

# Town of Scituate

ZONING BOARD OF APPEALS

600 Chief Justice Cushing Hwy.  
Scituate, Massachusetts 02066  
(781) 545-8716



Robert F. Howland and Carol Howland (collectively, the “**Applicants**”) request a finding/special permit pursuant to Zoning Bylaw Section 810.2, and/or any relief that the Board of Appeals may grant to authorize the construction of an addition onto the dimensionally, nonconforming single-family dwelling in the rear of the dimensionally nonconforming lot at 30 Ocean Avenue, Scituate, Massachusetts (Assessor Parcel No. 8-6-13) (the “**Requested Relief**”).

The application was received, advertised, and a public hearing was held on April 15, 2021. The following members were present and voted at the public hearing:

Anthony J. Bucchere, Chairman  
Edward C. Tibbetts  
George Xixis

The Applicants were present at the public hearing and were represented by attorney Jeffrey A. De Lisi, of Ohrenberger, De Lisi & Harris, LLP of 28 New Driftway, Scituate, MA 02066, and by Paul J. Mirabito, PLS, of Ross Engineering Company, Inc. of 683 Main Street, Norwell, MA 02061.

The subject property at 30 Ocean Avenue (hereinafter, the “**Property**”) is owned by the Applicants by deed dated November 21, 2019 and recorded with the Plymouth County Registry of Deeds at Book 52102, Page 138, and is identified as Scituate Assessor Parcel No. 8-6-13. The Property is located in the R-3 zoning district. The Property exceeds the lot area requirement in the zoning district as it has 13,913 S.F. of area in a 10,000 S.F. zoning district, but is nonconforming with respect to lot frontage and lot width (75 Ft. in a 100 Ft. zone). The Property is improved with two buildings which were both constructed prior to the adoption of zoning in Scituate, and both of which are used as single-family dwellings. The front dwelling, which has a residential address of 30 Ocean Avenue, is dimensionally conforming in all respects except the northerly side yard where its covered porch is set back approximately 7.4 Ft. from the property line. The rear dwelling, which has a residential address of 30A Ocean Avenue, is dimensionally conforming in all respects except that it is set back approximately 3.6 Ft. from the rear

property line in a zoning district that requires a 20 Ft. setback. It is a two-story structure that is approximately 23 Ft. in height according to the plot plan filed with the application.

The Applicants propose to construct an approximately 20' x 21', two story addition on the rear dwelling that will match the 23 Ft. height of the existing dwelling in a zoning district that allows a maximum height of 35 Ft. The footprint of the addition will be approximately 420 S.F. and the gross floor area will be increased by a total of 840 S.F. The existing dwelling is 1,302 S.F. according to the records of the Scituate Tax Assessor. This addition will comply with all dimensional criteria except that it will extend the rear yard nonconformity; it will be set back approximately 4.5 Ft., whereas the existing dwelling is set back 3.7 Ft. The Applicants do not propose to create any new nonconformities. The Applicants explained that the addition is vital to allow for the continued care of their 21-year-old son, Bobby, who has downs syndrome and other related significant medical conditions. Specifically, the addition will enable Bobby and his live-in aids to reside at the rear dwelling Property, while his parents live in the front dwelling. Otherwise, the Applicants explained, Bobby would have to be institutionalized. The proposed addition is well within the size and scope of an addition that is customarily allowed by this Board in the Town of Scituate.

Stephen Faber of 11 Cherry Lane expressed an opposition, speculating on the loss of light and air that may occur, and expressing concerns on their view of the addition. Mr. Faber expressly indicated that his concern is not with the use of the structure, but that he thinks that it can be better conceptualized from a design perspective to minimize its impact on the Faber property. The Applicants indicated that a fence presently separates their Property from that of the Faber's, and that they welcome the consideration of mitigation such as vegetation. The Applicants' representative noted that, while the addition is proposed to be 20' in length, only about five feet of that distance will abut the Faber property. It was also correctly noted that views are not protected interests in the Town of Scituate, and that the standard required by Section 810.2 is whether the proposed addition would be "substantially" more detrimental to the "neighborhood" than the existing nonconforming structure. While the Fabers share a property line with the Applicants, their dwelling and pool are a considerable distance from that property line, and a Google Earth photograph shown at the hearing demonstrates that there presently exists some vegetative screening defining the Faber's rear yard. Nonetheless, Mr. Faber indicated that he did not believe that additional vegetative screening would be helpful in this situation. The neighborhood is a densely zoned area, and many properties, including the Faber property, contain more than one building.

The Applicant demonstrated pre-existing nonconforming status, and Board of Appeals considered the Requested Relief pursuant to the last paragraph of Zoning Bylaw Section 810.2 that provides as follows:


"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 40A, Section 6 to allow the proposed repair, alteration, reconstruction, extension or structural change."


G.L. Ch. 40A, Section 6 provides, in relevant part, that zoning ordinances or bylaws shall not apply to lawful pre-existing nonconforming structures or uses, but shall apply to any reconstruction, extension or structural change to provide for its use for a substantially different manner or to a substantially greater extent “except where alteration, reconstruction, extension or structural change to a single or two-family home does not increase the nonconforming nature of said structure” Said Section 6 further 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.”<sup>1</sup>

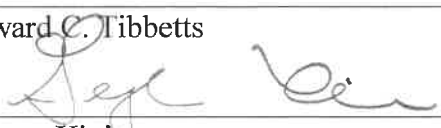
Based upon the application materials, and information provided at the hearing, including the Site Plan, a Massachusetts GIS map, a Google Earth photograph, and the foregoing, including a relative comparison of the customary relief previously granted by this Board in many instances, the Board of Appeals finds that the Applicants have demonstrated that they are entitled to the Requested Relief. The Board specifically finds that the said proposed addition does not create any new nonconformities, and that to the extent that it intensifies an existing nonconformity, such intensification will not be substantially more detrimental than the current pre-existing nonconforming dwelling or use to the neighborhood.

For the foregoing reasons, the Board unanimously voted to GRANT the sought finding/special permit and the Requested Relief.

SCITUATE ZONING BOARD OF APPEALS

  
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Anthony J. Bucchere, Chairman

  
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Edward C. Tibbetts

  
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George Xixis

<sup>1</sup> The words “structure or” appearing in the brackets in the quoted sentence were supplied by Willard v. Board of Appeals of Orleans, 25 Mass. App. Ct. 15,21,514 N.E.2d 369 (1987), and later noted and applied in Rockwood v. Snow Inn Corp., 409 Mass. 361, 363 n.4, 364, 566 N.E.2d 608 (1991).

Filed with the Town Clerk and Planning Board: April 27, 2021

This Finding 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. Ch. 40, Section 17, and shall be filed within twenty (20) days of the date of filing the decision with the Town Clerk.