

Town of Scituate

ZONING BOARD OF APPEALS

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Scituate, Massachusetts 02066
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TOWN OF SCITUATE ZONING BOARD OF APPEALS Meeting Minutes

June 15, 2023

Present: George Xixis, Chair, 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, June 15, 2023 at 7:00 P.M.** to consider the following requests:

First Application: Kevin Barry and Kathleen McCoomb, 165 Thatcher Street, Milton, MA 02186 request 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 an addition to a preexisting, nonconforming accessory structure located at **26 Newport Street, Scituate, MA 02066 (Assessor's Map 71, Block 3, Parcel 2)** and increasing the gross floor area by more than 20%.

Mr. Xixis – confirmed for the record that this application had been withdrawn.

Second Application: Nir Drory, Beach Boy Realty Trust, 117 Lyman Road, Chestnut Hill, MA 02467 requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Sections 810.1, 810.2 and 470.6F of the Scituate Zoning Bylaw and/or any other relief that the Board of Appeals may grant, to allow the reconstruction of two single-family dwellings located at **74 Glades Road and 74C Glades Road, Scituate, MA 02066 (Assessor's Map 5, Block 4, Parcel 26)** which were destroyed by fire and to allow the continued non-conforming use of the property, which is occupied by two single-family dwellings (74 and 74C Glades Road). **Representing the Applicant – Gregory J. Morse (Registered Professional Engineer, Morse Engineering) and applicant.**

Mr. Morse – reviewed and presented the application on behalf of the homeowner. The property is located at 74 and 74C Glades Road and is in the R3 zoning district. It is one property with two separate homes on it, both of which were destroyed by fire. The non-conformities include the front and side yard setbacks and the lot width. Neither building conforms with current FEMA standards. 74 Glades Road was built in 1873 and 74C Glades Road was built in 1978.

The proposal would be to construct two new dwellings largely in the same locations depicted on the plan. They would be fully FEMA compliant, constructed on pile foundations which should satisfy the requirements for a special permit under Section 470.6.F. The work does not create any new non-conformities. The setbacks for the side yard are greater in all cases. The setback to the front yard for 74C Glades does get closer to Town Way. The frontage existed at 6.5 feet off Town Way and is proposed at four feet. It is a pre-existing, non-conforming setback that would be a de minimis change.

Both buildings are proposed larger in size at two and a half stories. The proposal for 74 Glades would be for a total of 4,200 square feet which represents a 90.6% increase and 1,290 square feet for 74C Glades, which would represent a 158.50% increase. Existing setbacks would be maintained in all cases with the one previous exception.

Mr. Xixis – stated that according to the zoning chart and the latest plan dated June 15, 2023, the existing front yard setback is noted at 6.5 feet and proposed at 4 feet on both the chart and plans. The plan depicts it at 4 feet, so change the plan from 3.2 to 4 feet. The board confirmed with Mr. Morse that all other setbacks on the plan are correct.

Mr. Vogel - Anytime the exterior wall is less than five feet from a property line it needs to be constructed with fireproof materials. There's a particular construction system that would achieve that, and the window area would be limited to 25% of that wall. When the building department receives the plans for a building permit those regulations will be adhered to. Mr. Vogel also commented on the height restriction.

Meeting was open for public comment -

Robert Trembley (abutter @ 71 Glades Road, Scituate, MA 02066) - questioned the increase in size, which was explained by the applicant who reiterated that all zoning bylaws, elevation standards and the new building code will be adhered to in the rebuilding. The board also noted that the building height in the R3 zoning district is limited to three stories and the proposed two buildings will be two and a half stories tall, which is lower than the maximum height allowable and they are on more or less on the same footprint.

Deborah Vaughan (abutter @ 78 Glades Road, Scituate, MA 02066) – her home was also extensively damaged in the fire but wanted to note that the previous work on the applicant's property was beautiful and she is in support of the rebuild.

Mr. Xixis – made a motion with respect to the application for special permit for 74 Glades Road and 74C Glades Road that the relief be granted and that the board approved the plan by Morse Engineering dated June 15, 2023 and that the board find that the plan as proposed raises no new nonconformities and to the extent it intensifies any existing non-conformities such intensification is not substantially more detrimental to the neighborhood. Motion seconded by Mr. Carchia, all in favor, unanimous.

Third Application: Burke Development, LLC, 23 Fairview Avenue, Scituate, MA 02066 requests a modification of the Special Permit/Finding approved on April 20, 2023 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 first floor area by more than 20%. **Representing the Applicant - Walter B. Sullivan, 80 Washington Street, Building B, Suite 7, Norwell, MA 02061 and Gregory J. Morse (Registered Professional Engineer, Morse Engineering) and applicant.**

Attorney Sullivan – noted that identical relief is being sought as noted in the minutes of the April 20, 2023 meeting; however, a net overall decrease in the impervious land surface in the Water Resource Protection District was indicated on the original plan should be noted. While there will be a slight increase in the impervious front yard area it will be de minimus.

Mr. Xixis – stated that it appeared there is a proposed net reduction overall of the impervious area by approximately 75 square feet. A bit of an increase is noted in the front. The issue is that the 20-25%

maximum and/or the 2,500 square foot maximum impervious lot coverage is exceeded by both existing and proposed conditions. Mr. Xixis noted that at the previous hearing this issue was not addressed and the Planning Board wished this to be considered by this board as part of the overall approval. Mr. Vogel also commented on this issue.

Meeting was open for public comment -

Bruce Arbonies (23 Gannett Pasture Lane, Scituate, MA 02066) – Chair of the Water Resource Commission. Mr. Arbonies questioned that since this property is within a zone with the most restricted water resource area, if any rain catchment or artificial recharge for this new development or the addition will be required. Mr. Morse responded that the proposal will be for water quality treatment off of the parking surfaces with TSS removal, a deep sump pump hooded catch basin and subsurface drywells on the site for infiltration of runoff from the roof leaders. No further questions.

Mr. Xixis - made a motion that the board reapprove the special permit for 12 Old Country Way, Scituate, MA on a plan by Morse Engineering dated March 14, 2023 and revised April 13, 2023 and having considered the impervious lot coverage and the stormwater management system, the board finds that there are no new non-conformities and to the extent this intensifies any existing non-conformities such as intensification is not substantially more detrimental to the neighborhood, and that this is demonstrated to the board's satisfaction in light of the decrease in impervious lot coverage and the proposed stormwater management plan as set forth both in this plan and as represented by the applicant. Motion seconded by Mr. Carchia, all in favor, unanimous.

Fourth Application: Matthew and Amanda McCarthy, 31 Rosa's Lane, Scituate, MA 02066 request a modification of the Special Permit/Finding approved on February 16, 2023 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 an accessory structure on a preexisting, nonconforming lot located at **31 Rosa's Lane, Scituate, MA 02066 (Assessor's Map 27, Block 1, Parcel 19P)** and increasing the gross floor area by more than 20%. **Representing the Applicant - Gregory J. Morse (Registered Professional Engineer, Morse Engineering).**

Mr. Morse – noted for the record that this is a modification of an existing special permit for the property located at 31 Rosa's Lane that was originally filed seeking a special permit to allow construction of an accessory building on the property. The special permit was granted by this board. However, the proposed location of that building has changed as a result of meetings with the Conservation Commission. This site is located in the R2 zoning district and the only non-conformity is the frontage on Rosa's Lane at 45 feet. The existing home fully complies with all zoning requirements, and setbacks for the proposed accessory structure comply with all zoning setbacks. The dimensions and the floor area are the same as the originally permitted proposed structure - just moved from the north side of the house to the south side, which does not create any new non-conformities in any way. Mr. Xixis commented that the only non-conformity is a function of the existing site conditions.

Meeting was open for public comment – no public comments.

Mr. Xixis – made a motion that the Board approve the special permit for the addition of an accessory building at 31 Roses Lane pursuant to the plan by Morse Engineering dated March 6, 2023 as revised May 1, 2023 and that said accessory dwelling will introduce no new non-conformities and to the extent it intensifies any existing non-conformities such as intensification will not be substantially more detrimental to the neighborhood. Motion seconded by Mr. Carchia, all in favor, unanimous.

Fifth Application: Horace and Emily Tjakra, 72 Glades Road, Scituate, MA 02066 request a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Sections 810.2 and 470.6F of the Scituate Zoning Bylaw and/or any other relief that the Board of Appeals may grant, to allow the reconstruction of a single-family dwelling located at **72 Glades Road, Scituate, MA 02066 (Assessor's Map 5, Block 4, Parcel 27)** which was destroyed by fire. **Representing the Applicant - Gregory J. Morse (Registered Professional Engineer, Morse Engineering).**

Mr. Morse – reviewed and presented the application on behalf of the homeowner. The property is located in the R3 zoning district. The non-conformities of the home are with respect to the frontage of the lot existing at 0, the area of the lot existing at 7,136 square feet where 10,000 square feet is the requirement, the lot width of 35.73 feet, where 100 feet is the requirement, the front yard setback at 15.5 feet where 30 feet is the requirement and the side yard setbacks of 3.7 and 2.8 feet where 8 feet is the requirement. The home was constructed in 1920 and is not compliant with FEMA standards. The proposal is to construct a new home largely in the same location on a new timber pile foundation and would be fully FEMA compliant. There are no new non-conformities being created and all of these setbacks to the front and side yard are proposed at greater setbacks than what existed prior to the fire. A two and a half story house is proposed increasing the floor area. The existing home was 2,298 square feet and the proposal would be at approximately 3,590 square feet, for a 56% increase.

Mr. Xixis – confirmed with Mr. Morse that this has zero frontage because we have a back lot behind another one, so the access to this home is the 8-foot-wide right of way depicted on the plan. Mr. Vogel noted the same comments that were made on 74C Glades Road, in terms of construction both on north and south walls closer than five feet to the property line and the same constraints would apply to height. No further questions.

Meeting was open for public comment -

Robert Trembley (abutter @ 71 Glades Road, Scituate, MA 02066) – stated he was in full support as neighbors of folks rebuilding their homes, especially after this horrible tragedy.

Mr. Xixis – made a motion on the application for a special permit in accordance with M.G.L. Chapter 40A Section 6 and Sections 810.2 and 470.6F of the Scituate Zoning Bylaw to allow the reconstruction of single-family home located at 72 Glades Road, Scituate, MA 02066, pursuant to the plan by Morse Engineering dated May 17, 2023 and move that the special permit be granted and that the board find that the proposed reconstruction does not introduce any new non-conformities and to the extent it intensifies any existing non-conformities such intensification will not be substantially more detrimental to the neighborhood. Motion seconded by Mr. Marks, all in favor, unanimous.

Sixth Application: Plunkett Family Living Trust, 60 Longmeadow Road, Milton, MA 02186 requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Sections 810.2 and 470.6F of the Scituate Zoning Bylaw and/or any other relief that the Board of Appeals may grant, to allow the reconstruction of a single-family dwelling located at **70 Glades Road, Scituate, MA 02066 (Assessor's Map 5, Block 4, Parcel 29)** which was destroyed by fire. **Representing the Applicant - Gregory J. Morse (Registered Professional Engineer, Morse Engineering).**

Mr. Morse – reviewed and presented the application on behalf of the homeowner. The same relief is being sought as in the prior application that was just granted on the property next door. This property is located at 70 Glades Road and was destroyed by fire. The home is located in the R3 zoning district. The non-conformities are the lot area at 4,644 square feet, the frontage on Glades Road at 41.57 square feet, the lot width of 41.57 feet, and the side yard setbacks. The property encroaches on the left-hand side over

the lot line and on the right-hand side it had a 5.7- foot setback. The home was built in 1900 and is non-compliant with FEMA standards.

The proposal is to construct a two and a half story home that would be on a timber pile foundation and would comply with height requirements. The proposed setbacks are greater than existing or maintaining existing setbacks on all sides. The proposed home would fix the encroachment back to a six-foot setback on the left-hand side and would represent an increase in the floor area. The existing home was approximately 1,354 square feet and the proposed is 3,160 square feet and represents a 133% increase.

Mr. Xixis & Mr. Vogel— commented on the lot placement for the proposal and Mr. Vogel commented on the height requirement and that in this case there will be no restriction on the exterior wall construction.

Meeting was open for public comment –

Annette Radzevich (abutter @ 68 Glades Road, Scituate, MA 02066) – stated that she supported the rebuild.

Mr. Xixis - made a motion on the application of the Plunkett Family Living Trust, 60 Longmeadow Road, Milton, MA 02186, for a special permit and/or finding in accordance with M.G.L. Chapter 40A, and Section 810.2 and 470.6F of the town zoning bylaw and/or any other relief that the board may grant to allow the reconstruction of a single-family dwelling located at 70 Glades Road which was destroyed by fire and move that the board approved the special permit and find pursuant to the plan by Morse Engineering dated May 18, 2023, and the board find that such a plan and such reconstruction does not introduce any new non-conformities and to the extent it intensifies any existing non-conformities those will not be substantially more detrimental to the neighborhood. Motion seconded by Mr. Marks, all in favor, unanimous.

Seventh Application: Edward M. Fopiano c/o Walter B. Sullivan, Esq., 80 Washington Street, Building B, Suite 7, Norwell, MA 02061 requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 or in the alternative a Variance in accordance with M.G.L. Chapter 40A, Section 10 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 non-conforming single-family residence and accompanying deck located at **7 Milton Street, Scituate, MA 02066 (Assessor's Map 72, Block 9, Parcel 9)**.
Representing the Applicant - Walter B. Sullivan, 80 Washington Street, Building B, Suite 7, Norwell, MA 02061 and applicant.

Attorney Sullivan – a special permit for a raze and reconstruction was requested for the property at 7 Milton Street. The property was purchased by the Fopiano's on May 30, 2019. It was constructed in 1945 and contains only 1,000 square feet on a 3,180 square foot lot. This is a modest 1.5 story cape home with a one car garage located in an R3 zone.

The Fopiano's are looking to raze the existing home and build a 2,500 square foot home to modern standards. It is proposed to be compliant with FEMA requirements. The front setback is currently 15.2 feet and is proposed to be 11.6 feet from the deck and 19.1 feet from the dwelling. To the west there's an 8.6-foot setback and proposed to be 8.8 foot from the dwelling. To the east where it was 5.5 feet before, it is proposed at 5.3 feet. The proposed height is going to change. Zoning allows 35 feet and the proposal is for 36.5 feet. The filing was supplemented with a plan that shows other properties in the district which indicates that the structure two houses away is a little over 36 feet.

Mr. Xixis – your alternative to the variance for height attempts to follow in the reasoning of Section 620.4.A, which would allow you to use the average front yard setback of homes 200 feet to either side of

your property to determine your required setback. You want to use similar reasoning to justify increasing the height limitation for this project. Mr. Xixis asked Mr. Vogel if we have anything that says we can use such a computation and Mr. Vogel replied no and added that in his opinion it would be a very bad precedent to set and he doesn't see any reason to do this. The board also questioned why this couldn't be at 35 feet.

Attorney Sullivan - Mr. Fopiano has worked with his architect the better part of two years to try to make this compliant. He has squeezed it down to the proposed 36.5, and I think it's because of the elevation it's not possible. Three Milton Street is 36.8.

Mr. Xixis – stated that although he appreciated that may be a factual statement, he didn't think it was relevant or that it would meet the variance standard. Mr. Xixis suggested a continuance for the applicant to submit another set of plans that will get to 35 feet or below.

Attorney Sullivan – asked on Mr. Fabiano's behalf if it would be possible for the board to approve the special permit or finding for the setbacks, but with the understanding that no relief would be granted regarding height and realized that he would have to comply with the 35 feet so that the hearing could be closed tonight.

Mr. Vogel – stated he would be willing to do that if he were on the board and felt that suggested that should be written into the decision. The Building Department would certainly review it and be aware that what they will submit will meet the requirements. Mr. Carchia stated that as long as it was in the decision and that he would be resubmitting a set of construction plans showing the height as a maximum of 35 feet that there wouldn't be a need to bring it back before the board.

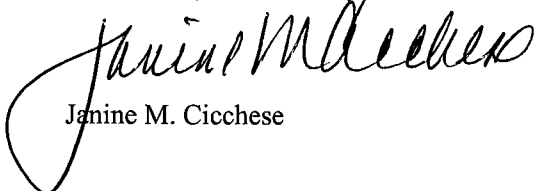
Mr. Xixis – made a motion with respect to Edward M. Fopiano's application for a special permit/finding in accordance with M.G.L. Chapter 40A Section 6 and/or any other relief that the Board of Appeals may grant, we will allow the razing and reconstruct of a pre-existing, non-conformed single-family residence and accompanied deck located at 7 Milton Street pursuant to the plan by Hoyt Land Surveying dated March 9, 2023 and revised most recently on May 26, 2023, with regard to all the relevant setbacks with the limitation that the height of the resulting structure will be no higher than 35 feet as defined by Section 620 of the Zoning Bylaws, specifically 35 feet from average grade at the foundation to a point halfway between the ridge and the eaves, and that said structure will introduce no new non-conformities and to the extent it intensifies any existing non-conformities, those will not be substantially more detrimental to the neighborhood. Motion seconded by Mr. Carchia, all in favor, unanimous.

ADJOURNMENT

Mr. Xixis made a motion to adjourn. Motion seconded by Mr. Carchia, all in favor, unanimous.

Meeting adjourned at 7:47 p.m.

Respectfully submitted by,



Janine M. Cicchese