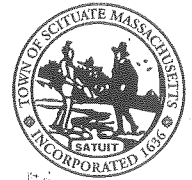


Town of Scituate

ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY
SCITUATE, MASSACHUSETTS 02066
(781) 545-8716



Decision of the Scituate Zoning Board of Appeals on the application of Joseph Annese of 60 Collier Road, Scituate, Massachusetts (hereinafter, the "**Applicant**") 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 pre-existing nonconforming single-family residential dwelling, on a pre-existing nonconforming lot at 60 Collier Road, Scituate, MA (Assessor's Parcel 64 -09-12), will not be substantially more detrimental or injurious to the neighborhood, than the existing structure or use (hereinafter, the "**Requested Relief**").

The application was received, advertised, and a public hearing was held on November 15, 2018. The following members were present and voted at the public hearing:

John Hallin, Chairman
Edward C. Tibbetts
Thomas J. Cavanagh

The Applicant was present at the public hearing and was represented by attorney Jeffrey A. De Lisi of Ohrenberger, De Lisi & Harris, LLP of 28 New Driftway, Scituate, MA, and by Brendan Sullivan, P.E., P.L.S., of Cavanaro Consulting, Incorporated of 687 Main Street, PO Box 5175, Norwell, MA.

The subject property is owned by Joseph S. Annese, Trustee of Annese Family Trust u/d/t dated November 3, 2006, per deed dated November 2, 2006, and recorded with the Plymouth County Registry of Deeds at Book 33628, Page 29 (hereinafter, the "**Property**"). The Property contains 5,365 square feet of lot area, is laid out on a plan dated and recorded prior to the adoption of zoning in the Town of Scituate, and is more particularly shown as Lot 180 on such plan which is entitled "Plan of Rivermoor 3rd Cliff, Scituate, Mass., owned by George F. Welch". The said record plan is recorded with the Plymouth County Registry of Deeds in Plan Book 1, Page 560.

Along with the said application, deed, and record plan, the Applicant filed the following materials with Board of Appeals:

1. A copy of the current Assessor's Field Card from the Scituate Assessor showing that the dwelling on the Property was constructed in 1927; and

2. Plot plan showing the existing and proposed dwelling entitled "SITE PLAN 60 COLLIER ROAD - SCITUATE" dated August 20, 2018, revised through October 12, 2018, prepared by Cavanaro Consulting, Incorporated (hereinafter, the "Plot Plan").

The Property is located in the Residence R-3 zoning district, contains a single-family dwelling thereon, and is pre-existing, nonconforming to lot area (5,365 Sq. Ft. in a 10,000 Sq. Ft. zone) and lot frontage (50 Ft. in a 100 Ft. zone). The 1927, two-story dwelling contains 1,296 Sq. Ft. of gross living area, and is dimensionally pre-existing, nonconforming on the front yard (27.1 Ft. in a 30 Ft. zone) and the easterly side yard (6.4 Ft. in a 8 Ft. zone).

The Applicant does not propose to introduce any new nonconformities, and the proposed two-story reconstructed dwelling will be relocated on the lot such that the front and side yard dimensional nonconformities will be entirely eliminated. The front yard setback of the reconstructed dwelling is proposed to be 30.2 Ft., and the easterly side yard setback is proposed to be 8.2 Ft. According to the Plot Plan, the existing gross floor area will be increased from 1,296 Sq. Ft. to 3,166 Sq. Ft., a percentage increase of 144%.

The Applicant 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 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

Based upon the application materials, including the Plot Plan, the information provided at the public hearing, and the foregoing, the Board of Appeals finds that the Applicant has


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).

demonstrated that he is entitled to the Requested Relief. The Board specifically finds that the proposed reconstructed dwelling on the Property shall not be substantially more detrimental than the existing nonconforming dwelling or use to the neighborhood.

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



John Hollin, Chairman



Edward C. Tibbetts



Thomas J. Cavanagh

Filed with the Town Clerk and Planning Board: 12/28/18

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.