**ZONING BOARD of APPEALS PUBLIC HEARING**

**Wednesday, January 31, 2018 at 7:00 p.m.**

**Griffin Meeting Room, Harwich Town Hall**

**MINUTES**

On Wednesday, January 31, 2018 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.

7PM Call to Order by Chairman, David Ryer.

Members present: David Ryer, Dean Hederstedt, Kathleen Muller, James Hilliard, Daniel Tworek and Mike Cupoli.

Mr. Ryer announced that Board Clerk John Burke had submitted his resignation to the Town and it has been accepted. Mr. Ryer then nominated James Hilliard to become Clerk and asked for a vote from the Board as to that nomination. Mr. Hilliard was approved unanimously.

**Case #2017-38 (Continued from 12/27/17)**

Paul Cuddy, Trustee of Harwich Commons, LLC has applied for a Temporary Change of Use to allow for the continuation of storage of construction materials being used as part of the National Grid Pipeline Project. The application is pursuant to the Code of the Town of Harwich, §325 Table 1, Use Regulations as set forth in MGL Chapter 40A §6. The property is located at 0 Halls Path, Map 86, Parcel B7 in the RR Zoning District.

Mr. Hilliard read the case into the record as well as number of pieces of correspondence. These included:

\*An email from Lincoln Hooper of the Harwich Highway and Maintenance Department saying that the property in question is privately owned and therefore not under the jurisdiction of the DPW;

\*A Memo from Amy Usowski the Town’s Conservation Agent saying that the Conservation Commission does not have jurisdiction over the property;

\*A Memo from Meggan Eldridge the Town’s Health Director who responded to a letter from RH White and suggested conditions regarding the storage of materials at the site if a Special Permit were issued. The RH White letter was also read into the record. It gave assurances regarding the storage of construction materials during the extent of the pipeline project;

\*A Memo from Charleen Greenhalgh, the Town Planner with suggested conditions for the storage of construction materials during the life of the Temporary Permit.

Mr. Thomas White of RH White Construction, project manager, appeared on behalf of Paul Cuddy.

Mr. Ryer explained to Mr. White that of the original 5 members who heard the case at the December meeting, 2 were absent. Mr. Ryer himself could vote on the case because he had heard the testimony at the December meeting but noted that there would only be 4 available members to vote on the Special Permit. He gave Mr. White the option of a continuance until the next meeting if Mr. White preferred to have a 5 member Board voting on the case. Mr. White chose to be heard with 4 voting members.

Members voting on this case:

Mr. Ryer, Mr. Hederstedt, Ms. Muller and Mr. Cupoli

Mr. White explained that the RH White Construction Company had entered into an agreement with Paul Cuddy to use the property at 0 Halls Path to store construction materials as part of the project to lay 17 miles of new gas pipeline. Some amount of paving asphalt had been stored temporarily at the site but has been removed. He stated that there are no plans to store any additional asphalt but that occasional pieces are brought in as part of the excavated materials. These will be collected and removed as part of aggregate material that will end up at Robert Our Company for processing and sifting.

Mr. Hederstedt stated that he would like to see the RH White letter incorporated into the decision. It showed agreement and assurances to conditions limiting the storage of construction materials.

Mr. Ryer spoke about the possibility of a 2 step permit process, one for each of the lessee companies but after additional discussion agreed that the permit should be issued to the property owner, Paul Cuddy.

Mr. Hederstedt moved to close the public hearing and Mr. Cupoli seconded the motion.

Mr. Hederstedt then moved to GRANT the Temporary Special Permit for the continued storage of construction materials being used as part of the National Grid Pipeline Project at 0 Halls Path, which Temporary Special Permit shall expire on and all materials are to be removed by 10/01/19 and with conditions limiting construction equipment and excavated materials being stored to those required for the installation of pipes and their appurtenances as detailed in the letter from Thomas White of WH White Construction and Service Solutions, dated 1/12/18 and incorporated herein. Mr. Cupoli seconded the motion. The Board voted unanimously in favor. 4-0-0

**Case #2017-39**

Andrew M. Wang, Trustee of LSWCAPE Realty Trust, through his attorney, William Crowell has applied for a Special Permit or in the alternative, a Variance to expand a pre-existing, non-conforming single family dwelling by constructing a deck addition. The application is pursuant to the Code of the Town of Harwich, §325 Table 2, Area Regulations and Table 3, Height & Bulk Regulations as set forth in MGL Chapter 40A §6 and §10. The property is located at 5 Flake Yard Road, Map 7, Parcel A43 in the RH1 Zoning District.

Mr. Hilliard read the case into the record as well a letter from an abutter, Barbara Meyer of 11 Quason Lane saying that she and her brothers, who are co-owners with her, are in support of the project. Mr. Hilliard then recused himself from the case.

Members voting on this case: Mr. Ryer, Mr. Hederstedt, Ms. Muller, Mr. Tworek and Mr. Cupoli.

Attorney William Crowell introduced himself, Kevin Dauphinais of SandBox Design and Harry Ellis, the builder. Attorney Crowell began his presentation of the case by restating details of the application and adding some historical context regarding the origin of the street name and its location just outside of the historical campground area. He noted that the proposed porch will be setback from Flake Yard Road by 17.2’ where it is currently 23.3 feet. This will be an intensification of an existing non-conformity in keeping with the findings of the Gale Case. That will also be the case on the southerly boundary which will intensify from 9.7’ to 6.7’. There will be a section of the existing house which will be removed. The pre-existing, non-conforming building coverage will increase from 30.7% to 38.2% and the site coverage from 43.8% to 45.7%. Attorney Crowell argued that all of those intensifications fit the Gale Case and cause no substantial detriment to the neighborhood, no increase in noise, odor, fumes, congestion or the like and he asked that the Board grant the Special Permit.

Ms. Muller said that she did not like the project, that it made a grand house grander and that she did not see a necessity in enlarging the porch. She said that although she understood that the details fit the parameters of the Gale Case, she worried that Harwich would become like Nantucket. Attorney Crowell countered by saying that the porch would make the house look more like other houses in the neighborhood and offer a peaceful place to sit and watch the ocean. He added that the closest neighbors all approve of the project.

Mr. Hederstedt asked about the siding and Harry Ellis told him that he would be removing the clapboard and making the entire exterior white cedar shingles, again more in keeping with the neighborhood. He added that the removal of a portion of the house and the addition of second floor dormers, the house would look smaller than it currently does. Mr. Hederstedt also wanted to know if there would be any solar panels on the roof and Kevin Dauphine said that there wouldn’t be any and that 7 of the current skylights were being removed giving the house a more “Cape Cod” look.

Mr. Ryer said that he liked the project, particularly the reduction in the size of the house and thinks it will be an improvement and fit the neighborhood better.

Mr. Tworek said that he believed that the project meets the conditions of the Gale Case. Mr. Cupoli agreed.

Mr. Hederstedt moved to close the public hearing and Mr. Cupoli seconded the motion.

Mr. Hederstedt then moved to GRANT a Special Permit to expand a pre-existing, non-conforming single family dwelling by constructing a deck addition all according to the plans stamped and submitted. The Board found that there will be no new non-conformity but only the intensification of existing non-conformities and no detriment to the neighborhood, thereby fitting the requirements of the Gale Case. There is a condition that no substantial exterior demolition, construction nor new landscaping occur between June 30 and Labor Day of 2018 and 2019. Mr. Cupoli seconded the motion. The Board voted unanimously in favor. 5-0-0

Mr. Hederstedt moved and Ms. Muller seconded the motion to approve minutes from the December 27, 2017 meeting. The Board voted unanimously in favor.

There was some discussion generated by Ms. Muller’s concern that applicants of pre-existing, non-conforming dwellings can use Special Permits to inch into their setbacks again and again. She restated her distaste for the previous project but Mr. Ryer responded that esthetics are normally not considered as factors when using the Gale Case to issue Special Permits because that’s not considered detrimental to the neighborhood.

Mr. Hederstedt moved to adjourn and Mr. Cupoli seconded the motion. The Board voted unanimously in favor.

Submitted by Shelagh Delaney, ZBA Secretary