

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

**April 15, 2021**

TOWN OF SCITUATE  
TOWN CLERK  
2021 MAY 27 AM 10:32  
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**Present (via zoom): Anthony Bucchere, Chairman, Edward Tibbetts, 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, April 15, 2021 via zoom (remote access/participation). The meeting was called to order at 7:00 P.M. to consider the following requests:

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**First Application: Robert Hogan of 202 Central Avenue, Scituate, MA 02047** 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 **202 Central Avenue, Scituate, MA 02047 (Assessor's Map 70, Block 1, Parcel 10)** and increasing the gross floor area by more than 20%. **Representing the Applicant – Michael J. Biviano, Biviano Contracting, 1952 Ocean Street, Marshfield, MA 02050.**

**Mr. Biviano** – reviewed the application.

**Mr. Bucchere** – questioned Mr. Biviano regarding whether the new construction would be within the same footprint. Mr. Biviano explained that the new construction would be not much larger than the original footprint; however, it would be 2.5 stories where the original structure was only a story and a half. Mr. Bucchere confirmed with Mr. Biviano that he would actually be bringing the right side set back into conformity.

**Mr. Tibbetts** – states the new construction will be a modest house and is not disproportionate to the neighborhood. No comments from Ms. Xixis and Ms. Harrison.

**Mr. Vogel** – commented that once the Building Department receives the proposed plans the height requirements can be evaluated.

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

**Mr. Bucchere** – made a motion that the board grant the Special Permit for the proposed reconstruction at 202 Central Avenue in accordance with the plan drawn by Environmental Engineering Technologies, Inc. dated December 23, 2020 and further that the board find that the proposed dwelling will not create any new nonconformities and to the extent that it intensifies any existing nonconformities such intensification are not substantially more detrimentally to the neighborhood. Motion seconded by Mr. Tibbetts, all in favor, unanimous.

**Second Application: James Paskell of 20 Collier Road, Scituate, MA 02066, represented by Attorney Jeffery D. Ugino, Gelerman and Cabral, LLC, 6 Beacon Street, Suite 215, Boston, MA 02108** requests an Appeal pursuant to M.G.L. Chapter 40A, Section 15 and/or Sections 430.2 and 200 of

the Scituate Zoning Bylaw of the building permit dated February 2, 2021 to Lenord G. Cubellis and Virginia M. Cubellis, owners of the parcel located at **Cliff Avenue, Lot 64-5-2, Scituate, MA 02066 (Assessor's Map 64, Block 5, Parcel 2)**. **Representing the Applicant – Michael B. Cabral, Esq., Gelerman and Cabral, LLC, 6 Beacon Street, Suite 215, Boston, MA 02108 and Representing Lenord G. Cubellis – William H. Ohrenberger, Esq., Ohrenberger, DeLisi & Harris, LLP, 28 New Driftway, Scituate, MA 0266.**

**Mr. Bucchere** – reviewed the application and made a motion to allow a continuance to the next available hearing with assent from counsel for both parties. It is the understanding of the board that the landowner and the appellant are working to come to an agreement and are hopeful that the appeal will ultimately be dropped. Motion seconded by Mr. Tibbetts, all in favor, unanimous.

**Third Application: Perry Dinatale of 91 N. Street, South Boston, MA** 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 **10 Newton Street, Scituate, MA 02066 (Assessor's Map 72, Block 9, Parcel 4)** increasing the gross floor area by more than 20%. **Representing the Applicant – Richard (Dick) Rockwood, President of Rockwood Design, Inc., 1020 Plain Street, Marshfield, MA 02050.**

**Mr. Rockwood** – reviewed the application. Mr. Bucchere and Mr. Xixis questioned and confirmed the existing and proposed square footage. The lot area, width and frontage will stay the same and the front setback as noted by the applicant, will improve. The side setbacks will remain in conformance. The new home will be a 24 foot by 34-foot home two-story home.

**Mr. Vogel** – at the time the building department receives a building permit application, the application will be reviewed with regard to any flood requirements and/or conservation issues.

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

**Andrea L. Walker (abutter @ 6 Newton Street, Scituate, MA)** – 10 Newton Street is immediately behind her property. Ms. Walker describes this application as a two-story plus solid wall. Some of her concerns were that this proposed application would impact her enjoyment of her living area, run off concerns, flooding concerns and that it would prohibit natural light to her property and how it would affect the value of her property in the future. Ms. Walker also questioned the height requirement and had concerns of the height of what is proposed.

**Mr. Bucchere** – moved that the board grant the Special Permit with respect to the razing and reconstruction of the property at 10 Newton Street, Scituate, MA in accordance with the site plan drawn by Stenbeck & Taylor, Inc. and dated March 9, 2021 and that the board find that the proposed dwelling will not create any new nonconformities and that to the extent that it intensifies any existing nonconformities that such intensifications are not substantially more detrimental to the surrounding neighborhood. Motion seconded by Mr. Tibbetts, all in favor, unanimous.

**Fourth Application: Michael and Kelly Mangano of 20 Kelly Lane, Ladera Ranch, California 92694** request 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 **42 Brunswick Street, Scituate, MA 02066 (Assessor's Map 72, Block 5, Parcel 1-A)** increasing the gross floor area by more than 20%. **Representing the Applicant – Timothy R. Bennett (Professional Land Surveyor, of Grady Consulting, L.L.C., 71 Evergreen Street, Suite 1, Pembroke, MA 02364) and Heidi Condon (Heidi Condon Design (Architect), 146 Front Street, Suite 2, Scituate, MA 02066).**

**Mr. Bucchere** – reviewed the application. Mr. Bennett further reviewed the application. Mr. Bucchere confirmed with Mr. Bennett the proposed decks would be open and therefore would not have to comply with setbacks. Mr. Bucchere also confirmed proposed conditions according to the submitted plot plan with Mr. Bennett. Mr. Bucchere, along with comments from Mr. Vogel, stated that according to Massachusetts Building Code, any portions of a lot that abut a street in the town of Scituate have a required 30-foot front setback. The required setback from Brunswick Street would be 30 feet; however, the present home is a pre-existing nonconforming situation and the application is not proposing to bring it any closer, nor is a new nonconformity being created. Mr. Bucchere commented that several letters of support were received by abutters with the application. A letter from an abutter, Susan O'Brien, was also received. This letter expressed some support and concerns for the project. Ms. O'Brien had concerns of the use of "wooden pilings instead of cement piers" and the potential damage to her home due to the disturbance and pounding of pilings. Mr. Bucchere stated this is not something that the zoning board has purview over at all and suggested maybe a conversation between landowners might be beneficial.

**Mr. Vogel** – commented on the piling issue and the fact that the home is located on a barrier beach, coastal dune and velocity zone. Mr. Vogel stated that conservation and FEMA would most likely require wooden piling foundation and would need an extraordinary reason to allow anything different. Mr. Vogel further advised to possibly contact the homeowners and/or contractor with regard to disturbances and taking pictures to document any concerns with regard to damages. Mr. Tibbetts concurred with Mr. Vogel.

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

**Mr. Tibbetts** – moved that the board find on the application of Michael and Kelly Mangano that the raze and reconstruct does not create any new nonconformities to the extent that it may increase existing nonconformities they are not substantially detrimental to the neighborhood and that the 20% larger is likewise not substantially more detrimental to the neighborhood. Motion seconded by Mr. Xixis, all in favor, unanimous.

**Fifth Application: Paul Knight and Stacie Pallotta Knight c/o Walter B. Sullivan, Esq., Sullivan & Comerford, PC, 80 Washington Street, Building B, Suite 7, Norwell, MA 02061** request a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 to allow the razing and reconstruction of a pre-existing non-conforming single family dwelling at **9 Bridge Avenue, Scituate, MA 02066 (Assessor's Map 56, Block 3, Parcel 1)** increasing the gross floor area by more than 20%. **Representing the Applicant – Walter B. Sullivan, Sullivan & Comerford, PC, 80 Washington Street, Building B, Suite 7, Norwell, MA 02061 and Gregory J. Morse (Registered Professional Engineer, Morse Engineering).**

**Mr. Bucchere** – reviewed the application. The application was further reviewed by Greg Morse. The lot is nonconforming with respect to frontage and width. The new construction will take place within the existing footprint and setbacks will not change, including frontage and width. No questions from Mr. Bucchere, Mr. Xixis or Ms. Harrison. No comments from Mr. Vogel.

**Mr. Tibbetts** – confirmed with Mr. Morse and Attorney Sullivan that this application is not a raze and reconstruct but an addition of a second and third story to an existing structure. The application is before the board for the increase of more than 20%.

**Atty. Sullivan** – notes that this application is not creating more of a nonconformity and that there is no intensification and even if there was it is not inconsistent with the neighborhood. This is a pre-existing single-family home with no nuisance or hazard to the public and requests a finding and to grant approval for the project.

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

**Mr. Bucchere** – made a motion that the board find that the proposed addition to the home at 9 Bridge Avenue as shown on the plan made by Morse Engineering and dated March 8, 2021 does not create any new nonconformities and to the extent that it intensifies any existing nonconformities that such intensifications are not substantially more detrimental to the surrounding neighborhood. Motion seconded by Mr. Xixis, all in favor, unanimous.

**Sixth Application: Robert F. and Carol Howland of 30 Ocean Avenue, Scituate, MA 02066** request a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Sections 810.2 and/or 950.3 of the Scituate Zoning Bylaw to allow the extension of the rear dwelling at **30 Ocean Avenue, Scituate, MA 02066 (Assessor's Map 8, Block 6, Parcel 13). Representing the applicant - Jeffrey DeLisi, Esq., Ohrenberger, DeLisi & Harris, LLP, 28 New Driftway, Scituate, MA 02066 and Paul J. Mirabito, PLS (of Ross Engineering Company, Inc.).**

**Mr. Bucchere** – reviewed the application. Atty. De Lisi further reviewed the application and stated that the home is new to the applicants – two dwellings on one lot/classified as multiple houses – which were purchased for the purpose of providing and accommodating live-in care for their son who has Down's syndrome and additional medical conditions. The second house allows for that care, stability, privacy and to be able to remain at home and not in an institutional setting. A two-story addition is proposed. The nonconformity is on the rear yard. The addition will not create any new nonconformities and will comply with the front, side setbacks and height requirements. The addition will not intensify any existing nonconformities.

**Mr. Xixis** – asked whether the main house is conforming. It was stated that the only nonconformity is the left side covered porch of the existing dwelling.

**Mr. Tibbetts** – asked for confirmation that the two separate dwellings listed on the property pre-dated zoning requirements. Atty. De Lisi confirmed that in fact, the two dwellings are two separate residences on one lot and are grandfathered under zoning, not one primary dwelling and one accessory dwelling.

**Meeting was opened for public comment**

**Richard (Dick) Peinert (abutter @ 28 Ocean Avenue, Scituate, MA)** – stated that it was his understanding that the addition would be added to the left side of the house, which was confirmed by Attorney De Lisi.

**Stephen Faber (abutter @ 11 Cherry Lane, Scituate, MA)** – stated that the concern he had was that he felt that there was a better way of doing this project to avoid the negative impact in the form of his enjoyment of his property. Additional concerns were that the two-story addition will immediately overlook his property/backyard which has a “pool and other things” and does not wish for this to happen. Mr. Faber stated that he felt the addition could be built closer to the primary residence on the lot, positioned diagonally, not consist of two-stories or “looming over the backyard and using up light and air”.

**Atty. De Lisi** – responded to Mr. Faber's concerns and stated that the proposed addition would abut a 5-foot portion in the rear line of his property and although it would be more structure along the rear line, the proposed structure would be a de minimus amount that would actually be seen from the Faber backyard and would not be in the immediate vicinity of his residence. Mr. Faber's rebuttal was that the proposed structure is large and impactful from a visual standpoint and stresses he feels that the project could be

done in a different way. Atty. De Lisi states as a reminder to the board that the standard is “not substantially more detrimental to the neighborhood”.

**Mr. Bucchere** – directs a question to Atty. De Lisi with regard to any proposed plans for screening or landscaping for the project. Atty. De Lisi responds that the applicants would be happy to consider screening and/or anything reasonable. Atty. De Lisi also points out that views are not a protected interest under the Scituate Zoning Bylaw. Mr. Bucchere disclosed that Mr. Faber is familiar to him through business dealings as his office is a client of the company that he works for and did not feel that that would affect his decision in this matter.

**Mr. Tibbetts** – moved to find that the application of Robert F. and Carol Howland of 30 Ocean Avenue, Scituate, MA 02066 for an addition to an existing dwelling at 30A Ocean Avenue in accordance with a plan prepared by Ross Engineering dated March 10, 2021 entitled ZBA Plan for 30 Ocean Ave does not create any new nonconformities to the extent that it may intensify existing nonconformities it is not substantially detrimental to the neighborhood and vote to grant the relief requested by the applicants. Motion seconded by Mr. Xixis, all in favor, unanimous.

**Seventh Application: Jennifer Duff of 41 Fay Road, Scituate, MA 02066** requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 to allow the construction of a second story addition to a pre-existing, non-conforming single-family dwelling at **41 Fay Road, Scituate, MA 02066 (Assessor’s Map 34, Block 27, Parcel 6)** increasing the gross floor area by more than 20%.

**Mr. Bucchere** – reviewed the application. The applicant and her contractor further reviewed the application stating that a second floor will be added to the dwelling. Mr. Bucchere confirmed with the contractor that no work will be done outside of the footprint. The lot is nonconforming with regard to frontage, lot area, lot width and the front setback; however, the plan is to stay within the current footprint. No comments from Ms. Harrison or Ms. Xixis. Mr. Tibbetts concurs with Mr. Bucchere’s statements with regard to the plan and staying within the current footprint.

**Mr. Vogel** – states that after review this application appears to be straight forward.

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

**Paula Donahue (abutter @ 43 Fay Road, Scituate, MA)** – states she is neighbor to the applicant’s right side. Ms. Donahue’s concern was her chimney and the distance from her chimney to the proposed addition and any future safety concerns. Mr. Bucchere commented that what is being proposed falls within the regulations.

**Mr. Vogel** – commented that the Massachusetts Building Code states that the chimney, if on a sloping roof, needs to be 2 feet above the point where a horizontal line from the top of the chimney would intersect the roof 10 feet away. In this particular situation, anything over 10 feet away would be reasonably safe.

**Mr. Bucchere** – made a motion that the board find that the proposed second story addition at 41 Fay Road, Scituate, MA, which is to fall entirely within the existing footprint of the home existing there today and which is proposed to increase the square footage by 624 square feet does not create any new nonconformities and to the extent it intensifies any existing nonconformities that such intensification is not substantially more detrimental to the surrounding neighborhood. Motion seconded by Mr. Xixis, all in favor, unanimous.

## **DISCUSSION OF PROPOSED HARBOR RESIDENT STICKER PARKING**

**Mr. Bucchere** – commented that he did follow-up with some people in town and did speak with the Chief of Police who stated that this is a complicated issue. The Chief of Police did not take an opinion for either side but did mention that any enforcement, and level of enforcement due to complexity of such parking (weather, high tides etc.), would be another task for the police department. Mr. Bucchere stated he thinks this issue is something worthwhile to further explore and understands the need and desire for overnight parking. Mr. Bucchere expresses an opinion on behalf of the Zoning Board of Appeals that he feels this issue warrants some more investigation by the town and is willing to take steps to find out. Mr. Bucchere adds that he is not sure if he feels that residents that live in that neighborhood should have the right to park overnight in Cole Parkway but does know that the reason that they do not have the right to park overnight in Cole Parkway should be clear. Mr. Bucchere stated he will draft a letter from the Scituate Zoning Board of Appeals to the Traffic Rules and Regulations and will copy the Select Board and any other people who should be copied, which will state that based on past applications and from public input at hearings, that the Zoning Board would request that the town investigate creating some form of overnight parking in the harbor district, specifically for residents of the harbor district, and would add that the board recognizes that there may be complications that limit and/or nullify the town's ability to do that but the board feels that some investigation into the possibility of that type of parking should be made by the town.

**Mr. Tibbetts** – states that he feels this is potentially a good idea but whether this should be addressed by the Traffic Rules and Regulations. The Zoning Board has been addressing this issue as a legitimate concern as it relates to zoning issues, but may not fall within the jurisdiction of the ZBA. If this issue does fall to the Traffic Rules and Regulations, Mr. Tibbetts would support a letter from the ZBA suggesting that they look into the matter.

**Mr. Xixis** – states that he agrees with what has been previously said but wanted to make the point that there is currently parking in Cole Parkway. The problem becomes that during times of bad weather, many of those spots that are otherwise available to the public to park overnight are no longer available and the only other spots that are available are otherwise restricted and the individuals that park in those spots tend to get ticketed and possibly towed. Mr. Xixis also would support a letter to Traffic Rules and Regulations stating concerns that have been raised regarding parking in the course of Zoning Board issues and issues need to be revisited. Ms. Harrison also agreed.

**Mr. Vogel** – stated in his personal opinion that a way needs to be found to accommodate resident parking, what the solution is, is unclear.

### **Discussion was opened for public comment**

**Nancy Conway (resident of 150 Hatherly Road, Scituate, MA)** – stated she felt badly for people who have difficulty parking there but also all along the coast during storms and bad weather and when you purchase a property and/or rent one that doesn't come with a parking place, she doesn't feel these people should be able to park in public spaces that are maintained by the town and take up spots in the summertime either as it does get congested and becomes an added burden if you are paying mooring/slip and/or additional town fees to be in the harbor. Ms. Conway states that she is unsure if residents purchased their homes knowingly without a designated parking place should necessarily trump any other tax payer in town. Also, Ms. Conway questions how residents of the "harbor district" are determined – can residents that reside within a mile and half of the harbor be considered harbor residents and be considered for a sticker as well?

**Mr. Bucchere** – asked Mr. Vogel if the “harbor district” is a delineated district. Mr. Vogel stated that there is a designated “business harbor district”, which is part of the Zoning Bylaw. It is Mr. Vogel’s understanding that that district overlays all of the condominiums along Front Street and Cole Parkway and within the Welch Company area.

**Mr. Tibbetts** – commented that he feels that one of the challenges we have here is that the existing businesses in the harbor business district have commanded more of a demand for parking over the residents of the harbor. The board has actually reduced the need for parking but at the same time not offered the ability to park. The right to park in the area is not trying to be taken away but in applying the zoning bylaw the board was required to find the reduction in the need for parking by taking the theater out of the equation was less impactful on parking and therefore was a positive in the application but then no privilege for parking was provided. The board was not given the avenue to address the issue of parking and that is what is now being addressed. The question is not whether they have a right to park but whether they have it in any formal way that makes it easier. Nothing is trying to be taken away from the people of the town.

**Mr. Bucchere** – stated he feels that the board is in agreement thus far that the town coming to a conclusion and being able to the public and the residents we have explored this and we are moving with it or we have explored this and we are moving further or we have explored this and it is not going to happen for whatever reasons, is something the Zoning Board is willing to throw its support behind.

**Debbie Farrell (resident of 124 Front Street, Scituate, MA)** – stated that the nature of the reason she has been part of this process is due to the Mill Wharf Plaza application that was before the Zoning Board. However, reiterated her concerns that the residents of Front Street need parking stickers for Cole Parkway.

**Kathleen Baldwin (resident of 124 Front Street, Scituate, MA)** – discussed her recommendations for inclusion with the letter to Traffic Rules and Regulations. Also, Ms. Baldwin asked the board if there was any assistance she could provide. Mr. Bucchere suggested her vote and her ability to suggest how others may vote, as well as town meeting. Ms. Harrison also suggested that the public could write letters to the Traffic Rules and Regulations Committee regarding these issues.

**Linda Noble (of 124 Front Street, #2, Scituate, MA 02066)** – stated that she agreed with the decision to submit a letter to the Traffic Rules and Regulation Committee and thanked the board for their assistance.

**Mr. Tibbetts** – moves to vote to endorse a letter from the Zoning Board of Appeals asking for further investigation into the parking situation and possible resident parking in Cole Parkway. Motion seconded by Mr. Bucchere, all in favor, unanimous.

#### **APPROVAL OF MINUTES:**

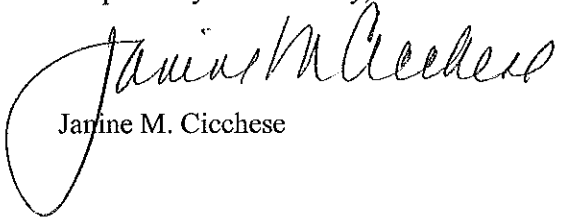
**Mr. Bucchere** – Makes a motion to approve the February 25, 2021 and March 18, 2021 minutes. Motion seconded by Mr. Tibbetts, all in favor, unanimous.

#### **ADJOURNMENT**

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

Meeting adjourned at 9:16 pm.

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