**HARWICH ZONING BOARD OF APPEALS**

**MINUTES**

**MARCH 21, 2016**

On Tuesday, March 21, 2016 at 7:00 PM the Harwich Zoning Board of Appeals (“The Board”) held a Public Hearing, which Hearing was continued from 3/8/2017, in the Griffin Meeting Room, Harwich Town Hall, 732 Main Street, Harwich, MA 02645 relative to a Comprehensive Permit application for the property located at 93-97 Route 28 in West Harwich, Assessor’s Map #10, Parcels # W3-B and W5; as follows:

**Case #2017-04** Habitat for Humanity of Cape Cod, Inc. c/o Attorney Warren H. Brodie, has applied for a Comprehensive Permit pursuant to MGL Chapter 40B Sections 20-23 and 760CMR 56.00, to create an eight lot subdivision to provide for 6 new single family affordable homes, 2 “market rate” lots and a cul-de-sac. The property is located at 93 and 97 Route 28, Harwich, Map# 10, Parcels #W3-B and W5 located in the R-L Zoning District.

Call to Order: Chairman David Ryer called the meeting to order at 7PM and after introduction of the Board members, read a statement explaining the 40B law and its parameters. He spoke about 780 CMR 56 which the Massachusetts Legislature adopted to implement Ch. 40B. He noted that the 3 options open to the Board of Appeals for disposing of the case were as follow:

1. The Board may approve the Comprehensive Permit on the terms and conditions set forth in the application without change;
2. It may approve the Comprehensive Permit with conditions as long as such conditions are consistent with local needs and do not make the project uneconomic;
3. Or it may deny the Comprehensive Permit as not consistent with local needs if the BOA finds that there are no conditions which will adequately address local concerns.

Mr. Ryer also set out the protocol for the meeting and stated that the end time for the Hearing would be 10PM.

Mr. Burke, the Board Clerk read the Legal Notice into the record and noted that a number of town residents had submitted letters and emails regarding the project, all of which are available for review either on the Town’s website or at the Building Department window.

Board members Present: Kathleen Muller, Dean Hederstedt, David Ryer, John Burke, Franco Previd and Al Donoghue. Members designated to be voting were the regular members, Mr. Ryer, Mr. Burke, Mr. Previd, Mr. Hederstedt and Ms. Muller.

Presenting the case was Attorney Warren Brodie of Falmouth and Leedara Zola Director of Land Acquisition and Project Permitting for Habitat for Humanity of Cape Cod (“Habitat”) as well as Dan Ojala from Down Cape Engineering.

Attorney Brodie introduced the Engineer on the Project, Dan Ojala, Ms.Leedara Zola, Vickie Goldsmith, Executive Director of Habitat for Humanity of Cape Cod and then told the Board that the project proposes to create 6 affordable homes and a cul de sac by reducing the lots with existing structures at 93 and 97 Route 28. The Harwich Ecumenical Council for Housing (“HECH”) still maintains ownership of all of the land but there is a Purchase and Sale Agreement in place for Habitat to buy the rear lots. HECH will maintain ownership of the 2 market rate houses which will not have affordability restrictions but the “Chase House” will have Historic Preservation conditions. Attorney Brodie explained briefly the Title V Septic compliance plan saying that although some portions of the land are within the AE Flood Zone, all of the homes will be outside of that zone. Flood insurance will not be required. There will be no private wells for irrigation on any of the lots and no evidence of contamination from past “plume” issues (see Exhibit W for the report of Bennett Environmental Associates). Although there are no regulations regarding septic systems in flood plain areas, the septic systems will be built so that there will be no reasonable risk for environmental concerns due to flooding. The Applicant has applied for an RDA from the Conservation Commission and will be heard on that soon. The plumbing plan will have alternate outlets at the front of each house in preparation for hookup to the eventual sewer system of Harwich. The application has the results of consultation with a traffic consultant as a Transportation Impact Assessment Plan under Exhibit B.

There will be both Cape Cod Style homes and ranch houses which could eventually be ADA compatible. All homes will have high efficiency insulation and heat pumps with the potential for solar panels.

This is a “Friendly" 40B Comprehensive Permit Application with the approval of the Harwich Board of Selectmen, the Harwich Housing Trust and the Harwich Housing Committee as well as the Cape Cod Commission. Habitat for Humanity of Cape Cod has a project eligibility letter for the site and design from DHCD and the project is presumed to be consistent with the local needs of affordable housing as per the details noted in Exhibit X. The applicant has requested waivers for subdivision regulations and zoning size regulations.

Habitat has established procedures for choosing purchasers via their selection eligibility process which includes a lottery approved by DHCD with preference for local residents. Purchasers must contribute “sweat equity” equivalent to 250 hours of work. Each home will have an affordability rider in perpetuity and will qualify for LEAD and Energy Star ratings. Habitat seeks local contributions of materials and labor and has many other successful projects throughout Barnstable County having built 103 homes on Cape Cod with another 25 in the pipeline and 35-40 in feasibility.

Ms. Muller asked for clarification on who owns the Chase house and Attorney Andrew Singer answered that HECH, his client, still owns that house as well as all of the land. HECH has entered into an agreement with Habitat whereby HECH will maintain ownership of the Chase House and barn, Lot 7 and Lot 8 as shown in Exhibit N, while Habitat will take ownership of the 6 rear lots. HECH has already been through the Historic Committee with respect to the “Chase House” and the 365 Demolition Delay period imposed by it has passed. HECH has no plans to demolish the house and has voluntarily agreed to place a Historic Preservation on the front façade and barn. HECH has an interested party looking to purchase Lots 7 & 8 with an understanding that the new owners will retain the tenants and perform necessary repairs. Leedara Zola noted that the parcel had originally been bought by HECH with the plan of demolishing the 2 houses and a plan develop 20-24 rental units. After having the property on the market for over a year, HECH decided not to move forward with that plan and along with Habitat, decided to keep the historic property and develop the land in the back.

Mr. Hederstedt had concerns about increasing the non-conformity of the historical property and asked that the applicant provide plot plans for Lots 7 & 8 for the Board to review. He also wanted detailed information on the heat pumps that would be used and wondered if the applicant had plans for building a bus shelter for school aged children as well as concerns about the number of trees which will be eliminated to build the houses. Leedara Zola answered that a number of trees had already been flagged for saving but that significant clearing is necessary for the septic systems and for building the foundations of the houses. It is unclear as to how many trees will be involved but Habitat tries to keep as many as possible. She also noted that the proposal is still in the initial stages and details as to the heat pump particulars and a potential bus stop shelter would be decided further along in the process.

Mr. Hederstedt had concerns regarding the placement of septic systems in an environmentally sensitive area with a high water table and the nitrogen loading that would come from those systems. He spoke about problems with the eel grass in the Herring River. Attorney Brodie answered that the applicant had met the requirements of 780 CMR 56.05 section 2 regarding the elements of a preliminary site plan and scaled architectural drawings and that the septic systems would be completely compliant to the requirements of Title V. Dan Ojala of Down Cape Engineering added that the area was not a nitrogen sensitive area and reiterated that the proposed septic systems had been given the go ahead by the Health Department, were fully compliant with Title V and with the small size of the development, would produce only a small fraction of the effluent allowed under Title V. He also stated that the eel grass had been decimated by a blight more than by problems with nitrogen. Mr. Hederstedt then questioned whether fertilizers would be allowed in the development. Mr. Ojala noted that there would be a significant layer of loam placed on top of the sand which would allow the grasses to soak up any added nutrient before those reached the water table.

Mr. Burke asked if the proposed homeowners’ association would include Lots 7 & 8 or just be limited to the 6 homes in the rear. Ms. Zola said that HECH will continue to own the two front houses and barn on Lots 7 & 8 to which Mr. Burke stated that he believed that the application was defective because Habitat was not in control of all of the properties that are a part of the proposal. The Purchase and Sale agreement does not include Lots 7 & 8 thereby denying Habitat site control over the entire site. He said that without site control, the application is defective according to case law. Mr. Burke argued and Mr. Ryer agreed that by including Lots 7 & 8, Habitat is avoiding the requirement of additional zoning relief that would be required in order to allow for them to become non-conforming. Mr. Ojala stated that he believed that HECH could become a co-applicant. Ms. Zola said that the Lots 7 & 8 will still be a part of the comprehensive permit and be subject to all of its conditions. Attorney Brodie restated that DHCD had offered a project eligibility letter. Attorney Singer said that although Lots 7 & 8 already have 2 houses, they are still a part of the subdivision because the 8 lots will be formed from the parceling of the 2 upon which the houses and a barn sit.

Mr. Ryer added that he would want conditions on the houses and barn on Lots 7 & 8 regarding footprint, number of units and architectural style. Mr. Burke reiterated that without architectural renderings and site plans on these, he believed that the application was defective and needs amending with a joint applicant and with more information submitted.

Mr. Donoghue wanted to know if there would be any restrictions on owners renting their properties or offering “Air BnB” services. Ms. Zola stated that there is a requirement for the successful purchasers that the homes be their primary residences and that they are rental restricted. Mr. Previd asked about whether the septic systems would fall under the driveways. Mr. Ojala said that the septic systems will be built rated with filter fabric to allow cars to park over them. Mr. Previd also wanted to know about street parking and Mr. Ojala said that each driveway would accommodate 2 cars but visitors would have to park in the cul de sac on the berm. Mr. Previd also wanted to know how many of Habitat’s past project had owners that were already local residents.

Vickie Goldsmith, Executive Director for Habitat told the Board that 6 out of 7 of the Oak Street residents were previous Harwich residents and 5 out of 7 had jobs in Harwich. Ms. Muller asked if the preference for local residents included the houses and the barn on Lots 7 & 8 and was told by Ms. Zola said that they would not be a part of the preference percentage. She said that Habitat thought it best to make the application with the existing houses and the barn on Lots 7 & 8 rather than demolish them which they could have done given the lapse of the demolition delay placed on the Chase House by the Historic Commission. They will be a part of the 40B Comprehensive Permit application.

Mr. Ryer said that he would like to see a landscaping plan included in the plans as well as a copy of the Homeowners’ Association agreement. He also asked about the location of the nearest fire hydrant. Dan Ojala said that the plan was to place one in the cul de sac near the turn around. Mr. Ryer thought some trees would have to be trimmed to improve sight lines and wanted to know where the neighbor at 85 Route 28 was to have access to the cul de sac. Ms. Zola pointed that location out and noted that there would be no increase in her development. Mr. Ojala said that the 20’ for pavement and berm was adequate and that the driveways will be 20’ apart.

Again, Mr. Burke stated that he thought that the application needed to be amended to include an additional entity and that he was ready to make a motion to deny the application without prejudice. Attorney Brodie responded that he wanted more time to research the case law brought up by Mr. Burke. Mr. Burke did not make the motion.

Public Comments included:

Joan McCarty who has volunteered for Habitat and fully supports the project feeling that there is a dire need for affordable housing in Harwich.

Richard Waystack said he also volunteers for Habitat and sees the owners of past projects around town doing jobs that are essential to our community. He added that they bring a diversity necessary to our town and are an integral part of our work force. He said that he has seen a huge flight of young people from our area because there are no affordable places to live. People who are afraid that having affordable homes near their property will cause the value of their homes to fall do not know the facts. Mr. Waystack as a realtor sees values either maintained or even increased when affordable housing projects are nearby and offered a number of examples. He finished by stating that we need to say, “Let’s see how we can make this work”, rather than focusing on legal impairments.

Bernadette Waystack said that as a resident and an educator, she sees a number of people who have been a part of her life now able to stay in this region because of Habitat.

Arthur Boden of 800 Orleans Road is the Housing Commission Chair and works with Habitat. He stated a total support for this project and for the organization as a whole. He hoped that the focus would be on whether the project is consistent with local needs.

Joe Towell of Neel road said he has also worked with Habitat and reminded people that the homes being built are modest homes but are well built. He repeated that the folks who live in them are a part of the local work force, go to the local schools and that the residents are so appreciative of their homes and the community assistance required to create them.

Dareen Davis of Willow Street had some concerns about how long some of the Habitat homes had taken for completion, specifically some Chatham projects. Vicki Goldsmith of Habitat explained that those homes were built on a steep slope and that the project was lengthened because of specific engineering needs. She stated that the Oak Street homes took about 10-12 months to complete which is completely average for building homes on Cape Cod. Ms. Davis was also concerned about the density of the proposed project and wondered if 4 homes could be built instead of 6. Leedara Zola answered that Habitat has a balanced approach to determining how many houses it will place in a subdivision that includes consideration of the size of the subdivision and the size of local houses and lots. Mr. Ojala added that Habitat had the option through the 40B process of building a multi-family project but wanted to stay with the single family dwelling model. Ms. Davis then noted her concern for homeowner association fees but Ms. Zola assured her that those fees would be minimal and mainly for the maintenance of the road.

Linda Cebula also has worked on Habitat projects and spoke of the serious need for affordable housing in Harwich. She has looked at a housing production plan with statistics and reiterated the need for supporting the Habitat project.

Lou Urbano of Riverside Drive had concerns about the environmental impact of the project as well as traffic issues on Route 28. He mentioned the past “plume” problems in the area as well as the upcoming Town vote on the Cape’s nitrogen problem and the need for a sewage system in Harwich. He said he was speaking in support of Habitat’s proposal but still had concerns.

Sally Urbano, also of Riverside Drive noted her concerns for the preservation of the historic property (the Chase House) and read a portion of the MEPA Review.

Ralph Diamond of 103 Route 28 said he has been a supporter of affordable housing for a long time but was not in favor of the location of this project. He expressed concerns about the flood risk and the density of placing 6 homes in that area. He read from a PICCA report regarding septic systems and the rising sea levels.

Gail McAleer also of 103 Route 28 said she has no problems with living near affordable housing but is mostly concerned with environmental issues as well as historic preservation. She said she believed that the sewer systems for West Harwich are a long way off.

Ann Stewart of Pleasant Lake Ave. brought up the water problems throughout the Cape and wondered why Habitat couldn’t just rehab existing run-down houses in Town. She spoke of her concern regarding the density of the project and the parking on the cul de sac.

Dareen Davis also said she would prefer it if Habitat could take over run down houses and make them affordable units.

Richard Waystack spoke of the density of the houses on Ocean Ave and other streets in the “Campground” area of Harwich Port and mentioned a number of houses being built right on the Herring River that would have far more negative impact on the health of the river than would the 6 homes proposed with Habitat’s project.

Danny Horne of 34 Smith Street said he likes the historic nature of his neighborhood and is concerned about preserving that quality. He said he thought the entire Judah Chase House should be preserved and not just the façade.

Mr. Ryer brought up the issue of sewering the Town and how he believes that is the solution to the current water problems on the Cape. He also clarified the parameters of a 40B application and that the statute allows for the size of the lots presented as well as the proposed septic systems. He said the standard that the Board needs to apply is whether the proposal is consistent with local needs. He said the Board cannot place more restrictions on affordable housing than it would place on other lots. The proposed septic systems are Title V compliant.

Attorney Brodie said that he and Habitat would like to reserve their responses until a later meeting.

Mr. Hederstedt moved that the Hearing be continued until Thursday, March 23rd at 7 PM and then again to April 6th at 7PM. Mr. Donoghue seconded the motion. The Board voted unanimously in favor.

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

Shelagh Delaney

Board Secretary