

**MINUTES
TOWN OF HARWICH
ZONING BOARD OF APPEALS
7:00PM WEDNESDAY, OCTOBER 25, 2023
TOWN HALL - GRIFFIN ROOM**

RECEIVED
TOWN CLERK
HARWICH, MA

2023 DEC -1 P 12:38

The full recording of this meeting can be viewed on You Tube, Harwich Channel 8.

MEMBERS PARTICIPATING: Brian Sullivan, Chairman, John August, David Nunnally, Al Donoghue, Clerk, David Ryer and Kenneth Dickson

I. CALL TO ORDER: Chairman Sullivan called the meeting of the Harwich Zoning Board of Appeals to order on Wednesday, October 25, 2023, at 7:00PM and read the Open Meeting Notice. Board members identified themselves for the record.

II. PUBLIC HEARING:

Case No. **2023-31 Joseph & Kathleen Emerson**, % Paul Muldoon - Muldoon Architects, LLC, 571 MA-28 Harwich Port, MA 02646, owner of the property located at **26 Moody Road**, Assessors' Map 23, Parcel A3-4, in the RL Zoning District. The Applicant seeks a Special Permit to raze & replace the pre-existing non-conforming single-family dwelling, pursuant to the Harwich Zoning By-laws s325-54 and MGL Chapter 40A Section 6.

Mr. Donoghue read Case No. 2023-031 as presented.

Mr. Sullivan noted that there were no notices submitted by the Town Departments, including the Board of Health. There were no notices filed by abutters. Members assigned to vote on this case were: Al Donoghue, David Nunnally, David Ryer, John August, and Kenneth Dickson.

Paul Muldoon of Muldoon Architects was present and representing John and Kathleen Emerson in their project at 26 Moody Road. Mr. Muldoon described the project in detail.

Mr. August asked questions regarding the septic system. Mr. Muldoon noted that they have an approved septic plan for 4 bedrooms.

Board members expressed concern that they had not received feedback from any Departments.

Mr. Sullivan noted that as the Applicants go through the process, the Board of Health will be involved.

Also noted was that two lots had been merged and the difference in dates on the plans. Other questions were asked and answered in detail.

Mr. Sullivan opened the Public Hearing.

An abutter, Laura (last name not stated), commented that most neighbors are there year round. She has no objection to the new home being built during the summer months. She is in favor of the Plan.

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

Vote 6:0 in favor. Motion carried.

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

Vote 6:0 in favor. Motion carried.

Mr. Ryer stated that the project meets the requirements of the Gale and Dietrich cases and the By-law. It's intensifying existing nonconformities and not creating any new one. In his opinion, it is not substantially more detrimental to the neighborhood. It is a positive addition to the neighborhood.

Mr. Donoghue moved to approve Case No. 2023-31 Joseph & Kathleen Emerson, owners of the property located at 26 Moody Road, Assessors' Map 23, Parcel A3-4, in the RL Zoning District. The Board has approved the Special Permit to raze & replace the pre-existing non-conforming single-family dwelling, pursuant to the Harwich Zoning By-laws s325-54 and MGL Chapter 40A Section 6. The current structure is a lawfully pre-existing, nonconforming single-family dwelling. The new structure will not be substantially detrimental to the neighborhood. The following conditions have been placed: There will be no demolition, outside construction or new landscaping during the period of June 30th to Labor Day of any year. During the life of the project, all construction vehicles shall be parked on the property to the extent possible. Building coverage shall not exceed 15%. It is a condition of this approval that the violation of the terms and conditions of this special permit may be enforced as a violation of the Harwich Zoning By-laws, MGL 40A Section 7 and the Harwich Zoning By-law as these may be amended from time to time. Seconded by Mr. Ryer.

Vote 5:0 in favor. Motion carried.

III. APPROVAL OF MINUTES

-September 27, 2023

Mr. Ryer read two comments into the record. 1.) On Case 2023-7, in the minutes for September 27, 2023, third line from the bottom of the first page, changing Public Meeting to Public Hearing. 2. On Case 2023-30, on the third line from the bottom, add to the end of the motion, Motion Carried.

Mr. Sullivan added a spelling correction, page 4, seconded paragraph, to Ryer.

Mr. Sullivan expressed that there should be more detail in the minutes, especially regarding Board discussions.

October 25, 2023

Mr. Ryer suggested adding a reference to the minutes noting that the full Board discussion may be viewed on the Harwich Channel 8.

Mr. August moved to approve the minutes as amended, seconded by Mr. Dickson.

Vote 6:0 in favor. Motion carried.

Mr. Ryer asked for a description of the Zoning Coordinator's position.

Mr. Sullivan gave a brief description but will get a more detailed explanation.

IV. NEW BUSINESS

-Any new business per the Board's discretion

-Discussion and possible vote to approve the 2024 ZBA Meeting Schedule

Mr. Sullivan reviewed the proposed dates. Board members made suggestions and noted their preferences.

Due to the availability of the room, there were alternate dates for November and December 2024. November 21, 2024, and December 19, 2024, were agreed upon dates.

Mr. Sullivan suggested that the meetings start at 6:30PM. After discussion, Board members agreed to the 6:30PM start time.

Mr. August moved to accept the 2024 calendar with the revisions as discussed, seconded by Mr. Nunnally.

Mr. Ryer suggested that the wording at the top referring to "five weeks prior" be removed. Discussion followed; no revision as made regarding that wording.

Vote 6:0 in favor. Motion carried.

Mr. Sullivan distributed handouts regarding Special Permits for the purpose of discussion and clarification. He gave a description of the original Gale case. Mr. Sullivan gave examples of cases that have been before the Board in the past, different situations and how setbacks and decks have been addressed. Also discussed was the definition of structure and what that includes vs the definition of building. Board members offered different scenarios that could appear on an application and discussed each. Mr. Sullivan noted that there is no wording for decks within the Gale case.

The discussion continued and focused on the Gale case and which By-laws it super-ceded. It was decided that #4-6, with the exception of #5A are all super-ceded by the Gale case. A suggestion was made that the Zoning By-laws need to be amended.

Also discussed was what exactly a “detriment” is and what the term “neighborhood” encompasses.

Mr. Sullivan will contact Julie Kavanagh, Select Board Liaison, regarding the suggested changes and the process for that.

Mr. Sullivan noted the pending lawsuit against the Harwich Zoning Board of Appeals and the individual members. He noted that naming each member individually is standard operating procedure. He had previously confirmed with the Town Counsel and the Town Administrator that they were aware of the lawsuit. Mr. Sullivan commented to the members that they were not obligated to do anything at this time, and he noted that he had signed the statement of facts and the Board’s decision on the case. Discussion followed regarding the Board’s liability. Mr. Sullivan will confirm with the Town that individual members are protected.

Mr. Ryer noted for the record that Mr. Sullivan did not imply that this suit is frivolous.

Mr. Sullivan did confirm that this is a legitimate appeal.

Mr. Sullivan commented that he will be attending the November 29th meeting.

V. OLD BUSINESS

NONE

VI. CORRESPONDENCE/BRIEFINGS

NONE

VII. ADJOURN

Mr. August moved to adjourn, seconded by Mr. Donoghue.

Vote 6:0 in favor, Motion carried. The meeting adjourned at 8:36 PM.

Respectfully submitted,

Judi Moldstad, Board Secretary