

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 (hereinafter referred to as "the Board") on the application of Robert Paine of 439 Tilden Road, Scituate, Massachusetts (hereinafter referred to as the "the Applicant") for a Finding under Massachusetts General Law (MGL) 40A § 6 and a Special Permit to allow the reconstruction of the pre-existing, nonconforming single-family dwelling located at 439 Tilden Road, Scituate, Massachusetts (hereinafter referred to as "subject property").

The application was received, advertised and a public hearing was duly held on June 21, 2007 with the following members of the Zoning Board of Appeals hearing the application:

Albert G. Bangert, Chairman
Brian B. Sullivan
Sara J. Trezise

Richard D. Paine of 140 Stockbridge Road, Scituate, MA, the Applicant's brother, represented the Applicant at the hearing.

At the time of the application, title to the subject property was in the name of Robert K. Paine by way of a quitclaim deed dated April 25, 1997 and recorded with the Plymouth County Registry of Deeds in Book 15121 Page 304.

The subject property is located in the A-2 Residential District. The property does not lie in the Town of Scituate Flood Plain and Watershed Protection District, nor does the property lie in the Town of Scituate Water Resource Protection Zoning District.

The lot consists of 25,918 square feet and contains two dwellings, a garage and a shed. The Assessor's field card shows that the single-family dwelling at the front of the lot was constructed in 1941; the second dwelling was constructed in 1946. Therefore, both dwellings predate the adoption of the frontage, area, and width requirements of the Scituate Zoning Bylaws established in 1953 and the height, setback and yard requirements in 1956.

The Dimensional Regulations for residential dwellings in an A-2 district are as follows -

- Lot area for a single family dwelling is not less than 20,000 square feet;
- Lot frontage on a street or way is not less than 100 feet;
- Lot width at the dwelling is not less than 125 feet;
- Setback from any street or way is not less than 30 feet;
- Side yard setback is not less than 15 feet; and
- Rear yard depth is not less than 8 feet for a one-story detached accessory building and not less than 30 feet for all other buildings.

Presently the existing structure is nonconforming with respect to -

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- Lot area for single-family dwelling – two dwellings on 25,918 square foot lot
- Setback from Tilden Road – 24 feet

The Board made the determination that the subject lot and dwellings were in existence prior to the establishment of the aforementioned requirements of the Scituate Zoning Bylaw and, therefore, enjoy pre-existing, non-conforming status and the protections afforded by MGL 40A § 6.

At the public hearing, the Board reviewed the Applicant's plan drawn by Flaherty & Stefani, 67 Samoset Street, Plymouth, MA, dated March 2, 2007 of the single-family dwelling the Applicant proposes to construct. The plans call for razing the 1941 and reconstructing a 26-foot by 40-foot, two-story plus attic single-family dwelling. The proposed dwelling will be setback not less than 30 (thirty) feet from Tilden Road, and therefore, the existing Zoning Bylaw setback nonconformity will be eliminated. The proposed new dwelling will meet all other setbacks and height requirements.

No one in attendance at the Public Hearing spoke in opposition to the proposal.

Based upon the evidence presented, the Board finds that both the lot and the two existing single-family dwellings located at 439 Tilden Road pre-exist the adoption of subdivision control in Scituate and are nonconforming to the bylaw. The Applicants' proposal is a reconstruction pursuant to the provisions of MGL c. 40A § 6.

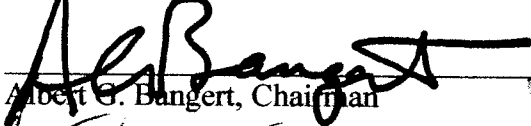
Pursuant to Section 1030.2 of the Bylaw, the lot is appropriate for a single-family dwelling. The use of the reconstructed dwelling should not adversely affect the neighborhood nor create any undue nuisance or hazard to vehicles or pedestrians. The town's Board of Health and the Building Commissioner 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.

THEREFORE, the Board unanimously voted to GRANT the Applicants a Special Permit under Scituate Zoning Bylaw Section 820 and Section 1020.2 and a Finding under MGL Chapter 40A Section 6 that the proposal to raze the pre-existing, nonconforming dwelling located at 439 Tilden Road, Scituate, Massachusetts and replace it with a new single-family dwelling as presented by the Applicants is not substantially more detrimental or injurious to persons, property or improvements in the vicinity. Accordingly, the Board determines that the Applicants may construct said dwelling provided that it is constructed as proposed at the hearing, is completed within two years following the razing of the existing dwellings, and that the following conditions are met:

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1. The dwelling will not exceed the proposed footprint of 26 feet by 40 feet at the location shown on the Flaherty & Stefani plan (dated March 2, 2007) presented to the Board at the hearing on June 21, 2007.
2. The reconstructed dwelling will meet all setback, side and rear yard and height requirements in the A-2 residential district.

ZONING BOARD OF APPEALS


Albert G. Bangert, Chairman



Brian B. Sullivan



Sarah J. Trezise

Filed with the Town Clerk on 7-9-07

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.