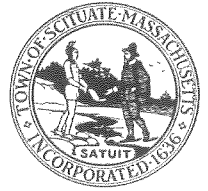


Town of Scituate

600 Chief Justice Cushing Hwy.
Scituate, Massachusetts 02066
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ZONING BOARD OF APPEALS

TOWN OF SCITUATE
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Decision of the Scituate Zoning Board of Appeals on the application of Mary E. Sullivan, Trustee of The Mary Elisabeth Realty Trust u/d/t dated July 11, 2011, or 96 Warren Street, Waltham, MA 02453 (hereinafter, the “**Applicant**”) for a special permit in accordance with Scituate Zoning Bylaw Section 470.6F and 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 a pre-existing, nonconforming single-family dwelling on a pre-existing, nonconforming lot at 23-25 Rebecca Road (Assessor Parcel Nos. 46-1-34 and 35) and to reconstruct a single-family dwelling thereon which will not be substantially more detrimental than the existing nonconforming structure or use to the neighborhood (hereinafter, collectively, the “**Requested Relief**”).

The application was received, advertised, and a public hearing was held on October 17, 2019. The following members were present and voted at the public hearing:

Brian B. Sullivan
Edward C. Tibbetts
Thomas J. Cavanagh

The Applicant was present at the public hearing and was represented by attorney William H. Ohrenberger, III, of Ohrenberger, De Lisi & Harris, LLP of 28 New Driftway, Scituate, MA, and by Brendan P. Sullivan, P.E., P.L.S., of Cavanaro Consulting, Inc., 687 Main Street, P.O. Box 5175, Norwell, MA 02061.

The subject property at 23-25 Rebecca Road (hereinafter, collectively, the “**Property**”) is a merged parcel that consists of two lots, both of which are owned by the Applicant, as shown in two deeds dated July 11, 2011 and recorded with the Plymouth County Registry of Deeds at Book 40121, Page 297 and 40121, Page 299, respectively. The two lots are laid out and shown as lots 16 and 17 on a plan entitled “Plan of Land at Sand Hills, Scituate, Mass. owned by George O. Allen dated September 29, 1908”, which plan is recorded at said registry in Plan Book 1, Page 506.

The Applicant filed the following materials with Board of Appeals:

1. Application for Public Hearing, Zoning Chart, and filing fees;
2. Assessor's Field Cards for both 23 & 25 Rebecca Road;
3. Deed recorded with the said Registry at Book 40121, Page 297;
4. Deed recorded with the said Registry at Book 40121, Page 299;
5. Said record plan of George O. Allen dated September 29, 1908, and recorded with the said Registry at Plan Book 1, Page 506;
6. Google Earth image of 23-25 Rebecca Road; and
7. Cavanaro Consulting plan entitled "Site Plan to Accompany ZBA Application 23-25 Rebecca Road – Scituate" dated September 9, 2019 (the "**Plot Plan**").

The Property is located in the Residence R-3 zoning district, and the Flood Plain and Watershed Protection overlay zoning district, and contains a single-family dwelling thereon. According to the Plot Plan and the application, both the Property, and the existing dwelling on the Property, are pre-existing, nonconforming. The Property is pre-existing, nonconforming because it was laid out on a plan in 1908 prior to the adoption of zoning in the Town of Scituate, and has aggregate lot area of 5,160 SF in a 10,000 SF zone, lot frontage of 83.1 ft. in a 100 ft. zone, and a lot width of 87.2 ft. in a 100 Ft. zone. The existing single-family dwelling thereon is pre-existing, nonconforming because it was constructed in 1920, which was prior to the adoption of dimensional setbacks in the Town of Scituate, and contained: (i) a 8 ft. front yard setback in a 10.4 ft. average setback zone, (ii) a 4.1 ft. southeasterly side yard setback in a 8 ft. zone, and (iii) a 6.3 feet rear yard setback in a 20 ft. zone. The neighborhood predominately contains dimensionally nonconforming dwellings on undersized, nonconforming lots. The existing dwelling contains approximately 1,066 SF of gross floor area, and is only separated from the closest dwelling at 27 Rebecca Road by about 5 feet. The entire existing dwelling is located in a special flood hazard zone designated by FEMA, Zone AE, and a portion of the existing dwelling is located in a velocity, or VE, flood zone, with a first floor elevation at approximately 13.8 ft. (the VE zone is established by FEMA to be elevation 19 ft., and the AE zone is established by FEMA to be elevation 15 ft.).

The Applicant proposes to raze the existing dwelling, move it away from the southeasterly sideline and home at 27 Rebecca Road towards the center of the Property, and to reconstruct it entirely outside of the VE zone and on pilings such that it is compliant with FEMA regulations and above the flood zone entirely. The Applicant does not propose to introduce any new nonconformities, proposes to eliminate entirely the side yard nonconformity, and lessen the rear yard nonconformity by improving the rear yard setback from 6.3 ft. to 13.2 ft. According to the Plot Plan, the gross floor area of the dwelling will be increased to 2,310 SF, or by approximately 117%, a size that is consistent with other homes in the Sand Hills neighborhood.

The fact that the reconstructed building will be removed entirely outside of the Velocity Zone, and placed on piles, will represent an elimination of a flood hazard altogether. Also, the proposed reconstructed dwelling will be entirely compliant to the State Building Code, and the livable space of the reconstructed dwelling will be brought outside the FEMA Flood Zone. The reconstructed dwelling will be consistent with the provisions of

the National Flood Insurance Program. Further, it will not affect the natural drainage patterns of the watercourse.

The Applicant 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 applicant may petition the Board of Appeals for a finding under General Laws Chapter 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 purpose or for the same purpose in a substantially different manner or to a substantially greater extent “except where alteration, reconstruction, extension or structural change to a single or two-family residential structure 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

The Board of Appeals specifically voted to find (i) that the Property and existing dwelling are dimensionally pre-existing, nonconforming, (ii) that the proposed reconstructed single-family dwelling will not create any new nonconformities, and (iii) to the extent that the proposal extends an existing nonconformity, such extension is not considered substantially more detrimental to the neighborhood than the existing nonconforming dwelling.

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 Applicant has demonstrated that she is entitled to the Requested Relief.

For the foregoing reasons, the Board unanimously voted to GRANT the special permit, finding(s), and the Requested Relief.

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).



Brian B. Sullivan



Edward C. Tibbetts



Thomas J. Cavanagh

Filed with the Town Clerk and Planning Board: November 5, 2019

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 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. Ch. 40, Section 17, and shall be filed within twenty (20) days of the date of filing the decision with the Town Clerk.