



Decision of the Scituate Zoning Board of Appeals on the application of Nancy Devine of 44 Prince Street, #311, Boston, MA 02113 (hereinafter, the "**Applicant**") for a Special Permit/Findings pursuant to M.G.L. Chapter 40A, Section 6, and Scituate Zoning Bylaw (hereinafter, the "**Bylaw**") Sections 810.2, 950.3, and all other applicable sections of the Bylaw, that the reconstruction/extension/alteration by razing and reconstructing a pre-existing, nonconforming two-family dwelling on a pre-existing, nonconforming lot at 23-23A Allen Street, Scituate, MA (a/k/a 23-23A Allen Place, Scituate, MA) will not be substantially more detrimental to the neighborhood than the existing nonconforming two-family dwelling or lot.

The application was received, advertised and a public hearing was duly held on December 20, 2012, with the following members of the Zoning Board of Appeals hearing the application:

Mr. Peter Morin, Chairman  
Ms. Sara Trezise  
Mr. Edward Tibbetts

The Applicant was present and was represented by her attorney Jeffrey A. De Lisi of Ohrenberger Associates, Scituate, Massachusetts, by her engineer and surveyor, Richard Grady, P.E., of Grady Consulting, LLC, 71 Evergreen Street, Suite 1, Kingston, MA 02364, and by her builder, Paul Armstrong of 12 Sea Street, Marshfield, MA 02050.

The subject property at 23-23A Allen Street, Scituate, MA (a/k/a 23-23A Allen Place, Scituate, MA) (hereinafter, collectively, the "**Subject Property**") is owned by Eric C. Sobran and Roberta M. Sobran as is evidenced in a certain deed dated May 14, 2002 and recorded with the Plymouth County Registry of Deeds at Book 22135, Page 121. The Subject Property is located in Residence R-3 Zoning District, and is not located within the Water Resources Protection District. The application package consisted of, amongst others, a site plan showing the exiting and proposed conditions, photographs of the existing two-family dwelling, and renderings of the proposed reconstructed two-family dwelling. The Applicant also provided a copy of the FY 2012 tax assessment from the Town of Scituate that indicates that the two-family dwelling on the Subject Property was constructed in 1900 prior to the adoption of zoning in the Town of Scituate.

The pre-existing nonconformities of the Subject Property are currently as follows: (i) the use of the structure thereon as a two-family dwelling (section 420.1 of the Bylaw permits the use of a structure as a two-family dwelling if the lot on which it is located contains not less than two times the area required for the erection of a single-family dwelling in the same district); (ii) lot area of approximately 6,007 square feet (10,000 square feet is required for a single-family dwelling and 20,000 square feet is required for a two-family

dwelling), (ii) lot frontage of 72 feet (100 feet is required), (iii) lot width of 72 feet (100 feet is required), and (iv) front yard setback of 8.2 feet (15.2 feet is required due to the average setback calculation permitted by Bylaw section 620.4A).

The Applicant proposes to raze and reconstruct the two-family dwelling on the Subject Property in a manner that decreases nonconformities on the Subject Property; on the front yard setback the reconstructed dwelling's closest point will be further from the frontage road than is the current dwelling, and the reconstructed dwelling will be further from the rear boundary by seven feet compared to existing conditions. Additionally, the side yard setback will continue to be in conformity with the dimensional requirements of the Bylaw.

Many of the building lots and homes on Allen Street (a/k/a Allen Place) appear to have nonconformities as to the dimensional requirements of the Bylaw. The Board determined that the Applicant's proposal would not be inconsistent with the other lots and structures in the neighborhood.

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 two-family dwelling on the Subject Property is a pre-existing nonconforming structure and that its use is entitled to the protection afforded in M.G.L. Ch. 40A Section 6 and section 810.2 of the Bylaw.

In addressing whether the proposed use of the new structure will be substantially more detrimental to the neighborhood than the existing nonconforming use or structure, the Board considers the guidelines set forth in Powers v. Building Inspector of Barnstable, 363 Mass. 648 (1973), Derby Refining Company v. City of Chelsea, 407 Mass. 703 (1990), and Building Commissioner of Medford v. McGrath, 312 Mass. 461 (1942).

Based on the information presented the Board finds that the proposed structure and use will not be substantially more detrimental to the neighborhood than the existing nonconforming structure and use, and that the proposed structure and use will not be substantially different in character or substantially more detrimental or injurious to persons, property, or improvements in the vicinity.

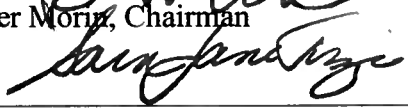
The Board is also satisfied that the criteria set forth in Section 950.3 of the Bylaw have been met, and specifically that (i) the Subject Property is an appropriate location for the proposed structure or use, (ii) the proposed use as developed will not adversely effect the neighborhood, (iii) there will not be an undue nuisance or serious hazard to vehicles or pedestrians as a result of the proposed use or structure, (iv) adequate and appropriate

facilities will be provided to ensure the proper operation of the proposed use or structure, and (v) there will not be any significant impact on the public or private water supply.

For the foregoing reasons, the Board unanimously voted to grant the Applicant a special permit and the requested findings to raze and reconstruct a two-family dwelling in accordance with the Site Plan submitted on behalf of the Applicant by Grady Consulting, LLC. This Special Permit and these findings are issued pursuant to Bylaw Sections 810.2, 950.2, and 950.3, respectively, and G.L. Ch. 40A, Section 6.

#### ZONING BOARD OF APPEALS

  
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Peter Morin, Chairman

  
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Sara Trezise

  
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Edward Tibbetts

Filed with Town Clerk on: December 26, 2012.

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.