

Town of Harwich
ZONING BOARD OF APPEALS
732 Main Street, Harwich, MA 02645

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MINUTES

Wednesday, October 28, 2015 at 700 p.m.
Griffin Meeting Room, Harwich Town Hall

On Wednesday, October 28, 2015 at 7:00 PM, the Harwich Zoning Board of Appeals held a Public Hearing in the Griffin Meeting Room at the Harwich Town Hall, 732 Main Street to hear the following cases.

Members present were Gary Carreiro, Dean Hederstedt, Franco Previd, David Ryer and Joseph Campbell.

7:00 Call to Order by Chairman Gary Carreiro

Case #2015-40

Mark A. Contonio and Susan E. Contonio, owners, c/o Andrew L. Singer, Esq. have applied for a Special Permit to convert the second floor of their conforming, detached accessory building (garage) to contain one bedroom. The application is pursuant to the Code of the Town of Harwich §325 Table 1 Use Regulations, Use (1)b and §325-14.Q. The property is located at 102 North Westgate Road, Map 78, Parcel G11-2 in the RR Zoning District.

Presenting: Attorney Andrew Singer introduced owner Susan Contonio and told the Board that they were looking for a Special Permit to allow for the addition of a bedroom to the pre-existing lawful barn. He noted that there would also be a bathroom but no kitchen, only a "bar sink". He clarified that this was not a request for an accessory apartment but for an accessory building with a bedroom, the addition of which would still be in compliance with the size of the septic system. The application is according to §325-13, Table 1 and §325-14Q of the Harwich Zoning Bylaws. The Accessory building with a bedroom would be subordinate to the main dwelling where the applicants live, will not adversely affect the public good, is an appropriate use and would not add any nuisance or serious hazard to the neighborhood. Attorney Singer added that there were adequate facilities for the proposed use. The site coverage and building coverage would both remain conforming. There would be no impact on parking or safety issues and would not adversely affect public safety or the well-being of the public. Attorney Singer also noted that the Building Commissioner had classified the proposed use as an accessory building with a bedroom and not as an accessory apartment. He clarified the appropriateness of the request before the Zoning Board of Appeals under §325-51 for conforming structures and §325-13, Table 1 for use regulations. Attorney Singer read into record the Building Commissioner's letter of denial which noted that §325-14Q reinforces the requirement for Special Permit review by the Zoning Board of Appeals.

Mr. Hederstedt said that he believed that the addition of the "bar sink" qualified the proposal as an apartment and Mr. Campbell agreed. Ms. Contonio tried to explain the need for the extra sink for her visiting family members who would use it for coffee preparation and the like. Mr. Carreiro stated that the bylaws are silent on the definition of an apartment versus an accessory building with bedrooms but noted that numerous cases had come before the Board with extra sinks in accessory buildings where the Board found no evidence of an apartment.

Mr. Ryer added that the Board of Health defines a kitchen as having a stove, refrigerator and a sink with similar wording in the state building code. Attorney Crowell, who was in the audience, offered that past cases had focused on whether there was a stove in order to determine whether the building was an apartment and that it is up to the Building Commissioner to enforce regulations restricting accessory apartments. Mr. Previd stated that a sink in a garage does not make the garage an apartment. Mr. Carreiro agreed and said that he believed that the applicants were stating in good faith that they had no intention of renting the bedroom.

There was no public discussion.

Motion to close discussion was made by Mr. Ryer and seconded by Mr. Previd.

Mr. Ryer then moved with Mr. Hederstedt seconding the motion to approve the Special Permit to convert the second floor of their conforming, detached accessory building (garage) to contain one bedroom according to the plans submitted. The application is pursuant to the Code of the Town of Harwich §325 Table 1 Use Regulations, Use (1)b and §325-14.Q. The property is located at 102 North Westgate Road, Map 78, Parcel G11-2 in the RR Zoning District with the condition that the applicants may not rent the space to be created above the garage.

The Board voted unanimously in favor.

Case #2015-41

Rick Howard, owner, has applied for a Variance to build a 468 SF garage. The application is pursuant to the Code of the Town of Harwich §325 52 as set forth in MGL Chapter 40A Section 10. The property is located at 405 Queen Anne Road, Map 70, Parcel A3-1 in the RL Zoning District.

Mr. Carreiro stated that he had been familiar with the applicants in the past but believed he could be neutral in his vote and the applicant agreed.

Presenting: Attorney Wm. Crowell introduced Applicant Rick Howard. He then handed to the Board a revised site plan recertified on 10/26/15 showing that the distance from the proposed garage to the westerly boundary is 24.3' and 10' on the easterly side. He stated that Mr. Howard, who is a self employed builder, has no ability to put a garage in any other location on his lot that would make it conforming due to the unique size and shape of the lot and the placement of the septic system. The lot is a wedge shape and slopes dramatically. The septic system prevents the garage from being placed in the northerly section of the property. Attorney Crowell added that a garage is a reasonable use of a single family dwelling and that the owner would use it to store his truck. The owners have an additional hardship in that the shed that they currently use to store their tools and dirt bike equipment has been broken into 4 times in recent years. Building the garage in the proposed location would not be substantially more detrimental to the public good and would not be a substantial derogation from the intent or purpose of the bylaw.

There was no public discussion.

Mr. Campbell had no comment and Misters Ryer and Hederstedt agreed that the owners had a hardship and that the lot shape was unique to the district, both feeling that the applicants had met the requirements for granting a variance.

Mr. Ryer moved and Mr. Hederstedt seconded the motion to close discussion. Unanimous approval.

Mr. Ryer then moved and Mr. Hederstedt seconded the motion to grant the variance to build a 468 SF garage pursuant to the Code of the Town of Harwich §325-52 as set forth in MGL Chapter 40A Section 10 and according to the plans submitted. The Board has found that the

applicants have met the requirements for a variance, that the proposed garage will not be substantially more detrimental to the neighborhood and that because of the unique lot shape of the property, a literal enforcement of the bylaws will result in both a substantial practical and financial hardship to the Applicants.

The Board voted unanimously in favor.

Case #2015-42

Virginia A. Flynn, owner, c/o her agent, Mary Jane Yeomans has applied for a Variance and a Special Permit to enclose a pre-existing, non-conforming porch. The application is pursuant to the Code of the Town of Harwich §325 Table 2, Area Regulations, §325-54. A. (1) (a) (1), §325-54. A. (2) (a) (c) as set forth in MGL Chapter 40A Section 6 and Section 10. The property is located at 584 Route 28, Map 14, Parcel W9-6 in the R-R Zoning District.

Presenting for the applicant were Michael Yeomans and Mary Jane Yeomans who told the Board that the owner wanted to enclose the pre-existing entry porch and thinks they need a variance to the side line setback requirement. The structure is pre-existing, nonconforming. The applicant also needs a special permit to enclose the porch with a new roof and screen panels. There will be no increase in the side non-conformity.

Mr. Ryer stated that he believed that there was no need for a variance and that the case fits the reasoning of the Gale case as it is an intensification of an existing non-conformity. The Board agreed.

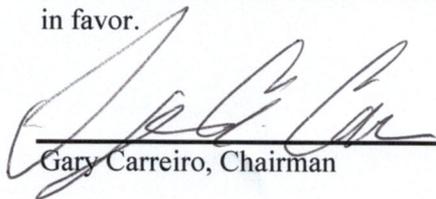
Mr. Ryer then moved and Mr. Campbell seconded a motion to close the public hearing. All voted in favor.

Mr. Ryer then moved and Mr. Hederstedt seconded the motion to grant the special permit to enclose the pre-existing nonconforming porch according to the plans submitted because the proposal falls within the reasoning of the Gale case. The plan would not create any additional negative impact to the neighborhood with regard to traffic or pollution nor negatively impact light or air and would add no new non-conformity, nuisance or hazard.

The Board voted unanimously to grant the special permit.

Mr. Ryer moved and Mr. Campbell seconded the motion to approve the minutes from the September 30, 2015 meeting. All voted in favor.

Mr. Hederstedt then made a motion to adjourn which was seconded by Mr. Campbell. All voted in favor.



Gary Carreiro, Chairman

12-16-15

DATE