**ZONING BOARD of APPEALS PUBLIC HEARING**

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

**Griffin Meeting Room, Harwich Town Hall**

**MINUTES**

On Wednesday, October 25, 2017 at 7:00 PM, the Harwich Zoning Board of Appeals will hold a Public Hearing in the Griffin Meeting Room at the Harwich Town Hall, 732 Main Street to hear the following cases. Any member of the public having interest in these applications is invited to attend and provide information and comment relevant to these matters or may submit the same in writing by Thursday, October 19, 2017.

Members present: David Ryer, John Burke, Kathleen Muller, Al Donoghue and Joseph Campbell. Dean Hederstedt left prior to the meeting due to illness.

**Case #2017-18 *(CONTINUED to 10/25/17)*** Jeffrey Rego and Joseph H. Rego III through their agent, Attorney Charles M. Sabatt seek a decision of the Board overturning the Building Commissioner’s denial of a request for enforcement under MGL Chapter 40A §7. Applicants contend that the operation of “sand pit” is prohibited under §325 Table 1–Use Regulations and/or requires a permit under §325-102 and that travel to access the subject pit over a private way, a portion of which crosses the Applicants’ property, is an unlawful extension of an unpermitted industrial and commercial use into a residential zoning district in violation of Massachusetts Case Law. The property is located off of Jay Z Drive, Assessor’s Map MISC, Parcel 4054001 in the RR Zoning District.

Attorney Sabatt, representing the Rego family submitted a written request and signed an Agreement form to continue the case until 11/29/17.

Ms. Muller made a **motion to continue** the case with Mr. Burke offering a second. The Board voted unanimously in favor of continuing Case # 2017-18 until November 29, 2017 at 7PM.

**Case #2017-19 *(CONTINUED TO 11/29/2017)*** Clifford A. Daluze, John Z. Daluze, Jr. and Margaret Weigand through their agent, Attorney Frank J. Shealey are appealing a Cease and Desist Order issued by the Building Commissioner on 5/23/17 to halt “any and all commercial activity” at a “sandpit” located off Jay Z Drive until Applicants obtain “appropriate zoning relief” and an Operations Permit from the Harwich Planning Board. Applicants claim they have a “pre-existing, non-conforming status” under MGL Chapter 40A §6 and §325-26 of the Harwich Zoning By-Laws. The property is located off of Jay Z Drive, Assessor’s Map MISC, Parcel 4054001 in the RR Zoning District.

Attorney Shealey, representing the Daluze applicants submitted a written request to continue the case until 11/29/17. He also signed the Agreement to Continue form.

Ms. Muller made a **motion to continue** the case with Mr. Burke offering a second. The Board voted unanimously in favor of continuing Case # 2017-19 until November 29, 2017 at 7PM.

**Case # 2017-27 *(CONTINUED to 10/25/17)*** Joseph G. DeStefano and Sarah DeStefano through their agent, Attorney William Crowell have applied for a Special Permit or in the alternative, a Variance to demolish and replace a single family dwelling. The application is pursuant to the Code of the Town of Harwich §325-54.A and Table 2, Area Regulations as set forth in MGL Chapter 40A §6 and §10. The property is located at 36 Northern Avenue, Map 6, Parcel E5-13-2 in the RH-1 Zoning District.

Mr. Burke read into the record comments withdrawing objections to the project from abutters Bill and Bethany Craig as well as Attorney David Keenan representing abutter Patricia Keenan-Luppi. He also read concerns from the Health Director regarding the new septic system.

Members voting:

David Ryer, John Burke, Kathleen Muller, Al Donoghue and Joseph Campbell

Attorney Crowell introduced himself and the Applicants, Joe and Sarah DeStefano and offered revised plans which will eliminate the pool for the project and referred to the 2 letters from abutters expressing their withdrawal of objections for the project. He noted that the remaining plan will be a bit larger to the east side where the pool would have been. Attorney Crowell said that the concerns of the Health Director will be addressed. He argued that the reasoning of the Gale Case applied because with the addition of a second floor in essentially the same footprint, there would be intensifications of existing non-conformities and no new non conformity. He stated there would be no substantial detriment to the neighborhood and asked that the Board grant the Special Permit.

Mr. Ryer stated that he wanted a condition prohibiting the exterior demolition, construction and new landscaping during the time between June 30 and Labor Day 2018.

There were no public comments.

Mr. Campbell moved and Mr. Donoghue seconded the motion to close the public hearing. The Board voted unanimously in favor.

Mr. Burke moved and Mr. Donoghue seconded the motion to **GRANT the Special Permit** to demolish and replace a single family dwelling under Section 6 of Chapter 40A according to the plans provided including building plans by Peter Dimeo dated 8/2/17 and revised 10/6/17, a plot plan by Rober Survey dated 7/8/2017, revised 10/8/2017 finding that the proposed reconstruction will not be substantially more detrimental to the neighborhood that the existing structure with the ***condition that no substantial exterior demolition, construction or new landscaping occur between June 30 and Labor Day of 2018.*** The Board voted unanimously in favor. 5-0-0

**Case # 2017-30** David W. Grainger and Evelyn J. Grainger through their agent, Attorney James Stinson have applied for a Special Permit to demolish and replace a pre-existing non-conforming single family dwelling. The application is pursuant to the Code of the Town of Harwich §325-54.A and Table 2, Area Regulations as set forth in MGL Chapter 40A §6. The property is located at 21 Uncle Venies Road, Map 17, Parcel R1 in the RM Zoning District.

Attorney Stinson introduced himself and Dave Clark, the project engineer and noted that the project involves a property within the flood zone requiring the house to be razed in order to raise it to the proper flood zone height. He said that the house was built in 1935 and is just over 5’ from the street. The proposed new house will be primarily within the same footprint as the original house but will change the front orientation. The building and site coverage amounts will remain under the maximum allowed and the height will stay under the 30’ maximum, measured from the base flood elevation as per the zoning bylaw. Dave Clark explained the calculations for determining height which measures the peak at 25.5’. Attorney Stinson added that the Applicants are going before the Board of Health proposing a 6000 gallon tight tank. He said that the new structure satisfies the requirements of the Gale Case in that it will not create any new non-conformity and not be substantially more detrimental to the neighborhood. He asked that the Board grant the Special Permit.

Mr. Burke had concerns about the limitations for parking. Dave Clark said there would be off-street parking for 2 vehicles.

Noni Frost of 17 Uncle Venies Road wanted clarification of the southerly boundary of the property. Dave Clark assisted her in reading the site plan saying that the plan used by his firm is recorded at the Barnstable County Registry of Deeds.

Ms. Muller moved and Mr. Campbell seconded the motion to close the public hearing. The Board voted unanimously in favor.

Mr. Burke moved and Mr. Donoghue seconded the motion to **GRANT the Special Permit** to demolish and replace a single family dwelling under Section 6 of Chapter 40A according to the plans provided including building plans by Seaside Designs dated 9/6/17 and a plot plan by Clark Engineering LLC 9/21/17, revised 10/25/17 finding that the proposed reconstruction will not be substantially more detrimental to the neighborhood that the existing structure with the ***condition that no substantial exterior demolition, construction or new landscaping occur between June 30 and Labor Day of 2018.*** The Board voted unanimously in favor. 5-0-0

**Case # 2017-31** Damien and Cyndi Teixeira have applied for a Variance for a new dwelling built to a height of over 30’. The application is pursuant to the Code of the Town of Harwich §325 Table 3, Height and Bulk Regulations as set forth in MGL Chapter 40A §10. The property is located at 2 Fish & Game Drive, Map 77, Parcel C15 in the RR Zoning District.

Members voting on this case:

David Ryer, John Burke, Kathleen Muller, Al Donoghue and Joseph Campbell

Owner/applicants Damien and Cyndi Texeira introduced themselves and argued their case re-stating details from their petition. They explained that the completed house has a height of 11” over the 30’ maximum under the zoning code. He said that neither the engineer nor the building inspectors referred him to the proper definition of height. He added that he had been a contractor for over 35 years. He said that it would be too substantial to change the height at this point and that other houses in the neighborhood appear to be even taller. Cyndi Texeira added that they had a buyer lined up and the sale will fall through if they have to make changes.

Ray Chesley, the Harwich Building Commissioner commented that the Building Department had tried to draw attention to the height restriction details in 2 separate areas on the permit issued, explaining that the building had to be built to comply with the Code. He added that there was a clear condition on the face of the permit requiring a certification from a registered engineer saying that the house conformed to the Code.

Mr. Donoghue said that he thought the property seemed consistent with others in the neighborhood. Mr. Burke wondered why the applicant had not used his Construction Supervisor’s license to build his own house but instead pulled the permit with the homeowner exemption. Mr. Texeira said that he had been advised to do so by his accountant. Mr. Burke added that he was struggling with the fact that as a builder, Mr. Texeira should have been responsible for understanding how to implement the requirements of the permit. He asked the petitioner if he knew of the criteria for obtaining a Variance, specifically the hardship portion. Mrs. Texeira said that the upcoming winter weather would be a hardship.

Mr. Ryer needed clarification between differing height numbers given by Down Cape Engineering. He said that although the Board is normally very tough on compliance with the height requirement he thought that this could be a minimal dimensional variance. Ms. Muller added that she was struggling with the fact that the owner is a licensed builder and that he should know how to read code requirements. She was concerned that if the Board were to grant a Variance in this case, what would stop other owners of homes in that neighborhood that may be over the height restriction from expecting one as well.

Mr. Burke responded to the Applicants’ argument that their hardship would be the cost of changing the roof line. He told the Texeiras that they would need to connect that hardship to the shape, soil or topography of their specific lot. The burden of proof is on the Applicant. Mr. Ryer added that he thought that the Board should continue the case so that the Applicants could gather more information about costs and topography.

Mr. Campbell moved and Mr. Donoghue seconded **to continue the case until 11/29/17**. The Board voted unanimously in favor. 5-0-0

**Case # 2017-32** Steven A. and Joanne E. Churchill through their agent, Attorney William Crowell have applied for a Special Permit or in the alternative, a Variance to demolish and replace a pre-existing non-conforming single family dwelling. The application is pursuant to the Code of the Town of Harwich §325 Table 2 Area Regulations as set forth in MGL Chapter 40A §6 and §10. The property is located at 17 Shore Drive, Map 78, Parcel B15 in the RR Zoning District.

Members voting on this case:

David Ryer, John Burke, Kathleen Muller, Al Donoghue and Joseph Campbell

Attorney Crowell introduced himself as well as the Applicants, Steve and Joanne Churchill and noted that the property is on Shore Drive in North Harwich and not on Shore Road near the ocean. The proposed house will intensify existing non-conformities. There is a small building envelope because of the cranberry bogs, the wetlands and the placement of the septic system. Applicants have already been approved by the Board of Health and the Conservation Commission. He added that the Gale Case applies and asked that the Board grant the Special Permit.

Mr. Ryer asked for more detailed building plans than what was submitted. He added that once the Board stamped the plans, the builder would need to follow those plans for construction. Attorney Crowell disagreed suggesting that a basic format would be sufficient but that changes could be made to change the porch to a 3-season room at the time of the building application. Mr. Burke disagreed and asked for the case to continue in order for the Building Professional to submit more detailed building plans.

Mr. Burke moved and Mr. Donoghue seconded the **motion to continue the case until 11/29/17**. The Board voted unanimously in favor. 5-0-0

**Case # 2017-33**  Stephen Trowbridge through his agent, Attorney Andrew Singer has applied for a Special Permit to change, alter and extend a pre-existing non-conforming single family dwelling by constructing an 18’ x 22’ addition and porch. The application is pursuant to the Code of the Town of Harwich §325-54 as set forth in MGL Chapter 40A §6. The property is located at 18 Bay View Road, Map 14, Parcel X1 & X17 in the RL Zoning District.

Members voting on this case:

David Ryer, John Burke, Kathleen Muller, Al Donoghue and Joseph Campbell

Attorney Singer, representing the Applicants introduced himself and the project architect, Alison Alessi. He handed out a Summary of Reasoning for the case and explained that the project is for a one story addition between the garage and the main house. The property is a unique combination of two parcels with a tennis court built in 1922 which constitute a large portion of the site coverage. He added that the proposed new structure will not add any new nonconformity nor be a substantial detriment to the neighborhood. It has already been approved by the HDHC and will be compatible with the character of the neighborhood. He asked that the Board grant the Special Permit.

Mr. Burke moved and Al Donoghue seconded the motion to **GRANT the Special Permit** under 40A Section 6 finding that there will be intensifications of existing non-conformities, no new non-conformity and no detriment to the neighborhood according to the plans provided including building plans by A3 Architects, Inc. dated 9/5/17 and a plot plan by Moran Engineering Associates, LLC dated 9/18/17 with the ***condition that no substantial demolition, construction or new landscaping occur between June 30 and Labor Day of 2018***. The Board voted unanimously in favor. 5-0-0

Mr. Ryer informed the Board that due to the timing of Christmas in 2018, the meeting for December of 2018 will be held on the 19th instead of the 26th.

Mr. Ryer also asked the Board secretary to check on the figures for expense and revenue of the Board in preparation for the upcoming budget planning for the fiscal year 2019.

Ms. Muller moved and Mr. Donoghue seconded the motion to approve the minutes from the September 27th meeting. The Board voted unanimously in favor.

Ms. Muller then moved and Mr. Donoghues seconded the motion to adjourn the meeting. The Board voted unanimously in favor.