**ZONING BOARD of APPEALS PUBLIC HEARING**

**Wednesday, September 27, 2017 at 7:00 p.m.**

**Griffin Meeting Room, Harwich Town Hall**

**MINUTES**

On Wednesday, September 27, 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, Dean Hederstedt, Kathleen Muller, James Hilliard and Al Donoghue

**Case #2017-19 (CONTINUED to 10/25/17))** Clifford A. Daluze, John Z. Daluze, Jr. and Margaret Weigand through their agent, Attorney Frank J. Shealey are appealing a Cease and Desist Order issued by the Building Commissioner on 5/23/17 to halt “any and all commercial activity” at a “sandpit” located off Jay Z Drive until Applicants obtain “appropriate zoning relief” and an Operations Permit from the Harwich Planning Board. Applicants claim they have a “pre-existing, non-conforming status” under MGL Chapter 40A §6 and §325-26 of the Harwich Zoning By-Laws. The property is located off of Jay Z Drive, Assessor’s Map MISC, Parcel 4054001 in the RR Zoning District.

Attorney Shealey agreed to a continuance because there were insufficient members available who had been present at the original hearing and the survey requested by the Board had not yet been completed.

Ms. Muller made a motion to continue until October 25, 2017. The motion was seconded by Mr. Donoghue. The Board voted unanimously in favor. 5-0-0

**Case # 2017-27** Joseph G. DeStefano and Sarah DeStefano through their agent, Attorney William Crowell have applied for a Special Permit or in the alternative, a Variance to demolish and replace a single family dwelling. The application is pursuant to the Code of the Town of Harwich §325-54.A and Table 2, Area Regulations as set forth in MGL Chapter 40A §6 and §10. The property is located at 36 Northern Avenue, Map 6, Parcel E5-13-2 in the RH-1 Zoning District.

Attorney William Crowell requested a continuance until 10/25/17 so that the attorney representing the abutters at 29 Wyndemere Bluffs Road could be present.

Mr. Hederstedt moved and Mr. Hilliard seconded the motion to continue the case until 10/25/17. The Board voted unanimously in favor. 5-0-0

**Case # 2017-28** Clifford E. Rober through his agent, Attorney William Crowell has applied for a Special Permit or in the alternative, a Variance to demolish and replace a single family dwelling. The application is pursuant to the Code of the Town of Harwich §325-54.A and Table 2, Area Regulations as set forth in MGL Chapter 40A §6 and §10. The property is located at 14 Hudson Lane, Map 4, Parcel J1-8 in the RH-1 Zoning District.

Members voting on this case: Mr. Hederstedt, Ms. Muller, Mr. Hilliard, Mr. Donoghue and Mr. Ryer.

Attorney Crowell introduced himself and the Applicants, Cliff and Lisa Rober. The property is on the north side of Lower County Road. The Applicant is a professional land surveyor. He prepared the plans and the compliance grid that are a part of this application. The plan will intensify a pre-existing non-conformity with the addition of a second floor thereby fitting the requirements of the Gale Case. There will no additional noise, odor, fumes, traffic, congestion or the like and no substantial detriment to the neighborhood.

Ms. Muller asked if the Gale Case can apply to demo and rebuild projects and Attorney Crowell said that it does. Mr. Hederstedt wanted clarification on the height of the new house and was told by Attorney Crowell that it will be approximately 23.6’ from the average grade. Mr. Ryer asked if the proposed driveway will be closer to the property line and was told by Attorney Crowell that it will be but that it can go right up to the property line.

There was no public comment.

Mr. Hederstedt made a motion which was seconded by Mr. Donoghue to close the public hearing. All voted in favor.

Mr. Hederstedt then moved and Ms. Muller seconded the motion to GRANT the Special Permit to demolish and replace a pre-existing non-conforming single family dwelling according to the plans provided based upon the findings of the Gale Case with no substantial detriment to the neighborhood and no new non-conformity with the condition that no substantial exterior demolition or construction and no new landscaping occur between June 30 and Labor Day of 2018. The Board voted unanimously in favor. 5-0-0

**Case # 2017-29** Keith A. Gollenberg and Sandra J. Gollenberg through their agent, Attorney William Crowell have applied for a Special Permit or in the alternative, a Variance to construct an addition including a new garage and convert the existing garage into habitable space. The application is pursuant to the Code of the Town of Harwich §325-54.A and Table 2 Area Regulations as set forth in MGL Chapter 40A §6 and §10. The property is located at 317 Lower County Road, Map 12, Parcel Y2-5 in the RH-1 Zoning District.

Mr. Ryer read into the record comments by the Conservation Commission noting that the applicants will need approval of that Commission as the property is in a flood zone.

Attorney Crowell introduced himself and Sandra Gollenberg as well as Kathy DeMeier of Encore Construction. He noted that the property is south of Lower County Road and that the garage is currently pre-existing non-conforming. There will be an intensification of that existing non-conformity bringing this case within the parameters of the Gale Case. The proposal includes an addition with a new garage with habitable space above. Attorney Crowell said that the Applicants are requesting a Special Permit and would like language in the permit to reflect the fact that the structure needs to be raised 2’ because it is in the flood plain. He added that there will be no new non-conformity and that there will be no detriment to the neighborhood.

Mr. Ryer asked for the final height of the house. Attorney Crowell told him that the height will be 23’, 7/8”.

There were no public comments.

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

Mr. Hederstedt then moved and Mr. Hilliard seconded the motion to GRANT the Special Permit to construct an addition including a new garage and convert the existing garage into habitable space all according to the plans provided, which plans call for an increased height of approximately 2’, finding that the Gale Case applies in that there will an intensification of an existing non-conformity, no new non-conformity and no substantial detriment to the neighborhood. The Board voted unanimously in favor. 5-0-0

In new business, Mr. Ryer wanted the Board to vote on his recommendation to reject any new application that does not have a completed Page 3 Compliance grid. Mr. Hederstedt so moved with Mr. Hilliard offering a second. The Board voted unanimously in favor. 5-0-0

Mr. Ryer then recognized Larry Ballantine of the Board of Selectmen who spoke briefly about his role as liaison to the Zoning Board of Appeals.

Mr. Ryer spoke about the upcoming October ZBA meeting, specifically about the Daluze “sand pit” case (#2017-19) and how best to deal with the rehearing. It was decided to offer the Applicants through their attorney, Frank Shealey, the option of a 4 member Board (as that is all that will be available for voting on this case) at the October 25th meeting or an alternative date.

Mr. Hederstedt moved and Mr. Donoghue seconded the motion to adjourn. The Board voted unanimously in favor. 5-0-0

Motion to close the public hearing by DH KM JH DR AD

 2nd DH KM JH DR AD

Motion by DH KM JH DR AD to GRANT DENY

by DH KM JH DR AD

 the Special Permit to demolish and replace a single family dwelling according to the plans submitted

2nd DH KM JH DR AD

Conditions:

Motion by DH KM JH DR AD

2nd by DH KM JH DR AD to approve the minutes from the August 30, 2017 meeting.