**ZONING BOARD of APPEALS PUBLIC HEARING**

**Wednesday, August 31, 2016 at 7:00 p.m.**

**Griffin Meeting Room, Harwich Town Hall**

**MINUTES**

On Wednesday, August 31, 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.

Call to order at 7:03 by Chairman, David Ryer

Members present:

David Ryer, John Burke , Gary Carreiro, Dean Hederstedt, Kathleen Muller and James Hilliard

**Case #2016-14 (Continued from July 27, 2016)**

Steven and Judith Balloch, by their agent, William D. Crowell, Esq. have applied for Special Permits and a Variance to construct two additions as well as a front porch and dormers. The application is pursuant to the Code of the Town of Harwich §325 Table 2, Area Regulations, §325-54.A.(2), §325-54.A.(2)(c) and §325-52 Variances as set forth in MGL Chapter 40A §6 and §10. The property is located at 31 Wah Wah Taysee Road, Map 6, Parcels B1-1, B1-4C and B1-4D in the RH-1 Zoning District.

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

Presenting the case was Attorney William Crowell along with the owner, Judith Balloch. Attorney Crowell reviewed the details of the case presented at the July meeting and told the Board that the Applicants had re-worked the plans to avoid the need for a Variance on the easterly boundary of the Master Bedroom expansion. The newly revised plan requires a Special Permit for the southern, northern and front setbacks as they are intensifying existing non-conformities. This plan has a “beveled” corner for the Family Room expansion in order to comply with the setback. However, Attorney Crowell asked that the Board consider a new plan for the Family Room expansion which would eliminate the need for a beveled corner but would possibly require a Variance as it would encroach on the northeast corner setback by 1’7”.

Attorney Crowell also handed out copies of a letter from the abutters (Wallace and Eleanor Howe of 32 Hiawatha Rd.) directly behind the Applicants’ home which letter supported the proposed project. He argued that the reasoning of the Gale Case applied for the requested Special Permit as the plan intensifies existing non-conformities, offers no detriment to the neighborhood, adds no significant increase in noise, odor, fumes, traffic or congestion. Attorney Crowell argued for a minor Variance for the family room expansion by saying that the “jog” in the lot was unique and created a hardship in that the owners would be unable to do an expansion without a bevel in the building plan. The abutters support the project and there would be no substantial derogation from the intent or purpose of the bylaw and no impact on the public good as the building would still remain a single family dwelling.

Mr. Burke thanked the Applicants for re-working the plans and suggested that they did not need a Variance for the expansion of the Family Room. His interpretation was that the plan shows an intensifying of the already existing north side nonconformity. That expansion and the others all fall within the reasoning of the Gale case as intensifications of pre-existing non-conformities with no substantial detriment to the neighborhood. The other Board members agreed.

Mr. Burke moved to close the public discussion and Mr. Carreiro seconded that motion. The Board voted unanimously in favor.

Mr. Burke then moved and Mr. Carreiro seconded the motion to **GRANT** the requested **Special Permit for the proposed additions** according to the revised plans dated 8/29/16 for modifications of a non-conforming building on a non-conforming lot finding there would be no substantial detriment to the neighborhood. **The Board voted unanimously in favor. 5-0.**

**Case #2016-15**

Robert S. Heppe Jr. and Gaylene D. Heppe have applied for a Special Permit to construct a Family Room addition with connecting hallway. The application is pursuant to the Code of the Town of Harwich §325 Table 2, Area Regulations, §325-54.A.(2) and §325-54.A.(2)(C) as set forth in MGL Chapter 40A §6. The property is located at 311 Route 28, Map 12, Parcel 1 in the CH1 Zoning District.

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

The Owner/Applicants, Robert and Gaylene Heppe began their presentation by explaining that they are the only owner occupied single family dwelling on Route 28 between Kildee Hill and the A&W Restaurant. Their house was built in 1797 and sits on a commercially zoned 1-acre lot. The abutting wetlands and their proximity to Route 28 limit their options for expansion. The proposed addition for a Family Room would be farther from the street.

Ms. Muller thought the plans were completely appropriate and Mr. Hederstedt believed that the reasoning of the Gale Case applied. All of the other members agreed.

Mr. Hilliard moved to close the public hearing and Mr. Burke seconded the motion. All voted unanimously in favor.

Mr. Hederstedt then moved and Mr. Carreiro seconded the motion to **GRANT the Special Permit to construct a Family Room addition** according to the plans stamped and submitted by Moran Engineering dated 6/14/16 and drawings by F.D. Ciambriello Architectural Design, pages 1-6 dated 4/1/16. **The Board voted unanimously in favor. 5-0**

**Case #2016-16**

Peter V. Hopple and Joelene Hopple have applied for a Special Permit for a change of use to create a new garage with an apartment above or in the alternative to create a new garage with a bedroom and bath above. The application is pursuant to the Code of the Town of Harwich §325 Table 1, Use Regulations as set forth in MGL Chapter 40A §6. The property is located at 71 Gorham Road, Map 32, Parcel W2 in the RL Zoning District.

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

Peter Hopple, the Owner/Applicant started his presentation saying that he has a permit for construction that has been ongoing for a number of months but that the original permit had only unfinished space above the garage. Mr. Hopple is now looking to create an accessory apartment above the garage to accommodate family who visit from California or for a nanny to care for his young child. He asked that the Board grant a Special Permit for the apartment above the garage according to Section 325 51(H).

Mr. Ryer noted that the restrictions for an accessory building with an apartment under Section 325 51(H) include that the apartment cannot be more than ½ the square footage of the main house and no more than 900 square feet. Mr. Hopple told the Board that the main house is over 2400 square feet and the proposed apartment would be approximately 400 square feet, well under the 900 SF restriction. He also stated that the proposed apartment would have a small kitchenette as well as a bathroom.

Mr. Hederstedt said that he believed that the plan met the criteria for an apartment. Mr. Burke noted that in the RL Zone, the minimum lot size requirement for having an accessory apartment is 20,000 square feet and asked Mr. Hopple if his plot plan clarified the total size of his lot. Mr. Hopple answered that he believed that his lot was over 20,000 square feet but would need to access that information from another surveyed plot plan. Mr. Carreiro, Mr. Ryer and Mr. Burke said that the Board needed confirmation of the Section 325 51(3)(G) lot size requirement. Mr. Hopple asked for a conditional approval pending the Board’s receipt of revised plans that will show the size of the lot, the size of the house and the size of the proposed apartment. The Board agreed to offer conditional approval because of the volume of cases on the Agenda for September.

Mr. Hederstedt moved and Mr. Burke seconded the motion to close the public hearing. **Mr. Burke then moved and Mr. Carreiro seconded the motion to GRANT the Special Permit to build an accessory apartment** pursuant to the *revised* plans that Applicant would submit for review by Chairman Ryer within 10 days, which plans will show that the property and the proposed apartment meet all dimensional requirements for approval of an accessory apartment. The Board unanimously approved. 5-0

**Case #2016-17**

G. Brian Sullivan and Mary C. Sullivan have applied for a Special Permit or in the alternative, a Variance to construct a 3-season room in the same footprint of their existing deck. The application is pursuant to the Code of the Town of Harwich §325.A (2)(a), §325.A (2)(b), §325.A (2)(c) and §325-52 Variances as set forth in MGL Chapter 40A §6 and §10. The property is located at14 Deer Run Rd., Map 35, Parcel P7-6 in the R-M Zoning District.

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

Mr. Burke read into the record a letter of support from abutters Jim and Linda Merriam of 6 Deer Run.

Presenting with the Applicant/Owners was Attorney William Crowell who told the Board that the owners have a lawfully existing deck on the western side/rear of the property which was approved by the Harwich Building Department in 1984 but does not comply with today’s setback requirements. The Applicants wish to build a 3-season room on the same footprint as that deck. Because they are adding habitable space, they need a Special Permit. Attorney Crowell argued that there would be no substantial detriment to the neighborhood and no increase in odor, fumes, traffic congestion or the like.

Members of the Board agreed that the application fell within the Special Permit requirements.

 Mr. Carreiro moved and Mr. Burke seconded the motion to close public hearing. The Board voted unanimously in favor.

**Mr. Hederstedt then moved and Ms. Muller seconded the motion to GRANT to Brian and Mary Sullivan, Trustees of the Sullivan Family Living Trust dated 4/1/14 a Special Permit to build a 3-season room** according to the plot plan submitted by Moran Engineering dated 4/19/16 and building plans pages 1, 2 and 3 dated 4/20/16. **The Board voted unanimously in favor. 5-0**

The Board then informed Attorney Crowell that because of an administrative error, Board Member Dean Hederstedt had not been officially reappointed to the Harwich Zoning Board of Appeals prior to his votes on Cases #2016-13, 2016-14, 2016-01 and 2016-05 which cases were heard during the July meeting. The Board asked Attorney Crowell if he would approve of Mr. Hederstedt’s reaffirming his votes on those cases during the August meeting and Attorney Crowell said did approve. Mr. Hederstedt then reaffirmed his July votes. Copies of this reaffirmation will be filed with each case noted.

Mr. Hederstedt moved and Mr. Carreiro seconded the motion to accept the revised minutes from the July 27, 2016 meeting. The Board voted unanimously in favor. 5-0

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

**FOR THE RECORD**

* On Thursday, 9/8/16, Chairman David Ryer reviewed and approved revised plans brought in by Peter Hopple, owner of 71 Gorham Road, Case # 2016-16.

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

Board of Appeals Recording Clerk