

# Town of Scituate

ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY  
SCITUATE, MASSACHUSETTS 02066  
(781) 545-8716



2007 APR 24 P 6:34

SCITUATE, MASS.

Decision of the Scituate Zoning Board of Appeals (hereinafter referred to as "the Board") on the application of Daniel and Jane Hannigan of 10 Thorny Meadow Way, Hanover, MA (hereinafter referred to as "Applicants") for a Finding and Special Permit under Massachusetts General Law (MGL) Chapter 40A, Section 6 that would allow the two single-family pre-existing non-conforming dwellings located at 6 Lighthouse Road, Scituate, MA, to be torn down and replaced with an entirely new single-family dwelling that will not be substantially more detrimental to the neighborhood than the existing two non-conforming structures.

The application was received and advertised. A public hearing was duly held on March 28, 2007 with the following members of the Board hearing the application:

John F. Danehey, Chairman  
Albert G. Bangert  
Brian B. Sullivan  
Sara Trezise

Herbert M. Kuendig of Kuendig Design, 4 Brook Street, Scituate, MA represented the Applicants at the hearing.

The subject property, located at 6 Lighthouse Road, Scituate, is in the A-3 residential district and is owned by the Applicants, pursuant to a Quitclaim Deed filed and recorded at the Plymouth County Registry of Deeds on December 12, 1995 at Book 14018, Pages 100-104. The subject property is not within the Water Protection District.

The two existing single-family dwellings were constructed approximately in 1920, prior to the adoption of the frontage, area, and width requirements of the Scituate Zoning Bylaw in 1953. The Board made the determination that the subject property enjoys grandfathered status with respect to the Zoning Bylaws.

The Dimensional Regulations for residential dwellings in an A-3 district are as follows -

- Lot area for a single family dwelling is not less than 10,000 square feet;
- Lot frontage on a street or way is not less than 100 feet;
- Lot width at the dwelling is not less than 100 feet;
- Setback from any street or way is not less than 30 feet;
- Side yard setback is not less than 8 feet; and
- Rear yard depth is not less than 8 feet for a one-story detached accessory building and not less than 20 feet for all other buildings.

Currently the existing structure is nonconforming with respect to -

- Lot area - 2,826 square feet

- Lot frontage – 40.9 feet
- Lot width at the dwelling – 31 to 35 feet
- Setback from any street or way – protrudes 3.7 feet into public right-of-way
- Side yard setback – 0 to 10 feet

The Applicants propose to raze the two existing dwellings and reconstruct a single dwelling that will reduce the setback non-conformities as follows –

- Setback from any street or way – 5.3 feet
- Side yard setback – 3 feet

Under the second “except” clause of the first paragraph of Section 6 of MGL Chapter 40A, “reconstruction” of a pre-existing, non-conforming single or two-family dwelling is permitted as a matter of right if the reconstruction does not increase the non-conforming nature of said structure. Since the term “reconstruction” is used in the statute without any modifying adjectives, the Board has previously decided that it should be given its broadest meaning and that, accordingly, it is intended to mean total, as well as partial, reconstruction.

MGL Chapter 40A Section 6 provides that “[P]re-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.”<sup>1</sup> Moreover, Section 820 of the Scituate Zoning Bylaws provides that “[T]he Board of Appeals may authorize a nonconforming use to be changed to a more restricted use or to a specified use not substantially different in character or more detrimental or injurious to persons, property or improvements in the vicinity...”

The Board determined that, based on the Applicants' site plans and architectural drawings, and representations, the new dwelling to be constructed on the property would not be more nonconforming than the existing structure, but in fact, will reduce the present nonconformities in setback from the public way and setback from the neighboring properties.

While the proposed structure will be larger than either of the current structures, the Applicants propose to maintain a single dwelling status. Additionally, there will be no difference in the quality or character or degree of the use. The Applicants are only seeking to modernize their home. No facts were presented to the Board that indicate that the proposed lot use will be different in kind in its effect on the neighborhood than the use of the current structure.

**THEREFORE**, based on the information presented, the Board unanimously voted to grant the Applicant 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 two dwellings located at 6 Lighthouse Road, Scituate, Massachusetts and replace them with a new single family dwelling as presented by the Applicants is not substantially more detrimental or injurious

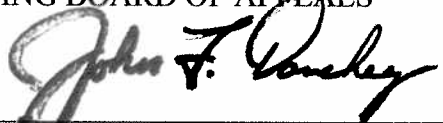
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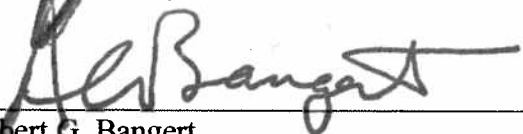
<sup>1</sup> The words "structure or" appearing in the brackets in the quoted sentence were supplied by Willard v. Board of Appeals of Orleans, 25 Mass. App. Ct. 15, 21, 514 N.E.2d 369 (1987), and later noted and applied in Rockwood v. Snow Inn Corp., 409 Mass. 361, 363 n.4, 364, 566 N.E.2d 608 (1991).

to persons, property or improvements in the vicinity. Accordingly, the Board determines that the Applicants may construct said dwelling provided that

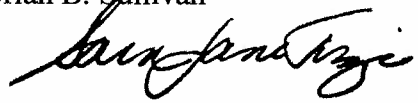
- a. it is constructed in accordance with the Zoning Bylaw,
- b. construction of the dwelling is completed within two years following the razing of the existing dwellings,
- c. the footprint of the newly constructed residence conforms to the "Building Location Plan" dated February 27, 2007 as presented at Board hearing,
- d. and at least three off-street parking spots (exclusive of the garage) are provided.

ZONING BOARD OF APPEALS

  
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John E. Danehey, Chairman

  
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Albert G. Bangert

  
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Brian B. Sullivan

  
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Sara Trezise

Filed with the Town Clerk on 4-24-07

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.