

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 on the application of Janet C. Gibson, President of Alice's House, Inc. of 815 Union Street, Marshfield, Massachusetts (hereinafter, the "**Applicant**") for a special permit and/or finding, in accordance with Scituate Zoning Bylaw Sections 810.2, 830, 950.2B, 950.2D, and/or G.L. Ch. 40A, Section 6, and/or any other relief that the Board of Appeals may grant to allow the razing and reconstruction, extension, and/or alteration of a pre-existing nonconforming single family residential structure that was destroyed by fire on March 8, 2012, and a pre-existing nonconforming accessory structure thereto, on a pre-existing nonconforming lot at 112 Humarock Beach Road, Scituate, MA (Assessor's Parcel 72-1-13-F-R). (hereinafter, the "**Requested Relief**").

The application was received, advertised and a public hearing was held on June 18, 2015. The following members were present and voted at the public hearing:

Edward C. Tibbetts
Francis M. Lynch
Anthony J. Bucchere

The Applicant was present at the public hearing and was represented at the hearing by attorney Jeffrey A. De Lisi of Ohrenberger, De Lisi & Harris, LLP of 28 New Driftway, Scituate, MA, and by Gregory J. Morse, P.E. of Morse Engineering Co., Inc. of 19 Union Street, Scituate, MA.

The Applicant owns the subject property by Quitclaim Deed of Laura Newell, Trustee of Alice Feeney Trust, dated February 25, 1997 and recorded with the Plymouth County Registry of Deeds at Book 14992, Page 207 (hereinafter, the "**Property**"). Along with the said application and deed, the Applicant filed the following materials with Board of Appeals:

1. A copy of the record plan of land entitled "Plan of Land in Scituate Massachusetts belonging to Fourth Cliff Land" dated February 25, 1882, and recorded with the said Registry Plan Book 1, Page 91, which record plan shows that the Property was laid out on a plan prior to the adoption of dimensional zoning in Scituate;
2. A copy of an Assessor's Field Card from the Scituate Assessor for fiscal tax year 2012 showing that the dwelling on the Property which was burned in 2012 was constructed in 1920;
3. A copy of an Assessor's Field Card from the Scituate Assessor for fiscal tax year 2015 as required by the Application for Zoning Relief;
4. Plot plan showing the buildings that existed on the Property at the time of the March 8, 2012 fire and the proposed reconstructed buildings entitled "Proposed Site Plan 112 Humarock Beach (Assessor's Parcel: 72-1-13F) Scituate, MA" dated June 15, 2015 prepared by Morse Engineering Co., Inc. (hereinafter, the "**Plot Plan**").

The Property is located in the Residence R-3 zoning district. The Property contained a single-family dwelling and a detached accessory building until March 8, 2012 when both structures burned in a fire. According to the Plot Plan, the Property is nonconforming as to lot area (7,500 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). Prior to the March 8, 2012 fire, the single-family dwelling thereon was dimensionally nonconforming to the Scituate Zoning Bylaw requirements on both the northerly and southerly side yards (4.2 ft. from the northerly sideline and 6.5 ft. from the southerly sideline in an 8 ft. zone). Similarly, at the time of the 2012 fire, the detached accessory building on the Property was dimensionally nonconforming to the Scituate Zoning Bylaw requirements on the northerly side yard (4.4 ft. from the northerly sideline in an 8 ft. zone) and on the rear yard (4.7 ft. in a 20 ft. zone).

The Applicant proposes to reconstruct both the dwelling and the detached accessory building on the Property. As to the proposed reconstructed dwelling, the Applicant intends to eliminate the side yard nonconformity from the northerly sideline, and to make the southerly side yard nonconformity less nonconforming. The Property is located directly on Humarock beach and the dwelling that existed at the time of the fire was located in the FEMA velocity zone. The Applicant indicated that the proposed reconstructed dwelling will be moved further away from the beach such that it will be outside of the velocity zone thereby improving safety at the Property. As to the proposed reconstructed detached accessory building, the Applicant intends to eliminate the side yard nonconformity, and to make rear yard nonconformity less nonconforming.

Section 830 of the Scituate Zoning Bylaw provides as follows:

"A non-conforming structure or use damaged or destroyed by accidental causes may be repaired, reconstructed or restored either within the same portion of the lot or within a different portion of the lot provided that doing so renders the structure less non-conforming than previously and

used as before, provided that such repair, reconstruction or restoration shall be completed within four years of said accidental damage or destruction; and further if an application for a finding under General Laws Chapter 40A, Section 6 special permit or building permit necessary for the repair, reconstruction or restoration of the nonconforming building, structure or use has been filed by the third anniversary of such accidental damage or destruction, and if, in the opinion of the Building Commissioner the issuance of said permits is faithfully and continuously pursued, the four year time limit may be extended by the Building Commissioner by the period of time between application for and issuance of all such permits (including all periods of time attributable to litigation involving such permits) or as necessary to allow sufficient time to complete the permitted repair, reconstruction or restoration work in accordance with the Massachusetts Building Code, (provided said building or structure existed or had the right to exist at the time of application in accordance with Section 800 of the bylaw.)”

The Applicant filed its zoning application on March 4, 2015, which is prior to the third anniversary of the March 8, 2012 fire that destroyed the buildings on the Property. As indicated on the Assessor’s field cards, the buildings on the Property were constructed prior to the adoption of dimensional zoning in Scituate. The Applicant is proposing that the reconstructed buildings will be less nonconforming than those that burned in the March 8, 2012 fire.

The Board of Appeals also considered the zoning relief requested pursuant to the last paragraph of Zoning Bylaw Section 810.2, which 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.

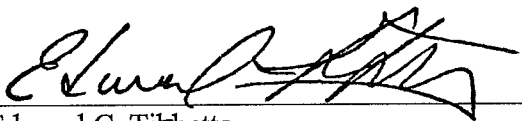
G.L. Ch. 40A, Section 6 provides, in relevant part, that zoning ordinances or bylaws shall not apply to lawful pre-existing nonconforming structures or uses, but shall apply to any reconstruction, extension or structural change to provide for its use for a substantially different purpose or for the same 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

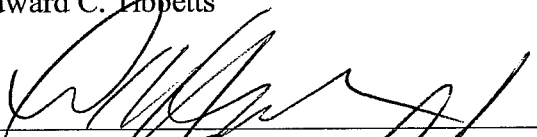
The Board of Appeals specifically voted to find (I) that the Applicant filed the application for zoning relief in a timely fashion pursuant to Section 830 of the Zoning Bylaws; (II) that the pre-existing use and structures were non-conforming as to lot area, lot frontage and lot width, that the single-family dwelling had been dimensionally nonconforming on the northerly and southerly side yards and that the detached accessory building on the Property was dimensionally nonconforming on the northerly side yard and at the rear; (III) that the proposed reconstruction shown on the Plot Plan is less nonconforming than the structures that existed on the Property at the time of the March 8, 2012 fire; (IV) that under G.L. Ch. 40A, Section 6 the proposed reconstruction does not intensify any of the pre-existing nonconformities; and (V) that the proposed reconstruction is not substantially more detrimental to the neighborhood than the previous use or structures.

Based upon the application materials, the information provided at the public hearing, and the foregoing, the Board of Appeals finds that the Applicant has demonstrated that he is entitled to the Requested Relief.


For the foregoing reasons, the Board unanimously voted to GRANT a Special Permit pursuant to the Town of Scituate Zoning Bylaws, Section 810.2, Section 830 and G.L. Ch. 40A, Section 6, to allow for the reconstruction of a single family dwelling and accessory structure as set forth in the submitted Plot Plan prepared by Morse Engineering Co., Inc. dated June 15, 2015.



Edward C. Tibbetts



Francis M. Lynch



Anthony J. Bucchere

Filed with the Town Clerk and Planning Board: July 30, 2015

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).

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.