

Town of Scituate

OFFICE OF BUILDING COMMISSIONER
ZONING ENFORCEMENT OFFICER

600 Chief Justice Cushing Hwy.
Scituate, Massachusetts 02066
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2024 APR 19 AM 11:39

TOWN OF SCITUATE ZONING BOARD OF APPEALS Meeting Minutes

January 18, 2024

Present: George Xixis, Chair, Christopher Carchia, Greg Fleming and Heath Fahle.
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, January 18, 2024 at 7:00 P.M.** to consider the following requests:

First Application: Matthew Donadio, 405 Blauvelt Avenue, Ho-Ho-Kus, NJ, 07423 requests approval of a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 810.2 of the Scituate Zoning Bylaws and/or any other relief that the Board of Appeals may grant, to reconstruct the existing dwelling with additions and raze/reconstruct the existing detached garage in conformance with setback requirements on a pre-existing, nonconforming lot at **16 Collier Avenue, Scituate, MA 02066 (Assessor's Map 8, Block 4, Parcel 5-B).**

Mr. Rick Grady of **Grady Consulting, L.L.C.** (71 Evergreen Street, Suite 1, Kingston, MA 02364) represented the Applicant and introduced both the **Architect (Ms. Sally Weston, Sally Weston Associates, 222 North Street, Hingham, MA 02043)** and **Contractor (Mr. Brian Greenberg)** as being in attendance.

Mr. Grady – presented and reviewed the application status. Mr. Grady reported that the pre-existing nonconforming lot is located in a R-3 Residential District, is 13,254 square feet in size and has 75 feet of frontage. The plan for the property is to take the existing 1.5 story dwelling down to its foundation and rebuild a 2-story dwelling with a rear addition and front porch. Front, side and rear setbacks will all be conforming when built as proposed. A plunge pool and new septic system will be located in the backyard.

Mr. Xixis – asked for a restatement of the lot frontage, to which Mr. Grady complied.

Mr. Xixis – reminded Mr. Grady that the pool is also subject to zoning setbacks.

Meeting was opened for public comment –

Ms. Mary Ellen Higgins – (abutter at 12 Collier Avenue, Scituate, MA 02066) stated her concern that the reconstruction of 16 Collier Avenue would, as presented, block the ocean view she currently enjoys.

Mr. Xixis – reminded those in attendance that there are no Bylaws regulating the loss of views.

Mr. Fleming – made a motion that the Board find that the proposed reconstruction of the existing dwelling with additions and the raze and reconstruction of the existing detached garage in conformance with setback requirements on a pre-existing, nonconforming lot (**16 Collier Avenue, Scituate, MA 02066**) pursuant to the plan prepared by Grady Consulting, L.L.C. dated October 20, 2023, with a revision dated 12.12.23, introduces no 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 the plan. The motion was seconded by Mr. Carchia, all in favor, unanimous.

Second Application: Kathleen McCoomb and Kevin Barry, 165 Thatcher Street, Milton, MA 02186 request a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 810 of the Scituate Zoning Bylaws and/or any other relief that the Board of Appeals may grant, to allow the construction of a second story addition to a nonconforming pre-existing dwelling at **26 Newport Street, Humarock, MA 02047 (Assessor's Map 71, Block 3, Parcel 2)**.

Mr. Kevin Barry (Applicant) – presented and reviewed the application status. The property is a pre-existing nonconforming dwelling on a nonconforming lot, located in an R-3 residential district. Proposed is the addition of a second story, constructed above the existing first floor footprint. No bedrooms will be added to the existing structure and there will be no change to the existing, free-standing garage.

Meeting was opened for public comment – no public comments.

Mr. Xixis – asked Mr. Vogel for comments.

Mr. Vogel – allowed that he is familiar with the project, as the Applicants have already applied for a building permit and that the plan and work to be performed do not trigger FEMA elevation requirements.

Mr. Xixis – made a motion that the Board find that the proposed construction of a second story addition to a nonconforming pre-existing dwelling (**26 Newport Street, Humarock, MA 02047**) pursuant to the plan prepared by PGB Engineering, LLC dated April 8, 2023 introduces no 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 the plan. The motion was seconded by Mr. Carchia, all in favor, unanimous.

Third Application: (Continued from November 16, 2023). J. Stephen Bjorklund, 861 Main Street, Norwell, MA 02061 requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 810.1 of the Scituate Zoning Bylaw and/or any other relief that the Board of Appeals may grant, to allow the construction of a single-family home located at **141 Turner Road, Scituate, MA 02066 (Assessor's Map 40, Block 1, Parcel 39)**.

Mr. Bjorklund – opened the continued discussion/review of his Application by stating that he wanted to visit the history and interpretation of Section 810.1 of the Scituate Zoning Bylaw. Mr. Bjorklund then

opined on the language and intent of Section 810.1, as most recently amended, approved by a vote of Town Meeting on April 11, 2022, and cited specific ZBA applications which, in his opinion, supported the approval of his Application for 141 Turner Road.

Mr. Bjorklund -- questioned the intent of Section 810.1 and it's interpretation by the Scituate ZBA in the years since its incorporation in the Bylaws.

Mr. Vogel – spoke of his intent and goals in writing the current amended Section 810.1.

There was general discussion among the Board, Mr. Bjorklund and Mr. Vogel regarding whether or not current rulings are subject to the stipulations and restrictions of the original Bylaw language or the language as currently amended.

Mr. Xixis – opined that the language of 810.1, dated April 11, 2022, is the language guiding ZBA decisions since that date.

Mr. Vogel – agreed with Mr. Xixis and stated that that had been his intent when proposing and promoting the amendment.

Meeting was opened for public comment –

Mr. Ted McCafferty – (abutter at 138 Turner Road, Scituate, MA 02066) stated that he and his attorney had submitted a letter to the ZBA, which was to remind the Board that the Applicant and his proposed development of 141 Turner Road had been to Land Court on several occasions and the requested relief to construct a single-family home on the parcel had been denied each time.

The Minichs -- (Pete and Cathy, abutters at 140 Turner Road, Scituate, MA 02066) also brought to the Board's attention the litigation surrounding the Applicant's attempts to develop 141 Turner Road and restated the fact that the property is not "blighted" and has been vacant for 40+ years.

Mr. Greg Morse – (167 Tack Factory Pond Drive, Scituate, MA 02066) opined that the amended 810.1 was intended to avoid blight, but that this property (141 Turner Road) should be considered a developable site, given that the proposed construction complies with setbacks and has direct water and sewer connections.

Mr. Jeff De Lisi – (318 Country Way, Scituate, MA 02066) opined that the Board is faced with presenting a Finding and not a Special Permit and offered that he thinks there was no mechanism in the Zoning Bylaw, from 1980 until the April 11, 2022 approval of the amended Section 810.1, for anyone to come forward asking for a waiver. Mr. De Lisi also shared his opinion on Mr. Bjorklund's approach to the Board, stating that he believed Mr. Bjorklund should focus his request for relief on the answer to the question of why the previous owner (of 141 Turner Road) did not apply for reconstruction/relief during the 2-year time frame provided by Section 810.1, as it was written at that time.

Mr. De Lisi -- requested that the Board not link Mr. Bjorklund's request for relief to his (Mr. De Lisi's), request as applied for in Application for 326 Central Avenue, Scituate, MA 02066.

Mr. Xixis – Assured Mr. De Lisi that the Board approaches applications on a case by case basis and that the Board consider each one fairly, in their discretion.

Mr. Xixis – redirected attention to questions/comments from Mr. Vogel and the Board after opening with his own comments and addressing the question before the Board. Mr. Xixis stated that, as he sees it, the question is whether or not the Board has the power to waive the 4-year period for property abandoned or not in use if a structure does not exist “in whole or in substantial part as of the effective date of this Bylaw or any other amendment thereto”. Mr. Xixis continued by briefly summarizing the situation, as follows:

- The property has not been in use for more than 4 years and, in fact, much longer. The property has been maintained and is not a blight, but an empty lot that is nonconforming in the R3 district, with respect to lot area, width and frontage.
- Prior to April 11, 2022 there was no mechanism for any property owner who had not come forward during the 2-year window (pre-April 11, 2022 Section 810.1 condition) to ask for a waiver, which is why Section 810.1 was rewritten.

Mr. Bjorklund – interjected that a property owner could (during that period) ask for a waiver, but the Board did not have the ability to grant it.

Mr. Xixis – responded that, yes, an owner could ask for a waiver, but agreed that there was no provision to provide for it. Mr. Xixis continued, saying that under the prior provision and as of February 3, 2016 when the issue had been settled by the Land Court, Mr. Bjorklund’s lot was an empty lot that was not separately buildable but could only function to enlarge the parcel of an abutter. Mr. Xixis opined that Mr. Bjorklund is before the ZBA because he (Mr. Bjorklund) believes:

- The ZBA now has the ability to grant a waiver, which, if granted, would give Mr. Bjorklund the right to build on the parcel in question.
- That Mr. Bjorklund is asking (under provision of 810.1) for the Board to grant him a waiver.

Mr. Xixis -- continued by saying that as of 2016 the property was what it was (not separately buildable) and that should the current ZBA fail to grant the waiver, the failure to grant the waiver would not change the current state of the property.

Mr. Carchia -- shared the objectives of the current Town Zoning Bylaws, opining that the Bylaw was created to straighten out choppy parceling pre-Bylaw and that the Bylaw gives the Town the ability to eliminate nonconformity. Mr. Carchia also stated that the Board is not bound by decisions handed down by earlier Boards. Mr. Carchia added that he doesn’t believe that the property at 141 Turner Road qualifies for an extension, given the extensive period of time (40 years) that it has lain vacant.

Mr. Fleming – agreed with Mr. Carchia and that the property is subject to current zoning and that it should not be “grandfathered” by means of the amended language in Section 810.1, given that it is a nonconforming lot.

Mr. Fahle – expressed concern as to whether or not denying the waiver constituted a type of “taking”.

Mr. Xixis – responded to Mr. Fahle by stating that if a property has no value or has a diminished value due to changes in the Bylaw, a decision by the Board to deny a waiver would not be considered a taking.

Mr. Xixis – summarized his understanding of the question facing the Board, saying that it comes down to whether or not the Board has the ability or inability to grant a waiver or relief. Mr. Xixis continued, stating that Mr. Bjorklund’s position is that the Board has the ability to grant relief, but in his (Mr. Xixis’) opinion, a wide range of discretion in this matter and that in his opinion 141 Turner Road is not eligible for a waiver or for relief.

Mr. Xixis – motion to deny the application. The motion was seconded by Mr. Carchia all in favor, unanimous.

APPROVAL OF MEETING MINUTES

The Board unanimously approved Minutes prepared for the ZBA meetings held on September 21, 2023 and October 19, 2023.

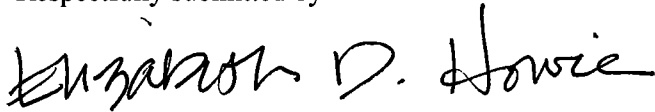
APPROVAL OF ZBA DECISIONS

There were no Decisions presented for approval.

ADJOURNMENT

Motion to adjourn by Mr. Xixis and seconded by Mr. Fleming, all in favor, unanimous.
Meeting adjourned at approximately 8:45 p.m.

Respectfully submitted by

A handwritten signature in black ink that reads "Elizabeth D. Howie". The signature is written in a cursive, flowing style.

Elizabeth D. Howie