

# Town of Scituate

## ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY

SCITUATE, MASSACHUSETTS 02066

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Decision of the Scituate Zoning Board of Appeals (hereinafter referred to as "the Board") on the application of Michael Ball, Trustee (hereinafter referred to as the "the Applicant") for a Finding under Massachusetts General Law (MGL) 40A Section 6 and a Special Permit to allow the reconstruction of the single-family dwelling located on a pre-existing, nonconforming lot at 92 Thomas Clapp Road, Scituate, Massachusetts (hereinafter referred to as "subject property").

The application was received, advertised and a public hearing was duly held on October 18, 2007 with the following members of the Zoning Board of Appeals hearing the application:

Albert G. Bangert, Chairman  
Brian B. Sullivan  
Sara J. Trezise

The Applicant represented himself at the hearing.

At the time of the application, title to the subject property was in the name of Michael Ball, Trustee of Blue Water Nominee Realty Trust, 12 Jefferson Lane, Scituate, MA by way of a deed dated July 5, 2005 and recorded with the Plymouth County Registry of Deeds in Book 30855, Pages 311-312.

The subject property is located in the A-1 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. The locus lies in Zone X as shown on FIRM Map #250282 0003 E, dated October 16, 2003. The 42,287 square foot lot consists of 18,166 square feet of upland. The Assessor's field card shows that the single-family dwelling on the property was constructed in 1947. Additionally, the field card indicates the existence of a detached garage of indeterminate age.

The Dimensional Regulations for residential dwellings in an A-1 District are as follows -

- Lot area for a single family dwelling is not less than 40,000 square feet of upland;
- Lot frontage on a street or way is not less than 100 feet;
- Lot width at the dwelling is not less than 175 feet;
- Setback from any street or way is not less than 30 feet;
- Side-yard setback is not less than 15 feet; and
- 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.

Presently the existing lot is nonconforming with respect to -

- Lot area – 18,166 square feet of upland;
- Lot width at dwelling - 111 feet;
- Side-yard setback from east boundary - 12 feet

The Board made the determination that the subject dwelling was in existence prior to the establishment of the Scituate Zoning Bylaw (SZB) side-yard setback provision established in 1956 and therefore, enjoys pre-existing, non-conforming status and the protections afforded by MGL 40A Section 6.

The Board reviewed the Applicant's plan drawn by Ross Engineering Company, 683 Main Street, Norwell, MA, dated September 18, 2007. The Applicant proposes to raze the existing dwelling and detached garage on the subject property and reconstruct a new single-family dwelling. The Board determined that the proposed replacement dwelling would eliminate the current side-yard non-conformity and will not create new nor intensify existing non-conformities.

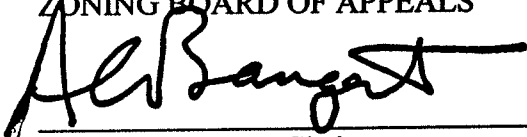
An abutting property owner present at the Public Hearing spoke in support of the Applicant's proposal. No one spoke in opposition.

Pursuant to SZB 1030.2, the Board finds that a) the lot is appropriate for a single-family dwelling, b) the reconstructed dwelling should not adversely affect the neighborhood, c) the use will not create any undue nuisance or hazard to vehicles or pedestrians, d) the Board of Health and the Building Commissioner will ensure that appropriate facilities are provided to assure the proper operation of the single-family dwelling, e) the proposed use of dwelling will not have a significant impact on any public or private water supply, and f) 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 relevant 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.

**THEREFORE**, the Board unanimously voted to GRANT the Applicant a Special Permit under Scituate Zoning Bylaw Section 1020.2 and Section 820 and a Finding under MGL Chapter 40A Section 6 that the proposal to raze the dwelling located at 92 Thomas Clapp 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 determined that the Applicant may construct said dwelling subject to the following conditions:

1. The dwelling is to be completed within two years following the razing of the existing dwellings.
2. The detached garage is to be razed.

ZONING BOARD OF APPEALS



Albert G. Bangert, Chairman



Sarah J. Trezise



Brian B. Sullivan

Filed with the Town Clerk on 10-26-07

This Special Permit will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County Registry 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.