

**TOWN OF SCITUATE
ZONING BOARD OF APPEALS
Meeting Minutes**

October 20, 2022

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Present: George Xixis, Chairman, Anthony Bucchere, Susan Harrison, Justin M. Marks, Christopher Carchia

Also present: Robert Vogel, Scituate Building Commissioner

The Scituate Zoning Board of Appeals held a hybrid public hearing in the Selectmen's Hearing Room in the Scituate Town Hall located at 600 Chief Justice Cushing Highway and was also accessible via zoom on Thursday, October 20, 2022 at 7:00 P.M. to consider the following requests:

First Application: Dawn and Dustin Diedrickson, 70 Marion Road, Scituate, MA 02066 request a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 810.2 of the Scituate Zoning Bylaw and/or any other relief that the Board of Appeals may grant, to allow for the construction of an addition to a preexisting, nonconforming single-family dwelling located at 70 Marion Road, Scituate, MA 02066 (Assessor's Map 40, Block 11, Parcel 14) and increasing the gross floor area by more than 20%. Representing the Applicant – Paulette O'Connell, OCO Architecture::Design, LLC, Hingham, MA and the applicants.

Ms. O'Connell – reviewed and presented the application on behalf of the homeowners/applicants. She stated the home is a nonconforming structure at the front setback. The application is for an addition. The proposed addition would be at the rear of the existing structure and does conform to all side and rear setbacks. The addition will be a two-story structure.

Meeting was opened for public comment – no public comments or board comments.

Mr. Bucchere – made a motion that the board find that the proposed addition at 70 Marion Road shown on the Grady Consulting plan dated August 22, 2022 does not create any new nonconformities and that to the extent that it increases or intensifies any existing nonconformities such intensification is not substantially more detrimental to the surrounding neighborhood and that we grant the special permit. Motion seconded by Ms. Harrison, all in favor, unanimous.

Second Application: Matthew and Kathleen Kaplan, 58 Branch Street, Scituate, MA 02066 request a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 810.2 of the Scituate Zoning Bylaw and/or any other relief that the Board of Appeals may grant, to allow the razing and reconstruction of a conforming single-family dwelling on a pre-existing, nonconforming lot at 58 Branch Street, Scituate, MA 02066 (Assessor's Map 38, Block 2, Parcel 6) and increasing the gross floor area by more than 20%. Representing the Applicant – Jeffrey M. Hassett (Registered Professional Engineer, Morse Engineering).

Mr. Hassett – reviewed and presented the application on behalf of the homeowner. This single-family home meets all setbacks as well as a detached garage that does not meet the side yard setback. The property itself is conforming as to frontage and area, nonconforming with respect to width. The proposed home is approximately 3800 square feet, which would be a 232% increase and consistent with other homes in the vicinity. The new home would comply with all property line setbacks and would not create any new nonconformities and eliminates the side yard setback.

Mr. Xixis – according to the plan, the side yard setbacks are conforming. The plan and numbers provided would be for the proposed home and not the garage, which is nonconforming. Mr. Vogel stated he grew up in this home and for that reason only would not agree.

Meeting was opened for public comment –

Christian Dietz (abutter @ 54 Branch Street, Scituate, MA 02066) – asked for confirmation of the location of the proposed home and distance from his home. Mr. Xixis and Mr. Hassett confirmed this with Mr. Dietz.

Mr. Bucchere – made a motion that the board grant the special permit requested and doing so find that the proposed single-family home at 58 Branch Street shown on the Morse Engineering plan dated September 15, 2022 does not create any new nonconformities and to the extent it intensifies any existing nonconformities such intensification is not substantially more detrimental to the surrounding neighborhood. Motion seconded by Mr. Carchia, all in favor, unanimous.

Third Application: (*continued from September 15, 2022*) Kenton L. Bongarzone, 17 Gates Circle, Scituate, MA 02066 requests a Variance in accordance with 950.2C of the Town of Scituate Zoning Bylaws. Specifically, the applicant seeks a variance from the requirements of Section 520.4A, which mandates a 150' Non-Disturbance Buffer Zone to tributaries in the Water Resource Protection District, for the construction of a single-family dwelling at **5 Williamsburg Lane, Scituate, MA 02066 (Assessor's Map 37, Block 2, Parcel 4A)**. **Representing the Applicant – James F. Creed, Jr., Esq., Creed & Formica, 2036 Ocean St #1, Marshfield, MA 02050, Gregory J. Morse (Registered Professional Engineer, Morse Engineering – via Zoom) and Jeffrey M. Hassett (Registered Professional Engineer, Morse Engineering) and Kenton and Elaine Bongarzone - applicants. Patricia Lambert, Chair of the Scituate Planning Board and John Chessia, Professional Engineer, Chessia Consulting Services, LLC – via Zoom) were also present.**

Mr. Bucchere and Mr. Xixis– prior to the start of this application review confirmed that this is a five-member board with three voting members and two alternates: the voting members are George Xixis, Anthony Bucchere and Susan Harrison.

Attorney Creed and Mr. Morse - reviewed and summarized the status of this application on applicant's behalf.

Mr. Morse – reiterated that this is a request for a variance from Section 520.4 of the bylaw, which is the 150' no disturb buffer in the Water Resource Protection District. This is not a complete request for a waiver of the no disturb but the proposal on this site is a minimum of a 50' no disturb buffer in accordance with the plans. Mr. Morse agreed that variances should not be easily granted and that in his career this is the first he has applied for before this board. Mr. Morse stated that he could not replicate the uniqueness of this lot on any other property in town. This lot was laid out in the 1950's and is a fully compliant zoning lot in the R2 zoning district and was endorsed by the planning board at that time. The lot contains more than 20,000 square feet of land area which is entirely upland, requisite frontage on Country Way and Williamsburg Lane. The same owner has owned the lot since it was created and have

continued to pay taxes. In the 1970's, the applicant sold to the town for a \$1 purchase an easement which traversed the southern lot line and created a drainage easement for the town. The Bongarzone's allowed drainage along Country Way to go across their property and to discharge at the rear. It was evident how the easement was laid out along the side lot line that it was intended not to infringe on the unbuildability of this lot. Since the last meeting, water samples have been collected and results have been provided documenting the water quality at the outfall pipe at the back of this property. It was noted that throughout most of the summer we experienced drought conditions and little fertilizer was being used and no road salt had been used but nothing really stands out in the provided water sample that was off the charts and was not extremely dirty. At the request of the board a peer review was requested and the town hired John Chessia Consulting. He provided a letter and revisions to our plans were made based on that letter and those were submitted to the board on September 29, 2022. Since that time, no peer review comments have been received but Mr. Morse felt that the revisions in that letter addressed the outstanding issues including a construction entrance, additional erosion control details, additional details on stormwater including roof drywell chambers, raingardens and plantings on the site to handle driveway runoff and roof runoff and additional soil testing was done to verify soil types. Since the last meeting the Board of Health has approved the septic system at this site in its entirety. The septic system is a three bedroom rather advanced septic system providing nitrogen reduction capabilities. In review of the variance, M.G.L. c. 40A, Section 10 definitions of variance has three prongs. Mr. Morse states the first prong is unique topography and he feels this property fits that description. Additionally, the shape of the property which is a corner lot and what is unique is the area that is on the lot 150' no disturb setback line. The 150' no disturb setback line encompasses the entire buildable portion of this previous buildable lot that was signed off. The second prong is literal enforcement of the zoning bylaw provision would involve substantial hardship, financial or otherwise. Mr. Morse stated that in this case literal enforcement of 150' buffer would essentially constitute a land taking and render this property completely unbuildable for any purpose. This provision of the bylaw makes it so you can not do any of the allowed uses in the zoning bylaw and would render financial hardship on the applicant. The third prong contains two parts – relief can be granted without substantial detriment to the public good and without nullifying from the intent of the bylaw. Mr. Morse stated that the intent of the bylaw is to provide a setback to the tributary and allow runoff or stormwater and contaminants to infiltrate, get filtered and minimize impacts on the town's drinking water supply. Outside the 150' setback on a conventional lot, the applicant could do whatever they wanted. On this site there are advanced site controls that will not nullify or substantially derogate from the intent of the bylaw. The controls are with respect to stormwater or infiltrating the roof area, treating all of the runoff off of the driveway and proposing an innovative alternative technology septic system. It is believed that with these features in place no detrimental effect will take place. Mr. Morse further stated that there is approximately 1,400 feet from this site to the reservoir. Inside that 1,400-foot distance there are 150 other homes that already exist within that 1,400-foot radius. According to the Massachusetts GIS map within the town of Scituate there are approximately 60 dwellings inside the 150' no disturb buffer. Mr. Morse stated that the vast majority of those are without any stormwater controls or without any advanced septic systems in place that are proposed in this case. Mr. Morse acknowledged that he received a letter October 19, 2022 from the planning board and stated he could address any of those issues. Mr. Morse stated he believed wholeheartedly that this site met the requirements in the town of Scituate.

Mr. Bucchere – stated that Mr. Morse has put certain protections in place and those make this property not present a substantial detriment to the town's water supply.

Mr. Chessia – stated he submitted a letter back in July and had not been asked to write a revision to that letter so there is no follow-up. Mr. Xixis recommended Mr. Chessia reviewing the key points in his previous letter and responses will be handled. Mr. Chessia reviewed his recommendations from the Water Resources Committee and the DPW. Mr. Chessia also recommended wetland delineation, which in his understanding the conservation commission has found no wetlands at that site and the last

recommendation was that supporting documentation be provided to support the variance. These requirements were reviewed by Mr. Morse this evening. Mr. Chessia noted that although the site would not require a stormwater permit he recommended that the data typically provided for such an application be provided as support for the variance. The board asked for six items in Mr. Chessia's initial proposal. Mr. Chessia reviewed these items which were as follows: the quality and quantity of the surface water, the quality of the effluent from the septic system, comments regarding the construction, property development conditions and whether proposed or adequate – a deed restriction is being proposed to a three-bedroom house, deed restriction requiring the use of low nitrogen fertilizer and the proposed donation to put a particle separator at the outfall for the system. Mr. Chessia additionally commented he did a full review of Section 520 and commented on all these points. Mr. Bucchere asked Mr. Chessia in his opinion if a single-family home could be built on this lot without posing a substantial threat to the water supply and Mr. Chessia answered that in his opinion it would not be proposing a substantial threat to the water supply. Mr. Bucchere went on to ask Mr. Chessia if he felt that the construction of this proposed home would pose a somewhat negligible threat to the water supply. Mr. Chessia stated that any home within that distance would pose some threat but he does not believe it would be substantial. Mr. Xixis did ask more specifically about the underestimation of the numbers on the nitrogen on the septic system and asked for clarification from Mr. Morse.

Mr. Morse – stated that proposed septic design for this site was a denitrification system. The MA DEP has a couple different types of septic systems that are approved for that purpose. A system was chosen that is DEP approved for “general use” as a nitrogen reduction system. Mr. Morse explained he took and used his numbers from a DEP test center but stated that this is still the type of system that DEP would require in this case for denitrification. Mr. Morse also stated he did provide some stormwater calculations attached to his letter dated September 29, 2022. The pre vs. post drainage analysis was not done as the focus was the quality of the water not quantity. Quality calculations were provided with the September 29, 2022 letter. Mr. Morse did state that inspections would be made during the construction phase at several points but noted a crushed stone parking area was proposed along with an erosion control barrier and soil stockpiles identified on the plan. These are typical measures and have been included here. Mr. Morse noted he did propose deed restrictions regarding the three-bedroom design, pesticides, herbicides and fertilizers. He stated he did agree with Mr. Chessia that the enforcement of these would be hard to enforce; however, those are standard conditions for approvals that are used by the planning board and conservation commission and makes the homeowner aware of the issue. Mr. Morse discussed the mitigation issue. He had originally offered the amount of \$10,000.00 for mitigation for any stormwater improvement project that the town wanted to undertake. Mr. Morse stated that we now have a water sample at the discharge point and the water does not seem that dirty. Mr. Morse did reach out to DPW to see if there was a list for water quality improvements in town that the money could go toward. The DPW stated they would be happy to accept the money but did not have any list or any specific project. Mr. Morse stated he would still offer the \$10,000.00 condition to be held by the DPW for any project to be used at the town's discretion that could benefit the town water quality. Mr. Xixis concurs with Mr. Morse's findings with the water sample numbers. Mr. Xixis asked Mr. Morse for his opinion that the proposed construction of the three-bedroom house with the proposed septic system would significantly change the quality of the water that is being discharged. Mr. Morse stated that he did not think it would significantly change the quality of the water being discharged. Mr. Morse also was asked about the quantity of the water discharge after building the proposed house. Mr. Morse stated that in his opinion the quantity of water leaving the site would be increased very slightly. Lawn surface and driveway surface would be added, some water would be retained with drywell systems, raingardens but with larger storm events there would be an increase off of the site. This site drains in a southerly direction toward where the tributary is and Mr. Morse stated that the peak rate of runoff from this site at that location would go up if you looked at just this site. However, he believes that the rate of runoff coming out of the culvert already exists at a higher number. The culvert takes water from Country Way, First Parish Road up by the Senior Center and that tributary therefore is capable of handling a larger tributary area. In Mr.

Morse's opinion he stated he did not think it would have any detrimental effect to any of the downgradient properties.

Meeting was opened for public comment –

Patricia Lambert – Chair of the Scituate Planning Board – addressed the board with something that she said during a planning board meeting that was the focus of an information request which triggered the letter dated October 19, 2022 submitted by the Planning Board. Patricia stated she had listened to the zoning board meeting and the discussion of Williamsburg Lane and the ongoing issue with attempts to have this lot developed over a number of years and that a variance was being sought due to it being within the 150' tributary. During the meeting the requirements for meeting a variance were discussed and the planning board as a whole does not support this project because it is in the Water Protection district and in Zone A and this letter was submitted for those reasons.

Mr. Chessia – added that he thought it would be a good idea to add the particle separator (swirl chamber to remove sediment from the water) in this case because when he visited the site the DPW had hired someone to clean the sediment out of the pipe as the pipe reportedly gets full of sand and sediment frequently so something at that location that could be cleaned would save them a lot of work. Mr. Chessia wanted to make the board aware of this issue. Mr. Morse stated that if the town decided to do a particle separator there the \$10,000.00 would go a long way to making that happen. Catch basin hoods upstream may also be useful and cheaper that may contribute to helping. Mr. Morse also commented on the letter received by the Planning Board. He commented he re-watched the meeting referred to on YouTube. Mr. Morse wanted to point out that this site is completely different from 305 Country Way which is referred to in the planning board letter as he went on to explain. Some discussion with the board regarding the 305 Country Way issue took place.

Mr. Xixis – discussed the impervious area issue with Mr. Morse. As designed, the impervious area is shown as 14.9% and below the 15% limit. Mr. Bucchere clarified that the only relief being sought is from the buffer. Mr. Morse stated that this plan proposes 14.9% of the lot being impervious land area, approximately 3200 square feet - 15% is not the maximum limit allowed in the bylaw. The maximum limit allowed in the bylaw is 20%. The 15% threshold requires the off runoff be recharged and that is being done anyways. In the event that they were over the 15%, those requirements would be complied with. Mr. Xixis also asked Attorney Creed if this site was being taxed as a buildable lot. Attorney Creed stated it was his belief that it was and it was his understanding that until such time you obtain an abatement you are taxed at the buildable rate. Mr. Xixis confirmed with Attorney Creed that as far as he was aware of no abatement had been sought to date. Mr. Vogel discussed with the board the 150' buffer issue being a fairly new addition to the bylaw and this lot being created in the 1960's.

Kent Bongarzone (Applicant) – stated that in his opinion this is the only lot in town that the town has been granted an easement and a right of way through.

Mr. Bucchere – stated in summary after his previous communications with the Water Resources Committee, they felt that the purpose and intent of the bylaw was to not have anyone build within 150' of a tributary and that this board was defeating the purpose of the bylaw if this variance is allowed. Mr. Bucchere goes on to state his issues with the current version of the bylaw as it relates to these issues and the enforcement of same. Mr. Bucchere stated that this lot is unique and reviewed the requirements for allowance of a variance. A discussion of board members followed regarding conflicts within the bylaw and this application. What makes this application different is that previously relief has been granted for preexisting homes within the 150' buffer – in this case relief is being sought for the construction of a new home within the 150' buffer.

Attorney Creed – addressed the board and stated that their discussion with regard to the purpose and intent of the bylaw is essentially describing a taking. He stated that the only thing that this lot could be used for is a residence. A further discussion included the bylaw and the Water Protection Commission issues. Attorney Creed also discussed the drainage going into the drinking supply and the donation to the Scituate DPW that has been offered and remains on the table for mitigation in this case and/or future projects. Mr. Vogel also commented on the follow-up of additional precautions if this application were to be allowed. Mr. Vogel stated that the building department does not have that ability. Further discussions of the board included hiring an outside engineer that would come at the cost of the applicant and after discussions between Attorney Creed and the applicants, the applicants stated they would be amenable to this condition with their input. Mr. Morse also commented that having a review engineer do site inspections is common practice and would be a reasonable condition. Mr. Chessia stated that one of the things that the board may want to consider is to how to permanently protect that 50' buffer in the event of a sale of the home and new owners and their awareness of the deeded conditions/restrictions of the site. The board, Mr. Hassett and Attorney Creed discussed attaching a plan with the delineated areas/buffer zone/rain gardens that would be attached to a deed to be recorded.

Elaine Bongarzone (applicant) – stated that this is a unique lot, the town needed this lot and if were not for that reason this application would not be before this board. Mrs. Bongarzone stated that the fact that the Bongarzone family is trying to resolve the problem of harming the drinking water and the fact that they have come seeking relief from the town for something that was a buildable lot and which is being debated to no longer be a buildable lot and asked this board to take that into consideration.

Mr. Bucchere – made a motion that this board grant a variance from Section 520.4 for the property at 5 Williamsburg Lane to be constructed as shown on the Morse Engineering plan dated April 7, 2022 as revised September 27, 2022. Said variance is conditioned on the mitigating improvements (septic, drainage collection and the like) as shown on the plan and including the markings as shown on the plan and adding no disturbance markings with respect to the rain garden, with the further condition that the town be allowed to hire a review engineer for the construction process to confirm such improvements are being built in accordance with the plans at the applicant's expense and with the applicant's input on that process and under the condition that Morse Engineering submit a plan more appropriate for recording of land records, shows the 50' buffer and the location of the rain garden and the septic, deed restrictions to pesticides and fertilizers and the additional condition that the applicant deposit \$10,000.00 with the Scituate DPW. Motion seconded by Mr. Xixis, all in favor, unanimous.

Patricia Lambert – Chair of the Scituate Planning Board – stated she has never sat at a board meeting where the applicant is allowed to pick their own peer review engineer. Mr. Bucchere stated that he wished to clarify this issue. The applicant picking their own peer review engineer is by no means what was being implied. Mr. Bucchere stated however, that the applicant does have a statutory right to be kept apprised of the process and to give input in that process. The input does not need to be adhered to by the board. Mr. Bucchere went on to note that if the applicant was told that their thoughts were not to be heard or considered regarding the selection of a peer review engineer and then did not like the peer review engineer, they then would be able to vacate that peer review engineer in court.

APPROVAL OF MEETING MINUTES

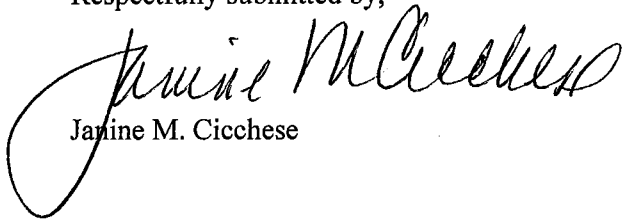
Mr. Xixis – made a motion to approve the September 15, 2022 and October 4, 2022 minutes. Motion seconded by Ms. Harrison, all in favor, unanimous.

ADJOURNMENT

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

Meeting adjourned at 8:53 p.m.

Respectfully submitted by,

A handwritten signature in cursive script, reading "Janine M. Cicchese". The signature is written in black ink and is positioned above the printed name.

Janine M. Cicchese