**TOWN OF HARWICH**

**BOARD of APPEALS**

**7PM WEDNESDAY DECEMBER 28, 2022**

**TOWN HALL – GRIFFIN ROOM**
**MINUTES**

**Board Members Present**: Brian Sullivan, Al Donoghue, David Nunnally, David Ryer, Timothy Bailey

**Board Members Absent:** Chris Murphy, Joe Beasley

 **I.CALL TO ORDER:**

Meeting was Called to Order at 7:00 PM by Brian Sullivan, Chair. Mr. Sullivan read opening remarks regarding the purpose of the meeting to hear and decide applications before the Board of Appeals and the Recording Notice.

**Case No. 2022-38** Eric L. & Jodi E. Farno, represented by William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at 25 Edgewood Rd., Assessors’ Map 6, Parcel E2-5A in the RH-1 Zoning District. The Applicant seeks a Special Permit, or in the alternative a Variance, to raze and replace a non-conforming single-family dwelling, pursuant to the Harwich Zoning By-laws §§325-52 and -54(A) and MGL Chapter 40A Sections 6 & 10.

The Chair announced that the Conservation Commission and Police Department reported no issues with this case. A notice from The Board of Health was received that stated as the applicant is proposing a new septic system it must be fully compliant with a permit prior to signing off on a building permit.

The Chair assigned voting as follows, Mr. Al Donoghue, Mr. Brian Sullivan, Mr. David Nunnally, Mr. David Ryer, Mr. Timothy Bailey.

The Chair asked the applicant or representative to introduce themselves. Presenting the case on behalf of the applicant was William D. Crowell, Esq. Attorney Crowell introduced himself and the two owners of the property seated with him, Eric and Jodi Farno. Then presented their petition.

The Petitioners seek to demolish and replace the preexisting, non-conforming single family residence as shown on the certified plot plan by Down Cape Engineering, dated September 26, 2022. The plan shows the existing and proposed dwellings on the plan. Also provided is a Building and Elevation Plans by Gary Ellis dated September 26, 2022. The existing dwelling is non-conforming as to all four setbacks and the proposed dwelling will improve all four setbacks, especially on the southerly side. Building coverage will be under 30% and only slightly increasing from 29.3% to 20.1% Site coverage will decrease from 28.7% to 26.8%. The proposed dwelling will create new habitable space withing the required setbacks and such will constitute an intensification of existing non-conformities. However, in accordance with the findings of the Gale Case, this Board may grant a Special Permit to intensify non-conformities upon a finding that the same will not constitute a substantial detriment to the entire neighborhood.

The Chair asked for comments by members of The Board. Mr. Ryer had no questions but commented that he agreed that the case met the requirements of the Gale and Deadrick Cases and recommended that approval be granted with the construction time condition. Mr. Sullivan inquired if all construction vehicles could be parked on the property. Discussion was that the lot was too small to accommodate. There were no other questions by Board Members.

The Chair opened the meeting for any Public Comment. Hearing none asked for a motion to close the public hearing. Motion by Mr. Ryer and second by Mr. Nunnally to close the public hearing. The Board voted unanimously to approve.

The Chair asked for additional comments by members of The Board as well as the Applicant, hearing none asked for a motion on the Case.

Motion By Clerk – Al Donoghue

Case No. 2022-38 Eric L. & Jodi E. Farno, represented by William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at 25 Edgewood Rd., Assessors’ Map 6, Parcel E2-5A in the RH-1 Zoning District. The Applicant has been granted a Special Permit to raze and replace a non-conforming single-family dwelling having found that the applicant meets the requirements of the Bylaw and the Gale and Deadrick cases as the proposed project will intensify one or more existing nonconformities, will not create any new nonconformity and will not be substantially more detrimental to the neighborhood than the existing structure. All work shall be performed in accordance with the plans submitted with this application and pursuant to the Harwich Zoning By-laws §325-52 and -54 and MGL Chapter 40A Sections 6 & 10. This special permit is granted and approval subject to the following conditions.

1) During the life of the project, there shall be no demolition, construction or new landscaping between June 30th and Labor Day of any year

2) A violation of the terms and conditions of this Special Permit and Variance may be enforced as a violation of the Harwich Zoning Bylaw pursuant to G.L. c 40A, Sec. 7 and the Harwich Zoning Bylaw, as these may be amended from time to time.

The motion was Second by David Ryer.

The Chair asked for any further discussion on the motion by The Board, hearing none asked for a vote on the Motion. Board voted to approve 5-0.

**Case No. 2022-39** Edward W. & Melissa B. Donnelly, represented by William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at 25 Quail Nest Run, Assessors’ Map 85, Parcel S123 in the RR & Six Ponds Zoning Districts. The Applicant seeks a Special Permit, or in the alternative a Variance, to construct a porch, deck, and steps onto a non-conforming single-family dwelling, pursuant to the Harwich Zoning By-laws §§325-52 and -54(A) and MGL Chapter 40A Sections 6 & 10.

The Chair announced that the Conservation Commission and Police Department reported no issues with this case. A notice from The Board of Health was received that stated as the proposed deck comes right up to the septic tank the contractor will be required to confirm the deck is not placed over any portion of the septic system during installation.

The Chair assigned voting as follows, Mr. Al Donoghue, Mr. Brian Sullivan, Mr. David Nunnally, Mr. David Ryer, Mr. Timothy Bailey.

The Chair asked the applicant or representative to introduce themselves. Presenting the case on behalf of the applicants, Edward and Melissa Donnelly was William D. Crowell, Esq. Attorney Crowell introduced himself and Edward Donnelly seated with him. Then presented their petition.

The Petitioners seek a Special Permit to construct a porch, step and deck on their pre-existing, non-conforming single-family residence as per the Existing and Proposed Conditions Plot Plan by Moran Engineering Associates, dated November 14, 2022 and the Building and Elevation Plans showing the proposed first floor renovations, new front porch and front step, existing first floor and front elevations.

The porch, step and deck will meet all applicable setbacks. The building coverage of 15% max will increase slightly from 16.7% to 18% and the Site Coverage of 25% max will increase slightly from 28% to 29.7%. The subject property is also located in the Six Ponds District however 325-97 of the By-law, which Attorney Crowell provided, states that developed lots seeking to add structures exceeding the 100 square feet, as the proposed deck, are allowed as long as the maximum lot coverage does not exceed 25%. In this case, however, the site coverage of 28% already exceeds that maximum and therefore the Gale Case would apply allowing for an intensification of an existing non-conformity. Similarly, the aforementioned building coverage and site coverage increases would fall under the purview of the Gale Case to allow for intensification of existing non-conformities upon the issuance of a Special Permit by this Board finding that the same does not constitute a substantial detriment to the entire neighborhood.

The Chair asked for comments by members of The Board. Mr. Ryer asked if a portion of the existing patio was coming out. Applicant affirmed. Mr. Ryer commented that he agreed that the case met the requirements of the Gale and Deadrick Cases and recommended that approval be granted without the construction timetable as the area is not congested and it was a small project. There were no other comments or questions by Board Members.

The Chair opened the meeting for any Public Comment. Hearing none asked for a motion to close the public hearing. Motion by Mr. Ryer and second by Mr. Nunnally to close the public hearing. The Board voted unanimously to approve.

The Chair asked for additional comments by members of The Board as well as the Applicant, hearing none asked for a motion on the Case.

Motion By Clerk – Al Donoghue

Case No. 2022-39 Edward W. & Melissa B. Donnelly, represented by William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at 25 Quail Nest Run, Assessors’ Map 85, Parcel S123 in the RR & Six Ponds Zoning Districts. The Applicant has been granted a Special Permit, to construct a porch, deck, and steps onto a non-conforming single-family dwelling having found that the applicant meets the requirements of the Bylaw and the Gale and Deadrick cases as the proposed project will intensify one or more existing nonconformities, will not create any new nonconformity and will not be substantially more detrimental to the neighborhood than the existing structure. All work shall be performed in accordance with the plans submitted with this application and pursuant to the Harwich Zoning By-laws §325-52 and -54 and MGL Chapter 40A Sections 6 & 10. This special permit is granted and approval subject to the following conditions.

`1) That for the life of the approved project, all construction vehicles will be parked on the Applicant’s property and not on any public street or road.

2) A violation of the terms and conditions of this Special Permit and Variance may be enforced as a violation of the Harwich Zoning Bylaw pursuant to G.L. c 40A, Sec. 7 and the Harwich Zoning Bylaw, as these may be amended from time to time.

The motion was Second by Mr. Nunnally.

The Chair asked for any further discussion on the motion by The Board, hearing none asked for a vote on the Motion. Board voted to approve 5-0.

**III APPROVAL OF MINUTES**

Chair asked for any questions, comments, or changes to the September 28th minutes. Mr. Ryer made a motion to approve the minutes as written. Seconded by Mr. Nunnally. Board voted to approve 5-0.

Chair asked for any questions, comments, or changes to the November 30th minutes. Mr. Nunnally made a motion to approve the minutes as written. Seconded by Mr. Donoghue. Board voted to approve 3-0 with two abstaining as Mr. Ryer and Mr. Beasley were not at the meeting.

**IV OLD BUISNESS**

Case No. 2022-31: Stating that the Board was not to discuss the merits of the case, The Chair reviewed that as this is a continued case at which only five members of the Board attended the November meeting when presented. The issue is that at a future meeting when this case is continued, one or more of those five members may not be in attendance such as in the upcoming January meeting the Chair will be absent. The Chair open for discussion if the resolution to problem of ensuring a full five-member Board hear the case would be resolved if the Applicant is asked to represent the case in its entirety. Mr. Ryer commented he was unclear about that, and recommended Town Council be contacted as to how to proceed to ensure Board Members not in attendance at the November meeting be approved to hear the case when continued. The Chair indicated he would pursue that action and request Town Councils opinion. The Chair also commented he needs to determine if Town Council has reviewed the case, as previously requested, and based upon that opinion being available, when Attorney Wall plans to request a continuance date.

**V. NEW BUISNESS**

The Chair informed the Board that our new Board Member, John August, will be at the January meeting.

Regarding the January meeting, Mr. Sullivan reminded the Board that he would not be in attendance and requested The Clerk, Al Donoghue to be the acting Chair.

**VI. ADJOURN**

Mr. Ryer moved to adjourn at 7:39pm. Seconded by Mr. Donoghue.