

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

**March 17, 2022**

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**TOWN OF SCITUATE**  
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**Present: George Xixis, Acting Chair, Susan Harrison, Christopher Carchia, Justin Marks**  
**Also present: Robert Vogel, Scituate Building Commissioner**

**The Scituate Zoning Board of Appeals** held a public hearing in the Selectmen's Hearing Room in the Scituate Town Hall located at 600 Chief Justice Cushing Highway on **Thursday, March 17, 2022 at 7:00 P.M.** to consider the following requests:

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**First Application: Mary Ellen Holt, 38 Hatherly Road, Scituate, MA 02066** requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 810.2(A) of the Scituate Zoning Bylaw and/or any other relief that the Board of Appeals may grant, to allow an addition to a pre-existing, nonconforming single-family dwelling at **38 Hatherly Road, Scituate, MA 02066 (Assessor's Map 45, Block 10, Parcel 6)** and increasing the gross floor area by more than 20%. **Representing the applicant – Richard Servant of Stenbeck & Taylor, 844 Webster St # 3, Marshfield, MA 02050.**

**Richard Servant** – presented the application. This property is located at the corner of Hatherly Road and Stewart Place, was built in 1953 and is located within the R-3 zoning district. The home has a nonconforming front yard setback to Stewart Place of 13.9 feet. The proposed addition has been configured in a way so that it will not bring the structure into further noncompliance, will meet all the requirements and on the existing nonconforming side it will be approximately 8 inches further off the property line from where the house currently is now. The existing house and garage is 1505 square feet and the proposed new dwelling and garage will be 3289 square feet for a 1784 square foot increase. The existing garage behind the house will be connected with this addition and will eventually be converted to living space.

**Meeting was opened for public comment** – no public comments and/or questions from the board.

**Ms. Harrison** – made a motion to approve the request by Mary Ellen Holt, 38 Hatherly Road, Scituate requesting a Special Permit in accordance with M.G.L. Chapter 40A, Section 6 and Section 810.2(A) of the Scituate Zoning Bylaw as shown on the plan dated January 25, 2022 by Richard Servant of Stenbeck and Taylor and find that request does not create any new nonconformities and to the extent that there are new nonconformities it does not intensify any existing nonconformities and such intensification if it does exist will not be substantially detrimental to the neighborhood. Motion seconded by Mr. Carchia, all in favor, unanimous.

**Second Application: Josephine Hughes and Samantha Zelmanow, 41 Attawanhood Trail, Old Saybrook, CT 06475** request a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 810.2(A) of the Scituate Zoning Bylaw and/or any other relief that the Board of Appeals may grant, to allow the construction of an addition to the pre-existing, nonconforming single-family

dwelling at **27 Cliff Road South, Humarock, MA 02047 (Assessor's Map 68, Block 5, Parcel 5-0)** and increasing the gross floor area by more than 20%. **Representing the applicant – Philip Baker, Architect with Rockwood Design, 1020 Plain St #320, Marshfield, MA 02050.**

**Philip Baker** – presented this application to build a second story addition on a pre-existing, nonconforming dwelling. The dwelling is conforming on the rear and side setbacks and nonconforming on the front at 24 feet. The proposed square footage on the second floor would be 1248 with a walk-out half story deck. The footprint would not be changing.

**Mr. Xixis** – confirmed with Mr. Baker that the footprint would not be changing and that square footage would go from 1248 to just over 2000 square feet. Also, a deck is proposed to be added to the front of the house.

**Meeting was opened for public comment** – no public comments. Mr. Vogel commented that no new nonconformities would be created.

**Mr. Xixis** – made a motion on the request of Josephine Hughes and Samantha Zelmanow for the Special Permit in accordance with M.G.L. Chapter 40A, Section 6 and Section 810.2(A) of the Scituate Zoning Bylaw that the board find that the proposed addition to the pre-existing nonconforming single-family dwelling does not create any new nonconformities and to the extent it does it does not intensify any existing nonconformities and such intensification if it does exist will not be substantially detrimental to the neighborhood. Motion seconded by Mr. Carchia, all in favor, unanimous.

**Third Application: Mark Richardson, 109 Elm Street, Scituate, MA 02066** requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 610.2.B of the Scituate Zoning Bylaw and/or any other relief that the Board of Appeals may grant, to allow construction of a single-family dwelling on a lot with 2x the land area and 50 foot of frontage at **109 Elm Street, Scituate, MA 02066 (Assessor's Map 44, Block 2, Parcel 18).** **Representing the Applicant - Gregory J. Morse (Registered Professional Engineer, Morse Engineering).**

**Mr. Morse** -presented this application for allowance of a 50-foot frontage lot. This property is located in the R2 zoning district which typically requires 100 feet of frontage and 20,000 square feet of land area. The subdivision of Mr. Richardson's property is depicted on the plan submitted by Morse Engineering. Lot 2 is the subject of this hearing, which has the requirements to meet 610.2B of the Bylaw and 51 feet of frontage on an approved road, it has 40,221 square feet of upland and 44,751 square feet of total land area. According to the plan submitted, Lot 2 is not be further subdivided and it meets all the requirements of the Bylaw. This request was ordered to allow the construction of a single-family dwelling on the lot or more properly characterized as a request for approving the common driveway issue. The exact location of the single-family dwelling can not yet be determined. Typically, this type of issue would first go before the Planning Board; however, the Planning Board will not sign an A&R until a Special Permit is issued and the lot can be approved. Mr. Morse states that on the submitted plan, Lot 1 is the lot that is required to be serviced by a common driveway due to lot width. The intent would be to do a common driveway and if approved on Lot 2, the yet to be approved common driveway would serve both lots 1 & 2 so that lot width could be measured parallel to the common driveway. Note #12 on the plans submitted notes that approval of a buildable lot is required from the Planning Board.

**Mr. Xixis** – stated that if this application is approved, it will be subject to conditions such as an A&R, common driveway approvals, restrictions on the Registry of Deeds etc. Mr. Xixis confirmed with Mr. Morse that Lot 1 would have 107 feet of frontage and Lot 2 would have the 50 feet of frontage. Lot 1 would require the common driveway. In discussion with the board, Mr. Xixis further explains that if

approved the lot would be approved so that construction could occur assuming that construction of a single-family dwelling meets all the other requirements.

**Meeting was opened for public comment –**

**Patricia Anderson (abutter @ 238 Country Way, Scituate, MA 02066)** – questioned the “rattail” piece of land on the plan and what it would be used for. Mr. Morse explained that it is part of Lot 2 required to make up the lot. The septic system would possibly be put in this area to keep it away from the house – at its minimum point it reaches 20 feet.

**Anthony Gentile (abutter @ 127 Elm Street, Scituate, MA 02066)** – questioned if the property would be subdivided into three separate lots as noted as Lot 1, Lot 2 and Lot 3 as shown on plan. Mr. Morse explained that the intent is to divide the property shown on the plan into 3 lots. Lots 1 & 2 would be for new homes and Lot 3 is the existing home.

**Mr. Vogel** – questioned Mr. Morse as to the process of Lot 1 becoming a legally buildable lot, further submissions etc. Mr. Morse explained that for Lot 1 to be a buildable lot it would have to be serviced by a common driveway which would have to go before the Planning Board and possibly a Stormwater Permit on Lot 1 and possibly Lot 2. As of this time, Lot 1 is not a buildable lot.

**Bruce Arbones (abutter @ 23 Gannett Pasture Lane, Scituate, MA 02066)** – also a member of the Water Resource Committee – questioned the tributary which runs up Elm Street across from Beach Plum Lane. Mr. Morse confirmed that there is a tributary at this site and the wetlands at this property have been verified and certified by the Scituate Conservation Commission. The tributary is not mapped on the Town of Scituate’s maps but it has been identified and all applicable setbacks have been met.

**Ann Burbine (abutter @ 10 Pennycress Road, Scituate, MA 02066)** – questioned if the “rattail” was considered part of upland which was confirmed. Ms. Burbine stated she felt it disingenuous that the Planning Board had come up with 30 foot in diameter width to get rid of “rattails” and this is a rattail and this plan was filed on the day after the public hearing regarding this matter. Mr. Xixis stated that as of this hearing the bylaws will be interpreted as they currently exist.

**Mr. Xixis** – made a motion that the application of Mark Richardson, 109 Elm Street, Scituate, MA requesting a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 610.2B of the Scituate Zoning Bylaw to allow the construction of a single-family dwelling on a lot with 2x the land area and 50 foot of frontage at 109 Elm Street, Scituate, MA is approved contingent that the conditions that affected lot receives all necessary approval, including A&R and common driveway approvals and that these are filed with the Registry of Deeds as well as meeting all applicable provisions of the Scituate Zoning Bylaw, wetland bylaws and Board of Health regulations. Motion seconded by Ms. Harrison, all in favor, unanimous.

**Fourth Application: Robert and Cristina Counihan, 55 Common Street, Scituate, MA 02066** request a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 610.2.B of the Scituate Zoning Bylaw and/or any other relief that the Board of Appeals may grant, to allow construction of a single-family dwelling on a lot with 2x the land area and 50 foot of frontage at **93 Elm Street, Scituate, MA 02066 (Assessor’s Map 44, Block 2, Parcel 17 & 18). Representing the Applicant - Gregory J. Morse (Registered Professional Engineer, Morse Engineering).**

**Mr. Morse** – presented this application which is a proposal to divide the remainder of the Elm Street land, specifically creating lot 6 and is proposed as a 50-foot frontage lot. It meets all requirements of the bylaw. Mr. Morse noted that the dwelling on lot 5 is to be razed once approvals are in place. Lot 5 will

be a vacant lot when the structure comes down and will be noted as an unbuildable lot until such a time that the planning board issues the necessary approvals. Mr. Morse also noted that there is a drain pipe on lot 3 and a tributary. Lot 4 is a completely buildable.

**Mr. Xixis** – asked if there were any common driveway requirements on this lot. Mr. Morse stated that lot 5 would be serviced by a common driveway.

**Meeting was opened for public comment –**

**Ellen Bernier (abutter @ 91 Elm Street, Scituate, MA 02066)** – confirmed with the board the proposals for the discussed proposed lots on Elm Street and the location of the proposed common driveway.

**Mr. Xixis** – on the application of Robert and Cristina Counihan, 55 Common Street, Scituate, MA 02066 requesting a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 610.2.B of the Scituate Zoning Bylaw and/or any other relief that the Board of Appeals may grant, to allow construction of a single-family dwelling on a lot with 2x the land area and 50 foot of frontage at 93 Elm Street, Scituate, MA 02066 the board finds that be approved pursuant to the plan dated February 7, 2022 prepared by Morse Engineering with the conditions on that plan as well as any necessary approvals including A&R common driveway approvals and filing with the Registry of Deeds as well as all applicable provisions of the Scituate Zoning Bylaw and Board of Health regulations with the additional condition that the dwelling on lot 5 of the plan be razed and that that lot go through any other necessary approvals to become a buildable lot. Motion seconded by Ms. Harrison, all in favor, unanimous.

**Fifth Application: Kenton L. Bongarzone, 17 Gates Circle, Scituate, MA 02066** requests a Variance in accordance with 950.2C of the Town of Scituate Zoning Bylaws. Specifically, the applicant seeks a variance from the requirements of Section 520.4A, which mandates a 150' Non-Disturbance Buffer Zone to tributaries in the Water Resource Protection District, for the construction of a single-family dwelling at **5 Williamsburg Lane, Scituate, MA 02066 (Assessor's Map 37, Block 2, Parcel 4A). Representing the Applicant - John Danehey, Esq. of Danehey & Osterberg, P.C., 5 Old Country Way, Scituate, MA 02066.**

**Mr. Xixis** – the board has received a request for continuance in this matter. The request will be granted and will be heard at the April 21, 2022 meeting. Motion seconded by Mr. Carchia, all in favor, unanimous.

**Sixth Application: (*continued from February 17, 2022*) Sentil Kumar, as Trustee of the 322 CJC Realty Trust u/s/t 3-28-18, 155 Main Dunstable Road, Suite 160, Nashua, NH** requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and/or any other relief that the Board of Appeals may grant, to allow the applicant to have 2 lots and driveway with preexisting, non-conforming structures at **322 Chief Justice Cushing Highway, Scituate, MA 02066 (Assessor's Map 48, Block 3, Parcel 2B). Representing the Applicant – Paul J. Mirabito, PLS, Ross Engineering Company, Inc., 683 Main Street, Norwell, MA 02061 and Walter B. Sullivan, Esq., 80 Washington Street, Building B, Suite 7, Norwell, MA 02061 (counsel for Mr. Kumar).**

**Atty. Sullivan** – presented the application and/or amendments to application. Attorney Sullivan explained that previously he was seeking approval for the subdivision of the existing structures on this lot and to put them all on their own lot. The observation of this board at that time was unfavorable to that type of finding and the request for a continuance was granted. Attorney Sullivan explained that what they are now seeking is to put the existing house on lot 2 and then, on lot 1 is a 50-foot lot under 610 of the Scituate Zoning Bylaw and to minimize the two remaining existing residential structures. The footprint

would not be changed to any of the existing structures and would be seeking a building permit to renovate the inside. The request was previously for 3 lots but the current request would be for 2 lots, one being the 50 foot under the bylaw. The plan has been discussed with the building commissioner and the deputy fire chief and the neighbors to clear any confusion.

**Mr. Xixis** – asked if the proposal would be to use the existing driveway and that was confirmed. Attorney Sullivan also stated this would not be considered a common driveway as it would be 2 lots not 3 and he would be filing with the Planning Department to get the division approved. Attorney Sullivan confirmed with the board that his request was for approval of the 50-foot lot, which Ms. Xixis and Attorney Sullivan agreed was lot 2 on the submitted plan dated February 3, 2022. Mr. Xixis did confirm with Attorney Sullivan that no new and/or updated application was filed and that the relief being sought would be covered under the “and/or any other relief that the Board of Appeals may grant” language”. Mr. Carchia questioned that the current intent is to keep the three (four including garage) existing buildings on that one lot, which was confirmed.

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

**Brett Woodis (abutter @ 19 Satuit Trail, Scituate, MA 02066)** – stated that he had met with Attorney Sullivan and Mr. Mirabito and several other neighbors to discuss questions. Following that meeting he and other neighbors have additional questions/concerns. The main issue concerned the impact of water flow and the water table to the Satuit Trail neighborhood. Mr. Woodis also had concerns regarding the plan and what would actually be done on the property. One particular question was could a garage be built on the lot with the larger dwelling without going through the special permit process. Also, Mr. Woodis stated the current plan didn’t seem to make much sense to renovate the larger dwelling and have the existing smaller “cottages” on the remaining lot. Mr. Xixis stated that there seemed to be a disconnect in the logic and that Mr. Woodis seemed to be focusing on what the next step would be and not on what was currently before the board. Mr. Xixis and Mr. Vogel also stated that there are restrictions in place regarding the water issues and regarding future plans for this site, approval from other boards would need approval to move forward. Mr. Xixis and Mr. Carchia reiterated to Mr. Woodis that approval would be required by other boards who would provide additional restrictions and/or built in protection.

**Bruce Arbonies (abutter @ 23 Gannett Pasture Lane, Scituate, MA 02066)** – stated that the property is located in a Flood Protection District the impervious limitation would be 15% of the land area subject to the ZBA accommodating any special requests.

**Mr. Xixis** – made a motion that with respect to this application by Sentil Kumar, as Trustee of the 322 CJC Realty Trust u/s/t 3-28-18, 155 Main Dunstable Road, Suite 160, Nashua, NH for a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6, and specially 610.2 of the Scituate Zoning Bylaw as shown on the plans dated February 3, 2022 to allow the applicant to have two lots and a driveway with nonconforming structures at 322 Chief Justice Cushing Highway as shown on the plan dated February 3, 2022 prepared by Ross engineering Co., Inc. and that should be granted subject to any other necessary approvals including A&R common driveway approvals, if necessary, and that these be filed with the Registry of Deeds and the applicable provisions of the Scituate Zoning Bylaw to the extent that new dwellings and anything else that could be changing, any wetlands, Scituate Zoning Bylaw and Board of Health regulations etc. we find that this application should be allowed. Motion seconded by Ms. Harrison, all in favor, unanimous.

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

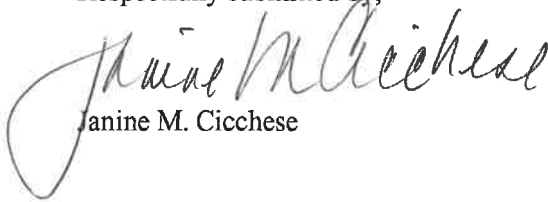
**Mr. Xixis** – made a motion to approve the February 17, 2022 minutes. Motion seconded by Mr. Carchia, all in favor, unanimous.

**ADJOURNMENT**

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

Meeting adjourned at 8:09 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