



Decision of the Scituate Zoning Board of Appeals on the application of Vickie M. Schlosser and Francis J. Schlosser of Scituate, Massachusetts for a finding under MGL 40A § 6 and a special permit to allow the construction of a one-car garage attached to their residence located at 117 Lawson Road, Scituate, Massachusetts "the property".

The application was received, advertised and a public hearing was duly held on September 18, 2008 with the following members of the Zoning Board of Appeals hearing the application:

Peter Morin, Chariman  
Brian B. Sullivan  
Sara J. Trezise

The property is located in the A-2 Residential District. The property does not lie in either the Town of Scituate Flood Plain, Watershed Protection District, or in the Town of Scituate Water Resource Protection Zoning District.

At the time of the application, title to the premises was in the name of the Applicants by way of a deed dated June 11, 1999 and recorded with the Plymouth County Registry of Deeds in Book 17556 Page 36.

The premises contain 27,100 square feet of land and contain 157.20 feet of frontage along Lawson Road, a public way. The A-2 Residential District requires 20,000 square feet lot area and 100 feet of frontage and 125 feet of lot width. In addition, the A-2 Residential District requires a 30 feet front setback, 15 feet side yard setbacks, 8 feet rear yard set back for detached accessory structures and 30 feet rear yard set back for all other buildings. The lot therefore is a conforming lot. The Applicants explained to the Board and produced evidence showing the lot is encumbered by what was known as the Thomas Lawson Duck Pond, a man made tile pond constructed in the early 1900's that still exists on rear half of the property and has resulted in the related wetlands creeping towards the street over the years. The pond and resulting wetlands encompass over half of the lot.

The original dwelling located upon the lot was constructed in 1962. The Applicants purchased the property in 1999 and renovated their home in 2004 upon the same footprint as the original dwelling and attached garage. At that time they requested permission from the Conservation Commission to expand the footprint and attach a one-car garage to the existing structure, but were denied that request. In 2007, however, the Conservation Commission approved the application before the Board. The original and renovated dwelling is located 24.77 feet from the layout of Lawson Road although it lies fifty feet from the pavement; the dwelling and proposed garage conform to side and rear lot line setbacks.

In 1972, the Town of Scituate adopted its Wetlands Protection Rules and Regulations. The bylaw prohibits new construction within fifty feet of wetlands, but gives the Conservation Commission the authority to condition work similar to the Applicants' proposal. In this case they have required that the Applicants' garage be no closer to the wetlands, twenty feet, than the original and renovated dwelling.

At the September 18, 2008 public hearing, the Board reviewed with the Applicants and their attorney the submitted plan drawn by EET, Inc. of Marshfield, Massachusetts dated October 15, 2007 and revised August 12, 2008. The plans call for attaching a one car garage and small breezeway to the existing dwelling which will lie 24.92 feet from Lawson Road and maintain the twenty foot setback from the wetlands to the rear as required by the Conservation Commission. The proposed attached garage could be constructed to meet the 30-foot setback from Lawson except that it would violate the fifty-foot buffer zone of the Wetlands Protection Rules and Regulations. The Board discussed with the Applicants that the common sense purpose of setback and yard requirements is to maintain space around a structure from other significant things that are the subject matter of zoning, whether that space to be maintained from a structure is another structure, a street, a boundary line or a wetland. The creation of a buffer zone is an increase in the yard requirement of Scituate's Bylaw, and in the application before the Board decreases the buildable area and makes compliance with the thirty-foot setback from Lawson Road impossible.

Based upon the evidence presented, the Board finds that the single-family dwelling located at 117 Lawson Road and is pre-existing and nonconforming to the bylaw. The Applicants' proposed addition to their single-family dwelling is entitled to be reviewed by the Board pursuant to the terms of MGL c. 40A § 6, paragraph one.

The Board finds that the proposed addition to the dwelling, by extending the currently non-conforming setback from Lawson Road, increases the nonconforming nature of the existing single-family dwelling. The Board finds, however, that the increase to the nonconforming nature of the dwelling is not substantially more detrimental to the neighborhood than the existing nonconformity.

Pursuant to Section 1030.2 of the Bylaw, the lot is appropriate for a single-family dwelling. The continued use of the dwelling and proposed addition will 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 the garage addition 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 Applicants' request for a finding under MGL Chapter 40A § 6 and for a Special Permit to allow the addition to the single family dwelling as shown on the Application Plan.

ZONING BOARD OF APPEALS



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Peter Morin, Chairman



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Brian B. Sullivan



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Sara J. Trezise

Filed with the Town Clerk on: September 22, 2008

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.