



Decision of the Scituate Zoning Board of Appeals ("the Board") on the application of Shannon L. Tobin and Edward B. Tobin, 21 Gannett Road, Scituate, MA ("the Applicants") for a finding under Massachusetts General Law ("MGL") Chapter 40A Section 6 and a special permit under Scituate Zoning Bylaw ("SBZ") 1020.2 to partially raze and reconstruct their pre-existing, nonconforming single-family dwelling located at 21 Gannett Road, Scituate, MA ("subject property").

The application was received, advertised and a public hearing was duly held on June 19, 2008 with the following members of the Zoning Board of Appeals hearing the application:

Albert G. Bangert, Chairman
Peter B. Morin
Sara J. Trezise

Attorney Michael C. Hayes of 43 Front Street, Scituate, MA represented the Applicants before the Board.

DESCRIPTION OF THE PROPERTY: At the time of the application, title to the subject property was in the name of Edward B. Tobin and Shannon L. Tobin by way of a deed dated June 26, 1997 and recorded with the Plymouth County Registry of Deeds in Book 15274 Page 306.

The subject property 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 C as shown on FIRM MAP COMMUNITY PANEL 250282 0001 D dated July 2, 1992. The Assessor's field card shows that the single-family dwelling on the property was constructed in 1910.

The subject property contains 20,486 square feet of land and has 50 feet of frontage along Gannett Road. The subject property is shown as Lot B on a plan endorsed as Planning Board Approval Under Sub Division Law Not Required by the Scituate Planning Board on March 10, 1970, which plan is recorded with the Plymouth County Registry of Deeds in Plan Book 15 Page 488.

DETERMINATION ON ZONING BYLAW CONFORMITY: The Dimensional Regulations for lots and residential dwellings in the A-3 District are as follows –

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

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

According to documents examined at the hearing, the subject property does not conform to current zoning requirements with respect to –

- Rear yard depth – the dwelling is from 2.2 to 4.4 feet from the rear property line.

The Board determined that the subject property was in existence prior to the establishment of the SZB setback requirements in 1956. Therefore, the Board finds that the subject property enjoys pre-existing, non-conforming status and the protections afforded by MGL 40A, Section 6.

PROPOSED PROJECT: The Board reviewed the following documents provided by the Applicants -

1. Site plan drawn by Neil J. Murphy Associates, 231 CJC Highway, Cohasset, MA dated May 15, 2008 (one sheet).
2. An architectural sketch drawn by Leon Auvil, Architect, dated April 23, 2008 (one sheet).

The Applicants propose to add a front entry porch and a mudroom to the northerly face of the dwelling and add a second floor to the western portion of the dwelling. Additionally, the Applicants propose to raze a second story deck on the easterly side of the dwelling and replace it with an enclosed one-story porch with an uncovered deck above. The enclosed porch will be no closer to the rear property line (from 10.9 to 12.6 feet) than the footprint of the existing deck.

The Board noted that the reconstruction of the dwelling as presented would upgrade the property, would be a modest change to existing conditions and consistent with the character of the neighborhood. By placing all utilities underground, the general appearance of the property would be improved.

Three abutters voiced concern at the hearing. Five abutters submitted written support of the application.

Based upon the evidence presented, the Board finds that the existing single-family dwelling located at 21 Gannett Road pre-exists the SZB setback requirements adopted in 1956 and is nonconforming to the bylaw. The Applicant's proposal as presented is properly reviewed pursuant to the terms of MGL 40A Section 6. The Board finds that while the proposed reconstruction extends the pre-existing non-conformity as to the rear yard set back, it does so in a minor way and therefore the Board further finds that the proposal, while extending the nonconforming nature of the existing single-family dwelling, is not substantially more detrimental to the neighborhood than the existing nonconforming use.

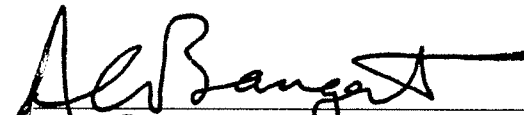
Pursuant to Section 1030.2 of the Bylaw, the Board finds that a) the lot is appropriate for a single-family dwelling, b) the reconstructed dwelling should not adversely affect the neighborhood, c) the use will not create any undue nuisance or hazard to vehicles or pedestrians, d) the Town's Board of Health and the Building Commissioner will ensure that appropriate facilities are provided to assure the proper operation of the single-family dwelling, e) the proposed use of dwelling will not have a significant impact on any public or private water

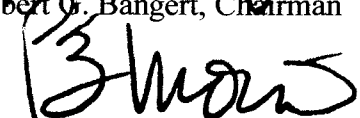
supply, and f) the lot is not located within the Water Resource Protection District. In addition, the Board finds that the use reflects the nature and purpose of the use prevailing when the bylaw took effect, that there is no difference in the quality or character, as well as the degree of use, and the proposed use is not different in kind in its effect on the neighborhood.

THEREFORE, the Board unanimously voted to GRANT the Applicants' request for a Finding under MGL Chapter 40A Section 6 and for a Special Permit under SZB Sections 1020.2 and 820 to allow the reconstruction of the single-family dwelling as shown on the Application Plan with the following conditions:

1. The second floor deck located above the proposed screen-in porch shall remain uncovered and shall not be converted into living area.
2. The reconstruction shall conform to the plans submitted with the Application, or a reasonable facsimile thereof, any modifications to the plans to be at the discretion of the zoning enforcement officer.

ZONING BOARD OF APPEALS


Albert G. Bangert, Chairman


Peter B. Morin


Sara J. Trezise

Filed with the Town Clerk on: June 23, 2008

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 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.