

# 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 Raymond and Nicole Zucker of 25 Gilson Road, Scituate, MA (hereinafter referred to as "Applicants") for a Special Permit/Finding under M.G.L. Chapter 40A, Section 6 that would allow the existing, non-conforming dwelling located at 25 Gilson Road, Scituate, MA, to be torn down and replaced with an entirely new dwelling that will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

The application was received, advertised, and a public hearing was duly held on December 21, 2006 with the following members of the Zoning Board of Appeals hearing the application:

Agnes Rona, Acting Chairman  
Albert Bangert  
Brian B. Sullivan

Chairman John Danehey recused himself from hearing the matter due to a potential conflict.

The subject property, located at 25 Gilson Road, Scituate, is in the A-3 residential district. The property is owned by LCT-LLC, a Nevada Limited Liability Trust, pursuant to a Quitclaim Deed filed and recorded in the Plymouth Registry of Deeds on December 14, 2005 at Book 31907, Page 20-21. The Applicants presented a letter from the owners of the property authorizing them to seek relief from the Board for the raze and reconstruction.

The original single family dwelling was constructed in 1950. The dwelling was constructed prior to the adoption of the zoning bylaw in 1953, and therefore enjoys grandfathered status with respect to the Scituate Zoning Bylaws.

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

- a. The required lot area for a single family dwelling is 10,000 square feet;
- b. The required lot frontage is 100 feet;
- c. The required front yard setback is 30 feet;
- d. The required side yard setback is 8 feet;
- e. The required rear yard depth is 20 feet; and
- f. The required lot width is 100 feet.

Presently the existing dwelling is nonconforming as to frontage, lot width, front yard setback and side setback on the easterly side of the dwelling. The Applicants propose to raze the existing dwelling and reconstruct a new dwelling in such a manner that will comply with front, side and rear setback requirements. The proposed new dwelling will continue to be nonconforming as to the frontage and lot width.

Under the second "except" clause of the first paragraph of Section 6 of M.G.L. Ch. 40A, "reconstruction" of a pre-existing, non-conforming single family dwelling is permitted as a matter of right if the reconstruction does not increase the non-conforming nature of said structure. Since the term "reconstruction" is used in the statute without any modifying adjectives, the Board has previously decided that it should be given its broadest meaning and that, accordingly, it is intended to mean total, as well as partial, reconstruction.

M.G.L. Ch. 40A § 6 provides that "[P]re-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."<sup>1</sup> The Board determined that, based on the Applicants' site plans and architectural drawings, and representations, the new dwelling to be constructed on the property would not be more nonconforming than the existing structure. In fact, the applicant will be eliminating the present front and side yard setbacks nonconformities.

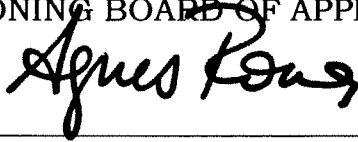
While the proposed structure will be larger than the current structure, the Applicant proposes to maintain, not expand, the single dwelling status. Additionally, there was no difference in the quality or character or degree of the use. The Applicants are only seeking to enlarge their home which has been permitted, not only on their street, but within the neighborhood. In addition, no facts were presented to the Board that indicates that the proposed lot use will be different in kind in its effect on the neighborhood than the use of the current structure. To the contrary, many homes have been expanded and improved as more and more people have sought to live in this area year round and not use the homes as cottages.

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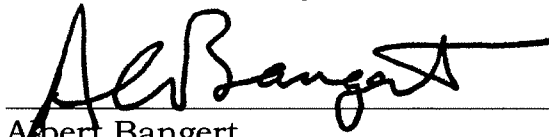
<sup>1</sup> The words "structure or" appearing in the brackets in the quoted sentence were supplied by Willard v. Board of Appeals of Orleans, 25 Mass. App. Ct. 15, 21, 514 N.E.2d 369 (1987), and later noted and applied in Rockwood v. Snow Inn Corp., 409 Mass. 361, 363 n.4, 364, 566 N.E.2d 608 (1991).

Based on the information presented, the Board unanimously voted to GRANT the Applicant a Special Permit under Scituate Zoning Bylaw § 820 and § 1020.2(D) and a FINDING under MGL c. 40A, § 6 that the proposal to raze and reconstruct the pre-existing nonconforming family dwelling located at 25 Gilson Road, Scituate, Massachusetts as presented by the Applicant is not substantially more detrimental or injurious to persons, property or improvements in the vicinity. Accordingly, the Board determines that the applicant 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 dwelling.

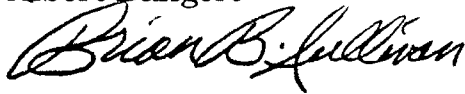
ZONING BOARD OF APPEALS



Agnes Rona, Acting Chairman



Albert Bangert



Brian B. Sullivan

Filed with the Town Clerk on 2-2-07

This Special Permit/Finding will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County 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.