

# Town of Scituate

ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY

SCITUATE, MASSACHUSETTS 02066

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SCITUATE, MASS.

Decision of the Scituate Zoning Board of Appeals (hereinafter referred to as "the Board") on the application of William Francis of 63 Lighthouse Road, Scituate, MA (hereinafter referred to as "Applicants") for a Finding/ Special Permit under Massachusetts General Law (MGL) Chapter 40A, Section 6 that would allow the razing and reconstruction of an existing wood frame structure on the property and to construct an entirely new single-family dwelling that will not be substantially more detrimental to the neighborhood than the existing non-conforming structure.

The application was received and advertised. A public hearing was duly held on January 19, 2011 with the following members of the Board hearing the application:

Peter Morin, Chairman  
Brian B. Sullivan  
Sara Trezise

The subject property, located at 63 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 May 6, 1969 at Book 3517, Pages 144. The subject property is not within the Water Protection District.

There are two existing single-family dwellings on the property, 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 – 13,903 +/- square feet
- Lot frontage – 40 feet
- Lot width at the dwelling – approximately 40 feet
- Setback from any street or way – approximately 5.6 feet
- Side yard setback – 3.7 +/- feet to 8.5 +/- feet

The Applicant proposes to raze the existing dwelling nearest Lighthouse Road and reconstruct it on the same footprint as the pre-existing nonconforming dwelling that currently exists.

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.

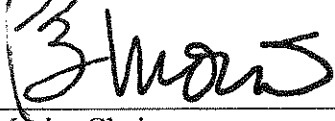
MGL Chapter 40A Section 6 provides that "[P]re-existing nonconforming structures and uses may be extended or altered, provided, that no such extension or alteration be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance 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." 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 representations, the new dwelling to be constructed on the property would not be more nonconforming than the existing structure, but in fact, will be an improvement, particularly as to safety as the heating and mechanical systems will be moved to the attic space.

Additionally, there will be no difference in the quality or character or degree of the use. The Applicant is only seeking to modernize the 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 dwelling located at 63 Lighthouse Road, Scituate, Massachusetts and replace it with a new single family dwelling as presented by the Applicant is not substantially more detrimental or injurious to persons, property or improvements in the vicinity. Accordingly, the Board determines that the Applicant may construct said dwelling provided construction of the dwelling is completed within two years following the razing of the existing dwelling, and the footprint of the newly constructed residence conforms to the "Building Location Plan" dated November 9, 2009 as presented at Board hearing.

ZONING BOARD OF APPEALS



Peter Morin, Chairman



Brian B. Sullivan



Sara Trezise

Filed with the Town Clerk on: March 14, 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.