

August 8, 2017

To: Town of Harwich Zoning Board of Appeals
From: Gail McAleer, 103 Route 28, West Harwich
Re: Case #2017-04 - 93 and 97 Main Street, West Harwich

Dear Members of the Harwich Zoning Board of Appeals:

Thank you for your service to the Town of Harwich and your tireless efforts to fully review and examine this rather unorthodox request for the application of the 40B statute for zoning relief made by Habit for Humanity in partnership with HECH.

As an abutter to the Judah Chase house at 97 Main Street and an active member of the Captain's Row neighborhood group to revitalize and raise awareness of this historically precious area in our town, I've watched this proposed project move forward to this point with shock and disbelief. Having served as an Assessor in the Commonwealth for almost 20 years, I have been involved in the creation of many affordable housing projects. I have never seen a project where the ownership interest, and therefore site control, are as nebulous and tentative as this.

As you well know, typically a developer purchases or is gifted a parcel of land by a city or town. If granted 40B zoning relief, they proceed to subdivide the parcel into non-conforming lots, specifying the affordable and market rate lots as required by statute. In the subdivisions I've seen, great care was taken to ensure the homes were built in a homogenous way so that there was no visible exterior distinction between the market and affordable homes. If there are common areas or private roads, a homeowner's association is established to maintain those assets and each homeowner pays a fee based on projected expenses and their percentage of ownership in those common areas. Very little of this project falls into this scenario.

Instead the requested zoning relief for 93 and 97 Main in West Harwich would authorize and result in the following:

1. The creation of 8 lots on a parcel size which permits 2 under current zoning laws.
2. Create 6 legal market rate apartments in the two existing single family dwellings at 93 and 97 Main which are currently providing affordable rentals to Harwich residents.
 - a. 93 Main currently has 2 unpermitted apartments.
 - b. 97 Main has 3 unpermitted apartments and a barn. In 1978 the Board unanimously denied the previous owner a variance to convert the barn to an apartment. In 1978 the Town discovered that the barn had been "converted to an apartment without a proper building permit" which they stated is "clearly contrary to the intent of the bylaw" as it would "result in having two dwelling units on one lot" (see ruling attached). The current owner indicated the barn is uninhabitable and has not been occupied for many years.
 - c. Approval of this 40B would make the 5 existing unpermitted apartments as well as the apartment in the barn all legal market rate rentals.
 - d. The current owner recently attempted to sell the 2 parcels and marketed them as single-family homes due to the lack of permitting as multi-families.

- e. The current owner will retain ownership of the front portion of the existing lots and the 2 single-family homes which will now have 6 legal market rate units.
 - f. The Board of Selectmen voted to pay the purchase price for the back portion of the lot for the building of 6 affordable homes.
- 3. Force the 5 families who currently live in the affordable rental apartments at 93 and 97 Main to find new homes as these new legalized 4-family and 2-family properties will be sold to a buyer(s) for full and fair cash value with legal market rate units.
- 4. The two lots 93 and 97 Main are in the CH1 zone which requires 40,000 square feet per dwelling. The existing single-family homes are each on 40,000+ square feet lots. The Assessors records indicate there are currently 5 bedrooms at 93 Main and 4 bedrooms at 97 Main, not including the new barn unit. If the 40B zoning relief is approved, the lot size for 93 Main will be reduced to 9,282 square feet and 97 Main will be reduced to 21,438 square feet.
- 5. Add 6 new septic systems servicing 16 additional proposed bedrooms per the 40B plan with lots sizes ranging from 7,587 square feet to 11,130 square feet.
- 6. The approval of this 40B legalizes the existing 6 units (including the “uninhabitable” barn unit) at 93 and 97 Main however no actual documentation, interior inspections, or safety information has been provided regarding these properties. In fact the current owner previously applied for a permit to demolish the historic Captain Judah Chase house at 97 Main because they claimed it had fallen into such disrepair since they purchased it in 2006 that the costs to renovate it were too high. Do these units meet safety and the market-rate-unit standards under Chapter 40B?
- 7. The Harwich Historical and Historic District Commission gave its support for this project “with the understanding that the existing historic home located at 97 Route 28, Harwich MA (sometimes referred to as the “Chase Home”) is to remain in place. HDHS’s support of this application is therefore subject to the Chase Home remaining in substantially its current form and streetscape.”
 - a. The Board of Selectmen voted to give \$25,000 to the current owner to hire a professional to create a Historic Preservation Restriction for the Judah Chase Home at 97 Main Street (Route 28).
 - b. The current owner subsequently appeared before the Selectmen indicating they had done the work “in-house” and wanted to return the \$25,000. The Selectmen suggested they delay the return of the funds until the matter was settled in case further work was needed.
 - c. The applicant’s revised suggested 40B approval motion item A.6 only mentions developing a preservation restriction for the “façade” of the Judah Chase House and barn and not the exterior as previously agreed. No details or deed restriction have been presented including the one created “in-house” by the current owner. If lots 7 and 8 are conveyed prior to the recording of the historic preservation restriction there will be no ability to enforce such a requirement. This is not in keeping with the stipulation on which the HDHC based their approval of this project, that the Chase Home remain “in substantially its current form and streetscape”.

8. Create a 40B development with essentially 2 very disparate sectors which will consist of the two larger market rate homes and the barn on Route 28 in front and the cluster of small affordable homes in the back, separated by vegetative screening.
 - a. Per the draft Declaration of Trust creating the Homeowner's Association submitted by the applicant, only the 6 affordable units will be part of the homeowner's association with all the rights and responsibilities involved including plowing and maintenance of the private road which will be created and voting rights in matters concerning the association.
 - b. The owners of the 2 front market rate homes are explicitly excluded from the homeowner's association. They will have none of the responsibilities the other owners have, even though lot 8 will have an easement to use the new road, and they won't have any voting rights related to the homeowner's association nor are they subject to any of the requirements of the Declaration of Trust.
 - c. This is not at all in keeping with the homogenous neighborhood/community environment that is usually fostered and encouraged in 40B projects.
9. The Landscape Plan submitted by the applicant indicates all 6 of the homes being built will be "Affordable". This is also stated in the **Background** section of their draft decision where they indicate they are "proposing to offer the units for sale at a price affordable to households **at or below 65% of the area median income.**" Later in the **Affordability Eligibility** section of the draft decision **B.1** they indicate **some of the homes will be moderate** but do not specify which ones or how many – "Six (6) Habitat houses in the Project shall be low- or moderate-income units, meaning they shall be sold to households whose **income is no more than eighty percent (80%)** of the area median income, as determined by the United States Department of Housing and Urban Development ("HUD") and DHCD."
10. This also raises a question then about the subsequent Section **B.4** – "the maximum number of **affordable units** allowed by law and applicable subsidy program, **but no more than seventy (70%) percent of the units**, shall be reserved for current residents of the Town of Harwich, municipal employees of the town of Harwich, employees of businesses located in the Town of Harwich and households with children attending Harwich's schools." How many units will be "affordable" and how many will be "moderate". Is the number reserved for Harwich residents only 70% of the "affordable" unit total?
11. Having 2 disparate sectors of this project also creates disparity or omissions in the covenants and construction or renovation guidelines. Since the applicant isn't really the owner of lots 7 and 8 and therefore mainly concerned with the new homes being built, it appears there's a lot of stipulations about the new homes but very little mention about the remaining properties.
 - a. **Section D: Construction Completion** of the draft decision outlines in detail the covenants, construction guidelines, and safety requirements for the 6 new affordable homes. I am unable to locate any covenants, building considerations or requirements (other than the barn), or safety stipulations regarding the other 3 structures on lots 7 and 8 which are currently and will likely continue to undergo significant construction and renovation, and as mentioned previously, have not been inspected for current safety compliance.

- b. Section **D.3** - The covenant addressing dumpsters only applies to the 6 affordable units – “there shall be no dumpsters or other similar outdoor receptacles for collective storage of trash, rubbish, or garbage for the six affordable housing lots. All outdoor receptacles for trash, rubbish or garbage on these lots shall be for the sole use of that individual lot owner, and all receptacles must be covered. What about lots 7 and 8?
- c. Do all the conditions outlined in **Section E.** pertain to the construction on all the properties in this project?

Even after all the hours of meetings, document revisions and submissions, there are still so many unanswered questions and concerns. This is obviously not a typical 40B project that starts with a vacant lot upon which is constructed a subdivision with consistent guidelines, uniform home design and construction requirements, an inclusive homeowner’s association or cohesive organizational structure, with hopefully a shared sense of investment and pride by the future owners in their neighborhood.

If, after thoughtful deliberation the Board votes to approve this project, I would request the **safety accommodation** made pursuant to a request by Jane-Ann Brady, 777 Pike Avenue, Attleboro, MA. 02703 in a letter to the ZBA dated March 19, 2017 be expanded.

Jane-Ann indicted that “due to the dead ending of Bayberry (it is NOT a cul de sac) I request that the Zoning Board require a stockade fence wherever necessary to prevent children from gaining access to Bayberry and possibly getting hurt. Bayberry just stops and there are three (3) driveways that access Bayberry at the same point. It is a very narrow road and during the season when the homes are all occupied and there are many guests parking in the roadway Bayberry becomes almost impassable at times and very dangerous backing out of a driveway. I beg you to do a site visit to Bayberry to get the full understanding of my concern for the safety of children should a child be looking to retrieve a ball or for any reason they may wander into harm's way.” It would be very easy for children to simply walk around the end of the currently proposed section of fence along the back edge of the project. We request that the 6’ stockade fence indicated on the Landcape Plan revised 7/13/2017 continue north along the sideline of lots 4, 5 and 6.

Again, I thank the Zoning Board of Appeals for their tireless efforts to perform their due diligence and thoughtful consideration when voting on such an unusual application of the 40B statute with its convoluted attempt at the appearance of momentary site control and significantly disparate rules, requirements, and almost all aspects relating to the market versus the affordable homes. It’s as if they’re two separate projects.

Sincerely,



Gail McAleer
103 Route 28
West Harwich, MA
508-280-9358
gamcaleer@gmail.com

cc: Michael MacAskill, Chair of the Board of Selectmen

DECISION

10-105

#78-15

The Petition of Suzanne E. Fox, 97 Main Street (Rte. 28), West Warwick, Mass., 02871. The Petitioner who is the owner of the above property sought a variance from the Warwick Protective By-law to convert an existing barn into an apartment.

In the evidence taken in this case, the board learned that the barn in question had been converted to an apartment without a proper building permit, and, only after some fire damage to the barn had occurred, did the Building Inspector become aware that the work had been done. Further, the Board learned that if the desired relief were granted it would result in having two dwellings on one lot.

In consideration of all the evidence in this case, the board voted unanimously to deny the petition on the grounds that the desired relief would be clearly contrary to the intent of the By-law since there would be two dwellings on one lot.

Petition Denied.

Members present and voting:

John L. Roche

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George Agenas

Charles Corbett

William Jusella

DECISION BOARD OF THE TOWN

John L. Roche
Chairman

Jane-Ann Brady
777 Pike Avenue
Attleboro, MA. 02703

March 19, 2017

Mr. David Ryer, Chair
Harwich Zoning Board of Appeals
c/o Building Department
732 Main Street
Harwich, MA. 02645

Re: Case #2017-04

Dear Mr. Ryer, Chair and Board Members:

I am writing to you re: the above mentioned Case as a homeowner on Bayberry Lane and due to the unpredictable weather at this time of year I may not be able to attend the meeting(s) this week. I request that my letter be read at the meeting and be submitted into the minutes of the meeting(s).

Please understand I am not an opponent of Chapter 40B. It is a very worthwhile program but I do have concerns I would like to share and have the proper authority address said concerns regarding Case #2017-04.

Concerns:

1. AFFORDABLE: The application is "to provide for 6 new single affordable homes" but I question the rationale of putting affordable homes for income restricted home buyers in Flood Zone AE. Has Habitat for Humanity of Cape Cod, Inc. thought about the additional cost of flood insurance that these home buyers will be faced with purchasing? As I understand it flood insurance in Zone AE can be very expensive. Have they wondered how a home buyer on a limited income is to afford a mortgage, taxes, homeowner's insurance and then add on expensive flood insurance if the mortgagor requires them to purchase the flood insurance? I understand this is probably not a concern of the Zoning Board but I think it should be addressed by the Habitat for Humanity of Cape Cod, Inc.
2. ZONING RELIEF: The relief being asked for is quite substantial in my opinion. Looking at the Site Plan prepared for Habitat for Humanity date 1-31-2017 and prepared by "down cape engineering, inc." it gives in the Zoning Summary requirement that lots be 40,000 S.F. Looking at the square footage per lot they are asking for a big reduction in lot size. My concern is this subdivision will be too dense and cause many problems.

Proposed Lot 1: 8,740 s.f

Proposed Lot 2: 10,687 s.f.

Proposed Lot 3: 10,541 s.f.

Proposed Lot 4: 9,469 s.f.

Proposed Lot 5: 9,365 s.f.

Proposed Lot 6: 10,426 s.f.

Does this mean they are asking for an overall average of 75.33% relief? I think for the safety of the residents and concern for the environment there must be some compromise met here. The

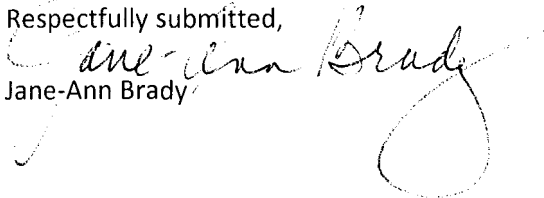
lot sizes are so small that it might endanger the surrounding area with septic systems crammed into the small lots. Has anyone done any testing for soils? Has anyone done any calculations for the nitrate load for septic systems in these reduced size lots in an environmentally sensitive area? There must be a reason that 40,000 s.f. is the requirement.

3. DRAINAGE: Again looking at the above referenced plan I see a leaching trench draining towards Bayberry Lane. The visual eye can see the proposed site is a higher elevation than the dead end of Bayberry where my home is located as well as others. This will adversely affect those of us that own property at the dead end portion of Bayberry as we already get stormwater drainage from the other end of Bayberry. Has anyone done the calculations for the 100-year Storm Event? Please take into consideration that this amount of roadway runoff draining towards Bayberry will hurt many existing homeowners.
4. SAFETY: Is this proposed roadway of sufficient size to accommodate emergency vehicles such as fire apparatus and their ability to turn around? Presuming there will be children in some of these homes is it safe? In addition due to the dead ending of Bayberry (it is NOT a cul de sac) I request that the Zoning Board require a stockade fence wherever necessary to prevent children from gaining access to Bayberry and possible getting hurt. Bayberry just stops and there are three (3) driveways that access Bayberry at the same point. It is a very narrow road and during the season when the homes are all occupied and there are many guests parking in the roadway Bayberry becomes almost impassable at times and very dangerous backing out of a driveway. I beg you to do a site visit to Bayberry to get the full understanding of my concern for the safety of children should a child be looking to retrieve a ball or for any reason they may wander into harm's way.

Thank you for listening to and addressing my concerns. My goal is to have this project be environmentally friendly, considerate of existing neighbors, and safe for all concerned.

Respectfully submitted,

Jane-Ann Brady

A handwritten signature in cursive script, appearing to read "Jane-Ann Brady", written in dark ink. The signature is fluid and extends across the line of the typed name.