**TOWN OF HARWICH**

**ZONING BOARD of APPEALS**

**WEDNESDAY, SEPTEMBER 28, 2022**, **7PM**

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

**Board Members Present**: G. Brian Sullivan, Al Donoghue, David Ryer, Chris Murphy, Timothy Bailey, David Nunnally, Joe Beasley

**Board Members Absent:** None

**1.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.

**II. PUBLIC HEARINGS**

**Case No**. **2022-26 22 Ocean Ave LLC**, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at 22 OceanAve, Assessors’ Map 6B, Parcel L10, in the RH-2 Zoning District. The Applicant seeks a Special Permit, or in the alternative a Variance, to demolish and replace a pre-existing, nonconforming single-family dwelling, pursuant to the Harwich Zoning By-laws §325-52 and 54 and MGL Chapter 40A Sections 6 & 10.

Attorney William Crowell introduced himself and requested a continuance of up to 180 days from this date to permit more time for the applicant to prepare new plans and indicated an agreement had been reached with the abutter at 20 Ocean Ave.

Motion was made by Mr. Ryer and seconded by Mr. Donoghue to allow the continuance and be the first case on our next meeting. The Board voted unanimously to approve. An ‘Agreement for Continuance’ was signed by Attorney Crowell and assented to by Brian Sullivan, Chairman.

**Case No. 2022-27 Dale M. & Susan E. Shaw**, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at 45 Christopher Way, Assessors’ Map 108, Parcel X3-20, in the RR Zoning District. The Applicant seeks a Special Permit, or in the alternative a Variance, to construct an addition and retaining wall on a pre-existing, nonconforming single-family dwelling, pursuant to the Harwich Zoning By-laws §325-52 and -54 and MGL Chapter 40A Sections 6 & 10.

Mr. Sullivan, Chair assigned the members voting on the Case: Al Donoghue, David Nunnally, Chris Murphy, David Ryer and Timothy Bailey.

As this was a continuance from the August 31st meeting at which the public haring had been closed, Mr. Sullivan asks for a motion to reopen the public meeting. Motion made by Mr. Ryer and seconded by Mr. Donoghue. The Board voted unanimously to approve.

Mr. Ryer reminded the Chair to designate whom will vote. Voting as assigned during the August 31st meeting are as follows; Mr. Donoghue, Mr. Nunnally, Mr. Murphy, Mr. Ryer and Mr. Bailey.

Attorney William Crowell introduced himself and Mr. Dale Shaw, owner of the property. Mr. Shaw presented two handouts to the Board. 1. A new site plan with a picture of the existing driveway, retaining wall and landscaping and 2. A written statement by Mr. Shaw outlining the hardship to be relieved by a variance to build the retaining wall.

Attorney Crowell discussed relevant portions of the case, noting the practitioners are seeking a Special Permit to construct an addition to the rear of the subject property and a variance to construct a retaining wall as per the Plot Plan handed out. Attorney Crowell indicated that the main concern is that we are asking for a variance for the height of the wall to 5’11” or less will be dictated by the topography of the land and that portions of the wall will be in compliance with the 4’ height per the by-law.

The Chair asks for comments or questions from the Board.

Mr. Ryer indicated that the granting of the special permit is warranted and supports the granting of a variance. Mr. Donoghue agreed. Mr. Sullivan inquired about parking all construction vehicles on the property and the applicant stated there would be room.

Mr. Sullivan opened the meeting for any Public Comment and given there was none asked for a motion to close the Public Meeting.

Motion to close the Public Meeting made by Mr. Ryer and second by Mr. Murphy. Mr. Sullivan asked for Vote to close the Public Meeting. The Board voted unanimously to approve.

Mr. Sullivan asked for additional comments by members of The Board as well as the Applicant.

Mr. Sullivan asked for a motion on the Case.

Mr. Donoghue made the following two motions.

Case No. 2022-27 Dale M. & Susan E. Shaw, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at 45 Christopher Way, Assessors’ Map 108, Parcel X3-20, in the RR Zoning District. The Applicant has been granted Special Permit to construct an addition on a pre-existing, nonconforming single-family dwelling as granting is consistent with the guidelines and rulings of the Gayle and Deadrick cases the, pursuant to the Harwich Zoning By-laws §325-52 and -54 and MGL Chapter 40A Sections 6 & 10.

In addition, I move that the Board grant a second motion to grant a Variance is this case for the removal of an existing retaining wall and the construction of a new wall in accordance with the plans submitted with this application, having found that the applicant meets the requirements of the Bylaw and of M.G.L Section 10, chapter 40A, as the shape and topography of the land justify the Variance and that the failure of the Board to make this grant will result in a substantial hardship to the applicant. The Board further finds that this condition is specific to this property and does not generally affect the entire district, and that 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 Bylaw. All work shall be performed in accordance with the plans

This 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 Chair asked for a second on the two motions so moved by Mr. Ryer. Chair called for a vote on motion 1 for the Special Permit to construct an addition. Board Voted to approve 5 to 0. Special Permit granted.

The Chair asked for a vote on Motion 2, for a variance to construct a new retaining wall. Board Voted to approve 5 to 0. Variance granted.

**Case No. 2022-28** Brian A. Taranto & Michelle Taranto, c/o James Hagerty of Reef Builders., P.O. Box 186 West Dennis, MA 02670, owner of the property located at 24 Green Needle Ln, Assessors’ Map 4, Parcel T2-13, in the RH-1 Zoning District. The Applicant seeks a Special Permit to demolish and replace a preexisting, nonconforming single-family dwelling, pursuant to the Harwich Zoning By-laws §325-52 and MGL Chapter 40A Sections 6 & 10.

Timothy Bailey brought to the Boards attention that he lives in the area and received abutters notice regarding the case but felt his proximity to the property would not impact his judgement.

The Chair assigned the following members to vote on this case. Al Donoghue, David Nunnally, Chris Murphy, David Ryer and Joe Beasley.

The Chairmen, Mr. Sullivan asks the applicant or representative to introduce themselves. Presenting the case on behalf of the applicant was Jim Haggerty.

Mr. Hagerty reviewed that the applicant bought the house, built in 1969, about a year ago and the lot is non-conforming undersized lot of 10,670 sq ft. Proposed is the removal of the roof and walls of the existing dwelling and construct a dwelling on the existing floor and foundations with the construction of a four-bedroom home consisting of a new bedroom addition to the west and garage extension to the east. Neither addition intensifies an existing non-conforming condition. Mr. Hagerty reviewed the setbacks. The left side non-conforming setback from the property line will remain as is. The new addition to the east will be within the building setback however will not intensify the existing non-conforming setback. The balance of the setbacks, building height, building coverage and site coverage are proposed to be in compliance with the current zoning regulations. The proposal does not warrant a finding of substantially more detrimental to the neighborhood. Will not be creating any new nonconformities and will, in fact, enhance the neighborhood.

The Chair asks for comments or questions from the Board.

Mr. Ryer stated that the application meets the requirements of the by law and the Gale and Deadrick cases and is simply increasing an existing nonconformity. Mr. Ryer recommended the construction time condition as well as general condition and will need to re-due the septic system per the Board of Health.

Mr. Donoghue asked about the location of the septic systems.

Mr. Sullivan asks if there will be able to maintain all construction vehicles on the property and the timeline for the project. Mr. Hagerty commented all vehicles would be maintained on the property except for a brief period with deliveries. Project will take about 10 months. Mr. Sullivan also commented that the Planning Board had not rendered a review of the project as they had not met prior to this meeting.

The Chair asked for comments or questions from the Public. Mr. Vincent Costello, a neighbor, commented that he was in favor of the project and recommended the Board approve the Special Permit.

Chair asked if there was anyone else in the public that would also like to speak to this application. Hearing no one, the Chair asks the applicant for any final comments. There were none.

Chair asked for a motion to close the Public Hearing. Motion by Mr. Murphy, Seconded by Mr. Donoghue. The Board voted unanimously to approve.

Chair asked for any final comments or questions by the Board. Hearing none the Chair asked for a motion on the case by the Clerk.

Case No. 2022-28 Brian A. Taranto & Michelle Taranto, c/o James Hagerty of Reef Builders., P.O. Box 186 West Dennis, MA 02670, owner of the property located at 24 Green Needle Ln, Assessors’ Map 4, Parcel T2-13, in the RH-1 Zoning District. As the proposal is in consistent with the guidelines and rulings of the Gayle and Deadrick cases, and will not be substantially detrimental to the neighborhood, the Applicant has been granted a Special Permit to demolish and replace a preexisting, nonconforming single-family dwelling, pursuant to the Harwich Zoning By-laws §325-52 and MGL Chapter 40A Sections 6 & 10.

This permit is granted and approval subject to the following conditions.

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

2. 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.

3. 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.

Chair asked for any final comments or questions by the Board.

Mr. Sullivan raised the question that since the applicant could maintain all construction vehicles on the lot would that impact the project time frame condition. Both Mr. Ryer and Mr. Donoghue commented that it would not because of the location.

Motion was seconded by Mr. Ryer.

The Chair asked for a vote on the motion. Board Voted to approve 5 to 0. Special Permit granted.

The Chair asked for a brief recess.

**III. APPROVAL OF MINUTES**

Mr. Sullivan asked the Board for any comments or changes to the August 31, 2022, minutes, and hearing none asked for a motion to approve the minutes as presented.

Mr. Ryer moved to approve the Minutes. Mr. Bailey second. The Board voted unanimously in favor. Motion carries: Minutes approved.

**IV OLD BUSINESS**

Cape Cod Commission/Dirtworks Mining: Mr. Sullivan indicated that he had been in contact with CCC and was told that there was nothing for our Board to do at this time and that there would probably be no activity on the case until mid-October. There was discussion that since the mining area was strictly in Dennis, that it was unlikely that there would be any involvement by Harwich Boards. Mr. Ryer commented that we need to have the Building Commissioner visit the site. Mr. Sullivan said he would bring this case up to the new Building Commissioner, John Mee.

Mass Housing Partnership: Mr. Sullivan reviewed the conference call he and Lecia had with MHP. The discussion did not review any specific case but to review the application process for technical assistance should a CPA be received. Regarding a grant, MHP commented that since Harwich had not requested a grant since 2004 or 2005, that the maximum $15,000 budget would probably be approved and in their opinion should be sufficient for a case assistance.

Chair asked for any questions or comments, hearing none opened the discussion to the public and recognized Mr. Peter Gori.

Mr. Gori commented that has a professional real estate broker and consultant for nearly 20 years it was his opinion the $15,000 would be woefully inadequate for the site (Board assumed referring to Chloe’s Path). Mr. Gori stated his interest was as an abutter. That given water, wastewater, traffic, and analysis by the town, $15,000 would not be sufficient.

Mr. Sullivan commented that the discussion tonight was not about any specific projects and as it pertains to professional studies that it was his understanding, they would be the responsibility of the applicant. Mr. Gori acknowledged and commented that since the analysis by the technical consultant would need a Peer review the expense to the town would exceed the $15,000. Mr. Gori thanked the Board for the time.

**V. NEW BUISINESS**

New Building Commissioner: New commissioner will be starting next week.

Annual BOA Review with Selectmen: The Chair discussed that prior to our next meeting he will be meeting with the Selectmen for the annual report by the HBA. At this meeting he plans to bring up to the Selectmen that the HBA should be included in any Zoning Code review as he had recently read that such a review was being planned. Mr. Sullivan commented that there were existing Zoning Codes that are not clear, such as for garages not attached and asked members of the Board to forward to him any examples of zoning bylaws that need to be reviewed for clarity. At the meeting with Selectman, he would like a list available as examples in case requested. Mr. Ryer commented that it would be the Planning Board that will be managing any zoning review. Mr. Ryer also indicated he would prepare an email of his suggestions.

**VI. ADJOURN**

Mr. Ryer moved to adjourned at 8:02pm. Mr. Nunnally seconded. Vote unanimously in favor, Motion carries; meeting adjourned.

Authorized Posting Officer: Lecia McKenna

Board of Appeals Recording Clerk