



Decision of the Scituate Zoning Board of Appeals on the application of Leabman Real Estate Services, LLC, 1490 Central Avenue, Needham, MA 02992 (hereinafter, the "Applicant") for a Special Permit/Finding pursuant to M.G.L. Chapter 40A, Section 6, and Scituate Zoning Bylaw (the "Bylaw") Sections 810.2 and 420.2 that the reconstruction/extension/alteration of an existing nonconforming single family residential structure on a nonconforming lot, and the proposed structure, although greater than 20% larger, will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or lot.

The application was received, advertised and a public hearing was duly held on August 15, 2013, with the following members of the Zoning Board of Appeals hearing the application:

Sara J. Trezise, Chairman  
Edward C. Tibbetts  
Francis Lynch

The subject property (the "Subject Property") at 2 Lighthouse Road is owned by 2 Lighthouse Road Nominee Trust, Selena A Fink and Lindsay Fink, Trustees (See Quitclaim Deed, Book 41402/Page 160, filed with the Plymouth County Registry of Deeds). It is located in Residence R-3 Zoning District, and is located within the Water Resources Protection District. The Subject Property is 4,875 ± SF with 29± foot frontage on Garden Road and 16± foot frontage on Jericho Road. The Applicant has provided a copy of the current tax assessment from the Town of Scituate which indicates that one of the two single family dwellings on the Subject Property was constructed in 1925, prior to the adoption of zoning in the Town of Scituate. The pre-existing nonconformities of the Subject Property are (a) lot area, (b) frontage (45 feet, 100 feet required), (c) westerly side yard setback (2.5 feet, 8 feet required, 2.5 feet proposed) and (d) easterly side yard setback (6.7 feet, 8 feet required, 8 feet proposed).

The Applicant proposes to alter the existing two single family dwellings on the Subject Property by razing the northerly "cottage" and adding a three story addition to the remaining (southerly) dwelling that will increase living area approximately 2,400 sq. ft. (more than 20% ; approximately 192%). The Subject Property currently consists of two separate single family dwellings on one lot. The proposed alteration will end this nonconformity as well as the easterly side yard setback nonconformities.

M.G.L. Ch. 40A Section 6 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.”

The Board specifically FINDS that the existing single family dwelling is a pre-existing nonconforming structure/use entitled to the protection afforded in M.G.L. Ch. 40A Section 6.

In addressing whether the proposed use of the new structure will be substantially more detrimental to the neighborhood than the existing nonconforming use or structure, the Board considers the guidelines set forth in Powers v. Building Inspector of Barnstable, 363 Mass. 648 (1973), Derby Refining Company v. City of Chelsea, 407 Mass. 703 (1990), and Building Commissioner of Medford v. McGrath, 312 Mass. 461 (1942).

Based on the information presented, the Board FINDS that the proposed alteration and use will not be substantially more detrimental to the neighborhood than the existing nonconforming structure and use, and that the proposed structure or use will not be substantially different in character or substantially more detrimental or injurious to persons, property, or improvements in the vicinity. The raze/alterations/addition to be as detailed on documents presented at the hearing including, but not limited to:

1. Certified Site Plan titled “Plan of Proposed Addition, SITE: Assessors’s Map 46, Lot 3,2 Lighthouse Road, Scituate, MA”, Silva Engineering Associates, P.C., 1615 Bedford Street, Bridgewater, MA 02324, Dated July 30, 2013

This Special Permit and these findings are issued pursuant to Zoning Bylaw Sections 810.2, 420.2 and G.L. Ch. 40A, Section 6.

This Special Permit and these findings are issued contingent upon the Applicant providing accurate existing and proposed gross living area calculations which confirm approximately 2,600 square feet and 5,000 square feet respectively as represented at the public hearing.

ZONING BOARD OF APPEALS

  
Sara J. Trezise, Chairman

  
Edward C. Tibbetts



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Francis Lynch

Filed with Town Clerk on: August 19, 2013.

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 40A, 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.