



Decision of the Scituate Zoning Board of Appeals on the application of Paul Mirabito for John Levanchy and Nancy Levanchy, Trustees of Scituate, Massachusetts for a finding under MGL 40A § 6 and a special permit to allow a second floor addition to their commercial building located at 196 Front Street, Scituate, Massachusetts.

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

Sara J. Trezise, Acting Chairman
Edward C. Tibbetts
Frank Lynch

The property that is the subject matter of this application is located in the town's Business District. The property does not lie in the Town of Scituate Flood Plain and Watershed Protection District, nor does the property lie in the Town of Scituate Water Resource Protection Zoning District. The proposed work does not lie within a Flood Hazard Zone.

At the time of the application, title to the premises was in the name of John Levanchy and Nancy Levanchy, Trustees of NJ Realty Trust by way of a deed recorded with the Plymouth County Registry of Deeds in Book 38019 Page 218.

The premises contain 3,504 square feet of land and contain 42.44 feet of frontage along Front Street, a public way. The Business District requires 10,000 square feet lot area and 100 feet of frontage. In addition, the Business District requires a 30 feet front setback, 8 feet side yard setbacks, and 20 feet rear setback for dwellings (8 feet for all other buildings).

According to the records of the Scituate Assessor, the one story building located upon the lot was built in 1920. The property is serviced by the town's public water and public sewer system. The building is set back from Front Street 3 feet; it is also currently located 10.5 feet from the Northerly sideline and 2.5 feet from the Southerly sideline, and 210.90 feet from the rear lot line (Scituate Harbor). The lot is nonconforming to the Bylaw due to its lot size and frontage; and the building is also nonconforming to the Bylaw due to both its front and side yard setbacks. The lot and building are therefore pre-existing and nonconforming.

At the November 15, 2012 public hearing, the Board reviewed with the Applicants and Mr. Mirabito the survey plan dated October 7, 2009 drawn by Neil J. Murphy Assoc., Inc. and architectural plans drawn by Tiriyaki Architectural Design, 21C South Main Street, Cohasset, Massachusetts. In addition, the Applicant reviewed with the Board a rendering of the second floor addition to the building the Applicants propose to construct.

The plans call the construction of a second floor to the building that the Applicants plan to use for storage of goods sold in their first floor gift shop. The proposed work will not enlarge the footprint of the building.

No one in attendance at the Public Hearing spoke in opposition to the proposal.

Based upon the evidence presented, the Board finds that the lot, and the existing building located at 196 Front Street pre-exist the adoption of subdivision control in Scituate and are nonconforming to the bylaw. The use of the building as a gift shop is a permitted use in the Business District. The Applicants' proposed addition is entitled to be reviewed by the Board pursuant to the terms of MGL c. 40A § 6.

The Board finds that the proposed addition of a second story to the existing building does not increase the nonconforming nature of the existing building 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 the current and proposed use of the structure. The use of the structure 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.

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 second floor addition to the building as shown on the Application Plans.

ZONING BOARD OF APPEALS


Sara Trezise, Acting Chairman


Edward C. Tibbets


Frank Lynch

Filed with the Town Clerk on: January 8, 2013.

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.