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Decision of the Scituate Zoning Board of Appeals on the application of Scott R. Horton (the "Applicant"), residing at 8 Buttonwood Lane, Scituate, Massachusetts, for a finding/special permit under MGL c.40A §6 to raze and reconstruct a pre-existing nonconforming single family dwelling (the "Dwelling") and to increase, by more than 20%, the existing gross floor area of the dwelling located at 10 Buttonwood Lane, Scituate, Massachusetts (the subject "Premises").

The application was received, advertised and a public hearing (the "Hearing") was duly held on July 19, 2012 with the following members of the Zoning Board of Appeals (the "Board") hearing the application:

Peter B. Morin
Sara J. Trezise
John Hallin

Title to the subject Premises is vested in Scott R. Horton by way of a deed dated February 13, 2012 recorded with the Plymouth County Registry of Deeds in Book 40969, Page 233 (the "Deed"). According to the Deed and plan of land to which the Deed refers (said plan dated September 1928 and filed with Plymouth County Registry of Deeds, Plan Book 4, Page 836), the Premises contain 18,760 square feet of land and has 70 feet of frontage on Buttonwood Lane, a public way. According to records kept by the Scituate Town Assessor, the Dwelling was constructed upon the Premises in 1926, prior to the adoption of the Zoning By-laws.

The Premises is located in the Scituate Zoning By-laws R-3 Residential District. The primary purpose of the Residence R-3 District is to provide locations for neighborhoods containing higher-density, single family homes.

The R-3 Residential District has a 10,000 square feet minimum required lot area, a 100 feet minimum frontage requirement and a 100 feet minimum lot width requirement. Furthermore, the R-3 Residential District requires a 30 feet front yard setback, except that the building need not be set back on its lot further from the line of the street than the average distance from such line of the buildings on the same side thereof between two intersecting streets and ways and within two hundred (200') feet of the lot in question. The R-3 Residential District requires 8 feet side yard setbacks, and a 20 feet rear yard setback for dwellings.

In connection with the present Application, an engineered plan of the Project was submitted to the Board on behalf of the Applicant entitled: "Proposed Site Plan 10 Buttonwood Lane (Assessor's Parcel 5-3-8), Scituate, MA" prepared by Morse Engineering Co., Inc., dated June 12, 2012 and revised July 13, 2012 (the "Plan" and/or "Project").

The Plan demonstrates that the Premises both at present and as reconstructed will continue to contain in excess of 18,000 feet, meeting the R-3 Residential District 10,000 feet minimum requirement.

The Plan demonstrates that the front yard setback of the present Dwelling is 19.5 feet, and the proposed reconstructed Dwelling will be setback 28.5 feet from Buttonwood Lane. While this does not meet current set back requirements, it certainly makes the property less nonconforming.

The Plan also demonstrates that the rear yard setback of the present Dwelling is 159 feet, and the proposed reconstructed Dwelling will have a rear setback of 115 feet, well within the rear yard setback requirements of the Zoning By-laws.

The Plan demonstrates that the side yard setback of the present Dwelling is 14.9 feet, whereas the proposed reconstructed Dwelling will have a setback of 9 feet, which is within the side yard setback requirements of the Zoning By-laws.

Finally, the Plan demonstrates that the Premises contain only 70 feet of frontage and 70 feet of lot width. The current Zoning By-Laws require 100 feet of frontage and 100 feet of width; thus, the present Dwelling does, and the proposed reconstructed Dwelling shall constitute a preexisting nonconforming dwelling under the Zoning By-laws.

At the Hearing, Attorney Lawrence Mayo and Professional Engineer Jeffrey Hassett were present for purposes of representing the Applicant. The Board reviewed the Application and the Plan. Attorney Mayo represented to the Board that the Plan required the demolition and reconstruction of the Dwelling in a different location so as to (i) allow the septic system presently serving the Dwelling to be moved into the front yard and out of all of the Wetlands Buffer Zone, Flood Plain and Watershed Protection District, and FEMA Flood Zone; and, (ii) to bring the front yard setback of the Dwelling into closer compliance with the Zoning By-laws.

The Board members expressed their understanding of the Project as indicated on the Plan, and concurred that it was in the best interest of the community to relocate the septic system from the wet zones.

Pursuant to the powers bestowed upon the Board in §950.1 *et seq.* of the Zoning By-laws, and based upon the evidence presented at the Hearing, the Board finds that the Dwelling is a preexisting nonconforming residential dwelling according to the Zoning By-laws; and, therefore, under Section 810.2 of said By-laws the Applicant is entitled to a finding under G.L. c.40A, §6. The Board also finds that the Plan of reconstruction of the Dwelling does not increase the nonconforming nature of the Premises. The Board further finds that the extension and/or alteration of the Premises according to the Plan shall not be substantially more detrimental to the neighborhood than the preexisting dwelling.

Last, in addition to meeting the specific requirements set forth in the Zoning By-laws, the Board finds that: (a) the Premises is an appropriate location for the relocation of the


Dwelling; (b) the use of the Premises as altered by the reconstruction of the Dwelling will not adversely affect the Buttonwood Lane neighborhood; (c) there will not be an undue nuisance or serious hazard to vehicles or pedestrians as a result of the reconstruction of the Dwelling upon the Premises; (d) adequate and appropriate facilities will be provided to assure the proper operation of the proposed Dwelling; (e) there will not be any significant adverse impact on any public or private water supply as a result of the Project; and, (f) the Premises is not located within the Water Resources Protection District.

For the foregoing reasons, the Board unanimously voted to GRANT the Application for a finding under M.G.L. c.40A, §6 and Special Permit allowing Applicant to raze and reconstruct the Dwelling according to the specifications of the Plan.

ZONING BOARD OF APPEALS


Peter B. Morin, Chairman


Sara J. Trezise


John Hallin

Filed with the Town Clerk on: July 31, 2012.

This Finding/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.