

Town of Scituate

ZONING BOARD OF APPEALS

600 Chief Justice Cushing Hwy.
Scituate, Massachusetts 02066
(781) 545-8716



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Decision of the Scituate Zoning Board of Appeals on the application of J. Stephen Bjorklund for a Special Permit/Finding pursuant to M.G.L. c. 40A § 6 and Section 810.2 of the Scituate Zoning Bylaw to allow the razing and reconstruction of the pre-existing, non-conforming single-family dwelling located at 161 Captain Pierce Road, Scituate, Massachusetts 02066 (Assessor's Map 26, Block 2, Parcel 7) and increasing the gross floor area by more than 20%.

The application was received, advertised and a public hearing was duly held on February 16, 2023 with the following members of the Zoning Board of Appeals hearing the application:

George Xixis, Chairman
Susan Harrison
Christopher Carchia

The property that is the subject matter of this application is located in the R-2 Residential District. The property does not lie in the Town of Scituate Flood Plain and Watershed Protection District, but does lie in the Town of Scituate Water Resource Protection Zoning District. The property is located within FEMA ZONE X as shown on FIRM Community Panel 25023C 0109L dated July 6, 2021.

At the time of the application, title to the premises was in the name of Nancy M. Young surviving Tenant by the Entirety with Richard D. Young, by way of a deed dated April 4, 2003 and recorded with the Plymouth County Registry of Deeds in Book 26005 Page 248, and is shown on the Scituate Assessors Map 26 Block 2 Parcel 7-0.

The premises contain 19,295 square feet of land, more or less and contains 95.86 feet of frontage and 94 feet of lot width along Captain Pierce Road, a public way. The R-2 Residential District requires 20,000 square feet lot area and 100 feet of frontage and 125 feet of lot width. In addition, the R-2 Residential District requires a 30 feet front setback, 15 feet side yard setbacks, 8 feet rear yard set back for detached accessory structures and 30 feet rear yard setback for all other buildings.

The lot is shown on a plan dated January 2, 1947, drawn by S. Litchfield, Surveyor, which plan is recorded with the Plymouth County Registry of Deeds in Plan Book 7, Page 186.

The existing single-family dwelling located upon the lot was constructed, according to The Scituate Assessor's records, in 1920. In addition to lot area, frontage and lot width, the existing dwelling does not meet the rear and side yard setback requirements of the Town of Scituate Zoning Bylaw; however, the dwelling is conforming to its Westerly existing side yard setback requirement and front setback.

The lot upon which the dwelling sits is nonconforming as to lot area, lot width, and frontage. Both the lot and the existing single-family dwelling, therefore, are pre-existing and non-conforming to the Scituate Zoning Bylaw.

At the February 16, 2023 public hearing, the Board reviewed with the Applicant a plan drawn by Morse Engineering Company, Inc. of Scituate, Massachusetts dated January 17, 2023. The proposal calls for the razing of the current 771 square foot single family dwelling and reconstructing a 3,200 single family dwelling. The proposed single-family dwelling will meet all front, rear and side yard setbacks.

Chapter 40A § 6 of Massachusetts General Laws and the relevant case law allows the reconstruction, alteration or 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 is required.

Based upon the evidence presented, the Board finds that the both the lot and existing single-family dwelling known as and numbered 161 Captain Pierce Road are pre-existing and nonconforming to the bylaw as to lot area, width, frontage and side yard and rear yard setback requirements. The Applicant's proposal to raze and reconstruct the existing single-family dwelling is entitled to be reviewed by the Board pursuant to the terms of M.G.L. c. 40A § 6, paragraph one.

The existing floor area of the dwelling is 771 square feet, and the proposed floor area of the reconstructed dwelling is 3,200 square feet, a 315% increase. Under Section 810.2 of the Scituate Bylaw, the alteration, reconstruction, extension or structural change to a nonconforming single- or two-family dwelling that increases the gross floor area by more

than 20% requires a Board of Appeals finding under General Laws Chapter 40A, Section 6 and Special Permit.

The Board found that the lot and single-family dwelling located thereon is preexisting and nonconforming to the Scituate Zoning Bylaw as to lot area, lot width, frontage, rear yard setback, and Easterly side yard setback. The Board further found that the proposed single-family dwelling will eliminate two existing nonconformities, and not create any new nonconformities of the Scituate Zoning By-Law.

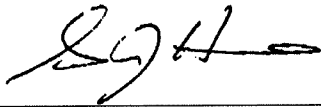
Pursuant to Section 950.3 of the Bylaw, the lot is appropriate for a single-family dwelling. The use of the dwelling should not adversely affect the neighborhood, nor create any undue nuisance or hazard to vehicles or pedestrians. The town's Board of Health and the Building Commissioner will ensure that appropriate facilities are provided to assure the proper operation of the single-family dwelling. The proposed use of dwelling will not have a significant or cumulative impact on any public or private water supply. The lot is located within the Water Resource Protection District and the proposed dwelling meets all requirements of Section 520.5.F. 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 M.G.L. Chapter 40A § 6 and for a Special Permit to raze and reconstruct the single-family dwelling as shown on the Application Plan.

SCITUATE ZONING BOARD OF APPEALS



George Xixis, Chairman



Susan Harrison



Christopher Carchia

Filed with the Town Clerk on March 7, 2023

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 in a court of competent jurisdiction. Proof of that filing shall be provided to the Town Clerk within twenty (20) days of the date of the filing of the decision with the Town Clerk.