



2012 JUL -10 P 12:20 K10

Decision of the Scituate Zoning Board of Appeals on the application of Nicolai Afanasenko and Angela Afanasenko, of 303 Chief Justice Cushing Highway, Scituate, Massachusetts 02066 for a finding under MGL 40A § 6 and a special permit to allow the construction of an addition to their pre-existing nonconforming single family dwelling located at 303 Chief Justice Cushing Highway, Scituate Massachusetts.

The application was received, advertised and a public hearing was duly held on June 21, 2012 with the following members of the Zoning Board of Appeals hearing the application:

Peter Morin, Chairman
Sara J. Trezise
John Hallin

At the time of the application, title to the premises was in the name of Nicolai Afanasenko and Angela Afanasenko, Husband and Wife as Tenants by the Entirety, by way of a deed dated April 9, 2004, filed and registered with the Plymouth County Registry District of the Land Court as Document No. 562752, and noted on Certificate of Title No. 105169 and also recorded with the Plymouth County Registry of Deeds in Book 27961 Page 3.

The single family dwelling that is the subject matter of the Application is located within Scituate's R-1 Residential District. The premises consists of a lot that contains a total of 46,869 square feet that was laid out on two plans, the first a subdivision plan dated March 30, 1971 recorded with the Plymouth County Registry of Deeds as Plan No. 287 of 1971, and is shown as Lot 3A on said subdivision plan; and the second being a subdivision plan dated March 30, 1971 filed as Plan No. 16859D and filed with Certificate of Title No. 7299 in the Land Registration Office, and is shown as Lot 3 on said subdivision plan. The lot contains 258.01 feet along said Chief Justice Cushing Highway, a public way.

Property located in the R-1 Residential District requires 40,000 square feet lot area, 175 feet of lot width, 100 feet of frontage, 100 feet setback from Chief Justice Cushing Highway, 15 feet side yard set backs, and 30 feet rear yard setback for a dwelling (8 feet for a one story detached accessory structure).

The dwelling, pursuant to the Scituate Assessor's records, was constructed in 1971. The dwelling currently sits 97.1 feet from Chief Justice Cushing Highway, The Lot meets lot area, frontage, lot width requirements of the Bylaw and the dwelling meets side and rear setback requirements of the Bylaw. However, in 1987 the town added an amendment to

the Zoning Bylaw requiring all buildings be set back 100 feet from the exterior line of Chief Justice Cushing Highway; therefore, the dwelling does not meet said 100 feet setback requirement from Chief Justice Cushing Highway.

At the June 21, 2012 public hearing, the Board reviewed with the Applicant the Plot Plan dated April 9, 2012 prepared by Ross Engineering Company, Inc., Professional Engineers and Land Surveyors, Norwell, Massachusetts, showing both existing and proposed conditions. The Board also reviewed the Scituate Assessor's card, deed to the property, an aerial photograph of the site and another plot plan of the property dated March 3, 2004.

The plans call for the construction of a 35 X 42 addition to the front of the dwelling which will be within the 100 foot setback requirement from Chief Justice Cushing Highway and be located 62.1 feet from said highway and will therefore increase the existing non-conforming setback from Chief Justice Cushing Highway from 97.1 feet to 62.1 feet. The Board discussed with the Applicants the planting of two (2) conifer trees along the northerly side of the existing paved driveway to lessen the visual impact of the addition which will buffer the view of the addition from northbound traffic along Chief Justice Cushing Highway.

No one in attendance at the public hearing spoke in opposition to or in favor of the project.

Based upon the evidence presented, the Board finds that both the lot is conforming to the bylaw, but that the dwelling, built in 1971, is pre-existing and non-conforming to Section 620.3 of the Bylaw since it is located within the 100 setback from Chief Justice Cushing Highway (said requirement being added to the bylaw in 1987). The Applicants' proposal is therefore entitled to review pursuant to the terms of MGL c. 40A § 6. The Board specifically finds that the addition proposed will increase the non-conforming nature and use of the property to persons, property and improvements in the neighborhood. However, the Board specifically finds that said increase is not substantially more detrimental than the existing nonconforming nature and use of the property to persons, property and improvements in the neighborhood.

Pursuant to Section 950.3 of the Bylaw, the lot is appropriate for a single family dwelling. The use of the dwelling as proposed 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 the dwelling will not have a significant impact on any public or private water supply. 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.

For the foregoing reasons, the Board unanimously voted to GRANT the Applicants' request for a finding under MGL Chapter 40A § 6 and for a Special Permit to allow the proposed addition, extension or structural change to the single family dwelling at 303 Chief Justice Cushing Highway, subject, however, to the following condition:

1. Two (2) conifer trees shall be planted along the northerly side of the existing paved driveway to lessen the visual impact of the addition and to enhance the buffer from northbound traffic along Chief Justice Cushing Highway.

ZONING BOARD OF APPEALS



Peter Morin, Chairman



Sara J. Trezise



John Hallin

Filed with the Town Clerk on: July 10, 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.