**ZONING BOARD of APPEALS PUBLIC HEARING**

**Wednesday, June 28, 2017 at 7:00 p.m.**

**Griffin Meeting Room, Harwich Town Hall**

**MINUTES**

On Wednesday, June 28, 2017 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, John Burke, Dean Hederstedt, Franco Previd, Kathleen Muller and Al Donoghue

**Case #2017-16**

Paul Murphy applied for a Special Permit to construct an addition 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 and §325 Table 2, Area Regulations as set forth in MGL Chapter 40A §6.The property is located at 41 Ayer Lane, Map 14, Parcel 14-Q13-A in the RH-1 Zoning District.

Members voting on this case: John Burke, Kathleen Muller, Dean Hederstedt, Franco Previd and Al Donoghue

The Applicant, Paul Murphy, along with the construction overseer, Ed Lacey presented the case. A New Title V septic system has been installed and site plans were distributed to the Board. Mr. Murphy noted that he had been the owner since 2000 and that the proposed project will remain in the same footprint as the current pre-existing, non-conforming structure with the exception of the bulkhead. He told the Board that the application was according to §325-54.A.2 and that the project will not increase any non-conformity nor will it be substantially more detrimental to the neighborhood than the existing structure. He added that the project will add a new kitchen, laundry/bath and master suite and focuses on the rear of the property so the traditional Cape appearance of the house will not change.

Mr. Ryer said that he believed that the case fit the reasoning of the Gale Case. Mr. Burke asked for and received assurances that the height would not go above the 30’ limit.

There were no public comments.

Mr. Burke moved and Mr. Donoghue seconded the motion to close the public hearing. The Board voted unanimously in favor. 5-0-0

Mr. Hederstedt then moved and Mr. Burke seconded the motion to GRANT the Special Permit to construct an addition onto a pre-existing, non-conforming single family dwelling according to the plans provided (building plans dated 2/2/17 and a site plan dated 4/11/17 and revised on 6/23/17) finding that the reasoning of the Gale Case applies in that there will be no new non-conformity and the proposed addition will be no more detrimental to the neighborhood than the existing structure. The Board voted unanimously in favor. 5-0-0

**Case #2017-17**

David J. Rome and Lori R. Rome have applied for a Special Permit for additions to their pre-existing, non-conforming single family dwelling. The application is pursuant to the Code of the Town of Harwich §325 54.A.2 and §325 Table 2, Area Regulations and Table 3, Height & Bulk Regulations as set forth in MGL Chapter 40A §6.The property is located at 35 Pleasant Street in the RM-1 Zoning District.

Members voting on the case: John Burke, Kathleen Muller, Dean Hederstedt, Franco Previd and Al Donoghue

Attorney William Crowell presented the case along with the owners, David and Lori Rome. He noted that the property is a very small lot with a cottage on it that the owners hope to expand in order for it to become their full time residence. The proposed addition would intensify the north side setback. Although the building coverage would increase to beyond the maximum allowable limit, Attorney Crowell suggested that the increase would be diminimus, there would be no increase in odor, noise, fumes or the like and there would be no detriment to the neighborhood.

Ms. Muller approved of the plan. Mr. Burke noted that there would be an increase in building coverage that would create a new non-conformity therefore requiring a Variance instead of a Special Permit. Mr. Burke agreed and asked the applicants if there was any room to shave down the size of the addition. He asked if the existing shed could go. Attorney Crowell said that the owners had adjusted the plan as much as they thought they could.

Attorney Crowell then argued for a Variance saying that the required hardship is the size of the lot and the size and structure of the house which has a foundation that will not support a second story.

The Board then discussed ways that the plan could be adjusted to forego the requirement of a Variance but at the end of the discussion, Mr. Burke suggested that the applicants agree to continue to the next meeting and they agreed.

Mr. Hederstedt moved and Mr. Donoghue seconded the motion to continue the hearing until July 26, 2017 at 7PM. The Board voted unanimously in favor.

**Case #2017-04 (Continued)** 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.

Mr. Ryer made note of the fact that although Mr. Donoghue was not at the April 6, 2017 meeting, he had reviewed the meeting by tape and is now eligible to vote on the case.

Members voting on this case:

David Ryer, John Burke, Kathleen Muller, Dean Hederstedt and Franco Previd

Mr. Burke read into the record a letter from the Health Director, Paula Champagne responding to concerns about the septic systems from Lou Urbano and a memo from the Conservation Agent, Amy Usowski regarding the pending conservation application and its implications.

Leedara Zola of Habitat introduced Dan Ojala of Down Cape Engineering, Attorney Andrew Singer, representing HECH and Attorney Paul Haverty of Regnante, Sterio & Osborne LLP. As well as the directors of both Habitat and HECH. Ms. Zola noted that the new packet of materials submitted included the amended application, a letter from attorney Haverty, updated site plans and house plans, landscape plans, updated covenants, the Purchase and Sale agreement, updated waivers, the proposed conditions annotated with references to the draft decision.

Attorney Haverty spoke of his background focusing on 40B developments and explained that he came in to assist Habitat and the Board in dealing with the 40B process. He explained that the Zoning Board acts also as the Planning Board and can grant any waivers to move forward despite the fact that an underlying lot might not comply with zoning. If there is an existing non-compliance, it becomes moot. The lot becomes conforming once the Board votes on the 40B permit.

Mr. Hederstedt continued to be concerned about the illegal multi-family use and the wants the nonconformities to not change as a result of the issuance of the 40B permit.

Attorney Haverty noted that when the decision is issued, the plans will be set in stone and any changes or modifications will need Board approval.

Attorney Singer added that the draft decision and conditions on lots # 7 & 8 include size and numbers of bedrooms as well as language that says they “shall only be residential use”. They will be a part of the subdivision. HECH has an agreement to sell to someone. All 8 lots will be subject to the requirements of 40B.

Ms. Zola noted that the newly submitted Exhibit V has the Declaration of Trust and the Declaration of Protective Covenants that attempt to help the residents be good neighbors and allow for the management of the road. She added that the plan has changed so that there is no access on the cul-de-sac for # 87 Route 28.

Mr. Ryer spoke about changes he wanted to see in Exhibit V including adding boats to the restrictions on Page 2, paragraph 2C. He also wanted the addition of attorney’s fees incurred by the enforcing party included as part of the enforcement mechanism. In the Declaration of Trust, page 2, paragraph B should include lots #7 & 8 so that the Trustee can enforce covenants. Page 15, paragraph 18 needed the addition of the language, “including any attorney’s fees incurred by the Town.

Mr. Ryer said that aesthetics are important and the landscaping plan did not include some items that the Board wanted. He suggested some additions of screening plantings. Jeff Brown, the landscaper on the project said that there are some fairly good sized trees on lots 7 & 8 that will be preserved. The engineer had no problem with that, Attorney Haverty added that the Board can add conditions to that effect. Ms. Zola said that Habitat could submit plans with added landscaping details by the next meeting.