

Town of Scituate

ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY
SCITUATE, MASSACHUSETTS 02066
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Decision of the Scituate Zoning Board of Appeals on the application of George Allman and Maureen Allman of 3 Jawl Avenue, Scituate, Massachusetts (hereinafter, collectively, the “**Applicant**”) for a special permit and finding, or other appropriate relief pursuant to the Scituate Zoning Bylaws, and specifically Section 810.2 thereof, and/or G.L. Ch. 40A, Section 6, to allow for the razing and reconstruction of an existing single family dwelling and detached accessory building at 3 Jawl Avenue, Scituate, MA (hereinafter, the “**Requested Relief**”).

The application was received, advertised and a public hearing was held on October 15, 2015. The following members were present and voted at the public hearing:

Sara J. Trezise, Chairman
Edward C. Tibbetts
Francis M. Lynch

The Applicant was represented at the hearing by (i) attorney William H. Ohrenberger, III of Ohrenberger, De Lisi & Harris, LLP, of Scituate, MA, (ii) Paul J. Mirabito of Ross Engineering Company, Inc. of Norwell, MA, and (iii) Julie Johnson of Custom Home Design of Marshfield, MA.

The Applicant, Maureen F. Allman, owns the property by Deed recorded with the Plymouth County Registry of Deeds at Book 7651, Page 308 (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, which record plan is dated May 1924 and is recorded with the said Registry at Plan Book 3, Page 801. The Applicant also filed a copy of an Assessor’s Card from the Scituate Assessor showing that the buildings on the Property were constructed in 1940, and a plot plan showing the proposed reconstructed dwelling and detached accessory building entitled “Site Plan for 3 Jawl Avenue in Scituate, MA” dated September 22, 2015, Scale 1”-10’, prepared by Ross Engineering Company, Inc. of 683 Main Street, Norwell, MA (hereinafter, the “**Plot Plan**”).

The Property is located in the Residence R-3 zoning district and contains a single-family dwelling and detached accessory building thereon. According to the Plot Plan, the Property is pre-existing, nonconforming as to lot area (8,960 sq. ft. in a 10,000 sq. ft. zone). The existing single-family dwelling is pre-existing, nonconforming as to the front yard setback (19.3 ft. in a 30 ft. zone) and the rear yard setback (18.6 ft. in a 20 ft. zone). The existing detached accessory building is pre-existing, nonconforming as to the rear yard setback (2.7 ft. in a 20 ft. zone) and the westerly side yard setback (2 ft. in an 8 ft. zone).

The Applicant proposes to reconstruct a new single-family dwelling on the property that will be no closer to the front yard setback than presently exists, and further from the rear yard setback than presently exists. Additionally, the applicant proposes to reconstruct the detached accessory structure such as to eliminate the existing side yard nonconformity and to lessen the rear yard nonconformity.

The Applicant also seeks to increase the gross floor area of the dwelling from 1,450 SF to 4,246 ST, an increase of 192%

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.”

M.G.L. Ch. 40A Section 6, as interpreted by the Massachusetts Appeals Court in *Gale v. Zoning Board of Appeals of Gloucester*, 80 Mass. App. Ct. 331 (2011), and other cases, requires the Board to identify the particular respect or respects in which the existing lot or structure does not conform to the present by-law and then determine whether the proposed alteration or addition would intensify the existing nonconformities or result in additional ones. If the answer is in the negative, the Board is required to grant the Special Permit.

The Board specifically FINDS that the Property is pre-existing, nonconforming as to lot area (8,960 sq. ft. in a 10,000 sq. ft. zone), front yard setback, rear yard setback; that the existing detached accessory building is pre-existing, non-conforming as to the rear yard and westerly side yard setbacks; that the proposed new dwelling will be less non-conforming with respect to the rear yard setback requirements; that the proposed new detached accessory structure will be less non-conforming as to the rear yard setback; that the proposed structures will not intensify or increase any of the existing non-conformities; and that the proposed new structures conform in all other respects to the dimensional requirements of the Zoning Bylaw.

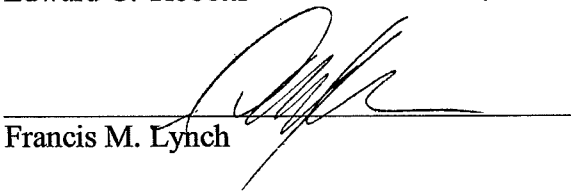
Based upon the application materials, the information provided at the public hearing, and the foregoing, the Board of Appeals finds that the Applicant has demonstrated that he is entitled to the Requested Relief. For the foregoing reasons, the Board unanimously voted to GRANT the application for a Special Permit to raze the current dwelling and permit construction of a new larger single family dwelling and detached accessory structure as set forth on the Plot Plan entitled "Site Plan for 3 Jawl Avenue in Scituate, MA" dated September 22, 2015, Scale 1"-10', prepared by Ross Engineering Company, Inc. of 683 Main Street, Norwell, MA submitted by the applicant.



Sara J. Trezise, Chairman



Edward C. Tibbetts



Francis M. Lynch

Filed with the Town Clerk and Planning Board: November 20, 2015

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.