

Town of Scituate

ZONING BOARD OF APPEALS

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Decision of the Scituate Zoning Board of Appeals (hereinafter referred to as "the Board") on the application of William J. Clary and Linda Fagan of 12 Graves Avenue, Scituate, MA (hereinafter referred to as "the Applicants") for a Finding under Massachusetts General Law (MGL) Chapter 40A, § 6 and a Special Permit to allow the removal of an illegally added 4.4-foot by 22.3-foot room extension and restoration of the building to the footprint which existed prior to said expansion at a single family dwelling located at 12 Graves Avenue, MA (hereinafter referred to as "subject property").

The application was received, advertised and a public hearing was duly held on July 19, 2007 with the following members of the Zoning Board of Appeals hearing the application:

Albert G Bangert, Chairman
Brian B. Sullivan
Sara J. Trezise

Bruce Wait of Wait Land Use Consultants, Inc., Scituate, MA represented the Applicants at the hearing.

At the time of the application, title to the subject property was in the name of Linda J. Fagan and William J. Clary, as Joint Trustees, by way of a quitclaim deed dated December 5, 2003 and recorded with the Plymouth County Registry of Deeds in Book 27206 Pages 33-34.

The subject property is located in the A-3 Residential District. A portion of the property lies in the Town of Scituate Flood Plain and Watershed Protection District. The property does not lie in the Town of Scituate Water Resource Protection Zoning District. The property lies in Zone AE E1 = 11 as shown on F.E.M.A. Flood Insurance Rate Map 250282 0001 E, dated October 16, 2003. The property is serviced by an on-site septic system.

The Town of Scituate Assessor's field card states that the single family dwelling located upon the lot was built in 1922, and therefore predate the adoption of the frontage, area, and width requirements of the Scituate Zoning Bylaws in 1953 and the height, setback and yard requirements in 1956. The Board made the determination that the subject lot and dwelling prior to the construction of the illegal extension were in existence prior to the establishment of the aforementioned requirements of the Scituate Zoning Bylaws.

The Dimensional Regulations for residential dwellings in an A-3 district are as follows -

- Lot area for a single family dwelling is not less than 10,000 square feet;
- Lot frontage on a street or way is not less than 100 feet;
- Lot width at the dwelling is not less than 100 feet;
- Setback from any street or way is not less than 30 feet;
- Side yard setback is not less than 8 feet; and
- Rear yard depth is not less than 8 feet for a one-story detached accessory building and not less than 20 feet for all other buildings.

Prior to the illegal extension of the room, the structure was nonconforming with respect to -

- Lot area – approximately 4,960 square feet
- Lot frontage on Montvale Avenue – 52 feet;
- Lot frontage on Graves Avenue – 50 feet;
- Lot width at the dwelling is - 70 feet;
- Setback from Montvale Avenue - 12.7 feet;
- Setback from Graves Avenue – 13.6 feet;

The Board made the determination that the subject lot and dwellings prior to the illegal extension enjoyed pre-existing, non-conforming status and the protections afforded by MGL 40A § 6.

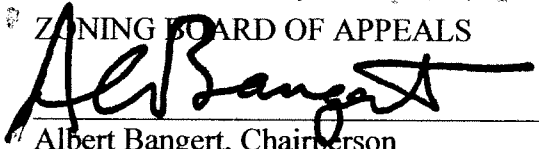
At the Hearing, the Board reviewed with the Applicant the plans drawn by Ross Engineering, 683 Main Street, Norwell, MA, dated July 21, 2005. The plans call for the razing the portion of the illegally added room addition, which extends further into the setback from Graves Avenue and restoring the property to its pre-existing footprint.

During the course of the public hearing, numerous property owners in the immediate area of the subject property spoke in opposition to allowing the Applicants to restore the property. One neighbor spoke in favor of the proposed restoration.

Pursuant to Section 1030.2 of the Bylaw, the lot is appropriate for a single-family dwelling. The use of the reconstructed 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.

THEREFORE, the Board unanimously voted to GRANT the Applicant a Special Permit under Scituate Zoning Bylaw Section 820 and Section 1020.2 and a Finding under MGL Chapter 40A Section 6 that the proposal to remove the illegal 4.4 by 22.3-foot building extension and restore the subject property to the pre-existing footprint of the nonconforming dwelling is not substantially more detrimental or injurious to persons, property or improvements in the vicinity. Accordingly, the Board determines that the Applicants may re-construct said dwelling provided that it is constructed in accordance with the Zoning Bylaw and that reconstruction of the dwelling is completed within six months of the filing of this Decision.

ZONING BOARD OF APPEALS


Albert Bangert, Chairperson



Brian B. Sullivan



Sara J. Trezise

Filed with the Town Clerk on 8-23-2007

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.