

Town of Scituate

ZONING BOARD OF APPEALS

600 Chief Justice Cushing Hwy.
Scituate, Massachusetts 02066
(781) 545-8716



RECEIVED
2021 DEC -6 AM 11:41
TOWN OF SCITUATE
1080 Main St
Scituate, MA 02066

Decision of the Scituate Zoning Board of Appeals on the application of Robert J. Murray of 40 Battery Street, Unit 110, Boston, MA 02109 (hereinafter, the “**Applicant**”) for a special permit/finding in accordance with Scituate Zoning Bylaw Section 810.2 and G.L. Ch. 40A, Section 6, and/or any other relief that the Board of Appeals may grant, to raze a pre-existing, nonconforming single-family dwelling on a pre-existing, nonconforming lot at 603 Hatherly Road (Assessor Parcel No. Map 7, Block 5, Parcel 48) and to reconstruct a single-family dwelling thereon which will not be substantially more detrimental 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 November 18, 2021. The following members were present and voted at the public hearing:

Anthony J. Bucchere, Chairman
Susan Harrison
George Xixis

The Applicant was represented at the public hearing by his attorney, Jeffrey A. De Lisi, of Ohrenberger, De Lisi & Harris, LLP of 28 New Driftway, Scituate, MA, and by Nicholas C. Leing, Project Designer of Grady Consulting, L.L.C., 71 Evergreen Street, Suite 1, Kingston, MA 02364.

The subject property at 603 Hatherly Road (hereinafter, collectively, the “**Property**”) is owned by the Applicant as appears on a deed recorded with Plymouth County Registry of Deeds at Book 54890, Page 89. The Property was laid out and shown as Lot 2 on a plan entitled “Subdivision Plan of Land owned by Jean A. and J. Raymond Gaffey, Jr., off Hatherly Road, North Scituate Beach, Scituate, Massachusetts, January 31, 1952” which plan was recorded at said registry prior to the adoption of residential zoning in Scituate in Plan Book 9, Page 5208.

The Applicant filed the following materials with Board of Appeals:

1. Cover letter, Application for Public Hearing, Zoning Chart, and filing fees prepared by Grady Consulting, L.L.C.;
2. Assessor's Field Card;
3. Deed recorded with the said Registry at Book 54890, Page 89;
4. Photographs of the Property;
5. Architectural renderings, floor plans, and elevations by Custom Home Designs of Marshfield, MA dated August 2, 2021 (Sheets A-1 through A-6); and
6. Grady Consulting plot plan entitled "PLOT PLAN #603 HATHERLY ROAD SCITUATE, MASSACHUSETTS" dated August 31, 2021 (three sheets) (collectively, the "Plot Plan").

The Property is located in the Residence R-3 zoning district and contains a single-family dwelling thereon which was constructed in 1956 according to the field card of the Tax Assessor. The Property is a corner lot having frontage on both Hatherly Road and Cricket Circle. The dwelling presently maintains its primary frontage from Hatherly Road, and is nonconforming as to its front yard setback along Hatherly Road because it is set back 29.5 feet in a 30-foot zone. Pursuant to the third full paragraph of G.L. Ch. 40A, Section 7, the said dimensional nonconformity is characterized as a legally non-conforming structure subject to Section 810.2 of the Scituate Zoning Bylaw and G.L. Ch. 40A, Section 6. The Property itself is pre-existing, nonconforming as to lot area (15,022 sf in a 20,000-sf zone), lot frontage along Hatherly Road (79.1 ft. in a 100 ft. zone), and lot width (104 ft. in a 125 ft. zone). The existing dwelling contains approximately 2,793 square feet.

The Applicant proposes to raze the existing dwelling and to reconstruct a new dwelling on the Property. The reconstructed dwelling will eliminate the front yard nonconformity and will conform with all dimensional requirements set forth in the Scituate Zoning Bylaw. In addition, by changing the front of the dwelling and primary access road from Hatherly Road to Cricket Circle, the Applicant will also eliminate both the lot frontage and lot width nonconformities; those calculations will be measured utilizing Cricket Circle as the frontage road. The gross floor area of the dwelling will increase to 4,224 sf, which is proportional in the neighborhood, which is four blocks from the Atlantic Ocean and abuts a private golf club.

At the hearing the Applicant indicated that an abutter communicated a concern about surface water runoff as a result of the proposed change to the Property. The Applicant indicated that he is proposing a swale to be installed (shown on the Plot Plan) as mitigation to counteract any such adverse stormwater runoff.

As indicated above, 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

The Board of Appeals specifically voted to find (i) that the Property and existing dwelling are dimensionally pre-existing, nonconforming, (ii) that the proposed reconstructed single-family dwelling will not create any new nonconformities, and (iii) to the extent that the proposal extends an existing nonconformity, such extension is not considered substantially more detrimental to the neighborhood than the existing nonconforming dwelling.


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 demonstrated that she is entitled to the Requested Relief.

For the foregoing reasons, the Board unanimously voted to GRANT the special permit, finding(s), and the Requested Relief.

SCITUATE ZONING BOARD OF APPEALS



Anthony J. Bucchere



Susan Harrison



George Xixis

Filed with the Town Clerk and Planning Board: December 6, 2021

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.

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).