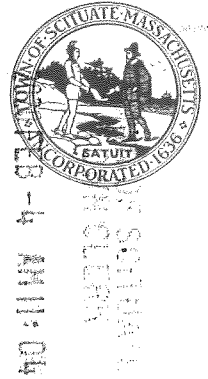


Town of Scituate

ZONING BOARD OF APPEALS

600 Chief Justice Cushing Hwy.
Scituate, Massachusetts 02066
(781)545-8716



Decision of the Scituate Zoning Board of Appeals on the application of Natalie A. O'Connell of 94 Lawson Road, Winchester, MA (hereinafter, the "**Applicant**") for a special permit in accordance with Scituate Zoning Bylaw Section 470.6F and a finding in accordance with Scituate Zoning Bylaw Sections 810.2 and G.L. Ch. 40A, Section 6, and/or any other relief that the Board of Appeals may grant, to raze a pre-existing, nonconforming single-family dwelling on a pre-existing, nonconforming lot at 31 Eleventh Avenue (Assessor Parcel No. 39-5-30-0) and to reconstruct a single-family dwelling thereon which will not be substantially more detrimental than the existing nonconforming structure or use to the neighborhood (hereinafter, collectively, the "**Requested Relief**").

The application was received, advertised, and a public hearing was held on January 16, 2020. The following members were present and voted at the public hearing:

Anthony J. Bucchere, Chairman
Brian B. Sullivan
Edward C. Tibbetts
Thomas J. Cavanagh
George Xixis

The Applicant was present at the public hearing and was represented by attorney Jeffrey A. De Lisi, of Ohrenberger, De Lisi & Harris, LLP of 28 New Driftway, Scituate, MA, and by Gregory J. Morse, P.E., of Morse Engineering Co., Inc., 10 New Driftway, Suite 303, Scituate, MA 02066.

The subject property at 31 Eleventh Avenue (hereinafter, the "**Property**") is owned by the Applicant, as more particularly described in Certificate of Title No. 104825. The Property is laid out and shown as lot 290 on sheet 4 of a Plan No. 8507B, a copy of a portion of which is filed with Certificate of Title No. 1023.

The Applicant filed a plot plan with the Board entitled "31 Eleventh Avenue (Assessor's Parcel: 39-5-30) Scituate, Massachusetts" dated December 13, 2019, revised through January 16, 2020, prepared by Morse Engineering Company, Inc. (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 and the application, both the Property, and the existing dwelling on the Property, are pre-existing, nonconforming. The Property is pre-existing, nonconforming because it was laid out on a plan prior to the adoption of zoning in the Town of Scituate, and has a lot area of 7,773 SF in a 10,000 SF zone, lot frontage of 50.27 ft. in a 100 ft. zone, and a lot width of 50.27 ft. in a 100 Ft. zone. The existing single-family dwelling thereon is pre-existing, nonconforming because it was constructed in 1928, which was prior to the adoption of dimensional setbacks in the Town of Scituate, and contains: (i) a 16.3 ft. front yard setback in a 16.8 ft. average setback zone, and (ii) a 4.9 ft. northeasterly side yard setback in a 8 ft. zone. The neighborhood predominately contains dimensionally nonconforming dwellings on undersized, nonconforming lots. The existing dwelling contains approximately 1,326 SF of gross floor area. While the Property is partially located in the Town of Scituate Flood Plain and Watershed Protection District, the applicant's representative explained that the existing and proposed dwellings are not located in the said overlay. No portion of the existing or proposed dwellings are located in a special flood hazard zone designated by FEMA.

The Applicant proposes to raze the existing dwelling, and to reconstruct it such that the front and side yard dimensional nonconformities will be entirely eliminated¹. Therefore, the proposed reconstructed dwelling will comply with all dimensional setback requirements. According to the Plot Plan, the gross floor area of the dwelling will be increased to 2,763 SF, or by approximately 108%, a size that is consistent with other homes in the Sand Hills neighborhood.

The reconstructed dwelling will not pose a flood risk as it is landward of the special flood hazard zone, and thus it is unnecessary to elevate the building onto piles to bring it into compliance with the provisions of the National Flood Insurance Program. Also, the proposed reconstructed dwelling will be entirely compliant to the State Building Code. Further, it will not affect the natural drainage patterns of any watercourse.

The Applicant demonstrated pre-existing nonconforming status, and Board of Appeals considered the Requested Relief 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."

M.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

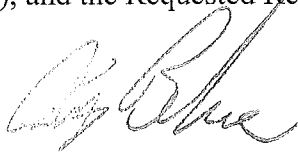
¹ The Plot Plan depicts that the proposed bulkhead will be setback approximately 6 feet from the northeasterly side yard. Pursuant to Scituate Zoning Bylaw Section 620.4.C bulkheads are excepted from dimensional setback requirements.

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.”²

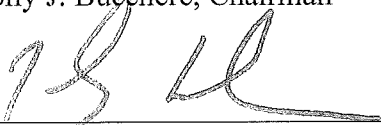
The Board of Appeals found (i) that the Property and existing dwelling are dimensionally pre-existing, nonconforming, (ii) that the proposed reconstructed single-family dwelling will not create any new nonconformities, and (iii) to the extent that the proposal extends an existing nonconformity, such extension is not considered substantially more detrimental to the neighborhood than the existing nonconforming dwelling.

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

For the foregoing reasons, the Board unanimously voted to GRANT the special permit, finding(s), and the Requested Relief.



Anthony J. Bucchere, Chairman



Thomas J. Cavanagh



Edward C. Tibbetts

Filed with the Town Clerk and Planning Board: 2/4/20

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.

² 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).