

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

September 16, 2021

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

Also present: Robert Vogel, Scituate Building Commissioner

The Scituate Zoning Board of Appeals held a public hearing on **Thursday, September 16, 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: Sally Caverly, 11 Cliff Avenue, Scituate, MA 02066 requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 800 and 810.2 of the Scituate Zoning Bylaw and/or any other relief that the Board of Appeals may grant, to allow the razing and reconstruction of a pre-existing, nonconforming single-family dwelling at **11 Cliff Avenue, Scituate, MA 02066 (Assessor's Map 64, Block 5, Parcel 4)** and increasing the gross floor area by more than 20%. **Representing the Applicant – Terry McGovern (Registered Land Surveyor, Stenbeck & Taylor, Inc.) and Jamie Kelliher of Axiom Architects, 2048 Washington Street, Hanover, MA 02339.**

Mr. McGovern and Mr. Kelliher – reviewed the application. The board confirmed that over the front door would be an open slat pergola. All existing utilities will be reused. No comments from Mr. Vogel.

Meeting was opened for public comment – no public comments.

Mr. Bucchere – made a motion that the board find that the proposed raze and reconstruct shown on the site plan by Stenbeck & Taylor dated August 1, 2021 creates no new nonconformities and to the extent that it intensifies any existing nonconformities such intensification is not substantially more detrimental to the surrounding neighborhood and that the board grant the requested special permit. Motion seconded by Mr. Carchia, all in favor, unanimous.

Second Application: John McDowell, 28 Wampatuck Avenue, Scituate, MA 02066 requests 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 construction of a front porch to the pre-existing, nonconforming single-family dwelling at **28 Wampatuck Avenue, Scituate, MA 02066 (Assessor's Map 40, Block 9, Parcel 11).**

Mr. McDowell – reviewed and presented his application. This application is presented for a covered front porch and will be eight feet in depth and across the span of the front of the house (approximately 32 feet). There will be no walls on the porch. No issues from Mr. Vogel.

Meeting was opened for public comment – no public comments.

Mr. Xixis – on the application of John McDowell, 28 Wampatuck Avenue, Scituate in accordance with M.G. L. Chapter 40A, Section 6 and Section 810.2 of the Scituate Zoning Bylaw to allow the construction of a front porch to the pre-existing, nonconforming single-family dwelling at 28 Wampatuck Avenue and move that the board find that the Morse Engineering plan dated July 30, 2021 shows no new nonconformities and to the extent there are any existing nonconformities there is no increase in the existing nonconformities and any intensification is not substantially more detrimental to the neighborhood. Motion seconded by Ms. Harrison, all in favor, unanimous.

Third Application: (Continued from July 15, 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).** **Representing the Applicant – Stephen Rider, Esq., 30 Lincoln Street, Hingham, MA 02043.** **Christopher Carchia recused himself as a board member from this application as he is a direct abutter to the property.**

Atty. Rider – provided a review of the application and stated that he has submitted a revised plan and additional information, including a letter to the ZBA from the neighbors in support of Mr. Spath, an affidavit of Ann Wheeler and a traffic count. Atty. Rider reviewed the facts that this application centers around the fact the Quonset hut on the property was erected without a proper building permit and whether or not it is substantially detrimental to the surrounding neighborhood.

Mr. Bucchere – reviewed letter submitted by Jeanne Mullin regarding her opposition to the most recent proposed berm (and read it aloud for the record). Mr. Bucchere and the board stated that although Mr. Spath owns half of the property that contains the condominium unit the other half owner, Ms. Mullin, is not in agreement. The portion of the property that is being discussed is not owned exclusively by Mr. Spath. The location of the proposed berm was discussed as well as the property lines for the condominium unit and the construction yard. Encroachment into abutting land and/or adverse possession of the condominium unit property and construction yard property was discussed.

Mr. Spath – stated he had made multiple attempts to keep the neighbors happy including proposing to install fencing along the property lines, to install a berm, noise reduction and a reduction in traffic. Atty. Rider suggested that if the board was inclined to say the proposed berm was satisfactory that the berm be built on the applicant's property unless he obtains legal rights to construct the berm elsewhere. Mr. Vogel stated that a building permit would not be required to construct the berm and states that conservation may need to be involved.

Mr. Xixis – confirmed with Mr. Spath what he was and was not proposing for a berm and its location.

Ms. Harrison – asked whether the issue concerning the light that was discussed at the last meeting has been mitigated. Mr. Spath provided a photo of the light on his phone for the board to view.

Meeting was opened for public comment -

Bruce Arbonies (Water Resources Commission liaison and resident @ 23 Gannett Pasture Lane, Scituate, MA) – had questions concerning the berm as to runoff as the back end of this property is inside the 150-foot tributary buffer zone and additional land that is within the water resource protection area. Mr. Vogel stated this most likely will have to be reviewed by the conservation commission.

Robert Dillon (abutter @ 134 Stockbridge Road, Scituate, MA 02066) and David Sturgeon (son-in-law of Robert Dillon – not a Scituate resident) – Mr. Sturgeon asked for confirmation as to a particular

section of property and if Mr. Spath was the owner and why the berm is not proposed to run the entire length of the property line. Mr. Bucchere stated that Mr. Spath is using property past the property line and that is why the berm is not being proposed to follow the property line. Mr. Sturgeon and Mr. Dillon also questioned the use as to what is going on out on the back of the property and whether or not it is an intensification and what method and/or rights an abutter has if they see a clear action at the sight that is clearly to them an intensification. Mr. Vogel commented.

Christopher Carchia (as abutter @ 119 Stockbridge Road, Scituate, MA) – provided his personal historical view of the property as he has lived in his home since he was a child. He also asked whether or not any other existing buildings on the property could be labelled as an intensification. Mr. Bucchere stated that as the other existing structures were always there and are not new and are not necessarily an intensification and are not detrimental to the neighborhood.

Mark Fenton (abutter @ 25 Crescent Avenue, Scituate, MA) – clarified before the board his understanding of what the issues are before the board in this matter. The board stated that his summation was fair.

Jeanne Mullin (abutter @ 132 Stockbridge Road, Scituate, MA 02066) – informed the board that she has retained counsel to represent her in a land matter involving Mr. Spath. Ms. Mullin stated that in her opinion the condominium land has been encroached upon.

Mr. Bucchere – discussed the berm and the positioning/repositioning the location of the light with Mr. Spath. The board further discussed conditions concerning the berm as follows. Mr. Vogel discussed that the conservation commission may have to be involved in the construction of the berm.

Proposed conditions:

1. **Where** – entirely on the Spath Engineering property or “straddling the property line” (of the condominium unit) if Spath Engineering has a court order that states consent of the property owner is not required or with consent of both property unit owners.
2. **When** – the applicant will actively pursue the construction of the berm to be completed by December 15, 2021.
3. **What** – the height of the “arborvitae like evergreen treeish bushes” would be approximately four feet and maintained at a height of four or more feet.
4. **Maintenance and length**– the dimensions of the berm will be incorporated into the decision per the plan submitted by Spath Engineering and to be maintained in a “like new” condition with annual maintenance if required and to be covered in a grass like substance or mulch.
5. **Light** – efforts to be made by the applicant for the light to be furthered angled away from abutter’s homes.

Mr. Bucchere - subject to the above conditions, made a motion to grant a building permit to maintain the existing Quonset hut subject to inspection of the hut and the Scituate Building Commissioner confirming it was built in accordance with the Massachusetts Building Code has the board initially given the building permit finding that to the extent the existence of the Quonset hut creates an expansion or intensification of this nonconforming use such expansion is not substantially more detrimental to the surrounding neighborhood providing the following conditions are met:

The applicant further angles the existing light that was constructed with the hut downwards and away from abutters homes and the applicant constructs a berm in accordance with the Site Pro berm diagram submitted with the application to a height of ten feet and with evergreen plantings of a height of approximately four feet at the time of planting. Both the berm and the plantings to be maintained reasonably to continue the appearance of both in a manner not significantly less than the quality and structure that they were upon installation. Said berm is to be located along the property lines shown on the most recent plan submitted with the application by Spath Engineering dated last revised June 22, 2021; however, said berm is to be located entirely on Parcel 54-2-25 and 26 unless and until the applicant obtains the consent of both condominium owners for the abutting land or a court order stating that they do not need the consent of both condominium owners. The surface of the berm is to be maintained with a mulch covering or a grass like covering. The construction of the berm is to be actively pursued through any necessary town permitting and/or board approval processes and then to be constructed. If the applicant abandons the construction of the berm or abandons the pursuit of the construction of the berm this board reserves the right to pull the permit. If the applicant violates any of these conditions the board reserves the right to pull the permit. As an additional condition, if at any time the applicant determines that the berm is not going to be done by December 15 the board requests that a letter be submitted to the board stating why and what the plan is for completion. A copy of said letter will be circulated to the abutters by Andrew Spath. Motion seconded by Ms. Harrison, all in favor, unanimous.

APPROVAL OF MINUTES:

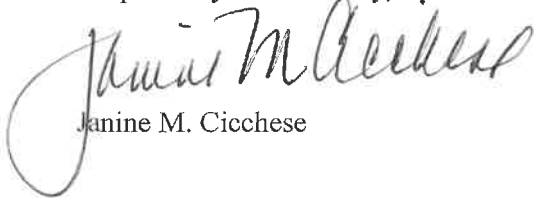
Mr. Bucchere – made a motion to approve the June 17, 2021, July 15, 2021 and August 19, 2021 minutes for the board as a group for the meetings that they were respectfully present. Motion seconded by Ms. Harrison, all in favor, unanimous.

ADJOURNMENT

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

Meeting adjourned at 9:27 pm.

Respectfully submitted by,



Janine M. Cicchese