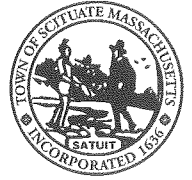


Town of Scituate

ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY
SCITUATE, MASSACHUSETTS 02066
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TOWN OF SCITUATE
ZONING BOARD

Decision of the Scituate Zoning Board of Appeals on the Application of Doris M. Crary and Dennis A. Badore, Trustees of the Doris M. Crary and Dennis A. Badore Revocable Trust dated June 28, 2012, both of 8 Oceanside Drive, Scituate, Massachusetts 02066, with a mailing address of 279 South Street, Halifax, Massachusetts 02338 (hereinafter the "Applicant") for a Special Permit/Finding pursuant to M.G.L. Chapter 40A, §6, and Scituate Zoning Bylaw (the "Bylaw") Section 810.3, and/or any other relief it deems necessary, that the reconstruction/ extension/ alteration of an existing nonconforming multi-family dwelling located within an existing nonconforming structure on a nonconforming lot, and the proposed structure, although greater than twenty (20%) percent larger gross floor area, will not be substantially more detrimental to the neighborhood than the existing nonconforming use, nonconforming structure and/or nonconforming lot.

The Application was duly received, duly advertised, and a public hearing was duly held on May 17, 2018, with the following voting members of the Scituate Zoning Board of Appeals hearing the Application:

John Hallin, Chairman
Sara J. Trezise
Edward C. Tibbetts

The Applicant was represented at the hearing by Attorney Daniel J. MacKinnon and Gregory J. Morse, P.E. of Morse Engineering Company, Inc.

The subject property is located at 87 Glades Road, Scituate Massachusetts and is owned by the Applicant pursuant to a deed recorded in the Plymouth County Registry of Deeds in Book 41811, Page 28 (hereinafter the "Subject Property"). The Subject Property is located in an R-3 Zoning District and Watershed and Floodplain Protection District. It is not located within the Water Resources Protection District. The Applicant has provided a copy of the current tax assessment card as well as previous assessor's cards from 1993 and 1928 all of which indicate that the multi-family dwelling was constructed on the Subject Property in 1920. (There was conflicting information as to whether the structure contains four or five units with the Applicant stating that during their period of ownership the dwelling contained four units, while all assessor's cards reflect the structure contained five units. For purposes of this Decision, the Board will assume the structure currently contains four units.)

The Applicant has also provided documentation evidencing that the multi-family dwelling was constructed prior to the adoption of zoning in the Town of Scituate. The pre-existing nonconformities of the Subject Property are (a) use as a multi-family dwelling; (b) frontage; (c) lot width; (d) lot area; (e) front yard setback; (f) right side yard setback, and (g) parking.

The Applicant proposes to alter the location of the existing multi-family dwelling on the Subject Property by reconstructing the structure in a different location on the lot. The new location of the structure would decrease the front yard setback nonconformity from 4.2' to 4.3', and decrease the right side yard setback nonconformity from an encroachment to 3.0'. The proposed new structure would also decrease the nonconforming use of the multi-family dwelling from four units to three units, reduce the number of bedrooms in the structure from eight to six, and provide parking for six vehicles thereby bringing available parking into compliance with current zoning requirements. The proposed new structure would result in an increase of gross floor area of 22.4% from 2786 square feet to 3,388 square feet.

M.G.L. Chapter 40A, §6 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."

Section 810.3 of the Bylaw states that "The Board of Appeals may allow the repair, alteration, reconstruction, extension or structural change of a nonconforming structure other than a single or two family dwelling (or structures accessory thereto) if the board makes a finding that such repair, alteration, reconstruction, extension or structural change will not be substantially more detrimental to the neighborhood than the existing nonconforming structure."

The Board specifically finds that the existing multi-family dwelling is a pre-existing nonconforming use/structure entitled to the protections afforded by the Bylaw and M.G.L. Chapter 40A.

In addressing whether the proposed use of the new structure will be substantially more detrimental to the neighborhood than the existing nonconforming use or structure, the Board considered the guidelines set forth in Powers v. Building Inspector of Barnstable, 363 Mass. 648 (1973); Derby Refining Company v. City of Chelsea, 407 Mass. 703 (1990); and Building Commissioner of Medford v. McGrath, 312 Mass. 461 (1942).

Based on the information presented, the Board finds that the proposed reconstruction of the structure, as shown on the plan, dated 4/17/18, submitted with the Application by Morse Engineering Co., Inc., and use as a multi-family dwelling will not be substantially more detrimental to the neighborhood than the existing nonconforming structure and use, and that the proposed structure or use will not be substantially different in character or substantially more detrimental or injurious to persons, property or improvements in the vicinity.

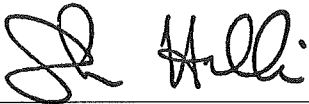
The Board finds the Applicant meets the Special Permit/Finding criteria set forth in Bylaw Section 950.3, A through E, as follows:

- A. The specific site is an appropriate location for both the use and structure as the use and structure are pre-existing nonconforming at the location, will reduce nonconformities related to both the use and structure, and will represent a significant improvement to the neighborhood from the existing structure;

- B. The multi-family use and structure will not adversely affect the neighborhood as it is a reduction in the number of units currently in the structure, it increases available parking to current zoning requirements, and reduces several nonconformities including, but not limited to, an encroachment;
- C. There will be no undue nuisance or serious hazard to vehicles or pedestrians as a result of the use or structure and in fact may reduce the hazard to vehicles and/or pedestrians by increasing the availability of parking;
- D. Adequate and appropriate facilities will be provided to assure the proper operation of the use and structure; and
- E. The structure will be serviced by municipal water and an on-site sewage disposal system and will be of no impact on any public or private water supply.

Based on all of the above the Board has unanimously voted to grant the Special Permit/Finding with the condition that the final plan submitted to obtain a building permit reflects compliance with height requirements of the Bylaw.

ZONING BOARD OF APPEALS



John Hallin, Chairman



Sara J. Trezise



Edward C. Tibbetts

Filed with the Town Clerk on June 11, 2018

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.