

Town of Scituate

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SCITUATE, MASS.

Decision of the Scituate Zoning Board of Appeals on the application of Robert A. Jacobucci, of 50 Irving Road, Scituate, Massachusetts 02066 for a finding under MGL 40A § 6 and a special permit to allow the razing and reconstruction of the pre-existing nonconforming single family dwelling located at 50 Irving Road, Scituate Massachusetts.

The application was received, advertised and a public hearing was duly held on February 16, 2011 with the following members of the Zoning Board of Appeals hearing the application:

Peter Morin, Chairman
Edward C. Tibbetts
Sara J. Trezise

The property that is the subject matter of this application is located in the R-3 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.

At the time of the application, title to the premises was in the name of Robert A. Jacobucci, by way of a deed dated October 23, 2003, filed and registered with the Plymouth County Registry District of the Land Court as Document No. 552084, and noted on Certificate of Title No. 104335.

The single family dwelling that is the subject matter of the Application is located upon a 4,000 square foot lot that was laid out by a subdivision plan dated Dec. 1921 filed as Plan No. 4226D and filed with Certificate of Title No. 1217 in the Land Registration Office, and is shown as Lot 288 on sheet three of four sheets. The Lot contains 50 feet of frontage along Irving Road, a public way. The dwelling, pursuant to the Scituate Assessor's records was constructed in 1955. The dwelling currently sits 29.8 feet from Irving Road, 15.9 feet from the rear lot line, and 7.8 and 9.8 feet from it respective side lines. The dwelling is serviced by the town's public sewer system.

The property is located in the R-3 Residential District which requires 10,000 square feet lot area, 100 feet of frontage, 30 feet front yard setback, 8 feet side yard set backs, and 20 feet rear yard setback for a dwelling (8 feet for a one story detached accessory structure).

The Board noted that the dwelling was constructed in 1955, which was after the adoption of subdivision control by the Town of Scituate in 1953. However, with the assistance of the Building Inspector and Zoning Enforcement Officer, the Board reviewed the Building and Zoning By-Laws adopted by the Town in 1953. That By-Law set forth minimum lot area, width and frontage requirements in residential districts in the town. Section 6-3 of

that By-Law, however, exempted those lots duly laid out at the time of adoption of the By-Law from the minimum lot area, width and frontage requirements.

The Board therefore found that the 4,000 square foot lot that is the subject matter of this decision is pre-existing and non-conforming as to lot area and lot width. Likewise, the dwelling located upon the lot is pre-existing and non-conforming as to front yard set back, one side yard setback and rear yard set back.

At the February 16, 2011 public hearing, the Board reviewed with the Applicant's attorney the Site Plan dated January 14, 2011 prepared by Morse Engineering Company, Inc., Norwell, Massachusetts, showing both existing and proposed conditions. In addition, the Board reviewed architectural plans drawn by Rockwood Design, Inc., Norwell, Massachusetts; a photograph of the site is included on the Assessors's card.

The plans call for the razing and reconstruction of the dwelling. The existing dwelling, a one story three bedroom single family dwelling will be replaced with a two story cape style three bedroom home. The reconstructed dwelling will sit 30.1 feet from Irving Road and will sit 9.7 and 8.1 feet from the respective side lines. The reconstructed dwelling will maintain its location 15.9 feet from the rear lot line on the southerly side of the rear of the dwelling, and a small bump out and bulkhead on the northerly side of the rear of the dwelling will be sit 20.1 feet from the rear lot line. The reconstructed dwelling will therefore be conforming as to front yard setback, side setbacks, will maintain its current rear yard setback (except for the small bum out area described above which will be conforming). There were no comments from any person present at the public hearing.

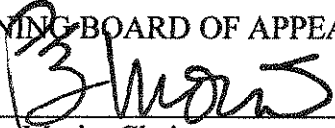
Based upon the evidence presented, the Board finds that both the lot and existing single family dwelling located at 50 Irving Road pre-exist the adoption of subdivision control in Scituate. The Board finds that the lot is non-conforming as to lot area and lot width, and the single family dwelling is non-conforming as to front yard setback, one side yard setback and rear yard setback. Both the lot and the dwelling are therefore pre-existing and nonconforming. The Applicants' proposal is therefore entitled to review pursuant to the terms of MGL c. 40A § 6 and Section 810 of the Scituate Bylaw. The Board further finds that the proposed second floor of the reconstructed dwelling and the small bump out, pursuant to Section 810 of the Bylaw, is an intensification of the nonconforming nature of the dwelling, but said intensification 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 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

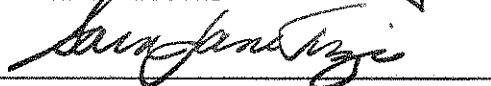
addition, the Board finds that the use reflects the nature and purpose of the use prevailing when the bylaw took effect, that there is no difference in the quality or character, as well as the degree of use, and the proposed use is not different in kind in its effect on the neighborhood.

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 proposed razing and reconstruction, extension or structural change to the single family dwelling at 50 Irving Road.

ZONING BOARD OF APPEALS


Peter Morin, Chairman


Edward C. Tibbetts


Sara J. Trezise

Filed with the Town Clerk on: February 22, 2011.

This Special Permit/Finding will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County 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.