

# Town of Scituate

ZONING BOARD OF APPEALS

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



2011 NOV 14 A 10:14

Decision of the Scituate Zoning Board of Appeals on the application of Michael D. Ball of 12 Jefferson Lane, Scituate, MA (hereinafter, the "Applicant") for a Special Permit/Finding pursuant to M.G.L. Chapter 40A, Section 6, and Scituate Zoning Bylaw (the "Bylaw") Sections 810.2 that the reconstruction/extension/alteration by reconstructing an existing conforming single family residential structure on a nonconforming lot, and the proposed structure, although greater than 20% larger, will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or lot.

The application was received, advertised and a public hearing was duly held on October 20, 2011, with the following members of the Zoning Board of Appeals hearing the application:

Peter Morin  
Brian B. Sullivan  
Edward Tibbetts

The subject property (the "Subject Property") at 21 Crescent Avenue was in the name of Salvatore C. Apicella and Alma G. Apicella by way of a warranty deed dated December 4, 2001 and recorded with the Plymouth County Registry of Deeds in Book 35364, Page 326-327. The Applicant presented a signed affidavit from Salvatore and Alma Apicella giving Mr. Ball permission to apply for the Special Permit that is the subject of this decision. The subject property is located in 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 which indicates that the single family dwelling on the Subject Property was constructed prior to the adoption of zoning in the Town of Scituate. The only pre-existing nonconformities of the Subject Property are (a) lot frontage of 82.49 feet is less than the required 100', and (b) lot width is 81.50 feet, less than the required 100'. In all other respects, the lot and the dwelling are conforming.

The Applicant proposes to construct an addition which will add to the living area of the home in excess of 20% of the existing dwelling. Even though the new dwelling gross floor area will be approximately 154% of the existing dwelling, the new dwelling will conform and substantially exceed all existing setback requirements. Furthermore, the applicant proposes to widen the existing driveway and add to the off street parking afforded by the property. According to 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 dwelling is a pre-existing nonconforming structure/use entitled to the protection afforded in M.G.L. Ch. 40A Section


6. The pre-existing, non-conformities will remain unchanged after the proposed project. There will be a larger home on the property, but the Board noted this is a neighborhood of homes similar in size to the proposed structure. As the use, residential, pre and post construction, will remain unchanged, and is conforming; there is not an intensification of the use. The structure or use will not be substantially different in character or substantially more detrimental or injurious to persons, property, or improvements in the vicinity.

The Board heard from abutters to the project who expressed concerns over the size of the house, and parking concerns. The home and parking will be similar to and consistent with other homes in the neighborhood.

For the foregoing reasons, the Board unanimously voted to FIND that the proposed addition to the current residence on the pre-existing, non-conforming lot would not be more substantially detrimental to the neighborhood than the current residence on the property, and to GRANT the Applicant a special permit and the requested findings to permit the extension of the single family dwelling in accordance with the submitted plans prepared by Morse Engineering Company, Inc. 19 Union Street, P.O. box 92, Scituate, MA 02066 entitled "Existing Conditions Plan 21 Crescent Avenue", dated December 2, 2011.

#### ZONING BOARD OF APPEALS

  
Peter Mohn, Chairman

  
Brian Sullivan

  
Edward Tibbetts

Filed with Town Clerk on: November 14, 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.