

# 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 Graham and Stephanie McGirr of 34 Kent Street, Scituate, for a finding under MGL 40A § 6 and a special permit to allow an alteration and addition to a pre-existing non-conforming single-family dwelling located at 34 Kent Street, Scituate, Massachusetts.

The application was received, advertised and a public hearing was duly held on November 17, 2011 with the following members of the Zoning Board of Appeals hearing the application:

Peter B. Morin  
Brian B. Sullivan  
Sara J. Trezise  
John Hallin  
Edward C. Tibbetts

The property that is the subject matter of this application is located in the R-2 Residential District.

At the time of the application, title to the premises was in the name of James G. McGirr and Stephanie T. McGirr, by way of a deed recorded with the Plymouth County Registry of Deeds in Book 554 Page 41 in the Registered Land section, Certificate No. 110841.

The premises contain 22,163 square feet of land and 135.62 feet of frontage Kent Street, a public way. The R-2 Residential District requires 20,000 square feet lot area and 100 feet of frontage and 100 feet of lot width. In addition, the R-2 Residential District requires a 30 feet front yard setback, 15 feet side yard setbacks, 8 feet rear yard setback for one story detached accessory structures and 30 feet rear yard set back for all other buildings. Based upon the certified plot plan submitted with the Application, the current single-family dwelling has a northerly side yard setback on the northerly sideline of 7.4'. The structure is therefore nonconforming as to the northerly boundary side yard setback. All other dimensional aspect are conforming. The Applicant produced evidence at the hearing showing the lot and single-family dwelling located upon thereon have been in existence since 1920. The single-family dwelling is therefore pre-existing and nonconforming.

At the November hearing, Mr. McGirr was present and was joined by Julie Johnson of Custom Home Design. The Board reviewed the submitted plan drawn by Ross Engineering Co., Inc. Norwell, Massachusetts dated October 6, 2011. In addition, the applicant reviewed with the Board photographs of the existing dwelling and a rendering

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of the proposed alteration and addition to the dwelling the Applicant proposes to construct. The plan called for the alteration of the rear portion of the existing structure with the same side yard setback, and a 34' x 26' addition to the rear portion of the structure that would be less non-conforming than the existing non-conforming setback, but still non-compliant with the 15' setback requirement.

The Applicant explained that their property is subject to a view easement in favor of the rear abuttor, and their desire was to give the view easement the widest possible leeway.

The Board members expressed their preference that the rear addition should, if possible, be brought into compliance with the side yard setback, and the Applicants agreed that could be done.

Based upon the evidence presented, the Board finds that the single-family dwelling located at 34 Kent Street pre-exists the adoption of subdivision control in Scituate and the dwelling is nonconforming to the bylaw. The Applicant's proposed alteration and addition to single family dwelling is entitled to be reviewed by the Board pursuant to the terms of MGL c. 40A § 6.

The Board finds that the proposed alteration and addition, as revised, do not increase the nonconforming nature of the existing single-family dwelling. The Board finds that the continued nonconforming nature of the dwelling is not substantially more detrimental to the neighborhood than the existing nonconformity.


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

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 alteration of and addition to the single family dwelling as shown on the Application Plan,

with the condition that a revised plan be submitted to show the location of the proposed addition altered to conform to the 15' side yard setback.

Prior to the issuance of a building permit, the Applicant shall provide the Building Inspector with a revised plan.

ZONING BOARD OF APPEALS

  
Peter B. Morn, Chairman

  
Brian B. Sullivan

  
Sara J. Trezise

Filed with the Town Clerk on: March 8, 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.