

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

January 20, 2022

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**TOWN OF SCITUATE
TOWN CLERK**

Present: Anthony Bucchere, Chairman, George Xixis, Susan Harrison, Christopher Carchia, Justin Marks

Also present: Robert Vogel, Scituate Building Commissioner

The Scituate Zoning Board of Appeals held a public hearing via remote access on Thursday, January 20, 2022 at 7:00 P.M. to consider the following requests:

First Application: Joseph P. Joyce and Marie Antoinette Titine Joyce, 39 Ocean Avenue, Scituate, MA 02066 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 razing and reconstruction of a pre-existing, nonconforming single-family dwelling at **39 Ocean Avenue, Scituate, MA 02066 (Assessor's Map 8, Block 2, Parcel 6-0)** and increasing the gross floor area by more than 20%. **Representing the Applicant – Paul J. Mirabito, PLS, Ross Engineering Company, Inc., 683 Main Street, Norwell, MA 02061. Applicant – Joseph Joyce also present via remote access.**

Paul Mirabito – presented the application. The lot area is 13, 602 square feet. The existing home currently meets all required property line setbacks. The only nonconformity is the lot frontage and lot width. It is proposed to raze the existing dwelling and replace it with the proposed dwelling, which will meet all of the required setbacks. The new dwelling will have an increase in the gross floor area of 40.8%. No grade changes are proposed to the lot for the new dwelling.

Mr. Vogel – The original home was built in 1910 so in order to demolish it would have to go before the historical commission. Mr. Joyce advised that that has been done and the proper approval granted. No comments from the board.

Meeting was opened for public comment –

Leonard and Suzanne Rubenstein (abutter @ 41 Ocean Avenue, Scituate, MA 02066) – questioned if there were any drainage, runoff or storm issues that would be of concern and/or ramifications, if the town has restrictions on building times and concerns regarding dust, contaminates, rodents when the home is razed. Mr. Vogel responded to these questions.

Alexander and Kathleen Thomson (abutter @ 31 Ocean Avenue, Scituate, MA 02066) – questioned if the design of the home and/or architectural plans were available to view.

Mr. Bucchere – made a motion that the board approve the special permit application for the proposed raze and reconstruction at 39 Ocean Avenue, Scituate, MA 02066 as shown on a plan made by Ross

Engineering dated November 16, 2021 and that the board find that the proposed dwelling doesn't create any new nonconformities and that to the extent that it intensifies any existing nonconformities such intensifications are not substantially more detrimental to the surrounding neighborhood. Motion seconded by Mr. Carchia, all in favor, unanimous.

Second Application: Brian Roake, 53 Hawley 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 an addition to a pre-existing, nonconforming single-family dwelling at **53 Hawley Road, Scituate, MA 02066 (Assessor's Map 34, Block 25, Parcel 11)**.

Mr. Roake – presented his application. The existing home is a single family one level home currently at approximately 750 square feet. The application proposes a single-story addition, which would add approximately 525 square feet. Discussion with the board included clarification of the layout of the proposed addition and a ground level deck. The shed is scheduled to come down. No questions from the board; however, a further discussion clarified the setbacks due to some discrepancies on the application.

Meeting was opened for public comment – no public comment.

Mr. Bucchere – made a motion that the board grant the requested relief for the proposed addition to the home at 53 Hawley Road, Scituate, MA 02066 and that the board find that the proposed addition as shown on the plan prepared by James McGrath and dated September 1, 2021 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 approve said addition provided that the total square footage of the home does not exceed 1522 square feet and that the location of those additions remain entirely within the building envelope/required setbacks. Motion seconded by Mr. Xixis, all in favor, unanimous.

Third Application: 4 Garfield Street Realty Trust, 733 Plain Street, Marshfield, MA 02050 requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 810.2A and 470.6 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 **4 Garfield Street, Scituate, MA 02066 (Assessor's Map 73, Block 12, Parcel 611f & 10a)** and increasing the gross floor area by more than 20%. **Representing the Applicant - Gregory J. Morse (Registered Professional Engineer, Morse Engineering)**.

Mr. Morse – presented the application for Kevin McDonough (applicant). This project is a raze and reconstruct. This property is located in the R3 zoning district and in the Flood Plain and Watershed Protection overlay district. The existing home was built in 1940 and predates the town's zoning requirements. The existing nonconformities are the lot area, the frontage and the width. The existing structure is non-compliant with regard to rear setbacks and also with FEMA flood plain requirements. The proposal is to raze the existing home and construct a new single-family home, with the new home being pulled slightly forward on the lot which will bring the rear yard setback into greater conformance. The new home would be constructed on pilings. The existing home is currently 1334 square feet, the proposed home will be 2.5 stories and 2890 square feet, an approximate 117% increase in size. No questions/comments from the board.

Meeting was opened for public comment –

Kathleen Vining (abutter @ 10 Garfield Street, Scituate, MA 02066) – questioned exact location and whether the new home would encroach on the road. The board answered her question.

Mr. Bucchere – made a motion that the board grant the relief requested in connection with the raze and reconstruction at 4 Garfield Street, Scituate, MA 02066 shown on a plan by Morse Engineering and dated December 9, 2021 and that the board find that the proposed dwelling 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.

Fourth Application: Kenton L. Bongarzone, 17 Gates Circle, Scituate, MA 02066 c/o John Danehey, Esq., of Danehey & Osterberg, P.C., 5 Old Country Way, Scituate, MA 02066 requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Sections 810 and 820 of the Scituate Zoning Bylaw and/or any other relief that the Board of Appeals may grant, to allow existing nonconformities at **5 Williamsburg Lane, Scituate, MA 02066 (Assessor's Map 37, Block 2, Parcel 4A)** to be extended/changed to a use not substantially more detrimental. **Representing the Applicant - John Danehey, Esq. of Danehey & Osterberg, P.C., 5 Old Country Way, Scituate, MA 02066 and Gregory J. Morse (Registered Professional Engineer, Morse Engineering).**

Attorney John Danehey – presented the application. Attorney Danehey stated that the special permit/finding relief should be under Section 820 and not Section 810 as that would not apply in this matter. A variance was before this board on this address in 2015 – at which time the variance application was withdrawn. Attorney Danehey stated that this lot is a conforming lot aside from the nonconforming use – it meets all the setbacks, the lot width and size requirements. The issue is the nonconformity which is a drainage pipe, which is on the rear end of the property that runs from east to west from Country Way and ends at a headwall that opens up and ends at the Tack Factory Pond. Kenton Bongarzone currently owns the property, which has been in his family since approximately 1957. In approximately 1971 the town of Scituate approached the then owner (who was Mr. Bongarzone's father) to put in an easement for a drainage pipe to drain off Country Way. Mr. Bongarzone's father gave it to them for consideration of \$1.00 and they put it in diagonally across the property. At an unspecified time later, the town decided to upgrade the drain from a corrugated pipe to a cement pipe and at that time moved it the rear of the property (perpendicular to Country Way – corner of Country Way and Williamsburg Lane). In 1987 the Water Resource Protection District was put in place to protect our water supply/resources. This property is within this zone. In approximately 2000 the property was owned solely by Kenton Bongarzone. The nonconformity is due to the fact that the property lies within the Water Resource Protection District and the use of the drainage pipe with the headwall. Attorney Danehey referred to Section 820 of the Scituate Zoning Bylaw where it refers to a nonconforming use being changed to a specific use and also if the preexisting nonconformity is located in a Water Resources Protection District such use can not be changed Attorney Danehey stated he felt that the bylaw as written is incorrect (Section 510.4) as it does not deal with the Water Resource Protection District. Attorney Danehey stated that the section that would relate to the requested relief is Section 520.4 (4) if permission by way of a special permit/finding is granted, a three-bedroom residential home would be placed on the property as an allowable use. Attorney Danehey claimed that this property is not within the 150 feet of a reservoir. In 2013 the Division of Environmental Protection determined on a separate project that a drainage pipe existed on a property just south of this one. This drainage pipe (or outlet pipe) was deemed a tributary and as a result of that determination it was stated that there was a 150 foot no disturbance zone.

Mr. Morse – reviewed the site plan. This property is in an R2 zoning district, which requires a minimum of 20,000 square feet – this lot is 21,461 square feet. The entire lot is upland, no wetlands exist and it is not located in the flood plain. Since the time that this property was subdivided in approximately 1956 this lot has been altered. The land was cleared at one point and there are piles of soil. According to the

contour of the lot, this lot was filled in in various places to level the property off. The Division of Environmental Protection has walked this property along with the Conservation Commission to confirm that no wetlands exist on this property. The proposal for this property is to construct a new three-bedroom home with an on-site septic system. A previously applied for septic permit was issued and has since expired.

Mr. Bucchere – discusses the nonconforming use with Attorney Danehey and the easement issue. Attorney Danehey stated he does not agree with Mr. Bucchere's comments. Mr. Xixis and Mr. Vogel also commented on addressed issues including the tributary, buffer zone and additional relief issues, namely under Section 520.4 (4). Mr. Bucchere stated that he can not support a motion and/or second a motion for a special permit under Section 810.2, 810.3 and/or 820 nor under any other section under the code for a special permit to build this home. Mr. Bucchere stated that if Attorney Danehey were to change, expand or amend that nonconforming structure, the board would be in a position to review the application as an 810.3 special permit and be consistent in that review with the 810.2 home special permits within the Water Resource Protection District. The difference being this application is asking for permission for the construction of a new home under 520.4 where no home existed on this lot prior to the imposition of the bylaw. Attorney Danehey asked for a continuance of this application.

Meeting was opened for public comment –

Mark Fenton (abutter @ 25 Crescent Avenue, Scituate, MA 02066) – offered that it was his opinion that Section 520.4 would be the defining factor to consider in this matter and felt it was clear with regard to its intent and specifications and the determination of the tributary.

John Sciara (abutter @ 330R Country Way, Scituate, MA 02066) – confirmed prior discussions regarding easement and fill issue and had additional comments regarding 11 Williamsburg Lane.

Attorney Danehey – at this time proposed a site walk for the board members and asked if a continuance were to be granted in this matter, would like to continued to March 17, 2022. Mr. Bucchere encouraged any board members interested to be involved in a site walk and also what the appropriate way to contact the Department of Environmental Protection and the Water Commission for their input in this matter.

Gerard Wynne (abutter @ 30 Williamsburg Lane, Scituate, MA 02066) – asked to be involved in site walk. Attorney Danehey stated he would reach out to him in this regard.

Mr. Bucchere – made a motion to approve Attorney Danehey's request for a continuance to the March 17, 2022 meeting of the ZBA with the understanding that the applicant may amend and/or modify their application to include a variance. Motion seconded by Mr. Carchia, all in favor, unanimous.

Fifth Application: (*continued from December 16, 2021*) 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 – at the written request of Scott and Tara McGavin, Mr. Bucchere made a motion to continue the McGavin application for 39 Arrowwood Drive, Scituate, MA 02066 to the February 17, 2022 meeting of the Scituate Zoning Board. Motion seconded by Mr. Carchia, all in favor, unanimous.

Sixth Application: Andrew Spath-Stockbridge Properties, LLC of 41 Cavanagh Road, Scituate, MA 02066 requests 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 the construction of a berm at **106-108 Stockbridge Road, Scituate, MA 02066 (Assessor's Map 54, Block 2, Parcel 25 & 26)**. **Chris Carchia** recused himself from this application as he is an abutter to the property.

Mr. Spath – suggested Mr. Vogel bring the board up to date with regard to the variance application. Mr. Vogel stated that within the appropriate bylaw that within the Water Resource Protection District zone that this property lies within that the slopes are critical to the protection of the district's resources (and to protect erosion, runoff, saltation) and that no slope can be created over 25% or 1:4 ratio. The way the berm was previously discussed and the way the berm needs to be constructed in a practical manner would lead to the side slopes being 1:1, which would be an approximate 10-foot-high berm with a base dimension of 25 feet with a five-foot flat area on top for plantings. According to the regulations and the variance is not in place, the berm becomes approximately 80 feet wide at the base which is not what was intended and is impracticable by the board's decision. Mr. Bucchere and Mr. Vogel opined that the other conditions that were previously put on the berm in the other granted relief are adequate to protect against improper runoff and damage to other vegetation as long as the berm is constructed properly and with the proper material (jute mesh and plantings). The variance standard was reviewed and discussed and the board agreed that this application was a valid variance application. Mr. Xixis and Ms. Harrison agreed that the berm would be a substantial improvement to the site and the area. Mr. Bucchere also confirmed that the berm would be constructed entirely on the applicant's property and have now added the combination of jute mesh and plantings will be used in a manner that is efficient.

Meeting was opened for public comment –

Chris Carchia (abutter @ 119 Stockbridge Road, Scituate, MA 02066) – questioned a maintenance requirement for the berm. The board stated that maintenance of the berm was a previously agreed on condition of the approval of the special permit.

Mark Fenton (abutter @ 25 Crescent Avenue, Scituate, MA 02066) – questioned/asked for clarification as to whether the applicant was directed by this board to go before Conservation Commission due to this properties proximity to water. It was noted that the Conservation Commission was notified of this hearing and no response was received. Mr. Spath also noted that a copy of the plan was delivered to the Conservation Commission and they had no issues with the plan.

David Sturgeon (not a Scituate resident - son-in-law of Robert Dillon @ 134 Stockbridge Road, Scituate, MA 02066) – questioned the timing of the construction of the berm itself. Mr. Spath commented that the planting would be in the spring but that the construction most likely would begin approximately 30 days from this date and pending approvals.

Mr. Bucchere – made a motion that the board grant the requested variance requested by Stockbridge Properties regarding the property at 106-108 Stockbridge Road, Scituate, MA 02066 and granting a variance from the slope requirements found within Section 520.5F to allow a berm of 10 feet in height and approximately 25 feet in width to come close to a 1:1 slope grading with the condition that a combination of jute mesh and plantings be utilized to maintain the integrity of the berm and prevent against unwanted runoff. Also, with the understanding that all requirements and conditions of the prior relief granted by this board with respect to this property also will be achieved. Motion seconded by Mr. Xixis, all in favor, unanimous.

APPROVAL OF MINUTES:

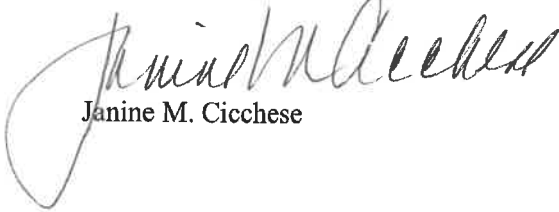
Mr. Bucchere – made a motion to approve the December 16, 2021 minutes. Motion seconded by Mr. Carchia, all in favor, unanimous. Mr. Marks abstained from voting as he was not in attendance at the meeting.

ADJOURNMENT

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

Meeting adjourned at 9:26 pm.

Respectfully submitted by,

A handwritten signature in dark ink, appearing to read 'Janine M. Cicchese', is written over the printed name. The signature is fluid and cursive, with a large loop at the beginning.

Janine M. Cicchese