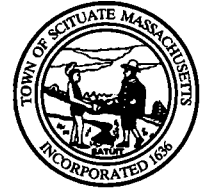


Town of Scituate

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 David and Nancy Creighton, 18 Mitchell Avenue, Scituate, Massachusetts (hereinafter, the "**Applicants**") for a finding in accordance with Scituate Zoning Bylaw Sections 810.2.C, 950.2D, and/or M.G.L Ch. 40A, Section 6, and/or any other relief that the Board of Appeals may grant, to raze and rebuild a nonconforming, pre-existing dwelling in respect to lot area, frontage, width, and dimensional setbacks at 18 Mitchell Avenue, Scituate, Massachusetts (Assessor's Parcel 15-4-13-0) (hereinafter, the "**Requested Relief**").

The application was received, advertised, and a public hearing was held on August 17, 2023. The following members were present and voted at the public hearing:

George Xixis, Chairman
Justin M. Marks
Christopher Carchia

The Applicants were represented by Attorney Matthew E. Mitchell of Ohrenberger, De Lisi & Harris, LLP of 28 New Driftway, Scituate, MA.

The subject property is owned by David and Nancy Creighton. For title purposes see deed dated October 8, 1982, and filed with the Plymouth County Registry of Deeds in Book 5223, Page 151. According to the Scituate Tax Assessor, the property is improved with two separate single-family dwellings, both of which were constructed prior to the adoption of zoning in Scituate. On December 12, 2022, the Scituate Planning Board voted to endorse an ANR plan dividing the said property into two lots, and the Certificate of Action was filed with the Town Clerk. Each lot contains one of the existing dwellings. This application concerns Lot 1 shown on the ANR plan, which presently contains the dwelling that has an address of 18A Mitchell Avenue (the "**Locus**"). The Locus is located in the R-3 zoning district. The dwelling at 18A Mitchell Avenue is nonconforming to the rear yard setback (1.5 ft. in a 20 ft. zone), and to the easterly side yard setback (6.6 ft. in a 8 ft. zone.) The Applicants propose to raze the said dwelling on the Locus and replace it with a reconstructed dwelling that (i) entirely conforms with the required

side yard setback (i.e., the side yard setback nonconformity will be eliminated), and (ii) significantly improves the setback nonconformity on the rear yard by increasing it from 1.5 ft. to 9.4 ft.

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; and
2. Plot plan entitled "PLAN TO ACCOMPANY ZBA APPLICATION" dated May 3, 2023, prepared by Morse Engineering Co., Inc. (hereinafter, the "**Plot Plan**").
- 3.

By proposing to reconstruct the dwelling more or less in the center of the buildable portion of the Locus, the Applicants do not propose new nonconformities, and the proposed two-story reconstructed dwelling will be relocated on the Locus such that the nonconforming setbacks of the Locus are either eliminated entirely or significantly reduced. The proposed reconstruction would bring the dwelling on the Locus into greater congruity with the character of the neighborhood, and would benefit abutting properties because it would be moved away from the property boundaries.

Given the foregoing, together with M.G.L. Ch. 41, Section 81L and Zoning Bylaw Section 610.3, the Board was satisfied that the Applicants demonstrated pre-existing, nonconforming status. Thus, the Board considered the Requested Relief pursuant to the last paragraph of Zoning Bylaw Section 810.2.C, that provides, in part, as follows:

"In all other instances of alteration, reconstruction, extension or structural change to structures governed by this bylaw, the applicant 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, which the Board may grant if the Board finds the proposed repair, alteration, reconstruction, extension or structural change will not be substantially more detrimental to the neighborhood than the existing nonconforming structure."

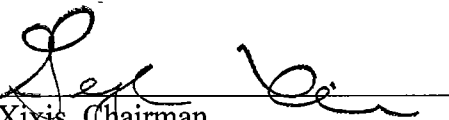
M.G.L. Ch. 40A, Section 6 provides, in relevant part, that zoning ordinances or bylaws shall not apply to lawful pre-existing nonconforming structures or uses, but shall apply to any reconstruction, extension or structural change to provide for its use for a substantially different manner or to a substantially 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

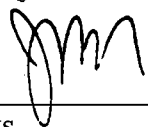
¹ The words "structure or" appearing in the brackets in the quoted sentence were supplied by Willard v. Board of Appeals of Orleans, 25 Mass. App. Ct. 15,21,514 N.E.2d 369 (1987), and later noted and applied in Rockwood v. Snow Inn Corp., 409 Mass. 361, 363 n.4, 364, 566 N.E.2d 608 (1991).


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 is pre-existing and nonconforming, that its reconstruction will not create any new nonconformities, and that, to the extent that it intensifies an existing nonconformity, that such intensification 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.

SCITUATE ZONING BOARD OF APPEALS


George Xixis, Chairman


Justin M. Marks


Christopher Carchia

Filed with the Town Clerk on September 29, 2023

This decision will not become effective until such time as an attested copy 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.