

Town of Scituate

ZONING BOARD OF APPEALS

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Scituate, Massachusetts 02066
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Decision of the Scituate Zoning Board of Appeals on the application of Gregory P. DeConsiliis and Lisa M. DeConsiliis of 28 Bemis Street, Newtonville, Massachusetts (hereinafter, the “**Applicants**”) for a finding in accordance with Scituate Zoning Bylaw Sections 810.2 and G.L. Ch. 40A, Section 6, and/or any other relief that the Board of Appeals may grant, to alter, reconstruct, extend or structurally change the pre-existing nonconforming dwelling on the lot at 142 Humarock Beach, Scituate, MA (Assessor Parcel No. 71-4-13-F), by relocating said dwelling on the lot and constructing an addition thereon which completely eliminates an existing nonconforming setback and does not intensify an existing nonconformity, but which increases the gross floor area by more than 20% (hereinafter, the “**Requested Relief**”).

The application was received, advertised, and a public hearing was held on May 26, 2021. The following members were present and voted at the public hearing:

Anthony J. Bucchere, Chairman
Edward C. Tibbetts
George Xixis

The Applicants were present at the hearing and were represented by Attorney Jeffrey A. De Lisi of Ohrenberger, De Lisi & Harris, LLP of 28 New Driftway, Scituate, MA.

The subject property is owned by Gregory P. DeConsiliis and Lisa M. DeConsiliis pursuant to a deed dated September 23, 2009 and filed with the Plymouth County Registry of Deeds in Book 46363, Page 306 (hereinafter, the “**Property**”). The Property contains 14,500 square feet of lot area, is laid out on a plan dated and recorded prior to the adoption of zoning in the Town of Scituate. The said land is more particularly identified as Lots #21 and #23 on such plan which is entitled “Plan of Land, Scituate”. The said record plan is recorded with the Plymouth County Registry of Deeds in Plan Book 1, Page 92.

Along with the said application, deed, and record plan, the Applicants filed the following materials with the Board of Appeals:

1. A copy of the current Assessor's Field Card from the Scituate Assessor showing that the dwelling on the Property was constructed in 1913 prior to dimensional zoning;
2. Plot plan showing the existing and proposed dwelling entitled "142 Humarock Beach Humarock Massachusetts" dated April 8, 2021 prepared by Morse Engineering Company, Inc. (hereinafter, the "**Plot Plan**");
3. Mass GIS and;
4. Google Earth Image of Locus

The Property is located in the Residence R-3 zoning district, contains a single-family dwelling thereon, and is pre-existing nonconforming in regard to lot frontage (50 Ft. in a 100 Ft. zone) and lot width (50 Ft. in a 100 Ft. Zone). The 1913, two story dwelling contains 1,368 Sq. Ft. of gross floor area, and is dimensionally nonconforming with regard to the requirements of the Northerly side-yard setback (4.5 Ft in an 8 Ft. zone) and the Southerly side-yard setback (6.5 Ft in an 8 Ft. zone). The Property is conforming with regard to lot area, (14,500 Sq. Ft. in a 10,000 Sq. Ft. zone).

The Property is also located in the FEMA VE-16 Zone El. 16 Ft. as indicated on the Plot Plan ². The FEMA VE-16 Zone is a designation assigned to areas within the coastal flood zone which are in the path of potential wave action and extreme high winds resulting from a storm surge. The existing dwelling is neither on pilings nor is it flood compliant.

The applicants propose to eliminate the northerly side yard nonconformity by removing the existing detached structure altogether. The Applicants also propose to relocate the existing dwelling further from the ocean, and then to construct an addition onto the relocated dwelling. This proposed structure will be positioned on the lot such that the southerly side yard nonconformity will be less nonconforming. The Humarock neighborhood consists primarily of large seaside homes. The height of the building will be increased, but will stay within the parameters of what is allowable as-of-right under the Scituate Zoning Bylaw. This relocated and altered structure will be entirely elevated onto piles and above the special flood hazard elevation of 16 ft. Therefore, the new structure will be compliant with FEMA standards.

The Applicants demonstrated pre-existing nonconforming status, and Board of Appeals considered the Requested Relief pursuant to the last paragraph of Zoning Bylaw Section 810.2 that provides as follows:

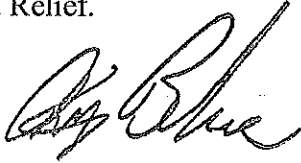
"In all other instances of alteration, reconstruction, extension or structural change to single- or two-family dwellings, the Applicants may petition the Board of Appeals for a finding under General Laws 40A, Section 6 to allow the proposed repair, alteration, reconstruction, extension or structural change."

G.L. Ch. 40A, Section 6 provides, in relevant part, that zoning ordinances or bylaws shall not apply to lawful pre-existing nonconforming structures or uses, but shall apply to any reconstruction, extension or structural change to provide for its use for a substantially different manner or to a substantially greater extent "except where alteration, reconstruction, extension or structural change to a single or two-family home does not increase the nonconforming nature of said structure" Said Section 6 further provides that "pre-existing nonconforming structures and

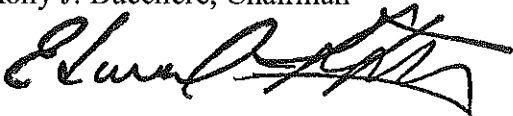
uses may be extended or altered, provided that no such extension or alteration be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming [structure or] use to the neighborhood.”¹

Based upon the application materials, including the Plot Plan, the information provided at the public hearing, and the foregoing, the Board of Appeals finds that the Applicants have demonstrated that they are entitled to the Requested Relief. The board specifically finds that the proposed reconstructed dwelling on the Property will not be substantially more detrimental than the current pre-existing nonconforming dwelling or use to the neighborhood.

For the foregoing reasons, the Board unanimously voted to GRANT the finding and the Requested Relief.



Anthony J. Bucchere, Chairman



Edward Tibbetts



George Xixis

Filed with the Town Clerk and Planning Board: 06/23/2021

This Finding 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 an appeal period of twenty (20) days.

Appeal of any decision of the Zoning Board of Appeals may be made pursuant to M.G.L. Ch. 40A, Section 17, and shall be filed within twenty (20) days of the date of filing the decision with the Town Clerk.

¹ 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).

² See Note 9. On Plot Plan