

Town of Scituate

ZONING BOARD OF APPEALS

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Scituate, Massachusetts 02066
(781) 545-8716



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Decision of the Scituate Zoning Board of Appeals on the application of Derek Delmonico and Tracey J. M. Delmonico, Trustee of the Tracey J. Delmonico 2004 Trust, of 13 Circuit Avenue, Scituate, Massachusetts (hereinafter, the “**Applicants**”) for a finding in accordance with Scituate Zoning Bylaw Sections 810.2 and G.L. Ch. 40A, Section 6, and/or any other relief that the Board of Appeals may grant, to raze the existing, nonconforming single-family dwelling on a pre-existing nonconforming lot at 13 Circuit Avenue (Assessor Parcel No. 50-1-20-0) and to reconstruct said dwelling with a fully dimensionally conforming dwelling which completely eliminates an existing nonconforming setback and does not intensify an existing nonconformity, but which increases the gross floor area by more than 20%. (hereinafter, the “**Requested Relief**”).

The application was received, advertised, and a public hearing was held on June 17, 2021. The following members were present and voted at the public hearing:

Anthony J. Bucchere, Chairman
George Xixis
Susan Harrison

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

The subject property is owned by the Applicants pursuant to a deed dated December 23, 2019, and recorded with the Plymouth County Registry of Deeds in Book 52185, Page 269 (hereinafter, the “**Property**”). The Property contains 29,124 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 1 on such plan which is entitled “Plan of house lots on THE FIRST

CLIFF, Scituate, Mass. 1922". The said record plan is recorded with the Plymouth County Registry of Deeds in Plan Book 3, Page 506.

Along with the said application, deed, and record plan, the Applicants 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 1930 prior to dimensional zoning;
2. Plot plan showing the existing and proposed dwelling entitled "Plot Plan Assessors Lot 51-1-20 #13 Circuit Avenue Scituate, Massachusetts" dated December 1, 2020 prepared by Grady Consulting, L.L.C. (hereinafter, the "**Plot Plan**");
3. Zoning Chart Completed by Kevin Grady, P.E.;
4. Mass GIS;
5. Google Earth Image of Locus

The Property is located in the Residence R-3 zoning district, contains a single-family dwelling thereon, and is pre-existing nonconforming in regard to lot frontage and width (64.31 Ft. in a 100 Ft. zone). The two-story dwelling contains 2,098 Sq. Ft. of area, and is dimensionally nonconforming with regard to the front-setback (19.9 Ft. in a 30 Ft. zone). The Property is conforming with regard to lot area, (29,124 Sq. Ft. in a 10,000 Sq. Ft. zone).

The Applicants do not propose to introduce any new nonconformities, and the proposed two-story reconstructed dwelling will be relocated on the lot such that the pre-existing nonconforming front-yard setback is eliminated entirely. According to the Plot Plan and testimony at the hearing, the existing gross floor area will be increased from approximately 2,098 Sq. Ft. to approximately 4,250 Sq. Ft., an increase of 103%. The Applicants propose to raze and reconstruct the existing single-family dwelling in a manner which reduces the nonconforming nature of the Property. The Board also notes that the existing structure is one of the smallest dwellings on Circuit Avenue, and the reconstructed dwelling will be more in keeping with the large homes along Circuit Avenue.

The Applicants 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:

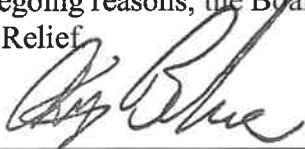
"In all other instances of alteration, reconstruction, extension or structural change to single- or two-family dwellings, the Applicants may petition the Board of Appeals for a finding under General Laws 40A, Section 6 to allow the proposed repair, alteration, reconstruction, extension or structural change."

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

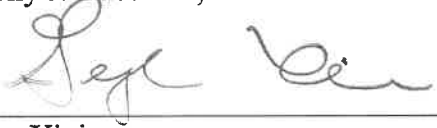
substantially more detrimental than the existing nonconforming [structure or] use to the neighborhood.”¹

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 Applicants have demonstrated that they are entitled to the Requested Relief. The Board specifically finds that the proposed reconstructed dwelling on the Property will 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.



Anthony J. Bucchere, Chairman



George Xixis



Susan Harrison

Filed with the Town Clerk and Planning Board: June 24, 2021

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.

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).

² See Note 9. On Plot Plan