



Decision of the Scituate Zoning Board of Appeals on the application of John S. Kroeger and Amy L. Kroeger of 428 First Parish Road, Scituate, MA (hereinafter, the "Applicant") for a Special Permit/Finding pursuant to M.G.L. Chapter 40A, Section 6, and Scituate Zoning Bylaw (the "Bylaw") Sections 810.2 for the expansion and addition to a lawfully existing nonconforming single family residential dwelling where the proposed structure will increase the gross floor area by more than 20% over the existing structure.

The application was received, advertised and a public hearing was duly held on September 19, 2013, with the following members of the Zoning Board of Appeals hearing the application:

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

The subject property (the "Subject Property") at 428 First Parish Road is owned by John S. Kroeger and Amy L. Kroeger (See Certificate of Title No. 114870, Book 674, Page 70 filed with the Plymouth County Registry of Deeds). It is located in Residence R-2 Zoning District, and is not located within the Water Resources Protection District. The Subject Property is 29,640 ± SF with frontage on First Parish Road. The Applicant has provided a copy of the current tax assessment from the Town of Scituate which indicates that the single family dwelling on the Subject Property was constructed in 1925, prior to the adoption of zoning in the Town of Scituate. The pre-existing nonconformity of the Subject Property is that at no point does the lot width meet the requirement of 125 feet set forth in Section 610.1 A.

The Applicant proposes to alter the existing single family dwelling on the Subject Property by adding a second floor to the existing structure and an addition to the front as set forth in the submitted Site Plan prepared by Morse Engineering Co. Inc. dated June 27, 2013. The proposed expansion and addition together will increase the gross floor living area more than 20% (approximately 63%).

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), requires the Board to identify the particular respect or respects in which the existing 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 applicant will be entitled to the issuance of a special permit.

The Board specifically FINDS that the existing single family dwelling is a pre-existing nonconforming structure/use entitled to the protection afforded in M.G.L. Ch. 40A Section 6, that the lot width requirements set forth in the Town of Scituate Zoning Bylaws, Section 610.1, do not apply to the expansion or addition to a dwelling and that therefore the proposed expansion and addition to the dwelling does not increase the non-conforming nature of the lot or dwelling even though the gross floor living area shall increase by more than 20%.

Based on the information presented, the Board GRANTS the Applicant's request to issue a Special Permit to allow the expansion and addition of the single family dwelling at 428 First Parish Road, Scituate, MA by more than 20% gross floor area as set forth in the Site Plan prepared by Morse Engineering Co. Inc. dated June 27, 2013.

This Special Permit and these findings are issued pursuant to Zoning Bylaw Sections 810.2 and G.L. Ch. 40A, Section 6.

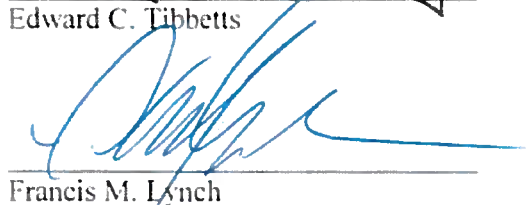
ZONING BOARD OF APPEALS



Sara J. Trezise, Chair



Edward C. Tibbetts



Francis M. Lynch

Filed with Town Clerk on: October 23 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. Chapter 40A, Section 17, and shall be filed in a court of competent jurisdiction. Proof of that filing shall be provided to the Town Clerk within twenty (20) days of the date of the filing of the decision with the Town Clerk.