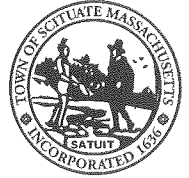


Town of Scituate

ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY
SCITUATE, MASSACHUSETTS 02066
(781) 545-8716



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Decision of the Scituate Zoning Board of Appeals on the application of John M. Foley, Trs. 18 Birch Lane, Scituate, MA 02066 (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 that the reconstruction/extension/alteration of an existing nonconforming single family residential structure on a nonconforming lot, and the proposed structure, although greater than 20% larger, will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or lot.

The application was received, advertised and a public hearing was duly held on October 19, 2017, with the following members of the Zoning Board of Appeals hearing the application:

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

The subject property (the "Subject Property") at 9 Ocean Avenue is owned by John M. Foley (See Certificate of Title No. 2016 00001207 filed with the Plymouth County Registry of Deeds, Bk 46466, Pg. 268 page 1) It is located in Residence A-3 Zoning District, and is not located within the Water Resources Protection District. The Subject Property is 11,251 SF with 84.85 foot frontage on Ocean Ave. 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 constructed in 1900, prior to the adoption of zoning in the Town of Scituate. The pre-existing nonconformities of the Subject Property are (a) front yard setback (24' feet, existing structure), (b) frontage (84.85'), and (c) lot width (84.85').

The Applicant proposes to alter the location of existing single family dwelling on the Subject Property by moving the structure to new location on the lot. The new location of the structure would decrease the front set back non-conformity from 23.5' to 24'.

M.G.L. Ch. 40A Section 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."

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.

In addressing whether the proposed use of the new structure will be substantially more detrimental to the neighborhood than the existing nonconforming use or structure, the Board considers 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 alteration and use will not be substantially more detrimental to the neighborhood than the existing nonconforming structure and use, and that the proposed structure or use will not be substantially different in character or substantially more detrimental or injurious to persons, property, or improvements in the vicinity. The proposed addition as detailed on documents presented at the hearing including, but not limited to


1. Certified Plot Plan, 9 Ocean Ave, by Ross Engineering Co., Professional Land Surveyors, 683 Main Street, Norwell, MA 02061, Dated September 19, 2017

The board finds the applicant meets the special Permit/Finding criteria at Section 950.3 A through E.


- A. The locus is in a residentially zoned district. As such the specific site is an appropriate location for both the use and structure.
- B. The relocated single family dwelling will not adversely affect the neighborhood as said dwelling and use is consistent with similar structures in the neighborhood.
- C. There will be no undue nuisance or serious hazard to vehicles or pedestrians as a result of the relocated dwelling as the use will remain the same.
- D. Adequate and appropriate facilities will be provided to assure the proper operation of the relocated dwelling. Current environmental, health and building codes require that the Building Commissioner issue a building permit only upon his satisfaction as to complete and total compliance with the aforesaid codes. In doing so aforementioned assurances will clearly be met.
- E. Whereas the relocated dwelling will be serviced by Town water and an on-site septic system and whereas there are no known potable wells within 100' of the locus, there will be no impact on any public or private water supply.

This Special Permit and these findings are issued pursuant to Zoning Bylaw sections 810.2 & 950.3 A through E and G.L. Ch. 40A, Section 6.

ZONING BOARD OF APPEALS



John Hallin, Chairman



Sara J. Trezise



Edward C. Tibbetts

Filed with Town Clerk on January 12, 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.