

Town of Scituate

ZONING BOARD OF APPEALS

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ZONING BOARD
2018 MAY 14 PM 12:07

Decision of the Scituate Zoning Board of Appeals on the application of Peter Martin of 11 Paige Street, Hingham, Massachusetts (hereinafter, the "**Applicant**") on his request for (i) a Special Permit pursuant to Scituate Zoning Bylaw Sections 460.2, 470.6F and 950.2B, (ii) a G.L. Ch. 40A, Section 6 Finding in accordance with Scituate Zoning Bylaw Sections 810.2 and 950.2D, (iii) and/or any other relief that the Board of Appeals may grant, to raze a dimensionally conforming single-family dwelling in the Residence R-2, the Saltmarsh & Tideland Conservation, and the Flood Plain and Watershed Protection Zoning Districts at 67 Border Street, Scituate, MA (the "**Property**") on a lot which is pre-existing, nonconforming as to lot frontage, and to reconstruct a dimensionally conforming single-family dwelling thereon having an increase by more than 20% in the gross floor area (hereinafter, collectively, the "**Requested Relief**").

The application was received, advertised, and a public hearing was held on April 19, 2018. The following members were present and voted at the public hearing:

John Hallin, Chairman
Sara J. Trezise
Anthony J. Bucchere
Thomas 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 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 May 5, 2017, and recorded with the Plymouth County Registry of Deeds at Book 48391, Page 137. Along with the said application, deed, and record plan, 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 1958;
2. Photographs of the existing single-family dwelling; and
3. Plot plan showing the existing and proposed dwelling entitled "Amended ZBA Plan for 67 Border Street in Scituate, Mass." dated March 7, 2018, Scale 1"=30', prepared by Ross Engineering Company Inc. (hereinafter, the "**Plot Plan**").

According to the Town of Scituate Zoning Map, the Property is technically located in the Residence R-2 zoning district, the Saltmarsh & Tideland Conservation overlay zoning district (hereinafter, the "**STC District**"), and the Flood Plain and Watershed Protection overlay zoning district (hereinafter, the "**FPWP District**"). With respect to the FPWP District, the Applicant's land surveyor explained that Zoning Bylaw Section 470.3 provides that the FPWP District is more precisely defined to be located and bounded as shown on a specific 1972 plan as the limit of the ten-foot contour. According to the Plot Plan, the area of the existing and proposed reconstructed dwelling is above the ten-foot contour, and, therefore, the Applicant's land surveyor concluded that the proposed work would not be within the FPWP District. Likewise, with respect to the STC District, the Applicant's land surveyor explained that the area of the work is not located within an actual salt marsh or tideland. Nonetheless, in an abundance of caution, since the Scituate Zoning Map technically identifies the Property as within these overlay districts, the Applicant has requested that the Board grant a Special Permit. Based upon the documents and plans provided to the Board, as well as the Applicant's presentation, the Board finds that the Special Permit criteria of Zoning Bylaw Section 470.6F and 460.2, respectively, have been met. The proposal will not adversely affect the natural character of the area, and is consistent with the existing use of the property and the residential uses of the properties in the neighborhood. Additionally, the construction will meet the requirements of the National Flood Insurance Program and the Commonwealth of Massachusetts Building Code, and has no effect on natural drainage patterns of any watercourse.

The record deed indicates that the lot was created by a plan endorsed by the Scituate Planning Board on April 12, 1958, and which plan is recorded with the Plymouth County Registry of Deeds at Plan No. 128 of 1958 in Plan Book 11, Page 324. At the time that the lot was created, the Town of Scituate had a lot frontage requirement of fifty feet. Presently, the lot frontage requirement is 100 feet. Therefore, the Property is pre-existing, nonconforming as to lot frontage.

The single-family dwelling on the Property was constructed in 1958 according to the Tax Assessor. The Plot Plan indicates that the existing and proposed reconstructed dwellings both are fully compliant with all dimensional setback requirements in the R-2 Zoning District. However, because the reconstructed dwelling will represent an increase in gross floor area by 47.6% on a pre-existing, nonconforming lot, then a Finding is necessary under Section 810 of the Scituate Zoning Bylaw.

M.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


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).

The Board of Appeals specifically voted to find (i) that the existing Property is nonconforming as to lot frontage and that the single-family dwelling thereon is otherwise dimensionally conforming; and (ii) that the proposed razing and reconstruction thereof as shown on the amended Plot Plan will not create any new nonconformities, and that, to the extent that the reconstructed dwelling intensifies the existing lot frontage nonconformity, then such intensification will not be substantially more detrimental to the existing lot frontage nonconformity.

Based upon the application materials, including the Plot Plan, as amended and before the Board, 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. The Board is assured that the requirements of Bylaw Section 950.3 have been satisfied.

For the foregoing reasons, the Board unanimously voted to GRANT the Special Permit, Finding(s), and the Requested Relief upon the condition that the Applicant modify Note 2 shown on the amended Plot Plan so as to indicate that the Property lies in the FPWP District.

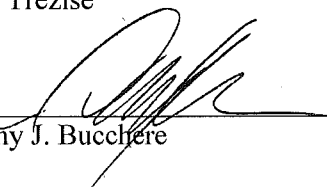
ZONING BOARD OF APPEALS



John Hallin, Chairman



Sara J. Trezise



Anthony J. Bucchiere

Filed with the Town Clerk and Planning Board: May 14, 2018

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.