

Town of Scituate

ZONING BOARD OF APPEALS

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



Decision of the Scituate Zoning Board of Appeals on the application of Colonel John P. Walsh of San Antonio, Texas for a finding under MGL 40A § 6 and a special permit to allow an addition to his summer residence located at 2 Dickens Row, Scituate, Massachusetts.

The application was received, advertised and a public hearing was duly held on August 21, 2008 with the following members of the Zoning Board of Appeals hearing the application:

Peter Morin
Brian B. Sullivan
Edward C. Tibbetts

The property that is the subject matter of this application is located in the A-3 Residential 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.

At the time of the application, title to the premises was in the name of the Applicant by way of a deed recorded with the Plymouth County Registry of Deeds in Book 4109 Page 65.

The premises contain 4,446 square feet of land and contain 78.00 feet of frontage along Town Way, a public way; the premises also contain 57.00 feet of frontage along Dickens Row, a private way. The A-3 Residential District requires 10,000 square feet lot area and 100 feet of frontage and 100 feet of lot width. In addition, the A-3 Residential District requires a 30 feet front setback, 8 feet side yard setbacks, 8 feet rear yard set back for detached accessory structures and 20 feet rear yard set back for all other buildings. The Applicant produced evidence at the hearing showing the lot and single-family dwelling located upon thereon have been in existence since at least 1921. The Applicant stated at the hearing that he and his family have maintained the premises as their summer residence for over fifty years. The dwelling is connected to the town's public sewer system. The dwelling is set back from Town Way 19.18 feet; it is also set back from Dickens Row 32.98 feet. Both the Westerly side yard and rear setback are also non-conforming; there also a 10 foot passageway between the premises and the Westerly abutter. The current single-family dwelling is therefore nonconforming as to its front, Westerly side and rear setbacks. The lot and single-family dwelling are therefore pre-existing and nonconforming.

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At the August 21, 2008, the Board reviewed with Colonel Walsh and his attorney the submitted plan drawn by Neil J. Murphy Assocs., Inc. Cohasset, Massachusetts dated January 29, 2004. In addition, the applicant reviewed with the Board a rendering of the addition to the dwelling the Applicant proposes to construct. The plans call for a 13' x 13' addition, which will extend the pre-existing non-conforming setback along Town Way from 19.18 feet to approximately 15.00 feet. All other setbacks will remain the same. This application is the exact same proposal that was previously approved by the Board of Appeals in 2004 but not built and reviewed by the Board of Appeals in 2006 but withdrawn by the Applicant.

One abutter submitted a letter to the Board in support of the application; two abutters in attendance at the Public Hearing spoke in favor and one abutter and his wife spoke in opposition to the proposal. The abutters' opposition was based upon the diminution of their view and safety concerns relating to reduced visibility of traffic exiting Dickens Row onto Town Way. The Board finds that the concern regarding traffic safety is an unsubstantiated fear. The Board finds that the proposed addition will have an insignificant effect on the abutters' view. The abutter asserted that the proportional increase in square footage of the non-conforming dwelling was substantial in comparison to the existing dwellings in the neighborhood. The Board considered the proportional increase in lot coverage, and finds that the increase is insubstantial and that, with the addition, the applicant's dwelling will be comparable to the scale of other dwellings in the neighborhood.

Based upon the evidence presented, the Board finds that the lot and single family dwelling located at 2 Dickens Row pre-exist the adoption of subdivision control in Scituate and are nonconforming to the bylaw. The Applicant's proposed addition to his single family dwelling is entitled to be reviewed by the Board pursuant to the terms of MGL c. 40A § 6, paragraph one.

The Board finds that the proposed addition to the dwelling, by extending the currently non-conforming setback from Town Way, increases the nonconforming nature of the existing single-family dwelling. The Board finds, however, that the increase to the nonconforming nature of the dwelling is not substantially more detrimental to the neighborhood than the existing nonconformity.

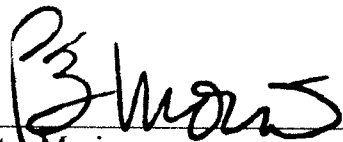
Pursuant to Section 1030.2 of the Bylaw, the lot is appropriate for a single-family dwelling. The use of the dwelling should not adversely affect the neighborhood, nor create any undue nuisance or hazard to vehicles or pedestrians. The town's Board of Health and the Building Commissioner will ensure 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

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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 addition to the single family dwelling as shown on the Application Plan.


ZONING BOARD OF APPEALS



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Filed with the Town Clerk on 9/4/08

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.