

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

April 21, 2022

Present: Anthony Bucchere, Chairman, George Xixis, Christopher Carchia
Also present: Robert Vogel, Scituate Building Commissioner

The Scituate Zoning Board of Appeals held a hybrid public hearing in the Selectmen's Hearing Room in the Scituate Town Hall located at 600 Chief Justice Cushing Highway and was also accessible via zoom on **Thursday, April 21, 2022 at 7:00 P.M.** to consider the following requests:

First Application: (*continued from February 17, 2022*) Scott and Tara McGavin, 39 Arrowwood Drive, Scituate, MA 02066 request a Variance in accordance with M.G.L. Chapter 40A, Section 10 and Section 520.5(F) of the Scituate Zoning Bylaw and/or any other relief that the Board of Appeals may grant, to allow for the construction of an in-ground pool and retaining wall at **39 Arrowwood Drive, Scituate, MA 02066 (Assessor's Map 16, Block 01, Parcel 25)**. The single-family dwelling is located on a conforming lot and meets all property line setbacks.

Mr. Bucchere – the board has received a request for a continuance of this application to the June 16, 2022 hearing. Mr. Bucchere made a motion that the board grant the request for continuance to the June 16, 2022 hearing. Motion seconded by Mr. Xixis, all in favor, unanimous.

Second Application: Edward Johnson of K & E Construction for Byron and Constance Leach, 50 Hazel Avenue, Scituate, MA 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 razing and reconstruction of a pre-existing, nonconforming single-family dwelling at **50 Hazel Avenue, Scituate, MA 02066 (Assessor's Map 50, Block 1, Parcel 19)**.
Representing the Applicant - Gregory J. Morse (Registered Professional Engineer, Morse Engineering).

Mr. Morse – presented this application which is a raze and reconstruct project for a single-family dwelling. The property is 10,921 square feet in size, all upland and located in the R3 district. There is an existing home on the site built in approximately 1895 with 1716 square feet of floor area. The lot itself is nonconforming with respect to frontage. The dwelling would be nonconforming with respect to lot width, nowhere on the lot is the required width. The proposal is to take down the existing home and to put a new one in its place. It would comply with the front setback to Hazel Ave, side and rear yard setback but the location, as with the existing house, does not comply with the front yard setback to Harbor Heights Road. It is an intensification as proposed with an 8.6-foot setback, which is a typical side yard setback at that location. The square footage of the proposed new home is 2,933 square feet which represents a 70.9% increase in size.

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Mr. Bucchere – confirmed that along Harbor Heights Road it is nonconforming and the proposal would be to become more nonconforming; however, Harbor Heights Road is more of a “paper street”. Mr. Morse stated that he had previous discussions with the Building Commissioner regarding treating that as a side yard setback and proceeded with that information. The opinion was revised that it should be considered a front yard setback and apply for the relief under the special permit. There are wetlands that would prohibit development of Harbor Heights Road at this location. The access to Hazel from Harbor Heights Road is currently blocked off and is blocked by boulders.

Meeting was opened for public comment –

Marie and Neil Sorensen (abutter @ 56 Hazel Avenue, Scituate, MA 02066) – questioned where the driveway would be. Mr. Morse stated that a new driveway is proposed which access is off of the frontage. Currently there is no driveway at the site, the new driveway is proposed to be where the current garage is located off of Hazel Avenue. Mr. Sorensen asked about difference in the proposed setbacks. Mr. Sorensen also asked who placed the boulders at Harbor Heights Road – if it was the town. Mr. Bucchere stated he did not know the answer to that question.

Mr. Vogel – noted in the book of Scituate streets and ways, Harbor Heights area is indicated as a paper street and there is precedent for allowing that line to be thought of as a sideline. Mr. Bucchere and Mr. Morse discussed that although Harbor Heights may be considered a paper street, it is open and passable by vehicle at present. Mr. Morse stated that there are boulders across the street so that you can’t connect through to the constructed portion at this time; but it is passable to a point past this property. Mr. Bucchere points out that Harbor Heights Road is not taxed per the Assessor’s maps. Mr. Morse states he is unable to confirm this. Harbor Heights Road is shown on the Assessor’s map as if it was public which makes the paper street issue debatable. Mr. Bucchere stated he is not comfortable approving the setbacks in this matter for new construction.

Mr. Bucchere – questioned whether the applicant might think about going deeper into the lot rather than quite this wide. Mr. Morse stated that at this point he would like to request a continuance to the next available meeting to give him additional time to investigate average front yards along Harbor Heights Road and to discuss the possibility of going deeper into the lot with his client. Mr. Bucchere made a motion to grant the request for a continuance to May 19, 2022 hearing. Motion seconded by Mr. Carchia, all in favor, unanimous.

Third Application: Stephen and Lesley Faber, 11 Cherry Lane, Scituate, MA 02066 and Richard and Karen Ross, 9 Cherry Lane, Scituate, MA 02066 c/o Jeffrey T. Angley, Esq., Phillips & Angley, One Washington Mall, Boston, MA 02108 request an Appeal pursuant to M.G.L. c. 40A, Section 8 and Section 15 of the building permit (R-22-0144) issued to Carol Howland on February 14, 2022, concerning the property known as and located at **30 Ocean Avenue, Scituate, MA 02066 (Assessor’s Map 8, Block 6, Parcel 13)**. The permit authorizes work on the rear dwelling at 30 Ocean Avenue, known as 30A Ocean Avenue. **Representing Carol, Robert Howland and Robert Howland, III “Bobby”– Matthew Mitchell, Esq. and Jeffrey De Lisi, Esq. of Ohrenberger, De Lisi & Harris, LLP, 28 New Driftway, Scituate, MA 02066 and representing the applicants - Nicholas Shapiro, Esq. and Alexandria Castaldo, Esq., Phillips & Angley, 1 Washington Street, Suite 7A, Boston, MA 02108.**

Attorney Mitchell – corrected for the record that the property noticed as 30A Ocean Avenue is actually 30R Ocean Avenue.

Attorney Shapiro – stated that at issue is the administrative appeal of the post hoc issuance of the building permit issued to Carol Howland at 30A Ocean Avenue. Attorney Shapiro noted that his client’s properties are located in the Minot section of Scituate and directly abut the Howland’s property along the

shared backyard boundary line. The Howland's property consists of two single-family dwellings: 30 and 30A Ocean Avenue. 30A is situated in the rear close to the party's rear boundary line. In April of 2021, this board granted the Howland's relief for an addition to 30A Ocean Avenue and specifically to provide greater space and amenities for the Howland's adult developmentally disabled adult son Bobby and his health aid. Attorney Shapiro's client's appealed that decision to Land Court and that litigation remains pending. Earlier this year, the Howland's sought to conduct some of the work at issue in the prior proceedings in the Land Court litigation that would be confined to the existing building envelope of 30A Ocean Avenue. Attorney Shapiro's clients received no notice of this work and no building permit was pulled for this work before it commenced. When it came to the building departments attention the Howland's were required to obtain a post hoc building permit. The appeal was brought because this recent work and the issuance of the post hoc building permit implicate legal claims and factual issues relevant to the disposition of the Land Court litigation, in particular the Howland's property is not the location of a pre-existing nonconforming structure, but also a nonconforming use, a second single-family dwelling on a single lot. Specifically, 430.1 of the bylaw prohibits two single family dwellings on a single lot. In order for a building permit to issue to anyone for any development the use reflected by the building permit must be authorized by local zoning. Here there are two principle problems with the use: first, the Howland's have failed to prove that 30A Ocean Avenue is a pre-existing nonconforming single-family dwelling. It is the Howland's burden to prove their pre-existing, nonconforming status. In the Land Court litigation, the Howland's have claimed that 30A is a lawful pre-existing nonconforming "carriage house". However, 30A Ocean Avenue is not presently a carriage house. Attorney Shapiro goes on to explain the description of a carriage house.

Mr. Bucchere – stated that Attorney Shapiro was making more than one point and that for clarification for attendees of the meeting it would be best to handle each point individually and suggested starting with the issue of proving whether this second single-family dwelling is in fact pre-existing nonconforming.

Attorney Shapiro – stated that litigation has been on-going for a year, discovery has been done. Mr. Bucchere stated at this point that he was familiar with the litigation in connection with the earlier Special Permit granting but would like to keep that issue aside. Mr. Bucchere reiterated that Attorney Shapiro's first point was that the building permit issued for work within the existing four corners of a building on a property was work that was in furtherance or in order to accomplish the building out of a dwelling and that it was his contention that the property owner needed to prove otherwise and that maybe this wasn't a dwelling prior to the imposition of Scituate's bylaw. Attorney Shapiro corrects and stated that he and his client's do not believe that evidence has been induced that 30A Ocean Avenue as a single-family dwelling is a second single family dwelling at locus and that there have not been facts presented for evidence of the carriage house according to Assessor's records. As far as can determined, the second property was developed as part of the main house in 1910 and is unsure of the origin of the carriage house claim from the Howland's, but if it was a carriage house at some point it became a single-family dwelling and no facts have been presented as to when that happened. More specifically, that it happened before Scituate adopted this typical zoning provision that prohibits two principle dwellings on a single lot. Attorney Shapiro stated that the Howland's should have proved this prior to obtaining any building permits to do any work.

Mr. Bucchere – stated he was not in agreement with Attorney Shapiro's statements that in order to get a building permit for interior work on an existing building that a property owner needed to provide proof to the abutters that they qualify for a building permit. More importantly, Mr. Bucchere stated that there were some facts that contradict some of Attorney Shapiro's issues. Mr. Bucchere asked Attorney Shapiro if in fact his office pulled the building office file during research for this matter and was familiar with a building permit pulled in 1966 for work on the rear building. Attorney Shapiro stated that he did not and that production in connection with the litigation from the town was due tomorrow. Mr. Bucchere confirmed with Attorney Shapiro that he was referring to document production in connection with

litigation. Mr. Bucchere again stated that despite any ongoing litigation, the building jacket was available to anyone for review whether or not they are a party to litigation. Mr. Bucchere stated that he was familiar with a building permit in the jacket from 1966 relating to work on the rear building and that building permit refers to “refurbishing the existing rooms in chauffeur’s quarters”. Mr. Bucchere stated that “quarters” was close enough to dwelling and demonstrated that the building on 30R Ocean Avenue was living quarters, at least prior to 1966. Mr. Vogel confirmed that the accessory dwelling bylaw came into effect in 1987. Mr. Bucchere further stated that even if it was not pre-existing nonconforming, we have ten years without a building permit and six years with a building permit and a building permit exists and it has been more than six years. Mr. Bucchere continued with - how would we object to within code improvement of what was a dwelling more than six years ago and exists with a valid building permit.

Attorney Shapiro – stated that it sounds that this 1966 building permit was for refurbishment to a carriage house, which according to his description is a detached garage with living quarters for a chauffeur, which would be a different use than a single-family dwelling. Mr. Bucchere stated he could not disagree more. The fact is that someone was living there and the job description of the occupant is irrelevant and that he was confident he would not find any case law that showed a precedent for a change of use due to occupation of the person who was sleeping in the bed. The argument for change of use in Mr. Bucchere’s opinion was “a bit of a stretch” – if someone was sleeping there in the 1960’s it was a dwelling in the 1960’s and it is a dwelling now.

Mr. Xixis – stated there was a second building permit dated 1988 which also applies to this building and that building permit states “to remodel the kitchen and the bath on the first floor, install a new bath on the second floor”. Mr. Bucchere asked for confirmation as to whether that permit applied to 30R Ocean Avenue. The board confirmed that it in fact did and relied on drawings from 1988 that referred to the rear building. Mr. Bucchere continued that further building out took place in 1988, more than six years ago. Mr. Xixis pointed out that due to this description, this building was not a garage. Mr. Bucchere agreed and even if it was a carriage house for a chauffeur, the person that sleeps there today does not need to drive a carriage. Mr. Bucchere stated that in his opinion, we have decent proof that this is a pre-existing nonconforming dwelling and even if we did not, he thinks the Howland’s have Massachusetts law on their side that it is allowed to be a dwelling now under the statute of limitations for permit enforcement.

Attorney Shapiro – disagreed with the notion that a carriage house is the same as a single-family dwelling and refers to different types of residential uses, including ADU’s (accessory dwelling unit) and that zoning frequently treats different types of residential uses differently. Attorney Shapiro stated that without the benefit of the building jacket, and if that demonstrates that it is no longer a garage and was a dwelling unit, then that does call into question when the amendment took place to forbid multiple family dwellings on a single lot. If that amendment happened after 1988, then Attorney Shapiro’s office would concede that it is pre-existing nonconforming as to the second single-family dwelling on a unitary lot. Mr. Bucchere confirmed with Mr. Vogel that the accessory dwelling portion of our bylaw was 1987, this was a dwelling in 1966. Attorney Shapiro disagreed with that statement – that he did not agree that a carriage house was a single-family dwelling. Mr. Bucchere continued that it was not a single-family dwelling, it is not currently a single-family dwelling. The applicants are not seeking relief and we are not seeking the building permit to make it a single-family dwelling, it is a pre-existing nonconforming accessory dwelling. Mr. Bucchere went on further to state that he was not sure it is a nonconforming accessory dwelling, it is nonconforming as to its setback – it is a preexisting nonconforming structure as to setback and one that exists with building permits for more than six years and having existed for more than ten years but it is a dwelling occupied by members of the family. Mr. Bucchere and Mr. Vogel discuss that if the Howland’s wanted to rent 30R Ocean Avenue, even prior to the issuance of the most recent building permit, would they have been allowed to in the opinion of the building department. Mr. Vogel stated that he wished to clarify that the building permit that was issued was for changing an existing half bath into a full bath and installing an unstructural partition to divide a large room into two

smaller rooms. Mr. Bucchere confirms with Mr. Vogel that the change was to make a large bedroom into two smaller bedrooms. Mr. Vogel stated that is what was applied for and the Scituate Fire Department approved and stamped the plans for smoke/CO detectors.

Mr. Bucchere – stated that he felt he understood the reasoning behind Attorney Shapiro’s client’s objection to our previously issued Special Permit. Mr. Bucchere stated he recalled that being a complex decision, a ruling was made and he understood the objection of Mr. Faber at that time. However, Mr. Bucchere stated he did not understand Attorney Shapiro’s client’s objection to this building permit as this permit was not changing anything that would be noticeable to his client’s or have any effect on the enjoyment or use of their property. Conceivably, where the large bedroom was made into two smaller bedrooms, there could be an additional person habituating in that structure. Mr. Bucchere stated that he attempted to put himself in the shoes of his client and said “everybody wins” – change is being done without changing the footprint. Mr. Bucchere questioned what exactly was Attorney Shapiro’s client’s the objection to this building permit. Attorney Shapiro stated that litigation is ongoing and that doing work only within the envelope presents a harder argument under powers for the powers prawns to be implicated by only internal work – and this refers to the Land Court on-going issue. Attorney Shapiro stated that his client’s issues with what happened previously was that there was a pre-existing nonconforming structure that was being changed but from his client’s perspective there also is an expansion of a pre-existing nonconforming use. The reason for this appeal is for Attorney Shapiro’s client’s to preserve their rights in the pending litigation as from their perspective this is all pre-existing nonconforming use and any kind of work to expand that raises the specter of powers and whether it’s a lawful extension or not and up to this point he and his client’s have not felt they have had an opportunity to have a conversation with any town officials about what is going on next door. Mr. Bucchere answered that technically he was discussing a matter on which he was being sued on with the Plaintiff’s counsel without the benefit of his counsel, which makes this complicated. Attorney Shapiro stated his second issue was that whenever you are doing work to a what is believed to be a pre-existing nonconforming use some kind of calculus/inquiry/analysis needed to happen at the town level before this post hoc building permit issued. Attorney Shapiro’s understanding was that double duty was being fulfilled in that a building code certification and also that the use that is going on in a structure is legal. This appeal was brought because in Attorney Shapiro’s belief, the building department has not considered whether what has been proposed or has been done implicates an unlawful expansion of a pre-existing nonconforming use.

Mr. Vogel – stated that the original plans that were submitted consisted of a bedroom and a half bathroom it did not appear to make a change to two smaller bedrooms and a full bathroom was that much of a change. There was no reason to think the building itself needed to be legalized before making revisions. Mr. Bucchere asked Mr. Vogel what the difference would be between adding a bathroom and office above a garage and making a garage an accessory dwelling. Mr. Vogel further explained that a legal accessory dwelling would have to meet setbacks or be pre-existing nonconforming and specifically in the interior, in Scituate you could go all the way towards a self-contained dwelling unit if you stop prior to installing a range (a stovetop with an oven). If you do not have one of those, you do not have an accessory dwelling. Mr. Bucchere noted that we are aware a kitchen has been in 30R Ocean Avenue since at least 1988 and a bath on the first floor. Mr. Bucchere also noted that there was most likely some kind of cooking implemented in 1966 as it was referred to as quarters. Mr. Vogel also added that floor plans dated 1987 are available from that permit (1988) which show an accessory dwelling layout, which shows full kitchen, two bedrooms. The new plan would revert to the two bedrooms as on the previous plan that were there in 1987.

Attorney Mitchell – noted that referenced building permit is actually a permit for a foundation so it pre-existed 1988.

Attorney De Lisi – In 1988 an occupancy permit would have been issued. Under the occupancy permit section of the bylaw it indicates that the issuance of an occupancy permit is an affirmation that all of the uses of the subject property comply with zoning. In a sense we already have a determination on the issue of use and there is a six-year statute of limitations with respect to that. Also, the floor plan from the 1988 permit indicates that there was a kitchen, a bathroom, a living room on the first floor and on the second floor was a master bathroom and two bedrooms which existed prior to 1988 permit and what was proposed and what it ended up being and is today. Mr. Bucchere clarified that one of the bedrooms becomes a large bathroom and the other is split into two smaller bedrooms. The square footage was not being changed.

Mr. Bucchere – stated in his opinion there is an “overflowing cornucopia of evidence” to suggest that this is a pre-existing nonconforming dwelling and are making no substantial change to it with this current building permit. Mr. Bucchere addressed Attorney Shapiro and stated that he felt he had sufficient information and that further points previously made by Attorney Shapiro should be addressed by the Land Court litigation. Mr. Bucchere again states that the board has an abundance of evidence that we have a pre-existing nonconforming dwelling and that the most recent changes could not possibly be considered more substantially detrimental to the surrounding neighborhood. Mr. Xixis conferred that the net result was the conversion of a half bath to a full bath.

Attorney De Lisi – stated that in his opinion this appeal was nothing more than an attempt to bootstrap the use question on top of the prior approved permit for an extension of a pre-existing nonconforming building that did not deal with use. Mr. Bucchere stopped Attorney De Lisi in his argument as further issues related to the pending Land Court litigation. Mr. Bucchere stated that the purpose of this meeting was an appeal of the building permit for the changes we discussed within the four corners of an existing structure and further issues should be presided over by “someone far more qualified”. Mr. Bucchere asked Attorney Shapiro if he had anything further he would like to add regarding this building permit issue. Attorney Shapiro stated that if in fact this was a pre-existing nonconforming use then this appeal was something that needed to be brought in order to avoid any preclusive stuff if the appeal had not been brought. Attorney De Lisi did suggest that the board should consider the threshold issue of the six-year statute of limitations, which actually is a jurisdictional issue and this was seconded by Attorney Mitchell.

Mr. Bucchere – stated that the issue before the board was whether the building department properly or improperly issued the permit. Any additional issues should be addressed by the Land Court. Mr. Xixis stated that the facts are the facts. Mr. Carchia also agreed in his opinion the building permit was properly issued.

Meeting was opened for public comment –

Patricia Lambert - Alexander Place, Unit 36, Scituate, MA) – on behalf of the Planning Board, Ms. Lambert wanted to point out that 30R Ocean Avenue was not an approved accessory dwelling but was a separate house.

Robert Howland (homeowner @ 30/30R Ocean Avenue, Scituate, MA 02066) – wanted to point out that the reason for the renovations to 30R Ocean Avenue are for his son, Bobby, who has Down’s syndrome and special needs with medical complications. Mr. Howland wanted to note to the board that he is attempting to keep Bobby within the community, his neighborhood and his town. Mr. Howland asked to have it noted for the record that his family would like Bobby to remain in his community and be a part of it. In Mr. Howland’s opinion he felt this renovation has had no detrimental effect on the applicant’s or other neighbors and he is sad that such an action was brought.

Carol (Carrie) Howland and Robert Howland, III “Bobby” - (homeowner @ 30/30R Ocean Avenue, Scituate, MA 02066) – explained that Bobby wanted to say something by way of his assisted technology. Bobby stated his name, his age and his town. He also stated that he required help for his medical needs at home and overnight.

Attorney Shapiro – wanted to comment on the issue of statute of limitations; however, the board did not feel that was an issue.

Mr. Bucchere – made a motion that the building permit issued for the interior amendment and renovation to the property at 30R, which was noted as 30A in the hearing notice, to deny the appeal of that building permit and for the board to find that the building permit was properly granted with respect to use and the bylaw otherwise. Motion seconded by Mr. Xixis, all in favor, unanimous.

Fourth Application: (*continued from March 17, 2022*) 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).**

Mr. Bucchere – the applicant requested a continuance to the May 19, 2022 hearing. Mr. Bucchere made a motion that the request be allowed and continued to May 19, 2022. Motion seconded by Mr. Carchia, all in favor, unanimous.

Fifth Application: Kelli Ann Wilson, Trustee of the Kelli Ann Wilson Trust 2004 c/o Jeffrey A. DeLisi, Esq., Ohrenberger, DeLisi & Harris, LLP, 28 New Driftway, Scituate, MA 02066 requests a Special Permit/Finding in accordance with M.G.L. Ch. 40A, Section 6 and Sections 950.2D and 810.2 of the Scituate Zoning Bylaw and/or any other relief that the Board of Appeals may grant, to raze a pre-existing nonconforming single-family residential dwelling on a pre-existing nonconforming lot in the Residence R-3 Zoning District at **113 River Street, Scituate, MA 02066 (Assessor’s Map 73, Block 4, Parcel 26-0)** and to reconstruct a single-family dwelling thereon which will not create new nonconformities and will not be substantially more detrimental or injurious to the neighborhood than the existing nonconforming structure or use. **Representing the applicant - Jeffrey De Lisi, Esq. of Ohrenberger, De Lisi & Harris, LLP, 28 New Driftway, Scituate, MA 02066 and Paul J. Mirabito, PLS, Ross Engineering Company, Inc., 683 Main Street, Norwell, MA 02061.**

Attorney De Lisi – presented the application. The property was partially located in a FEMA velocity zone and was entirely located in a special flood hazard zone and at an elevation of 14 (14 feet above sea level), FEMA considers the property subject to flooding. The town has an overlay zoning district, flood plain and watershed protection overlay district, and the property is actually not in that zoning district. A Special Permit is not required even though this property meets that threshold. The house is actually existing at 11.9feet above sea level. The proposal is to elevate the house onto pilings so the house would not be subject to flooding. The lot is pre-existing nonconforming at the area, lot width and frontage. The house, according to assessor’s records, was built in 1950 consisting of 576 square feet and is a single-story cottage. The house is conforming in all respects except that it is pre-existing nonconforming in the front yard setback. The proposal would make the front setback slightly better and slightly further from River Street. The proposal would make this dwelling two and a half stories and would not be detrimental to the surrounding neighborhood.

Mr. Vogel – with discussion with the board agreed that this is an ideal project. Mr. Vogel noted this would require approval from the conservation commission.

Meeting was opened for public comment –

Scott Simmons (abutter @ 47 Ocean Drive, Scituate, MA 02066) – asked about the septic design and the roof structure of the rear outbuilding. Additionally, asked about the staking/re-staking of his property that appeared to have been disturbed.

Mr. Bucchere – stated that the rear outbuilding was not proposed to be removed and/or applicant was not seeking to amend that building. Mr. Xixis added that the septic appeared to be proposed to be below ground and in compliance with town/state regulations, the building in the rear is nonconforming but is pre-existing so it is grandfathered and regarding the property stakes no information was available. Attorney De Lisi stated that this land is registered land so there is no ability to have adverse possession.

Mr. Bucchere – made a motion that the board find that the proposed raze and reconstruct shown on a plan drawn by Ross Engineering dated March 15, 2022 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.

Sixth Application: Thomas P. McCarthy, 49 Aberdeen Drive, 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 razing and reconstruction of a pre-existing, nonconforming single-family dwelling at **121 Jericho Road, Scituate, MA 02066 (Assessor's Map 46, Block 12, Parcel 1)** and increasing the gross floor area by more than 20%.

Mr. McCarthy – presented his application and stated the proposal would be to raze the existing dwelling, which is now very close to Jericho Road (south on the lot away from Foam Road) and does not meet setbacks, and construct a new single-family, four-bedroom dwelling. The first-floor elevation would be at 16.5.

Mr. Bucchere – the dwelling is in a R3 zone and is nonconforming with regard to lot area. Mr. Vogel added that both front corners of the property are in the layout of the road. Rear yard setback and front yard setbacks of the existing home are currently noncompliant, side yard setback is compliant. The proposed home would still be nonconforming. Mr. Bucchere stated that due to the fact that the setbacks are not clearly marked on the plan and the plan does not include a chart, he would suggest resubmitting a full-size plan which would include a chart. Mr. Vogel also suggested taking into consideration the average setbacks of the homes along Jericho Road.

Meeting was opened for public comment –

Lynne Holder (abutter @ 16 Foam Road, Scituate, MA 02066) – stated she has concerns for the neighborhood including views, views of the water, sunlight views. Mr. Bucchere explained these are not things that are protected by the bylaw. Ms. Holder asked if the neighborhood had a voice about how the lot would be used. Mr. Bucchere also stated that there is a height bylaw in Scituate so the new dwelling would have to abide by that. Ms. Holder also asked if the neighborhood could be part of what was going to be built there. Mr. Bucchere stated that they would not be a part of what would be built there but it is their property. Ms. Holder expressed concern over keeping the uniqueness and for the family community of Scituate and she would like to attempt to keep that charm.

Mr. McCarthy – stated that he grew up in Scituate and lived there most of his life, has been a builder in Scituate for over 40 years and is familiar with the neighborhood as several of the homes there belonged to family members.

Michael and Deborah Arlauskas (abutter @ 10 Foam Road, Scituate, MA 02066) – wanted to state he is opposed to this project and is concerned about water displacement during flooding. Mrs. Arlauskas had concerns regarding placement of the proposed garage and safety pulling out onto the street. The Arlauskas's also addressed concerns regarding building size and location.

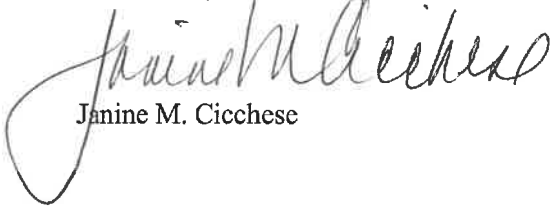
Mr. Bucchere – stated to Mr. McCarthy that the board would need him to request a continuance or request the board rule on his application now. Mr. McCarthy requested a continuance. Mr. Bucchere made a motion to continue the application on this matter to June 16, 2022. Motion seconded by Mr. Carchia, all in favor, unanimous.

ADJOURNMENT

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

Meeting adjourned at 9:07 pm.

Respectfully submitted by,

A handwritten signature in dark ink, appearing to read "Janine M. Cicchese", written in a cursive style. The signature is positioned above the printed name.

Janine M. Cicchese