**TOWN OF HARWICH**

**ZONING BOARD of APPEALS**

**WEDNESDAY, FEBRUARY 22, 2023**

**TOWN HALL – GRIFFIN ROOM   
MINUTES**

**Board Members Present:**Brian Sullivan, David Ryer, Al Donoghue, Timothy Bailey, and Dave Nunnally

**Board Members Absent:** Chris Murphy, Joseph Beasley, John August, and Kenneth Dickson.

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

**II. PUBLIC HEARINGS**

Mr. Donoghue opened the case by reading the notice:

Case No. **2023-02 John W. Carey,** 56 Cook Circle, Hyannis, MA 02601, owner of the property located at **5 Bells Neck Rd.**, Assessors’ Map 10, Parcel G1 in the RM Zoning District. The Applicant seeks a Special Permit, or in the alternative a Variance, to change the use to a multi-family use and create habitable space with the setback on a pre-existing, non-conforming structure, pursuant to the Harwich Zoning By-laws §§325-52 and -54 and MGL Chapter 40A Sections 6 & 10.

Members Voting: Brian Sullivan, David Ryer, Al Donoghue, Timothy Bailey, and Dave Nunnally.

Mr. Sullivan stated this Board cannot issue a Special Permit for multi-family that is for the Planning Board to grant and the applicant is here to request relief pertaining to the setback.

Attorney William Riley, introduced himself and John Carey, Property Owner, and stated the applicant before the Board because the existing rear setback is 16 feet which does not meet the current requirements and according to 325:51 any change, alterations or extended use to a non-conforming building requires the issuance of a Variance or Special Permit by the Board of Appeals.

The Board and Attorney Riley continued to discuss whether the Board has the authority to grant a Special Permit on a multi-family property and the applicant said he is prepared to move forward for a Variance.

John Carey discussed the proposed project and his professional experience as a license contractor. He emphasized the importance for year-round housing and this property will provide 10 one-bedroom apartments that will be first offered to essential workers in the town, such as police, fire and healthcare workers.

Attorney Riley argued the structure of the property proposes a significant financial hardship due to the cost of lifting and moving the structure to be compliant with the setback requirement versus only lifting the building. The building has existed in that location for 150 years and the continuation of the location will not cause any public detriment or degrade the purpose and intent of the Bylaws. He stated there is a risk to the safety of the structure to the historic building if moved and enough damage may occur that it can’t be preserved. He argued it's a minor dimensional relief with no structures on the adjacent property in close proximity to the property line and there is hardship arising out of the condition of the structure and it's a condition that only applies to this lot and not to others generally in the neighborhood, and the the relief can be granted without degrading from the purpose and intent of the bylaw or without substantial public detriment.

Mr. Sullivan asked if phase 2 of the project will require any relief through this Board.

Mr. Carey said the structure involved in Phase 2 should not require any relief.

Mr. Ryer asked if access to the property would be on Bells Neck Rd and if the parking area will be paved.

Mr. Carey responded access will be on Bell Neck Rd and there is currently a substantial paved parking area which will be reduced and repaved.

Mr. Sullivan opened the hearing for public comment.

Attorney Victoria Dalmas introduced herself and stated she is representing Alan Longton of Pinewood Village Condominium, Unit 11. She discussed relevant case law, how it relates to this case and suggested the Board request a legal opinion. She started to talk about Phase 2 of the project.

The Board interjected to say only Phase 2 is not before the Board tonight.

Attorney Dalmas continued stating Variance standards are quite stringent, the hardships sounds to be a personal hardship and expanding the structure without expanding the mass to fit into a non-conforming setback is achievable and would be a good result for the neighborhood.

Marie Gunderson, Pinewood Village, Unit 9, asked about the Historical Commission case.

Mr. Sullivan read the interdepartmental comment from the Historical Commission, stating the demolition of the foundation was approved.

Ms. Gunderson said structure is changing from occasional use to continuous use.

Mr. Ryer said it will not effect the use if the applicant can meet the setbacks.

Arthur Bowden, Harwich resident, said he hasn’t heard the word “housing” enough during this hearing and applauds the applicant for providing Harwich with needed housing.

Richard Waystack, Harwich Resident, talked about the commitment Mr. Carey made to Town to maintain the historical integrity of the building when he purchased the property from the Selectmen and how it would be easier and cheaper to raze/replace the historic structure, but the applicant chose preservation. He discussed the housing shortages and how it affects the town, and would like to see the Board grant a Variance.

Mark Hundertmark, 36 Pine Grove Rd, discussed the Bylaws, potential problems with the scope of the which could be a detriment to the neighborhood and suggested the applicant scale back the project.

Mr. Waystack said the abutting parcel has 16 units and this would be in line with the current neighborhood.

Mr. Ryer said “detrimental to the neighborhood” only applies to Special Permits, not Variances.

Ms. Gunderson commented the units in the abutting property are not all occupied year round.

Attorney Dalmas said the objective in mind are good objectives, but she has not heard argumentation that supports a Variance, and it would be appropriate for Town Meeting to act upon this. She stated it is impossible to renovate the structure as it exists and make it work without expanding it.

Mr. Hundertmark said there is a Special Permit requirement from the Planning Board and possibly one from the Board of Appeals.

Mr. Riley discussed the statutes of a Variance, noted the unique situation and the financial hardship of the Applicant. He said its clearly not a derogation of the purpose or intent of the Bylaw and the proposed changes on the building, the dormers, are in line with standards that preservations are intent on applying to antique structures. He understands the need for housing is not a zoning issue but hopes it may carry some weight and the structure must be profitable in order to be preserved.

Mr. Ryer moved to close the public hearing. Duly seconded. Vote 5-0.

Motion carries; Public Hearing closed.

The Board discussed the different uses the property has had over the years, including a youth center and determined the Board can grant a Variance if the case meets the criteria.

The Board agreed this project would not be a detriment to the neighborhood or derogate from the bylaw because the Planning Board said the project meets the requirements for a multi-family developments and is a financial hardship for the applicant.

No further discussion for the Board.

Mr. Ryer moved that the Board grant a Variance to change the use of the existing structure to a multi-family use and create habitable space within the setback on a pre-existing non-conforming structure pursuant to MGL Chapter 40A §10 and the Harwich Zoning Bylaw, for the property located at 5 Bells Neck Road, Assessors’ map 10 Parcel G1, in the RM zoning District. The Board makes this grant by finding that the shape of the historic structure is unique and that in moving of the structure to meet current setbacks that there is a danger of damage to the structure and that there is a substantial financial hardship that the applicant would have to bear if the Variance were not granted and the applicant had to relocate the building to comply with current setback requirements.  The Board further finds that there is no substantial detriment to the public good if it grants the Variance in that the granting of the Variance will not nullify or substantially derogate from the purpose or intent of the Bylaw.  The Board finds that this condition is specific to the property and does not generally affect the district in which the property is located. All work shall be performed in accordance with the plans submitted with this application. The Variance is granted subject to the following conditions:

1. All conditions for a Site Plan Special Permit which have been approved by the Harwich Planning Board in case number PB 2022-24 shall apply pursuant to the code of the town of Harwich §325-55.
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 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. Donoghue. Vote 5 – 0.

Motion carries; Variance granted.

Mr. Donoghue opened the case by the reading the notice.

Case No. **2023-03 John D Barone & Karen D. Gagne,** c/o James C. Norcross, Esq., PO Box 727, Chatham MA 02633, owner of the property located at **14 Atlantic St.**, Assessors’ Map 6B, Parcel L140 in the RH-2 Zoning District. The Applicant seeks a Special Permit raze and replace a pre-existing non-conforming single family dwelling, pursuant to the Harwich Zoning By-laws §325-54 and MGL Chapter 40A Section 10.

Mr. Donoghue read the Memo from Christopher Nickerson from the Department of Public Works.

Mr. Sullivan read the Memo from the Board of Health and discussed FAST septic systems.

Attorney Jamie Norcross introduced himself and Jack Wishart, Architect, discussed relevant portions of the case noting the proposed structure will be located in the same footprint of the existing structure with a slight expansion at the rear of the property. The setbacks will remain unchanged but will increase site and building coverage and the proposed design will keep with the size and characteristic of other homes in the neighborhood and is not substantially more detrimental to the neighborhood. He noted the revised plans due to changes the Historic Commission requested and approved.

Jack Wishart discussed the design specifics, including the foundation, landscape plan and fencing.

Mr. Sullivan asked specifics regarding the septic system.

The Applicants responded they are going with the septic system recommended by the Board of Health but are not septic professionals.

Mr. Sullivan expressed his concerns that the structure resides on Town property and if the Board has the authority to approve construction on Town property, the roadway. If the applicant is tearing down the property, the new structure should be built within the lot.

Attorney Norcross gave the history of the property. The original subdivision plan was in 1920 and the town did a Taking Plan at a later date which is why this property is partially on Town property along with a number of other properties. He stated the Applicant is not going to touch the foundation, moving it would require excavation on Town property and there is a full foundation under the porch making it difficult to decrease.

Mr. Ryer suggested if the Board grants the Special Permit to do so at risk to the owner. If the Town ever decides the house can no longer be on Town property and noted the rest of Case appears to meet the other requirements.

The Board and the Applicant discussed whether or not the Board can issued construction on Town Property.

Attorney Norcross stated a continuance is likely going to be needed.

Members Voting: Brian Sullivan, David Ryer, Al Donoghue, Timothy Bailey, and Dave Nunnally.

Mr. Sullivan opened the hearing for Public Comment.

Dan Griffin, an abutting neighbor, expressed concerns about the proposed house because it is a 40 ft structure on a 40ft long lot. He questioned on the property owner will maintain or build the rear of the house, such as siding or painting, without being on his property and how the height of building will affect ehir view.

Mr. Wishart responded it will be difficult to build the house without being on the neighbor’s property, but there will be a way and he would ask for some flexibility from the Abutter.

Attorney Norcross if construction without encroaching on someone’s property, the applicant can provide construction protocol at the next meeting.

Another resident of the rear abutting property express concerns about the potential for liability if construction workers are allowed on her property.

The Board and the Applicant discussed conditioning the special permit so there is no encroachment on abutting properties if needed.

Mr. Ryer moved to continue the case until Marth 29th, 2023. Seconded by Mr. Nunnally. Vote 5-0

Motion carries; case continued.

The Board took a 5 minute break.

**III. APPROVAL OF MINUTES**

Mr. Nunnally moved to approved the January 22nd meeting minutes with revision of who was in attendance. David Nunnally was not in attendance at the last meeting. Duly seconded. Motion carries; minutes approved.

**IV. NEW BUSINESS**

The Chair discussed a letter which was received by the Board yesterday regarding a dumpster and a recreational vehicle being stored in violation of the Zoning Bylaws and he gave the letter to the Building Commissioner.

The Board discussed attendance for the next meeting.

Mr. Bailey asked the Chair to discuss common building practices when structures are built close to lot lines.

**VI. CORRESPONDENCE/BREIFINGS**

The Board discussed the potential Bylaw changes regarding accessory dwelling units proposed by the Planning Board, including a memo from David Ryer to the Planning Board, concerns about parking and how changing lot size minimums or setback requirements may help allow residents to obtain Special Permits instead of Variances.

Mr., Sullivan moved to submit Mr. Ryer’s Memo as input to the Planning Board. Duly seconded. All vote in favor Motion carried.