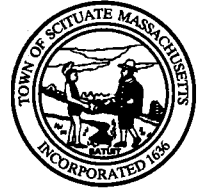


# Town of Scituate

ZONING BOARD OF APPEALS

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



2023 OCT -5 PM 2:25  
TOWN OF SCITUATE  
MASSACHUSETTS

Decision of the Scituate Zoning Board of Appeals on the application of Ian and Eva Horowitz, of Kingston, NY (hereinafter, the "**Applicants**") for a finding in accordance with Scituate Zoning Bylaw Sections 810.2.C, 950.2D, and/or M.G.L Ch. 40A, Section 6, and/or any other relief that the Board of Appeals may grant, to construct an addition westerly (side) and rear of the pre-existing, nonconforming dwelling on the pre-existing, nonconforming lot at 62 Collier Road, Scituate, Massachusetts (Assessor's Parcel 64-9-11) which increases the gross floor area by approximately 30% (hereinafter, collectively, the "**Requested Relief**").

The application was received, advertised, and a public hearing was held on August 17, 2023. The following members were present and voted at the public hearing:

George Xixis, Chairman  
Justin M. Marks  
Christopher Carchia

The Applicants propose to construct 2 additions that consist of a one-story addition on the westerly (left) side yard and a second-floor addition on the rear of the existing dwelling. The Applicants were represented by Paul J. Mirabito of Grady Consulting, L.L.C., of Norwell, MA.

The subject property is owned by Applicants by deed recorded with the Plymouth County Registry of Deeds in Book 52166, Page 560. According to the Scituate Tax Assessor, the property is improved with a single-family dwelling that was constructed in 1940, which was prior to the adoption of residential zoning in Scituate. The property is located in the R-3 zoning district, and is nonconforming to the lot area (8,262 s.f. in a 10,000 s.f. zone), lot frontage & width (75 ft. in a 100 ft. zone), front yard setback (21.9 ft. in a 30 ft. zone), and right (easterly) side yard setback (7.5 ft. in a 8 ft. zone.) The Applicants propose to construct that consists of one-story on the westerly (left) side yard and a second floor on the rear of the existing dwelling.

The gross floor area will be increased from approximately 2,220 s.f. to 2,845 s.f., which equates to an increase of about 30%. The addition will not create any new nonconformities, but will intensify the existing front yard setback nonconformity because the façade, which will be no closer to the street than the existing dwelling, will be extended parallel to the street toward the westerly side yard on the same plane of the existing dwelling.

The Board received the application, a narrative prepared by Grady Consulting, L.L.C., a copy of the current deed & record plan, a copy of the FY 2023 Assessor's Field Card, and a plot plan entitled "BOARD OF APPEALS PLAN FOR 62 COLLIER ROAD IN SCITUATE, MASS." dated June 17, 2023, prepared by Grady Consulting, L.L.C. (hereinafter, the "**Plot Plan**").

The neighborhood consists of primarily large, nonconforming homes on smaller, nonconforming lots. This addition is consistent with the homes in the neighborhood. The Board was satisfied that the Applicants demonstrated pre-existing, nonconforming status. Thus, the Board considered the Requested Relief pursuant to the last paragraph of Zoning Bylaw Section 810.2.C, that provides, in part, as follows:

"In all other instances of alteration, reconstruction, extension or structural change to structures governed by this bylaw, 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, which the Board may grant if the Board finds the proposed repair, alteration, reconstruction, extension or structural change will not be substantially more detrimental to the neighborhood than the existing nonconforming structure."

M.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 Plot Plan, the information provided at the public hearing, and the foregoing, the Board of Appeals finds that the Applicants have demonstrated that they are entitled to the Requested Relief. The board specifically finds that the proposed reconstructed dwelling on the Property is pre-existing and nonconforming, that that the proposed addition will not create any new nonconformities. Additionally, the Board further finds that, to the extent that the addition intensifies an existing nonconformity, that such

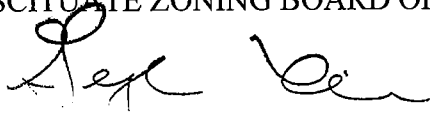
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<sup>1</sup> The words "structure or" appearing in the brackets in the quoted sentence were supplied by Willard v. Board of Appeals of Orleans, 25 Mass. App. Ct. 15,21,514 N.E.2d 369 (1987), and later noted and applied in Rockwood v. Snow Inn Corp.,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

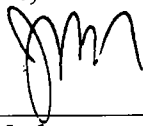
intensification will not be substantially more detrimental than the current pre-existing, nonconforming dwelling or use to the neighborhood.

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

SCITUATE ZONING BOARD OF APPEALS



George Xixis, Chairman



Justin M. Marks



Christopher Carchia

Filed with the Town Clerk on October 5, 2023

This decision will not become effective until such time as an attested copy 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 40, Section 17, and shall be filed within twenty (20) days of the date of the filing of the decision with the Town Clerk.