**TOWN OF HARWICH**

**ZONING BOARD of APPEALS**

**WEDNESDAY, MAY 25, 2022**

**TOWN HALL – GRIFFIN ROOM
MINUTES**

**Board Members Present:**David Ryer, Al Donoghue, Jamie Armstrong, Chris Murphy, Brian Sullivan, Jonathan Beasley and Dave Nunnally.

**Board Members Absent:** Tim Bailey

**Call to Order**: Mr. Ryer called the meeting to order at 7:00 PM, read the recording notice and introduced the members of the Board.

**II. PUBLIC HEARINGS**

Case No. **2022-19 Matthew C. and Pamela A. Menzel,** c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at **25 Cross St**, Assessors’ Map 14, Parcel S5, in the RM zoning District. The Applicant seeks a Special Permit, or in the alternative a Variance, to raze and replace a non-conforming detached garage, pursuant to the Harwich Zoning By-laws §325-52 and -54 and MGL Chapter 40A Sections 6 & 10. **(Continued from 4/27/22)**

Attorney William Crowell introduced himself and Pamela Menzel, noting the changes made to the proposed project in the revised set of building, elevation plans and a revised plot plan. The applicant has reduced the height and is leaving the second floor unfinished, with no bathroom. He stated the site coverage decreased by 1% with the new plan and a special permit is applicable because the use of the structure is not changing. Attorney Crowell argued that the project will be an intensification of an existing non-conformity, will not increase noise, odor, fumes, traffic or congestion and will therefore, not be a substantial detriment to the entire neighborhood. He asked that the Board grant the requested Special Permit.

Members voting: David Ryer, Alexander Donoghue, Chris Murphy, Brian Sullivan, and Dave Nunnally

Mr. Sullivan asked about the plans included regarding the existing house.

Attorney Crowell responded there are no changes to the dwelling.

Mr. Ryer opened the public discussion.

Bob Nickerson, of Harwich Port, commented the new plans are more in line with the neighborhood and requested the Board consider adding a list of conditions which was given to the Board.

Mr. Ryer moved to close the public hearing. Seconded by Mr. Donoghue. Vote unanimously in favor. Motion carries; public hearing closed.

The Board discussed whether the case would need a Special Permit or Variance. The Board agreed if the garage stays a garage a Special Permit is appropriate.

Mr. Ryer suggested an additional condition stating the Special permit is granted solely for garage – creating habitable space will require a Variance from the Board.

Attorney Crowell and the Board discussed the additional conditions requested by the abutter and by the Chair.

Mr. Donoghue then moved that the Board grant a Special Permit to raze and replace a garage on a pre-existing, non-conforming single family dwelling pursuant to the Code of the Town of Harwich, §325-54 as set forth in MGL Chapter 40A §6 for the property located at **25 Cross St.,** Map 14, Parcel S4 in the RM Zoning District.

Said grant and approval are subject to the following:

1. There shall be no demolition, construction or new landscaping between June 30th and Labor Day of any year;
2. There shall be no construction on Sunday;
3. Construction fencing required between properties to reduce construction debris entering abutting properties;
4. No work to be done earlier than 7pm or later than 5pm;
5. Solely for the use and structure as a garage with unfinished, unheated, storage spacer a – pursuant to authority of the Comstock and Bowling cases, or any other relevant case, and any other proposed use, finishing or heating of the garage, will require further approval from the Zoning Board of Appeals;
6. A violation of the terms and conditions of this Special Permit 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.

Seconded by Mr. Murphy. Vote: 5-0-0. Motion carries; Special Permit granted.

Case No. **2022-21 Cape Cod Savings Bank,** c/o Andrew L. Singer, Esq., P.O. Box 67, Dennisport, MA 02639, owner of the property located at **129 Route 137**, Assessors’ Map 87, Parcel U3-67 in the CH-2 and WR zoning districts. The Applicant seeks to amend a Special Permit, or in the alternative a Variance, to change, extend, and alter a pre-existing nonconforming site condition by refiguring the parking lot and ADA parking location pursuant to the Harwich Zoning By-laws §325-52 and -54 and MGL Chapter 40A Sections 6 & 10.

Joe Beasley recused himself from the case because he works for Cape Cod Five Savings Bank.

Members voting: Al Donoghue, Jamie Armstrong, Chris Murphy, Brian Sullivan, and Dave Nunnally

Attorney Andrew Singer introduced himself, Chris Raber, Chief Real Estate officer for Cape Cod Five, and Brain Weiner of Coastal Engineering and discussed relevant portions of the case, noting the proposed project increase site coverage by 3%, putting the property 4% over the maximum existing site coverage in the WR zone. He stated the reconfiguration of the site will greatly improve traffic flow and create a safer handicap parking location. He argued the project meets the requirements for both a Special permit based on increasing an existing non-conformity or Variance based on the topography of lot and circumstances related to structures and request the Board grant a Special Permit.

Mr. Murphy asked how the storm water will be collected.

Mr. Weiner responded additional infiltration will aid in storm water containment.

The Board and the applicant discussed the specifics of the proposed parking and lane changes, such as signage and locations.

No Public comment

Mr. Sullivan moved to close the public hearing. Seconded by Mr. Nunnally. Vote unanimously in favor Motion carries; public hearing closed.

The Board discussed whether the project requires a Variance or Special Permit. The Board agreed the case requires a Variance because it’s not a residential property and meets the criteria to grant a Variance.

Mr. Donoghue then moved that the Board grant a Variance to change, extend, and alter a pre-existing nonconforming site condition by refiguring the parking lot and ADA parking location, non-conforming pursuant to the Code of the Town of Harwich, §325-52 as set forth in MGL Chapter 40A §6 for the property located at **129 Route 137.,** Map 87, Parcel U3-67 in the CH-2 and WR Zoning District.

Said grant and approval are subject to the following:

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 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.

Seconded by Mr. Murphy. Vote: 5-0-0. Motion carries; Variance granted.

Case No. **2022-22 Paul J. Angelini and Christina Hagopian,** c/o Michael Kenny, PO Box 384, Cataumet, MA 02534, owners of the property located at **0 Clearwater Dr.**, Assessors’ Map 73 Parcel P95, in the RR and WR zoning districts. The Applicant seeks a Variance to construct a shed within the required setback, pursuant to the Harwich Zoning By-law §325-52 and MGL Chapter 40A Section 10.

Members voting: Al Donoghue, Jamie Armstrong, Chris Murphy, Brian Sullivan, Tim Bailey, and Jonathan Beasley.

Michael Kenny introduced himself and the property owners, Angelini and Christina Hagipian. Christina Hagiopian stated if the proposed shed is placed within the setback requirements it would be within the NHESP (Natural Heritage and Endangered Species Program) Zone and Conservation Commission would like the shed to outside to the wetland zone. Mr. Kenny asked that the Board grant the Variance.

Mr. Murphy moved to close the public hearing. Seconded by Mr. Beasley. Vote unanimously in favor Motion carries; public hearing closed.

The Board agreed it’s sensible to keep the shed away from the wetlands and meets the requirements for a Variance.

No public comment.

Mr. Donoghue moved to close the public hearing. Seconded by Mr. Beasley. Vote unanimously in favor Motion carries; public hearing closed.

The Board discussed whether this is a Special Permit or Variance because of the Comstock and Borland cases and how those cases affect small structures. A Special Permit is preferably because it is the lower level of required relief to be granted. The Board agreed based on the Comstock and Borland cases a Special Permit is applicable.

Mr. Donoghue then moved that the Board grant a Special Permit to construct a shed pursuant to the Code of the Town of Harwich, §325-54 as set forth in MGL Chapter 40A §6 for the property located at **0 Clearwater Dr.**, Assessors’ Map 73 Parcel P95, in the RR and WR zoning districts.

Said grant and approval are subject to the following:

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 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.

Seconded by Mr. Armstrong. Vote: 5-0-0. Motion carries; Special Permit granted.

Case No. **2022-23 Michael and Mary-Beth Donovan,** c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at **5 Trinity Cove**, Assessors’ Map 1, Parcel E3-9 in the RL zoning district. The Applicant seeks a Special Permit, or in the alternative a Variance, to renovation the eastern portion of a non-conforming, single family dwelling pursuant to the Harwich Zoning By-laws §325-52 and -54 and MGL Chapter 40A Sections 6 & 10.

Members voting: Al Donoghue, Jamie Armstrong, Chris Murphy, Brian Sullivan, and Jonathan Beasley.

Attorney Crowell introduced himself, Michael and Mary-Beth Donovan and discussed relevant portions of the case noting the project will decrease the easterly setback and increase other pre-existing conformities. He stated the property owners have contacted the abutters and have given support of the project. Attorney Crowell argued that the project will be an intensification of an existing non-conformity, will not increase noise, odor, fumes, traffic or congestion and will therefore, not be a substantial detriment to the entire neighborhood. He asked that the Board grant the requested Special Permit.

Mr. Sullivan asked about the dimensions of the deck and if the owner of the 10 foot buffer strip supports the project.

Mr. Donovan responded the deck is 3 and half feet off the ground and gave the Board an email of support from the abutting property owner.

No public comment.

Mr. Murphy moved to close the public hearing. Seconded by Mr. Beasley. Vote unanimously in favor Motion carries; public hearing closed.

No further discussion from the Board.

Mr. Donoghue then moved that the Board grant a Special Permit renovation the eastern portion of a pre-existing, non-conforming single family dwelling pursuant to the Code of the Town of Harwich, §325-54 as set forth in MGL Chapter 40A §6 for the property located at **5 Trinity Cove.,** Map 1, Parcel E3-9 in the RL Zoning District.

Said grant and approval are subject to the following:

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 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.

Seconded by Mr. Beasley. Vote: 5-0-0. Motion carries; Special Permit granted.

**IV. NEW BUSINESS**

The Board scheduled a meeting for Tuesday the 14th at 7:00pm to discuss bylaw provisions and zoning laws.

The Board discussed upcoming annual elections for the Board during the next meeting. Jamie will not run to be reappointed for another term. David Nunnally has been recommended to the Board of Selectman to become a full member.

Mr. Ryer moved to approve the changes to the Comprehensive Permit Application. Seconded by Mr. Armstrong. Vote unanimously in favor.

The Board discussed getting updated copies of the Bylaw.

**VI. ADJOURN**

Mr. Ryer moved to adjourned at 8:47pm. Seconded by Mr. Murphy. Vote unanimously in favor Motion carries; meeting adjourned.

Authorized Posting Officer: Lecia McKenna

Board of Appeals Recording Clerk