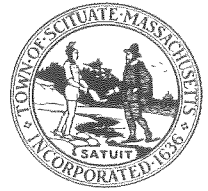


Town of Scituate

ZONING BOARD OF APPEALS

600 Chief Justice Cushing Hwy.
Scituate, Massachusetts 02066
(781)545-8716



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TOWN OF SCITUATE
TOWN CLERK

Decision of the Scituate Zoning Board of Appeals on the application of Paul M. Holland, Jr., Trustee of the Flynn Family Trust u/d/t dated June 28, 2016, Trustee's Certificate filed with Plymouth County Registry of Deeds District of the Land Court (the "Land Court Registry") as Document No. 786224 (hereinafter, the "Applicant"), for a Special Permit in accordance with Scituate Zoning Bylaw Sections 470.6F and 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 raze a dimensionally conforming single-family dwelling on a pre-existing non-conforming lot at 236 Central Avenue (Assessor Parcel No. 69-1-37) (hereinafter, the "Property") and to reconstruct a single family dwelling thereon which will be an approximately 48% increase in gross floor area, will comply with all dimensional zoning setback and height requirements, and will not be substantially more detrimental than the existing structure or use to the neighborhood (hereinafter, collectively, the "Requested Relief").

The application was received, advertised, and a public hearing was held on November 21, 2019. The following members were present and voted at the public hearing:

Anthony J. Bucchere, Chairman
Brian B. Sullivan
Edward C. Tibbetts

The Applicant was present at the public hearing and was represented by attorney Jeffrey A. De Lisi, of Ohrenberger, De Lisi & Harris, LLP of 28 New Driftway, Scituate, MA.

The Property is shown as Lot 28 on sheet 2 of subdivision plan #12049B, drawn by Irving Rosenblatt, C.E., dated April 1940, and filed at the Land Court Registry with Certificate of Title No. 6909. The record owner of the Property is David S. Keyes as described in Certificate of Title No. 65144 filed with the Land Court Registry.

Along with a cover letter and the application/abutter's list fees, the Applicant filed the following materials with Board of Appeals:

1. Application for Public Hearing;
2. Photocopy of a portion of a Purchase and Sale Agreement providing authorization by David S. Keyes to allow for the Applicant to pursue the Requested Relief;
3. Assessor's Field Card pertaining to Assessor Parcel No. 69-1-37;
4. Certificate of Title No. 65144;
5. Sheet 2 of Land Court Plan No. 1249B;
6. Photographs of the Property;
7. Plan entitled "Site Plan Showing Proposed Building Reconstruction 236 Central Avenue, Parcel 69-1-37 Scituate, MA" dated October 11, 2019, by "Stenbeck & Taylor, Inc., 844 Webster Street, Suite 3, Marshfield, MA 02050 (hereinafter, the "Plot Plan)"; and
8. Zoning Chart completed by Stenbeck & Taylor, Inc.

The Property is located in the Residence R-3 zoning district, and the Flood Plain and Watershed Protection overlay zoning district. The entire Property is located in a special flood hazard zone designated by FEMA, Zone VE (EL 18). According to the Plot Plan, the Property is conforming to lot area (10,700 Sq. Ft. of lot in a 10,000 Sq. Ft. zone), but is nonconforming as to lot frontage and width (50 ft. in a 100 ft. zone). On November 7, 2018 the Board of Appeals filed a decision with the Scituate Town Clerk issuing a special permit and finding (subsequently filed at the Land Court Registry as Document No. 778370) to allow for the substantial improvement, a reconstruction, of the dimensionally conforming dwelling constructed in 1951 on the pre-existing, nonconforming Property (hereinafter, the "2018 Decision"). Specifically, the 2018 Decision authorized the dimensionally conforming one-story approximately 1,500 square foot dwelling to be razed and reconstructed entirely within its building footprint. Following the issuance of the 2018 Decision, and in reliance thereon, the pre-existing, dwelling on the Property has since been partially demolished, leaving the foundation partially intact.

The Applicant has since entered into an agreement to acquire the Property and desires to modify the 2018 Decision and/or for the Board to issue a new decision allowing for the reconstructed dwelling to (i) have an altered building footprint elevated onto piles while remaining dimensionally conforming to the Scituate Zoning Bylaw's setback and height requirements, (ii) increase the building from one-story to two and one-half stories, and (iii) increase the gross floor area from 1,500 Sq. Ft. to 2,226 Sq. Ft., representing a 48.5% increase. The reconstructed dwelling will conform with all dimensional setback and height criteria; it will be setback from Central Avenue a distance of 30.5 Ft. in a 30 Ft. zone, will be setback a distance of 8 Ft. on each of the two side yards, and will be setback about 23 Ft. to the seawall and 150 Ft. to the mean low water mark of the Atlantic Ocean in a 20 Ft. zone.

Additionally, as indicated above, the proposed reconstructed dwelling will be elevated onto pilings, such that the top of the piles are two feet above the FEMA Flood Zone. The fact that the reconstructed building will be removed entirely outside of the Velocity Zone, and placed on piles, will represent an elimination of a flood hazard altogether. Also, the proposed reconstructed dwelling will be entirely compliant to the State Building Code, and the livable space of the reconstructed dwelling will be brought outside the FEMA Flood Zone. The

reconstructed dwelling will be consistent with the provisions of the National Flood Insurance Program, and will not affect the natural drainage patterns of the watercourse.

The Applicant demonstrated pre-existing nonconforming status (lot frontage and width), and Board of Appeals considered the requested finding 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 applicant may petition the Board of Appeals for a finding under General Laws Chapter 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 purpose or for the same purpose in a substantially different manner or to a substantially greater extent "except where alteration, reconstruction, extension or structural change to a single or two-family residential structure 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

The Board of Appeals specifically voted to find (i) that the Property is dimensionally pre-existing, nonconforming as to lot frontage and width, (ii) that the proposed reconstructed single-family dwelling will not create any new nonconformities, and (iii) to the extent that the proposal extends an existing nonconformity, such extension is not considered substantially more detrimental to the neighborhood than the existing nonconforming dwelling.

Additionally, the Board considered the Applicant's Scituate Zoning Bylaw Section 470.6.F request for a special permit. Pursuant to said Section 470.6.F, the Board may grant a special permit authorizing substantial improvements of an existing structure which legally existed on March 2, 1992, provided: (1) such improvements must be consistent with the requirements of the National Flood Insurance Program; (2) any improvements must be consistent with those provisions of the State Building Code (780 Code of Massachusetts Regulations) pertaining to flood resistant construction, in consultation with the Building Commissioner; and (3) any improvements shall not affect the natural drainage patterns of the watercourse.

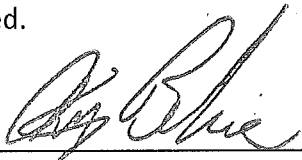
The dwelling was erected in 1951 and was recently demolished in reliance of the 2018 Decision, which specifically granted the Section 470.6.F special permit, and, in any event, the foundation still remains. Elevating the reconstructed dwelling onto piles such that the reconstructed

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).

dwelling is above the FEMA flood elevation/zone will bring the dwelling into compliance with the National Flood Insurance Program and the State Building Code. And, natural drainage patters from the Atlantic Ocean will be encouraged and not adversely affected. Accordingly, the Board found that the Applicant met the requirements of Scituate Zoning Bylaw Section 470.6.F.

Based upon the application materials, including the Plot Plan, the information provided at the public hearing, the 2018 Decision, and the foregoing, the Board of Appeals finds that the Applicant has demonstrated that he is entitled to a modification of the 2018 Decision effectively accepting the Plot Plan. The Applicant also demonstrated that he is entitled to the Requested Relief.

For the foregoing reasons, the Board unanimously voted to GRANT the special permit, finding(s), and the Requested Relief, and thereby also allowed the 2018 Decision to be modified.



Anthony J. Bucchere



Brian B. Sullivan



Edward C. Tibbetts

Filed with the Town Clerk and Planning Board:

12/17/19

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 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. Ch. 40, Section 17, and shall be filed within twenty (20) days of the date of filing the decision with the Town Clerk.