

# Town of Scituate

## ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY  
SCITUATE, MASSACHUSETTS 02066  
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Decision of the Scituate Zoning Board of Appeals on the application of Frank and Joyce McNeil of 4 Elizabeth Lane, West Bridgewater, MA for a Finding under MGL 40A § 6 and the Scituate Zoning Bylaws 810.2 to allow an addition to a pre-existing non-conforming dwelling on a nonconforming lot at 15 Hazel Avenue, Scituate, Massachusetts, increasing the gross floor area of the structure by more than 20%.

The application was received, advertised and a public hearing was duly held on November 15, 2017 with the following members of the Zoning Board of Appeals hearing the application:

John Hallin, Chairman  
Sarah J. Trezise  
Edward C. Tibbetts  
Anthony 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. The existing structure has a GFA of approximately 1,397 square feet. The proposed reconstructed structure will have a GFA of 1,873 square feet, an increase of 34%.

At the time of the application, title to the premises was in the name of Francis D. McNeil and Joyce E. McNeil by way of a deed dated January 30, 2014 and recorded with the Plymouth County Registry of Deeds in Book 44048 Page 245.

The property contains 9,400, more or less, square feet of land with 93.87 feet of frontage along Hazel Avenue, a public way, and lot width of less than 95 feet. The R-3 Residential District requires 10,000 square feet lot area and 100 feet of frontage and 100 feet of 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.

According to the Quitclaim Deed, the lot was created by a plan dated February 8, 1946, which plan is recorded with the Plymouth County Registry of Deeds in Plan Book 6 Page 909. According to the submitted Town of Scituate Assessors Card, the existing dwelling located upon the lot was constructed in 1933. The lot and dwelling are pre-existing and nonconforming to the bylaw as to its lot frontage, lot width and front setback.

The following table illustrates the existing and proposed (as amended by the Boards decision) non-conformities relative to current applicable dimensional requirements contained in Section 600 – Dimensional Regulations.

	<b>Lot Area (sq. ft.)</b>	<b>Lot Frontage</b>	<b>Lot Width</b>	<b>Property Line Front Setbacks Hazel Avenue REQUESTED</b>	<b>Property Line Front Setbacks Hazel Avenue GRANTED</b>
<b>Required</b>	10,000	100'	100'	30'	30'
<b>Existing</b>	9,400	93.87' ±	95.24' ±	29.3'	29.3'
<b>Proposed</b>	9,400	93.87' ±	95.24' ±	21.2'	29.2'

The Board reviewed with the Applicant plans drawn by C S Kelley Land Surveyors of Pembroke, Massachusetts dated September 27, 2017 and by Fischer Associates stamped and dated 6/15/2017. The proposal calls for the construction of a one story addition on the northerly side that will be closer than the existing front setback (29.3feet).

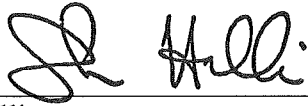
The case of Gale v. Zoning Board of Appeals of Gloucester (2012), allows the addition to a pre-existing non-conforming single family dwelling if the Board first identifies the particular respect or respects in which the existing structure does not conform to the present Bylaw and then determine whether 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 dwelling located at 15 Hazel Avenue are pre-existing and nonconforming to the bylaw. The Applicant's proposal to construct a one story addition is entitled to be reviewed by the Board pursuant to the terms of MGL c. 40A § 6, paragraph one.

The Board found that the lot and dwelling located thereon are preexisting and nonconforming to the Scituate Zoning Bylaw as to lot area, lot frontage, and lot width, and front setback. The Board further finds that the proposed addition, as conditioned, will not create any new nonconformity and to the extent that it may intensify any existing nonconformities such intensifications are not significantly more detrimental to 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 construct an addition dwelling by adding a one story addition as shown on the Application Plan by C.S. Kelley Land Surveyors stamped and dated 9/27/2017 and by Fischer Associates stamped and dated 6/15/2017. The Board conditions that the porch area to the east shall not be covered other than a pergola or the like and that the proposed addition to the north shall be located no less than 29.2' from the property line on Hazel Avenue and submission of a revised site plan reflecting said changes must be received prior to issuance of a building permit.

SCITUATE ZONING BOARD OF APPEALS



John Hallin



Sara J. Trezise



Edward C. Tibbetts

Filed with the Town Clerk and Planning Board on December 14, 2017

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.