



Decision of the Scituate Zoning Board of Appeals on the application of Sarah Chase of 310 Country Way, Scituate, Massachusetts (hereinafter, the "**Applicant**") for a Special Permit and/or finding in accordance with Scituate Zoning Bylaw Section 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 and reconstruction, extension, and/or alteration of a pre-existing, nonconforming single family residential structure and/or accessory structures thereto on a pre-existing nonconforming lot at 318 Country Way, Scituate, Massachusetts, will not be substantially more detrimental or injurious than the existing nonconforming structure(s) or use(s) to the neighborhood (hereinafter, the "**Special Permit**").

The application was received, advertised and a public hearing was held on September 19, 2013. The following members were present and voted at the public hearing:

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

The Applicant was present at the public hearing and was represented at the hearing by attorney Jeffrey A. De Lisi of Ohrenberger Associates, Scituate, MA.

The Applicant owns the property by Quitclaim Deed of John J. Komola and Christine T. Komola dated June 27, 1997, and filed with the Plymouth County Registry of Deeds at Book 15288, Page 024 (hereinafter, the "**Property**"). Along with the said application and deed, the Applicant filed with Board of Appeals photographs of the Property, a copy of an Assessor's Card from the Scituate Assessor showing that the dwelling on the Property was constructed in 1829, a copy of the 1953 Real Estate Valuation List showing that the "garage" existed at the Property in 1953, a proposed North Elevation sketch, and a stamped plan entitled "Proposed Garage Plan Town of Scituate Massachusetts" dated June 3, 2013, Scale 1"-20', prepared by Environmental Engineering Technologies, Inc. of 465 Furnace Street, Marshfield, MA 02050 (hereinafter, the "**Plot Plan**").

The Property is located in the Residence R-2 zoning district and contains a single-family dwelling and a subordinate detached structure that is accessory thereto (hereinafter, the "**Accessory Structure**"). According to the Plot Plan, the Property is nonconforming as to lot area (15,104 sq. ft. in a 20,000 sq. ft. zone), and the Accessory Structure on the Property does not conform to a sideline setback; it is approximately 5.36 feet from the southerly sideline at its closest point. The single family dwelling on the Property is also nonconforming as to the front yard setback (27.46 feet in a 30 ft. zone).

The Applicant informed the Board of Appeals that the existing Accessory Structure on the Property, approximately 20 ft. x 22 ft. in size, is old and in very poor condition. The Applicant proposes to raze the said Accessory Structure and to reconstruct a new

Accessory Structure in its approximate location, as per the plans submitted, with a dimension of approximately 20 ft. x 24 ft. in size, and two stories in height. The Applicant proposes that the reconstructed Accessory Structure will be further from the southerly sideline when compared to the existing Accessory Structure, and will comply with all height requirements of the Scituate Zoning Bylaw.

Following consideration of the Application materials, and the testimony at the public hearing, the Board of Appeals finds that the Property, the said single family dwelling, and the said Accessory Structure all pre-existed the adoption of zoning in Scituate, and are therefore legally pre-existing and nonconforming.

The Applicant indicated that, due the location of the septic system on the Property, the only viable location for the reconstructed Accessory Structure is as proposed by the Applicant. According to the Applicant, the goal is for the reconstructed Accessory Structure to preserve the character and aesthetic look of the existing Accessory Structure, but to allow for functional uses allowed in the zoning district, such as garage, storage, and home office space.

The Board of Appeals considered the zoning relief requested, and specifically Section 810.2 of the Scituate Zoning Bylaw that authorizes the “repair, alteration, reconstruction, extension or structural change of a lawful, dimensionally nonconforming single or two-family dwelling, or a portion thereof, or accessory structures thereto.” Section 810.2 further provides, in relevant part, 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.”

The definition of a “single family dwelling” set forth in Section 200 of the Scituate Zoning Bylaw specifically includes “allowed accessory uses.” The definition of “allowed accessory uses” set forth in Section 200 provides that “subordinate structures” which meet certain criteria comprise “allowed accessory uses”. The Applicant’s Accessory Structure clearly meets these criteria.

G.L. Ch. 40A, Section 6 provides, in relevant part, 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

¹ 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).

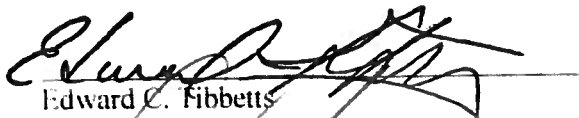
nonconforming lots, structures and uses, and that the requested change, extension or alteration requested by the Applicant will not be substantially more detrimental than the existing nonconforming lots, structures or uses to the neighborhood.

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 she is entitled to the requested relief. In addition, in accordance with Section 950.3 of the Scituate Zoning Bylaw, the Board is assured, and specifically finds, that all of the criteria under said Section 950.3 are satisfied.

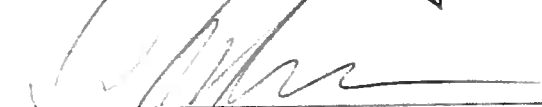
For the foregoing reasons, the Board unanimously voted to GRANT the Special Permit, the finding(s), and the requested relief with respect to the razing and reconstruction of the accessory structure, with the condition that the use will not be extended to any use not allowed as of right in the zoning district in which it lies and the condition that the reconstruction of the accessory structure is in accordance with the submitted proposed North Elevation sketch and stamped plan entitled "Proposed Garage Plan Town of Scituate Massachusetts" dated June 3, 2013, Scale 1"=20', prepared by Environmental Engineering Technologies, Inc. of 465 Furnace Street, Marshfield, MA 02050.



Sara J. Trezise, Chairman



Edward C. Fibbets



Francis M. Lynch

Filed with the Town Clerk and the Planning Board: October 7, 2013

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