

# Town of Scituate

ZONING BOARD OF APPEALS

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



Decision of the Scituate Zoning Board of Appeals on the application of John Townsend of the Sandcastle Group, 600 Plain Street Marshfield, MA 02050, 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 84 Scituate Ave. Scituate Massachusetts. The Applicant presented a letter from the homeowners authorizing the applicant to make the presentation on the homeowner's behalf.

The application was received, advertised and a public hearing was duly held on July 20, 2011 with the following members of the Zoning Board of Appeals hearing the application:

Peter Morin, Chairman  
Brian B. Sullivan  
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 John J. Kibiloski and Leslie A. Thomas, by way of a deed dated August 29th, 2000, filed and registered with the Plymouth County Registry of Deeds at Book 18829, and Page 2-3. The single family dwelling that is the subject matter of the Application is located on a 4,627 square foot lot according to a plan dated June 23, 2011, from Ross Engineering of Norwell, MA., and Stamped by Paul Mirabitio, RLS. The Lot contains 50 feet of frontage along Scituate Ave., a public way. The dwelling, pursuant to the Scituate Assessor's records was constructed in 1930. The dwelling currently sits 16.6 feet from Scituate Ave., and does not encroach into either the side yard or the rear yard setback. 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 1930, which was prior to the adoption of subdivision control by the Town of Scituate 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 4,627 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 setback.

At the July 21, 2011 public hearing, the Board reviewed with the Applicant the aforementioned Site Plan dated June 23, 2011 prepared by Ross Engineering Company, Inc., Norwell, Massachusetts, showing both existing and proposed conditions

The plans call for the razing and reconstruction of the dwelling. The existing dwelling, a two story three bedroom single family dwelling will be replaced with a two story cape style three bedroom home. The reconstructed dwelling will sit no closer to Scituate Ave. than the current dwelling. The reconstructed dwelling will maintain its compliance with the sideline and rear yard setbacks. 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 84 Scituate Ave. 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. 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 razing and reconstruction are, pursuant to Section 810 of the Bylaw, 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 84 Scituate Ave.

ZONING BOARD OF APPEALS

  
Peter Morin, Chairman

  
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Filed with the Town Clerk on: August 29, 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.