

**MINUTES
TOWN OF HARWICH
ZONING BOARD OF APPEALS
7:00 PM WEDNESDAY, NOVEMBER 29, 2023
TOWN HALL - GRIFFIN ROOM**

RECEIVED
TOWN CLERK
HARWICH, MA

2023 DEC 28 P 2: 29

Board Members Present: Chairperson Brian Sullivan, Timothy Bailey, Chris Murphy, John August, and Kenneth Dickson.

Board Members Absent: David Ryer, David Nunnally, Al Donoghue.

Also Participating: Amy Kwesell, Town Counsel

I. CALL TO ORDER; RECORDING NOTICE: Mr. Sullivan called the meeting of the Harwich Zoning Board of Appeals to Order on Wednesday, November 29, 2023, at 7:00PM and read the Recording Notice.

II. PUBLIC HEARINGS:

Case No. 2023-32 Town of Harwich, % Daniel Pelletier, Harwich Water Department, 196 Chatham Rd. Harwich, MA 02645, for property located at **Bovacove Traffic Circle**, Assessors' Map 126, in the RR Zoning District. The Applicant seeks a Variance from s325-21 Table 2 Area Regulations, s325-18G Additional regulations (setback regulations for accessory structure) for a municipal owned sewer pumping station, pursuant to the Harwich Zoning By-laws s325-52 and MGL Chapter 40A Section 10

Mr. August read Case No. 2023-032 as presented.

Mr. Sullivan noted that, from the Office of the Town Administrator, a letter in support of the Variance had been received. The Board of Health, Conservation Commission and Police Department have no issues with the proposed project. The Planning Board will ask Town Counsel's opinion if the ZBA requires waivers.

Dan Pelletier, Water/Wastewater Superintendent and Jeff Greg from GHD were present.

Ms. Sullivan assigned voting for this Case:

Members Voting: Brian Sullivan, Chris Murphy, John August, Timothy Bailey, and Kenneth Dickson.

Mr. Greg gave a detailed description of the proposed project.

Mr. Sullivan explained that he sent an email to Town Counsel and the Applicant prior to the meeting. The email may have expressed his personal opinions. Therefore, in keeping with the Open Meeting Laws, he did not forward the email to other members of the ZBA. He distributed a

memo regarding the email to all members and the Applicants. Mr. Sullivan read the memo which answered questions and explained the Variance requirements. He also explained why the application is for a Variance and not a Special Permit.

Board members asked questions which Mr. Pelletier and Mr. Greg answered in detail. Town Council also offered answers and explanations of wording.

Mr. Sullivan opened the Public Hearing.

Florence Lothberg of Harwich was present and expressed her concerns regarding the pumping station and its effect on the neighborhood. She asked questions which Mr. Pelletier and Mr. Greg answered in detail. They also showed her and other neighbors who were present, the plan/drawing of the proposed project.

Kristen Wynn was present and asked questions regarding the noise of the generator and the timeline of the project which Mr. Pelletier answered.

Mr. Dickson moved to close the Public Hearing, seconded by Mr. Murphy. Vote 5:0 in favor. Motion carried.

Mr. Sullivan reviewed the key issues for the Applicants.

At the Applicant's request, Atty. Kwesell addressed the key issues and noted that if the Board agrees, the Applicants meet the three prongs of a Variance.

Mr. Dickson moved to close the Board's discussion, seconded by Mr. Murphy. Vote 5:0 in favor. Motion carried.

Mr. Sullivan moved, **Case No. 2023-32 Town of Harwich**, % Daniel Pelletier, Harwich Water Department, 196 Chatham Rd. Harwich, MA 02645, for property located at **Bovacove Traffic Circle**, Assessors' Map 126, in the RR Zoning District. The Applicant has been granted a Variance from the applicable area requirements s325-21 Table 2 Area Regulations, s325-18G Additional regulations (setback regulations for accessory structure) for a municipal owned sewer pumping station, pursuant to the Harwich Zoning By-laws s325-52 and MGL Chapter 40A Section 10. As a failure of a Board to make this grant will result in a substantial hardship to the Applicant, the Town of Harwich. The Board further finds that the Variance can be granted due to the unusual shape of the property which 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 its granting will not nullify or substantially derogate from the intent or purpose of the By-law. All work shall be performed in accordance with the Plans. Said grant and approval are subject to the following conditions:

A violation of the terms and conditions of this Variance may be enforced as violation of the Harwich Zoning By-law pursuant to G.L. Chapter 40A Section 7 of the Harwich Zoning By-law as these may be amended from time to time. An additional condition is subject to the findings of the Harwich Planning Board if waivers for a site plan review are required.

Motion seconded by Mr. Murphy. Vote 5:0 in favor.
Motion carried: Variance Granted

Case No. 2023-33 Standish Woods Assoc., % Joseph F. Powers, Town of Harwich, 732 Main St., Harwich, MA 02645, for property located at **0 Standish Woods Circle**, Assessors' Map 112, Parcel C5-64, in the RR Zoning District. The Applicant seeks a Variance from s325-21 Table 2 Area Regulations, s325-18G Additional Regulations (setback regulations for accessory structure), 325-18A Lot Shape Number, for a municipal owned sewer pumping station, pursuant to the Harwich Zoning By-laws s325-52 and MGL Chapter 40A Section 10.

Mr. August read Case No. 2023-33 as presented.

Mr. Sullivan noted that the Board of Health, Conservation Commission and Police Department have no issues with the proposed project. The Harwich Planning Board questions if waivers by their Board for a site plan review are required, they will ask that they be answered by Town Counsel. A letter was received on June 1, 2023, from the Mass Division of Fisheries and Wildlife for this project which is their NHP file number 32-1141 stating that the Division has determined that the project as currently proposed will not result in the prohibitive take of state listed rare species. In addition, a letter was received dated October 24, 2023, from the Standish Woods Homeowner Association, which Mr. Sullivan read.

Mr. Sullivan assigned voting:

Members Voting: Brian Sullivan, Chris Murphy, John August, Timothy Bailey, and Kenneth Dickson.

Dan Pelletier, Water/Wastewater Superintendent was present in place of Joseph Powers, Town Administrator. Jeff Greg of GHD was also present and explained the Application in detail.

Mr. Sullivan gave the definition of a Shape Factor and noted that the Town of Harwich regulation is a Shape Factor of 22. The Shape Factor of the lot in question is rounded up to 142 and is exceeding the Shape Factor of 22, which is what the Applicant is seeking relief from.

Board members asked questions which Mr. Pelletier answered.

Mr. Sullivan opened the Public Hearing. No comments taken.

Mr. Dickson moved to close the Public Hearing, seconded by Mr. Murphy. Vote 5:0 in favor.
Motion carried.

Atty. Kwesell stated that the location meets the three prongs of a Variance.

Mr. Dickson moved to close the Board discussion, seconded by Mr. August. Vote 5:0 in favor.
Motion carried.

Mr. Sullivan moved, on **Case No. 2023-33 Standish Woods Assoc.**, % Joseph F. Powers, Town of Harwich, 732 Main St., Harwich, MA 02645, for property located at **0 Standish Woods Circle**, has been granted a Variance from s325-21 Table 2 Area Regulations, s325-18G Additional Regulations (setback regulations for accessory structure), 325-18A Lot Shape Number, for a municipal owned sewer pumping station, 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 Town of Harwich. The Board further finds that the Variance can be granted due to the unusual shape of the property which 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 its granting will not nullify or substantially derogate from the intent or purpose of the By-law. All work shall be performed in accordance with the Plans. Said grant and approval are subject to the following conditions:

A violation of the terms and conditions of this Variance may be enforced as violation of the Harwich Zoning By-law pursuant to G.L. Chapter 40A Section 7 of the Harwich Zoning By-law as these may be amended from time to time. An additional condition is subject to the findings of the Harwich Planning Board if waivers for site plan review are required.

Seconded by Mr. Murphy. Vote 5:0 in favor.
Motion carried: Variance Granted

Case No. 2023-34 Town of Harwich, % Daniel Pelletier, Harwich Water Department, 196 Chatham Rd., Harwich, MA 02645, for property located at the intersection of **Route 39 & Church St. Traffic Island**, Assessors' Map 126, in the RR Zoning District. The Applicant seeks a Variance from s325-21 Area Regulations, s325-18G Additional Regulations (setback regulations for accessory structure) for a municipal owner sewer pumping station, pursuant to the Harwich Zoning By-laws s325-52 and MGL 40A Section 10

Mr. August read Case No, 2023-34 as presented.

Mr. Sullivan noted that the Board of Health, the Conservation Commission and Police Department have no issues with the Plan as presented. A letter in support of the Variance was received by the Town Administrator's Office. The Harwich Planning Board questions if waivers by the Board for the site point review are required and plans to ask Town Counsel.

Mr. Sullivan assigned the voting in this case:

Members Voting: Brian Sullivan, Chris Murphy, John August, Timothy Bailey, and Kenneth Dickson.

Dan Pelletier, Water/Wastewater Superintendent and Jeff Greg from GHD were present. Mr. Pelletier and Mr. Greg described the proposed plan in detail.

Board members asked questions which Mr. Pelletier and Mr. Greg answered.

Mr. Sullivan opened the Public Hearing.

Mr. Dickson moved to close the Public Hearing, seconded by Mr. Bailey. Vote 5:0 in favor.
Motion carried.

Mr. Dickson moved to close the Board discussion, seconded by Mr. August. Vote 5:0 in favor.
Motion carried.

Mr. Sullivan moved on Case **No. 2023-34 Town of Harwich**, % Daniel Pelletier, Harwich Water Department, 196 Chatham Rd., Harwich, MA 02645, for property located at the intersection of **Route 39 & Church St. Traffic Island**, Assessors' Map 126, in the RR Zoning District. The Applicant is granted a Variance from applicable area requirements s325-21 Area Regulations, s325-18G Additional Regulations (setback regulations for accessory structure) for a municipal owned sewer pumping station, pursuant to the Harwich Zoning By-laws s325-52 and MGL 40A Section 10. As a failure of the Board to make this grant would result in a substantial hardship to the Applicant, the Town of Harwich. The Board further finds that the Variance can be granted due to the unusual shape of the property which 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 its granting will not nullify or substantially derogate from the intent or purpose of the By-law. All work shall be performed in accordance with the Plans. Said grant and approval are subject to the following conditions:

A violation of the terms and conditions of this Variance may be enforced as violation of the Harwich Zoning By-law pursuant to G.L. Chapter 40A Section 7 of the Harwich Zoning By-law as these may be amended from time to time. An additional condition is subject to the findings of the Harwich Planning Board if waivers for site plan review are required.

Seconded by Mr. August. Vote 5:0 in favor.
Motion carried: Variance Granted

Case No. 2023-35 Brian Springsteen % Joseph F. Powers Town of Harwich, 732 Main St., Harwich MA 02645, for property located at **3 Wilmas Way**, Assessors' Map 117, Parcel P1-1, in the RR Zoning District. The Applicant seeks a Variance from s325-21 Table 2 Area Regulations, s325-18G Additional Regulations (setback regulations for accessory structure) for a municipal owned sewer pumping station, pursuant to the Harwich Zoning By-laws s325-52 and MGL Chapter 40A Section 10

Mr. August read Case No. 202-35 as presented.

Mr. Sullivan noted that the Board of Health, the Conservation Commission and Police Department have no issues with this proposed project. The Harwich Planning Board questions if waivers by the Board for a site plan review are required and plan to ask Town Counsel.

Mr. Sullivan assigned voting to the case:

Members Voting: Brian Sullivan, Chris Murphy, John August, Timothy Bailey, and Kenneth Dickson.

Dan Pelletier, Water/Wastewater Superintendent and Jeff Greg of GHD were present and explained the proposed project in detail.

Board members asked questions which Mr. Pelletier and Mr. Greg answered.

Mr. Sullivan opened the Public Hearing.

Mr. Dickson moved to close the Public Hearing, seconded by Mr. Murphy. Vote 5:0 in favor. Motion carried.

Mr. August moved to close the Board discussion, seconded by Mr. Murphy. Vote 5:0 in favor. Motion carried.

Mr. Sullivan moved, on Case **No. 2023-35 Brian Springsteen** % Joseph F. Powers Town of Harwich, 732 Main St., Harwich MA 02645, for property located at **3 Wilmas Way**, Assessors' Map 117, Parcel P1-1, in the RR Zoning District. The Applicant has been granted a Variance from s325-21 Table 2 Area Regulations, s325-18G Additional Regulations (setback regulations for accessory structure) for a municipal owned sewer pumping station, 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 Town of Harwich. The Board further finds that the Variance can be granted due to the unusual shape of the property which 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 its granting will not nullify or substantially derogate from the intent or purpose of the By-law. All work shall be performed in accordance with the Plans. Said grant and approval are subject to the following conditions: A violation of the terms and conditions of this Variance may be enforced as violation of the Harwich Zoning By-law pursuant to G.L. Chapter 40A Section 7 of the Harwich Zoning By-law as these may be amended from time to time. An additional condition is subject to the findings of the Harwich Planning Board if waivers for site plan review are required.

Seconded by Mr. Dickson. Vote 5:0 in favor.

Motion carried: Variance Granted

Five-minute break taken.

Case No. 2023-36 David Crosbie, % Benjamin E. Zehnder 62 Route 6A, Suite B, Orleans, MA 02653, owner of the property located at **481 Depot Street**, Assessors' Map 36, Parcel B1 in the IL & RR Zoning districts. The Applicant seeks a Special Permit from s325-51Q Multifamily Special Permit s325-54A (2) Nonconforming Structures and Uses, s325-2 Word uses & Definitions, s325-8 Applicability of Use Regulations, s325 Table 1 of use Regulations (use 39 Self-storage) pursuant to the Harwich Zoning By-Laws s325-51 and MGL Chapter 40A Section 9

Mr. August read Case No. 2023-36 as presented.

Mr. Sullivan noted that the Board of Health will require a fully compliant septic system to be installed. Further a complete septic application will be required prior to building permits signing off. The Historic Commission reported that the house is on the Historic Inventory Property List as the building is over 100 years old. Therefore, any demo to the exterior of the building will require Historic approval. The Conservation and Police Department have no concerns. No report received by Planning Board. Mr.

Sullivan assigned voting on this case:

Members Voting: Brian Sullivan, Chris Murphy, John August, Timothy Bailey, and Kenneth Dickson.

Benjamin Zehnder was present and representing the Applicant, David Crosbie. Atty Zehnder described the proposed project in detail. He also offered a detailed explanation of the wording and why this property is unusual.

Board members asked questions which Atty. Zehnder and Mr. Crosbie answered in detail.

Mr. Sullivan opened the Public Hearing.

Allen Hall was present and had questions regarding his abutted property and other questions about the proposed project.

Maura Hall was present and expressed her concerns, which Mr. Crosbie responded to.

Mr. Dickson moved to close the Public Hearing, seconded by Mr. Murphy. Vote 5:0 in favor. Motion carried.

Mr. Sullivan commented on wanting clarification on zoning districts and setbacks from Town Counsel and suggested possibly continuing the hearing. Board discussion followed.

After discussion, Mr. Sullivan filled out the Agreement for Continuance Form which Atty. Zehnder signed.

Mr. Sullivan moved to continue Case No. 2023-36,

Seconded by Mr. Dickson Vote 5:0 in favor.
Motion carried. Case continued to December 27, 2023.

Case No. 2023-37 Brendan Lowney, % William D. Crowell, Esq., 25 Pleasant Lake Ave. Harwich, MA 02645, owner of the property located at **78 Lovers Ln** Assessors' Map 41, Parcel L4 in the RR Zoning District. The Applicant seeks a Special Permit or in the alternative a

Variance from s325-54 Nonconforming Structures and Uses, to construct an addition, pursuant to the Harwich Zoning By-laws s325-51 and 52 and MGL Chapter 40A Section 9 and 10

Mr. August read Case No. 2023-37 as presented.

Mr. Sullivan noted that the Board of Health will require a fully complaint septic system to be installed. A complete septic application will be required prior to the building permit sign-off. The Conservation and Police Department have no concerns.

Mr. Sullivan assigned voting on this case:

Members Voting: Brian Sullivan, Chris Murphy, John August, Timothy Bailey, and Kenneth Dickson.

Atty. William Crowell was present and representing the Applicant Brendan Lowney. Also present was Matthew Young, Brendan Lowney's business partner. Atty. Crowell described the proposed project in detail.

Board members asked questions which Atty. Crowell answered.

Mr. Sullivan opened the Public Hearing.

Mr. Dickson moved to close the Public Hearing, seconded by Mr. Murphy. Vote 5:0 in favor. Motion carried.

Mr. Murphy moved to close the Board discussion, seconded by Mr. Bailey. Vote 5:0 in favor. Motion carried.

Mr. Sullivan moved on **Case No. 2023-37 Brendan Lowney**, % William D. Crowell, Esq., 25 Pleasant Lake Ave. Harwich, MA 02645, owner of the property located at **78 Lovers Ln** Assessors' Map 41, Parcel L4 in the RR Zoning District. The Applicant has been granted a Special Permit to renovate and construct an addition and construct a new second floor, pursuant to the Harwich Zoning By-laws s325-51 and 52 and MGL Chapter 40A Section 9 and 10. The proposed alteration and addition to the existing structure and the additional habitat space to be created will be an intensification of a pre-existing non-conformities and will not be substantially more detrimental to the neighborhood than the current structure and as it will not create any additional negative impacts with respect to traffic, noise, odor and congestion. Granting is consistent with the Harwich By-laws MGL Chapter 40A Gail/Dietrich and related cases. Any relief not explicitly granted hereunder is hereby denied. All work shall be performed in accordance with the plan submitted with this application. Said grant and approval are subject to the following conditions:

For the life of the project, all construction vehicles will be parked on the Applicant's property and not on any public street or road. A violation of the terms and conditions of this Special

permit will be enforced as a violation of the Harwich Zoning By-laws pursuant to G.L. Chapter 40A, Section 7 and the Harwich Zoning By-laws as this may be amended from time to time.

Seconded by August. Vote 5:0 in favor.
Motion carried: Special Permit Granted

III. APPROVAL OF MINUTES:

– October 25, 2023

Mr. Dickson moved to approve the minutes of the October 25, 2023, meeting as submitted,

Seconded by Mr. Murphy. Vote 5:0 in favor.
Motion carried: Minutes approved.

IV. NEW BUSINESS: None

V. OLD BUSINESS:

Mr. Dickson noted that the agenda could be modified. He also noted By-law clean-up. Board discussion followed.

VI. CORRESPONDENCE/BRIEFINGS

VII. ADJOURN

Mr. Murphy moved to adjourn.

Seconded by Mr. Dickson. Vote 5:0 in favor.
Motion carried: Meeting adjourned.

Respectfully submitted,

Judi Moldstad
Recording Secretary