

# Town of Scituate

## ZONING BOARD OF APPEALS

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



TOWN OF SCITUATE  
Town Clerk's Office  
Scituate, MA 02066  
JAN 30 2017

Decision of the Scituate Zoning Board of Appeals on the application of Marvell Homes, LLC of Scituate, Massachusetts for a Finding under MGL 40A § 6 and a Special Permit to raze and reconstruct the pre-existing nonconforming single family dwelling at 25 Bayberry Road, Scituate, Massachusetts.

The application was received, advertised and a public hearing was duly held on December 15, 2016 with the following members of the Zoning Board of Appeals hearing the application:

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

The property that is the subject matter of this application is located in the R-2 Residential District. The property does lie in the Town of Scituate Flood Plain and Watershed Protection District, and the Town of Scituate Saltmarsh and Tideland Protection District. The property does not lie in the Town of Scituate Water Resource Protection Zoning District. The property lies in Zone AE 15 as shown on FIRM MAP COMMUNITY PANEL #250276 0107 K, dated November 4, 2016.

At the time of the application, title to the premises was in the name of Ellen A, Mackenzie as shown on the Plymouth County Registry District of the Land Court Certificate of Title No. 91579. The Applicant is the contract purchaser of the property.

The premises contain 41,883 square feet of land, more or less, and contains a pre-existing nonconforming single family dwelling, constructed in 1910. While the lot complies with the dimensional requirements of the Scituate Bylaw, the pre-existing dwelling, located 7.4 feet from Bayberry Road, does not meet the thirty (30) foot front yard setback requirement of the bylaw.

At the December 15, 2016 public hearing, the Board reviewed with the Applicant a plan drawn by Ross Engineering Company, Inc. of Norwell, Massachusetts dated November 7, 2016. The plan shows the reconstructed dwelling decreasing the existing nonconforming setback from 7.4 feet to 13.8 feet and increasing the westerly conforming side setback from 23.9 feet to 41.4 feet. The proposal also calls for an increase in the gross floor area of the dwelling from 2,891 square feet to 4,315 square feet, an increase of 49%. The existing impervious area will increase from 1,921 square feet to 2,284 square feet, an increase of 18.9%.

At the public hearing, the Board reviewed the applicants plan and discussed Massachusetts General Law Chapter 40A, and the Scituate Zoning Bylaw Sections 810.2B and Sections 460 and 470.6F. One abutter spoke expressing concerns with the proposal.

Based upon the evidence presented, the Board finds that the existing single family dwelling located at 25 Bayberry Road is pre-existing and nonconforming to the Scituate Zoning Bylaw. The Applicant's proposal to raze and reconstruct the single family dwelling is entitled to be reviewed by the Board pursuant to the terms of M.G.L. Chapter. 40A § 6, paragraph one.

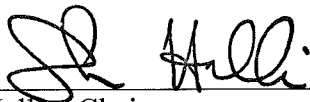
The Board further finds that since the premises contain sufficient lot frontage and lot area but the dwelling is nonconforming as to front yard setback requirements of the Bylaw and since the Applicant proposes an increase of the gross floor area to the pre-existing nonconforming single family dwelling by more than 20% the project may not be permitted by the Building Commissioner pursuant to Section 810.2B of the Bylaw, but may be allowed by the Board by way of a finding under General Laws Chapter 40 A, Section 6. The Board therefore finds that the pre-existing single family dwelling is nonconforming as to the front yard setback requirements of the Bylaw and the Applicant's proposal will not intensify any existing nonconformities or result in new ones. In fact, the proposal calls for the reduction of the existing nonconforming front yard setback from 7.4 feet to 13.8 feet.

The Board then turned its attention to Sections 460 and 470 of the Scituate Zoning Bylaw. The Board finds that the Applicant's proposal meets the requirements of Section 460.2 and that the granting of a Special Permit will not adversely affect the natural character of the area in which the land referred to in the application is located. The Applicant's plan also calls for the **lowest floor of the** reconstructed dwelling to be at elevation 16.0 and therefore meets the requirements of Section 470.6F.1 and 2 as it will be consistent with applicable requirements of the Nation Flood Insurance Program as well as applicable requirements of the State Building Code pertaining to flood resistant construction. Finally, since there is no watercourse on or near the premises, the requirement of 470.6.F.3 is not applicable.

Pursuant to Section 950.3 of the Bylaw, the lot is appropriate for a single family dwelling. The use of the dwelling should not adversely affect the neighborhood, nor create any undue nuisance or hazard to vehicles or pedestrians. The town's Board of Health and the Building Commissioner will ensure that appropriate facilities are provided to assure the proper operation of the single family dwelling. The proposed use of dwelling will not have a significant impact on any public or private water supply, and the lot is not located within the Water Resource Protection District. In addition, the Board finds that the use reflects the nature and purpose of the use prevailing when the bylaw took effect, that there is no difference in the quality or character, as well as the degree of use, and the proposed use is not different in kind in its effect on the neighborhood.

For the foregoing reasons, the Board unanimously voted to GRANT the Applicant's request for a Finding under M.G.L. Chapter 40A, § 6 and for a Special Permit under Sections 460, 470.6.F.3 and 810.2B of the Scituate Zoning Bylaw to raze and reconstruct the single family dwelling at 25 Bayberry Road as shown on the Application Plan.

#### ZONING BOARD OF APPEALS



John Hallin, Chairman



Sara J. Trezise



Edward C. Tibbetts

Filed with the Town Clerk on 1.30.17

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