

# Town of Scituate

OFFICE OF BUILDING COMMISSIONER  
ZONING ENFORCEMENT OFFICER

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

February 15, 2024

**Present:** George Xixis, Chair, Justin Marks, Greg Fleming, Heath Fahle  
**Also present:** Robert Vogel, Scituate Building Commissioner

The Scituate Zoning Board of Appeals held a hybrid public hearing in the Select Board's Hearing Room in the Scituate Town Hall located at 600 Chief Justice Cushing Highway and was also accessible via Zoom on **Thursday, February 15, 2024 at 7:00 P.M.** to consider the following requests:

**First Application: (Continued from December 21, 2023).** Catherine E. Spillane, 326 Central Avenue, Scituate, MA 02066 seeks (1) a waiver by special permit and/or finding pursuant to Scituate Zoning Bylaw Section 810.1 of the four-year "abandonment or non-use period" of a pre-existing, nonconforming structure on a pre-existing, nonconforming lot at **326 Central Avenue, Scituate, MA 02066 (Assessor's Map 68, Block 5, Parcel 17)** that had been damaged or destroyed by fire in 2012, and (2) a finding, pursuant to Scituate Zoning Bylaw Section 821.2C and M.G.L. Chapter 40A, Section 6, to allow a proposed repair, alteration, reconstruction, extension or structural change to the said nonconforming structure that will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

**Mr. Matt Mitchell** -- of the firm Ohrenberger, De Lisi & Harris, LLP, 28 New Driftway, Scituate, MA 02066 appeared on behalf of Ms. Spillane and her representative, Mr. Jeff De Lisi of Ohrenberger, De Lisi & Harris. Mr. Mitchell indicated that a continuance for this application had been requested by Mr. De Lisi. An email authored by Mr. De Lisi requesting the continuance until the Board's April 18, 2024 was shared with the Board before the meeting.

**Mr. Xixis** -- made a motion to recognize the request and grant the continuance. Mr. Marks seconded the motion, all in favor, unanimous.

**Second Application:** Angela Stout, c/o J. Stephen Bjorklund, requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 530 of the Scituate Zoning Bylaws and/or any other relief that the Board of Appeals may grant, to allow the partial conversion of an existing garage to an accessory dwelling at **22 Beal Place, Scituate, MA, 02066 (Assessor's Map 50, Block 5, Parcel 40)**.

**Mr. Xixis** -- Asked Mr. Bjorklund why he was appearing before the ZBA, given that this project had already been approved by the Planning Board. (What relief had not been granted by the Planning Board?)

**Mr. Bjorklund** – stated that the property is nonconforming in terms of frontage (having 98.27 feet while needing 100 feet) and width (having 98.27 feet while needing 100 feet).

**Mr. Xixis** – made a motion to approve and adopt the Special Permit granted by the Planning Board. Mr. Fleming seconded the motion, all in favor, unanimous.

**Third Application: Adams Equity Partners, LLC c/o Jeffrey A. De Lisi, Esq., Ohrenberger, De Lisi & Harris, LLP, 28 New Driftway, Scituate, MA 02066** request a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 610.2.B of the Scituate Zoning Bylaws and/or any other relief that the Board of Appeals may grant, to create Lot 2, as depicted on a plan by Morse Engineering dated January 17, 2024 for property with an existing address of **165 Summer Street, Scituate, MA, 02066 (Assessor Parcel Nos. 23-1-38-F and 24-2-49-B).**

**Matt Mitchell**, of Ohrenberger, De Lisi & Harris, and **Greg Morse**, of Morse Engineering, represented the Applicant.

**Mr. Morris** – presented and reviewed the application status. The Application is a request to grant the creation of a 50 feet frontage lot on the property known as 165 Summer Street, Scituate, MA 02066. The lot is in the R1 zoning district, Water Resource Protection District and is approximately 139,822 square feet in overall size. There is an existing home on the property. The property was previously divided years ago and the Town line of Scituate and Town line of Norwell bi-sect the lot.

**Mr. Xixis** – questioned whether the Applicant is looking to maintain Lot 1 and Lot 2 or is the Applicant looking to merge the 2 lots into 1 lot.

**Mr. Morse** – responded by saying that the Applicant is looking to make 1 new buildable lot (Lot 2) and proceeded to show on plan what area Lot 2 encompasses. Lot 2 is more than 2 times in size than the upland area (94,115 square feet), with 80,962 square feet of that being upland area. Lot 2 has frontage of 117.47 feet on Summer Street.

**Mr. Xixis** – asked Mr. Morse is this is, then, one lot that the Applicant is trying to divide into two.

**Mr. Morse** – responded by saying that this was a lot with a house on it that had a separate parcel of land that effectively is merged because they are under the same ownership.

**Mr. Xixis** – to clarify the Applicant's intent, Mr. Xixis asked Mr. Morse if the Applicant is trying to change the boundaries of these lots so there will be a different Lot 1 and a different Lot 2.

**Mr. Morse** – responded that Mr. Xixis comment/clarification is correct. Mr. Morse continued, by stating that Lot 1 is a fully compliant zoning lot, so the Applicant is not before the Board for Lot 1, but that they will go to the Planning Board seeking an ANR (Approval Not Required) endorsement to recreate the existing lot lines. Mr. Morse also stated that the Applicant is seeking approval from the ZBA only for Lot 2 as a 50 feet frontage lot. They are seeking approval for a 50 feet frontage lot because a conventional lot in Scituate requires a lot width of 100 feet from the road to the structure to be constructed. At its most narrow, Lot 2, as proposed, does not support/maintain that 100 feet. Lot 2 does, however, meet the criteria for a 50 feet frontage lot.

**Mr. Xixis** – stated his assumption that the house to be constructed on Lot 2 will be conforming as to setbacks.

**Mr. Morse** – responded in the affirmative to Mr. Xixis’ question.

**Mr. Vogel** – stated that he assumes a couple of more steps need be taken for Lot 2 to be developable, including receiving an ANR from the Planning Board and determining and achieving access to Lot 2 without crossing the wetlands area.

**Mr. Xixis** – also questioned the accessibility of Lot 2, given that a good portion of the Summer Street frontage is wetlands.

**Mr. Morse** – responded to Messrs. Vogel and Xixis by stating that this (ZBA Hearing) is the Applicant’s first step in a multi-step process and that after receiving ZBA approval the Applicant will go to the Planning Boards in both Scituate and Norwell. Mr. Morse addressed the question of access by stating that access to Lot 2 will be over the existing driveway to 165 Summer Street, which is in the Town of Norwell and that Norwell allows “by right” common driveways up to 100 feet in length. The intended access to Lot 2 will be through the common driveway and then by easement.

**Mr. Fleming** – asked if there would be a new curb cut in Scituate.

**Mr. Morse** – indicated that there would be no new curb cut in Scituate.

**Meeting was opened for public comment –**

**Mr. J. Stephen Bjorklund (861 Main Street, Norwell, MA 02061)** – offered that he did not believe the two lots have been merged and that the Applicants are just modifying the plan that they had (Mr. Bjorklund stated that the original plan was on record). Mr. Bjorklund continued to say that he believed this plan to be better than that which was originally approved and restated that he believes they (Applicants) have 2 separate lots.

**Ms. Amy Spencer-Forrest (abutter @ 159 Summer Street, Scituate, MA 02066)** – asked for clarity on lot lines and how the new lot would be accessed.

**Mr. Morse** – answered Ms. Spencer-Forrest by revisiting the plan and stating that the lot would be accessed by a common driveway, which would originate in Norwell.

**Mr. Xixis** – asked if anyone had a question or comment vis-à-vis Mr. Bjorklund’s assertion that these lots have not merged and whether or not anyone believes that a merger is necessary in light of the process the Applicant needs to go through to get the lot lines redrawn.

**No questions or comments were shared.**

**Mr. Xixis** – asked Mr. Morse if the Applicant is asking the Board to approve the offered plan, assuming everyone else who needs to approve the plan does so.

**Mr. Morse** – responded that the Applicant is asking the ZBA to approve Lot 2 as a 50 feet frontage lot.

**Ms. Tracy Gaudet** – (abutter @161 Summer Street, Scituate, MA 02066) asked for clarification that any easement would be on 165 Summer Street and no other property.

**Mr. Morse** – confirmed that the only easement would be on 165 Summer Street.

**Mr. Xixis** – made a motion on the application of Adams Equity Partners, LLC c/o Jeffrey A. De Lisa, Esq., requesting a Special Permit/Finding and/or any other relief that the Board of Appeals may grant pursuant to Scituate Zoning Bylaw Section 610.2.B to create a so-called 50 foot frontage lot, shown as Lot 2 on the property located at 165 Summer Street, Scituate, MA 02066 according to the plan by Morse Engineering Co., Inc. dated January 17, 2024 and that the Board grant that request. The motion was seconded by Mr. Fleming, all in favor, unanimous.

**Fourth Application: Kathy A. & Frank J. Nelson, 9 Collier Road, Scituate, MA, 02066** request a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 810.2 of the Scituate Bylaws 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 **9 Collier Road, Scituate, MA, 02066 (Assessor's Map 64, Block 6, Parcel 2)**. Mr. Morse, of Morse Engineering Company, LLC, 10 New Driftway Ste 303, Scituate, MA 02066, represented the Applicants.

**Mr. Morse** – presented and reviewed the application status. Mr. Morse reported that the property is shown on the Assessor's card as having been built in 1890, but that it had undergone significant renovations in the 1990s. The existing structure and property, located in the R3 district, do not conform regarding lot frontage, lot width through the house, front yard setback and side yard setback. The proposed reconstruction will increase the lot width through the house to 64.59 feet and front setback to 36 feet, while the rear setback will decrease to 62.5 feet. The left side setback will increase to 5 feet and the right side setback will decrease to 16 feet. Acknowledging the Plan, Mr. Morse stated that the Gross Floor Area of the proposed structure will increase by 68.3%, from 2,864 square feet to 4,822 square feet. Mr. Morse further stated that he believes the proposed new construction is in keeping with the neighborhood and that it will not create any new nonconformities.

**Mr. Vogel** – questioned whether or not the garage is structurally connected.

**Mr. Morse** – responded that the garage is attached.

**Mr. Vogel** – pointed to the existing garage as an encroachment on the side yard setback and wondered if the proposed floor plan could be reconfigured so as not to encroach and possibly cause drainage issues. Mr. Vogel continued, saying that stormwater runoff from new and recent construction has become an issue and that he would like to see all measures taken to prevent this issue.

**Mr. Morse** – responded that the proposed plan is scheduled to meet with the Conservation Commission and that this Application to the ZBA is but a first step in the approval process.

**Meeting was opened for public comment –**

**Ms. Maureen Hayes** – (abutter at 3 Collier Road) expressed her concern that the proposed proximity of the new construction might pose a fire risk and requested that the ZBA make their approval conditional and move that any mechanicals will not be located on her/the North/Northeast side of the property.

**Mr. Morse** – shared that he was not comfortable making the decision to move the mechanicals.

**Mr. Xixis** – made a motion to pause and revisit this Application at the end of the meeting, so as to give Mr. Morse and his associate time to consider the placement of the mechanicals. Mr. Fleming seconded the motion.

**Fifth Application: Michael and Mary Phipps Milot, 12 Forest Park Drive, Vero Beach, FL, 32962 through their Agent (Paul J. Mirabito, PLS, Ross Engineering Company, 683 Main Street, Norwell, MA 02061) request a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 810.2.B of the Scituate Bylaws 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 62 Gilson Road, Scituate, MA, 02066 (Assessor's Map 60, Block 2, Parcel 21).**

**Mr. Xixis** – (in concert with Mr. Mirabito) summarized the Application, presented and reviewed the application status. The subject property is a 5,348 square feet nonconforming lot containing a single family dwelling, which was constructed in 1920.

The existing structure and property, located in the R2 district, do not conform regarding lot frontage, lot area and the structure's left side yard setback. The currently existing setbacks will remain relatively unchanged with the proposed reconstruction. According to the Plan prepared by Ross Engineering Company, the Gross Floor Area of the proposed structure will increase by 237%, from 784 square feet to 2,636 square feet. No grade changes are proposed and the increase in impervious area is 20.6% and as such, will not require any onsite stormwater mitigation.

**Meeting was opened for public comment** – no public comments.

**Mr. Xixis** -- made a motion on the application of Michael and Mary Phipps Milot, 12 Forest Park Drive, Vero, Scituate, MA requesting a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 810.2B of the Scituate Zoning Bylaws 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 on a preexisting nonconforming lot at 62 Gilson Road, Scituate, MA 02066 pursuant to the plan by Ross Engineering Company dated January 18, 2024 and that the Board find that the proposed construction 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 application be granted. The motion was seconded by Mr. Fleming, all in favor, unanimous.

**Mr. Xixis called back Mr. Morse to continue the hearing of the Fourth Application.**

**Mr. Morse** -- responding to comments from Ms. Hayes (abutter @ 159 Summer Street, Scituate, MA 02066) regarding the location of the AC unit(s) and generator, Mr. Morse stated that he and his associate revisited the plan presented to the Board and decided that the most desirable location for the generator would be on the northwest-most corner of the house, approximately 20 feet from the lot line and that the AC would be located approximately 8 feet from the lot line, also on the northwest side of the house.

**Mr. Xixis** – asked Mr. Morse if he would find it acceptable if the Board approved placement of the AC unit at least 8 feet from the lot line and the placement of the generator at least 20 feet from the lot line.

**Mr. Morse** – responded that the generator, at this newly proposed location would be at least 15 feet from the lot line.

**Mr. Xixis** – asked if there were any other comments or questions and, in the absence of comments and questions, Mr. Xixis presented his motion.

**Mr. Xixis** – made a motion on the application of **Kathy A. & Frank J. Nelson, 9 Collier Road, Scituate, MA, 02066** requesting a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6 and Section 810.2B of the Scituate Zoning Bylaws 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 9 Collier Road, Scituate, MA, 02066 pursuant to the plan by Morse Engineering Co., Inc. dated January 18, 2024 and revised on February 7, 2024 with the condition that the proposed AC unit be situated at least 8 feet from the northwest lot line and that the proposed generator be situated at least 15 feet from said northwest lot line and that the Board find that the proposed raze and reconstruction 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 application be granted. The motion was seconded by Mr. Fleming, all in favor, unanimous.

#### **APPROVAL OF MEETING MINUTES**

The Board unanimously approved Minutes prepared for the ZBA meeting held on November 16, 2023.

#### **APPROVAL OF ZBA DECISIONS**

The Board unanimously approved ZBA Decisions for the following Applications:


- 2 Ocean Avenue
- 70 Glades Road
- 74B Glades Road
- 74 and 74C Glades Road

#### **ADJOURNMENT**

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

Meeting adjourned at approximately 7:45 p.m.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read "Elizabeth D. Howie". The signature is fluid and cursive, with the first name being the most prominent.

Elizabeth D. Howie