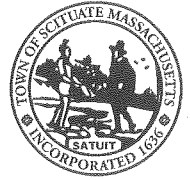


# Town of Scituate

## ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY  
SCITUATE, MASSACHUSETTS 02066  
(781) 545-8716



Decision of the Scituate Zoning Board of Appeals on the application of David Keyes, 43 Pine Ridge Road, Arlington, MA 02467 ("Applicant") for a Special Permit/Finding under MGL 40A § 6 and the Town of Scituate Zoning Bylaws 810.2 and 470.6F, for the reconstruction, extension, alteration, or structural change of a pre-existing nonconforming structure on a nonconforming lot, will not be substantially more detrimental to the neighborhood than the pre-existing nonconforming structure on a nonconforming lot at 236 Central Avenue, Humarock, Massachusetts (Parcel ID# 69-1-37) ("Property").

The application was received, advertised and a public hearing was duly held on September 20, 2018 with the following members of the Zoning Board of Appeals hearing the application:

Edward C. Tibbetts, Acting Chairman  
Anthony J. Bucchere  
Thomas J. Cavanagh

The Applicant was represented at the hearing by Richard Servant, Professional Land Surveyor, of Stenbeck & Taylor Inc.

The property is located in the R-3 Residential District, and lies in the Town of Scituate Flood Plain and Watershed Protection District. The Property is not located in the Town of Scituate Water Resource Protection Zoning District. The existing structure has a gross floor area of approximately 1,500 square feet. The proposed reconstructed structure would be in the existing footprint; thus, the proposed gross floor area would remain at 1,500 square feet.

At the time of the application, title to the premises was in the name of David S. Keyes as evidenced by Certificate of Title No. 45283 in the Plymouth County Registry of Deeds Land Court Division. The Property consists of Lot 28, which is identified on sheet 2 of Plan No. 12049B, a copy of which is filed with Certificate of Title No. 6909 in the Plymouth County Registry of Deeds Land Court Division, and indicates that the Lot was created by a plan dated April 1940. According to the Town of Scituate Assessors Card, submitted by the applicant, the existing dwelling located upon the lot was constructed in 1951.

The Board reviewed with the Applicant's plans drawn by Richard Servant, Professional Land Surveyor, of Stenbeck & Taylor, Inc., dated May 2, 2018, revised June 25, 2018 ("Plan"). The Board also reviewed the Zoning Chart, photographs of the property, and Town of Scituate Assessors Card, all submitted by the Applicant. According to the material submitted to the Board, the property contains 10,700 square feet of land, more or less, with lot width and frontage both being 50 feet. The A-3 Residential District requires 10,000 square feet lot area and 100 feet of frontage and 100 feet of lot width. In addition, the A-3 Residential District requires a 30 feet front setback, 8 feet side yard setbacks, 20 feet rear yard setback. Based on the materials submitted, both the existing and proposed dwelling, conform to lot area, and minimum setbacks, but does not conform to Lot Width and lot frontage.

M.G.L. Chapter 40A, §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."

Section 810.2 of the Bylaw states in part that "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."

The Board specifically finds that the existing dwelling is a pre-existing nonconforming structure entitled to the protections afforded by the Bylaw and M.G.L. Chapter 40A.

In addressing whether the proposed structure will be substantially more detrimental to the neighborhood than the existing nonconforming structure, the Board considered 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 reconstruction of the pre-existing nonconforming structure on a pre-existing non-conforming lot, as shown on the plan, dated May 2, 2018, revised June 25, 2018, submitted with the Application by Stenbeck & Taylor, Inc., will not be substantially more detrimental to the neighborhood than the existing structure, and that the proposed structure will not create any new nonconformities or intensify any existing nonconformities, and to the extent that it may intensify any existing nonconformities such intensifications are not significantly more detrimental to the neighborhood..

Section 470.6 of the Floodplain and Watershed Protection District portion of the Bylaw states in part:

"Upon issuance of a special permit by the Board of Appeals and subject to such special conditions and safeguards as the Board of Appeals deems necessary to fulfill the purposes of this section, the following uses and structures are permitted:

- A. A special permit for substantial improvement of existing structures which legally existed on the date of amendment of this section of the bylaw (March 2, 1992) may be issued in accordance with the following:
  - 1. Such improvements must be consistent with the requirements of the National Flood Insurance Program.
  - 2. Any improvements must be consistent with those provisions of the State Building Code (780 Code of Massachusetts Regulations) pertaining to flood resistant construction, in consultation with the Building Commissioner.
  - 3. Any improvements shall not affect the natural drainage patterns of the watercourse."

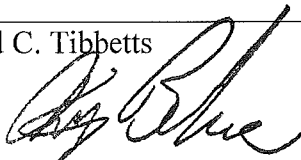
The Board finds the Applicant meets the Special Permit criteria set forth in Bylaw Section 470.6F in that the existing structure legally existed on the date of the amendment of that section of the bylaw, the proposed structure will be consistent with the requirements of the National Flood Insurance Program, the construction of the proposed structure will be consistent with the State Building Code pertaining to flood resistant construction in consultation with the Building Commissioner, and the proposed structure will not affect the natural drainage patterns of a watercourse.

Based on all of the above the Board has unanimously voted to grant the Special Permit/Finding with the condition that all construction be consistent with those provisions of the State Building Code pertaining to flood resistant construction in consultation with the Building Commissioner.

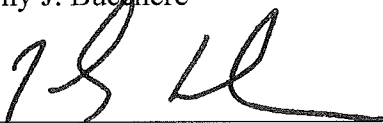
ZONING BOARD OF APPEALS



Edward C. Tibbetts



Anthony J. Bucchere



Thomas J. Cavanagh

Filed with the Town Clerk and Planning Board on 10/17/18

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.