

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 Ana and Philip Bard of 26 Kimball Road, Arlington, Massachusetts (hereinafter, collectively, the "**Applicant**") for a special permit and/or finding, in accordance with Scituate Zoning Bylaw Sections 810.2, 830, 950.2B, 950.2D, and/or G.L. Ch. 40A, Section 6, and/or any other relief that the Board of Appeals may grant that the razing and reconstruction, extension, and/or alternation of a pre-existing nonconforming single-family residential structure, on a pre-existing non conforming lot at 8 Holmes Street, Scituate, MA (Assessor's Parcel 73-13-12-F) will be less nonconforming, and will not be substantially more detrimental or injurious to the neighborhood, than the destroyed and/or existing nonconforming structure(s) or use(s). (hereinafter, the "**Requested Relief**").

The application was received, advertised and a public hearing was held on June 16, 2016. The following members were present and voted at the public hearing:

Sara J. Trezise, Chairman
Edward C. Tibbetts
Francis M. Lynch

The Applicant was present at the public hearing and was represented at the hearing by attorney Jeffrey A. De Lisi of Ohrenberger, De Lisi & Harris, LLP of 28 New Driftway, Scituate, MA, and by Jeffrey M. Hassett, P.E. of Morse Engineering Co., Inc. of 19 Union Street, Scituate, MA.

The subject property is owned by Susan M. Dinon as evidenced by Certificate of Title No. 104687 filed in the Plymouth Country Registry District of the Land Court. The property is shown as Lots 153 and 154 on sheet 1 of subdivision plan #5280K, drawn by Irving Rosenblatt, C.E., dated Feb. 1941, filed with Certificate of Title No. 7448 (hereinafter, the "**Property**"). Along with the said application, certificate of title, and record 1941 plan, the Applicant filed the following materials with Board of Appeals:

1. A copy of an Assessor's Field Card from the Scituate Assessor for fiscal tax year 2016 showing that the dwelling on the Property was constructed in 1950;
2. Conceptual renderings of the proposed reconstructed dwelling entitled "Concept Design Layout Not of Construction" dated May 17, 2016 prepared by Custom Home Designs, 260 South River Street, Marshfield, MA 02050;
3. Plot plan showing the dwelling that presently exists on the Property and the proposed reconstructed dwelling entitled "Proposed Site Plan 8 Holmes Street, (Assessor's Parcel: 73-13-12F) Scituate, MA" dated May 16, 2016, revised through June 16, 2016 prepared by Morse Engineering Co., Inc. (hereinafter, the "**Plot Plan**").

The Property is located in the Residence R-3 zoning district, and the Flood Plain and Watershed Protection overlay zoning district, and contains a single family dwelling thereon and a small shed. According to the Plot Plan, the Property is nonconforming as to lot area (6,520 sq. ft. in a 10,000 sq. ft. zone), lot frontage (80 ft. in a 100 ft. zone) and lot width (80 ft. in a 100 ft. zone). The single-family dwelling thereon is dimensionally nonconforming to the Scituate Zoning Bylaw requirements of front yard setback insofar as it is set back approximately 24 feet from Holmes Street. The Property is bounded on the west by the South River, and other than the front yard setback, the dwelling is presently conforming to dimensional setback requirements.

The Applicant does not propose to introduce any new nonconformities, and the proposed reconstructed dwelling will be moved further from Holmes Street such that the existing front yard setback nonconformity will be less nonconforming. Additionally, the Applicant's engineer represented at the hearing that the proposed reconstructed dwelling will increase the gross floor area of the dwelling by thirty-seven percent when compared to the existing dwelling (1,396 SF existing gross floor area per the said Assessor's Field Card versus 1,912 SF gross floor area per the proposed conceptual renderings provided with the Application).

The Board and Applicant also discussed flood plain and elevation issues. The Plot Plan shows elevations based on the NAVD88 datum. The existing dwelling is within the FEMA Flood Zone AE (elevation 8.9 ft.). The proposed reconstructed dwelling will be raised onto pilings such that the top of the piles are at elevation 13.5 ft., and the first floor at 15.5 ft. The proposed reconstructed dwelling will be entirely compliant to the State Building Code, and the livable space of the reconstructed dwelling will be brought outside the FEMA Flood Zone. The reconstructed dwelling will be consistent with the provisions of the National Flood Insurance Program. Further, it will not affect the natural drainage patterns of the watercourse.

The Applicant demonstrated pre-existing nonconforming status, and Board of Appeals considered the zoning relief requested pursuant to the last paragraph of Zoning Bylaw Section 810.2 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.”

G.L. Ch. 40A, Section 6 provides, in relevant part, that zoning ordinances or bylaws shall not apply to lawful pre-existing nonconforming structures or uses, but shall apply to any reconstruction, extension or structural change to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent “except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure.” Said Section 6 further 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.”¹

The Board of Appeals specifically voted to find (i) that the lot is non-conforming as to area, frontage and width, (ii) that the front yard setback of the existing structure is nonconforming, (iii) that the proposed reconstructed dwelling reduces the front yard setback nonconformity by one foot, (iv) that the proposed reconstructed dwelling is not substantially more detrimental to the neighborhood than the existing dwelling and, (v) that the criteria set forth in Bylaw Section 950.3 will be satisfied.

Based upon the application materials, including the Plot Plan revised through June 16, 2016, 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 special permit, finding(s), and the Requested Relief upon the condition that the Applicant file with the Board a revised plot plan indicating the percentage increase in the gross floor area of the proposed reconstructed dwelling when compared to the existing dwelling so long as the reconstruction does not increase the gross square footage of the dwelling more than the proposed 1912 gross square feet.

¹ The words "structure or" appearing in the brackets in the quoted sentence were supplied by Willard v. Board of Appeals of Orleans, 25 Mass. App. Ct. 15, 21, 514 N.E.2d 369 (1987), and later noted and applied in Rockwood v. Snow Inn Corp., 409 Mass. 361, 363 n.4, 364, 566 N.E.2d 608 (1991).

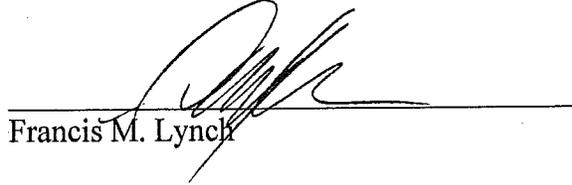
ZONING BOARD OF APPEALS



Sara J. Trezise, Chairman



Edward C. Tibbetts



Francis M. Lynch

Filed with the Town Clerk and Planning Board: June 20, 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.