

Town of Scituate

ZONING BOARD OF APPEALS

600 Chief Justice Cushing Hwy.
Scituate, Massachusetts 02066
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TOWN OF SCITUATE ZONING BOARD OF APPEALS Meeting Minutes

April 20, 2023

Present: Susan Harrison, Acting Chairman, Justin M. Marks, 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 20, 2023 at 7:00 P.M.** to consider the following requests:

First Application: Patricia A. Huie and John P. Kelly, c/o Jeffrey A. De Lisi, Esq., Ohrenberger, De Lisi & Harris, LLP, 28 New Driftway, 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, that the alteration, extension, or structural change in the form of an approximately 100 SF addition to a pre-existing, nonconforming single-family home on a pre-existing nonconforming lot at 12 Alden Street, Scituate, MA (Assessor's Map 73, Block 7, Parcel 5-0) will not be substantially more detrimental or injurious to the neighborhood, than the existing nonconforming structure. **Representing the Applicant – Jeffrey A. De Lisi, Esq., Ohrenberger, De Lisi & Harris, LLP, 28 New Driftway, Scituate, MA (via Zoom).**

Attorney De Lisi - presented and reviewed the application status. Attorney De Lisi stated this property is located in Humarock and is approximately 40 feet by 80 feet in width. The property is nonconforming with respect to lot area (3200 square feet), lot width and lot frontage. The building is nonconforming on the right-side yard and front yard. Attorney De Lisi explained that the foundation extends and provides access to an area underneath the home that contains laundry facilities. The home is quite old and is currently set up so that you have to exit the house, lift the bulkhead to enter the basement. This addition would enclose the foundation so that it is flush with the right front of the house. This would allow them to access the basement from the inside of the house and some extra space. This addition would be approximately 100 square feet in total.

Mr. Carchia – stated he felt that this request was to increase a nonconformity and that it would be substantially more detrimental. Attorney De Lisi stated that one of the benefits of this project is that it would require a fire rated wall where one does not currently exist. In discussing the application, Attorney De Lisi stated he felt this application would also qualify as a variance if the board wanted to go in that direction and offered an explanation if necessary. Attorney De Lisi also addressed the “substantially detrimental” language. Mr. Carchia stated he felt that it came down to where the setback was being measured from. Ms. Harrison joined the discussion. The discussion included whether the outside wall was part of the foundation of the dwelling or if it was a retaining wall. Members of the board and Mr. Vogel expressed in their opinion this wall would be considered as a retaining wall and the setbacks would

therefore be increasing a nonconformity. Attorney De Lisi discussed the factors for consideration of a variance and what he felt applied. Mr. Carchia suggested other options, possibly adding onto the back of the existing dwelling. Attorney De Lisi additionally asked if the board would be amenable to the possibility of allowing the applicant to cover the area of the existing bulkhead. The board did not feel the standard for a variance could be met. Attorney De Lisi requested a continuance to discuss the options with his client. Attorney De Lisi stated later in the meeting that he received an email from his client who stated that the leaching field is behind the home which is why they can not build onto the back.

Meeting was opened for public comment – no public comments.

Mr. Carchia – made a motion to continue this application to May 18, 2023 meeting. Motion seconded by Ms. Harrison, all in favor, unanimous.

Second Application: Erin Brighton, 94 Turner Road, 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 for the construction of an addition to a preexisting, nonconforming single-family dwelling located at **94 Turner Road, Scituate, MA 02066 (Assessor's Map 40, Block 6, Parcel 5). Representing the Applicant – Jeffrey M. Hassett (Registered Professional Engineer, Morse Engineering).**

Mr. Hassett - presented and reviewed the application status. The proposal is for a second story addition and a small expansion of the footprint to the front of the home. The property is in the R3 zoning district and built in 1962. The home is approximately 1800 square feet and would increase the floor area to approximately 2444 square feet for a 35.7% increase. The lot is nonconforming with respect to frontage, area and width. The building is nonconforming with respect to the front yard setback and the side yard setback.

Meeting was opened for public comment – no public comments.

Ms. Harrison – made a motion that the board find that the proposed addition to the single-family home shown on a plan prepared by Morse Engineering dated March 9, 2023 does not create any new nonconformities and to the extent it intensifies any existing nonconformities, such intensification is not substantially more detrimental to surrounding neighborhood and that the board grant the relief. Motion seconded by Mr. Carchia, all in favor, unanimous.

Third Application: Christopher M. Goodman, 3 Seagate Circle, Scituate, MA 02066 requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Sections 810.2B, 470.6F and 950.2B of the Scituate Zoning Bylaw and/or any other relief that the Board of Appeals may grant, to allow for the proposed 31.6% increase in the gross floor area as well as a substantial improvement of a dwelling constructed prior to March 2, 1992 in the Town of Scituate Flood Plain and Watershed Protection District on a preexisting, nonconforming lot at **3 Seagate Circle, Scituate, MA 02066 (Assessor's Map 15, Block 2, Parcel 1)** and that said increase in gross floor area and substantial improvement will not be substantially more detrimental or injurious to the neighborhood than the existing non-conforming structure or use and will not adversely affect the natural character of the surrounding area. **Representing the Applicant – Jeffrey A. De Lisi, Esq., Ohrenberger, De Lisi & Harris, LLP, 28 New Driftway, Scituate, MA (via Zoom).**

Attorney De Lisi - presented and reviewed the application status. The property is a corner lot located at the corners of Seagate Circle and Surfside Road. The nonconformities consist of front yard setback (from Surfside Road) and lot width. The property is located in the Scituate Flood Plain overlay. The existing

house and the proposed addition will be elevated. The conservation commission has already approved the project. Parking would be under the dwelling.

Mr. Carchia – stated he drove by the property and felt that the application, plans and photos as submitted are invalid. The buildings as depicted do not exist and changes have been made to the main house. Attorney De Lisi stated that the intention was not to abandon the preexisting, nonconforming front yard setback. Attorney De Lisi did confirm that a portion of the home had recently been removed. Mr. Vogel commented. This matter has been before the conservation commission.

Meeting was opened for public comment – no public comments.

Ms. Harrison – made a motion that the board find/grant to allow the proposed 31.6% increase in the gross floor area as well as substantial improvement of the dwelling constructed prior to March 2, 1992 of the Town of Scituate Flood Plain and Watershed Protection District on a preexisting, nonconforming lot at 3 Seagate Circle as shown on a plan by Grady Consulting dated March 7, 2023 and that the proposal does not create any new nonconformities and to the extent it intensifies any existing nonconformities it is not substantially detrimental to the surrounding neighborhood and will not adversely affect the natural character of the surrounding area. Motion seconded by Mr. Carchia, all in favor, unanimous.

Fourth Application: Joseph Hannon, P.E. of Atlantic Coast Engineering LLC, 88 Front Street, Suite 20B, Scituate, MA 02066 requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Sections 810 and 610 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 preexisting, nonconforming single-family dwelling on a pre-existing nonconforming lot located at **25 Porter Road, Scituate, MA 02066 (Assessor's Map 45, Block 2, Parcel 67-0). Representing the Homeowner - Joseph Hannon, P.E., Atlantic Coast Engineering LLC, 88 Front Street, Suite 20B, Scituate, MA 02066 (via Zoom).**

Mr. Hannan - presented and reviewed the application status. The building is nonconforming as to the front and rear setbacks and lot area. The proposed single-story additions are on the left and right side. The additions are minor in terms of square footage. No conservation or FEMA involvement is necessary. No driveway changes are proposed.

Meeting was opened for public comment –

Janet D'Angelo (abutter @ 2 Harbor View Road, Scituate, MA 02066) – questioned whether the addition would be a one or two stories and if any changed would be made to the driveway. These questions were addressed.

Ms. Harrison – made a motion that the board find that the proposed addition to a single family home shown on a plan by Atlantic Coast Engineers dated July 30, 2022 on 25 Porter road, Scituate, MA 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 and the board grant the relief. Motion seconded by Mr. Carchia, all in favor, unanimous.

Fifth Application: Burke Development, LLC, 23 Fairview Avenue, Scituate, MA 02066 requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 810.2C 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 preexisting, nonconforming structure located at **12 Old Country Way, Scituate, MA 02066 (Assessor's Map 48, Block 2, Parcel 55)** and increasing the gross floor area by more than 20%. **Representing the Applicant – Jeffrey M. Hassett (Registered Professional Engineer, Morse**

Engineering) and Walter B. Sullivan, 80 Washington Street, Building B, Suite 7, Norwell, MA 02061.

Mr. Hassett - presented and reviewed the application status. The proposal is to raze and reconstruct a mixed-use building. The site is approximately 7500 square feet and zoned as GDG-GBC Village District (or Village Center and Neighborhood District) and is located at the corner of Old Country Way and Jenkins Place. The property is currently developed of two buildings – the larger building consisting of a two-unit multifamily recently renovated building and a second building located at Old Country Way to the side of the first building consisting of a garage and one residential unit. The project would be to raze and reconstruct the second building on the side of the lot. The building is nonconforming with respect to left side setback and encroaches over the right-side yard on the right property line and rear yard setback. The new building will be reconstructed in the same general location with an increase of 263%. The proposal would improve the nonconformities – the left side would be slightly more conforming; the right side would be pulled back ten feet to comply with the required setback and the rear setback will be more conforming. A site plan special permit will be required from the planning board. The separation between the two buildings on the lot is approximately eight feet currently. Mr. Burke discussed the project with the board. He explained the plan is to take off the ten feet in the back that encroaches and keep the existing lot line, which will be improved. The impervious surface will be decreased and increasing the conformity on the lot. The size increase is attributed to adding a second story. Mr. Burke stated he has spoken to Karen Joseph, Town Planner regarding a density bonus for a possible second unit. The proposed project would be a big improvement to what is currently there and would improve setbacks. The existing two-family building has been extensively renovated by Mr. Burke. Mr. Carchia stated his concern would be the proximity of the two buildings next to each other and the density of them and whether they would be more substantially detrimental to the neighborhood. Mr. Burke stated the proposed use of the building would be for owner occupied office where the garage is currently located. Mr. Burke stated his intent would be to improve the neighborhood not be a detriment as he lives and works locally and remains invested.

Meeting was opened for public comment –

Stephen Monterio (abutter @ 9 Jenkins Place, Scituate, MA 02066) – stated the proposal for this project seems reasonable. He also questioned the proposed number of units and parking issues. Mr. Burke stated that those issues would be discussed with Planning.

Bruce Arbonies, 23 Gannett Pasture Lane, Scituate, MA 02066 (Water Resources Commission) – stated this project is located in Zone A – the most restrictive zone. It appears there is a deck located on the back of the main house – would that be considered impervious? Mr. Vogel stated it would not be and commented that the large deck would be reduced in size and rebuilt to be substantially smaller. This would be considered pervious if rain can fall through it. Mr. Arbonies also discussed the impervious amount being reduced and stated the current impervious appeared to be approximately 1700 square feet according to the tax records. He questioned whether there would be an artificial recharge plan for this property. Mr. Hassett commented that the impervious lot coverage calculations were included on the submitted plan and there is a decrease in impervious coverage. Removing the concrete in front of the main building, removing concrete walkways and the different footprint of the proposed building would help accomplish the decrease. The recharge will be addressed through the Planning Board review which Mr. Arbonies stated there would be a requirement for according to the current Water Resource Protection District bylaw and Mr. Vogel agreed.

John Danehey (owner and professional offices @ 5 Old Country Way, Scituate, MA 02066) – commented on the renovation to date on the property and stated he did a great job. Mr. Danehey stated he would be in favor of this project and would most likely be a better building than what currently exists.

Mr. Danehey suggested that in his opinion this would be more of a benefit to the neighborhood than a detriment. Mr. Danehey is also in agreement with reducing the impervious surfaces.

Ms. Harrison – made a motion that the board find that the proposed razing and reconstruction of a preexisting, nonconforming structure located at 12 Country Way as shown on plans by Morse Engineering dated March 14, 2023 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 and that the board grant the relief. Motion seconded by Mr. Carchia, all in favor, unanimous.

Sixth Application: Edward M. Fopiano, 259 Main Street, Hingham, MA 02043 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 preexisting, nonconforming single-family dwelling located at **7 Milton Street, Scituate, MA 02066 (Assessor's Map 72, Block 9, Parcel 9)** and increasing the gross floor area by more than 20%.

Ms. Harrison – stated that the board has received a request for postponement in this matter. Ms. Harrison made a motion to approve the request for postponement to the next meeting. Motion seconded by Mr. Carchia, all in favor, unanimous.

Seventh Application: (continued from March 16, 2023) William Guilford, 224 Chief Justice Cushing Highway, Scituate, MA 02066 requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Sections 620.3 and 810.2 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 preexisting, nonconforming single-family dwelling located at **224 Chief Justice Cushing Highway, Scituate, MA 02066 (Assessor's Map 58, Block 1, Parcel 1A)** and increasing the gross floor area by more than 20%. **Representing the Applicant – Jeffrey M. Hassett (Registered Professional Engineer, Morse Engineering.**

Mr. Hassett - presented and reviewed the application status. The proposal is for an addition to a single-family home. The home is in the R1 zoning district and approximately 2700 square feet and built in 1984. The front yard setback is the only known nonconformity on CJC Highway where the required setback is 100 feet. A garage addition is proposed on the roadway side of the house which would reduce the front yard setback and would increase the floor area by 66%. At the last meeting Mr. Vogel expressed concern about reducing the front setback and possibly requiring a variance. A meeting took place with Mr. Vogel and an email was received from Mr. Vogel dated March 22, 2023 withdrawing that objection. The special permit therefore can be issued if the board finds that it will not be substantially more detrimental, which the applicant felt was the case here. The purpose of the 100-foot setback along 3A is to create a greenbelt, which in this case would be done by preserving the 50-foot landscape buffer. Compared to the adjacent properties which have no landscape buffer, this property is far less detrimental. Ms. Harrison noted the email and case law received for this argument and acknowledged she had also spoken with Scituate town counsel who agreed. No questions from the board or Mr. Vogel.

Meeting was opened for public comment – no public comments.

Ms. Harrison – made a motion that the board find that the proposed addition to a preexisting, nonconforming single-family dwelling located at 224 Chief Justice Cushing Highway and a site plan by Morse Engineering dated January 31, 2023 does not create any new nonconformities and to the extent it intensifies any existing nonconformities such intensification is not substantially detrimental to the surrounding neighborhood and the board grant the relief. Motion seconded by Mr. Marks, all in favor, unanimous.

Eighth Application: (*continued from March 16, 2023*) Joseph Hannon, P.E., Atlantic Coast Engineering LLC, 88 Front Street, Suite 20B, Scituate, MA 02066 requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Sections 810 and 610 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 on a preexisting, nonconforming lot located at **2 Rebecca Road, Scituate, MA 02066 (Assessor's Map 46, Block 4, Parcel 18). Representing the Homeowner - Joseph Hannon, P.E., Atlantic Coast Engineering LLC, 88 Front Street, Suite 20B, Scituate, MA 02066 (via Zoom).**

Mr. Hannan - presented and reviewed the application status. There were two measurements on the zoning table for the proposed that had asterisks next to them that indicated a further reduction in nonconformity when in reality because of the piles there is no further nonconformity. The two measurements were adjusted and updated in the zoning table and that dimensionally meets the requirements that are being sought. No questions from the board.

Meeting was opened for public comment – no public comments.

Ms. Harrison – made a motion that the board find that the proposed raze and reconstruct of a single-family dwelling on a preexisting, nonconforming lot at 2 Rebecca Road as shown on the plan dated October 25, 2022 and revised March 16, 2023 by Atlantic Coast Engineering does not create any new nonconformities and to the extent that it intensifies any nonconformities such intensification is not substantially detrimental to the surrounding neighborhood and that the board grant the relief. Motion seconded by Mr. Carchia, all in favor, unanimous.

ADJOURNMENT

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

Meeting adjourned at 8:40 p.m.

Respectfully submitted by,


Janine M. Cicchese