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Decision of the Scituate Zoning Board of Appeals on the application of Kevin E. Hunter and Karen A. Hunter of 8 Northerly Farm Road, Scituate, Massachusetts (hereinafter, collectively the "**Applicants**") for a finding in accordance with Scituate Zoning Bylaw Sections 810.2, 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 & reconstruction, change, extension, or alteration to the single-family residential dwelling on a pre-existing nonconforming lot at 52 Otis Place, Scituate, Massachusetts (Assessor's Parcel 50-4-18-0), will not be substantially more detrimental or injurious 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 March 21, 2019, continued to April 25, 2019 and May 16, 2019. The following members were present and voted at the public hearing:

Anthony J. Bucchere, Chairman

Edward C. Tibbetts

Thomas J. Cavanagh

The Applicants were present at the public hearing and were represented by Attorney Jeffrey A. De Lisi of Ohrenberger, De Lisi & Harris, LLP of 28 New Driftway, Scituate, MA, by Rick Servant P.L.S., of Stenbeck & Taylor, Inc. of 844 Webster Street, Marshfield MA, and by Richard Rockwood, of Rockwood Design, Inc., 1020 Plain Street, Suite 320, Marshfield MA.

52 Otis Place (hereinafter, the "**Subject Property**") is owned by the Applicants per deed dated January 11, 2019, and recorded with the Plymouth County Registry of Deeds at Book 50773, Page 85.

Along with the said application, deed, record plan, and assessor property card, the Applicants filed the following material with the Board of Appeals:

1. Plot plan showing the existing and proposed dwelling entitled "CERTIFIED LOCATION PLAN SHOWING PROPOSED HOUSE 52 OTIS PLACE, SCITUATE, MA, PARCEL 50-4-18" dated January 29, 2019, revised through May 15, 2019 prepared by Stenbeck & Taylor, Inc. (hereinafter, the "**Plot Plan**"); and

2. A Plan entitled "Building Overlay Plan 52 Otis Place, Scituate, MA, Parcel 50-4-18", dated May 15, 2019, prepared by Stenbeck & Taylor, Inc. (hereinafter, the "**Building Overlay Plan**").

The Subject Property is located in the Residence R-3 zoning district, contains a single-family dwelling which fully conforms to Scituate's yard setback requirements and is on a pre-existing, nonconforming lot (6,955 Sq. Ft. in a 10,000 Sq. Ft. Zone and contains 74 Ft. of frontage in a 100 Ft. Zone). The dwelling on the Subject Property contains 950 Sq. Ft. of gross floor area. The Applicant does not propose to introduce any new nonconformities, and the proposed dwelling will also fully conform to all dimensional yard requirements. The required front yard setback is reduced to 24.2 Ft. using the acreage front yard setback of the two abutting properties on the same side of the street in accordance with Scituate Zoning Bylaw Section 620.4.

According to the Project Plans, the existing gross floor area will be increased from 950 Sq. Ft. to 2,880 Sq. Ft., a percentage increase of 203%. Though not required, the Applicants presented elevations of the proposed dwelling which is not out of character with the neighborhood. Nonconforming lots are not uncommon in this neighborhood, and the Applicants provided the Board with data concerning multiple other such properties in the neighborhood with homes exceeding 2,000 SF, 2,400 SF, and 3,000 SF.

The Applicants 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 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."

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 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" 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."<sup>1</sup>

Based upon the application materials, including the Project Plans, 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

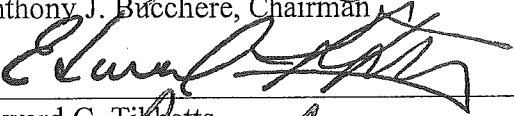
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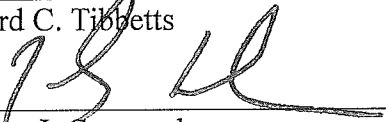
<sup>1</sup> The words "structure or" appearing in the brackets in the quoted sentence were supplied by Willard v. Board of Appeals of Orleans, 25 Mass. App. Ct. 15,21,514 N.E.2d 369 (1987), and later noted and applied in Rockwood v. Snow Inn Corp., 409 Mass. 361, 363 n.4, 364, 566 N.E.2d 608 (1991).

proposed reconstructed dwelling on the Property shall not be substantially more detrimental to the neighbors than the existing conforming dwelling on the nonconforming lot at the Subject Premises.

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

  
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Anthony J. Bucchere, Chairman

  
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Edward C. Tibbetts

  
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Thomas J. Cavanagh

Filed with the Town Clerk and Planning Board: 6/3/19

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.