

Town of Scituate

ZONING BOARD OF APPEALS

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



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Decision of the Scituate Zoning Board of Appeals on the application of Leslie A. Hubbard and Jeffrey G. Hubbard, Trustees of JAC Realty Trust (hereinafter, collectively, the "**Applicant**") for a finding and/or special permit in accordance with Scituate Zoning Bylaw Sections 470.6F, 810.2, 950.2B, 950.2D, and/or G.L. Ch. 40A, Section 6, and/or any other relief that the Board of Appeals may grant that the razing of a pre-existing nonconforming single-family dwelling at 28 River Road, Scituate, MA (Assessor's Parcels 69-2-18, 19 and 20), and reconstruction of a single family dwelling thereon, will be less nonconforming, and will not be substantially more detrimental or injurious to the neighborhood, than the existing nonconforming structure (hereinafter, the "**Requested Relief**").

The application was received, advertised and a public hearing was held on November 17, 2016. The following members were present and voted at the public hearing:

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

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 subject property is owned by the Applicant as evidenced by Certificate of Title No. 123573 filed in the Plymouth Country Registry District of the Land Court. The property is shown as Lots 282 and 283 on sheet 4 of subdivision plan #12049B, drawn by Irving Rosenblatt, C.E., dated April 1940, and filed with Certificate of Title No. 6909, and as Lot 284 on sheet 5 of said subdivision plan (hereinafter, collectively, the "**Property**"). Along with the said application, certificate of title, and record 1940 plan, the Applicant filed the following materials with Board of Appeals:

1. A copy of an Assessor's Field Card from the Scituate Assessor for fiscal tax year 2016 showing that the dwelling on the Property was constructed in 1950; and

2. Stamped site plan entitled "Plan of Land, 28 River Road, Scituate, MA" prepared by Morse Engineering Co., Inc., dated October 19, 2016 (hereinafter, 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, the Property contains almost double the amount of lot area (19,941 S.F. in a 10,000 S.F. zone), and one and one-half times the required lot frontage and lot width (150 ft. in a 100 ft. zone) required by the Scituate Zoning Bylaw. The single-family dwelling thereon is dimensionally nonconforming to the Scituate Zoning Bylaw requirements of front yard setback insofar as it is set back approximately 20 feet from River Road in a 30 ft. zone. The Property is bounded on the west and the south by the South River, and, other than the front yard setback, the dwelling exceeds, and is conforming to, dimensional setback requirements of the rear and side yards.

The Applicant does not propose to introduce any new nonconformities, and the proposed reconstructed dwelling is proposed to be no closer to River Road than the existing dwelling, such that the existing front yard setback nonconformity will be no less nonconforming. The applicant proposes that the reconstructed dwelling will be an increase in the gross floor area of the dwelling by 188% when compared to the existing dwelling (780 S.F. existing versus 2,244 S.F. proposed).

The Board and Applicant also discussed flood plain and elevation issues. According to the Applicant's attorney and the Plot Plan, the existing dwelling is within the FEMA Flood Zone AE (elevation 15 ft.). The proposed reconstructed dwelling will be raised onto wooden pilings such that the first floor will be at 16.3 ft. above sea level. The proposed reconstructed dwelling will be compliant with the State Building Code in consultation with the Building Inspector, and the livable space of the reconstructed dwelling will be brought above the FEMA flood elevation, an improvement from the existing conditions which are more than three feet lower than the FEMA flood elevation. The reconstructed dwelling will be consistent with the provisions of the National Flood Insurance Program, and will not affect the natural drainage patterns of any watercourse.

The Applicant demonstrated pre-existing nonconforming status, and Board of Appeals considered the zoning relief requested 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 is conforming as to lot dimensions, (ii) the existing dwelling is pre-existing, nonconforming only with respect to front yard setback, (iii) that the proposed reconstructed dwelling will not intensify the front yard nonconformity, (iv) that the proposed reconstructed dwelling is not substantially more detrimental to the neighborhood than the existing dwelling, and (v) that the proposed reconstructed dwelling will be in compliance with the special permit provisions of Scituate Zoning Bylaw Section 470.6.

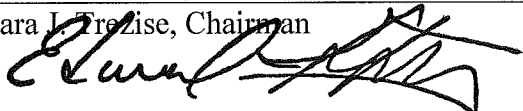
Based upon the application materials, including the Plot Plan, the information provided at the public hearing, and the foregoing, the Board of Appeals finds that the Applicant has demonstrated that he is entitled to the Requested Relief.

For the foregoing reasons, the Board unanimously voted to GRANT a Finding for the proposed project under Scituate Zoning Bylaw Section 810.2, and a Special Permit pursuant to Scituate Zoning Bylaw Section 470.6F, to raze and reconstruct the dwelling as set forth in the Plot Plan.

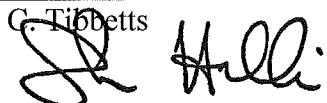
SCITUATE ZONING BOARD OF APPEALS



Sara L. Frezise, Chairman



Edward G. Tibbetts



John Hallin

Filed with the Town Clerk and Planning Board: January 11, 2017

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.