



Decision of the Scituate Zoning Board of Appeals (hereinafter referred to as “the Board”) on the application of Patricia and Gregory Geaman of 7 Ridings Way, Chadds Ford, PA (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 86-87 Lighthouse Road, Scituate, MA, to be razed 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 July 24, 2008 and August 21, 2008 with the following members of the Board hearing the application:

Peter B. Morin, Chairman  
Brian Sullivan  
Edward Tibbetts

The subject property, located at 86-87 Lighthouse Road, Scituate, is in the A-3 residential district and is owned by Malcolm Hall, pursuant to a Quitclaim Deed filed and recorded at the Plymouth County Registry of Deeds at Book 19796, Pages 279. The Applicants have standing to request the relief pursuant to an existing purchase and sales agreement between them and the owners, which agreement is part of the record. Herbert Keundig form Keundig Design represented the Applicants at the hearing. The original single-family dwelling was constructed in approximately 1890. 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:

The required -

1. Lot area for a single family dwelling is not less than 10,000 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 100 feet;
4. Setback from any street or way is not less than 30 feet;
5. Side yard setback is not less than 8 feet; and
6. 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.

Presently the existing structure is nonconforming with respect to lot width, frontage, side yard and front yard setbacks. The Applicants propose 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. However, the proposed location of the new

dwelling on the lot will reduce the lot width nonconformity such that the lot width through the dwelling will be 122.4 feet versus the current 118 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 § 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 Applicants original plan called for a dwelling of 2,732 square feet, which would be set back from the westerly abutting lot line 8.1 feet. At the initial public hearing, Mr. Robert Bradford, the abutter at 82 Lighthouse Road, opposed the application, stating that with the increased size of the house, especially the height, his house would be cast in a shadow for much of the day, and his view of the harbor would be significantly affected. Members of the board requested that Mr. Keundig consult with his clients and determine if they would be willing to reduce the footprint of the house to address the concerns of the abutter.

At the second public hearing, Mr. Keundig presented a revised plan that reduced the size of the dwelling to 2,330 feet, increased the side yard setback to the Bradford property to 11.6 feet and provided for a reduced height on the rear decking area. The result was that the sight lines from the roadway and abutters on the opposite side of the street provided a more substantial view of the harbor and better preserved air and light to the neighborhood.

The Board determined that, based on the Applicants' revised 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.

While the proposed structure will be larger than the current structure, there will be no difference in the quality or character or degree of the use. The Applicants are only to seeking to enlarge their home. In addition, no facts were presented to the Board that

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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).

indicates 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 § 820 and § 1020.2(D) and a finding under MGL c. 40A, § 6 that the proposal to raze and reconstruct the pre-existing nonconforming family dwelling located at 87-89 Lighthouse Road, 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 years following the razing of the existing dwelling.

ZONING BOARD OF APPEALS



Peter B. Morin, Chairman



Brian Sullivan



Edward Tibbetts

Filed with the Town Clerk on: September 23, 2008

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.