

Town of Scituate

ZONING BOARD OF APPEALS

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Decision of the Scituate Zoning Board of Appeals on the application of Pamela Gray-Prescott, et. al, Trustees of 556 First Parish Road Realty Trust, of Marshfield, Massachusetts (hereinafter, collectively, the "**Applicant**") for a Special Permit and/or finding in accordance with Scituate Zoning Bylaw Section 810.2, 950.2B, 950.2D, and 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 at 562 First Parish Road, Scituate, Massachusetts, will not be substantially more detrimental or injurious than the existing nonconforming structure or use to the neighborhood (hereinafter, the "**Special Permit**").

The application was received, advertised and a public hearing was held on March 16, 2011. The following members were present and voted at the public hearing:

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

The Applicant was represented by attorneys William H. Ohrenberger, III, and Jeffrey A. De Lisi of Ohrenberger Associates, Scituate, MA, and by Paul J. Mirabito of Ross Engineering Co. Inc., Norwell, MA.

The Applicant owns the property by Deed of Natalie E. Gray dated August 25, 2009, and filed with the Plymouth County Registry District of the Land Court as Document No. 654334 on Certificate of Title No. 113691, and with the Plymouth County Registry of Deeds at Book 37661, Page 345 (hereinafter, collectively, the "**Property**"). The Property is located in the Residence R-1 zoning district and contains two single-family dwellings that existed at the time that the Subdivision Control Law went into effect in the Town of Scituate. On February 24, 2011, pursuant to G.L. Ch. 41, Section 81L, the Scituate Planning Board endorsed a plan entitled "Plan of Land in the Town of Scituate, Massachusetts 556 and 562 First Parish Road", dated January 18, 2011 and prepared by Ross Engineering Company, Inc. (hereinafter, the "**81L Plan**"), which divided the Property into two separate lots each containing one of the pre-existing single family dwellings thereon; Lot 1 and Lot 2 shown on the 81L Plan. The Applicant provided the Board of Appeals with a copy of the endorsed 81L Plan.

The Applicant's petition for the Special Permit concerns Lot 1 shown on the 81L Plan, which has an address of 562 First Parish Road and contains approximately 31,156 S.F. of land (hereinafter, "**Lot 1**"). Lot 1 is also shown on a plan entitled "Plan of Land in the Town of Scituate, Massachusetts 556 and 562 First Parish Road" dated February 25, 2011, and prepared by Ross Engineering Company, Inc. (hereinafter, the "Application Plan"), a copy of which Application Plan was provided to the Board of Appeals with the application. The Applicant provided the Board of Appeals with copies of records obtained from the Scituate Town Assessor that indicate that that the structure on the

property was classified as a “dwelling” as early as 1952, that the year it was constructed was unknown, and that its age was characterized as “old”. Additionally, at the hearing, the Applicant also provided the Board of Appeals with affidavits from Pamela Gray-Prescott and Susan P. Grassie, respectively, indicating that the dwelling thereon pre-existed the adoption of zoning in the Town of Scituate.

The Applicant seeks authorization to modify the existing dwelling by either constructing improvements and/or an addition thereto, or by razing it and reconstructing a new dwelling in its place. The Applicant proposes that the new dwelling, or all such improvements or additions, will conform with all dimensional setback requirements for dwellings in the Residence R-1 zoning district. Moreover, the Applicant by her attorney indicated that she will petition the Scituate Planning Board for a common driveway special permit which, when granted, will be located on an adjacent parcel shown as Lot 3 on the Application Plan and will be used to access Lot 1, amongst others.

While the existing dwelling on Lot 1 complies with all dimensional setback requirements of the Scituate Zoning Bylaw, Lot 1 was made to be nonconforming as to lot area, lot width, and frontage by virtue of the Planning Board’s endorsement of the 81L Plan. The Board of Appeals discussed with the Applicant the applicability and effect of Section 610.4 of the Scituate Zoning Bylaw, which indicates that a lot may not be reduced in size “so that the area remaining has less than the area and dimensions” required by the Scituate Zoning Bylaws, “except that, pursuant to G.L. Ch. 41, Sections 81K and L, a lot on which two or more dwellings were standing when the Subdivision Control Law went into effect in the Town of Scituate may be divided into separate lots, on each of which one such dwelling remains standing.” This provision specifically also provides as follows:

“... If such division results in a nonconforming setback for one or more of the existing dwellings, or a lot that does not meet the minimum lot area, these nonconformities will be considered legally pre-existing nonconformities. Further alterations of these dwellings or the boundaries of the lots on which they are standing shall not increase any nonconformity under the provisions of this bylaw unless the applicant obtains the zoning relief required for pre-existing nonconforming structures under Section 800 of this bylaw.”

The Board of Appeals is satisfied that the 81L Plan, Section 610.4 of the Zoning Bylaw, and the rules of statutory construction, render the nonconformities of lot area, lot width, and frontage created by the Planning Board’s endorsement of the 81L Plan to be legally pre-existing nonconformities such that the Board of Appeals may grant the requested relief. In addition, the Applicant indicated to the Board of Appeals that the nonconformity with respect to lot width will be satisfied when the Scituate Planning Board grants a common driveway special permit in accordance with Section 720.7L of the Scituate Zoning Bylaw.

The Board of Appeals then considered the zoning relief requested for extensions, alterations, or modifications concerning the legally pre-existing nonconformities. Section 810.2 further states, in relevant part, as follows:

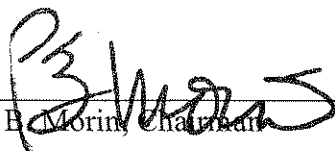
"In all other instances of alteration, reconstruction, extension or structural change to single or two family dwellings, the applicant may petition the Board of Appeals for a finding under General Laws Chapter 40A, Section 6 to allow the proposed repair, alteration, reconstruction, extension or structural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

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 Lot 1 is a pre-existing nonconforming structure or use and that the requested change, extension or alteration requested by the Applicant will not be substantially more detrimental than the existing nonconforming structure or use 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 Applicant has demonstrated that she is 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 on: April 14, 2011.

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).

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.