**ZONING BOARD of APPEALS PUBLIC HEARING**

**Wednesday, December 28, 2016 at 7:00 p.m.**

**Griffin Meeting Room, Harwich Town Hall**

**MINUTES**

On Wednesday, December 28, 2016 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 the Chair, David Ryer.

Members Present:

David Ryer, John Burke, Franco Previd, Dean Hederstedt, Kathleen Muller, James Hilliard and Al Donoghue

**Case #2016-30**

Kevin E. Kelley and Robbin M. Kelley by their agent, Attorney Paul R. Tardif applied for a Variance from the requirements of Chapter 325 §52.(N) to construct 3 Two-Family Duplexes on Lots 1 and 2 of a 3-lot ANR Plan by elimination of a common boundary between 2 of the 3 lots. The application is pursuant to the Code of the Town of Harwich §325-52 as set forth in MGL Chapter 40A §10. The property is located at 56 Bog Lane, Map 56, Parcel K2-1 in the RL Zoning District.

Members voting on this case: Mr. Ryer, Mr. Burke, Mr. Previd, Mr. Hederstedt and Ms. Muller.

Chairman Ryer read a number of letters into the record from abutters expressing opposition to the proposed project as well as notes from the Planning Board.

Presenting the case was Attorney Paul Tardif along with Dewitt Davenport who is part of a Purchase and Sale agreement to buy the land in question. Mr. Davenport restated the particulars of the application and added that his company has been in business for over 60 years and is the largest landlord in Barnstable County with 60 homes and 11 apartments in Harwich worth 16.5 million dollars in tax revenue. He handed out a packet to the Board that included maps and photos showing the details of the properties that are a part of this case. He asked the Board to pay particular attention to the way the electric easement ran through the lots. Mr. Davenport showed photos of a similar completed project of connected duplexes in Harwich on Fionn’s Way. He stated that his company has 20 full time staff that offers 24-hour services to their properties.

Mr. Davenport went on to explain the intent of the plan which will use only 2 of the 3 lots for 3 duplexes and then offer a deed restriction for the 3rd lot that will prohibit building on it. Each of the 6 apartments will have the potential for 4 bedrooms but will initially be finished with only 2 bedrooms in each.

Attorney Tardif argued the case for a Variance by explaining the 3 part test that includes: 1) that the soil, shape or topography be specific to the lots and not the entire neighborhood, 2) that a literal enforcement of the bylaw would involve a substantial hardship to the applicant, and 3) there would be no derogation from the purpose or intent of the bylaw. In terms of the first and second parts of the test, Attorney Tardif explained that the easement eradicates about ½ of the building area and that the power company has many restrictions on what can be done near and within the easement. He added that one of the lots was completely isolated with no frontage. He said that the proximity of the neighborhood stables was also limiting. Attorney Tardif argued that there would be no substantial detriment to the public good because the proposed homes would look much like other homes in the area and be residences within a residential zone, complying with all setback requirements. Because of all of this, he said that there would be no derogation from the intent of the bylaw and requested that the Board grant the Variance.

Mr. Hillard asked if the owners knew of the easement restrictions when they purchased the property and if Attorney Tardif had any case law to support his argument regarding a hardship due to the easement. Attorney Tardif said the owners did know of the restrictions and that the supporting case was Dionn v. Waltham, 344 MA 47.

Ms. Muller asked if there was a potential for 24 bedrooms on the 2 lots and was told by Mr. Davenport that the potential was there but they would only start with 12. Mr. Hederstedt asked Attorney Tardif to repeat the hardship argument for lots 1 and 2 and was told that the hardship is the difficulty with lot 3.

Mr. Ryer said he thought the hardship is not with the soil, shape or topography but with the right of way and Mr. Burke felt that the Planning Board should hear the case to determine whether multi-family dwellings should be approved in this zone.

There was a variety of public commentary, all in opposition to the plan including statements from Alena West, Lorne Jusilla and Diane Bianco as well as a detailed argument from Attorney David Reid who represents Mark Zippo, an owner of 7 properties on South Westgate Road. Attorney Reid offered some photos and written exhibits as well as his argument that the Applicants had not met the 3 part test for the issuance of a Variance. He said that the easment does not affect these 3 lots in any unique way but that it runs through multiple properties in Harwich. He also said that the current and past owners have all had full knowledge and acceded to the easement along with its restrictions. He said that there was no hardship as the lots are all buildable as individual lots and that the intent of the bylaw was to maintain a low density in the R-L Zoning district, not add 24 bedrooms to 2 lots. He noted that the magnitude of neighborhood opposition speaks for itself in terms of the detriment to the public.

Mr. Ryer offered the Applicants an opportunity for a “straw poll” of the Board to determine if they wanted to proceed or withdraw. Attorney Tardif said that would like to hear how the Board would vote. All voting members said that would deny the Variance request.

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

Attorney Tardif asked to withdraw the petition without prejudice.

**Mr. Hederstedt moved and Mr. Previd seconded the motion to allow the withdrawal without prejudice. The Board voted unanimously in favor. 5-0-0**

There was a 5 minute recess.

**Case #2016-31**

Edward J. Donahue, by his agent, Attorney James Stinson applied for a Special Permit to construct an addition to a pre-existing non-conforming dwelling. The application is pursuant to the Code of the Town of Harwich §325 Table 2, Area Regulations and §325-54.A.(2)(c) as set forth in MGL Chapter 40A §6. The property is located at 8 Earle Terrace, Map 12, Parcel N1-31 in the RH-1 Zoning District.

Members voting on this case: Mr. Burke, Mr. Previd, Mr. Hederstedt, Ms. Muller and Mr. Hilliard.

Presenting the case was Attorney James Stinson along with the engineer on the project, Andrew Philbrook. Attorney Stinson restated the details of the application and added that all of the lots in the neighborhood are pre-existing, non-conforming. The Applicants’ house is only 685 square feet. The proposal is for a small addition which will intensify an existing non-conformity which follows with the reasoning of the Gale Case. He said the shed in the northwest corner would be moved to within compliant setbacks. He said that there would be no increase in congestion, traffic or noise and that there would be no detriment to the neighborhood. He asked that the Board grant the request for the Special Permit.

The Board had no additional questions or comments. There were no public comments.

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

**The Board voted unanimously in favor. 5-0-0**

**Mr. Hederstedt then moved and Ms. Muller seconded the motion to GRANT the requested Special Permit** to construct an addition at 8 Earle Terrace according to the plans provided, finding that the Gale Case applies as the addition will intensify existing non-conformities, create no new non-conformities and that the project will not be substantially more detrimental to the neighborhood than the current single family dwelling with the condition that the existing shed be moved to within compliant setbacks. **The Board voted unanimously in favor. 5-0-0**

**Case #2016-32**

Morgan R. Rees and Janet M. Rees through their agent, Attorney William D. Crowell applied for a Special Permit to construct two (2) additions to a pre-existing non-conforming single family residence. The application is pursuant to the Code of Harwich §325 Table 2, Area Regulations and §325-54.A.(2)(c) as set forth in MGL Chapter 40A §6. The property is located at 60 Kelley Road, Map 3, Parcel W1-2 in the RH-1 Zoning District.

Members voting on this case: Mr. Burke, Mr. Previd, Mr. Hederstedt, Ms. Muller and Mr. Donoghue.

Presenting for the Applicants was Attorney William Crowell who restated the details of the application and added that the porch addition would come no closer to the setbacks and that the easterly addition continues along the same line as an existing encroachment thereby intensifying an existing non-conformity. According to the Gale Case, as long as there is no new non-conformity and no substantial detriment to the neighborhood, the Board may grant the requested Special Permit. He said there would be no increase in noise, odor, fumes, congestion or the like and asked that the Board grant the Special Permit.

The Board needed no additional clarification and there were no public comments.

Mr. Hederstedt moved and Ms. Muller seconded the motion to close the public hearing. All voted in favor. 5-0-0

**Mr. Hederstedt then moved and Ms. Muller seconded the motion to GRANT the Special Permit** according to the plans provided finding that the Gale Case applies as the project will intensify a pre-existing non-conformity, add no new non-conformity and cause no substantial detriment to the neighborhood. **The Board voted unanimously in favor, 5-0-0.**

**Case #2016-33**

Douglas E. Murphy and Jeanne T. Murphy through their agent, Attorney William D. Crowell applied for a Special Permit or in the alternative, a Variance to construct a deck and an addition to a pre-existing non-conforming single family residence. The application is pursuant to the Code of Harwich §325 Table 2, Area Regulations and §325-54.A.(2)(c) as set forth in MGL Chapter 40A §6 and §10. The property is located at 22 Kevin Road, Map 81, Parcel A49 in the RR Zoning District.

Members voting on this case: Mr. Burke, Mr. Previd, Mr. Hederstedt, Ms. Muller and Mr. Hillard.

Presenting with the Applicants was their Attorney, William Crowell who restated the details of the application and added that the addition on the easterly side of the dwelling will meet the setbacks. The westerly deck addition will come no closer to the setbacks than the dwelling thereby intensifying a pre-existing non-conformity. The percentages of building and site coverage would stay within acceptable limits. Since the project adds no new non-conformity and will offer no substantial noise, odor, traffic or congestion, it would not be a substantial detriment to the neighborhood. He asked that the Board grant the Special Permit according to the finding in the Gale Case.

The Board had no questions and there was no public commentary.

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

**The Board voted unanimously in favor. 5-0-0**

**Mr. Hederstedt then moved and Mr. Previd seconded the motion to GRANT the Special Permit to** construct an addition and deck according to the plans provided to a pre-existing non-conforming single family dwelling according to the reasoning of the Gale Case, finding that there would be an intensification of an existing non-conformity, no new nonconformity and no substantial detriment to the neighborhood. **The Board voted unanimously in favor. 5-0-0**

**Case #2015-37 – *MODIFICATION***

Robert Dickinson and Maureen E Dickinson through their agent, Attorney William D. Crowell applied for a modification to a Special Permit granted by the Board of Appeals on 8/26/15 to allow for a decrease of .6 inches on the easterly setback and .4 inches on the westerly setback, changes between the Proposed Conditions Plan and the As Built Plan due to an error in the “Field Plans”. The property is located at 16 Park Place, Map 13, Parcel Z1 in the RH-2 Zoning District.

Members voting on this case: Mr. Ryer, Mr. Burke, Mr. Previd, Mr. Hederstedt and Ms. Muller.

Presenting for the Applicants was Attorney William Crowell who reiterated the details of the original proposed conditions plan of 5/20/15 which called for the squaring off of 3 out of 4 corners on the house. There was an intensification of existing non-conformities and no substantial detriment to the neighborhood. A building permit was obtained after the issuance of the Special Permit and Ambrose Homes proceeded with the buidling of the house. The current as-built shows the building as .4’ closer than the Special Permit plan on the Park Street side and .6’ closer to the easterly setback than the original plan due to an error in the “Field Plans”. He asked that the Board grant a modification to the original Special Permit in order to reflect those changes.

Mr. Hillard suggested that the Board accept a substitute plan of record and Mr. Ryer suggested that the Board modify the Special Permit.

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 moved and Mr. Previd seconded the motion to modify the original Special Permit granted on 8/26/15** to allow for the .6’ easterly and .4’ westerly changes to the setbacks, approved according to the reasoning of the Gale Case because of the intensification of existing non-conformities, no new non-conformities and no substantial detriment to the neighborhood. **The Board voted unanimously in favor. 5-0-0**

The Board then discussed a potential new zoning compliance table to be added to the application process.

**Mr. Hederstedt moved and Mr. Hilliard seconded the motion to approve the minutes from the November 30, 2016 meeting. The Board voted unanimously in favor. 5-0-0**

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