

# Town of Scituate

ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY  
SCITUATE, MASSACHUSETTS 02066  
(781) 545-8716



2011 DEC 21 P 1:30

Decision of the Scituate Zoning Board of Appeals on the application of Catherine R. Fogarty of 14 Fourth Street, Scituate, MA (hereinafter, the "Applicant") for a Special Permit/Finding pursuant to M.G.L. Chapter 40A, Section 6, that the proposed razing and reconstruction of an existing, nonconforming accessory residential structure on a nonconforming lot will not be substantially more detrimental to the neighborhood than the existing nonconforming.

The application was received and advertised, and a public hearing was duly held on November 17, 2011, with the following members of the Zoning Board of Appeals hearing the application:

Peter Morin  
Brian B. Sullivan  
Sara Trezise

The Applicant was present along with a representative of her contractor, Anthony's Construction & Roofing.

The subject property (the "Subject Property") at 14 Fourth Street is in the name of the Applicant pursuant to a quitclaim deed dated February 27, 2009 and recorded with the Plymouth County Registry of Deeds under Certificate of Title No. 113031 in Book 565, Page 31. The subject property is located in a Residence R-3 Zoning District, and is not located within the Water Resources Protection District. The Applicant has provided a copy of the current tax assessment from the Town of Scituate. It indicates that both of the single-family dwellings on the Subject Property were constructed in 1925, prior to the adoption of zoning in the Town of Scituate. The applicant proposes to raze and reconstruct the rear accessory dwelling, a 20' x 18' cottage style dwelling. The property is non-conforming as to lot size (5009 s/f in a 10,000 s/f zone), and the subject structure is non-conforming as to rear yard (2.8' to 3.2') and side yard (2.0' to 2.5') setbacks.

The Applicant testified that she has rented out the cottage unit since purchasing the property, and to her understanding, the cottage has been occupied for at least part of the calendar year continuously.

The Board heard from the Hoffmans, direct abutters residing at 15 Fifth Street. The Hoffmans testified that, because of the small lot size and encroachment of the subject cottage within the setback area, the cottage is "very close" to their property and intrudes on their privacy. They further testified that they have had issues in the past with noise from the tenants of the cottage. They requested that the Board apply the setback requirements of the zoning bylaw to the extent feasible.

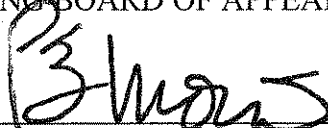
The Board discussed concerns with regard to the setback encroachments, and engaged in a discussion with the Applicant, her contractor, and the abutters with regard to increasing the rear and side yard setbacks for the new structure. Because of the minimal size of the lot and the situation of the principal residence on the lot, the Applicant would be unable to comply fully with side and rear yard setbacks without the cottage being unsuitably close to the rear of the principal dwelling. However, the Applicant's interest in maximizing the size of her back yard was weighed against the abutters' interest in privacy and the Board's interest in reducing existing nonconformities to the extent feasible.

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 cottage is a pre-existing nonconforming structure/use entitled to the protection afforded in M.G.L. Ch. 40A Section 6. However, in order to find that the relief requested would not be substantially more detrimental to the neighborhood than the existing dwelling, side and rear yard encroachments must be reduced. Based upon the Board's discussion and the testimony heard, a majority of the Board finds that the rear yard setback should be increased to 6' and the side yard setback should be increased to 5'. The Applicant is free to configure the placement of the structure in any fashion she desires, so long as the new setbacks are met.

On the basis of the foregoing condition, and for the foregoing reasons, the Board voted 2 in favor, one against, to FIND that the proposed reconstruction of the cottage on the pre-existing, non-conforming lot, with 6' rear setback and 5' side setback, would not be more substantially detrimental to the neighborhood than the current cottage, and to GRANT the Applicant a special permit and the requested findings to permit the razing and reconstruction of the cottage dwelling in accordance with this decision. A revised plan consistent with this decision shall be submitted to the Building Inspector in connection with a building permit application.

#### ZONING BOARD OF APPEALS

  
Peter Morin, Chairman

  
Brian Sullivan

  
Sara Trezise

Filed with Town Clerk on: December 21, 2011.

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.