

Town of Scituate

ZONING BOARD OF APPEALS

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Decision of the Scituate Zoning Board of Appeals on the application of Patricia A. Huie and John P. Kelly of 12 Alden Street (hereinafter, the “**Applicants**”) for a finding in accordance with G.L. Ch. 40A, Section 6 and Section 810.2C [formerly Section 810.2B, as amended] of the Scituate Zoning Bylaw, and/or any other relief that the Board of Appeals may grant, that the alteration, extension, or structural change in the form of an approximately 100 SF addition to a pre-existing, nonconforming single-family home on a pre-existing, nonconforming lot at 12 Alden Street, Scituate, MA (Assessor Parcel No. 73-7-5-0) (hereinafter, the “**Property**”) will not be substantially more detrimental or injurious to the neighborhood than the existing, nonconforming structure or use (hereinafter, collectively, the “**Requested Relief**”).

The application was received, advertised, and a public hearing was held on April 20, 2023 and continued to May 18, 2023. The following members were present and voted at the public hearing:

Susan Harrison, Acting Chairperson
Christopher Carchia
Justin M. Marks

The Applicants were represented at the public hearing by their attorney, Jeffrey A. De Lisi, of Ohrenberger, De Lisi & Harris, LLP of 28 New Driftway, Scituate, MA.

The Property is owned by the Applicants as appears in Certificate of Title No. 131307 filed with Plymouth County Registry District of the Land Court. The Property was laid out and shown as Lot 9 on a Plan No 5280-O, which plan was filed in 1943 at said Land Court registry prior to the adoption of residential zoning in Scituate.

In addition to the required application and zoning chart, the Applicant filed the following materials with Board of Appeals:

1. Cover letter of Attorney De Lisi dated March 9, 2023;
2. Assessor's Field Card;
3. Said Certificate of Title and Land Court Plan
4. Arial photograph of the Property;
5. MassGIS schematic of the Property; and
6. Grady Consulting plot plan entitled "SITE PLAN ASSESSORS LOT 73-7-5 12 ALDEN STREET SCITUATE, MASSACHUSETTS" dated March 1, 2023 (hereinafter, the "**Plot Plan**").

The Property is located in the Residence R-3 zoning district, and contains a single-family dwelling thereon which was constructed in 1949, according to the field card of the Tax Assessor. The Plot Plan depicts an existing, single-story dwelling having a foundation of approximately 600 SF. The said dwelling contains an uncovered deck extending into the front yard & side yard, as well as a concrete block foundation extending from the westerly side of the dwelling to approximately 1.5 Ft. from the westerly property boundary which is used to support an exterior stairway extending below the surface of the ground to the cellar. The Property is nonconforming insofar as it has 3,200 SF of lot area in a 10,000 SF zone, and 40 Ft. of lot frontage & lot width in a 100 Ft. zone. The Application and Plot Plan indicate that the dwelling is nonconforming in the front and westerly (right) side yard 23.2 Ft. and 1.5 Ft., respectively, in a zone that requires 30 Ft. and 8 Ft., respectively. The Board noted that the Application and Plot Plan do not correctly calculate the westerly side yard setback; it should be measured from the exterior façade of the dwelling, and not from the face of the concrete block foundation that supports the exterior subsurface stairs.

The Applicant desires to construct an approximately 4.4 Ft. x 22.7 Ft. addition onto the dwelling extending closer to the westerly side yard than the current dwelling. The addition will be no closer to the property line than the existing concrete block foundation which provides support for the exterior subsurface stairs. This addition will allow for the owner to access the cellar, which contains laundry facilities, from the inside of the dwelling.

The Board opened the conversation to input from the public, and no persons spoke.

As indicated above, the Applicant demonstrated pre-existing, nonconforming status, and Board of Appeals considered the Requested Relief pursuant to Zoning Bylaw Section 810.2C.

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

Section 810.2C states as follows:

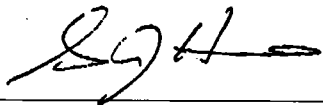
“In all other instances of alteration, reconstruction, extension or structural change to single or two family dwellings, the applicant may petition the Board of Appeals for a finding under General Laws Chapter 40A, Section 6 to allow the proposed repair, alteration, reconstruction, extension or structural change, which the Board may grant if the Board finds the proposed repair, alteration, reconstruction, extension or structural change of such nonconforming structure so as to increase an existing nonconformity, or create a new nonconformity, including the extension of an exterior wall at or along the same nonconforming distance within a required yard setback, shall require the issuance of a variance from the Board of Appeals.”

The Board of Appeals specifically voted to find (i) that the Property and existing dwelling are dimensionally pre-existing, nonconforming, (ii) that the proposed addition to the nonconforming westerly side of the dwelling will not create any new nonconformities, and (iii) to the extent that the proposal extends an existing nonconformity, such extension is not considered substantially more detrimental to the neighborhood than the existing nonconforming dwelling or use.

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 has demonstrated that she is entitled to the Requested Relief.

For the foregoing reasons, the Board unanimously voted to GRANT the requested finding, and the Requested Relief, upon the condition that the Applicant submit a modified Plot Plan that corrects the inaccurate existing westerly side yard setback calculation from 1.5 Ft. to 5.9 Ft.

SCITUATE ZONING BOARD OF APPEALS



Susan Harrison, Acting Chairperson

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).



Christopher Carchia



Justin M. Marks

Filed with the Town Clerk and Planning Board: June 30, 2023

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 or Land Court Registry 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.