

Town of Scituate

ZONING BOARD OF APPEALS

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TOWN OF SCITUATE, MASS.

Decision of the Scituate Zoning Board of Appeals (the "Board") on the application of Robert Demers and Dennis J. Balog of 39 Bayberry Road, Scituate, Massachusetts 02066 (the "Applicant") for a finding under Massachusetts General Laws ("MGL") Chapter 40A, Section 6 and a Special Permit under Scituate Zoning Bylaw ("SZB") 1020.2 to allow the razing of the existing garage and construct a new garage all in accordance with plans on file with the Board on a pre-existing, nonconforming lot at 39 Bayberry Road, Scituate, Massachusetts ("subject property").

The applicants are the owners of the subject property.

The application was received and advertised and an initial public hearing was opened and closed on July 20, 2011 with the following members of the Zoning Board of Appeals hearing the application:

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

DESCRIPTION OF THE PROPERTY: At the time of the application, title to the subject property was in the name of Robert Demers and Dennis J. Balog who acquired title by deed dated January 16, 1999 registered with the Plymouth County Registry District of the Land Court as Document No. 442922; see Certificate of Title No. 94931 in Land Court Registration Book 474, Page 131.

The subject property is located in the A-2 Residential District and lies within the Town of Scituate Flood Plain and Watershed Protection District. There is a single family dwelling and detached garage existing on the property. The Assessor's field card shows that the dwelling on the property and appurtenances were built in 1928.

DETERMINATION OF ZONING BYLAW CONFORMITY: The Dimensional Requirements for lots and residential dwellings in the A-2 District are as follows:

- Lot area for a single family dwelling – not less than 20,000 square feet;
- Lot frontage on a street or way – not less than 100 feet;
- Lot width at the dwelling – not less than 115 feet;
- Setback from any street or way – not less than 30 feet;
- Side yard setback – not less than 15 feet;
- Rear yard depth – not less than 30 feet.

The existing lot and building do not conform to current zoning requirements with respect to:

Lot area- 14,600 square feet;
Lot width at the building line – 115 feet;
Setback from street -(garage) – 27.3 feet;
Side yard setback – 2.1 feet (garage)

The Board determined that the subject dwelling and appurtenant garage were in existence prior to the establishment of the Scituate Zoning Bylaw lot size, frontage and width provisions in 1953, and building height and setback requirements in 1956 and that the adoption of the Flood Plain and Watershed Protection District. Therefore, the Board finds that the property enjoys a pre-existing, nonconforming status and the protections afforded by MGL Chapter 40A, Section 6.

PROPOSED PROJECT: The Board reviewed the following documents provided by the Applicant:

Site plan entitled "Site Plan 39 Bayberry Road, Scituate MA" prepared for Robert Demers dated May 9, 2011 prepared by Cavanaro Consulting

The Applicant proposes to raze the existing garage and replace it with a new two story garage which will not exceed height limitations at the ridgeline. The location of the garage on the lot shall be close to the side lot line but is situated in a way to create less impact on the neighborhood and the wetlands than the prior structure. Further, the garage shall be setback further from Bayberry Road than the existing garage and therefore reducing slightly the nonconformity.

One abutter in attendance at the Public Hearing spoke in opposition to the project. No one else objected to the proposed special permit.

Pursuant to Section 1030.2 of the Bylaw, the Board finds that:

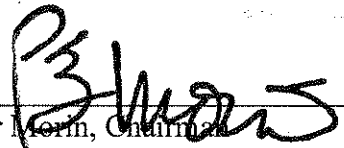
- (a) The lot is appropriate for a single family dwelling with appurtenant garage. It is currently improved with a residence and appurtenant garage and following the razing and reconstruction will also be improved with a single family dwelling and appurtenant attached garage.
- (b) The reconstruction of the garage should not adversely affect the neighborhood as it will be constructed on pilings to comply with flood control regulations; the yard will be improved with wetland plants to enhance the environmental aspects of the subject property and architecturally, the design is an improvement over the existing garage.

- (c) The use will not create any undue nuisance or hazard to vehicles or pedestrians
- (d) Title 5, the Building Code, the Wetland Protection Act and Regulations promulgated there under and those who enforce these regulations will ensure that all appropriate facilities are provided to assure the proper compliance of the proposed attached garage and appurtenances.
- (e) The proposed use of the garage will not have any significant impact on any public or private water supply as the use is unchanged from prior use.

In addition, the board finds that the use reflects the nature and purpose of the use prevailing when the relevant 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.

THEREFORE, the Board unanimously votes to GRANT the Applicant a Special Permit under SZB Section 1020.2 and Section 820 and Finding under MGL Chapter 40A, Section 6 that the proposal to raze the existing garage at 39 Bayberry Road, Scituate, Massachusetts and replace it with a new two story garage as presented by the Applicant is not substantially more detrimental or injurious to persons, property or improvements in the vicinity. Accordingly, the Board determined that the Applicant may construct the two story attached garage and appurtenant decking provided that they are constructed as proposed at the hearing and it is completed within two years following the razing of the existing garage and further provided that the second floor of the garage is not to be converted at any time to livable space.

ZONING BOARD OF APPEALS


Peter Morin, Chairman


Brian B. Sullivan


Sara J. Trezise

Filed with the Town Clerk on: August 16, 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 MGL 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 Town Clerk