

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 (hereinafter referred to as "the Board") on the application of Francis G. Power, III, 2 Garden Road, Scituate, MA (hereinafter referred to as "the Applicant") for a Finding and a Special Permit under Massachusetts General Law (MGL) Chapter 40A, § 6 to allow the reconstruction of the pre-existing, nonconforming single-family dwelling located at 2 Garden Road, Scituate, MA.

The application was received, advertised and a public hearing was duly held on May 17, 2007 with the following members of the Zoning Board of Appeals hearing the application:

Agnes Rona, Acting Chairperson
Brian B. Sullivan
Albert G. Bangert

Attorney Michael C. Hayes of 43 Front Street, Scituate, MA 02066 represented the Applicant at the hearing.

At the time of the application, title to the subject property was in the name of Francis G. Power, III and Barbara J. Power pursuant to Certificate of Title No. 51338 issued by the Plymouth County Registry District of the Land Court at Book 256, Page 138.

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. The property lies in Zone X as shown on F.E.M.A. Flood Insurance Rate Map 250282. The property is serviced by the town's public sewer system.

The Town of Scituate Assessor's field card states that the single family dwelling located upon the lot was built in 1953. However, documentary evidence filed with the Board shows that the dwelling and a garage were in existence in 1952, and therefore predate the adoption of the frontage, area, and width requirements of the Scituate Zoning Bylaws in 1953 and the height, setback and yard requirements in 1956. The Board made the determination that the subject property enjoys grandfathered status with respect to the aforementioned requirements of the Scituate Zoning Bylaws.

The Dimensional Regulations for residential dwellings in an A-3 district are as follows -

- Lot area for a single family dwelling is not less than 10,000 square feet;
- Lot frontage on a street or way is not less than 100 feet;
- Lot width at the dwelling is not less than 100 feet;
- Setback from any street or way is not less than 30 feet;
- Side yard setback is not less than 8 feet; and

- Rear yard depth is not less than 8 feet for a one-story detached accessory building and not less than 20 feet for all other buildings.

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Presently the existing structure is nonconforming with respect to -

- Lot area – 5,000 square feet
- Side yard setback – 8.4 feet from southerly side-line
- Rear yard depth – 11.2 feet from westerly rear-line

While the subject dwelling is set back from Garden Road by 16.3 feet - less than the 30 feet required in the Dimensional Regulations, the Applicant's survey plans show that the average setback on Garden Road pursuant to Section 620.4 of the Bylaw is 13.65 feet. The setback of the dwelling from Hatherly Road is 35.7 feet. Therefore the subject property conforms to the Scituate Bylaw in regard to setback from any street or way.

At the May 17, 2007 public hearing, the Board reviewed with the Applicant the plans submitted drawn by Millbrook Survey, 401 Parsonage Street, Marshfield, Massachusetts, dated March 2, 2007. In addition, the Applicant reviewed with the Board a rendering of the proposed single-family dwelling he and his wife propose to construct, and in which they intend to reside. The plans call for the razing of the existing dwelling and reconstruction of two story plus attic single-family dwelling.

During the course of the public hearing, the Board, the Applicant and the northerly abutting property owner (Mr. Stephen J. Bjorklund) discussed the location of the proposed new dwelling. It was agreed by all that the best location of the dwelling would be to maintain the rear yard setback, increase the depth of the dwelling from 25.0 feet to 26.0 feet and allow the dwelling to be set back from Garden Road 13.65 feet pursuant to Section 620.4 of the bylaw.

No one in attendance at the Public Hearing spoke in opposition to the proposal. The northerly abutting property owner spoke in favor to the proposal.

Based upon the evidence presented, the Board finds that both the lot and existing single-family dwelling located at 2 Garden Road pre-exist the adoption of subdivision control in Scituate and are nonconforming to the bylaw. The Applicant's proposed building of the single family dwelling on the lot 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.

Pursuant to Section 1030.2 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 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.


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THEREFORE, the Board unanimously voted to GRANT the Applicant a Special Permit under Scituate Zoning Bylaw Section 820 and Section 1020.2 and a Finding under MGL Chapter 40A Section 6 that the proposal to raze the pre-existing nonconforming dwelling located at 2 Garden Road, Scituate, Massachusetts and replace it with a new single-family dwelling as presented by the Applicants is not substantially more detrimental or injurious to persons, property or improvements in the vicinity. Accordingly, the Board determines that the Applicants may construct said dwelling provided that it is constructed in accordance with the Zoning Bylaw, and reconstruction of the dwelling is completed within two years following the razing of the existing dwellings.


ZONING BOARD OF APPEALS



Agnes Rona, Acting Chairperson



Brian B. Sullivan



Albert G. Bangert

Filed with the Town Clerk on 5-23-07

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.