

# 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 Paul and Bonnie Turcotte of 61 Seaside Road, Scituate, Massachusetts (hereinafter, collectively, the "**Applicant**") for a Special Permit in accordance with Scituate Zoning Bylaw Sections 470.6F and 950.2B, and a Finding in accordance with Scituate Zoning Bylaw Sections 810.2 and 950.2D, 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 61 Seaside Road, Scituate, MA (Assessor's Map 28, Block 4, Parcels 4 and 5), 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, the "**Requested Relief**").

The application was received, advertised, and a public hearing was held on October 19, 2017. The following members were present and voted at the public hearing:

John Hallin, Chairman  
Sara J. Trezise  
Edward C. Tibbetts

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 Paul Mirabito, CE, PLS., of Ross Engineering Company, Inc., 683 Main Street, Norwell, MA.

The subject property is owned by the Applicant per deed dated July 28, 2017 and recorded with the Plymouth County Registry of Deeds at Book 48758, Page 211. The property consists of two merged parcels; (1) Parcel One shown and designated with the letter "B" on a plan bearing the title "Shore Acres Lots, Scituate, Mass." dated May 1945, by S. Litchfield, C.E., recorded with the Plymouth County Registry of Deeds in Plan Book 6, Page 751, and (2) Parcel Two comprised of three lots shown as lots 175, 176, and 177 on a plan entitled "Shore Acres Egypt - Mass.", dated August 1896, drawn by

George E. Wetherbee, Jr., Civil Engineer, recorded with the said registry at Plan Book 1, Page 462. Said Parcels One and Two shall hereinafter collectively be referred-to as the "**Property**". Along with the said application, deed, and record plans, the Applicant filed the following materials with Board of Appeals:

1. A copy of an Assessor's Field Card from the Scituate Assessor showing that the dwelling on the Property was constructed in 1920;
2. Photographs of the existing single family dwelling, and Google Earth aerial photographs of the Property; and
3. Plot plan showing the existing and proposed dwelling entitled "Board of Appeals Site Plan for 61 Seaside Road in Scituate, MA" dated September 15, 2017, prepared by Ross Engineering Company Inc. (hereinafter, the "**Plot Plan**").

The Property is located in the Residence R-3 zoning district, and the Flood Plain and Watershed Protection overlay zoning district, and contains a single-family dwelling thereon. The Property is located westerly of a boulder revetment on the Atlantic Ocean. According to the Plot Plan, the Property is bounded by two paper streets which have not been constructed; Seaside Road (essentially the beach easterly of the stone revetment) and Samoset Avenue (which runs perpendicular to the ocean between Seaside Road and Egypt Avenue). For purposes of dimensional setback measurements, the front yard is called to be along Seaside Road. According to the Plot Plan and the application, the Property is nonconforming as to lot frontage and width (50 ft. in a 100 ft. zone). The single-family dwelling thereon is dimensionally nonconforming to the Scituate Zoning Bylaw requirements of front and side yard setbacks insofar as it is set back approximately 9.8 feet from Seaside Road, and 7.7 feet and 8.3 feet, respectively, on each of the two side yards.

The Applicant does not propose to introduce any new nonconformities, and the proposed reconstructed dwelling will be moved further from the front and side property lines such that the existing setback nonconformities will be less nonconforming. According to the Plot Plan, the existing building footprint will increase by approximately 14% and the gross floor area of the dwelling will be increased by approximately 43.8%. The Board noted that the Plot Plan indicates that steps on the reconstructed dwelling are proposed to protrude into the layout of the paper street known as Samoset Avenue. The Applicant's attorney explained that the Applicant owns the fee to the midpoint of Samoset Avenue as a result of a statute known as the "Derelict Fee Statute", cited as G.L. Ch. 183, Section 58. Nonetheless, the Board was reluctant to approve construction of a portion of a building within the paper street and indicated that its vote of approval of the Requested Relief would exclude any construction within the paper street; such construction, if it occurs, to be at the Applicant's own risk.

The Board and Applicant also discussed flood plain and elevation issues. The existing dwelling is entirely within the FEMA Flood Zone AE (elevation 17.0 ft.). The proposed reconstructed dwelling will also be in the AE 17 ft. zone, and will be raised onto pilings such that the top of the piles are approximately at elevation 19.2 ft., and the first floor at approximately 21.0 ft. The fact that the building will be located on piles will also be

beneficial because it will eliminate the full basement in the existing dwelling. Also, the proposed reconstructed dwelling will be entirely compliant to the State Building Code, and the livable space of the reconstructed dwelling will be brought outside the FEMA Flood Zone. The reconstructed dwelling will be consistent with the provisions of the National Flood Insurance Program. Further, it will not affect the natural drainage patterns of the watercourse.

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.”<sup>1</sup>

The Board of Appeals specifically voted to find (i) that the front and side yard setbacks of the existing single-family dwelling are nonconforming, (ii) that the proposed reconstructed single-family dwelling reduces the front and side yard setbacks nonconformities, and (iii) that the proposed reconstructed dwelling is not substantially more detrimental to the neighborhood than the existing dwelling.

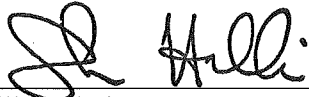
Based upon the application materials, including the Plot Plan, the information provided at the public hearing, and the foregoing, the Board of Appeals finds that the Applicant has demonstrated that he is entitled to the Requested Relief.

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<sup>1</sup> 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).

For the foregoing reasons, the Board unanimously voted to GRANT the Special Permit, Finding(s), and the Requested Relief upon the condition that the Board is not approving the construction of any portion of the proposed building within the layout of the paper street known as Samoset Avenue, and, if the Applicant chooses to build within the layout of Samoset Avenue, he does so at his own risk.

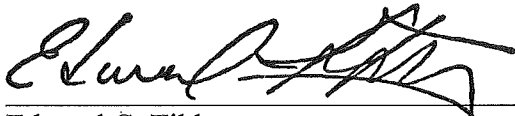
SCITUATE ZONING BOARD OF APPEALS



John Hallin, Chairman



Sara J. Trezise



Edward C. Tibbetts

Filed with the Town Clerk and Planning Board: November 20, 2017

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.