



Decision of the Scituate Zoning Board of Appeals on the application of Elsie Russo of Scituate, Massachusetts (hereinafter referred to as the "Applicant") for a finding under MGL 40A § 6 and a special permit to allow the reconstruction of the pre-existing nonconforming single family dwelling known as and numbered 19 Driftway, Scituate Massachusetts.

The application was received, advertised and a public hearing was duly held on October 18, 2012, continued to November 15, 2012 with the following members of the Zoning Board of Appeals hearing the application:

Edward C. Tibbetts  
John Hallin  
Frank Lynch

The property that is the subject matter of this application is located in the R-3 Residential District. The property does not lie in the Town of Scituate Flood Plain and Watershed Protection District; nor does it lie within the Town of Scituate Water Resource Protection Zoning District. The property lies in ZONE X as shown on FIRM Community Map Panel #250282 0137 J, dated July 17, 2012. The property is currently serviced and will continue to be serviced by the town's public sewer system and the public water supply.

At the time of the application, title to the premises was in the name of Elsie M. Russo by way of a deed recorded the Plymouth County Registry of Deeds in Book 35456 Page 202.

The premises contain 7,394 square feet of land and contain 98.13 of frontage along The Driftway and 75.00 feet of frontage along Moorland Road, both public ways in the Town of Scituate. The R-3 Residential District requires 10,000 square feet lot area and 100 feet of frontage. The setback requirements in the R-3 Residential District require thirty (30) feet front setback, eight (8) feet side setbacks and rear setback of twenty (20) feet for a dwelling.

The Assessor's field card states that the single family dwelling located upon the premises was built in 1945. The dwelling is set back on the North from The Driftway, 13.0 feet and on the West 22.2 feet from Moorland Road. The dwelling is set back from its South border 29.7 feet. There is an existing detached garage on the premises which sits 0.7 feet from the East lot line.

The lot does not meet the lot size, lot frontage and lot width requirements of Section 610.1 of the Bylaw. The dwelling does not meet front setbacks required by Section 620.3 of the Bylaw from both the Driftway and from Moorland Road. The existing detached

garage does not meet the setback requirements of Section 620.3 or 620.4 of the Bylaw. The lot, dwelling and garage are therefore nonconforming to the Scituate Bylaw.

Paul J. Mirabito of Ross Engineering Company, Inc. represented the Applicant at the October 18, 2012 public hearing. At that time, the Board reviewed with the Applicant the site plan submitted drawn by Ross Engineering Company, Inc, 683 Main Street, Norwell, Massachusetts and a rendering of the proposed single family dwelling drawn by Anthony P. D'Onofrio, AIA, of Scituate, Massachusetts. The plans call for the razing and reconstruction of the existing dwelling and garage. The proposed reconstruction will decrease the nonconforming setback from The Driftway from 13.0 feet to 14.1 feet and decrease the nonconforming setback from Moorland Road from 22.2 feet to 22.8 feet. The plans call for the rear yard setback of the dwelling, currently 29.7 feet, to be located 20.6 feet from the South lot line, both therefore conforming. The plans also call for the reconstruction of the garage at its present location, 0.7 feet from the East lot line. The plans also call for increasing the gross floor area of the dwelling from 945 square feet to 2,700 square feet (a 186% increase)

At the October 18, 2012, the Board asked whether the Applicant could move the reconstructed garage away from the East lot line. In addition, the abutting property owner to the East also questioned the location of the proposed reconstructed garage. No one present at the Public Hearing spoke in opposition of the proposal. The Applicant then agreed with the Board to move the proposed reconstructed garage to 5.1 feet from the East lot line, therefore reducing its nonconforming setback from the East lot line. The public hearing was then continued to November 15, 2012.

At the November 15, 2012, the Board reviewed with the Applicant the revised site plan dated November 13, 2012 and the revised D'Onofrio rendering. The revised site plan shows the proposed reconstructed garage, as requested by the Board, 5.1 feet from the East lot line.

Based upon the evidence presented, the Board finds that the lot, single family dwelling and garage pre-exist the adoption of subdivision control in Scituate and are nonconforming to the bylaw. The Applicant's proposed razing of the single family dwelling and the garage and their reconstruction is a reconstruction pursuant to the provisions of MGL c. 40A § 6. The Board further finds that the proposal does not increase the nonconforming nature of the existing single family dwelling. The Board further finds the proposal calls for the reconstructed dwelling and garage to be less nonconforming than the existing dwelling and garage and is not substantially more detrimental to the neighborhood than the existing nonconformity.

Pursuant to Section 950.3 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

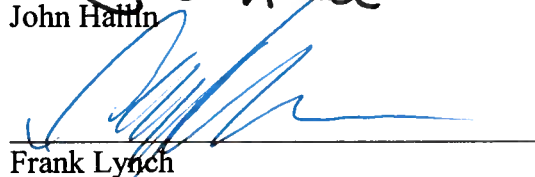
supply, and the property is not located within the Water Resource Protection District. There will not be any significant or cumulative impact upon municipal water supplies as there are no known potable wells within 100 feet of the property and the property is serviced by the public sewer system. In addition, 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 Applicant's request for a finding under MGL Chapter 40A § 6 and for a Special Permit to allow the reconstruction of the single family dwelling.

#### ZONING BOARD OF APPEALS

  
Edward C. Tibbetts

  
John Haffin

  
Frank Lynch

Filed with the Town Clerk on: November 30, 2012

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 40, Section 17, and shall be filed within twenty (20) days of the date of the filing of the decision with the Town Clerk.