

**MINUTES
TOWN OF HARWICH
ZONING BOARD OF APPEALS
7:00PM WEDNESDAY, SEPTEMBER 27, 2023
TOWN HALL - GRIFFIN ROOM**

RECEIVED
TOWN CLERK
HARWICH, MA

2023 OCT 30 A 9:17

MEMBERS PARTICIPATING: Brian Sullivan, Chairman, Kenneth Dickson, Chris Murphy, Al Donoghue, Clerk, Dave Nunnally and John August

I. CALL TO ORDER; RECORDING NOTICE

Mr. Sullivan called the meeting of the Town of Harwich Zoning Board of Appeals to order on Wednesday, September 27, 2023, at 7:00. He noted the purpose of the meeting and read the Recording Notice. All members identified themselves, for the record.

II. PUBLIC HEARINGS

Case No. **2023-27 Vincent P. Helfrich & Jeanne M. Helfrich, Trustees of Jeanne M. Hilfrich Trust**, % Andrew Singer, Esq., PO Box 6, Dennisport, MA 02639, owner of the property located at **33 Snow Inn Rd**, Assessors' Map P-3, in the RI Zoning District. The Applicant seeks a Special permit to renovate and construct a two-story addition onto a pre-existing, nonconforming single-family dwelling, pursuant to the Harwich Zoning By-laws s325-54 and MGL Chapter 40A Section 6.

Mr. Donoghue read Case No. **2023-27** as presented.

Mr. Sullivan noted that the Health Department did not express any concerns about the project. He noted a letter from the owners of 29 Snow Inn Rd., requesting that the Board delay approval. Voting on this case are Al Donoghue, Brian Sullivan, David Nunnally, Chris Murphy, and David Ryer.

Attorney Andrew Singer was present and representing the Applicants. Present in the audience were Vincent Helfrich and Brad Mola of Coastal Engineering. He reviewed the Applicants' request in detail. He noted that everything done on this property in the past has been done with permits and with permission of the Wheelers. (abutters). Also noted was that the Conservation Commission has approved the project.

Board members asked questions about the retaining wall, which Mr. Helfrich answered in detail. Board members asked additional questions which were answered in detail.

Mr. Sullivan opened the Public Hearing.

Emily Wheeler, owner/abutter, read part of the letter written by her sister. She and her sisters (owners) believe they will be adversely affected by the renovation and construction and gave

their reasons. She especially noted the easement and the calculation of site coverage. They (she and her sisters) respectfully request that the Board of Appeals delay issuing a decision on the Special Permit Application for the reasons noted.

Board members asked questions which Ms. Wheeler answered.

Mr. Ryer moved to close the Public Hearing, seconded by Mr. Dickson.

Vote 7:0 in favor. Motion carried.

Mr. Sullivan opened the Board discussion.

Board discussion followed and suggestions of conditions were made.

Mr. Nunnally moved to close the Board discussion, seconded by Mr. Donoghue.

Vote 7:0 in favor. Motion carried.

Mr. Donoghue moved on and read Case No. **2023-27 Vincent P. Helfrich & Jeanne M. Helfrich**, Trustees of Jeanne M. Hilfrich Trust of 33 Snow Inn Road, The Applicant seeks a Special permit to renovate and construct a two-story addition onto a pre-existing, nonconforming single-family dwelling, pursuant to the Harwich Zoning By-laws s325-54 and MGL Chapter 40A Section 6. The Applicants have been granted a Special Permit by the Board having found that the Applicant meets the requirements of the By-law and the Gale Dietrich cases. The proposed project will intensify one or more existing non-conforming, and no new non-conformities. It will not be substantially more detrimental to the neighborhood than existing structures. All work shall be performed in accordance with the plan submitted with this application, The Special Permit is granted subject to the following conditions: There will be no demolition, construction, or new landscaping during the time period from 30 June to Labor Day in any year. During the life of the project, all construction vehicles shall be parked on the property and not on any public street or road. Further, the Board, by granting this Special Permit, is not approving any possible violation or infringement of the easement rights of the owner of 29 Snow Inn Road, Harwich, MA. There will be sufficient attention to the current runoff and the property owner indicated it has a well in which the runoff will be taken off the surface. It is a condition of this approval a violation of the terms and conditions of the Special permit may be enforced as a violation of the Harwich Zoning By-law pursuant to MGL Chapter 40A Section 7 and the Harwich Zoning By-laws as these may be amended from time to time.

Mr. Ryer seconded the motion.

Vote 5:0 in favor with Mr. Donoghue, Mr. Sullivan, Mr. Nunnally, Mr. Murphy, and Mr. Ryer voting aye. Motion carried.

Case No. **2023-28 Rudolph Hernandez & Robin Hernandez, Trustees of the Hernandez Living Trust**, % William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at **2 Pilgrim Rd.**, Assessors' Map 7, parcel C16, in the RH-1 Zoning

District. The Applicant seeks a Special Permit, or in the alternative a Variance, to renovate and construct a covered porch and second floor deck with exterior stairs only a pre-existing, nonconforming single-family dwelling, pursuant to the Harwich Zoning By-laws s325-54 and - 52 and MGL Chapter 40A Sections 6 & 10.

Mr. Donoghue read case No. **2023-28** as presented.

Mr. Sullivan noted that the Health Department has no concerns about the project. This Applicant will be going before the Conservation Commission on October 3rd for review. He has a letter from an abutter with objections to various aspects of the project. Voting on this case will be; Mr. Donoghue, Mr. Sullivan, Mr. Nunnally, Mr. Ryer and Mr. Dickson.

Attorney William Crowell was present and representing the Applicants. Ms. Hernandez was also present. Mr. Crowell described the plan in detail noting that the proposed renovations are not closer to the lot line than the existing structure. He distributed pictures to Board members to use as a visual aid. Board members asked questions and Mr. Crowell and Ms. Fernandez answered in detail.

Mr. Sullivan opened the Public Hearing.

Alan Campbell of 18 Sea Street voiced his objection to the Special Permit and gave his reasons. He also spoke on behalf of the Heffernon Family at their request.

Atty. Crowell responded to Mr. Campbell and his concerns and expressed his own opinion regarding the spiral staircase noting that it is not a detriment to the entire neighborhood.

Mr. Ryer responded to Mr. Crowell by citing and reading Section 351 of the By-law Section B.

Mr. Dickson moved to close the Public Hearing, seconded by Mr. Donoghue. Vote 7:0 in favor. Motion carried.

Mr. Sullivan opened the Board discussion.

Mr. Ryer moved to close the Board's discussion, seconded by Mr. Donoghue. Vote 7:0 in favor. Motion carried.

Mr. Donoghue moved on and read Case No. **2023-28 Rudolph Hernandez & Robin Hernandez, Trustees of the Hernandez Living Trust**, % William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at **2 Pilgrim Rd.**, Assessors' Map 7, parcel C16, in the RH-1 Zoning District. The Applicant seeks a Special Permit, or in the alternative a Variance, to renovate and construct a covered porch and second floor deck with exterior stairs in accordance with the plans, only a pre-existing, nonconforming single-family dwelling. The Applicant has been granted a Special Permit and meets both the Gale and Dietrich cases. The project will intensify one of more existing non-conformities and will not substantially be more detrimental to the neighborhood than existing structures. All work will be performed in accordance with the plan submitted. The Special Permit is being granted subject to the following

conditions: There shall be no demolition, exterior construction or new landscaping during the period of June 30 through Labor Day of any year. During the length of the project, all constructions vehicles, if possible, shall be parked on the property. It is a condition of this approval that a violation of the terms and conditions of this Special Permit may be enforced as a violation of the Harwich By-laws pursuant to MGL Chapter 40A Section 7 and the Harwich Zoning By-law as these may be amended from time to time.

Mr. Ryer seconded the motion. Vote 5:0 in favor with Mr. Donoghue, Mr. Sullivan, Mr. Nunnally, Mr. Ryer and Mr. Dickson voting aye. Motion carried.

Case No. **2023-29 Dawna S. Levinson & Amy P. Levinson**, % William D. Crowell, Esq. 466 Route 28, Harwich Port, MA 02645, owner of the property located at **39 Wah Wah Taysee Rd.**, Assessors' Map 6, parcel B1-2, in the RH-1 Zoning District. The Applicant seeks a Special Permit, or in the alternative a Variance, to raze and replace a pre-existing, nonconforming single-family dwelling, pursuant to the Harwich Zoning By-laws s325-54 and -52 and MGL 40A Sections 6 & 10.

Mr. Donoghue read Case No. **2023-29** as presented. He also read a letter of support filed by an abutter.

Mr. Sullivan noted that the Health Department has no concerns about the project as proposed. He assigned voting on this case to: Mr. Donoghue, Mr. Nunnally, Mr. Murphy, Mr. Ryer and Mr. August.

Attorney Crowell was present and representing the Applicants who were seated in the audience. Also present was Paul Muldoon, the architect on the project and Brendan Lowney, a representative of the builder, Lewis, and Weldon. Mr. Crowell described the project and plan in detail.

Board members asked questions which Mr. Crowell and Mr. Muldoon answered in detail.

Mr. Sullivan opened the Public Hearing.

Mr. Crowell offered a bit of local history and explained the name of the road.

Mr. Ryer noted that the overhang goes into the front setback by 1.2 feet and is under 325-18F.

Mr. Crowell noted the measurement and that it is only 6" closer than what is allowed.

Mr. Dickson moved to close the Public Hearing, seconded by Mr. August. Vote 7:0 in favor. Motion carried.

Mr. Donoghue moved on and read Case No. **2023-29 Dawna S. Levinson & Amy P. Levinson**, % William D. Crowell, Esq. 466 Route 28, Harwich Port, MA 02645, owner of the property located at **39 Wah Wah Taysee Rd.**, Assessors' Map 6, parcel B1-2, in the RH-1 Zoning District. The Applicant seeks a Special Permit, or in the alternative a Variance, to raze and

replace a pre-existing, nonconforming single-family dwelling. The Board has moved to grant the Special Permit in this case having found that the Applicant meets the requirements and By-laws and the Gale and Dietrich cases as it will intensify one for more existing non-conformities and will not create any new non-conformities and will not be substantially more detrimental to the neighborhood than the existing structure. All work will be in accordance with the plan submitted with this application. The Special Permit is subject to the following conditions: There will be no demolition, exterior construction or new landscaping during the period of June 30 through Labor Day of any year. During the life of the project, all construction vehicles will be parked on the property and not on any public road. It is a condition of this approval that any violation of the terms of conditions of the Special Permit may be enforced as a violation of the Harwich Zoning By-laws pursuant to MGL Chapter 40A Section 7 of the Harwich Zoning By-law as these may be amended from time to time.

Mr. Ryer seconded the motion. Vote: 5:0 in favor with Mr. Donaghue, Mr. Nunnally, Mr. Murphy, Mr. Ryer and Mr. August voting Aye. Motion carried.

Case No **2023-30 Aaron T. & Debra J. Gingras**, % William D. Crowell, Esq. 466 Route 28, Harwich Port, MA 02645, owner of the property located at **10 Aarons Way**. Assessors' Map 60, Parcel G7-8 & **185 Pleasant Lake Ave.**, Assessors' Map 60, Parcel G1-2, in the RM District. The Applicant seeks a Variance from, applicable shape number requirements in s325-18 pursuant to the Harwich Zoning By-laws s325-52 and MGL Chapter 40A Section 10

Mr. Donoghue read Case No. **2023-30** as presented.

Mr. Sullivan noted that the Town has no issues. Voting assigned for this case: Mr. Donoghue, Mr. Sullivan, Mr. Murphy, Mr. Ryer and Mr. Dickson. He also noted that the hearing on this case has to do with the shape number situation and nothing to do with the frontage.

Attorney Crowell was present and representing the Applicants, Mr. Gingras was also present. He described the Application and the Plan in detail.

Mr. Sullivan opened the Public Hearing.

Daniel Hall of Long Pond Drive expressed concerns about the plan.

Mr. Nunnally moved to close the Public Hearing, seconded by Mr. Donoghue. Vote: 7:0 in favor. Motion carried.

Mr. Sullivan opened the Board discussion.

Board discussion followed regarding frontage and depth as well as other details about the shape.

Mr. Donoghue moved to reopen the Public Hearing, seconded by Mr. Murphy. Motion carried.

David Waite, an abutter on Pleasant Lake Ave., spoke and questioned the shape of the lot which he described as panhandle and expressed his concerns about the Plan.

Atty. Crowell responded to Mr. Waite's concern about the shape of the lot.

Mr. Ryer moved to close the Public Hearing, seconded by Mr. Dickson. Vote 7:0 in favor. Motion carried.

The Board resumed their discussion and clarified what they are making a decision on and what issues are for other Boards. Mr. Dickson expressed concerns about the math and the perimeter and suggested a condition of clarifying the calculations as he is not comfortable voting for this until numbers are clarified.

Mr. Crowell responded that Mr. Sweetzer, the Engineer, had signed and certified his calculations. He also suggested that rather than a continuance, the Board impose a condition that it would be approved subject to Mr. Sweetzer verifying the calculation.

Board discussion continued.

Mr. Sullivan read and moved on Case No. **2023-30, Aaron T. & Debra J. Gingras**, % William D. Crowell, Esq. 466 Route 28, Harwich Port, MA 02645, owner of the property located at **10 Aarons Way**. Assessors' Map 60, Parcel G7-8 & **185 Pleasant Lake Ave.**, Assessors' Map 60, Parcel G1-2, in the RM District. The Applicant has been granted a Variance from, applicable shape number requirements in s325-18 pursuant to the Harwich Zoning By-laws s325-52 and MGL Chapter 40A Section 10, as a failure of the Board to make this grant would result in a substantial hardship to the Applicant. The Board further finds that the condition is specific to this property and does not generally affect the entire District. There will be no substantial detriment to the public good by the granting of this Variance and that this granting will not nullify or substantially derogate any purpose of the By-law. The Violation of the terms or conditions of this Variance may be enforced in violation of the Harwich Zoning By-law pursuant to MGL 40A Section 7 and the Harwich Zoning By-laws as these may be amended from time to time.

Mr. Dickson went on record as saying that since Mr. August convinced him that 22 is an arbitrary number and the Chair noted that we don't know where it came from or why it's there, he no longer holds the same objection that he had about not knowing the numbers.

Seconded by Mr. Ryer.

Vote 5:0 in favor with Mr. Donoghue, Mr. Sullivan, Mr. Murphy, Mr. Ryer and Mr. Dickson voting Aye. Motion carried.

III. Approval of Minutes

- Approval of Minutes from 07.26.23 meeting
- Approval of minutes from 08.30.23 meeting

Mr. Ryer moved to approve the Minutes of the 07.26.23 meeting and the 08.30.23 meeting, seconded. Vote 7:0 in favor. Motion carried.

IV. NEW BUSINESS

- Any new business per the Board's discretion

Mr. Sullivan started a conversation about the time of the meetings and asked members to consider a 6:30PM start time for future meetings. He also brought up the subject of decks and the limit to going up, and asked members to also consider the issue for a future meeting.

V. OLD BUSINESS

None discussed.

VI. CORRESPONDENCE/BRIEFING

None discussed.

VII. ADJOURN

Mr. Nunnally moved to adjourn, seconded by Mr. Murphy. Vote 7:0 in favor. Motion carried.

Meeting adjourned.

Respectfully submitted,
Judi Moldstad
Board Secretary