

Town of Scituate

ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY
SCITUATE, MASSACHUSETTS 02066
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Decision of the Scituate Zoning Board of Appeals on the application of Francis M. Lynch, owner /applicant of 155 Edward Foster Road, 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 to raze an existing garage and to add a new garage, entry area and screened porch to the pre-existing, nonconforming single family dwelling at 155 Edward Foster Road, Scituate MA (Assessor's map 51, Block 3, parcel 15).

The application was received, advertised and a public hearing was duly held on March 17, 2016, with the following members of the Zoning Board of Appeals hearing the application:

Edward C. Tibbetts, Acting Chairperson
John Hallin
Anthony J. Bucchere

The subject property (the "Subject Property") at 155 Edward Foster Road is owned by Francis M. Lynch, 155 Edward Foster Road, Scituate Massachusetts 02066 (See Deed filed with the Plymouth County Registry of Deeds, Book 12786, Page 269). It is located in Residence R-3 Zoning District. It is neither located within the Water Resources Protection District nor the Flood Plain and Watershed Protection District. The Subject Property is approximately a 14,828 SF lot. The lot frontage is 88.05' and the lot width runs from 88.05' to 131.56'. The dwelling meets all dimensional setback requirements. The Applicant has provided a copy of the Subdivision Plan in which the property is shown as Lot 1. The Plan was approved by the Planning Board on January 16, 1962 (See Subdivision Plan, Book 12, Page 454). The Applicant has also 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 1969.

The Applicant proposes to erect a two story attached garage, new front entry area and screened porch. The existing gross floor area is 2,343 SF, the proposed demolition of the garage and the new garage, entry area and screened porch will increase the total gross floor area to 3,400 SF, an increase of 45.1%. The proposed setbacks for the reconstructed structure will be: 9.5' north side, 29.2' south side, 60.4' front and 20' rear. The lot width through the forward most point of the structure will be 106.2', all as set forth in the Site Plan of 155 Edward Foster Road, prepared by Ross Engineering Company, dated February 22, 2016 (hereinafter "the Site Plan").

The Board discussed a question raised on behalf of the abutter at 149 Edward Foster Road regarding the impact of the proposed additions on the water table and the drainage of storm water. The Applicant's engineer presented a topographical drawing of the two properties showing that the proposed additions were on the opposite side of the lot and downgradient from the abutter, that water in the area of the additions would flow to the rear of the property at 155 Edward Foster Road and not toward 149 Edward Foster Road. The engineer also noted that the proposed additions only increased the impervious area 16.5%, was not subject to the Town's storm water regulations and that the new construction, which will be on slab foundation, would have little, if any, impact on the water table.

The Board discussed the case of Gale v. Zoning Board of Appeals of Gloucester (2012), which it discussed in connection with prior applications at the hearing that evening and which has been the subject of many previous discussions at prior hearings. Under the procedure described in this decision, the Board must first identify the particular respect or respects in which the existing property does not conform to the present Bylaw. Then the Board must determine whether the proposed reconstruction, alteration or addition would increase or intensify the existing nonconformities or result in additional nonconformities. If the answer to that inquiry is in the negative a finding under Chapter 40A § 6 and Special Permit would be required. If the answer to the inquiry is affirmative, then the Board must determine whether the proposed additions would be substantially more detrimental to the neighborhood than the existing structure. If the Board finds the proposed additions are not substantially detrimental to the neighborhood, than a Special Permit may be granted.

In this case, the Board voted and found that the lot is non-conforming as to lot frontage and width. The Board further found that the proposed additions will not increase or intensify the existing non-conformity. The Board also found that the proposed additions would meet all dimensional requirements of the current Zoning Bylaw. Finally, the Board found the proposed additions would not be substantially more detrimental to the neighborhood than the existing structure.

Upon review of the plan and discussion of the proposed additions described in the Ross Engineering Site Plan, the Board determined the garage structure, new entry area and porch met the criteria of Section 950.3 A through E.

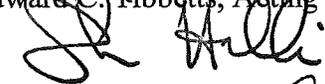
- A. The Property is in a residentially zoned district. As such the specific site is an appropriate for both use and structure.
- B. The proposed use will not adversely affect the neighborhood as said use is a residential use consistent with uses in the R-3 District.
- C. There will be no undue nuisance or serious hazard to vehicles or pedestrians as a result of the proposed use or structure as the use will remain the same. Additionally there is no increase in vehicular traffic associated with this project.
- D. Adequate and appropriate facilities will be provided to assure the proper operation of the proposed use and structure. 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 the aforementioned assurances will clearly be met.
- E. Whereas the proposed structure will be serviced by Town water and whereas there are no known potable wells within 100' of the locus, there will be no impact on the public or private water supply.

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 § 6, and that pursuant to Bylaw Sections 810.2 and 950.3, as well as G.L. c. 40A, § 6, a Special Permit be granted for the construction of a two story garage, new entry area and screened porch in accordance with the Site Plan.

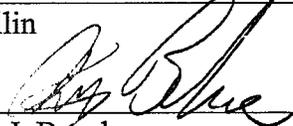
ZONING BOARD OF APPEALS



 Edward C. Gibbetts, Acting Chairperson



 John Hallin



 Anthony J. Bucchere

Filed with Town Clerk and Planning Board on March 24, 2016.

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.