



Decision of the Scituate Zoning Board of Appeals on the request of Vickie M. Schlosser and Francis J. Schlosser of Scituate, Massachusetts to amend the Zoning Board of Appeals finding under MGL 40A § 6 and Special Permit dated September 22, 2008, allowing the construction of a one car attached garage to their pre-existing and nonconforming residence located at 117 Lawson Road, Scituate, Massachusetts.

The request was received, abutters given notice, and a public hearing was duly held on August 15, 2013 with the following members of the Zoning Board of Appeals hearing the request:

Sara J. Trezise, Chair  
Edward C. Tibbetts  
Francis M. Lynch

The September 22, 2008 finding and special permit found that the single family dwelling located at 117 Lawson Road was a pre-existing and nonconforming structure and that the proposed addition of a single car garage to the dwelling, by extending the currently nonconforming setback from Lawson Road, increased the nonconforming nature of the existing single family dwelling. The Board found, however, that the increase to the nonconforming nature of the dwelling was not substantially more detrimental to the neighborhood than the preexisting nonconformity. In addition, the Board found the proposal met the special permit provisions of Section 1030.2 of the Bylaw (now Section 950.3 of the Bylaw), and that the use reflected the nature and purpose of the use prevailing when the bylaw took effect; that there was no difference in the quality or character, as well as the degree of use; and that the proposed use was not different in kind in its effect on the neighborhood. Said September 22, 2008 finding and special permit was recorded with the Plymouth County Registry of Deeds in Book 36462 Page 328.

Prior to their application for a special permit in 2008, Mr. and Mrs. Schlosser had sought a variance from the Board of Appeals for the construction of the garage as now requested by the present request for a modification to the permit issued on September 22, 2008. At that time, the Board was not convinced a variance was warranted. The Schlossers withdrew that application and later sought a finding and special permit attaching the garage to the house that was approved as described above.

At the August 15, 2013 public hearing, Mr. and Mrs. Schlosser requested the Board amend its prior decision and allow the garage to be constructed as a detached accessory structure to their dwelling. The Board reviewed the revised plan dated July 23, 2013 of E.E.T., Inc. of Marshfield, Massachusetts showing the garage detached from the dwelling and located 22.69 feet from Lawson Road. The previously approved attached garage was located 24.92 feet from Lawson Road.

The Board discussed the case of Huntington v. Zoning Board of Appeals of Hadley 12 Mass. App. Ct. 710 (1973) which allows an amendment to a Board's decision, even a substantial amendment, if proper notice of the request is given and the request is heard at a public meeting. Here, the Board determined that the applicant was not requesting a substantial amendment to the special permit, but that notice should be given to abutters. Such notice was properly given to abutters.

In addition, the Board discussed the case of Gale v. Zoning Board of Appeals of Gloucester 80 Mass. App. Ct. 331 (2011). Under Gale, when considering a special permit under Mass. Gen. L. ch. 40 section 6, the Board must first identify the particular respect or respects in which the existing structure does not conform to the present by-law and then determine whether the proposed alteration or addition would intensify the existing nonconformities or result in additional ones. If the answer to that inquiry is in the affirmative, a finding of no substantial detriment under the second sentence of Chapter 40A § 6 would be required to issue, or amend, the special permit.

One abutter spoke in favor of the Board allowing the detached garage, and no one at the public hearing spoke against the request.

The Board found that the proposed detached garage would be more attractive than the already permitted attached garage as it would appear less in scale, and have less of a visual effect to the neighborhood. The Board also found that the garage requested is an accessory use/structure to the existing dwelling, which use is customary in connection with the principal structure; is clearly incidental to the use of the principal structure; is located on the same lot with the principal structure; and does not constitute, in effect, a conversion of the principal use of the premises to one not permitted in the district.

The Board, as it did in 2008, found that the current dwelling was pre-existing and nonconforming to Scituate's Bylaw due to the dwelling being 24.77 feet from the layout of Lawson Road. The Board further found that the requested detached garage would create a new nonconformity by being 22.69 feet from the road layout. The Board found, however that the new nonconformity is not substantially more detrimental to the neighborhood than the existing nonconformity.

For the foregoing reasons, the Board unanimously voted to GRANT Mr. and Mrs. Schlosser's request to amend the Board's 2008 finding under MGL Chapter 40A § 6 and Special Permit and allow the previously approved garage to be detached from the dwelling as shown on the July 23, 2013 revision to the original Application Plan.

ZONING BOARD OF APPEALS

  
Sara J. Trezise, Chair

  
Francis M. Lynch

  
Edward C. Tibbetts

Filed with the Town Clerk and the Town Planning Board on: August 22, 2013.

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