

Town of Scituate

ZONING BOARD OF APPEALS

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



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Decision of the Scituate Zoning Board of Appeals on the application of Richard Whitehouse and Valerie Whitehouse of 109 River Street, Humarock, Massachusetts (hereinafter, the **"Applicants"**) for a finding in accordance with Scituate Zoning Bylaw Sections 810.2, 950.2D, and/or G.L. Ch. 40A, Section 6, and/or any other relief that the Board of Appeals may grant, that the razing and reconstruction, change, extension, or alteration to the pre-existing nonconforming single-family residential dwelling, on a pre-existing nonconforming lot at 109 River Street, Humarock, Massachusetts (Assessor's Parcel 50-4-24), will not be substantially more detrimental or injurious to the neighborhood, than the existing structure or use (hereinafter, the **"Requested Relief"**).

The application was received, advertised, and a public hearing was held on December 22, 2020. The following members were present and voted at the public hearing:

Anthony J. Bucchere, Chairman

Edward C. Tibbetts

Thomas J. Cavanagh

The Applicants were represented at the hearing by Attorney William H. Ohrenberger III of Ohrenberger, De Lisi & Harris, LLP of 28 New Driftway, Scituate, MA, and by Paul Mirabito, of Ross Engineering Company, Incorporated of 683 Main Street, Norwell, MA 02061.

The subject property is owned by Richard Whitehouse and Valerie Whitehouse pursuant to deed dated December 8, 2018, and filed with the Plymouth County Registry District of the Land Court as Document No. 780511 on Certificate of Title no. 128023 (hereinafter, the **"Property"**). The Property contains 4,535 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, and is more particularly known as Lot #92 on a plan of land filed with said Land Court as Plan No. 5280K.

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 1940 prior to dimensional zoning; and
2. Plot plan showing the existing and proposed dwelling entitled "ZBA Site Plan for 109 River Street in Scituate MA" dated November 2, 2020 prepared by Ross Engineering Company, Inc. (hereinafter, the "**Plot Plan**")

The Property is located in the Residence R-3 zoning district, contains a single-family dwelling thereon, and is pre-existing, nonconforming to lot area, (4,535 Sq. Ft. in a 10,000 Sq. Ft. zone), lot frontage (50 Ft. in a 100 Ft. zone), and lot width (50 Ft. in a 100 Ft. Zone). The 1940, single story dwelling contains 751 Sq. Ft. of gross floor area, and is dimensionally conforming with all setback requirements other than the and Right Side setback (6.2 Ft in an 8 Ft. zone).

The Applicants do not propose to introduce any new nonconformities, and the proposed two-story reconstructed dwelling will be relocated on the lot such that the pre-existing nonconforming nature of the Property is reduced. According to the Plot Plan, the existing gross floor area will be increased from 751 Sq. Ft. to 2,882 Sq. Ft.

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


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).

proposed reconstructed dwelling on the Property shall not be substantially more detrimental than the current pre-existing nonconforming dwelling or use to the neighborhood.

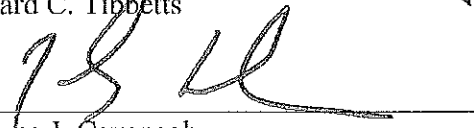
For the foregoing reasons, the Board unanimously voted to GRANT the finding and the Requested Relief



Anthony J. Bucchere, Chairman



Edward C. Tibbetts



Thomas J. Cavanagh

Filed with the Town Clerk and Planning Board: _____

1/20/2021

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.