



Decision of the Scituate Zoning Board of Appeals on the application of Ryan Hurley of 119 West Concord Street, #2, Boston, Massachusetts 02118 for a Flood Plain Special Permit pursuant to Scituate Zoning Bylaw Section 470.2 and a Special Permit pursuant to Scituate Zoning Bylaw Section 810.2A to allow the razing and reconstruction of the single family dwelling located at 55 Seaside Road, Scituate Massachusetts.

The application was received, advertised and a public hearing was duly held on February 21, 2013 with the following members of the Zoning Board of Appeals hearing the application:

Peter Morin, Chairman
Sara J. Trezise
Francis Lynch

At the time of the application, title to the premises was owned by Robert J. Buckley by way of a deed dated July 28, 1964 and recorded with the Plymouth County Registry of Deeds in Book 3128 Page 367 and a deed dated December 29, 1978 and recorded with the Plymouth County Registry of Deeds in Book 4594 Page 291. The Applicant is the contract purchaser of the premises.

The single family dwelling that is the subject matter of the Application is located within Scituate's R-3 Residential District. The premises consists of a lot that contains a total of 8,850 square feet and is shown as Lot 156 on a plan entitled "Shore Acres Egypt - Mass. August 1896" which plan is recorded with the Plymouth County Registry of Deeds in Plan Book 1 Page 287. The lot contains 105.30 feet along Seaside Road, a paper street bordering on the Atlantic Ocean, and 105.00 feet along Priscilla Avenue, a private way.

Property located in the R-3 Residential District requires 10,000 square feet lot area, 100 feet of lot width, 100 feet of frontage, 30 feet front setback, 8 feet side yard set backs, and 20 feet rear yard setback for a dwelling (8 feet for a one story detached accessory structure). In addition the property does lie within the Scituate Flood Plain and Watershed Protection District. The property lies in Zone VE EL 16 as shown on FIRM Map Community Panel #250282 00126 J, dated July 17, 2012. The property does not lie in the Town of Scituate Water Resource Protection District.

The dwelling, pursuant to the Scituate Assessor's records, was constructed in 1920. The existing property line setbacks are conforming as they either meet the dimensional requirements or are grandfathered based upon an approved finding by the Scituate Board of Appeals at a public hearing in July, 1998, which finding allowed the then encroaching structure to be relocated to its current location on the lot. While the dwelling meets all setback requirements of the Scituate Bylaw, the lot does not meet the lot area requirements of the Bylaw.

At the February 21, 2013 public hearing, the Board reviewed with the Applicant the Site Plan dated January 23, 2012 prepared by Ross Engineering Company, Inc., Professional Engineers and Land Surveyors, Norwell, Massachusetts, showing both existing and proposed conditions. The Board also reviewed the Scituate Assessor's card, deeds to the property, the recorded plan, and architectural plans and elevations for the proposed new dwelling.

The plans call for razing the existing dwelling and the reconstruction of a new single family dwelling utilizing the existing pile foundation. Some additional piles will be installed to support both an enlarged open deck and small increase in the house footprint. The proposed dwelling will not reduce any of the current compliant setbacks. In addition, the proposed dwelling will meet all applicable environmental and building code requirements. The proposal will increase the gross floor area from 2,198 square feet to 3,200 square feet.

Since the property is located within the Scituate Flood Plain and Watershed Protection District, Section 470.6 F of the bylaw requires a special permit for any substantial improvement to an existing structure. In addition, since Section 810.2 of the Bylaw does not allow the Building Commissioner to permit the reconstruction of a non-conforming single or two family dwelling that increases the gross floor area by more than 20%, said Section 810.2 requires the Applicant to petition the Board for a finding under Massachusetts General Laws Chapter 40A, Section 6 to allow the reconstruction sought by the Applicant.

While four abutters in attendance at the public hearing made comments regarding the proposal, no one in attendance at the public hearing spoke in opposition to or in favor of the project.

Based upon the evidence presented, the Board finds that while the dwelling, built in 1920 conforms to all setback requirements, the lot does not meet the lot area requirement of the bylaw and that therefore the lot and dwelling are pre-existing and nonconforming to the Scituate Bylaw. The Applicant's proposal is therefore entitled to review pursuant to the terms of MGL c. 40A § 6. The Board specifically finds that the proposed reconstructed dwelling will increase the non-conforming nature and use of the property to persons, property and improvements in the neighborhood. However, the Board specifically finds that said increase is not substantially more detrimental than the existing nonconforming nature and use of the property to persons, property and improvements in the neighborhood.

Pursuant to Section 950.3 of the Bylaw, the lot is appropriate for a single family dwelling. The use of the dwelling as proposed should 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 the dwelling will not have a significant impact on any public or private water supply. 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.

The Board also finds that the Applicant's proposal is a substantial improvement of an existing structure located within the Flood Plain and Watershed Protection District and legally existed on the date of the amendment of the Flood Plain and Watershed Protection District in the Scituate Bylaw (March 2, 1992).

For the foregoing reasons, the Board unanimously voted to GRANT the Applicant's request pursuant to Section 810.2 of the Bylaw for a finding under MGL Chapter 40A § 6 and, pursuant to Section 470.6F of the Bylaw, for a Special Permit to allow the proposed reconstruction of the single family dwelling at 55 Seaside Road, subject, however, to the following conditions:

1. All improvements must be consistent with the requirements of the National Flood Insurance Program;
2. Any improvements must be consistent with those provisions of the State Building Code (780 Code of Massachusetts Regulations) pertaining to flood resistant construction, in consultation with the Building Commissioner;
3. Any improvements shall not affect the natural drainage patterns of the watercourse.

ZONING BOARD OF APPEALS


Peter Morin, Chairman


Sara J. Trezise


John Hallin

Filed with the Town Clerk on: March 6, 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 40, Section 17, and shall be filed within twenty (20) days of the date of the filing of the decision with the Town Clerk.