**ZONING BOARD of APPEALS PUBLIC HEARING**

**Wednesday, June 27, 2018 at 7:00 p.m.**

**Griffin Meeting Room, Harwich Town Hall**

**MINUTES**

On Wednesday, June 27, 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.

Members Present:

David Ryer, Dean Hederstedt, James Hilliard, Kathleen Muller, Al Donoghue, Meghan Mahieu and Mike Cupoli.

**Case #2018-11**

Gerard P. Richer and Clare S. Richer, through their agent, Attorney Andrew Singer have applied for a Special Permit to construct a 2nd floor above a garage and guest suite of a pre-existing, non-conforming single family dwelling. The application is pursuant to the Code of the Town of Harwich, §325-54 and Table 2, Area Regulations as set forth in MGL Chapter 40A §6. The property is located at 35 Strandway, Map 1, Parcel J1-32-0 in the RH-1 Zoning District.

Members voting on this case:

Mr. Hederstedt, Mr. Hilliard, Ms. Muller, Mr. Donoghue and Mr. Cupoli.

The Clerk read into the record Memos from both the Conservation Agent noting approval from the Conservation Commission and the Board of Health noting their approval of the project with conditions.

Attorney Andrew Singer introduced himself, Gerry Richer, the owner and the builder, Rob McPhee. He presented the case offering a Summary of Reasoning as to why the Board should grant the requested Special Permit. He spoke about how the lot is pre-existing, non-conforming as to the lot coverage and area. He added that the project is for finishing a second story in the garage with no change in footprint. The proposal for a 2nd floor addition will be in character with other homes in the neighborhood and there will be no change in the total number of bedrooms as the 1st floor bedroom will change into living area. The Board of Health has restricted the home to 6 bedrooms. There will be no increase in density, water use nor increased nuisance or hazard. The proposed building height is for just over 24 feet with the main house remaining at 29.2 feet.

Mr. Ryer said he believed that the case fit the requirements of both the Gale Case and the Town Bylaws, Section 325-54.A.2 with an intensification of an existing non-conformity and no substantial detriment to the neighborhood. He added that he thought there needed to be a condition referring to the Board of Health requirements.

Mr. Hederstedt made a motion to close the public hearing and Mr. Donoghue seconded the motion.

Mr. Hederstedt then moved and Mr. Hilliard seconded the motion to GRANT the requested Special Permit to construct a 2nd floor above a garage and guest suite of a pre-existing, non-conforming single family dwelling at 35 Strandway according to the plans provided, the Board finding that the project will intensify an existing non-conformity, add no new non-conformity and not create a substantial detriment to the neighborhood. There will be 2 conditions with the Special Permit: 1) All requirements of the Board of Health and the Conservation Commission will be followed, and, 2) there will be no substantial exterior construction or landscaping between June 30 and Labor Day of both 2018 and 2019. The Board voted unanimously in favor.

**Case #2018-12**

Bruno Visco, Trustee, et al and Sandi Conroy, Trustee, through their agent, Thomas A. Moore, have applied for a Special Permit to construct a 2 story addition onto a pre-existing, non-conforming single family dwelling. The application is pursuant to the Code of the Town of Harwich, §325-54 & Table 2 Area Regulations as set forth in MGL Chapter 40A §6. The property is located at 34 Braddock Street, Map 14, Parcel V18-0 in the RH-1 Zoning District.

Members voting on this case:

Mr. Hederstedt, Mr. Hilliard, Ms. Muller, Mr. Donoghue and Ms. Mahieu.

The Clerk referred for entry into the record a number of pieces of correspondence including 2 letters from abutters in opposition of the project and a memo from the Health Director regarding the capacity of the current septic system.

Tom Moore of Thomas A. Moore Design Company introduced himself and the owner, Bruno Visco. He then offered revised plans to the Board which represented the Applicants’ attempt at addressing the issues brought up by the abutters. The revisions included a reduction in the height of the project, fewer windows and a change in the configuration of the 2nd floor rooms to offer more privacy to the neighbors. Mr. Moore said that he had met with the Health Director who had given her verbal approval to the new plan. He noted that the project to create 2nd floor living space has the bedrooms moving from the 1st floor to the second floor and changing out the 1st floor rooms to allow for more communal space. There will be no increase in bedrooms. He added that the privacy concerns of the neighbors are not unlike those of many of the tight neighborhoods in Harwich Port where lots are tiny but owners want to add space by moving upward. He told the Board that the neighbors most opposed to the project already have a second floor and an 8’ fence between their properties. Mr. Moore addressed the parking concerns stating that the Applicants have parking available for 4-5 cars and that when there is spillover, they either use the public lot at Bank Street Beach or send the cars to a relative’s home on Bank Street.

Mr. Visco spoke about the friendship the neighbors have had up until this point and that he doesn’t understand why his neighbors “lawyered up” when he had asked for their input on his proposal. He told the Board that he does not rent out his home as his neighbors do and that his revised plans were an effort to mitigate some of their concerns.

Mr. Hilliard asked for clarification on how the new plans would mitigate the stated problems. Mr. Moore restated that the height of the building will be slightly reduced with a change in the pitch of the roof. There will be fewer windows and those facing the neighbor will be from the bathroom.

Ms. Muller asked if the homes at both 32 and 36 Braddock were 2-story homes and Mr. Visco said that they were.

Mr. Hederstedt said that he believed that the revisions of the new plans have gone a long way to addressing the concerns of the neighbors. He asked again if the 8’ fence separating the Applicants’ property from the McCourts property was owned by the McCourts and he was told that it is. Mr. Hederstedt then suggested that some plantings might help with the neighbors’ concern regarding privacy of their outdoor shower.

Mr. Ryer noted that there are quite a number of 2 story homes in the neighborhood and that the test for granting a Special Permit is substantial detriment to the entire neighborhood, not necessarily the specific concerns of 1 or 2 neighbors. He said he believed that the case fits the requirements of the Gale Case and Section 325-54.A.2 with an intensification of an existing non-conformity, no new non-conformity and no substantial detriment to the neighborhood. Mr. Donoghue agreed.

Mr. Cupoli questioned the plan’s conversion of the 1st floor bedrooms into common space and thought that all of the rooms could be used as bedrooms, stressing the septic system and causing greater parking concerns for the neighborhood. Mr. Ryer responded saying that with the current septic system, the home is restricted to a 3-bedroom home and that it is the responsibility of the Board of Health and the Building Commissioner to enforce that. Ms. Muller added that there are many projects approved by the Board of Appeals with rooms that could also be used for sleeping.

Ms. Mahieu wondered whether there would be any room for the Applicants to upgrade their septic system.

Public comments included those of Bonnie Hall of 38 Braddock Street, abutting the McCourts and the Viscos. She said that she had been coming to the neighborhood since 1940 and that her house, which was originally a cottage, goes back to the 1920’s. She added that her parents had made many improvements including adding a 2nd story and that hers is one of only a handful of “year-round” homes. She said that everyone with a 2nd floor can look out onto neighbors’ yards including renters of the complaining abutters’ house. She also said that renters of the McCourt house have occasionally blocked her driveway and that she just calls and asks for them to move their cars. Parking is a neighborhood issue. She thought that the Viscos’ proposal was “wonderful” and that she and her husband “wholeheartedly approve” of the plan.

Attorney Matt Kelley who is representing the McCourts in their opposition to the project said that there are a number of neighbors who believe that the project is a detriment to the neighborhood. Their concerns include privacy issues, parking congestion and an overall reduction in the value of adjoining properties. He suggested that the improvements to the property would “obviously” include additional parking needs. Mr. Ryer disagreed. He noted that the proposal is for the house to remain a 3 bedroom house and that additional bedrooms will be blocked by the Board of Health without an upgrade to the septic system.

Ms. Muller asked about the distance between the McCourt’s house and their fence and was told it is about 30 feet. She also asked about when the owner’s advertised the house while looking for renters, how many people did they say their house would “sleep”. Mr. Kelley answered “8”. There was a review of some photos and wondered about how easy it would be to see in the shower from the 2nd floor of the Viscos’ property.

Dale Visco, one of the Trustees of the property in question reiterated that the family has never rented their property, unlike their neighbors and that spillover parking goes to the public lot or his house on Bank Street. He said that they also have limited privacy with their outdoor shower as they are currently a 1-story home and their neighbors’ houses are 2-story homes.

Brian McCourt of 36 Braddock Street spoke about the concerns that he and his family have saying that privacy and parking were their main issues. He noted that he will be adding 2 extra parking spots on his property. He stated that he and his family like the Viscos but they want to protect their property.

Mr. Hilliard said that he thought that the neighbors should all meet to attempt to work out a settlement. He and Mr. Ryer spoke about a concern with potential procedural issues regarding the submission of revised plans at the meeting. There was a suggestion that the Applicants ask for a continuance in order to attempt a plan that worked out a compromise.

Mr. Hederstedt moved and Mr. Hilliard seconded the motion to continue the case until July 25, 2018 at 7PM. The Board voted unanimously in favor.

**Case #2018-13**

Michelle L. & Gavin J. Archibald, Trustees of the Michelle L. Archibald Revocable Trust of 2017, through their agent, Attorney William Crowell have applied for a Special Permit or in the alternative, a Variance to enclose an existing porch to create habitable floor area onto a pre-existing, non-conforming single family dwelling. The application is pursuant to the Code of the Town of Harwich, §325-54 A (2) as set forth in MGL Chapter 40A §6. The property is located at 8 Atlantic Street a/k/a 8 Atlantic Ave., Map 6B, Parcel L137 in the RH-2 Zoning District.

Members voting on this case:

Mr. Hederstedt, Ms. Muller, Mr. Donoghue, Mr. Cupoli and Ms. Mahieu. Mr. Hilliard recused himself.

The Clerk read into the record memos from both the Conservation Agent noting that the project will be reviewed on July 5, 2018 and the Board of Health regarding their approval of the project with conditions.

Attorney William Crowell introduced himself and Kathleen DeMeyer of Encore Construction as well as the owners, Michelle and Gavin Archibald. He presented the case for the applicants restating the details of the application and adding that the project will add no bedrooms. There will be a 1% increase in site and building coverage. The Board of Health has approved the increase in habitable space. He said that the project will not be a substantial detriment to the neighborhood with no increase in noise, odor, fumes, congestion or the like and asked that the Board grant the requested Special Permit.

Ms. Muller asked for and was given clarification on the Board of Health decision.

Mr. Hederstedt asked if the enclosure would be heated and was told by Ms. DeMeyer that it would and that the area will become part of the living room. Attorney Crowell added that there will be no change in the footprint and no addition in the number of bedrooms.

Mr. Ryer said that he believed that the case fell within the parameters of the Gale Case and Section 325-54.A.2 finding no substantial detriment to the neighborhood. He said that he thought a condition requiring adherence to the Board of Health decision but Attorney Crowell said that he believed that would be redundant as the BOH decision is filed with the Town and the Barnstable County Registry of Deeds. He read that decision to the Board.

Ms. Muller made a motion to close the public hearing and Mr. Donoghue seconded the motion.

Mr. Hederstedt moved and Mr. Donoghue seconded the motion to GRANT the requested Special Permit to enclose an existing porch to create habitable floor area onto a pre-existing, non-conforming single family dwelling according to the plans provided, the Board finding that the Gale Case applies in that there will be an intensification of an existing non-conformity, no new non-conformity and no substantial detriment to the neighborhood. There is a specific reference to the ZBA decision of 2/7/08. There is a condition that there be no substantial exterior construction or landscape construction between June 30 and Labor Day of 2018 or 2019.

The Board voted unanimously in favor.

**There was a 5 minute break.**

**Case #2018-14**

Karen Fay, through her agent, Attorney William Crowell has applied for a Special Permit or in the alternative, a Variance to construct a 2nd floor deck onto a pre-existing, non-conforming single family dwelling. The application is pursuant to the Code of the Town of Harwich, §325-54 & Table 2, Area Regulations 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:

Mr. Hederstedt, Ms. Muller, Mr. Hilliard, Mr. Donoghue and Ms. Mahieu.

The Clerk read into the record a memo from the Health Director saying that the project will not impact the septic system.

Attorney William Crowell introduced himself and the owner, Karen Fay. He presented the case for the applicants restating the details of the application and adding that the Board granted a Special Permit in 2016 to move the foundation away from the street. The Applicant is now looking to place a westward facing deck over an existing porch within the setback. The Historic District and Historic Commission has already approved of the project. He stated that there will be a vertical intensification of an existing non-conformity, no new non-conformity and no substantial detriment to the neighborhood. The footprint, building and site coverage percentages will remain the same and there will be no increase in noise, odor, fumes, congestion or the like.

The Board asked for minor clarifications on the proposal but Mr. Ryer agreed that the case fit the requirements of the Gale Case and Section 325-54.

Mr. Hederstedt made a motion to close the public hearing and Mr. Donoghue seconded the motion.

Mr. Hederstedt then moved and Mr. Donoghue seconded the motion to GRANT the requested Special Permit toadd a 2nd floor deck onto a pre-existing, non-conforming single family dwelling according to the plans provided, the Board finding that the Gale Case applies in that there will be an intensification of an existing non-conformity, no new non-conformity and no substantial detriment to the neighborhood. There is a condition that there be no substantial exterior construction or landscape construction between June 30 and Labor Day of 2018 or 2019.

The Board voted unanimously in favor.

**Case #2018-15**

Edmund J. Doherty & John B. Doherty, Trustees of Joan B. Doherty Trust dated 4/2/09, through their agent, Attorney William Crowell have applied for a Special Permit, or in the alternative, a Variance to convert existing storage space above a garage to a bedroom thereby creating habitable space within a pre-existing, non-conforming structure. The application is pursuant to the Code of the Town of Harwich, §325-54 & Table 2, Area Regulations as set forth in MGL Chapter 40A §6. The property is located at 26 Sequatton Lane, Map 7, Parcel A25 in the RH-1 Zoning District.

Members voting on this case:

Mr. Hederstedt, Ms. Muller, Mr. Hilliard, Mr. Donoghue and Ms. Mahieu.

The Clerk read into the record a memo from the Health Director noting the requirement of decommissioning a bedroom or upgrading the septic if the bedroom count were to increase..

Attorney William Crowell introduced himself and Ed Doherty, one of the Trustees. He restated the details of the application and added that the Applicants have created a plan which decommissions one of the existing bedrooms in order that the bedroom count will remain the same. There will be no change in footprint, site coverage, building coverage and no increase in noise, odor, fumes, congestion or the like. Attorney Crowell sited the Gale Case and spoke of how this plan will intensify an existing non-conformity, create no new non-conformity and not be a substantial detriment to the neighborhood. He asked the Board to grant the requested permit.

Mr. Ryer said he agreed that the proposal meets the requirements of the Gale Case as this plan will intensify an existing non-conformity, create no new non-conformity and not be a substantial detriment to the neighborhood.

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

Mr. Hederstedt then moved and Mr. Hilliard seconded the motion to GRANT the requested Special Permit to convert existing storage space above a garage to a bedroom thereby creating habitable space within a pre-existing, non-conforming structure according to the plans provided, the Board finding that the Gale Case applies in that there will be an intensification of an existing non-conformity, no new non-conformity and no substantial detriment to the neighborhood with a condition that the requirements of the Board of Health are met. The Board voted unanimously in favor.

Mr. Hilliard nominated Mr. Ryer to continue in his position as Chairman of the Board of Appeals. The Board voted unanimously in favor.

Mr. Ryer then nominated Mr. Hilliard to continue on as Clerk of the Board of Appeals. The Board voted unanimously in favor.

Mr. Hederstedt moved to approve of minutes from the May 30, 2018 meeting and Mr. Hilliard seconded the motion. The Board voted unanimously in favor.

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

Authorized Posting Officer: Shelagh Delaney, sdelaney@town.harwich.ma.us

Board of Appeals Recording Clerk