



Decision of the Scituate Zoning Board of Appeals on the application of Alfred M. Boyajian, Trustee of Boyajian Family Trust, of 255 Ottley Drive NE, Atlanta, GA 30324 (hereinafter, the "Applicant") for a Special Permit/Finding pursuant to M.G.L. Chapter 40A, Section 6, and Scituate Zoning Bylaw (the "Bylaw") Sections 820, 1020.2(D), and 1030.2, that the reconstruction/extension/alteration by razing and reconstructing a nonconforming single family residential structure on a nonconforming lot 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 December 16, 2009, with the following members of the Zoning Board of Appeals hearing the application:

Mr. Peter Morin
Mr. Brian Sullivan
Ms. Sara Trezise

The Applicant was represented by attorneys William H. Ohrenberger, III and Jeffrey A. De Lisi of Ohrenberger Associates, Scituate, Massachusetts, and by Paul J. Mirabito of Ross Engineering Co., Inc., Norwell, MA.

The subject property (the "Subject Property") at 43 Oceanside Drive (a/k/a 97 Marion Road) is owned by Virginia A. Zakian, Patricia Z. Tith, and Jeanne Damlamian (See Certificate of Title No. 70464 filed with the Plymouth County Registry District of the Land Court). It is located in Residence A-3 Zoning District, and is not located within the Water Resources Protection District. The Subject Property has frontage on Oceanside Drive, Eleventh Avenue, and 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 1912 prior to the adoption of zoning in the Town of Scituate. The pre-existing nonconformities of the Subject Property are currently as follows: (i) lot area of approximately 7,578 S.F., (ii) rear yard setback from the adjacent property of 95 Marion Road of approximately 17.6 Ft., (iii) front yard setback from Oceanside Drive of approximately 7.0 Ft., (iv) front yard setback from Eleventh Avenue of approximately 29.7 Ft., and (v) less than the required lot width.

The Applicant proposes to raze and reconstruct the single family dwelling on the Subject Property as follows: (i) to entirely eliminate the rear yard nonconformity from the adjacent property at 95 Marion Road, (ii) to comply with the front yard setback requirement from Marion Road in accordance with Section 620.4A of the Bylaw, (iii) to maintain the existing setback from Oceanside Drive, and (iv) to exceed the minimum requirement of side yard setback along the boundary of the adjacent property at 95

Marion Road. The Applicant further proposes to reconstruct the said single family dwelling such that the said dwelling's covered porch is approximately 28.2 Ft. from Eleventh Avenue as compared to the existing 29.7 Ft.

The Applicant presented evidence that most of the building lots and homes thereon fronting on both Marion Road and Eleventh Avenue appear to have nonconformities as to the dimensional requirements of the Zoning Bylaw, and that they derive their primary frontage along Marion Road. From the evidence presented it appears that the location of the said dwellings and other structures such as garages for those properties between Eleventh Avenue and Marion Road are oriented such that Marion Road effectively serves as the frontage and that Eleventh Avenue is treated as the rear yard. The Board determined that the Applicant's proposal would be consistent with the other lots and structures in the neighborhood located between Marion Road and Eleventh Avenue, and that the proposal to bring the covered porch closer to Eleventh Avenue is less nonconforming than many of the other structures on the southerly side of Eleventh Avenue.

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 structure 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 Board is also satisfied that the criteria set forth in the Section 1030.2 of the Zoning Bylaw have been met, and specifically that (i) the Subject Property is an appropriate location for the proposed structure or use, (ii) the proposed use as developed will not adversely effect the neighborhood, (iii) there will not be an undue nuisance or serious

hazard to vehicles or pedestrians as a result of the proposed use or structure, (iv) adequate and appropriate facilities will be provided to ensure the proper operation of the proposed use or structure, and (v) there will not be any significant impact on the public or private water supply.

For the foregoing reasons, the Board unanimously voted to grant the Applicant a special permit and the requested findings to raze and reconstruct a single family dwelling in accordance with the following entitled plans prepared by Ross Engineering Co., Inc.: (i) "Plot Plan for 43 Oceanside Drive aka 97 Marion Road in Scituate, Mass.," dated November 24, 2009 and revised on December 10, 2009, (ii) "Existing Setback Plan for 97 Marion Road in Scituate, Mass.," dated November 20, 2009, and (iii) "Average Setback Plan for 97 Marion Road, Scituate, Mass.," dated November 23, 2009. The Board further unanimously voted to grant the said Special Permit and findings on the condition that the proposed reconstructed single family dwelling be utilized on pilings compliant with the State Building Code. This Special Permit and these findings are issued pursuant to Zoning Bylaw Sections 820, 1020.2 (D), and 1030.2, respectively, and G.L. Ch. 40A, Section 6.

ZONING BOARD OF APPEALS



Peter Morin, Chairman



Brian Sullivan



Sara Trezise

Filed with the Town Clerk on: December 29, 2009

This Special Permit/Finding will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County 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.