 that the reconstruction/extension/alteration by razing and reconstructing an existing conforming single family residential structure on a nonconforming lot, and the proposed structure, although greater than 20% larger, will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or lot.

The application was received, advertised and a public hearing was duly held on September 15, 2011, with the following members of the Zoning Board of Appeals hearing the application:

Peter Morin
Brian B. Sullivan
Sara J. Trezise

The subject property (the "Subject Property") at 47 Ocean Drive is owned by John W. Burns and Grace M. Burns (See Deed filed with the Plymouth County Registry of Deeds, Book 192, Page 166). The Applicant is the contract purchaser of the premises known as 47 Ocean Drive. The owners of the property have authorized the Applicant to present the Application to the Board.

It is located in Residence A-3 Zoning District, and is not located within the Water Resources Protection District. The Subject Property has 50.06 feet of frontage on Ocean Drive and an average lot width of 50.04 feet. The Applicant has provided a copy of the current tax assessment from the Town of Scituate which indicates that the single family dwelling on the Subject Property was constructed prior to the adoption of zoning in the Town of Scituate. The pre-existing nonconformities of the Subject Property are (a) lot frontage of 50.06 feet is less than the required 100', (b) lot width is 50.04 feet, less than the required 100', (c) lot area is 4,508 square feet, less than the required 10,000 square feet, and (d) setbacks of

Setback	Required	Existing	Proposed
Front	30.0'*	15.2'	22.9'
*Average neighboring dwelling setback calculated as 16.8'			
Side (south)	8.0'	3.8'	12.9'
Side (north)	8.0'	5.2'	8.9'
Rear	20.0'	53.7'	29.9'

The Applicant proposes to raze the existing single family dwelling on the Subject Property and replace it with a dwelling that will increase living area more than 20%. The

new dwelling will reduce pre-existing setback nonconformities and conform to all existing setback requirements.

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 is a pre-existing nonconforming structure/use entitled to the protection afforded in M.G.L. Ch. 40A Section 6.

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 or 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 the Section 950.3 of the Zoning Bylaw have been met, and specifically that (A) the Subject Property is an appropriate location for the proposed structure or use, (B) the proposed use as developed will not adversely affect the neighborhood, (C) there will not be an undue nuisance or serious hazard to vehicles or pedestrians as a result of the proposed use or structure, (D) adequate and appropriate facilities will be provided to ensure the proper operation of the proposed use or structure, and (E) 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 submitted plans prepared by Stenbeck & Taylor, Inc., 844 Webster Street, Marshfield, MA 02050 entitled "Site Plan, 47 Ocean Drive, Humarock, Scituate, MA.", dated August 29, 2011. The Board further unanimously voted to grant the said Special Permit and findings. This Special Permit and these findings are issued pursuant to Zoning Bylaw Sections 810.2, and 950, and G.L. Ch. 40A, Section 6. The Board further voted to require the applicant to submit a revised plan showing the existing and proposed square feet of living area prior to the issuance of a building permit.

ZONING BOARD OF APPEALS

Peter Morin, Chairman

Brian Sullivan

Sara Trezise

Filed with Town Clerk on: October 19, 2011.

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.