

Town of Scituate

ZONING BOARD OF APPEALS

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Decision of the Scituate Zoning Board of Appeals on the application of Stuart & Susan Coleman of 412 Tilden Road, Scituate, Massachusetts for a finding under MGL 40A § 6 and a special permit to construct additions to the pre-existing nonconforming single family dwelling at 412 Tilden Road, Scituate, Massachusetts.

The application was received, advertised and a public hearing was duly held on November 19th, 2015 with the following members of the Zoning Board of Appeals hearing the application:

Sara J. Trezise
John Hallin
Francis M. Lynch

The property that is the subject matter of this application is located in the R-2 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.

The R-2 Residential District requires 20,000 square feet lot area and 125 feet of frontage and lot width. In addition, the R-2 Residential District requires a 30 feet front setback, 15 feet side yard setbacks, 8 feet rear yard setback for detached accessory structures and 30 feet rear yard setback for all other buildings.

At the time of the application title to the property was owned by Stuart H. Coleman, 3rd and Susan M. Coleman. For title reference, see Certificate of Title No. 42310, filed with Plymouth Registry District of the Land Court.

The property has 21,287 square feet of land with 129.02 feet of frontage along Tilden Road. The existing dwelling located upon the lot was constructed in 1847 (as was shown in the Town of Scituate assessor's card, submitted with the application) and has a gross floor area of 1,446 square feet. The existing dwelling is setback 22.6 feet from Tilden Road. The height, rear and side setbacks meet the requirements for the R-2 zoning district. The existing dwelling, therefore, is nonconforming as to its front yard setback.

At the November 19th, 2015 public hearing, the Board reviewed a plan drawn by Robert C. Bailey Co., Land Surveyors 119 Plymouth Street, Pembroke, MA 02359, dated September 4th, 2015 (herein after "the Location Plan") as well as elevations plans prepared by Cedarville Design dated 9/1/15 for the proposed additions to the dwelling. The Board discussed the fact that the proposed addition on the westerly side of the property would not increase the existing non-conforming front yard setback (22.6') although, at its closest point, this addition would be set back 27.7' feet from the front set back.

The Board discussed the case of Gale v. Zoning Board of Appeals of Gloucester (2012), which would allow the proposed reconstruction if the Board first identified the particular respect or respects in which the existing structure does not conform to the present Bylaw and then determine whether the proposed reconstruction, alteration or addition would intensify the existing nonconformities or result in additional ones. If the answer to that inquiry is in the negative a finding under Chapter 40A § 6 and Special Permit would be required. If the answer to the inquiry is affirmative, then the Board must determine whether the proposed additions would be substantially more detrimental to the neighborhood than the existing structure.

Based upon the evidence presented, the Board finds that the front yard setback for the existing dwelling is pre-existing and nonconforming to the bylaw and that the Applicants' proposal to construct an addition to the westerly side and to the rear of the single family dwelling is entitled to be reviewed by the Board pursuant to MGL c. 40A § 6, and Section 810.2 of the Town of Scituate Zoning Bylaw. The Board further finds that the proposed westerly addition will extend into the 30 foot front set back but less than the existing front set back non-conformity. In all other respects, the Board finds that the proposed additions are within the dimensional and set back requirements for the zoning district and do not create any new nonconformity. The Board further finds that the proposed additions, as set forth in the Location Plan, would not be substantially more detrimental to the neighborhood than the existing dwelling.

Pursuant to Section 950.3 of the Town of Scituate Zoning Bylaw, the Board finds that the lot is appropriate for a single family dwelling. The use of the dwelling 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.

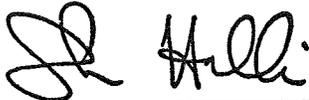
In addition, the Board finds that the use reflects the nature and purpose of the use prevailing when the bylaw took effect, that there is no difference in the quality or character, as well as the degree of use, and the proposed use is not different in kind in its effect on the neighborhood.

For the foregoing reasons, the Board unanimously voted to GRANT the Applicant's request for a finding under MGL Chapter 40A § 6 and for a Special Permit to construct the additions to the single family dwelling as shown on the Location Plan.

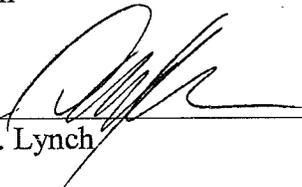
ZONING BOARD OF APPEALS



Sara J. Trezise



John Hallin



Francis M. Lynch

Filed with the Town Clerk and Planning Board on FEBRUARY 4, 2016

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