



Decision of the Scituate Zoning Board of Appeals on the application of Jeffrey and Megan De Lisi of 318 Country Way, Scituate, Massachusetts (hereinafter, collectively, the "**Applicants**") for a Special Permit and/or finding in accordance with Scituate Zoning Bylaw Section 810.2, 950.2B, 950.2D, and/or G.L. Ch. 40A, Section 6, and/or any other relief that the Board of Appeals may grant that the reconstruction, extension, and/or alteration of a pre-existing, nonconforming single family residential structure and/or accessory structures thereto on a pre-existing nonconforming lot at 318 Country Way, Scituate, Massachusetts, will not be substantially more detrimental or injurious than the existing nonconforming structure(s) or use(s) to the neighborhood (hereinafter, the "**Special Permit**").

The application was received, advertised and a public hearing was held on July 20, 2011. The following members were present and voted at the public hearing:

Peter B. Morin, Chairman
Brian B. Sullivan
Sara J. Trezise

The Applicants were present at the public hearing and were represented at the hearing by attorney William H. Ohrenberger, III, of Ohrenberger Associates, Scituate, MA.

The Applicants own the property by Deed of Nicole Fortier dated June 23, 2004, and filed with the Plymouth County Registry District of the Land Court as Document No. 567616 on Certificate of Title No. 105545 (hereinafter, the "**Property**"). Along with the application, the deed, and the record plan of land, the Applicants filed with the applications photographs of the Property, a copy of an Assessor's Card from the Scituate Assessor, and a plan entitled "Plot Plan for 318 Country Way in Scituate, Mass." dated March 3, 2011, Scale 1"=20', prepared by Ross Engineering Company, Inc., 683 Main Street, Norwell, Mass. 02061 (hereinafter, the "**Plot Plan**").

The Property is located in the Residence R-2 zoning district and contains a single-family dwelling and a subordinate structure that is accessory thereto. The Property has the following pre-existing lot nonconformities: lot area, lot frontage, and lot width. According to the Plot Plan, the accessory subordinate structure on the Property does not conform to the northerly sideline setback; it is approximately 3.7 feet from the northerly sideline at its closest point.

The Applicants propose to raze the accessory subordinate structure and to construct an addition onto their dwelling which will be in the approximate location of the razed accessory subordinate structure. The Applicants propose that the addition will not be closer to the sideline as the existing accessory subordinate structure.

At the public hearing, the Board of Appeals was provided with a letter from a town resident, Mr. P.F. Spencer, which indicates that Mr. Spencer's family built the dwelling and accessory structure on the Property and owned the Property since the early to mid-1800s. The letter from Mr. Spencer indicated that the dwelling was constructed in approximately 1835 by his great grandfather, and that the accessory subordinate structure was constructed well prior to the 1930s. Mr. Spencer was in attendance at the public hearing and provided further testimony and answered questions from the members of the Board of Appeals. The Scituate Town Assessor's Card also indicates that the dwelling was constructed in the 1800s. Accordingly, the Board of Appeals finds that the Property, the single family dwelling, and the subordinate accessory structure pre-existed the adoption of zoning in Scituate, that the lot is a legally, pre-existing nonconforming lot, and that the structures thereon are legally pre-existing non-conforming structures.

The Applicants also provided a letter of support for the Applicant's requested relief from their direct abutter, Mr. Greg Crone, who is an owner of, and resides at, 320 Country Way. Mr. Crone's house is the closest house to the proposed addition, and the accessory subordinate structure is 3.7 feet from Mr. Crone's southerly property boundary. The Applicants' attorney indicated that, due to certain unique features of the Property, such as topography, grade, the location of the septic system and related components, and the narrow floor plan of the dwelling, the only viable location of the addition is as proposed by the Applicants. According to the Applicants, the goal of the addition is to preserve the character of the existing dwelling, but to provide modern amenities and much needed floor space and bathrooms that would enable a family with children to live comfortably. Country Way is a designated scenic road and the Board of Appeals is particularly pleased that the Applicants have opted to preserve the dwelling on the Property, as opposed to razing it entirely. According to the Plot Plan, the proposed addition will be setback from Country Way quite a distance; more than sixty feet.

The Board of Appeals considered the zoning relief requested, and specifically Section 810.2 of the Scituate Zoning Bylaw which authorizes the "repair, alteration, reconstruction, extension or structural change of a lawful, dimensionally nonconforming single or two-family dwelling, or a portion thereof, or accessory structures thereto." Section 810.2 further provides, in relevant part, as follows:

"In all other instances of alteration, reconstruction, extension or structural change to single or two family dwellings, the applicant may petition the Board of Appeals for a finding under General Laws Chapter 40A, Section 6 to allow the proposed repair, alteration, reconstruction, extension or structural change."

The definition of a "single family dwelling" set forth in Section 200 of the Scituate Zoning Bylaw specifically includes "allowed accessory uses." The definition of "allowed accessory uses" set forth in Section 200 provides that "subordinate structures" which meet certain criteria comprise "allowed accessory uses". The Applicants' accessory subordinate structure clearly meets this criteria.

G.L. Ch. 40A, Section 6 provides, in relevant part, 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.”¹

The Board of Appeals specifically finds that the Property and the single family dwelling, its accessory uses, and the accessory subordinate structure on the Property are pre-existing nonconforming lots, structures and uses, and that the requested change, extension or alteration requested by the Applicant will not be substantially more detrimental than the existing nonconforming lots, structures or uses to the neighborhood.

Based upon the application materials, the information provided at the public hearing, and the foregoing, the Board of Appeals finds that the Applicants have demonstrated that they are entitled to the requested relief. In addition, in accordance with Section 950.3 of the Scituate Zoning Bylaw, the Board is assured, and specifically finds, that all of the criteria under said Section 950.3 are satisfied.

For the foregoing reasons, the Board unanimously voted to GRANT the Special Permit, the finding(s), and the requested relief.


Peter B. Morin, Chairman


Brian B. Sullivan


Sara J. Trezise

Filed with the Town Clerk: August 1, 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. Ch. 40, Section 17, and shall be filed within twenty (20) days of the date of filing the decision with the Town Clerk.

¹ 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).