

# Town of Scituate

ZONING BOARD OF APPEALS

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



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Decision of the Scituate Zoning Board of Appeals on the application of Alfred M. Boyajian, 94 Marion Road, Scituate, MA 02066 (hereinafter the “Applicant”) for finding in accordance with the Town of Scituate Zoning Bylaws 810.2, 950.2D, and/or M.G.L. 40A, Section 6, and/or any other relief that the Board of Appeals may grant, that the razing and reconstruction, change, extension, or alteration to the pre-existing nonconforming single family residential dwelling, on a pre-existing, nonconforming lot at 43 Oceanside Drive, Scituate, MA 02066 (Assessor’s Parcel 40-2-1), will not be substantially more detrimental or injurious to the neighborhood, than the previously existing structure or use (hereinafter, the “Requested Relief”).

The application was received, advertised, and a public hearing was held on February 25, 2021. The following members were present and voted at the public hearing:

Anthony J. Bucchere, Chairman

Edward C. Tibbetts

Thomas J. Cavanagh

The applicant was represented at the hearing by Stephen F. Corsaro, Esq. of Tufankjian, McDonald & Doton, LLC of 207 Front Street, and by Paul Mirabito of Ross Engineering Company, Inc. of 683 Main Street, Norwell, MA 02061.

The subject property is owned by the 43 Oceanside Drive Realty Trust, Alfred M. Boyajian, Trustee, pursuant to a Deed dated December 4, 2015, filed with the Plymouth County District of the Land Court as Document no. 739765 with Certificate of Title no. 122794 (hereinafter, the “Property”). The Property contains 7,578 square feet of lot area/upland, is laid out on a plan dated and recorded prior to the adoption of zoning in the Town of Scituate, and is shown as Lot 891 on plan #8507Q, drawn by C.B. Humphrey, Engineer for Court, dated August 26, 1943, as

approved by the Court, filed in the Land Registration Office a copy of a portion of which is filed with Certificate of Title No. 8681.

Along with the said application, deed, and recorded plan, the Applicant filed the following materials with the Board of Appeals:

1. A copy of the current Assessor's Field Card from the Scituate Assessor showing the age of the building;
2. Plan entitled "Building Permit Site Plan for 43 Oceanside Drive in Scituate, MA" dated January 15, 2021 prepared by Ross Engineering Company, Inc. (hereinafter, "the Site Plan").

The Property is located in the Residence R-3 zoning district, contained a single-family dwelling thereon, and is pre-existing, nonconforming to lot area (7,578 square feet in a 10,000 square foot zone). Historically, the first dwelling constructed on this lot was in 1912 prior to the adoption of zoning in Scituate. Subsequent to a duly recorded December 29, 2009 Board of Appeals Special Permit/Finding decision issued to Alfred M. Boyajian, a copy of which was submitted with the application, the original 1912 dwelling was razed and reconstructed by others in 2013.

The land is bordered by three public ways, namely Eleventh Avenue to the north, Oceanside Drive to the east and Marion Road to the south. The proposed front yard setback for the covered porch along the easterly property line along Oceanside Drive is 8.6 feet, which is greater than the 7.2 foot setback the Board granted in its 2009 Special Permit / Finding. The front yard setback for the dwelling on the northerly property line along Eleventh Avenue side is greater than the 30' requirement. A covered porch on this same side is setback 30.3 feet from Eleventh Avenue. The same is true for the dwelling setback from the southerly property line along Marion Road. The proposed 27.4' setback for the covered porch along Marion Road exceeds the average setback of 26.9 feet (see average setback calculation on the site plan). The side yard setback of 10' along the westerly property line exceeds the required 8' setback.

The Applicant does not propose to introduce any new nonconformities, and the foundation of the proposed two-story reconstructed dwelling will be located on the lot such in the same footprint of the previous dwelling, and that the pre-existing nonconforming nature of the Property is reduced (proposed front yard setback for easterly property line is 8.6 feet, which is greater than the 7.2 foot setback the Board granted in its 2009 Special Permit/Finding).

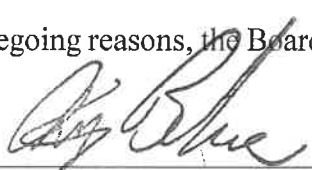
The Applicant demonstrated pre-existing, nonconforming status, and the Board of Appeals considered the Requested Relief pursuant to the last paragraph of Zoning Bylaw Section 810.2 that provides as follows:

"In all other instances of alteration, reconstruction, extension or structural change to single- or two-family dwellings, the Applicants 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, including the Site Plan, the information provided at the public hearing, and the foregoing, the Board of Appeals finds the Applicant has demonstrated that the application meets the criteria at Section 950.3 A through F, and that the Applicant is entitled to the Requested Relief. The Board specifically finds that the proposed reconstructed dwelling on the Property shall not be substantially more detrimental than the pre-existing non-conforming dwelling or use to the neighborhood.

For the foregoing reasons, the Board unanimously voted to GRANT the finding and the Requested Relief.

  
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Anthony J. Bucchere, Chairman

  
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Edward C. Tibbetts

  
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Thomas J. Cavanagh

Filed with the Town Clerk and Planning Board: March 30, 2021

The 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 a 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. 40A, Section 17, and shall be filed within twenty (20) days of the date of filing the decision with the Town Clerk.

<sup>1</sup> *Willard v. Board of Appeals of Orleans*, 25 Mass. App Ct. 15, 514 N.E. 2d 369 (1987), *Rockwood v. Snow Inn Corp.*, 409 Mass. 361, 363 n.4, 364, 566 N.E. 2d 608 (1991).