

Town of Scituate

ZONING BOARD OF APPEALS

600 Chief Justice Cushing Hwy.
Scituate, Massachusetts 02066
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Decision of the Scituate Zoning Board of Appeals on the application of Kelli Ann Wilson, of Marshfield, Massachusetts, Trustee of Kelli Ann Wilson Trust – 2004, u/d/t dated October 8, 2004 (hereinafter, the “**Applicant**”) for a finding in accordance with Scituate Zoning Bylaw Sections 950.2D and 810.2, and/or M.G.L. Ch. 40A, Section 6, and/or any other relief that the Board of Appeals may grant, to raze a pre-existing nonconforming single-family residential dwelling on a pre-existing nonconforming lot in the Residence R-3 Zoning District at 113 River Street, Scituate, MA (Assessor’s Parcel 73-4-26-0), and to reconstruct a single-family dwelling thereon which will not create new nonconformities and will not be substantially more detrimental or injurious to the neighborhood than the existing nonconforming structure or use (hereinafter, the “**Requested Relief**”).

The application was received, advertised, and a public hearing was held on April 21, 2022. The following members were present and voted at the public hearing:

Anthony J. Bucchere, Chairman
George Xixis
Christopher Carchia

The Applicant 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 Paul Mirabito, of Ross Engineering Company, Incorporated of 683 Main Street, Norwell MA 02061.

The subject property is owned by the Applicant pursuant to Land Court Certificate of Title No. 126202 dated December 15, 2017, and filed with the Plymouth County Registry District of the Land Court as Document No. 767054 (hereinafter, the “**Property**”). The Property contains 4,678 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 #94 on Sheet 1 of subdivision plan number 5280K.

Along with the said application, deed, and record plan, the Applicant 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 1950 prior to dimensional zoning; and
2. Plot plan showing the existing and proposed dwelling entitled "ZBA Plan for 113 River Street in Scituate Mass." dated March 15, 2022 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, (4,678 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 1950, single story dwelling contains 576 Sq. Ft. of gross floor area, and is dimensionally conforming with all setback requirements other than the and front yard setback (18.4 Ft. in a 30 Ft. zone which was reduced to 26.1 Ft. due to the so-called "average setback exception" to the otherwise required front yard setback set forth in the Scituate Zoning Bylaw).

The Applicant does not propose to introduce any new nonconformities, and the proposed 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 576 Sq. Ft. to approximately 3,372 Sq. Ft.

The Applicant 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 Applicant 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."

M.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

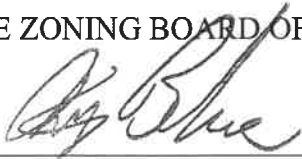
Based upon the application materials, including the Plot Plan, the information provided at the public hearing, and the foregoing, the Board of Appeals finds that the Applicant have

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).

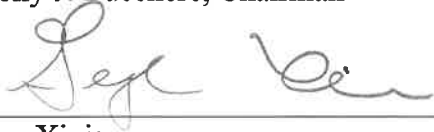
demonstrated that they are entitled to the Requested Relief. The board specifically finds that the proposed reconstructed dwelling on the Property shall not be substantially more detrimental than the current pre-existing nonconforming dwelling or use to the neighborhood.

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

SCITUATE ZONING BOARD OF APPEALS



Anthony J. Bucchere, Chairman



George Xixis



Christopher J. Carchia

Filed with the Town Clerk and Planning Board: May 9, 2022

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.