**ZONING BOARD of APPEALS PUBLIC HEARING**

**Wednesday, August 15, 2017 at 7:00 p.m.**

**Griffin Meeting Room, Harwich Town Hall**

**MINUTES**

On Wednesday, August 15, 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 case.

Call to order at 7PM by Chairman, David Ryer. Members present: Kathleen Muller, Dean Hederstedt, David Ryer, John Burke and Al Donoghue.

Mr. Burke read the Case into the record and explained that there had been a significant amount of correspondence regarding the case which was not read into the record but is available on the Town website along with the a prepared response from Habitat for Humanity of Cape Cod.

Mr. Ryer then explained that one of the Board members had retired since the last meeting. Taking his place in the voting was Al Donoghue who had been to each meeting with the exception of one which he reviewed through the video record. Mr. Ryer then asked that any comments be limited to those concerns or issues which have not already been addressed.

**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.

Appearing for the Applicants was Attorney Paul Haverty of Blatman, Bobrowski & Haverty, LLC, Vickie Goldsmith of Habitat for Humanity of Cape Cod, Attorney Andrew Singer for HECH and Dan Ojala, Project Engineer. Attorney Haverty noted that all of the required information had been supplied including a revised proposed decision.

Mr. Ryer wanted assurance that all covenants will be recorded prior to construction and that when titles are passed, all covenants will be on the record. Attorney Haverty told him they would be.

Mr. Hederstedt read a statement of his concerns regarding HECH’s responsibility for the condition of the barn before it is transferred. He wanted to know if there would need to be a Special Permit for the issuance of an Occupancy Permit. Attorney Singer said that the barn will need to be brought into compliance with the Building Code per review by the Building Inspector prior to the issuance of an Occupancy Permit. That will be via a building permit. No additional Special Permit will be required. The Comprehensive Permit will cover any conditions not enumerated in the Building Code. Attorney Haverty clarified that there is a 2 step process that includes the issuance of the Comprehensive Permit for “use”. Past that, the renovation for the current structures will be subject to review by the Building Inspectors, the Health Inspectors, etc. and everything will comply with the Code or there won’t be an Occupancy Permit. Any change in Use would require a return for a Special Permit from the ZBA.

Mr. Hederstedt then questioned certain waivers which mention requirements for the Board of Health regulatory policy. Attorney Haverty said that all septic systems need to comply with Title V which is not subject to waivers. The waivers noted only refer to any local requirements beyond Title V. The 40B Comprehensive Permit formula eliminates the need for layered approval by all of the different Town Boards. The waiver Mr. Hederstedt referred to only repeats what 40B allows in a Comprehensive Permit which makes the Board of Appeals the decision maker regarding local requirements.

Attorney Haverty suggested that condition A-11 which was stricken by Mr. Ryer be added back into the language. He explained that the purpose of that is for insubstantial waivers that might need to be added and will only be handled administratively by the Board via an administrative request rather than by opening a new hearing. Those are generally clarifications or corrections. Mr. Ryer wanted the word “otherwise” removed and approved of the suggestion with that condition.

PUBLIC COMMENTS

Mr. Ryer asked once again that people limit their commentary to issues not already addressed.

Gail McAleer shared her concern about the minimum zoning requirements and the multi-family use of the 2 current structures. She thought the barn might also be used as a second legal apartment on the same lot as a multi-family property.

Mr. Ryer said that the Comprehensive Permit process allows for the uses of the buildings as proposed by the applicant. He noted that many of the opponents of the project had a problem with the 40B process. He said that those concerns should be directed at state legislators, not the Board. The Board has listened to all of the public concerns and attempted to incorporate as much as possible into the conditions of the permit to comply with health and safety issues.

Ralph Diamond wanted to know what was going to happen to the current residents of #’s 93 and 97 Route 28 once the sale goes through. Andrew Singer responded that the new owner hopes to keep the same tenants. Those units, although low rent, will not be subject to the affordability restrictions of the 6 affordable units.

Ms. Muller wanted clarification as to the number of units per building as it is currently used. Attorney Singer said there are 3 units in one and 2 in the other. The barn is presently not habitable.

Mr. Diamond continued that he thought the net gain of affordable units would only be one if the 5 rental units were to increase their rents as to be too high. Mr. Ryer said he believed the Town would gain 6 deed restricted affordable units. If the Comprehensive Permit were to fail, the rental units in place could still be upgraded and their rents increased.

Mr. Hederstedt moved and Mr. Donoghue seconded the motion to end the public discussion. The Board voted unanimously in favor. Mr. Ryer then explained that there could be no more input from either the public or the Applicant.

DISCUSSION BY THE BOARD

Mr. Hederstedt said that although he understood that the methodology used to create the site control for the application was complex and sometimes difficult, it was used to help create affordable units. The 2 driving forces were land availability and cost. HECH and Habitat made an agreement for HECH to sell the land and the buildings to Habitat with approval from the Town’s Board of Selectmen. The consideration was financial and had nothing to do with the fact that there were 3, 4, 5 or 6 rental units. It was done for the maximum usage of the land for affordable housing. The Board recognizes that although the application was complicated in part because the market rate lots have structures that the public wanted to preserve, the benefits to the Town and its people are great.

Mr. Ryer added that the fact that Habitat will take title and then immediately deed the 2 front properties back to HECH, a move that was done in order to however briefly obtain site control for the 40B application, makes no difference in the Board’s decision. The Board and the public have been concerned with the visual impact of the project and got Habitat to agree to additional landscape screening from Route 28 and Mr. Diamond’s property. He said he wanted to thank the parties, the neighbors and the general public for their participation in the process. He said he understood that the density issue can be difficult for the neighbors but he compared that density with the cluster of houses in the “Campground/Ocean Grove” area of Harwich Port which the Board handles favorably on a regular basis.

Mr. Burke said he thought that the project did not meet the minimum requirements of site control according to the law because of the brief amount of time it will take for the eventual transfer of title back to HECH. He also thought that the Purchase and Sale Agreement for the site was factually incorrect. He suggested that the lack of information regarding any work that will be done on Lots 7 & 8 makes them look as though they are not in fact a part of the project but will receive a legitimization of illegal uses through the benefit of a Comprehensive Permit despite that. He said he would not support the current application as it stands.

Mr. Donoghue agreed with Mr. Ryer that there had been problems with how Habitat and HECH came to the current application form but he thought that the 6 properties are a benefit to the community which has become too expensive for workers to live here. He also thanked the Applicants and the public for being a part of the process.

Ms. Muller shared her concerns about the project. She said that although she was in favor of affordable housing, she would have preferred a project where the 2 existing houses would have been demolished and more affordable units created on those lots. She said that the attempts to keep those 2 houses, despite their deplorable condition resulted in a shell game of shifting ownership. The benefits of zoning waivers that come with a comprehensive permit will fall to the new owners of # 93 and 97 Route 28 and that was not intended by the 40B statute. She said that she would vote in opposition of the project.

Mr. Hederstedt added to his earlier comments by saying that he understood the issues with site control and ownership but also believed that Habitat accepts everything that HECH has agreed to is the truth. It is Habitat’s responsibility to ensure that all the information is correct and according to the terms of the conditions and waivers of the Permit before deeding the properties back to HECH at a certain date. He wanted to see the project move forward as the intent is to create affordable housing. The illegal use of the houses on Lots 7 & 8 is past the time of action by the Town. If the Comprehensive Permit is not approved, there will still be 3 illegal apartments and no new affordable units.

Mr. Burke wanted to see the application re-worked so that it meets the letter of the law because the end does not justify the means.

Mr. Ryer said that the arrangement between HECH and Habitat was for financial and economic dynamics. The market rate units allow for the construction of the 6 affordable units. If there were a negative decision and it was appealed to the DHCD, the Town would be spending money on outside counsel where the housing authority may very well find that site control exists. Mr. Burke felt that should not be a part of the decision making process.

Mr. Donoghue moved and Mr. Hederstedt seconded the motion to accept the draft decision of Case # 2017-04 in the application ofHabitat for Humanity of Cape Cod, Inc. 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 for the property located at 93 and 97 Route 28, Harwich, Map# 10, Parcels #W3-B and W5 located in the R-L Zoning District. The Board voted as follows:

Ms. Muller NO

Mr. Hederstedt YES

Mr. Ryer YES

Mr. Burke NO

Mr. Donoghue YES

The Motion passed 3 in favor and 2 opposed.

Attorney Haverty is to get the Decision to the Board for stamping and signing.

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

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

Board of Appeals Recording Clerk