**TOWN OF HARWICH**

**BOARD of APPEALS**

**WEDNESDAY NOVEMBER 30, 2022**, **7PM**

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

**Board Members Present**: Brian Sullivan, Al Donoghue, Chris Murphy, David Nunnally, Joe Beasley

**Board Members Absent:** David Ryer, Timothy Bailey

**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.

**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 requested to withdraw the case without prejudice.

Motion was made by Mr. Donoghue and seconded by Mr. Murphy to allow the Applicant to withdraw the case without prejudice, with filing fees waived if Applicant refiles within a year. The Board voted unanimously to approve.

**Case No. 2022-29** Jane C. Ayoub, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the properties located at 23 & 27 Soundview Rd, Assessors’ Map 26, Parcel L1-10, and Parcel L1-9, in the RM Zoning District. The Applicant seeks to confirm and amend the Variance in Case Number 2020-54 granted by this Board on January 24, 2021, allowing the equivalent exchange of 750 square feet of buildable upland between the two subject lots, be changed to 640 square feet pursuant to the Harwich Zoning By-laws §325-52 and MGL Chapter 40A Section 10.

The Chair indicated that there were no relevant documents by Town Offices filed in this case, and assigned voting as follows, Mr. Al Donoghue, Mr. Brian Sullivan, Mr. David Nunnally, Mr. Chris Murphy, and Mr. Joe Beasley.

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 reviewed the Petitioners seek to confirm and amend the Variance in Case Number 2020-24 granted by the Board on January 24, 2021, allowing the equivalent exchanged of 750 sq ft of land between the two lots. The only amendment requested is that the exchange will now be only 640 sq ft. The new lot numbers will remain the same so that the only change is the amount of land exchanged which is now 640 sq ft. Attorney Crowell referenced the new Division Plan by Ryder and Wilcox dated November 7, 2022.

Chair asked for comments by members of The Board. Mr. Sullivan asked Attorney Crowell to confirm that the new plan dated November 7, 2022, indicated the 640-sf now being exchanged. Attorney Crowell pointed out where on the plan it was noted. There were no other questions by Board Members.

Mr. Sullivan opened the meeting for any Public Comment. Speaking in favor of the exchange was Michael Loch of the Harwich Conservation Trust. Mr. Loch reviewed that the resultant donation of land at 27 Soundview to the Harwich Conservation Trust was welcomed as it was watershed land to Red River and important for water quality and animal habitat.

Chair noted that an abutter’s letter in favor was received by John Leong of 25 Trout Brook Rd and a 50% owner of 27 Soundview Rd. Chair asked for any other 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. Donoghue and second by Mr. Nunnally. Mr. Sullivan asked for a Vote to close the Public Meeting. 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.

Case No. 2022-29 Jane C. Ayoub, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the properties located at 23 & 27 Soundview Rd, Assessors’ Map 26, Parcel L1-10, and Parcel L1-9, in the RM Zoning District. The Applicants request to confirm and amend the Variance in Case Number 2020-54 has been granted by this Board allowing the equivalent exchange of 750 square feet of buildable upland between the two subject lots, be changed to 640 square feet pursuant to the Harwich Zoning By-laws §325-52 and MGL Chapter 40A Section 10. This amendment of a variance is granted and approval subject to the following conditions.

1) All conditions of Case 2020-54 apply.

2) A violation of the terms and conditions of this 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. Beasley.

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 to 0.

**Case No. 2022-30** John Canducci, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at 32 Deer Run, Assessors’ Map 35, Parcel P1-2, in the RM & CH-1 Zoning Districts. The Applicant seeks a Variance from minimum lot size requirement and frontage pursuant to the Harwich Zoning By-laws §325-52 and MGL Chapter 40A Section 10.

Mr. Sullivan indicated that he lived on Deer Run, but although not an abutter will recuse himself from this case and given that would still leave four Members of the Board offered the option to the applicant to continue the meeting, which Attorney Crowell nodded in approval, appointed The Clerk, Mr. Donoghue to assume the duties as The Chair for this case.

Mr. Donoghue asked the applicant and representative to introduce themselves. Presenting the case on behalf of the applicant was William D. Crowell, Esq.

Attorney Crowell introduced himself and the Applicant seating with him, John Canducci, reviewed the Petitioners seek a variance from the minimum lot size requirement and minimum frontage. The Petitioners purchased the lot on September 11, 2008, for $185,000 and have since paid approximately $28,000 in real estate taxes to the Town of Harwich. Attorney Crowell stated that the property at 32 Deer Run fronts Route 28. There was a septic design by Sweeter Engineering dated July 28, 2003, that was approved by the Board of Health on February 24, 2006, with a deed restriction limiting the proposed dwelling to two bedrooms by the Board of Health recorded as Document Number 925727 on June 19, 2003. Attorney Crowell stated that it is apparent all parties therefore assumed 32 Deer Run was a buildable lot. The owner at that time then sold the property to the Carducci’s and represented the property as a buildable lot. However, there is a technicality, and the lot is not buildable without a variance.

Attorney Crowell stated the confusion and technical issue is that the lot was partially in the CH-1 zoning district which required a Lot area of only 20,000 sf and 100 ft of frontage while the RM residential district required 40,000 sf and frontage of 150 ft. 32 Deer Run was part of a seven-lot subdivision plan by Moran Engineering that was approved by the Planning Board as residential lots. Attorney Crowell noted that obviously there was confusion by both the Town of Harwich and the prior owner in 2003 and thereafter with the Petitioner regarding the applicable zoning requirements for a single-family residence as to a commercial structure on the lot. Attorney Crowell noted that all other surrounding lots of 20,000 sf have been built upon. The Petitioner has a financial hardship, having invested over $200,000, as he would now like to construct his desired dwelling on said lot.

Attorney Crowell stated that as all other properties in the area that are half acre lots have been built upon except for 32 Deer Run, which makes this property unique. The Board could grant a variance without substantial detriment to the public good and the intent or purpose of the bylaw. In the alternative, if the property is used for commercial purposes, that would be more of a detriment and devaluation to the neighborhood than the building a single-family home.

Attorney Crowell addressed the lack of a current building plan. He discussed that the availability of surveyors, design firms and cost of said plans prevented them from having them prepared in advance. And did not want to spend a lot of money on plans prior to the granting of a variance. A rough document showing a building footprint was included in the application. Attorney Crowell stated that if The Board grants the variance that only a two-bedroom home would be built which will meet all setbacks of 20’ and 25’ required of the RM zoning.

Attorney Crowell concluded his presentation with providing a copy of a decision to grant a variance on a case before the Appeals Board in May of 2020 by Applicants Mr. and Mrs. Tocci which he considered were similar circumstances.

Mr. Donoghue, for the record, reviewed an abutters letter received from Pasquale and Kristen Pontoriero, of 30 Deer Run. Based upon the information presented in the application they contest the variance and will continue to do so until they determine the variance will not impact their property rights. They had been in contact with Attorney Crowell’s office and were told additional information would be available at this meeting but unfortunately, they could not make it to the hearing. Attorney Crowell requested to respond and confirmed the receipt of an email which had questioned the plans for a three-bedroom home when the lot was deed restricted to two bedrooms as well as the plans indicating a 81’ wide home, which Attorney Crowell commented was a misunderstanding of the plans as should have been 61. Regardless, Attorney Crowell confirmed the house will meet all front and side setbacks, be just two bedrooms and as requested by The Pontoriero’s the Applicant will consider putting the septic on the 28’ side.

Mr. Donoghue questioned the frontage as the application listed was 115’ but the plans indicated 114.9 on RT 28. Attorney Crowell confirmed the frontage was along RT. 28 and it was that frontage to be approved in the variance. He stated the Applicants desire for the home to face Deer Run.

Mr. Donoghue opened the meeting for any Public Comment. Hearing none, asked for any questions for the Applicant from members of The Board.

Mr. Murphy confirmed with Attorney Crowell that the October 15, 1991, plan was the one approved by the Planning Board as well as that 200’ of the property was in the commercial zone and 3’ in residential and that the other adjacent lots were also in commercial zoning. Attorney confirmed and further stated that all those lots had residential homes built and that 32 Deer Run was the only lot not built upon.

Mr. Donoghue asked for any additional questions to the applicant from members of The Board and hearing none asked for a motion to close the public hearing. Motion made by Mr. Nunnally and seconded by Mr. Murphy. The Board voted unanimously to approve.

Mr. Donoghue made a motion on the case.

Case No. 2022-30John Canducci, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at 32 Deer Run, Assessors’ Map 35, Parcel P1-2, in the RM & CH-1 Zoning Districts. The Applicant has been granted a Variance from minimum lot size requirement and frontage pursuant to the Harwich Zoning By-laws §325-52 and MGL Chapter 40A Section 10, as the failure of the Board to make this grant will result in a substantial hardship to the applicant. The Board further finds that there will be no substantial detriment to the public good by the granting of this Variance and that it’s 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 variance 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 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. Murphy.

The Chair asked Attorney Crowell, since there were only four members of The Board hearing the case, if he would like the members polled prior to a vote. The Attorney agreed and all members indicated they planned to vote in favor. The Chair then asked for a vote on the Motion. The Board Voted to approve 4 to 0.

**Case No. 2022-31** William Little & Sandra Clementino Holtz, represented by Brian J. Hall Esq., 90 Route 6A, Sandwich MA, 02653, owner of the property located at 10 Kings Rd, Assessors’ Map 42, Parcel E1-19, in the RR Zoning District. The Applicant seeks a Variance from minimum lot size requirement for an Accessory Dwelling Unit pursuant to the Harwich Zoning By-laws §325-52 and MGL Chapter 40A Section 10.

Chair stated for the record that the only report by other town departments concerning this case was from the Board of Health that indicated that the current septic has 5-bedroom capacity but a kitchen in an ADU triggers the requirement for a two-compartment septic tank or two tanks in series.

The Chair assigned voting as follows, Mr. Al Donoghue, Mr. Brian Sullivan, Mr. David Nunnally, Mr. Chris Murphy, and Mr. Joe Beasley.

The Chair asked the applicant or representative to introduce themselves. Presenting the case on behalf of the applicant was Brian J. Wall, Esq. Attorney Wall indicated he has an office in Sandwich and represents the Applicants William Little and Sandra Holtz, whom are in attendance.

Attorney Wall indicated that the Applicants recently constructed a two-car garage with a room above where they intended to have Mrs. Holtz’s elderly mother live. Tragically she passed away from Covid in 2020. And in 2021 Mr. Little suffered a stroke and now they seek to utilize the space as an ADU which they hope to provide to a care provider that will assist Mr. Little. An accessory dwelling unit is allowed in the RR district and the Applicants meet all the ADU criteria, except for the minimum area requirement in 325-14 which they are seeking a variance for.

Attorney Wall reviewed that the applicant must demonstrate a hardship related soil, shape and or topography and that relief must be able to be granted without detriment to the public good and without derogating from the intent of the Bylaw. The home is non-conforming due to the lot size. The lot is a different in shape than the lots in the neighborhood because the Applicants were able to obtain a 1,238-sf triangular shape piece of property from their neighbor on the west to enable the detached garage to meet the side yard setbacks. There are soil conditions as the garage was originally intended to be attached. After starting to dig the foundation of the garage ‘sugar’ sand was discovered which was rapidly moving away from the house foundation. Continued digging might cause the foundation to collapse. As a result, the garage was moved away from the house. The ADU will be located on the second floor of the detached garage which complies with all applicable setback requirements.

Attorney Wall reviewed MGL Chapter 40A, Section 10 requires a variance petitioner to demonstrate that a literal enforcement of the provisions of the ordinance or bylaw would involve substantial hardship, financial or otherwise. The Applicants will have a financial hardship if the literal provisions of the Bylaw are enforced. Mr. Little was a Police Officer in the Town of Chatham from 2003 until 2021. In April of 2021, Mr. Little suffered a stroke which has rendered him partially paralyzed and unable to work. Mr. Little’s wife, Mrs. Holtz left her job at Spaulding Hospital to care for Mr. Little. She is able to work parttime but leaving her job at Spaulding has resulted in a substantial loss of income for the family. The ADU will provide a small source of income and more importantly, it will provide housing for a CAN nurse who will care for Mr. Little.

As we meet all the criteria for an ADU with the exception of area that we believe that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw. And although the lot is undersized it is similar to the rest of the neighborhood.

Allowing the variance will enable the Applicants to have an ADU which is the purpose of the ADU Bylaw and promote the housing policies of the Town as embodied in the Zoning Bylaw.

In this particular application we believe that the Board can do the right thing in the right circumstance and help a family in need without detriment to the public good and derogating from the purpose of the Bylaw and respectively ask The Board to grant the variance.

Mr. Sullivan stated that nothing would make this Chair happier than to find a pathway to approval. Then opened the meeting up for public comment.

Peter Bernard of Kings Road and neighbor across the street spoke in favor of granting the variance.

Al Bradley of 8 Kings Road supported the granting of the variance and noted the applicants’ service to the community and indicated a variance was an opportunity for the Town to give back.

Hearing no other comments from the public, the Chair asked for additional questions or comments from members of The Board. Speaking for himself Mr. Sullivan indicated that he felt the location and the home would be a fitting place for an ADU. Mr. Sullivan stated to The Attorney that he was trying to make a connection of the granting of a variance back to the conditions of the land and requested him to restate the specific reasons relative to the Bylaw as to why The Board should grant this variance

Attorney Wall stated the following: 1. ADU section of the Bylaw is relatively new. The subdivision is 1964 and the lot size was acceptable then is smaller than acceptable today. The hardship is that there is an ability to have an ADU in Harwich but requires 20,000 sf so the lot is undersized. Mr. Sullivan stated that this argument related more to a granting of a Special Permit but although the lot is non-conforming the granting of Special Permit would create a new nonconformity. 2. A related point is shape. The garage meets all the setbacks and to accomplish this the Little’s acquired a triangle piece which is related to the shape of the lot. So, the hardship is the shape and size of the lot and 3. The ‘sugar’ sand created a hardship as the position of the garage required it to be a detached structure. Because the lot is undersized by not having a variance it creates a financial hardship which is related to the lot.

The Chair requested the other members of the Board to make any comments.

Mr. Murphy stated that the problem is lot size and not the shape or topography of the land. And commented he wished there was possibility of making a restriction and grant a variance in the specific case.

Mr. Donoghue commented that he is interested in the ground and that can be detrimental to the building but is unable to come up with a reasoning to enable The Board to grant a variance.

Mr. Beasley pointed out the strong support of the neighborhood.

Mr. Nunnally had no questions and commented that as one whom has served in the military he appreciates the applicant’s service to the community.

The Chair stated that as a result of opinions heard during the meeting supporting why a variance is warranted, he suggested that the Applicant request a continuance to a future meeting to allow time for The Board to seek an opinion from the Town Attorney. Attorney Wall indicated that he agrees and requested a continuance for the purpose stated.

Mr. Sullivan made a motion for a continuance to the December or future meeting. Motion was second by Mr. Murphy. The Chair called for a vote and a continuance was unanimously granted by The Board until the December or future meeting.

**Case No. 2022-32** Walter V. Maloney III & Tracey C. Maloney, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at 135 Miles St, Assessors’ Map 14, Parcel J4 in the RM 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 Clerk indicated that a document from the Board of Health as well as an abutter’s letter was received.

The Chair assigned voting as follows, Mr. Al Donoghue, Mr. Brian Sullivan, Mr. David Nunnally, Mr. Chris Murphy, and Mr. Joe Beasley.

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 the applicant and owner sitting with him, Walter Maloney.

Attorney Crowell presented the case. The Petitioners are requesting a Special Permit to demolish and replace the existing single-family residence and detached garage as shown on the Existing Conditions Plot Plan by TS Land Surveying Inc, dated September 10, 2021, and the Proposed Conditions Plot Plan by PJF and Associates dated September 12, 2022. The existing dwelling is non-conforming on the westerly setback at 19.2 feet but is conforming as to the remaining setbacks. The existing garage is non-conforming on the easterly setback at 3 ½ ft. The Proposed Conditions plot plan shows the dwelling now with an attached garage with a building code compliant roof over the porch attaching the garage to the main part of the dwelling. The proposed dwelling sunroom addition will be 10 ft from the westerly lot line but will meet all other required setbacks. Attorney Crowell handed out an abutter’s letter, in favor of the Special Permit, from the westerly neighbor, The Ferrairer’s, and stated that they had seen the building plans. Attorney Crowell reviewed that the compliant roof over the porch attaching the garage with habitable space above is all part of one single family residence.

Mr. Murphy inquired if the space above the garage would have a kitchen. Attorney Crowell affirmed. And Mr. Murphy further asked if that was an apartment. Attorney Crowell stated that you could look at it that way, but in fact many single-family homes have more than one kitchen. Attorney Crowell stated that they were not asking for any approval for an ADU nor asking to rent the space. The proposed dwelling, except for the 10-foot intensification of a non-conformity will meet all other required setbacks and in accordance with the findings of the Gale Case, will not constitute a substantial detriment to the entire neighborhood and requested The Board to grant a Special Permit to demolish and replace the structure.

The Chair asked if there was anyone in the Public that wanted to comment. Hearing none, asked Board Members for their questions and comments.

Mr. Beasley asked the Attorney to confirm that by making it one roof it makes it one structure

Mr. Murphy indicated that although they are not asking for an ADU it looks like an ADU, as well as the Board of Health thinks so. Attorney Crowell stated that if in the future they wanted to make it an ADU they would need to obtain appropriate permits, but until then, they would be in violation of Town Building Codes and subject to fines.

Mr. Donoghue indicated his opinion it looks like an ADU and expect it would get rented. Attorney Crowell stated that an ADU is not what they are representing. The applicant, Mr. Maloney stated that he has three daughters, grandchildren and dogs and needs this room for his family.

Mr. Sullivan commented that he initially considered the proposal contained an ADU but understands the argument that this would not be the first home in Harwich with a second kitchen.

Mr. Beasley commented that he has friends and family with homes with more than one kitchen and understands family members visiting that want their own space.

Mr. Sullivan brought up the abutters letter from the Eric and Megan Anderson of 118 Bank Street, whom are not in favor of the Special Permit. Attorney Crowell did not have the letter and was given a copy. The points of the letter were reviewed.

Mr. Sullivan asked for a motion to close the Public Meeting. Motion made by Mr. Murphy and seconded by Mr. Nunnally. The Board voted unanimously to approve

The Chair asked the Clerk to make a motion on the case.

Case No. 2022-32 Walter V. Maloney III & Tracey C. Maloney**,** c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at 135 Miles St, Assessors’ Map 14, Parcel J4 in the RM 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 case 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 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 seconded by Mr. Nunnally.

As there was no further discussion by The Board, The Chair then asked for a vote on the Motion. The Board Voted to approve 5 to 0.

**Case No. 2022-33** Siceamp Inc. D.B.A The Tern Inn, owner of the property located at 91 Chase St, Assessors’ Map 4, Parcel F1 in the RH-1 Zoning District. The Applicant seeks a Special Permit, or in the alternative a Variance, to convert a pre-existing nonconforming cottage from a 3-bedroom single unit to a 2-bedroom double unit, pursuant to the Harwich Zoning By-laws §§325-52 and -54 and MGL Chapter 40A Sections 6 & 10.

The Clerk indicated that two letters were received by abutters in favor of the permit

The Chair assigned voting as follows, Mr. Al Donoghue, Mr. Brian Sullivan, Mr. David Nunnally, Mr. Chris Murphy, and Mr. Joe Beasley.

The Chair asked the applicant or representative to introduce themselves. Presenting the case was John August, President and principle of Siceamp Inc. and owner with his wife.

The Petitioner seeks to renovate a pre-existing, non-conforming seasonal cottage to convert it from a three-bedroom single unit to two-bedroom double unit on the same footprint as the existing structure. The proposed renovation will take place within the existing building structure and will not increase the building footprint or elevation. The existing building is non-conforming at 6.1 feet from the northeast side boundary. Last renovated in the 1970’s and they are striving to keep the property in good repair. The renovation will create a more open and modern floorplan and reduce the intensity of use from 6 occupants to 4 occupants during its seasonal use. There will be no kitchens in either unit. Since there is no change in the existing nonconformities and the intensity of the use is being diminished and will not constitute a substantial detriment to the entire neighborhood, the Petitioner request a Special Permit for the renovation.

The Chair asks for comments or questions from the public and hearing none asked for a motion to close the Public Hearing. Motion by Mr. Murphy and seconded by Mr. Nunnally. The Board voted unanimously to approve.

Mr. Donoghue asked if there was an intent to rent this unit to staff members. Mr. August said no, but in the future planned to renovate a three-bedroom home on the property for seasonal help.

The Chair asked the Clerk to make a motion.

Case No. 2022-33 Siceamp Inc. D.B.A The Tern Inn, owner of the property located at 91 Chase St, Assessors’ Map 4, and Parcel F1 in the RH-1 Zoning District. The Applicant has been granted a Special Permit to convert a pre-existing nonconforming cottage from a 3-bedroom single unit to a 2-bedroom double unit, having found that the applicant meets the requirements of the Bylaw and the Gale case 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 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 seconded by Mr. Beasley.

As there was no further discussion by The Board, The Chair then asked for a vote on the Motion. The Board Voted to approve 5 to 0.

**Case No.** **2022-34** Jonathan & Sherri Estrellado, c/o Walter R Warren Jr., 259 Great Western Rd Unit B, Harwich, MA 02645, owner of the property located at 20 Duke Ballem Rd, Assessors’ Map 100, Parcel Y2 in the RR Zoning District. The Applicant seeks a Special Permit to construct a screen porch on a non-conforming single-family dwelling, pursuant to the Harwich Zoning By-laws §325-54(A) and MGL Chapter 40A Sections 6 & 10.

The Chair assigned voting as follows, Mr. Al Donoghue, Mr. Brian Sullivan, Mr. David Nunnally, Mr. Chris Murphy, and Mr. Joe Beasley.

The Chair asked the applicant or representative to introduce themselves. Presenting the case was Stephen Bobola, co-owner of Sand Dollar Customs representing the Estrellado’s.

Mr. Bobola reviewed the Petitioner seeks the renovation of a preexisting 12 x 20’ deck. The Petitioner is requesting an existing deck be transformed into a 3-season room with sliding eze-breeze panels. We are requesting an approval of this project as it does not change the pre-existing nonconformity of side setbacks or lot coverage and will not adversely affect the neighborhood.

Mr. Beasley asked Mr. Bobola you are replacing the decking. Affirmed.

Mr. Donoghue asked how far the deck was from southside. Answered was 12.49.

Chair asked if there was anyone in the Public that wanted to comment. Hearing none the Chair asked for a motion to close the public meeting. Motion by Mr. Beasley and seconded by Mr. Nunnally. The Board voted approval unanimously.

Chair asked the Clerk to make a motion.

Case No. 2022-34 Jonathan & Sherri Estrellado, c/o Walter R Warren Jr., 259 Great Western Rd Unit B, Harwich, MA 02645, owner of the property located at 20 Duke Ballem Rd, Assessors’ Map 100, Parcel Y2 in the RR Zoning District. The Applicant has been granted a Special Permit to construct a screen porch on a non-conforming single-family dwelling, having found that the applicant meets the requirements of the Bylaw and the Gale case 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 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. Murphy.

As there was no further discussion by The Board, The Chair then asked for a vote on the Motion. The Board Voted to approve 5 to 0.

**Case No. 2022-35** Derrick L. & Francine R. Tallman, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at 17 Louis Way, Assessors’ Map 4, Parcel M4-7 in the RH-1 Zoning District. The Applicant seeks a Special Permit, or in the alternative a Variance, to construct a finished second floor 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 assigned voting as follows, Mr. Al Donoghue, Mr. Brian Sullivan, Mr. David Nunnally, Mr. Chris Murphy, and Mr. Joe Beasley.

The Chair asked the applicant or representative to introduce themselves. Presenting the case was Attorney William Crowell and seated with him was Derrick Tallman.

The Petitioner is requesting a Special Permit to remodel/reconfigure the first floor and add a new second floor to the pre-existing, non-conforming single-family residence. There will be no change to the footprint of the entire dwelling which is non-conforming on the west side at 10.7 feet and non-conforming on the east side at 15.4 feet. Said distances will not change but new habitable space will be constructed on a second-floor addition which will constitute an intensification of the existing non-conforming setbacks on both the west and east sides. The garage previously was converted to an office but is now reverting to a garage use with the new habitable space above. It should be noted that the proposed westerly setback will remain at 10.7 feet. Also, both building coverage and site coverage will remain conforming with no changes to the footprint. Therefore, in accordance with the findings of the Gale Case, this Board may grant a Special Permit finding the renovation will not constitute a substantial detriment to the entire neighborhood.

The Chair asked for comments or questions from The Board. Hearing none asked if there was anyone in the Public that wanted to speak. John Keenan, an abutter spoke and stated he was in favor of the project.

There was discussion between Attorney Crowell and Board Members regarding not having any date restrictions and keeping all construction vehicles on the property.

Chair asked for a motion to close the public hearing. Motion made by Mr. Donoghue and second by Mr. Nunnally. The Board voted approval unanimously.

Case No. 2022-35 Derrick L. & Francine R. Tallman, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at 17 Louis Way, Assessors’ Map 4, Parcel M4-7 in the RH-1 Zoning District. The Applicant has been granted a Special Permit to construct a finished second floor onto a non-conforming single-family dwelling, having found that the applicant meets the requirements of the Bylaw and the Gale case 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. Acceptable egress will be always available on Lewis Way.
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. Murphy.

As there was no further discussion by The Board, The Chair then asked for a vote on the Motion. The Board Voted to approve 5 to 0.

**Case No. 2022-36** John & Elaine Keenan, c/o David Riquinha, 301 Purchase St, South Easton, MA 02375, owner of the property located at 3 Terry Ln Assessors’ Map 4, Parcel M5-5 in the RH-1 Zoning District. The Applicant seeks a Special Permit to construct a finished second floor onto a non-conforming single-family dwelling, pursuant to the Harwich Zoning By-laws §325-54 and MGL Chapter 40A Sections 6 & 10.

The Clerk stated for the record that The Board was in receipt of a notice by the Board of Health that the current septic system is designed for only three bedrooms. The proposed Plan indicates there will be a bonus room on the second floor that meets the definition creating a fourth bedroom. Privacy will need to be eliminated from the bonus room. The Petitioner was not aware of the notice by the Board of Health but stated that the bonus room will not have privacy.

The Chair assigned voting as follows, Mr. Al Donoghue, Mr. Brian Sullivan, Mr. David Nunnally, Mr. Chris Murphy, and Mr. Joe Beasley.

The Chair asked the applicant or representative to introduce themselves. Presenting the case was David Riquinha, the general contractor from North Eastern Trade Services, Inc. and seated with him was the owner John Keenan.

The Petitioner seeks to create a second floor over the existing dwelling with no outward expansion. The existing ranch is on a lot that is non-conforming due to the rear setback (9.9’ vs. the required 20’) but all other setbacks, building and site coverages are conforming. The existing rear deck on the southerly side will be eliminated so that setback will be improved.

The Chair asked for comments or questions from The Board. There were no questions. Chair asked if there was anyone in the Public that wanted to speak. Hearing none asked for a motion to close the public hearing. Motion made by Mr. Murphy and second by Mr. Nunnally. The Board voted approval unanimously

Chair asked the Clerk to make a motion in this case.

Case No. 2022-36 John & Elaine Keenan, c/o David Riquinha, 301 Purchase St, South Easton, MA 02375, owner of the property located at 3 Terry Ln Assessors’ Map 4, Parcel M5-5 in the RH-1 Zoning District. The Applicant has been granted a Special Permit to construct a finished second floor onto a non-conforming single-family dwelling, having found that the applicant meets the requirements of the Bylaw and the Gale case 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 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. Murphy.

As there was no further discussion by The Board, The Chair then asked for a vote on the Motion. The Board Voted to approve 5 to 0.

**III. APPROVAL OF MINUTES**

The minutes of the September meeting were not available to review

**IV OLD BUSINESS**

There was no Old Business to review.

**V. NEW BUISINESS**

Board of Appeals Meeting Calendar for 2023 was reviewed. In the past there had been only one meeting between November and December, but since there is no regular meeting scheduled conflicts with holidays in 2023 all agreed to have meetings each month and the calendar as presented was approved.

**VI. ADJOURN**

Mr. Murphy moved to adjourn at 9:43pm. Mr. Beasley seconded. Vote unanimously in favor, Motion carries; meeting adjourned.

Authorized Posting Officer: Lecia McKenna

Board of Appeals Recording Clerk