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TOWN OF SCITUATE



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Zoning Board of Appeals

Decision of the Scituate Zoning Board of Appeals on the application of John F. McNamara III of 75 Moorland Road, Scituate, MA (hereinafter, the "Applicant") for a Special Permit/Finding pursuant to M.G.L. Chapter 40A, Section 6, and Scituate Zoning Bylaw (the "Bylaw") Sections 810.2 for the conversion of an existing basement to habitable living area resulting in an increase the gross floor area by more than 20% over the existing structure.

The application was received, advertised and a public hearing was duly held on November 21, 2013, with the following voting and alternate members of the Zoning Board of Appeals hearing the application:

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

The subject property (the "Subject Property") at 75 Moorland Road is owned by John F. McNamara III and Catherine M. McNamara (See Deed, Book 39347, Page 89-91, recorded with the Plymouth County Registry of Deeds). It is located in Residence R-2 Zoning District. It is not located within the Flood Plain Watershed Protection District nor is it in the Water Resources Protection District. The Subject Property is 24,335 square feet of land with frontage on Moorland Road. The Applicant has provided a copy of the current tax assessment from the Town of Scituate which indicates that the single family dwelling on the Subject Property was originally constructed in 1949, prior to the adoption of zoning in the Town of Scituate. The pre-existing nonconformity of the Subject Property is that it does not meet the set back requirement of 30 feet from Moorland Road set forth in Section 620.3

The Applicant proposes to alter the existing single family dwelling on the Subject Property by improving the basement only as set forth in the application and submitted Site Plan prepared by Ross Engineering Company Inc. dated October 10, 2013 and Drawing by Off The Wall Design, Sheet A-1, dated September 3, 2013. The proposed improvement to the basement will increase the gross floor living area 40.7%.

M.G.L. Ch. 40A Section 6, as interpreted by the Massachusetts Appeals Court in *Gale v. Zoning Board of Appeals of Gloucester*, 80 Mass. App. Ct. 331 (2011), requires the Board to identify the particular respect or respects in which the existing structure does not conform to the present by-law and then determine

whether the proposed alteration or addition would intensify the existing nonconformities or result in additional ones. If the answer is in the negative, the applicant will be entitled to the issuance of a special permit.

The Board specifically FINDS that the existing single family dwelling is a pre-existing nonconforming structure/use entitled to the protection afforded in M.G.L. Ch. 40A Section 6, that the dwelling is set back from Moorland Road 24.3 feet and the bulkhead is set back 22.9 feet, that this is not in conformance with the set back requirement of 30 feet as provided in the Town of Scituate Zoning Bylaws, Section 620.3, and that the lot and dwelling are in all other respects in conformance with the Zoning Bylaws. The Board further FINDS that the proposed conversion of the existing basement does not intensify the existing non-conformity of the lot or dwelling or result in additional non-conformities even though the gross floor living area will increase by 40.7%.

Based on the information presented, the Board GRANTS the Applicant's request to issue a Special Permit to allow improvement of the basement at 75 Moorland Road, Scituate, MA to increase the gross floor from 3,318 square feet to 4,668 square feet as set forth in the Site Plan prepared by Ross Engineering Company Inc. dated October 10, 2013 and Drawing by Off The Wall Design, Sheet A-1, dated September 3, 2013..

This Special Permit and these findings are issued pursuant to Zoning Bylaw Sections 810.2 and G.L. Ch. 40A, Section 6.

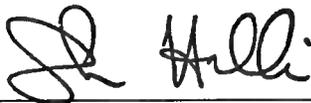
ZONING BOARD OF APPEALS



Sara J. Trezise, Chair



Edward C. Tibbetts



John Hallin

Filed with the Town Clerk and the Planning Board: December 10, 2013.

This Special Permit 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. Chapter 40A, Section 17, and shall be filed in a court of competent jurisdiction. Proof of that filing shall be provided to the Town Clerk within twenty (20) days of the date of the filing of the decision with the Town Clerk.