

# Town of Scituate

## ZONING BOARD OF APPEALS

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



JAN 27 2017

Decision of the Scituate Zoning Board of Appeals on the application of Dana Sceviour of 25 Irving Street, Canton, Massachusetts (hereinafter, the "**Applicant**") for (i) a G.L. Ch. 40A, Section 6 finding in accordance with Scituate Zoning Bylaw Sections 810.2 and 950.2D to raze a dimensionally conforming single-family dwelling at 24 Lynda Lane, Scituate, MA on a lot which is pre-existing, nonconforming as to lot width, and the reconstruction of a single family dwelling thereon having an increase in more than 20% in the gross floor area, and (ii) a special permit pursuant to Scituate Zoning Bylaw Sections 470.6F, 950.2B, and 950.3 for the substantial improvement to an existing structure at 24 Lynda Lane in the Flood Plain and Watershed Protection District, and/or (iii) any other relief that the Board of Appeals may grant. (hereinafter, the "**Requested Relief**").

The application was received, advertised and a public hearing was held on December 15, 2016. The following members were present and voted at the public hearing:

John Hallin, Chairman  
Edward C. Tibbetts  
Sara J. Trezise

The Applicant was present at the public hearing and was represented at the hearing by attorney Jeffrey A. De Lisi of Ohrenberger, De Lisi & Harris, LLP, of 28 New Driftway, Scituate, MA.

The Applicant owns the property by Deed dated August 26, 2016, and recorded with the Plymouth County Registry of Deeds at Book 47378, Page 95 (hereinafter, the "**Property**"). Along with the said application and deed, the Applicant filed with Board of Appeals the record plan of land showing that the Property was laid out on a plan prior to the adoption of dimensional zoning in Scituate. The said record plan is entitled "Plan of House Lots in Scituate, Mass. Owned by Allan R. Wheeler, Scale 1~50 Surveyed July 18, 1946 by H.V. Stenbeck, Surveyor, Scituate, Massachusetts" recorded with the said Registry on August 20, 1946 at Plan Book 6, Page 981. The Applicant also filed a copy

of an Assessor's Card from the Scituate Assessor showing that the dwelling on the Property was constructed in 1900. The Applicant also provided the Board with a plot plan showing the proposed reconstructed dwelling entitled "SINGLE FAMILY HOME PLOT PLAN" dated November 16, 2016, Scale 1"=20', prepared by Collins Civil Engineering Group, Inc. 225 South Main Street, West Bridgewater, MA 02379 (hereinafter, the "**Plot Plan**").

The Property is located in the Residence R-2 zoning district and contains a single-family dwelling thereon. According to the Plot Plan, the Property and the dwelling are conforming in all respects to the provisions of the Scituate Zoning Bylaw except with respect to lot width.

The Applicant provided photographs of the site and informed the Board that the existing dwelling on the Property has been vacant for a certain period of time and is unsightly. The Applicant proposes to raze the said single-family dwelling and to reconstruct a new single-family dwelling on the Property that will meet or exceed all dimensional setback requirements in the Residence R-2 Zoning District. The Applicant is required to obtain the requested finding from the Board because the lot is pre-existing, nonconforming as to lot width, and because the Applicant proposes to increase the gross floor area in excess of twenty percent.

The Applicant is also required to obtain a special permit under Zoning Bylaw section 470.6.F. because the Property is located in the Scituate Flood Plan & Watershed Protection District. While the Property is located in this overlay district, it is not in a Special Flood Hazard Area as defined by FEMA; it is located in Zone X which is outside of the 500 year floodplain. The first floor of the proposed reconstructed dwelling will be raised approximately three feet higher than the existing first floor, which is at grade, an improvement from the existing conditions. The reconstructed dwelling will be built in accordance with the State Building Code and will not affect the natural drainage patterns of any watercourse.

The Board of Appeals considered the zoning relief requested, and specifically the last paragraph of Zoning Bylaw Section 810.2 of the Scituate Zoning Bylaw 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.

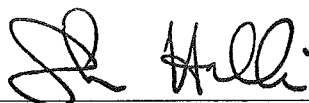
G.L. Ch. 40A, Section 6 provides, in relevant part, that zoning ordinances or bylaws shall not apply to lawful pre-existing nonconforming structures or uses, but shall apply to any reconstruction, extension or structural change to provide for its use for a substantially different purpose or for the same 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.”<sup>1</sup>

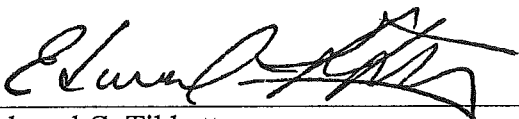
The Board of Appeals specifically finds that the Property is pre-existing nonconforming as to lot width, that razing the existing single family dwelling and reconstructing the dwelling as shown in the submitted Plot Plan will not intensify the existing nonconformities or result in additional ones, and that the proposed structure otherwise complies with applicable zoning bylaw requirements. The Board further found that the requested change, extension or alteration requested by the Applicant will not be substantially more detrimental to the neighborhood than the existing nonconforming lot, structures or use.

Based upon the application materials, the information provided at the public hearing, and the foregoing, the Board of Appeals finds that the Applicant has demonstrated that he is entitled to the Requested Relief.

For the foregoing reasons, the Board unanimously voted to GRANT a Special Permit pursuant to the Town of Scituate Zoning Bylaw Section 470.6.F, and a finding pursuant to the Town of Scituate Zoning Bylaw Section 810.2, and G.L. Ch. 40A, Section 6, to allow for the reconstruction of a single family dwelling at 24 Lynda Lane, Scituate, MA as set forth in the submitted Plot Plan, conditioned upon the requirement that the Applicant file with the Building Department a revised plot plan indicating on it calculations of lot area and percentage increase in the gross floor area of the proposed reconstructed dwelling.



John Hallin, Chairman



Edward C. Tibbetts



Sara J. Trezise

<sup>1</sup> 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).

Filed with the Town Clerk and Planning Board: JAN. 27, 2017

This Decision 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.