

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

**January 21, 2021**

**Present (via zoom): Anthony Bucchere, Chairman, Ed Tibbetts, Tom Cavanagh (not present), George Xixis, and Susan Harrison**

**Also present (via zoom): Robert Vogel, Scituate Building Commissioner**

**The Scituate Zoning Board of Appeals** held a public hearing on Thursday, January 21, 2021 via zoom (remote access/participation). The meeting was called to order at 7:00 P.M. to consider the following requests:

**First Application: (Continued from December 22, 2020) 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).**

**Mr. Bucchere** – Reviewed the application and states that the application has requested a continuance due to the unavailability of the applicant's counsel. Mr. Bucchere also added that he received a call from the engineer in this matter with Mr. Legge on the phone. They wanted to ask questions of Mr. Bucchere, many of which were duplicate of those asked at the last hearing. They were looking for clarification as to what the board was looking for, Mr. Bucchere reiterated the board was looking for further explanation as to the medical need for the size and shape of pool that is being proposed. Mr. Legge disagreed with the need for the board to know the information being requested, although he stated that he would attempt to get the board that information. Mr. Tibbetts commented that a compelling reason to find that the bylaw can be relieved must be provided by Mr. Legge and moved to allow the continuance. Motion seconded by Ms. Harris, all in favor, unanimous.

**Second Application: Paul Antonik c/o Oak Development and Design at 30 Summer Street, Hingham, MA 02043** requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6, and/or Sections 470.6 and 810.2 of the Scituate Zoning Bylaw to allow the razing and reconstruction of a pre-existing non-conforming single-family dwelling at **83R Glades Road, Scituate, MA 02066 (Assessor's Map 5, Block 3, Parcels 23 and 24).** **Representing the Applicant – Gregory J. Morse (Registered Professional Engineer, Morse Engineering).** **Also present – Paul "PJ" Antonik (Applicant).** **Representing Kristen and Christian Putnam - (abutters @ 81 Glades Road, Scituate, MA 02066) is Donald Nagle, Esq., Law Office of Donald P. Nagle, PC, 207 Front Street, Scituate, MA 02066.**

**Mr. Morse** - Reviewed the application and current status.

**Mr. Bucchere** – Addresses questions about a retaining wall and possible encroachments on 81 Glades Road, Scituate, MA 02066 and asks Mr. Morse to elaborate.

**Mr. Morse** – States that a retaining wall is proposed that would run alongside the left side lot line, which is the southern lot line on the proposed plan. The proposed retaining wall would be 2 to 2.5 feet in height and the main purpose for the retaining wall would be to bring into compliance a septic system at the property. The current cesspool has failed a Title V inspection. A new requirement is for a septic system to be installed above the ground water table. The retaining wall would hold back a mound that would be required for the septic system. The wall would run parallel with the direction of water flow so that it would not divert water onto an abutting property. Mr. Morse also states he did receive a copy of a letter from Attorney Nagle and addresses some of the concerns in that letter, including the fact that he has submitted revised plans to relocate the retaining wall to alleviate concerns that were addressed.

**Mr. Bucchere** – Addressed board members and asked if they had any questions or concerns. Ms. Harrison and Mr. Xixis stated their concerns were around the wall but stated that these concerns had been addressed by Mr. Morse. Mr. Tibbetts asked for confirmation of piling issues, existing garage and water flow and stated that he feels that the proposed would be an improvement to the property.

**Mr. Vogel** – Stated that a fence atop the proposed retaining wall should be proposed to avoid anyone falling off of the wall, pilings and FEMA elevation issues would be worked out to proper design. Mr. Vogel responded to a question from Mr. Bucchere with regard to clarification of compensation for pilings per Scituate bylaw and that this application will

comply with same as to height. Mr. Vogel responded with there is an exclusion for the height requirement and further clarified.

**Mr. Bucchere** – asked Mr. Morse to confirm the height of the proposed structure and if it included pilings. Mr. Morse stated he had submitted revised plans with overall height and stated that it is compliant with the bylaw.

### **Meeting was opened for public comment**

**Christian and Kristen Putnam (abutters @ 81 Glades Road, Scituate, MA 02066)** – Stated they do have concerns regarding the proposed building and the proposed site. Specifically, has issue with Mr. Morse's statements regarding water flow and overflow of the salt marsh and possibly their property. Another concern was the overall size of the proposed building and overall change in nature of the neighborhood. Mr. Putnam stated that he appreciated the submission of amended plans for the retaining wall and stated that they had hired an attorney to draft an easement for any future owner with regard to access.

**Mr. Bucchere** – Asked Mr. and Mrs. Putnam for clarification of the blocked access to 81 Glades Road from 83R Glades Road. Mr. and Mrs. Putnam confirmed that their property has direct frontage on Glades Road but that their front door is next to 83 Glades Road and that there is a continuous wall that is proposed along the property line and as originally proposed it would go straight out to Glades Road and/or close to Glades Road, would block the Putnam's access to Glades Road. The applicant amended the drawings so that that is currently not the case. The proposed retaining wall would not block the Putnam's at 83R Glades but the concern with the wall in back is that it would increase the flooding on their property that would normally go onto 83R Glades Road. Mr. Putnam also states that their property line runs very close to the property line for 83R Glades Road.

**Mr. Tibbetts** – Further discusses and clarifies property lines with the board and the possibility of creating a use easement with the neighbor.

**Atty. Nagle** – Stated he appreciated the revision of the plan to address the concerns of the Putnam's and that they will be seeking a legal easement as discussed. Attorney Nagle also addresses the concerns with regard to flooding and access and that some of the concerns may be mitigated by moving the systems and the mound requiring the retaining wall.

**Mr. Morse** – Responds with the fact the septic system cannot be moved under the house because of the proximity to the salt marsh and that he did look into putting it on the northerly side of the house; however, there is already a septic system that exists for 85-87 Glades in a right of way for one of the abutting houses. Where the proposed site of the retaining wall is is within 6 inches from the lot line and is essentially along the lot line. With regard to flooding, the grade would be raised over the septic system to bring the septic system into compliance and discusses flood storage capacity in relation to this application.

**Mr. Tibbetts** – Further comments on flood storage capacity, tidal and lunar flooding. Stated that he accepts what is being described by Mr. Morse. Mr. Bucchere also agrees with discussions regarding ocean capacity.

**Mr. and Mrs. Putnam** – Commented on the flood situation and their concern of the increase of flooding on their property. Mr. Bucchere clarifies the fact that the "law and certain governmental bodies regulations" doesn't view a razing of a certain property with respect to ocean related flooding, which this would be, as a violation or as a detriment to other abutting properties. Mr. and Mrs. Putnam acknowledged they understood the law.

**Atty. Nagle** – Raised the question of whether storm water and/or flooding could be mitigated by having infiltrated downspouts that may affect the Putnam's property. Mr. Tibbetts replied with comments regarding this point. Atty. Nagle also addressed height concerns with regard to Scituate Zoning Bylaws Section 620.1. These concerns were discussed with Mr. Vogel and the maximum height calculations were confirmed. Atty. Nagle also asked for confirmation regarding setbacks from property line. Mr. Bucchere clarified this concern.

**Delia Weikert (abutter @ 84 Glades Road, Scituate, MA 02066)** – Addressed her concerns and read aloud the letter she submitted to the Zoning Board of Appeals with regard to her opposition to this application. Ms. Weikert's additional concerns focused around the size allowance of the proposed application and water flow and flooding issues. Mr. Tibbetts addressed and explained with Ms. Weikert her concerns and explained that what is being proposed is an improvement and would bring the property up to code. Mr. Bucchere also commented the current septic system is not in compliance and

what is being proposed on this application would bring the septic system into compliance and that the improvements to this development would be better on the whole and that there are significant environmental benefits to this application.

**Robert Tremblay (abutter @ 71 Glades Road, Scituate, MA 02066)** – Also opposes this application and supports the comments and concerns expressed by Ms. Weikert. Mr. Tremblay additionally opposed Mr. Morse's comments with regard to the flow of water.

**Atty. Nagle** – Stated that he respectfully disagrees with comments made by Mr. Tibbetts with regard to size not being relevant and that he feels that size is an issue and feels that the impact to the neighborhood would be significant. Mr. Tibbetts directly rebutted that this proposal may be increasing in size but it is becoming more conforming in this proposal – all the setbacks are improving. Mr. Xixis also points out that although people are concerned about the flooding issue, fire safety should also be considered to allow distance between buildings.

**Mr. Morse** – Wanted to note that the proposed footprint is actually smaller than the footprint of the structures out there. Although the gross floor area is bigger the footprint is smaller, which allows the proposed to bring the setbacks into compliance.

**Mr. Tibbetts** – moved to grant the application of Paul Antonik, Oak Development and Design at 30 Summer Street, Hingham, MA 02043 for the raze and reconstruction of the property at 83R Glades Road, Scituate, MA 02066 as described in the plan entitled 83R Glades Road, (Assessor's Map 5, Block 3, Parcels 23 and 24), Scituate, MA by Morse Engineering and dated December 15, 2020, revised January 21, 2021 and further to find that this will not create and new nonconformities and to the extent that it may intensify that those are less detrimental to the neighborhood. Motion seconded by Mr. Bucchere, all in favor, unanimous.

**Third Application: Alan and Marion Brown of 49 Collier Road, Scituate, MA 02066** request a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6, and/or Section 810.2 of the Scituate Zoning Bylaw to allow the razing and reconstruction of a pre-existing, non-conforming single-family dwelling with a greater front yard setback than the pre-existing non-conforming setback but less than the required front yard setback at **49 Collier Road, Scituate, MA 02066 (Assessor's Map 64, Block 06, Parcel 14)**. **Representing the Applicant –Paul J. Mirabito, PLS (of Ross Engineering Company, Inc.)**

**Mr. Mirabito** - Reviewed the application and current status of the project. Mr. Mirabito pointed out that the side yard setbacks are conforming and the only nonconformity is the front yard setback. Mr. Xixis and Mr. Tibbetts confirmed that Mr. Mirabito explained that he had the ability to position the proposed new house at the average setback, which would eliminate the need to be before the ZBA, but believes the project would be improved if the house were to be positioned closer to the street, which would still be further from the street than the existing structure. The garage is on the left side of the house and the distance from the street will be at 16.7 feet so that parking in the driveway will be available and not be in the layout of Collier Road. Mr. Tibbetts commented that the 16.7 foot setback affords the homeowner a view line and off street parking.

**Mr. Bucchere** – Questioned Mr. Mirabito on whether the square footage of the current and proposed home is the same. Mr. Mirabito confirms the width of the house would be the same, the depth would be 8-10 feet deeper than the existing one.

**Alan Brown (owner and applicant)** – Confirms that the existing structure is a little over 3,000 square feet and the new structure is 4,016 square feet, which is a little over a 28% increase.

**Mr. Tibbetts** – Stated that because it is a conforming lot the only issue before the Zoning Board of Appeals is that the setback from the street. Mr. Mirabito confirms those issues. Mr. Vogel commented that along Collier Road there are other residences that there are many situations that are closer and less attractive than this proposed application.

**Meeting was opened for public comment**

**Frank Nelson (abutter @ 8 Lincoln Avenue, Scituate, MA 02066)** – Questioned as to how much of a deviation from present footprint to new footprint toward the ocean. Mr. Mirabito stated that the front line of the existing house will be approximately 2.5 feet back from the street than it is now. The rear of the house would be 8-10 feet further back to the rear of the existing house and also an open deck which will be coming off the first floor and about 6.5 feet above a flood

zone. The back yard will be relatively small. Mr. Mirabito confirmed with Mr. Nelson that the 8-10 feet would be compliant with the zoning requirements and that all the setbacks would be conforming aside from the front. Mr. Nelson also confirms the height of the proposed home with Mr. Mirabito. Also, Mr. Tibbetts reviews the height limit with Mr. Nelson and Mr. Mirabito.

**Leonard and Virginia (Len & Ginny) Cubellis (abutters @ 55 Collier Road, Scituate, MA 02066)** – Stated that they are in agreement with the approval of the proposed application.

**Mr. Tibbetts** – Proposed that the board approve the request by the applicant to raze and reconstruct a dwelling at 49 Collier Road, Scituate, MA 02066 in accordance with the plan prepared and entitled ZBA plan for 49 Collier Road in Scituate, MA dated December 15, 2020 prepared by Ross Engineering and that the proposed nonconformity is less nonconforming than existing nonconformities and to the extent that it may intensify it is less detrimental to the neighborhood. Motion seconded by Mr. Xixis, all in favor, unanimous.

**Fourth Application: Thomas Blake of 12 Oceanside Drive, Scituate, MA 02066, c/o Morse Engineering Company, Inc., P.O. Box 92, Scituate, MA 02066** requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6, and/or Sections 810.2 and 470 of the Scituate Zoning Bylaw to allow the razing and reconstruction of a pre-existing, non-conforming single-family dwelling at **12 Oceanside Drive, Scituate, MA 02066 (Assessor's Map 40, Block 1, Parcel 20)**. **Representing the Applicant – Gregory J. Morse (Registered Professional Engineer, Morse Engineering).**

**Mr. Morse** - Reviewed the application and current status. The application if approved would represent a 79% increase over the building that exists there.

**Mr. Tibbetts** – Stated that what is being proposed is obviously an improvement and asked for confirmation of the lot on whether it extends out to mean low water, which was confirmed by Mr. Morse. Mr. Morse states that essentially this lot is two lots, a lot on the land side of the seawall and a lot on the Oceanside of the seawall. Since the building of this house the seawall has been rebuilt. The true rear yard would be the ocean. There is common ownership between the two lots per Mr. Morse. Mr. Tibbetts confirmed with Mr. Morse that the front, side and rear setbacks would comply as proposed. The building height is not in violation of bylaws and confirmed what is before the board – the 79% increase in gross floor area, which Mr. Morse confirmed.

**Mr. Vogel** – Commented that it would be a great improvement to get it FEMA compliant and up on pilings. Flood vents would have to be installed in the existing walls should the garage remain and also suggested fire protection along the wall abutting and between the home and the garage the rear wall of the garage be sheathed in fire retardant/fire proof gypsum board and no other comments.

**Meeting was opened for public comment** – no public comment.

**Mr. Tibbetts** – Motion that the board approve the application of Thomas Blake of 12 Oceanside Drive, Scituate, MA 02066 to raze and reconstruct the dwelling at 12 Oceanside Drive, Scituate, MA 02066 in accordance with the plan entitled 12 Oceanside Drive (Assessor's Map 40, Block 1, Parcel 20), Scituate, MA by Morse Engineering and dated December 16, 2020 with a revision on January 21, 2021 and find that the proposed does not create any nonconformities and to the extent that it may intensify that it is not significantly more detrimental to the neighborhood. Motion seconded by Mr. Bucchere, all in favor, unanimous.

**Fifth Application: Stephen Connolly of 96 Pratt Road, Scituate, MA 02066**, requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6, and/or Section 810.2 of the Scituate Zoning Bylaw to allow the razing and reconstruction of a pre-existing, non-conforming single-family dwelling at **215 Tilden Road, Scituate, MA 02066 (Assessor's Map 39, Block 27, Parcel 25F)**. **Representing the Applicant – Gregory J. Morse (Registered Professional Engineer, Morse Engineering) and Steven M. Guard, Esq., GUARD LAW LLC, 1165 Washington Street, Hanover, MA 02339.**

**Mr. Morse** - Reviewed the application and current status. The lot frontage for this application is the nonconformity.

**Mr. Bucchere** – Questions Mr. Vogel as to whether the private way qualifies for frontage in this matter.

**Mr. Vogel** – Commented that this would best be determined by reviewing the deed and/or contacting a real estate attorney.

**Atty. Guard** – Commented that the deed does not reference the right of way but it is shown on the 1985 plan and it is his understanding that this property was in common ownership years ago when it was divided in 1985. Attorney Guard has conferred with Mr. Morse and no frontage is being claimed on that right of way and both thought it best to treat the lot as nonconforming frontage due to the fact that the right of way is very small and not of road grade or width and is considered more of a gravel driveway.

**Mr. Bucchere** – Stated that after reviewing plan feels that there is an argument that this is a conforming lot.

**Mr. Morse** – Commented that due to the definition of frontage in the zoning bylaw says that it has to be frontage that is suitable for division in accordance with an 81L division with the planning board and Mr. Morse did not feel the planning board would be comfortable with creating a form A lot off of this road and have issue with taking frontage off the right of way as it exists and for this reason found it deficient for meeting the standard of the zoning bylaw.

**Mr. Bucchere** – Had no comments with regard to treating this as a nonconforming lot. Mr. Xixis had no comment. Mr. Tibbetts asked for confirmation as to whether the right of way was identified as Persimmon Drive (off of Tilden Road) via Google maps.

**Stephen Connolly (abutter @ 96 Pratt Road, Scituate, MA 02066)** – Commented that he has done research regarding Persimmon Drive and feels Google maps is wrong, cannot locate a road or street and the right of way appears to be a sort of common driveway. Mr. Tibbetts responded with the fact that a named paper street and was picked up somewhere but defers to Mr. Morse and Attorney Guard.

**Mr. Morse** – Commented that during the survey research that was done he did not come across any labelled right of way as Persimmon Drive and also stated that there is a Persimmon Drive subdivision with approximately 10 homes (also referred to as Cushing Estates) in Scituate further up Tilden Road approximately 1,000 feet to the North.

#### **Meeting was opened for public comment**

**Richard Leach (abutter @ 213 and 213R Tilden Road, Scituate, MA 02066)** – stated he owns adjoining property. Questioned how many stories would the new home be and the setbacks from the property lines. Mr. Morse confirmed it would be a 2.5 story dwelling. Mr. Bucchere confirmed what the proposed setbacks would be. Mr. Leach thanked the board.

**Mr. Tibbetts** – Moved to grant the necessary relief for a Special Permit/Finding associated with the raze and reconstruction of the property at 215 Tilden Road in accordance with a plan prepared by Morse Engineering entitled 215 Tilden Road (Assessor's Map 39, Block 27, Parcel 25F), Scituate, MA dated December 16, 2020 and identify that there are no nonconformities associated with this project. Motion seconded by Mr. Xixis, all in favor, unanimous.

**Sixth Application: John Ison of 20840 4<sup>th</sup> Street, Saratoga, CA 95070**, requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6, and/or Sections 810.2 and 950.2D of the Scituate Zoning Bylaw to allow to construct a dimensionally conforming building accessory to, and thereby alter, extend or structurally change, a pre-existing, nonconforming single-family dwelling on a pre-existing, nonconforming lot at **38 Revere Street, Scituate, MA 02066 (Assessor's Map 72, Block 4, Parcel 2)** and that such accessory building will not be substantially more detrimental or injurious to the neighborhood, than the existing structure. **Representing the Applicant – Gregory J. Morse (Registered Professional Engineer, Morse Engineering) and Jeffrey DeLisi, Esq., Ohrenberger, DeLisi & Harris, LLP, 28 New Driftway, Scituate, MA 02066.**

**Mr. Morse** - Reviewed the application and current status. Confirmed the proposed project would be for a detached structure, first floor to be used as garage space and second floor would be office/gym space.

**Atty. DeLisi** – Confirmed that a special permit is not being requested as the property is not in the Scituate flood plain. Mr. Morse confirmed that the property is not in fact the Scituate flood plain but it is in a FEMA flood plain at elevation 13, the structure is FEMA compliant and is on piles.

**Mr. Bucchere** – Asked for clarification on the FEMA issue with the leaching field and that this will be a two-story structure, first story garage, and second story would be approximately 800 square feet. Atty. DeLisi confirmed this information.

**Mr. Vogel** – Asked Attorney DeLisi to confirm that the first story would be under the building and the parking would be under the building as the building is on piles. Mr. Bucchere also commented that essentially the parking would be enclosed and parking would be on the ground. Attorney DeLisi clarified that it would be a two car enclosed garage with a very short ramp to get to the parking area and will be elevated on a couple of feet of pilings but low enough that the cars would be able to pull into the garage with a room above with a bathroom, no shower, no bedroom or kitchen.

**Mr. Bucchere** – No further comments from the board or Mr. Vogel.

#### **Meeting was opened for public comment**

**Michael and Jeanne Huie (abutters @ 34 Revere Street, Scituate, MA 02066)** – Asked for a more detailed description of the setbacks and that the proposed application would be a stand-alone garage. Mr. Bucchere confirmed the setbacks and Attorney DeLisi confirmed the elevation of the peak and footprint. Mr. Huie stated that initially they would be opposed to this application. If it was attached to the existing house, he would not be opposed. Mr. Bucchere commented that his objection is noted.

**Mr. Bucchere** – Made a motion on the application of John Ison for the property at 38 Revere Street, Scituate that the board find that the proposed detached structure as shown on a plan by Morse Engineering dated December 7, 2020 does not create any new nonconformities and that to the extent it intensifies any existing nonconformities that such intensifications will not be more substantially more detrimental to the surrounding neighborhood. Motion seconded by Mr. Tibbetts, all in favor, unanimous.

#### **IV. APPROVAL OF MINUTES**

**Mr. Bucchere** – Moved that the board does not need to vote on minutes for months that there were no meetings; however, liked that they were being put on the record and as Chairman voted that the minutes for April 16, 2020, May 21, 2020, July 16, 2020 be approved and made a motion to approve the August 20, 2020 minutes. Motion seconded by Mr. Tibbetts, all in favor, unanimous.

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

Meeting adjourned at 9:26 pm.

Respectfully submitted by,

  
Janine M. Cicchese