

Town of Scituate

ZONING BOARD OF APPEALS

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



RECEIVED
2021 JUL -7 PM 2:48
TOWN OF SCITUATE
TOWN CLERK

Decision of the Scituate Zoning Board of Appeals on the application of David J. Dirubbo and Catrina M. Dirubbo of 4 Cliff Estates Road, Scituate, Massachusetts (hereinafter, the "Applicants") for a Special Permit/Finding under M.G.L. Ch. 40A, Section 6 and/or Section 810.2 and Section 950.2(D) of the Scituate Zoning Bylaws to allow the razing and reconstruction of a nonconforming, single-family dwelling located at 4 Cliff Estates Road, Scituate, Massachusetts (Assessor's Parcel 8-7-4C) (the "Property") and that the proposed reconstructed dwelling on the Property shall not intensify any existing nonconformity, but if there is an intensification it is not substantially more detrimental than the current pre-existing nonconforming dwelling or use to the neighborhood. (the "Requested Relief").

The application was received, advertised, and a public hearing was held on June 17, 2021. The following members were present and voted at the public hearing:

Anthony J. Bucchere, Chairman
Susan Harrison
George Xixis

The Applicants were represented at the hearing by Attorney Adam J. Brodsky of Drohan Tocchio & Morgan P.C. of 175 Derby Street, Suite 30, Hingham, MA; Gregory J. Morse, P.E. of Morse Engineering Co. Inc. of 19 Union Street, Scituate, MA; Eric Garber of Acella Construction Co. of 38 Washington Street, Pembroke, MA; and Kurt Raber of Catalyst Architecture/Interiors Inc. of 203 Willow Street, Suite A, Yarmouth Port, MA.

The Applicants hold title to the Property by virtue of Quitclaim Deed recorded with the Plymouth County Registry of Deeds, at Book 52704, Page 324. The lot was laid out in a plan entitled "Plan of Land in the Town of Scituate, Massachusetts, Cliff Estates & Glades Road, drawn by David M. Delprete, Surveyor Vautrinot & Webby Co., Engineers & Land Surveyors, May 20, 1982, and recorded with the Plymouth County Registry as Plan No. 586 of 1982 in Plan Book 23, Page 292.

Along with the said application, deed, and record plan, the Applicants filed the following materials with the Board of Appeals:

1. Plan to Accompany ZBA Application, 4 Cliff Estates Road, Assessor's Parcel 8-7-4C, Scituate, MA, prepared by Morse Engineering Company, Inc. dated April 6, 2021 (the "MECI Plan");
2. Photographs of 4 Cliff Estates Road, Scituate, MA, taken by Morse Engineering Company, Inc. (the "MECI Photographs"); and
3. Construction Set, May 5, 2021, prepared by Architects Brown, Linquist, Fenuccio & Rabber.).

The Property contains approximately 20,280 s.f., is located within the R-3 District and was improved by a 2-story single-family dwelling. The Property is conforming as to lot area, lot frontage, and lot width. The former dwelling was nonconforming as to the front yard setback (20.7 ft.). The required front yard setback is 27.7 ft. calculated as an average in accordance with § 620.4.A of the Zoning Bylaws.

The Applicants do not propose to introduce any new nonconformities. The proposed reconstructed dwelling will increase the gross floor area (from 3,353 s.f. to 5,629 s.f.) an increase of more than 20 percent.¹ The new front yard setback will be 25 ft. which will reduce the existing nonconformity by approximately 4.3 ft.

The Applicants demonstrated pre-existing nonconforming status, and the 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 Applicants may petition the Board of Appeals for a finding under General Laws 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 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 home does not increase the nonconforming nature of said structure." Section 6 further provides:

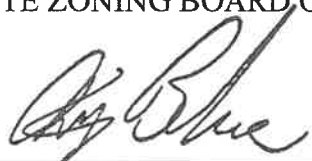
pre-existing nonconforming structures and uses may be extended or altered, provided that no such extension or alteration be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

¹ The Applicants' architect calculated the gross floor area as 4,484 s.f. The Assessors' records reflect the gross floor area as 3,353 sf. The Applicants use the more conservative number.


Based upon the application materials, the information provided at the public hearing, and the foregoing, the Board of Appeals finds that the Applicants have demonstrated that they are entitled to the Requested Relief. The Board specifically finds that the proposed reconstructed dwelling on the Property shall not intensify any existing nonconformity but if there is an intensification it is not substantially more detrimental than the current pre-existing nonconforming dwelling or use to the neighborhood.

For the foregoing reasons, the Board unanimously voted to GRANT the Section 6 finding Requested Relief.

SCITUATE ZONING BOARD OF APPEALS



Anthony J. Bucchere, Chairman



Susan Harrison



George Xixis

Filed with the Town Clerk and Planning Board: July 7, 2021

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