

Town of Scituate

ZONING BOARD OF APPEALS

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



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Decision of the Scituate Zoning Board of Appeals on the application of Bruce E. Beagley and Kathy M. Beagley, of and concerning 68 Collier Road, Scituate, MA 02066 (hereinafter, collectively, 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 increase the gross floor area of an existing non-conforming structure on a pre-existing, nonconforming lot by 43% (hereinafter, collectively, the "**Requested Relief**").

The application was received, advertised, and a public hearing was held on November 21, 2019. The following members were present and voted at the public hearing:

Anthony J. Bucchere, Chairman
Brian B. Sullivan
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 02066.

The subject property at 68 Collier Road (hereinafter, the "**Property**") is owned by the Applicants by deed dated October 30, 1990 and recorded with the Plymouth County Registry of Deeds at Book 10013, Page 2, and is identified as Scituate Assessor Parcel No. 64-9-10. The Property is further shown as a part of Lot 182 and all of Lot 183 on a plan entitled "Plan of Rivermoor, Third Cliff, Scituate, Mass., owned by George F. Welch", drawn by Stephen Litchfield Surveyor, dated April, 1906," recorded with the said Registry at Plan Book 1, Page 560. The Property is located in the Residential R-3 Zoning District, and its lot size and shape are pre-existing, nonconforming as to lot area (8,508 SF in a 10,000 SF zoning district) and frontage/width (75 Ft. in a 100 Ft. zoning district).

According to the records of the Scituate Tax Assessor, the dwelling on the Property was constructed in 1940. It is dimensionally conforming to all setbacks, except on its northeasterly sideline, where the dwelling is setback approximately 2.5 Ft. in an 8 Ft. zoning district. Additionally, the dwelling has approximately 1,704 SF of gross living area.

The Applicant proposes to construct an addition off the southwesterly side yard in the approximate area of the existing covered porch. According to the plot plan filed with the application, presently the closest distance of the existing dwelling to the southwesterly side yard is 39.2 Ft. in an 8 Ft. zoning district. The new construction of the addition will fully comply with all dimensional setbacks, and, specifically, the post-construction southwesterly side yard setback is proposed to be 13.3 Ft. in an 8 Ft. zoning district. The stated purpose for the addition is to enable an attached garage and a revised floor plan above that will increase the gross floor area of the dwelling to 2,428 SF, representing an increase of approximately 43%.

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.”

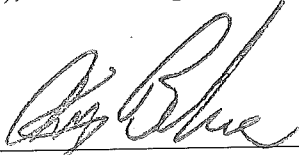
G.L. Ch. 40A, Section 6 provides, in relevant part, that zoning ordinances or bylaws shall not apply to lawful pre-existing nonconforming structures or uses, but shall apply to any reconstruction, extension or structural change to provide for its use for a substantially different purpose or for the same 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, the presentation, and 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.

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).

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



Anthony J. Bucchere



Brian B. Sullivan



Edward C. Tibbetts

Filed with the Town Clerk and Planning Board: 12/10/19

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.