

Town of Scituate

ZONING BOARD OF APPEALS

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Decision of the Scituate Zoning Board of Appeals on the Application of Doris M. Crary and Dennis A. Badore, Trustees of the Doris M. Crary and Dennis A. Badore Revocable Trust dated June 28, 2012, both of 8 Oceanside Drive, Scituate, Massachusetts 02066, with a mailing address of 279 South Street, Halifax, Massachusetts 02338 (hereinafter the "Applicant") for a Special Permit/Finding pursuant to M.G.L. Chapter 40A, §6, and Scituate Zoning Bylaw (the "Bylaw") Section 470.6F and Section 810.2, and/or any other relief it deems necessary, that the reconstruction, extension, alteration, or structural change of an existing nonconforming structure on a nonconforming lot, and the proposed structure, although greater than twenty (20%) percent larger gross floor area, will not be substantially more detrimental to the neighborhood than the existing nonconforming structure and/or nonconforming lot.

The Application was duly received, duly advertised, and a public hearing was duly held on June 21, 2018, with the following voting members of the Scituate Zoning Board of Appeals hearing the Application:

John Hallin, Chairman
Edward C. Tibbetts
Thomas J. Cavanagh

The Applicant was represented at the hearing by Attorney Daniel J. MacKinnon and Jeffrey M. Hassett, P.E. of Morse Engineering Company, Inc.

The subject property is located at 85 Glades Road, Scituate Massachusetts and is owned by the Applicant pursuant to a deed recorded in the Plymouth County Registry of Deeds in Book 42981, Page 15 (hereinafter the "Subject Property"). The Subject Property is located in an R-3 Zoning District and Floodplain and Watershed Protection District. It is not located within the Water Resources Protection District. The Applicant has provided a copy of the current tax assessment card which indicates that the structure was constructed on the Subject Property in 1920.

The pre-existing nonconformities of the Subject Property are (a) frontage; (b) lot width; (c) lot area; (d) front yard setback; (e) right side yard setback, (f) left side yard setback, (g) rear yard setback, and (h) parking.

The Applicant proposes to reconstruct the existing dwelling on the Subject Property by reconstructing the structure in a slightly different location on the lot. The new location of the structure would decrease the front yard setback nonconformity from 8.53' to 8.75', decrease the left side yard setback nonconformity from 1.00 to 3.00', and decrease the rear yard setback from 1.20 to 2.00. The proposed new structure

would provide parking for two vehicles thereby reducing the parking nonconformity from 0 to 2. The proposed new structure will not increase any existing nonconformities. The proposed new structure will result in an increase of gross floor area of 59.7% from 680 square feet to 1,086 square feet.

M.G.L. Chapter 40A, §6 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.”

Section 810.2 of the Bylaw states in part that “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.”

The Board specifically finds that the existing dwelling is a pre-existing nonconforming structure entitled to the protections afforded by the Bylaw and M.G.L. Chapter 40A.

In addressing whether the proposed structure will be substantially more detrimental to the neighborhood than the existing nonconforming structure, the Board considered the guidelines set forth in Powers v. Building Inspector of Barnstable, 363 Mass. 648 (1973); Derby Refining Company v. City of Chelsea, 407 Mass. 703 (1990); and Building Commissioner of Medford v. McGrath, 312 Mass. 461 (1942).

Based on the information presented, the Board finds that the proposed reconstruction of the structure, as shown on the plan, dated May 22, 2018, submitted with the Application by Morse Engineering Co., Inc., will not be substantially more detrimental to the neighborhood than the existing nonconforming structure, and that the proposed structure will not be substantially different in character or substantially more detrimental or injurious to persons, property or improvements in the vicinity.

The Board finds the Applicant meets the Special Permit/Finding criteria set forth in Bylaw Section 950.3, A through E, as follows:

- A. The specific site is an appropriate location for the structure as the structure is pre-existing nonconforming at the location, will reduce nonconformities related to the structure, and will represent a significant improvement to the neighborhood from the existing structure;
- B. The structure will not adversely affect the neighborhood as it increases available parking and reduces several nonconformities;
- C. There will be no undue nuisance or serious hazard to vehicles or pedestrians as a result of the use or structure and in fact may reduce the hazard to vehicles and/or pedestrians by increasing the availability of parking;
- D. Adequate and appropriate facilities will be provided to assure the proper operation of the use and structure; and
- E. The structure will be serviced by municipal water and an on-site sewage disposal system and will be of no impact on any public or private water supply.

Section 470.6 of the Floodplain and Watershed Protection District portion of the Bylaw states in part:

“Upon issuance of a special permit by the Board of Appeals and subject to such special conditions and safeguards as the Board of Appeals deems necessary to fulfill the purposes of this section, the following uses and structures are permitted:


F. A special permit for substantial improvement of existing structures which legally existed on the date of amendment of this section of the bylaw (March 2, 1992) may be issued in accordance with the following:

1. Such improvements must be consistent with the requirements of the National Flood Insurance Program.
2. Any improvements must be consistent with those provisions of the State Building Code (780 Code of Massachusetts Regulations) pertaining to flood resistant construction, in consultation with the Building Commissioner.
3. Any improvements shall not affect the natural drainage patterns of the watercourse."

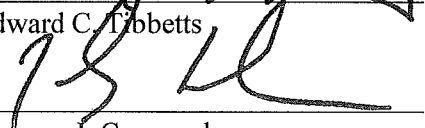
The Board finds the Applicant meets the Special Permit criteria set forth in Bylaw Section 470.6F in that the existing structure legally existed on the date of the amendment of that section of the bylaw, the proposed structure will be consistent with the requirements of the National Flood Insurance Program, the construction of the proposed structure will be consistent with the State Building Code pertaining to flood resistant construction in consultation with the Building Commissioner, and the proposed structure will not affect the natural drainage patterns of a watercourse.

Based on all of the above the Board has unanimously voted to grant the Special Permit/Finding with the condition that all construction be consistent with those provisions of the State Building Code pertaining to flood resistant construction in consultation with the Building Commissioner.

ZONING BOARD OF APPEALS


John Hallin, Chairman


Edward C. Tibbetts


Thomas J. Cavanagh

Filed with the Town Clerk on August 2, 2018

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.