

Town of Scituate

ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY
SCITUATE, MASSACHUSETTS 02066
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TOWN OF SCITUATE
ZONING BOARD OF APPEALS

Decision of the Scituate Zoning Board of Appeals on the application of Mark and Jamie Novak of 7 Nelson Road under Scituate Zoning By-laws to allow the construction of an addition to their pre-existing non-conforming residence at 7 Nelson Road and to increase the gross floor area of the structure by more than 20%.

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

Sara Trezise, Chairman
Ed Tibbetts
John Hallin

The structure that is on the property is a two story single family home which according to Town Assessors records was constructed in 1972. The application seeks approval to construct a 24 ft. x 19.7 ft. addition to the front of the existing dwelling which would increase the gross floor area (GFA) by 62.8%. The existing structure has a GFA of approximately 1,428 square feet. The proposed addition would add 879 square feet, for a new GFA of 2,325 square feet. The property is located in the residential R3 zoning district. It does not lie in the Scituate Flood Plain or Watershed Protection District.

Pursuant to *Gale v ZBA of Gloucester*, 80 Mass App 331 (2011), the Board identified the particular respects in which the existing structure does not conform to the present by-law.

The existing lot frontage and width, and one side line setback, are the only non-conformities. The lot was laid out in 1938, as evidenced by the deed submitted with the application. The Town Assessors card states that the structure on the lot was built in 1972, at which time the lot frontage and width requirement was 50 feet.

The following table illustrates the existing and proposed non-conformities relative to current applicable dimensional requirements contained in Section 600 – Dimensional Regulations.

	Lot Area (sq. ft.)	Lot Width	Frontage	Property Line Front Setbacks	Property Line Side Setbacks	Property Line Rear Setbacks
Required	10,000	100'	100'	30'	8'	20'
Existing	10,430	50'	50'	49.8'	6.8'/ 9.1'	134.2'
Proposed	10,430	50'	50'	31.1'	6.8'/ 9.0'	134.2'

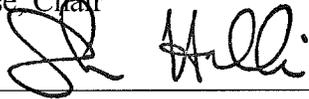
The Applicant wishes to add to the front of the existing structure. The addition will meet all dimensional setback requirements. Although the Board was not able to resolve the issue of how the existing structure could have been built in 1972 and not meet one side setback, the Board felt that since that particular non-conformity was unchanged by this application, this was not an issue that required resolution. Further, given that the side line setback non-conformity has existed for more than 10 years without notice of an action, suit or proceeding as to an alleged violation, this constitutes a legally non-conforming structure under recent amendments to Chapter 40A. See Session Laws: Chapter 184 of the Acts of 2016. The Board unanimously FINDS that the proposed alteration would neither intensify the existing nonconformities nor would it result in additional ones. Therefore, the Board determined that pursuant to Gale, the applicant is entitled to the permit/ finding as requested.

For the foregoing reasons, the Board unanimously voted to GRANT the application to permit the applicant to construct an addition to their property as proposed on the site plan for 7 Nelson Road submitted by the applicant with their application and dated September 30, 2016 by Morse Engineering.

SCITUATE ZONING BOARD OF APPEALS



Sara Trezise, Chair



John Hallin



Ed Tibbets

Filed with the Town Clerk and the Planning Board on: November 30, 2016

This Special Permit/Finding will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County 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.