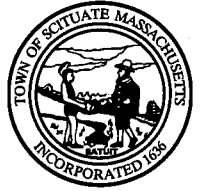


# Town of Scituate

ZONING BOARD OF APPEALS

600 Chief Justice Cushing Hwy.  
Scituate, Massachusetts 02066  
(781) 545-8716



2023 MAY -4 AM 9:33

Decision of the Scituate Zoning Board of Appeals on the application of Christopher M. Goodman, of 3 Seagate Circle, Scituate, MA 02066 (hereinafter, the "**Applicant**") for a special permit/finding in accordance with M.G.L. Ch. 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 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 (Assessor's Map 15, Block 2, Parcel 1) and that the said increase in gross floor area and substantial improvement will not be substantially more detrimental or injurious to the neighborhood than the existing nonconforming structure or use and will not adversely affect the natural character of the surrounding area (hereinafter, collectively, the "**Requested Relief**").

The application was received, advertised, and a public hearing was held on April 20, 2023. The following members were present and voted at the public hearing:

Susan Harrison, Acting Chairperson  
Christopher Carchia  
Justin M. Marks

The Applicant was represented at the public hearing by his attorney, Jeffrey A. De Lisi, of Ohrenberger, De Lisi & Harris, LLP of 28 New Driftway, Scituate, MA.

The subject property at Seagate Circle (hereinafter, the "**Property**") is owned by the Applicant as appears in Certificate of Title No. 122588 filed with Plymouth County Registry District of the Land Court. The Property was laid out and shown as Lot 1 on a Plan No 19206C, which plan was filed in 1950 at said Land Court registry prior to the adoption of residential zoning in Scituate.

In addition to the required application and zoning chart, the Applicant filed the following materials with Board of Appeals:

1. Cover letter of Ross Engineering Company dated March 13, 2023;
2. Assessor's Field Card;
3. Deed filed with the said Registry at Book 612, Page 188;
4. Land Court Plan No. 19206C;
5. Photographs of the Property; and
6. Grady Consulting plot plan entitled "ZBA PLAN FOR 3 SEAGATE CIRCLE IN SCITUATE, MASS." dated March 7, 2023 (hereinafter, the "**Plot Plan**").

The Property is located in the Residence R-3 zoning district and the Town of Scituate Flood Plain and Watershed Protection overlay zoning district, and contains a single-family dwelling thereon which was constructed in 1954, according to the field card of the Tax Assessor. The Property is a corner lot having frontage on both Surfside Road and Seagate Circle. The Plot Plan depicts an existing dwelling, the front portion of which is closest to Seagate Circle and has a footprint of approximately 1,056 S.F. The Plot Plan depicts a separate portion of that dwelling in the rear (furthest from Seagate Circle) that is orientated lengthwise to Surfside Road and has an approximately 900 S.F. footprint. The Plot Plan also depicts a "Previous Existing Garage" having a footprint of approximately 284.38 S.F. The said approximately 900 S.F. rear portion of the dwelling and the "Previous Existing Garage" were actually removed from the Property by the Applicant approximately two years ago. At the time, the Applicant intended to remove such portions and construct an addition, but COVID derailed the actual construction phase of the project. In 2022 the Applicant resumed the project. When he recently sought a building permit, the Applicant was referred to the Board for the required zoning relief. There was some discussion at the public hearing that perhaps the rear portion of the building and the garage had burned. However, the Applicant has since confirmed that such speculation is not accurate. The Applicant's Plot Plan depicts the removed portions of the dwelling and the previous garage as an existing condition because the Applicant did not abandon the prior nonconforming structures, but was delayed by COVID, and has always viewed the removed portions as part of the same project. Nonetheless, this zoning decision will consider setbacks only from the portion of the dwelling that remains.

Accordingly, the portion of the dwelling that remains is setback 11.3 ft. from Surfside Road (in a 30 ft. zone) and 30.4 ft. from Seagate Circle (in a 30 ft. zone), and has a westerly side yard setback of 22.5 ft. Additionally, the Property meets lot area and frontage requirements, but is nonconforming as to lot width when measured from Seagate Circle, having a width of 66.7 ft. (in a 100 ft. zone). The Applicant proposes to construct an addition in the rear of the remaining dwelling, which will contain a footprint of approximately 929.9 S.F. will be set back 19.5 ft. at its closest point from Surfside Road, and will have a westerly side yard setback of 14.5 ft. at its closest point. A finding is necessary pursuant to Scituate Zoning Bylaw Section 810.2 because the proposed addition represents an increase in gross floor area by more than 20% and because the existing dwelling and lot width do not meet the current requirements.

In addition, because the Property is located in the Town of Scituate Flood Plain and Watershed Protection overlay zoning district, the Applicant has requested a special

permit pursuant to Scituate Zoning Bylaw Section 470.6F. Since the existing dwelling was constructed prior to, and has existed since, March 2, 1992, the Board is authorized to issue the requested special permit so long as it finds that any improvements (1) are consistent with the National Flood Insurance Program, (2) are consistent with the provisions of the State Building Code pertaining to flood resistant construction, and (3) do not affect the natural drainage patterns of "the watercourse". The Property is located in FEMA Zone AE 14 ft. In this case, the Applicant proposes to elevate the existing remaining dwelling, and to elevate the proposed addition, above and outside of FEMA's established 14 ft. above sea level requirement. The building permit process will ensure that the work comply with all building code requirement, and there is no effect on any watercourse.

The Board opened the conversation to input from public, and no persons spoke.

As indicated above, the Applicant demonstrated pre-existing nonconforming status, and Board of Appeals considered the Requested Relief pursuant to the last paragraph of Zoning Bylaw Section 810.2, and the special permit provision of said Section 470.6F.

M.G.L. Ch. 40A, Section 6 provides, in relevant part, that zoning ordinances or bylaws shall not apply to lawful pre-existing nonconforming structures or uses, but shall apply to any reconstruction, extension or structural change to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent "except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure." Said Section 6 further provides that "pre-existing nonconforming structures and uses may be extended or altered, provided, that no such extension or alteration be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming [structure or] use to the neighborhood."<sup>1</sup>

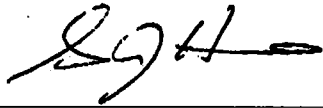
The Board of Appeals specifically voted to find (i) that the Property and existing dwelling are dimensionally pre-existing, nonconforming, (ii) that the proposed reconstructed single-family dwelling will not create any new nonconformities, and (iii) to the extent that the proposal extends an existing nonconformity, such extension is not considered substantially more detrimental to the neighborhood than the existing nonconforming dwelling. The Board was also satisfied that the requirements of said Section 470.6F were met.

Based upon the application materials, including the Plot Plan, the information provided at the public hearing, and the foregoing, the Board of Appeals finds that the Applicant has demonstrated that she is entitled to the Requested Relief.

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<sup>1</sup> The words "structure or" appearing in the brackets in the quoted sentence were supplied by Willard v. Board of Appeals of Orleans, 25 Mass. App. Ct. 15, 21, 514 N.E.2d 369 (1987), and later noted and applied in Rockwood v. Snow Inn Corp., 409 Mass. 361, 363 n.4, 364, 566 N.E.2d 608 (1991).

For the foregoing reasons, the Board unanimously voted to GRANT the special permit, finding(s), and the Requested Relief.



Susan Harrison, Acting Chair



Christopher Carchia



Justin M. Marks

Filed with the Town Clerk and Planning Board: May 4, 2023

This Finding will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County Registry of Deeds after the appeal period of twenty (20) days.

Appeal of any decision of the Zoning Board of Appeals may be made pursuant to M.G.L. Ch. 40, Section 17, and shall be filed within twenty (20) days of the date of filing the decision with the Town Clerk.