

Town of Scituate

ZONING BOARD OF APPEALS

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Decision of the Scituate Zoning Board of Appeals on the application of Kerri Johnson of 209 Broadway, Hanover, MA (hereinafter, the "Applicant") for a Special Permit/Finding pursuant to M.G.L. Chapter 40A, Section 6, and Scituate Zoning Bylaw (the "Bylaw") Sections 810.2 that the reconstruction/extension/alteration by razing and reconstructing a nonconforming single family residential structure on a nonconforming lot will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or lot.

The application was received, advertised and a public hearing was duly held on May 20, 2010 and June 18, 2010, with the following members of the Zoning Board of Appeals hearing the application:

Mr. Peter Morin
Mr. Brian Sullivan
Ms. Sara Trezise

The Applicant, Kerri Johnson, presented an executed purchase and sale agreement with the owner of the property, constituting sufficient standing to seek the requested relief.

The subject property (the "Subject Property") at 131 Gilson Road is owned by Virginia A. Zakian, Patricia Z. Tith, and Jeanne Damlamian (See Certificate of Title No. 70464 filed with the Plymouth County Registry District of the Land Court). It is located in Residence A-3 Zoning District, and is not located within the Water Resources Protection District. The Subject Property has 92.44 feet of frontage on Gilson Road and an average lot width of 92.44 feet. The Applicant has provided a copy of the current tax assessment from the Town of Scituate, which indicates that the single family dwelling on the Subject Property was constructed in 1920 prior to the adoption of zoning in the Town of Scituate. The only pre-existing nonconformities of the Subject Property are (a) lot frontage of 92.44 feet is less than the required 100', and (b) lot width is 92.44 feet, less than the required 100'. In all other respects, the lot and the dwelling are conforming.

The Applicant proposes to raze the existing single family dwelling on the Subject Property and replace it with a dwelling of greater size. Even though the new dwelling will be approximately twice the footprint of the existing dwelling, the new dwelling will substantially exceed all existing setback requirements. Furthermore, the applicant proposes to eliminate an existing nonconforming garage located in the northern corner of the lot.

The Board heard testimony from a number of neighbors who opposed the proposed increase in the size of the dwelling. Concerns regarding the impingement upon views and privacy were expressed.

M.G.L. Ch. 40A Section 6 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.”

The Board specifically finds that the existing single family dwelling is a pre-existing nonconforming structure/use entitled to the protection afforded in M.G.L. Ch. 40A Section 6.

In addressing whether the proposed use of the new structure will be substantially more detrimental to the neighborhood than the existing nonconforming use or structure, the Board considers the guidelines set forth in Powers v. Building Inspector of Barnstable, 363 Mass. 648 (1973), Derby Refining Company v. City of Chelsea, 407 Mass. 703 (1990), and Building Commissioner of Medford v. McGrath, 312 Mass. 461 (1942).

Based on the information presented the Board finds that, with the condition hereinafter stated, the proposed structure and use will not be substantially more detrimental to the neighborhood than the existing nonconforming structure and use, and that the proposed structure or use will not be substantially different in character or substantially more detrimental or injurious to persons, property, or improvements in the vicinity.

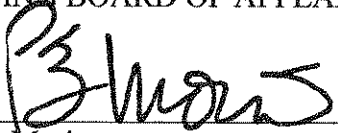
The Board notes that the zoning bylaw does not contain any limitation upon the size of a dwelling upon a lot, so long as the dwelling meets other dimensional requirements, which the proposed dwelling does. The Board further notes that other dwellings in the neighborhood have been expanded in similar fashion. The Board further notes that neighbors’ concerns regarding the effect of the proposed dwelling upon the views from their properties do not raise issues that are the proper subject of zoning regulation, absent a specific provision of the zoning bylaw so stating. The Scituate Zoning Bylaw does not contain any such provision.

With regard to the concerns expressed regarding the potential loss of privacy among direct abutters, the Board does note that the expansion of the dwelling is likely to result in the removal of three mature deciduous trees located along the westerly side of the existing dwelling. The removal of those trees will diminish the existing buffer between the proposed dwelling and the abutter to the west. The Board therefore requested that the applicant replace each tree so removed with a like kind tree with not less than 5” caliber. The Board further requested that the applicant place no less than two like kind 5” caliber trees along the easterly side of the proposed dwelling to create some visual buffer to the easterly abutter. The applicant agreed to both requests.


The Board is also satisfied that the criteria set forth in the Section 1030.2 of the Zoning Bylaw have been met, and specifically that (i) the Subject Property is an appropriate location for the proposed structure or use, (ii) the proposed use as developed will not adversely effect the neighborhood, (iii) there will not be an undue nuisance or serious hazard to vehicles or pedestrians as a result of the proposed use or structure, (iv) adequate and appropriate facilities will be provided to ensure the proper operation of the proposed use or structure, and (v) there will not be any significant impact on the public or private water supply.

For the foregoing reasons, the Board unanimously voted to grant the Applicant a special permit and the requested findings to raze and reconstruct a single family dwelling in accordance with the following entitled plans prepared by Grady Consulting, LLC, 71 Evergreen Street, Suite 1, Kingston, MA 02364 entitled "Site Plan for #131 Gilson Road, Scituate, Mass.", dated April 23, 2010 and revised on June 8, 2010. The Board further unanimously voted to grant the said Special Permit and findings on the condition that the applicant replace each of the three deciduous trees on the westerly side of the existing dwelling with three like kind trees of a minimum 5" caliper, and add not less than two like kind deciduous trees of 5" caliper to the easterly side of the proposed dwelling. This Special Permit and these findings are issued pursuant to Zoning Bylaw Sections 820, 1020.2 (D), and 1030.2, respectively, and G.L. Ch. 40A, Section 6.

ZONING BOARD OF APPEALS


Peter Morin


Brian Sullivan


Sara Tresize

Filed with Town Clerk on: July 21, 2010.

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.