

# Town of Scituate

ZONING BOARD OF APPEALS

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Decision of the Scituate Zoning Board of Appeals on the application of Marvell Homes, LLC of Scituate, Massachusetts for a finding under MGL 40A § 6 and a special permit to raze and reconstruct the pre-existing nonconforming single family dwelling at 12 Pond View Avenue Extension, Scituate, Massachusetts.

The application was received, advertised and a public hearing was duly held on September 17, 2015 with the following members of the Zoning Board of Appeals hearing the application:

Sara J. Trezise  
Francis M. Lynch  
Anthony J. Bucchere

The property that is the subject matter of this application is located in the R-3 Residential District. The property does not lie in the Town of Scituate Flood Plain and Watershed Protection District, nor does the property lie in the Town of Scituate Water Resource Protection Zoning District.

At the time of the application, title to the premises was in the name of Jeremiah A. Donovan, III and Marion E. Donovan by way of a deed dated November 18, 2014 and recorded with the Plymouth County Registry of Deeds in Book 44961 Page 144. The Applicant is the contract purchaser of the property.

The premises contain 7,000 square feet of land and contain 73 feet of frontage along Pond View Avenue Extension, a public way. The R-3 Residential District requires 10,000 square feet lot area and 100 feet of frontage and lot width. In addition, the R-3 Residential District requires a 30 feet front setback, 8 feet side yard setbacks, 8 feet rear

yard set back for detached accessory structures and 20 feet rear yard set back for all other buildings.

The lot was created by a plan dated August 24, 1894 which plan is recorded with the Plymouth County Registry of Deeds in Plan Book 1 Page 160. The lot therefore is pre-existing and is nonconforming as to lot area and frontage.

The existing dwelling located upon the lot was constructed in 1850. The existing dwelling is setback 17.5 from Pond View Avenue Extension and lies 7.0 feet from the Westerly sideline. The existing dwelling therefore, is nonconforming as to its front yard and westerly side yard setback.

At the September 17, 2015 public hearing, the Board reviewed with the Applicant a plan drawn by Ross Engineering Company, Inc. of Norwell, Massachusetts dated August 11, 2015 and a rendering of the proposed reconstructed dwelling. The Board discussed with the Applicant the proposed dwelling's front and rear set back, at which time the Applicant requested a continuance of the public hearing and opportunity to revise the plans.

The public hearing was continued to October 15, 2015 at which time revised plans dated September 22, 2015 showing the proposed dwelling would reduce the nonconforming front yard setback from 17.5 feet to 18 feet, and showing the proposed dwelling would meet side and rear setback requirements of the Bylaw. A second revised plan dated October 15, 2015 which added a zoning chart and a note stating the existing and proposed gross floor area of the dwelling and a revised rendering of the proposed reconstructed dwelling was also reviewed with the Board. The existing dwelling contains 1,512 square feet of gross floor area and the proposed dwelling contains 2,625 square feet of gross floor area, resulting in a 74% increase in the gross floor area.

At the initial public hearing, four abutters spoke, with one abutter opposed to the Application; and the opposing abutter also spoke against the Application at the continued public hearing.

The Board discussed the case of Gale v. Zoning Board of Appeals of Gloucester (2012), which would allow the proposed reconstruction if the Board first identified the particular respect or respects in which the existing structure does not conform to the present Bylaw and then determine whether the proposed reconstruction, alteration or addition would intensify the existing nonconformities or result in additional ones. If the answer to that inquiry is in the negative, a finding under Chapter 40A § 6 and Special Permit would be required.

Based upon the evidence presented, the Board finds that the both the lot and existing single family dwelling located at 12 Pond View Avenue Extension are pre-existing and nonconforming to the bylaw. The Applicants' proposal to raze and reconstruct the single family dwelling is entitled to be reviewed by the Board pursuant to the terms of MGL c. 40A § 6, paragraph one.

The Board finds that the lot does not conform to the Bylaw's lot area and frontage requirements, and the existing dwelling does not conform to the front and side yard setback requirements of the Bylaw. In addition, the Board finds that the proposal does not increase or intensify any nonconformities, and does not create any new nonconformity. The Board finds that the proposal will decrease the pre-existing nonconforming front yard setback and will eliminate the non-conforming westerly side yard setback requirement of the Bylaw. The Board finds that the proposed structure will conform in all other respects to the dimensional requirements of the Bylaw.

Pursuant to Section 1030.2 of the Bylaw, the lot is appropriate for a single family dwelling. The use of the dwelling should not adversely affect the neighborhood, nor create any undue nuisance or hazard to vehicles or pedestrians. The town's Board of Health and the Building Commissioner will ensure that appropriate facilities are provided to assure the proper operation of the single family dwelling. The proposed use of dwelling will not have a significant impact on any public or private water supply, and the lot is not located within the Water Resource Protection District. In addition, the Board finds that the use reflects the nature and purpose of the use prevailing when the bylaw took effect, that there is no difference in the quality or character, as well as the degree of use, and the proposed use is not different in kind in its effect on the neighborhood.

For the foregoing reasons, the Board unanimously voted to GRANT the Applicant's request for a finding under MGL Chapter 40A § 6 and for a Special Permit to raze and reconstruct the single family dwelling as shown on the revised Application Plans.

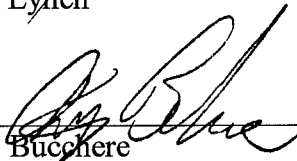
#### ZONING BOARD OF APPEALS



Sara J. Trezise



Francis M. Lynch



Anthony J. Bucchiere

Filed with the Town Clerk and the Planning Board on NOV.15/2015

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.