**ZONING BOARD of APPEALS PUBLIC HEARING**

**Wednesday, January 25, 2017 at 7:00 p.m.**

**Griffin Meeting Room, Harwich Town Hall**

**MINUTES**

On Wednesday, January 25, 2017 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.

Board Members Present: David Ryer, Dean Hederstedt, Franco Previd, Kathleen Muller, James Hilliard and Al Donoghue.

**Case #2017-01**

James M. Richmond and Lynne M. Richmond, through their agent, Jeffrey Nelson, applied for a Variance to construct a new non-conforming addition consisting of a garage and 2nd story Master Bedroom expansion to a conforming single family residence. The application is pursuant to the Code of the Town of Harwich §325 Table 2, Area Regulations, §325-52 as set forth in MGL Chapter 40A §10. The property is located at 5 Randolph Lane, Map 113, Parcel W5-14 in the RH-1 Zoning District.

Members voting on this case: Dean Hederstedt, Franco Previd, Kathleen Muller, James Hilliard and Al Donoghue.

Applicants’ agent, Jeffrey Nelson accompanied the owner, James Richmond in arguing that the parcel in question has some grade and slope issues that make the proposed location of the garage the only viable one. Because the house is conforming to the required setbacks, the Applicants need a Variance as opposed to a Special Permit. Mr. Nelson noted that none of the neighbors had objected and Mr. Richmond offered into the record letters from 2 abutters supporting the project. One was from Mark & Sarah Zibrat and the other was from Scott Long. There was also a letter from David Raznick, an attorney representing the owners who offered his argument that the plan would have no adverse impact on the neighborhood and that the hardship for the Applicants is the slope in the topography of the lot. In his letter, Attorney Rasnick requested that the Board grant the relief requested.

Mr. Hilliard asked for clarification from the Applicants that they were looking for a Variance due to a proposed encroachment on the sideline setback from 20’ to 10’. Mr. Nelson answered him in the affirmative. Mr. Hilliard then asked for the Applicant to explain his hardship, one of the requirements for granting a Variance. He also asked if there was a topographical feature unique to the Applicants’ property. Mr. Nelson said that the grade in the rear of the property makes it difficult to place a garage anywhere but at the proposed location. He also said that a garage was a part of the original building plan but was never built. Mr. Hilliard suggested that if the garage were placed in the front of the house, Applicants could meet the required setbacks. Mr. Richmond said that the septic system is in the front of the house, again, limiting the options for the placement of a garage.

Ms. Muller wondered if it would be impossible to locate the garage further to the front and Mr. Richmond answered that it would not be a good look.

There were some questions as to why the Applicants were seeking a Variance and not a Special Permit and Mr. Ryer explained that because the proposal would add a new non-conformity to a conforming structure, a Variance is required.

Mr. Hederstedt explained to the Applicant that the law requires certain criteria be met before a Board could grant a Variance: Some unique feature of soil, shape or topography; a hardship to the Applicant if the Variance were not granted; no substantial detriment to the neighborhood and no derogation from the intent of the bylaw. He said he believed that the Applicants had not met that burden.

Mr. Ryer said he believed that there were some topographical features to consider. Mr. Previd and Mr. Donoghue said they were having trouble seeing that the requirements for granting a Variance had been met.

Mr. Ryer asked the Applicant if he wanted to informally poll the Board to see if he wanted to continue with a vote and the Applicant said he wanted a full vote.

There were no comments from the public.

Mr. Hederstedt moved and Mr. Previd seconded the motion to close the public hearing. The Board voted unanimously in favor. 5-0-0

**Mr. Hilliard then moved to grant the request for a Variance** to construct a garage to within 10’ of the side setback according to the application and the plans provided. Mr. Donoghue seconded the motion. Mr. Hilliard and Mr. Donoghue voted in the affirmative. Ms. Muller, Mr. Hederstedt and Mr. Previd voted against the motion. **The motion failed. 2-3-0 DENIED**

**Case #2017-02**

Karen Fay, by her agent, Attorney William Crowell has applied for a Special Permit or in the alternative, a Variance to relocate a pre-existing, non-conforming single family residence onto a newly poured concrete foundation. The application is pursuant to the Code of the Town of Harwich §325 Table 2, Area Regulations, §325-54.A.(2)(c) as set forth in MGL Chapter 40A §6. The property is located at 3 Ocean Ave., Map 6B, Parcel L135 in the RH-2 Zoning District.

Members voting on this case: David Ryer, John Burke, Dean Hederstedt, Franco Previd, Kathleen Muller, James Hilliard and Al Donoghue.

Attorney Crowell appeared along with the applicant, Karen Fay and restated the details of the application and added that the building would move a few feet to the east making it more compliant than the current location. The Applicant had approval from the Historic Commission as well as the Board of Health and was looking for a Special Permit because the plan continues along the same line without increasing the encroachment. Attorney Crowell said there would be no substantial increase in noise, odor, traffic, congestion or the like and the there would be no detriment to the neighborhood but an improvement on the corner sight line. He asked that the Board grant the requested Special Permit according to the Town Bylaws.

Mr. Ryer thought that this was a classic Gale Case. The Board had no further comments or questions.

There were no comments from the public.

Mr. Hederstedt moved and Mr. Donoghue seconded the motion to close the public hearing. The Board voted unanimously in favor. 5-0-0

**Mr. Hederstedt then moved and Mr. Donoghue seconded the motion to GRANT the Special Permit** to relocate a pre-existing, non-conforming single family residence onto a newly poured concrete foundation according to the application and the plans provided. The Board had found that the proposed work does not create any new non-conformity nor will it be a substantial detriment to the neighborhood but that the plan increases the southerly and westerly setback but not the northerly which follows along the same line as a current non-conformity allowing for a Special Permit according to the Town of Harwich Bylaws and the Gale Case. **The Board voted unanimously in favor. 5-0-0**

The Board discussed in detail the potential addition of an “Application Checklist Addendum” to the current Zoning Board of Appeals Application. Mr. Ryer offered a handout of the “History of Zoning Requirements”. The hope is to have a more consistent flow of required information regarding zoning compliance from each applicant. It was decided to include the Abutters List with each packet to the members.

Mr. Hederstedt moved and Mr. Donoghue seconded the motion to approve the Minutes of the December 28, 2016 meeting with minor changes. The Board voted unanimously in favor. 5-0-0

Mr. Hederstedt then moved and Mr. Donoghue seconded the motion to adjourn the meeting. The Board voted unanimously in favor. 5-0-0

Authorized posting agent: Shelagh Delaney