

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

July 15, 2021

Present: Anthony Bucchere, Chairman, George Xixis and Susan Harrison
Also present: Robert Vogel, Scituate Building Commissioner

The Scituate Zoning Board of Appeals held a public hearing on **Thursday, July 15, 2021** in the Scituate Town Hall located at 600 Chief Justice Cushing Highway. The meeting was called to order at 7:00 P.M. to consider the following requests:

First Application: (Continued from June 17, 2021) 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)**.

Mr. Bucchere – moved to continue the Stockbridge application to the September meeting of the Scituate Zoning Board of Appeals. The reason for that is a board member or two will not be available in August and will probably have alternates and alternates are not able to be used for an application that has been previously continued. The current three board members will need to be present to hear this application. Motion seconded by Mr. Xixis, all in favor, unanimous.

Second Application: Daniel P. Whiting of 116 Country Way, Scituate, MA 02066 requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 520.4 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 pre-existing nonconforming single-family dwelling within 150 feet of a tributary at **116 Country Way, Scituate, MA 02066 (Assessor's Map 48, Block 2, Parcel 53)** and increasing G.F.A. over 20%. **Representing the Applicant - Gregory J. Morse (Registered Professional Engineer, Morse Engineering).**

Mr. Morse – reviewed the application. The proposal is to add an addition onto the back of the house. The addition complies with all front, side and rear setbacks; however, the nonconformity is regarding lot width. The 150-foot buffer in this case has already been developed. The addition represents a 35% increase in the floor area. The existing house is at 1840 square feet and the proposal is 2481, which is in keeping with the surrounding neighborhood.

Mr. Bucchere – stated that he feels this is a modest addition entirely within the building envelope. Mr. Bucchere asked Mr. Vogel if there were additional steps that would be required to provide protection to the tributary and the water source. No comments from Mr. Xixis and Ms. Harrison.

Mr. Vogel – stated that should the Conservation Board approve this project; an order of conditions would be put into place and include silt fence and all of the appropriate measures for protection and take into consideration the proximity to the tributary.

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Meeting was opened for public comment – no public comment.

Bruce Arbonies (resident at 23 Gannett Pasture Lane, Scituate, MA 02066) – is also a member of the Water Resource Commission and liaison. Questioned the board regarding what steps are being taken to protect that tributary and runoff.

Mr. Morse – stated this matter will go before the Conservation Commission with an order of conditions to issue which will have specific requirements with regard to inspections and erosion control barriers to prevent migration of sediment.

Mr. Bucchere – noted that some impervious areas were being removed and replaced with lawn. Mr. Morse confirmed that the rear driveway area would be removed. The proposed addition would be in that area, which would be considered clean runoff. That is being offset with the removal of approximately 1,000 square feet of driveway surface, which is a dirtier runoff. Mr. Bucchere asked Mr. Arbonies that given the change and that the Conservation Commission will consider this request, would there be anything additional that Mr. Arbonies felt should be considered prior to approval. Mr. Arbonies stated that outside of any concerns of the Conservation Department he didn't have any other concerns.

Mr. Vogel – asked Mr. Morse if he knew of any other application similar to this and if he felt that this matter may set a precedent that currently does not exist. Mr. Morse stated that there were at least two homes on the opposite side of the brook that were inside the 150-foot buffer. Mr. Bucchere stated that he felt that this type of permit had been issued before – not for new construction but for alterations.

Mr. Morse – added that the 150-foot buffer is a “do not disturb” zone not 150 feet from the structure and noted that the 150-foot buffer has already been disturbed at that location.

Mr. Bucchere - made a motion that subject to full compliance with any order of condition issued by the Conservation Commission and provided the modification of the driveway as shown on the plan is carried out, that the board grant the Special Permit for the addition shown on a plan drawn by Morse Engineering and dated May 6, 2021 and that addition being at 116 Country Way and find that the proposed addition does not create any new nonconformities and to the extent that it exacerbates any existing nonconformities such are not substantially more detrimental to the surrounding neighborhood. Motion seconded by Mr. Xixis, all in favor, unanimous.

Third Application: Fred Caffrey, 21 Bailey's Causeway, Scituate, MA 02066 & John Baron, 14 Bayberry Road, Scituate, MA 02066 c/o Gene J. Guimond, Esq., Baker, Braverman & Barbadoro, PC, 300 Crown Colony Drive, Suite 500, Quincy, MA 02169 request an Appeal of the building permit (B-21-470) issued on May 5, 2021 to the subject property at **8 Bayberry Road, Scituate, MA 02066 (Assessor's Map 05, Block 02, Parcel 13)**. **Representing the Applicants – Gene Guimond, Esq. of Baker, Braverman & Barbadoro, P.C., 300 Crown Colony Drive, Suite 500, Quincy, MA 02169, representing Joseph Joyce and Marie Antoinette Joyce – Walter B. Sullivan, 80 Washington Street, Building B, Suite 7, Norwell, MA 02061 and Paul J. Mirabito, PLS (of Ross Engineering Company, Inc.).**

Atty. Guimond – (Appellant's counsel) – asked for the board to rescind the building permit and allow the property owner to apply for two variances – one of the variances for lot width and the other for building height. Attorney Guimond provided the history and ownership of the property: A 2,250 square foot piece of property that is contingent of the lot width and ownership issue. In 2004, Mr. Caffrey (owner of Lot 15) was approached by Mr. Joyce who stated that he wished to build a house on the lot currently at 8 Bayberry Road. They entered into an agreement, the plans did not involve any elevation increase. In the R-2 district a lot width of 125 feet needs to be maintained for building and in this case the

125 feet was needed to place the building in the requested location. Days after the deed was recorded granting that land, an easement went back to Mr. Caffrey. That stated easement gave Mr. Caffrey “full control” of that easement area for all purposes. The Caffrey’s since moving in have maintained a fence (that area has been fenced in on their property and maintain a garden. They continue to maintain dominion and control of the area in question.

Mr. Bucchere – for clarification: the Caffrey’s owned Lots 15 and 16 and have a fence along the boundary line. They were approached by their abutter, who needed Lot 16, and the Caffrey’s sold Lot 16 to the abutter (Mr. Joyce). They understood that selling Lot 16 to their abutter so the abutter could have a buildable lot. The abutter’s paid \$60,000 for Lot 16 and immediately turned around and gave one of the more “total easements” back to grantor of the deed. Attorney Guimond confirmed information thus far. Attorney Guimond further added that plans of the house that was proposed to be built, complete with elevations, have changed. Mr. Bucchere again clarified that all parties were on the same page until they weren’t when plans for building changed. Attorney Guimond pointed out that he represents both Mr. Caffrey and Mr. Baron. Attorney Guimond refers to Scituate Zoning bylaw definition of lot and stated his client’s contingent is the “demonstrated dominion and control” and language in the easement show that the owner of the property of the subject building permit does not have dominion and control and ownership. Attorney Guimond cites reference to merger cases with nonconforming lots and “dominion and control”. If courts are looking for dominion and control as their guiding factor the reverse analogy would be that if you do not have dominion and control, you do not have ownership of that land and therefore do not have a continuous parcel.

Mr. Bucchere continues that he understood the argument but it getting hung up on the fact that one of Attorney Guimond’s clients sold the lot for that purpose. Attorney Guimond stated he understood but stated that the initial plans were for a different project. Mr. Bucchere points out that it was still for the building of the house and therefore the whole purpose of the sale would have failed regardless of what was proposed to be built. With regard to the height discussion, Attorney Guimond stated his clients were not clear with the filed plans what the projected height of the project was going to be and a builder came and informed them that the project would be approximately 33 to 35 feet. Approximately 6.6 feet of fill has been brought onto the site, so if add that 6 feet to the 33 to 35-foot height, you would be at approximately 39.6 to 41.6 feet. The contention is that this violates the purpose of the height restrictions in the bylaw. Mr. Xixis asked Attorney Guimond how he is figuring his measurements and the heights allowed in the bylaw are discussed. Mr. Vogel adds that he has scaled the provided drawings to 32 feet; however, it could be a little more.

Mr. Bucchere – noted that bringing in fill to low lying areas is a common practice; however, bringing in fill to not have to adhere to the height bylaw is not recommended and is enforced. Mr. Vogel confirmed to Mr. Bucchere that in his view the fill that was brought into this lot and the proposed structure complied with the bylaw. Mr. Vogel also noted that there was a septic system that was required to be raised and installed at this property that necessitated fill. Height is measured from the average finished grade at the foundation to the ridge or to that point midway between the eaves and ridge. Mr. Vogel stated that he did not have any concerns with the information that was provided prior to issuing the permit. The board agreed that with all information provided that this proposed structure complies with the height bylaw.

Attorney Sullivan – (counsel for property owner) provided some background on how the lot was acquired, including years of litigation. Attorney Sullivan argued that his client has ownership of the 1200 square foot lot and has use of this property. He also noted that his client had a septic system installed on the property and no one complained and a storm water permit issued to his client that was not appealed. Mr. Bucchere made note that the abutters are now claiming the lot is not buildable as it doesn’t have the required width as they have watched it being improved and now do not agree with the current proposed structure. The easement issued is further discussed.

Mr. Joyce – stated he understands the discussion; however, also stated that the Caffrey’s also clearly understood the setbacks and the issues at the time. Mr. Joyce stated that he was issued a building permit in approximately 2006/2007 when he installed the septic system and planned to build until the market crashed and he put his plans on hold. In 2007 the house that was proposed to be built was three stories and was much larger than what is currently being proposed. It is noted that the abutters did not appeal that building permit. The house that is proposed to be built on the site today is well below the maximum height and will be a two-story and approximately 3,200/3,300 square feet.

Meeting was opened for public comment –

Frederick and Jill Caffrey (abutters @ 21 Bailey’s Causeway, Scituate, MA) – stated she initially had no problem with the house being built until the amount of fill that has been brought in became an issue. Mrs. Caffrey also claimed water issues since the fill has been brought in. She also stated that if her and her husband had known the house wasn’t going to be for Mr. Joyce they would not have sold it. Mrs. Caffrey stated she was never informed of the issuance of a storm water permit until long after and therefore did not appeal. Mr. Xixis addressed Mrs. Caffrey and asked if she alleged that the building permit applicant should not be allowed to build on this lot or that the height of the house is being objected to based on the amount of fill. Attorney Guimond confirmed that he alleged that Mr. Joyce cannot build on this property and that with a variance he could possibly get a building permit. Attorney Guimond stated that it was his opinion that Mr. Joyce does not have ownership, dominion and control of the property and therefore do not meet the 125 square foot lot width in that area and would require a variance and also that the height violated the zoning bylaw and a variance would be required for that as well. Mr. Caffrey stated he had no issues with the proposed plan Mr. Joyce initially had nor building a house on that property now; however, would like to see it built at a natural grade and so that it would blend with the neighborhood. Mr. Bucchere stated that the opinion of abutters does not get to restrict what you do on your property.

Mr. Bucchere – struggled with the easement issue with the board.

Michael Connolly (abutter @ 11 Bailey’s Causeway, Scituate, MA) – asked the board if a resident required a permit to bring in fill to a lot before you build. The answer was no from Mr. Vogel and the board was unaware of any requirement for same. Mr. Connolly stated he would like a house to be built on this property and spoke to water issues in the neighborhood.

Mr. Mirabito – stated that this particular lot was not in the jurisdiction of the conservation commission and therefore did not require any specific permitting. Mr. Joyce obtained all other required permits for this lot. Attorney Sullivan respectfully requested that the board uphold the issuance of the building permit. Dr. Vincent (proposed buyer of proposed house at 8 Bayberry Road) stated that he cannot wait to move to Scituate and live at the proposed residence.

Mr. Bucchere – made a motion to deny the appeal of Fred Caffrey and John Baron for the issued building permit at 8 Bayberry Road in Scituate and we find in our denial that we do not see evidence that the property does not comply with the height or lot width requirements of the bylaw. Motion seconded by Mr. Xixis, all in favor, unanimous.

Fourth Application: Christopher and Jennifer Morrison, 60 Mordecai Lincoln Road, Scituate, MA 02066 request a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 470.6 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 single-family dwelling at **316 Hatherly Road, Scituate, MA 02066 (Assessor’s Map 28, Block 1C, Parcel 8C and 8R). Representing the Applicants – Lawrence P. Mayo, P.C., 80 Washington Square, Unit C20, Norwell, MA 02061.**

Attorney Mayo – reviewed the application and provided some historical information. Attorney Mayo noted that this property is in all respects compliant with all the dimensional requirements of the bylaw and will continue to be compliant after the proposed building. This application was before the board for a Special Permit due to it is within the Flood Plain and Wetland Protection District. The current home has structural and mold issues and will be replaced with a new three-story single-family home and septic issues will be addressed, along with this property being raised above the FEMA flood level. Approximately 1,476 square feet of impervious material will be removed in this process.

Mr. Bucchere – confirmed with Mr. Vogel, the board and Jen Morrison, the applicant, that the square feet of the current home is 1,859 and the home to be built will be 1,938, which would not exceed an increase of more than 20%.

Meeting was opened for public comment –

Paul Carroll (abutter @ 327 Hatherly Road, Scituate) – expressed safety concerns regarding fast traffic, no sidewalks and overgrown, large hedge as it comes into the street. Christopher and Jennifer Morrison explain that the hedge will be removed.

Mark Boles (abutter @ 324 Hatherly Road, Scituate) – questioned the board as to whether the pond would be filled in or remain. The pond will not be touched and will remain.

Mr. Bucchere – made a motion that the board find that the proposed raze and reconstruction shown on the Nantasket Survey and Engineering Plan dated June 7, 2021 complies with the provisions of Code 470.6 and that the board should grant the according Special Permit. Motion seconded by Mr. Xixis, all in favor, unanimous.

Fifth Application: Merrill A. Gibbons, Trustee of T.M.G. Realty Trust, 41 Mount Vernon Street, Braintree, MA 02184 requests 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 razing of an existing non-conforming single-family dwelling at **146 Central Avenue, Scituate, MA 02066 (Assessor's Map 70, Block 2, Parcel 16)** and reconstruction in a location with confirming side yard setbacks and less non-conforming front yard setbacks and increasing the gross floor area by 70%. **Representing the Applicants – Paul J. Mirabito, PLS (of Ross Engineering Company, Inc.).**

Mr. Mirabito – reviewed the application and stated that the plan was to raze the existing home and to elevate it onto a pile foundation. The proposal is for a two-story house with no lower level and an open deck. The new home is proposed to have approximately 900 square feet of additional space which will account for 70% increase in gross floor area. A hearing before the Conservation Commission is scheduled for next week in this matter.

Meeting was opened for public comment –

Keith Jansen (abutter @ 148 Central Avenue, Scituate) – stated he was in favor of the application and asked the height of the proposed pilings. Mr. Vogel stated that the proposed first floor would have to be a minimum of 17 feet from mean sea level. Mr. Mirabito stated that the first floor of the existing home is currently at 15.8 and the first floor of the proposed home will be approximately 19.0, the first floor of the home will go up approximately 3 feet from where it is currently.

Mr. Xixis – on the application of Merrill A. Gibbons, Trustee of T.M.G. Realty Trust, 41 Mount Vernon Street, Braintree, MA 02184 on the request for a Special Permit/Finding in accordance with M.G.L. 40A,

Section 6 and Section 810.2 of the Scituate Zoning bylaw to allow the razing of an existing non-conforming single family dwelling at 146 Central Avenue, Scituate, MA 02066 pursuant to the plan prepared by Ross Engineering dated May 24, 2021 the board hereby moves to grant the application finding that it doesn't create any new nonconformities and to the extent it increases any existing nonconformities such increases or intensifications are not substantially more detrimental to the neighborhood. Motion seconded by Ms. Harrison, all in favor, unanimous.

Sixth Application: Peter Zaccardi, Trustee of Gilson Realty Trust, 37 Moorland Road, Scituate, MA 02066 requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 810.2A 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 pre-existing, nonconforming single-family dwelling at **8 Studley Royal Road, Scituate, MA 02066 (Assessor's Map 30, Block 03, Parcel 17)** increasing the gross floor area by more than 20%. **Representing the Applicants – Paul J. Mirabito, PLS (of Ross Engineering Company, Inc.).**

Mr. Mirabito – reviewed the application and stated that a small addition will be added to the existing home. The lot area, frontage, width and front and right-side yard setbacks are all nonconforming. An increase of 64% of the gross floor area is being proposed with the new proposal.

Meeting was opened for public comment – the applicants were present and have no comment.

Mr. Bucchere – moved that the board find on the application of the Gilson Realty Trust, 37 Moorland Road, Scituate, MA 02066 that the proposed addition shown on a plan by Ross Engineering dated June 14, 2021 does not create any new nonconformities and to the extent that it intensifies any existing nonconformities such intensification is not substantially more detrimental to the surrounding neighborhood. Motion seconded by Mr. Xixis, all in favor, unanimous.

Seventh Application: (Continued from June 17, 2021) Joseph G. Gauquier of 24 Hatchet Rock Road, Scituate, MA 02066 requests a Variance in accordance with M.G.L. Chapter 40A, Section 10 and/or any other relief that the Board of Appeals may grant, to allow the construction of a covered front entryway to the pre-existing, nonconforming single-family dwelling at **24 Hatchet Rock Road, Scituate, MA 02066 (Assessor's Map 26, Block 2, Parcel 39).**

Mr. Bucchere – the applicant was not present. This application was dismissed without prejudice and the applicant is free to refile. Motion seconded by Mr. Xixis, all in favor, unanimous.

ADDITIONAL BUSINESS:

14-16 Old Country Way, Scituate, MA 02066 - request for extension of the Special Permit for this property.

Mr. Bucchere – Mr. Vogel had no issues with this request. Mr. Bucchere moved to grant the extension of the Special Permit to June 25, 2023 and not to be further extended. Motion seconded by Mr. Xixis, all in favor, unanimous.

APPROVAL OF MINUTES:

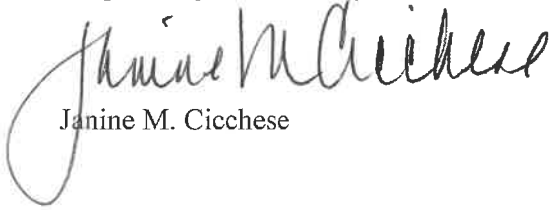
Mr. Bucchere – made a motion to approve the May 26, 2021 minutes. Motion seconded by Mr. Xixis, all in favor, unanimous.

ADJOURNMENT

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

Meeting adjourned at 8:49 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