

Town of Scituate

ZONING BOARD OF APPEALS

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Decision of the Scituate Zoning Board of Appeals on the application of K & E Construction, 209 Broadway, Hanover, Massachusetts (hereinafter, the "**Applicant**") for a Special Permit to raze and reconstruct a pre-existing, non-conforming single family dwelling at 55 Gilson Road, Scituate, MA (hereinafter, the "**Requested Relief**").

The application was received, advertised and a public hearing was held on July 16, 2015. The following members were present and voted at the public hearing:

Sara Trezise, Chair
John Hallin
Francis M. Lynch

The Application was presented by John Rehm of K & E Construction and Kevin Grady of Grady Consulting, L.L.C. at the public hearing. Questions and comments were presented by a number of residents and abutters.

The subject property 55 Gilson Road, Scituate, is a single family dwelling owned by Kerri Johnson, Edward Johnson and John D. Rehm, Jr. Trustees of Lennox Realty Trust, see recorded with the Plymouth County Registry of Deeds at Book 45737, Page 37 (hereinafter, the "**Property**"). It is located in the R-3 Zoning District, shown on Assessors Lot 60-01-25 and consists of 6,860 square feet, with frontage of 75 feet, lot width of 75 feet and a front yard setback of 20.9 feet. The dwelling was constructed in 1930. The lot is non-conforming as to area (10,000 square feet required), frontage (100 feet required), width (100 feet is required) and front yard setback (30 feet is required). Along with the said application and deed, the Applicant filed with Board of Appeals a stamped plot plan entitled "#55 Gilson Road, Scituate, Massachusetts" by Grady Consulting, LLC, dated June 24, 2015 (hereinafter, the "**Plot Plan**").

The Applicant informed the Board that the existing dwelling on the Property is dated and unsightly. The Applicant proposes to raze the said single-family dwelling and to reconstruct a new single-family dwelling on the Property. The existing home has 916 square feet, the proposed structure with have a finished floor area of 2,750 square feet.

The proposed structure will meet or all dimensional setback requirements in the Residence R-3 Zoning District except as to front setback, where the new structure will be pushed back from the existing 20.9 feet setback to 24.5 feet. The Applicant is required to obtain the requested finding from the Board because the lot is pre-existing and nonconforming as aforesaid and because the Applicant proposes to increase the gross floor area in excess of twenty percent.

The Board of Appeals considered the zoning relief requested, and specifically the last paragraph of Zoning Bylaw Section 810.2 of the Scituate Zoning Bylaw that provides 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.

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 purpose or for the same purpose 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 residential structure 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."¹

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), and other cases, requires the Board to identify the particular respect or respects in which the existing lot or 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. If the answer is in the affirmative, the Board must determine whether the reconstruction is substantially more detrimental to the neighborhood than the existing non-conformity.

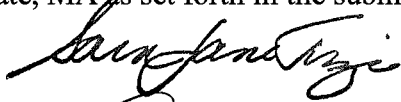
The Board of Appeals specifically finds that the Property is a pre-existing nonconforming lot as to lot area, width and frontage and that the existing structure is non-conforming as to front yard setback, that razing the existing single family dwelling and reconstructing a

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).

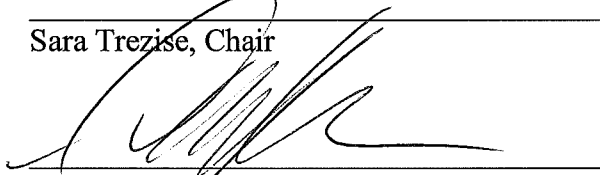
dwelling as shown in the Plot Plan will not increase the existing non-conformities and will reduce the non-conforming front yard setback. The Board finds that the proposed reconstruction will not increase the non-conformities but it will intensify the non-conformities. The Board further found that the requested change and construction requested by the Applicant will not be substantially more detrimental to the neighborhood than the existing non-conforming lot, structures or use.

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 he is entitled to the Requested Relief.

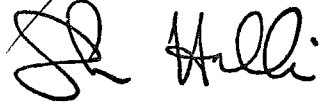
For the foregoing reasons, the Board unanimously voted to GRANT a Special Permit pursuant to the Town of Scituate Zoning Bylaws, Section 810.2, and G.L. Ch. 40A, Section 6, to allow for the reconstruction of a single family dwelling at 55 Gilson Road, Scituate, MA as set forth in the submitted Plot Plan.



Sara Trezise, Chair



Francis M. Lynch



John Hallin

Filed with the Town Clerk and Planning Board: August 5, 2015

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 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.