



Decision of the Scituate Zoning Board of Appeals on the application of Julie Johnson, 260 South River Street, Marshfield, MA 02050 (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 June 12, 2013, with the following members of the Zoning Board of Appeals hearing the application:

Peter Morin, Chairman
Sara J. Trezise
Edward C. Tibbetts

The subject property (the "Subject Property") at 92 Marion Road is owned by Alfred M. Boyajian, Trustee of 92 Marion Road Realty Trust, u/d/t dated February 21, 2013 (See Certificate of Title No. 118655 filed with the Plymouth County Registry of Deeds). It is located in Residence R-3 Zoning District, and is not located within the Water Resources Protection District. The Subject Property is 4,750 ± SF with 50± foot frontage on Marion 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 constructed in 1935, prior to the adoption of zoning in the Town of Scituate. The pre-existing nonconformities of the Subject Property are (a) lot area (10,000 feet required), (b) frontage (100 feet required) and (c) lot width (50 feet existing, 100 feet required).

The Applicant proposes to raze the existing single family dwelling on the Subject Property and reconstruct a dwelling that will increase living area more than 20%. The proposed dwelling will conform with front, rear, and side yard setbacks and be approximately 32' wide by 40' deep (front to back). The proposed rear yard setback will be 24 feet according to the revised plan.

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 reconstruction 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 addition to be as detailed on documents presented at the hearing including, but not limited to:

1. Site Plan 92 Marion Road, Scituate, Mass", Ross Engineering Company, Inc., 683 Main Street, Norwell, MA 02061, Dated May 8, 2013 (rear yard setback is 24 feet and proposed dwelling is 32' x 40')

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


Peter Morin, Chairman


Sara J. Trezise


Edward C. Tibbetts

Filed with Town Clerk on: June 18, 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.