

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

**May 26, 2021**

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TOWN OF SCITUATE  
RECEIVED

**Present (via zoom): Anthony Bucchere, Chairman, Edward Tibbetts and George Xixis**  
**Also present (via zoom): Robert Vogel, Scituate Building Commissioner, Neil Duggan, Building Inspector**

**The Scituate Zoning Board of Appeals** held a public hearing on Wednesday, May 26, 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 April 15, 2021) 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).**

**Mr. Bucchere** – after review of the application, it was his understanding that the appellant withdrew their appeal and motioned that the board accept that withdrawal. Motion seconded by Mr. Tibbetts, all in favor, unanimous.

**Second Application: Craig and Christine Murphy of 82 Scituate Avenue, 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 to allow for the construction of an addition to a pre-existing, nonconforming single-family dwelling at **82 Scituate Avenue, Scituate, MA 02066 (Assessor's Map 40, Block 3, Parcel 3)** increasing the gross floor area by more than 20%. **Representing the Applicant - Heather Marshall of Designs By Marshall, LLC, 17 Nelson Road, Scituate, MA 02066.**

**Christine (Christie) Murphy (applicant) and Heather Marshall (architect)** – reviewed the application and explained the proposed application would be an 81% increase in gross square footage. Mr. Bucchere questioned Ms. Marshall about the proposed living space above the garage. Ms. Marshall explained that this space would be accessible by its own staircase from the main living space. This space was described as a “bonus room” and will not be used as any type of rental space or separate dwelling.

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

**Mr. Tibbets** – moved that the board find that the application of Craig and Christine Murphy of 82 Scituate Avenue, Scituate, MA 02066 that the proposed addition if completed in compliance with the plot plan of 82 Scituate Avenue, Scituate, MA relies March 14, 2021 by James McGrath does not create any new nonconformities and to the degree that it may they are not substantially detrimental to the neighborhood and to find that the 20% increase in square footage likewise is not detrimental to the neighborhood. Motion seconded by Mr. Xixis, all in favor, unanimous.

**Third Application: Andrew Spath-Stockbridge Properties, LLC of 41 Cavanagh Road, Scituate, MA 02066** requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 to allow the expansion and intensification of a pre-existing, nonconforming structure at **106-108 Stockbridge Road, Scituate, MA 02066 (Assessor's Map 54, Block 2, Parcel 25)**. **Representing the Applicant – Stephen Rider, Esq., 30 Lincoln Street, Hingham, MA 02043.**

**Andrew Spath (applicant) and Attorney Stephen Rider** – reviewed the history of the application. Mr. Bucchere asked what the use of the Quonset hut was for. Mr. Spath replied it is used for storage of trucks and equipment, which are related to Mr. Spath's business, Site Pro Contracting, LLC. Mr. Bucchere stated he does see the stated Quonset hut on the site plan which was submitted with this application (approximately 2,400 sq. ft, 60' x 40').

**Mr. Vogel** – stated the reason Mr. Spath was asked to apply to the ZBA board was that the Quonset hut was erected without a building permit. A fine for this was levied and paid by Mr. Spath. In order for Mr. Spath to get a retroactive building permit, he was advised that he would have to come before the board for approval as a new building represented an expansion of the activity on the site. This property has historically been used for storage of heavy equipment and contractor's yard for a number of years throughout different owners. In approximately 1988-1990 there was a ZBA matter in which a Special Permit was issued involving this property, with several smaller businesses on the site. This matter was settled prior to court intervention with a stipulation of the smaller businesses being phased out over a period of time. Over a number of years, the smaller businesses have dissolved and are no longer, and the main condition of the Special Permit has been achieved. Mr. Vogel reports that the town of Scituate's Conservation Agent, Amy Walkey, was on-site approximately two weeks ago with a "flying squad" from the DEP. A report was generated from this site visit which stated that no hazardous waste and no serious infiltration of wetlands were observed. There was a minor issue found during this visit which Mr. Spath has repaired. Intensity of operation was discussed.

**Mr. Spath** – stated that when he purchased the property approximately five years ago there were a few Special Permit tenants still there but they are no longer. Mr. Bucchere asked Mr. Spath how many trucks he operated within his business – and noted that due to the Special Permit that the number should be thirty-three or less. Mr. Bucchere asked for a total of vehicles, whether personal or business related, on the property. Mr. Vogel stated he did not take a count during his recent visit but noted there were a number of vehicles. Mr. Bucchere stated that aside from the restriction of the number of vehicles, he did not feel that there were any other outstanding restrictions relating to the previously issued Special Permit that continued to this time.

**Mr. Bucchere** – discussed the issue of trucks being operated prior to 7:00 a.m. Mr. Bucchere felt that the business itself and/or trucks involved with the business should not be operating prior to 7:00 a.m. This issue is non-negotiable. Mr. Bucchere asked that the public comments focused on whether or not this structure intensifies the pre-existing nonconforming use in a way that is significantly more detrimental to the neighborhood.

**Mr. Tibbetts** – stated he concurred with Mr. Bucchere's assessment of the 1991 Special Permit and the ancillary tenant activities and stated that the issue here is that this property is pre-existing nonconforming use for a number of years and the public may not be happy with the current use. Mr. Tibbetts also asked for confirmation that no complaints had been received regarding this structure since it was built since 2018 until this most recent issue.

**Mr. Duggan** – stated both he and Mr. Vogel met with Mr. Spath approximately one week ago, during which options were discussed to help with neighbor relationships, noise, fencing, berms, lighting etc.

**Mr. Xixis** – asked the board to confirm that the property is in the Water Resource Protection District and Flood Plain and Watershed Protection District. That information was confirmed.

**Mr. Spath** – stated he had agreed to put up a berm and/or screening along the property line abutting the property he owns with Jeanne Mullin to screen the view of the operation (toward Country Way). Mr. Bucchere addressed the issue of now that no tenants remain on the property, Mr. Spath now has a 2,400 square foot building for his sole use, which would be viewed as an intensification of non-conforming use with more capacity for business. Other factors may constitute less of an intensification. Mr. Spath goes on to explain that some of the business has been brought inside such as large equipment storage and maintenance. No processing takes place inside the structure. Most of the processing takes place at site headquarters located in Cohasset. Mr. Spath reported that the recent intense noise was in his opinion associated with processing from another company who was renting space temporarily from Mr. Spath due to work on the lighthouse, which has now concluded.

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

**Robert Dillon (abutter @ 134 Stockbridge Road, Scituate, MA 02066)** – read his statement regarding his filed formal complaint concerning what he feels are violations of the previously issued Special Permit and his concerns with activities at 106-108 Stockbridge Road. Mr. Bucchere responded to several points including the revocation of the Special Permit and Mr. Dillon's mention of treating the Greenbush section of Scituate differently due to its diversity.

**Mr. Tibbetts** –also responded to the comments regarding diversity of Mr. Dillon and wanted to point out that the diversity or lack of diversity of a neighborhood should not influence this board in any way, shape or form. Mr. Tibbetts pointed out that reason this matter is before the board is whether or not there is an intensification and that is what should be addressed. Mr. Duggan also responded.

**Christopher Carchia (abutter @ 119 Stockbridge Road, Scituate, MA 02066)** – asked for confirmation that the Quonset hut complies with all building codes, zoning bylaws and is allowed to be there and is not just asking for forgiveness after building said hut. Mr. Bucchere explained that the property is grandfathered and the building does not violate the sites setbacks. Mr. Bucchere further explained that this is the first step in determining whether this structure is up to code.

**Mr. Vogel** – commented that no inspections have been done regarding the structure as a building permit has not been issued to hold required inspections. Mr. Vogel went on to say that the next step, after being given a Special Permit/Finding by the board, would be to file a building permit retroactively. Mr. Duggan noted that there is a current cease and desist notice on the building until it is properly permitted. Mr. Tibbetts stated that the structure does meet all setbacks and other aspects and again points out that it is the use of the structure that is before the board.

**Paul Papadonis (abutter @ 197 Hatherly Road, Scituate, MA 02066)** – asked if the current structure replaced another structure. Mr. Bucchere informed him that prior to the construction of this structure no other building existed. Mr. Papadonis expressed concern over noise in the neighborhood.

**Mark Fenton (abutter @ 25 Crescent Avenue, Scituate, MA 02066)** – stated that the time delay between the construction of the building and the complaints of abutters regarding the intensification may be an issue at this time as this has been the only legal opportunity to comment and does not suggest that the building was not a problem. Mr. Fenton also asked that if the board were to consider granting the building permit what kind of formal conditions could be assessed. Mr. Bucchere stated that very specific conditions could be part of the approval, should the board move to grant.

**John (Jack) McInnis (abutter @ 93 Stockbridge Road, Scituate, MA 02066)** – expressed concern over the building being built and now some three years later, possibly issuing a permit for that building without any repercussions. Mr. Bucchere commented that there is a cease and desist order for the property and the penalties for constructing the building will be determined.

**Jeanne Mullin (direct abutter @ 132 Stockbridge Road, Scituate, MA 02066)** – read her statement that expressed her concerns regarding the property. Mr. Spath commented that he is co-owner of the condominium property with Ms. Mullin.

**David Sturgeon (son-in-law of Robert Dillon – not a Scituate resident)** – offered his opinion that there has been an increase in the intensification of Mr. Spath's property, including shaking of Mr. Dillon's house and land, dirt and debris on Mr. Dillon's property, possible public health situation and fear of further intensification. Mr. Sturgeon also noted that after approximately 2019 there was a significant increase in dirt and dust to the point that the outside deck was unable to be used for family gatherings and barbecues. Mr. Bucchere asked Mr. Sturgeon if there is screening or fencing that in his opinion would help the situation. Mr. Sturgeon noted that noise, large vibrations and increased activity would remain an issue but stated screening may help.

**Michael Adams @ 108 Edward Foster Road, Scituate, MA 02066** – commented he has observed the site over the years from visiting Ms. Mullin (above). He has observed that the intensification of the site does appear to be evident with filling and encroachment of wetlands, dumping and spreading out of site.

**Mr. Vogel** – commented on the Conservation Commission being involved and stated that Amy Walkey, our Conservation agent, does not feel there are any problems in that area. The conservation issue will further be reviewed upon processing the building permit application.

**Mr. Tibbetts** – stated there is no evidence that the construction of the building intensified the conservation issues on the property.

**William Reynolds (abutter @ 48 Colonel Mansfield Drive, Scituate, MA 02066 – his daughter is married to Robert Dillon's son)** – questioned the board about ramifications with current use of the property and intensification of building of the Quonset hut. Mr. Spath responded to his question regarding reduction in tenant use of the property and the determined amount of trucks/equipment on the property.

**Mr. Bucchere** – stated that he feels that some more specificity would be required regarding screening, number of employees and possibly an inventory as to the number of trucks/heavy equipment located on the site (what is there and what comes and goes and what contributes to the site itself). It currently appears that the amount of trucks etc. is over the required limit of 33. Mr. Bucchere suggested to Attorney Rider to make a motion to continue to try to obtain the additional information.

**Attorney Rider** – asked for a continuance to the next scheduled hearing of the Zoning Board of Appeals. Mr. Bucchere stated that if the information is available prior to the next hearing to please try to get it to the board for review prior to the next meeting to avoid spending too much time on this matter in June due to the lengthy agenda.

**Mr. Tibbetts** - suggested that the applicant and his attorney discuss this matter with the neighbors and try to work cooperatively. Attorney Rider stated that they would do that.

**Fourth Application: R. Farwell & Sons, Inc. (Michael Farwell) of 38 Cedarwood 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 construction of an addition to a pre-existing, nonconforming single-family dwelling at **1 Summit Avenue, Scituate, MA 02066 (Assessor's Map 13, Block 2, Parcel 14)** and increasing the gross floor plan by more than 20%. **Representing the Applicant - Stephen Bjorklund.**

**Mr. Bjorklund** – reviewed the application for the applicants. A two-story addition was proposed in excess of the 20%. Mr. Tibbetts confirmed that there would be no increase in any non-conformities. The setback will be further away from the property line with the addition; however, a portion of that addition is located within the 15-foot setback. This would not be an expansion but an extension of a nonconformity along the same property line.

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

**Mr. Tibbetts** – moved that the board find that the proposed addition of Patrick and Kristen O'Brien of 1 Summit Avenue, Scituate, MA 02066 according to the plot plan for 1 Summit Avenue, Scituate, MA dated March 31, 2021 by Ross Engineering does not intensify or create any new nonconformities and to the degree that it does it is not substantially detrimental to the neighborhood and that the increase of more than 20% in living area is likewise not detrimental to the neighborhood. Motion seconded by Mr. Bucchere, all in favor, unanimous.

**Fifth Application: Anthony L. and Laurie A. Amonte, Co-Trustees of the ALA Nominee Trust of 58 Turners Way, Norwell, MA 02061** request 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 and/or any other relief that the Board of Appeals may grant, to allow the alteration, extension, or structural change in the form of 420 SF of additional living space above the first floor of the detached pre-existing nonconforming garage, on a pre-existing nonconforming lot at **129 Humarock Beach, Scituate, MA (Assessor's Map 71, Block 6, Parcel 13-0)**, will not be substantially more detrimental or injurious to the neighborhood, than the existing structure. **Representing the Applicant - Jeffrey DeLisi, Esq., Ohrenberger, DeLisi & Harris, LLP, 28 New Driftway, Scituate, MA 02066.**

**Attorney DeLisi** – reviewed the application. The frontage and width are nonconforming. The detached garage is nonconforming. The dwelling itself is nonconforming on the front yard setback, which is calculated from Humarock Beach. It is proposed to build a second floor above an old garage. The two structures are connected by a deck. The whole concept would be to keep that decking and to increase 13%. A single room with a half bath would be over the garage and access to that room would be from the deck itself. This room would not be used as an accessory dwelling/bedroom.

**Mr. Tibbetts** – questioned if you were accessing the proposed addition via the deck is the garage being adjoined to the dwelling. Attorney DeLisi stated that is the intention but the deck will remain uncovered. The house is elevated onto piles so the second floor of the garage will be at the same grade as the first floor of the home. The garage is below the first floor of the house. No comments from Mr. Xixis.

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

**Mr. Bucchere** – made a motion on the application of the ALA Nominee Trust that the proposed second story garage addition shown on the Atlantic Coast Engineering plan dated March 22, 2021 for the property at 129 Humarock Beach, Scituate, MA that the board find that the proposed addition does not create any new nonconformities and that to the extent that it intensifies any existing nonconformities that

those intensifications are not substantially more detrimental to the surrounding neighborhood. Motion seconded by Mr. Xixis, all in favor, unanimous.

**Sixth Application: David J. and Catrina M. Dirubbo of 4 Cliff Estates 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 to allow the construction of an addition to the pre-existing, nonconforming single-family dwelling at **4 Cliff Estates Road, Scituate, MA (Assessor's Map 8, Block 7, Parcel 4C)** and increasing the gross floor plan by more than 20%. **Representing the applicant – William Edes of Drohan, Tocchio & Morgan PC, 175 Derby Street, Suite 30, Hingham, MA 02043.**

**Attorney Edes** – stated a letter was sent to the board dated May 13, 2021. Mr. Bucchere confirmed receipt of the letter and the intent to withdraw the application. An application for the June meeting has been filed seeking different relief.

**Mr. Bucchere** – made a motion to allow the withdrawal. Motion seconded by Mr. Tibbets without prejudice, all in favor, unanimous.

**Seventh Application: Gregory P. and Lisa M. DeConsiliis of 28 Bemis Street, Newtonville, MA 02460** 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 alteration, reconstruction, extension or structural change to the pre-existing nonconforming single-family dwelling on the lot at **142 Humarock Beach, Scituate, MA (Assessor's Map 71, Block 4, Parcel 13-F)**, by relocating said dwelling on the lot and constructing an addition thereon which completely eliminates an existing nonconforming setback and does not intensify an existing nonconformity, but which increases the gross floor area by more than 20%. **Representing the Applicant - Jeffrey DeLisi, Esq., Ohrenberger, DeLisi & Harris, LLP, 28 New Driftway, Scituate, MA 02066 and Gregory J. Morse (Registered Professional Engineer, Morse Engineering).**

**Attorney DeLisi** – reviewed the application. The lot is 14,500 square feet. The lot is nonconforming as to frontage and width. The house is located in a velocity zone and the dwelling is not currently in flood compliance. The plan is to elevate the house on piles, move and rotate it into the lot further away from the beach and construct a third-floor addition onto the house, which would be compliant with height requirement. There is also a small detached accessory structure, which is proposed to be razed. The dwelling is currently nonconforming as to the side yards. No comments from the rest of the board.

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

**Mr. Tibbetts** – moved to find that the relocation and the addition of the dwelling at 142 Humarock Beach, Scituate, MA by Gregory and Lisa DeConsiliis as per the plan by Morse Engineering dated April 8, 2021 shall not create any new nonconformities, shall reduce existing nonconformities and to the degree that it may intensify it is not substantially detrimental to the neighborhood and the increase in square footage likewise is not substantially detrimental. Motion seconded by Mr. Bucchere without prejudice, all in favor, unanimous.

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

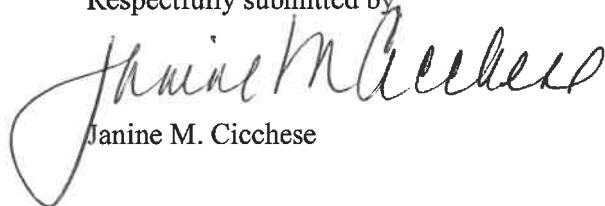
**Mr. Tibbetts** – Makes a motion to approve the April 15, 2021 minutes. Motion seconded by Mr. Xixis, all in favor, unanimous.

## **ADJOURNMENT**

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

Meeting adjourned at 9:58 pm.

Respectfully submitted by

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

Janine M. Cicchese