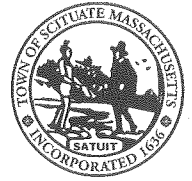


Town of Scituate

ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY
SCITUATE, MASSACHUSETTS 02066
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Decision of the Scituate Zoning Board of Appeals on the application of Diamond Development Realty Trust of Duxbury, Massachusetts for a Finding under M.G.L. Chapter 40A, § 6 and a Special Permit pursuant to Section 810.2 of the Scituate Zoning Bylaw to raze and reconstruct the pre-existing nonconforming single family dwelling at 53 Border Street, Scituate, Massachusetts.

The application was received, advertised and a public hearing was duly held on April 19, 2018 with the following members of the Zoning Board of Appeals hearing the application:

John Hallin, Chairman
Sara J. Trezise
Anthony J. Bucchere
Thomas Cavanagh

The subject property of this application is located in the R-2 Residential District. The property does not lie in the Town of Scituate Water Resource Protection District, or the Town of Scituate Saltmarsh and Tideland Protection District. The property lies in Zone X and AE 12 as shown on FIRM MAP COMMUNITY PANEL #250276 0107 K, dated November 4, 2016. While a portion of the property lies within the Scituate Flood Plain, the area where the proposed reconstructed dwelling will be located does not lie within the flood plain.

At the time of the application, title to the premises was in the name of Michelle G. Bonomi, also known as Mechele G. Bonomi, surviving Joint Tenant of John Neal Gray by way of a deed dated December 23, 1998 and recorded with the Plymouth County Registry of Deeds in Book 19129 Page 350. The Applicant is the contract purchaser of the property and provided the Board with written authority to represent the owner before the Board of Appeals.

The premises contain 44,967 square feet of land area and 58 feet of frontage along Border Street, a public way in the town of Scituate, and contain a pre-existing nonconforming single-family dwelling, constructed in 1957. While the lot complies with the dimensional requirements of the Scituate zoning bylaw, except for frontage requirements, the pre-existing dwelling, is located 14.4 feet from its westerly sideline. It is noted that at the time the dwelling was constructed, the bylaw required only 50 feet of frontage, therefore at the time of construction, the dwelling conformed.

At the April 19, 2018 public hearing, the Board reviewed with the Applicant a plan drawn by Ross Engineering Company, Inc. of Norwell, Massachusetts dated March 15, 2018. The plan shows the reconstructed dwelling eliminating the existing nonconforming side yard setback. The proposed setbacks are: 158.7 feet front yard setback, where 30 feet is required; 39.1 feet westerly side yard setback, 34.9 feet easterly side yard setback, where 15 feet is required and 85.2 rear yard setback, where 30 feet is required. The proposal also calls for an increase in the gross floor area of the dwelling from 2,394 square feet to 3,983 square feet, an increase of 66.4%. The existing footprint area will increase from 1,724 square feet to 2,369 square feet, an increase of 37.4%.

At the public hearing, the Board reviewed the applicants plan and discussed Massachusetts General Law Chapter 40A, and the Scituate Zoning Bylaw Section 810.2. One abutter spoke expressing concerns with the proposal.

Based upon the evidence presented, the Board finds that the lot and the existing single-family dwelling located at 53 Border Street are pre-existing and nonconforming to the Scituate Zoning Bylaw. The Applicant's proposal to raze and reconstruct the single-family dwelling is entitled to be reviewed by the Board pursuant to the terms of MGL c. 40A § 6, paragraph one.

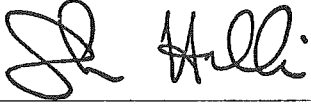
The Board further finds that since the premises contain insufficient lot frontage, sufficient lot area but the dwelling is nonconforming as to its Westerly side yard setback, and since the Applicant proposes an increase of the gross floor area to the pre-existing nonconforming single family dwelling by more than 20% the project may not be permitted by the Building Commissioner pursuant to Section 810.2A or 810.2B of the bylaw, but, pursuant to the final paragraph of Section 810.2 may be allowed by the Board by way of a Finding under General Laws Chapter 40A, Section 6.

The Board therefore finds that the lot is nonconforming as to the bylaw's frontage requirements, and the pre-existing single-family dwelling is nonconforming as to the side yard setback requirements of the bylaw. The Applicant's proposal will eliminate the existing nonconformity of the existing dwelling. The proposal does not change the nonconforming nature of the frontage.

Pursuant to Section 950.3 of the bylaw, the lot is appropriate for a single-family dwelling. The continued use of the dwelling will not adversely affect the neighborhood, nor create any undue nuisance or hazard to vehicles or pedestrians. The town's Board of Health and the Building Commissioner will ensure that appropriate facilities are provided to assure the proper operation of the single-family dwelling. The proposed use of dwelling will not have a significant impact on any public or private water supply, and the lot is not located within the Water Resource Protection District. In addition, the Board finds that the use reflects the nature and purpose of the use prevailing when the bylaw took effect, that there is no difference in the quality or character, as well as the degree of use, and the proposed use is not different in kind in its effect on the neighborhood.

For the foregoing reasons, the Board unanimously voted to GRANT the Applicant's request for a Finding under M.G.L. Chapter 40A § 6 and for a Special Permit under Section 810.2 of the Scituate Zoning Bylaw to raze and reconstruct the proposed single-family dwelling at 53 Border Street at any location of the lot, so long as said dwelling is within the required setbacks and the gross floor area of the new dwelling does not exceed 66.4% from that which presently exists.

ZONING BOARD OF APPEALS



John Hallin, Chairman



Sara J. Trezise



Anthony J. Bucchere

Filed with the Town Clerk and the Planning Board on MAY 11, 2018

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