



Decision of the Scituate Zoning Board of Appeals (hereinafter referred to as “the Board”) on the application of Mark and Megan Gajewski of 85 Kent Street, Scituate, MA (hereinafter referred to as “Applicants”) for a Special Permit/Finding under M.G.L. Chapter 40A, Section 6 that would allow the existing, non-conforming dwelling located at 85 Kent Street, Scituate, MA, to be torn down and replaced with an entirely new dwelling that will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

The application was received, advertised, and a public hearing was duly held on June 19, 2008 with the following members of the Board hearing the application:

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

The subject property, located at 85 Kent Street, Scituate, MA, is in the A-2 residential district and is owned by the Applicants, pursuant to a Quitclaim Deed filed and recorded at the Plymouth County Registry of Deeds on June 29, 2004 at Book 28555, Pages 300-301. Julie Johnson, Custom Home Design, 260 South River Street, Marshfield, MA 02050 and Michael F. Loring, Esquire, 50 Cole Parkway, Scituate, MA 02066, represented the Applicants at the hearing. The original single-family dwelling was constructed in 1946 prior to the time of 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-2 district are as follows:
The required –

1. Lot area for a single family dwelling is not less than 20,000 square feet;
2. Lot frontage on a street or way is not less than 100 feet;
3. Lot width at the dwelling is not less than 125 feet;
4. Setback from any street or way is not less than 30 feet;
5. Side yard setback is not less than 15 feet; and
6. Rear yard depth is not less than 8 feet for a one-story detached accessory building and not less than 30 feet for all other buildings.

The lot area requirement for a single family dwelling in an A-2 District is not less than 20,000 square feet. The subject lot contains 12,074 square feet of uplands, with the required square footage of the lot being 36,913 square feet, which exceeds the total square footage of 20,000 square feet. The location of the lot is such that there is no concern that any other dwelling or structure can be built upon it.

Presently the existing structure is nonconforming with respect to the lot width. The lot is currently 123.72 feet and not the required 125 feet at the dwelling. The Applicants propose is to raze the existing dwelling and reconstruct a new, larger one that will conform to all Dimensional Regulations with the exception of the lot width at the dwelling. The proposed location of the new dwelling on the lot will not expand the lot width nonconformity but will remain the same lot width through the dwelling as currently exists of 123 .72 feet.

Under the second “except” clause of the first paragraph of Section 6 of M.G.L. Ch. 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.

M.G.L. Ch. 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.”¹ 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, architectural drawings and representations that the new dwelling to be constructed on the property would not be more nonconforming than the existing structure.

While the proposed structure will be larger than the current structure, the Applicants propose to maintain, not expand, the 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 enlarge their home. In addition, no facts were presented to the Board that indicates that the proposed lot use will be different in kind in its effect on the neighborhood than the use of the current structure.

¹ The words “structure or” appearing in the brackets in the quoted sentence were supplied by Willard v. Board of Appeals or 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, n.4, 364, 566 N.E.2d 608 (1991).

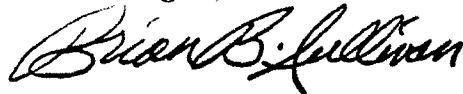
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THEREFORE, based on the information presented, the Board unanimously voted to grant the Applicant a Special Permit under Scituate Zoning Bylaw Section 820 and Section 1020.2(D) and a finding under M.G.L. Ch. 40A, Section 6 that the proposal to raise and reconstruct the pre-existing nonconforming family dwelling located at 85 Kent Street, Scituate, Massachusetts 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 that it is constructed in accordance with the Zoning Bylaw, and reconstruction of the dwelling is completed within two (2) years following the raising of the existing dwelling.

ZONING BOARD OF APPEALS



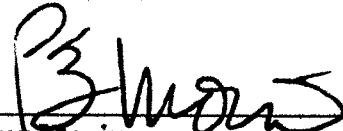
Albert Bangert, Chairman



Brian B. Sullivan



Sara J. Trezise



Peter Morin

Filed with the Town Clerk on: August 25, 2008

This Special Permit/Finding will not become effective until such time as an attested copy of the 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.