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ZONING BOARD OF APPEALS
Meeting Minutes

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August 20, 2020

Present (via zoom): Present (via zoom): Anthony Bucchere, Chairman, Tom Cavanagh and George Xixis. Also present (via zoom): Robert Vogel, Scituate Building Commissioner

The Scituate Zoning Board of Appeals held a public hearing on Thursday, August 20, 2020 via zoom (remote access/participation). The meeting was called to order at 7:00 P.M. to consider the following requests:

First Application: Carl Christenson, Trustee of 9 Stone Avenue, Scituate, MA requests a Special Permit/Finding in accordance with Section 810.2 of the Scituate Zoning Bylaw and/or M.G.L. Chapter 40A, Section 6 to allow the razing of the pre-existing, nonconforming single family dwelling at 9 Stone Avenue, Scituate, MA (Assessor's Map 22, Block 10, Parcel 11) increasing the gross floor area by more than 20% and reconstruction of said dwelling in a location with conforming setbacks. Representing the Applicant – Paul J. Mirabito, PLS (of Ross Engineering Company, Inc.)

Mr. Mirabito – Reviewed the application and current status. The Board had no questions and/or comments.

Meeting was opened for public comment – No public comments.

Heather Babineau (abutter @ 13 Stone Avenue, Scituate, MA) - concerned about water issues and storm water runoff with razing and new construction. She was advised this issue would be addressed with code issues. Mr. Mirabito further explained the process to the caller/abutter.

Mr. Cavanagh – Makes a motion on the application of Carl Christenson, Trustee of 9 Stone Avenue, Scituate, MA on his request for a Special Permit/Finding in accordance with Section 810.2 of the Scituate Zoning Bylaw and/or M.G.L. Chapter 40A, Section 6 to allow the razing and reconstruction of a pre-existing home on a nonconforming lot that the Board find that the proposed raze and reconstruction as proposed on the plan prepared by Ross Engineering dated June 10, 2020 does not create any new non-conformities and to the extent it exacerbates any non-conformities that is not substantially detrimental to the neighborhood. Motion seconded by Mr. Xixis, all in favor, unanimous.

Second Application: Christopher Saccitella, Trustee of the MODD Realty Trust c/o Walter B. Sullivan, Sullivan & Comerford, PC, 80 Washington Street, Building B, Suite 7, Norwell, MA 02061 requests a Variance to allow the construction of a single family dwelling at 11 Pineview Drive, Scituate, MA (Assessor's Map 35, Block 5, Parcel 2) on a lot which has been in existence since 1963 and contains 40,352 s.f. inclusive of uplands and land subject to M.G.L. Chapter 131, Section 40. Representing the Applicant – Walter B. Sullivan, Sullivan & Comerford, PC, 80 Washington Street, Building B, Suite 7, Norwell, MA 02061.

Atty. Sullivan – States to the Board that he had previously requested a continuance in this matter as his clients were not available due to travel and wished to be present and participate.

Mr. Bucchere – Addresses concerns to Attorney Sullivan regarding having not received the necessary plans submitted with the application. Makes a motion to accept the request for the variance and continue

this application to our next confirmed meeting. We are getting through these meetings one day at a time. Just so that everyone on our conference bridge understands, 11 Pineview application for a variance on a lot that did not include the required amount of upland has been continued to our next meeting, which at least at present is on a date which has yet to be confirmed. Motion seconded by Mr. Xixis, all in favor, unanimous.

Third Application: Oak Development and Design, Paul Antonik of 1035 Main Street, Hingham, MA 02043 requests a Special Permit/Finding pursuant to M.G.L. Chapter 40A, Section 6 and/or Sections 810.2 and 470.6 of the Scituate Zoning Bylaw to raze and reconstruct the preexisting, nonconforming single family dwelling at **83 Glades Road, Scituate, MA (Assessor's Map 5, Block 3, Parcel 22)** increasing the gross floor area by more than 20%. **Representing the Applicant - Jeff Hassett, Registered Engineer of Morse Engineering on behalf of Oak Development and Design.**

Mr. Hassett - Reviewed the application and current status.

Mr. Bucchere – Asks Mr. Hassett to confirm if approved it would be coming out of the flood plain, which is confirmed.

Mr. Cavanagh – Asks Mr. Hassett to confirm if in that area it is all private sewer. Mr. Hassan responds that sewerage is not available at that location and that there will be a filing with the Board of Health and Board of Conservation to put a new septic system in. The house will be on pilings and a portion of the septic will be under the house.

Meeting was opened for public comment

Delia Weikert (abutter @ 84 Glades Road, Scituate, MA) – lives diagonally across the street from the property. Expresses confusion on the new layout. The Board addresses the non-conformities, the new setbacks and that the house will be on pilings.

Kathleen Conway (abutter @ 89-91 Glades Road, Scituate, MA) – questions on the pilings which were addressed by Mr. Vogel. Ms. Conway also inquires about the razing of 87, 85 and 83 Glades Road. Mr. Bucchere clarifies that the only property that is being addressed this evening is 83 Glades. Mr. Vogel confirms the abutters will be notified by the property owner regarding the demolition. Additional concerns regarding 85 and 87 Glades Road were addressed with Jeff Hassett.

Mr. Bucchere – Makes a motion to grant the request for a Special Permit/Finding for the razing and reconstruction of the single-family home at 83 Glades Road to be built as shown on a plan drawn by Morse Engineering and dated July 22, 2020 and that the Board find that said razing and reconstruction complies with requirements of 470.6 of the Scituate Zoning Bylaw and the Board find that the proposed razing and reconstruction does not create any new non-conformities in that to the extent that it intensifies any existing non-conformities that such intensifications are not substantially more detrimental to the surrounding neighborhood. Motion seconded by Mr. Cavanagh, all in favor, unanimous.

Fourth Application: Bryan and Melanie Legge c/o Walter B. Sullivan, PC at 80 Washington Street, Building B, Suite 7, Norwell, MA 02061 request a Variance to allow for the construction of a 30'x15' swimming pool and a 10' x 12' pool house on the south side of the lot closest to Parker Avenue on a non-conforming lot at **9 Moorland Road, Scituate, MA (Assessor's Map 64, Block 3, Parcel 5).**
Representing the Applicant – Walter B. Sullivan, Sullivan & Comerford, PC, 80 Washington Street, Building B, Suite 7, Norwell, MA 02061. Also present - Joseph "Jed" Hannan, Professional Engineer of Atlantic Coast Engineering, LLC.

Atty. Sullivan – Reviewed the application and current status.

Mr. Bucchere – Further reviewed and confirmed information within the application with Attorney Sullivan and addressed several questions.

Mr. Hannan – Reviewed and confirmed previously provided information concerning the application and current status.

Mr. Bucchere – Initiated questions to Mr. Hannan and discussion with the Board with regard to all setbacks. Also addressed were alternative options to an in-ground heated pool for treatment of the child of the applicants who has cerebral palsy.

Atty. Sullivan – Rebuffs and discusses alternatives to the pool as addressed on the pending application and by the Board and this particular application as it pertains to the therapeutic use of the pool and the family hardship issue. Building code issues are also addressed with regard to fencing.

Mr. Xixis – Addresses concerns to Attorney Sullivan with regard to the extent and treatment of the medical issues of the applicant's child and how that relates to the requests for a variance concerning the pool.

Mr. Bucchere – addresses Attorney Sullivan as to why the family has not lived at the residence for long and why this particular home was chosen where a variance was needed if they knew they were going to request to put in a pool.

Attorney Sullivan – states in response to Mr. Bucchere that the family was unaware that a variance would be required and that immediate family of Mrs. Legge resides in the general area of the current Legge home, which was convenient with helping with care.

Attorney Sullivan – addresses Mr. Vogel and states he has his client, Mr. Legge, on the phone, who would be able to further address medical concerns/treatments with regard to his daughter and the nature of the therapy.

Mr. Bucchere – asks Attorney Sullivan if he is aware of any Massachusetts precedent for the granting of a dimensional variance for handicapped reasons for anything other than an access route. States he himself did some research and came up empty.

Attorney Sullivan – States he is aware of a previously awarded variance by this Board approximately ten (10) years ago for a similar circumstance medical hardship for a woman who lived out by Wood Island. Attorney Sullivan states he continues to feel the variance that is being requested is due to an extraordinary situation.

Mr. Bucchere – States his struggling with the relief that is being requested and the therapy and hardship issues.

Attorney Sullivan – States he understands Mr. Bucchere's concerns and feels that these types of cases should be determined on a case by case basis. Also refers the Board to the supporting medical documentation that was submitted with the application for further reference.

Ms. Xixis – States his concern/struggle is that the scope of the request is very large and wants to make sure they have as much information as possible to make a decision.

Mr. Bucchere – States that if Attorney Sullivan is able to get his client on speaker phone the Board will address his issues. Further addresses by way example, due to a further Google search of home aqua therapy pools, and the results that were found were smaller, less costly and whether or not they would be able to address the medical issues of what is proposed on the pending variance application. The Board further discusses these issues.

Attorney Sullivan – States that he is not opposed to a continuance in this issue as previously stated at the start of this proceeding to address precedent in Massachusetts for this type of relief and scope of therapy. Attorney Sullivan would like Mr. Legge to address these issues but he cannot call into the meeting and Attorney Sullivan feels it would be best to not call into his personal cell phone.

Meeting was opened for public comment –

Thomas Sullivan (abutter @ 5 Moorland Road, Scituate, MA) – states he has spoken with Bryan Legge and his family and his concerns are that the property at 5 Moorland Road is owned by a Trust between him and his siblings as Trustees. They are summer residents of the property and also has a daughter with a medical issue and understands the medical issue. He is concerned he could not access drawings to determine where the pool would be located. States his sister has concerns regarding continuous operation in terms of use and vibration and any equipment not be located on the 5 Moorland side. Also, in general his family supports the application and understand the difficulty with having a child with special needs.

Mr. Bucchere – Addresses Mr. Sullivan's concerns regarding vibrating equipment and access to plans at the Scituate Building Department at Town Hall.

Thomas Anderson (abutter @ 13 Parker Avenue, Scituate, MA) – notes he lives diagonally across the street from the Legge's and he has talked with them about the issues addressed in this pending application. States that he is 100% supportive of the approval of the requested variance and to his opinion has no impact on the neighborhood or the street. Feels this is a reasonable request for a little girl with special needs and feels this would be to her benefit.

Melanie Legge (applicant and mother of Madelynn Legge) – Reviewed with the Board the medical issues, disabilities of her daughter, current therapy aspects and past and proposed future surgeries and follow-up that would require an in-ground heating pool. Currently she is not receiving aqua therapy due to COVID. The pool would be proposed to be opened in April and closed in October and would be heated the entire time – if the weather is cooperative it would be longer. Melanie makes the point that her daughter would not be able to benefit from an endless pool with propelling jets as she does not have the strength to sustain that kind of current and would drown as she has to swim at a slower pace. No further questions from the Board.

Una H. Armstrong & John Sullivan (abutters @ 12 Parker Avenue, Scituate, MA) – notes she is a social worker by training and for her work and is sympathetic to the issues of the Legge's; however, she states she is not comfortable with the proposed request for several reasons. She notes that there is a serious problem with water on the Legge's property with regard to runoff and freezing, ice dams and dangerous walking hazards. Also, she addresses setback issues, the water problem not being addressed and possibly alter drainage. Mr. Sullivan pointed out that this is a problem that the Legge's inherited and really became a problem after the former owner of the home built the existing house. Mr. Sullivan states

that there is a spring on the Legge's property that adjoins their property. This spring is an issue every winter as the water freezes and runs the entire length of Parker Avenue, which is a two-way street. Mr. Sullivan agrees that the Legge's have done all that they have been able to do to mitigate the issue but cannot prevent the spring from bubbling. Mr. Sullivan questions what will happen to that spring should the pool be installed. Mr. Sullivan additionally states that it is his understanding that several town officials told the Legge's that they could install this pool at this location. Mr. Sullivan also is concerned about the requested size of the pool house.

Charles Bragg (abutter @ 11 Driftway, Scituate, MA) – states that he resides to the rear diagonal of the Legge's home and that he understands the issues of the therapy aspect of the pool but is concerned about the size of the pool and questions why couldn't they have some other type of pool such as a lap pool.

Mr. Bucchere – states he wants nothing more than to vote for this. Although he has additional questions and issues surrounding why the pool has to be this size, what happens when the Legge's decide they want to move out of the neighborhood at some point down the line, has questions on whether the Legge's deserve the pool (although in his personal opinion he feels they would benefit from the pool and their life would be better), feels he personally needs more information before he can vote on the application. States he himself will do his due diligence to find further information with regard to aqua therapy pools and sizes and related town-wide opportunities (South Shore YMCA etc.). Further issues include the bubbling spring, Legge's home was built on a recent Special Permit and possibly grant a variance and put a pool on it. Questions where to draw the line as to granting variances for complicated medical issues and setting a legal precedence and reason for validity. Also expresses concern on other available areas in town where an indoor pool could be built outside of the Third Cliff area.

Atty. Sullivan – States he would like to provide more information and be part of the solution of the spring/water issue.

The Board discusses with Attorney Sullivan the kind of additional information they would like to see with a level of specificity that would lead to a positive outcome. Also addresses the issue of the size of the pool shed as the lot size does not qualify.

Attorney Sullivan – Requests a continuance on this application.

Mr. Cavanagh – Makes a motion to accept a request for a continuance to continue to this to our September meeting. Motion seconded by Mr. Xixis, all in favor, unanimous.

Fifth Application: Richard F. & Maura A. Conlan of 3 Sears Avenue, Melrose, MA 02176 request a Special Permit/Finding in accordance with Scituate Zoning Bylaw Sections 460, 470.6F, 810.2, 950.2B, 950.2D and/or M.G.L. Chapter 40A, Section 6 and/or any other relief that the Board of Appeals may grant to allow the razing and reconstruction of the pre-existing, nonconforming single family dwelling at **159R Glades Road, Scituate, MA (Assessor's Map 64, Block 6, Parcel 14)** increasing the gross floor area by more than 20%. **Representing the Applicant – Paul J. Mirabito, PLS (of Ross Engineering Company, Inc.)**

Mr. Mirabito – Reviewed the application and current status. The Board discussed the application and answered questions with Mr. Mirabito.

Meeting was opened for public comment

Shawn Murphy (abutter @ 149 Glades Road, Scituate, MA) – Stated plans look good and no issues with project.

Daniel Carney (abutter @ 163R Glades Road, Scituate, MA) – Stated that from his point this appears in good shape and the upgrade to the project does not bother him at all.

Mr. Cavanagh – Makes a motion on the application of Richard F. & Maura A. Conlan of 3 Sears Avenue, Melrose, MA 02176 and their request for a Special Permit/Finding in accordance with Scituate Zoning Bylaw Sections 460, 470.6F, 810.2, 950.2B, 950.2D and/or M.G.L. Chapter 40A, Section 6 that the proposed raze and reconstruct of the property located at 159R Glades Road, Scituate, MA as depicted on the plan prepared by Ross Engineering Company, Inc. dated July 17, 2020 and that the new construction does not create any new non-conformities in that to the extent that it intensifies any existing non-conformities that does not substantially affect the neighborhood. Also, as it relates to Chapter 470.6F, I propose that the enclosed plan, as well as the filings and the explanation by Mr. Mirabito, indicate that this proposed construction complies with 470. And also as it relates to Section 460 of the Scituate Zoning Bylaw I move that we grant the Special Permit and find that this will not adversely affect the natural character of the area in which this land is located. Motion seconded by Mr. Bucchere, all in favor, unanimous.

Motion to adjourn by Mr. Cavanagh and seconded by Mr. Xixis, all in favor, unanimous.

Meeting adjourned at 9:03 pm.

Respectfully submitted by,

Janine M. Cicchese

