**HARWICH ZONING BOARD OF APPEALS**

Wednesday, September 28, 2016 at 7:00 p.m.

Griffin Meeting Room, Harwich Town Hall

**MINUTES**

On Wednesday, September 28, 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 case(s).

Members Present: John Burke, Acting Chair, Paul Doane, Joseph Campbell, Franco Previd, Acting Clerk, Kathleen Muller and James Hilliard

Mr. Burke called the meeting to order at 7PM.

**Case #2016-18**

Robert Elliott Nickerson and Barbara Ann Mulligan Nickerson, Trustees, have applied for a Special Permit or in the alternative a Modification of an existing Special Permit to add a porch to a pre-existing, non-conforming single family dwelling. The application is Pursuant to the Code of the Town of Harwich Section 325-54(A) as set forth in MGL Chapter 40A Section 6. The property is located at 617 Main Street, Map #14, Parcel Z7-1 in the CV Zoning District.

Members voting on this case

Mr. Burke, Mr. Doane, Mr. Campbell, Ms. Muller and Mr. Previd

Attorney Roger O’Day, representing the owner/applicant, Mr. Nickerson presented the case for a Special Permit. He noted that the antique house has a building permit and construction has been underway. A Special Permit is required to add a modest 3.3’ roof-protected area where only a concrete slab now exists. Because the new porch would intensify an existing non-conformity but would not be substantially more detrimental to the neighborhood than the existing structure, Attorney O’Day asked that the Board grant the request for a Special Permit.

Mr. Burke asked for better clarification of the setbacks on the plan and after a 3 minute recess, Mr. Nickerson offered those details. He initialed the amended plan.

There were no public comments.

Ms. Muller moved to close the public hearing and Mr. Previd seconded the motion. All voted in favor.

**Mr. Doane then moved to GRANT the Special Permit** to add the roofed porch area to the pre-existing, non-conforming single family dwelling according to the plans submitted and subject to the amendments to the setback details offered by Mr. Nickerson at the hearing. Mr. Campbell seconded the motion. **All voted in favor**.

**5-0-0**

**Case #2016-19**

Robert Elliott Nickerson and Barbara Ann Mulligan Nickerson, Trustees, have applied for a Special Permit to remove and reconstruct a garage. The application is Pursuant to the Code of the Town of Harwich Section 325-54(A) as set forth in MGL Chapter 40A Section 6. The property is located at 49 Pleasant Street, Map 14, Parcel W-4 in the RM Zoning District.

Mr. Campbell recused himself from participating in the vote.

Members voting on this case

Mr. Burke, Mr. Doane, Ms. Muller, Mr. Hilliard and Mr. Previd

Presenting along with the applicant was Attorney, Roger O’Day. He stated that the pre-existing, non-conforming garage is within 3.2 feet of the westerly side setback and is dilapidated. The proposed structure would be no closer but would be somewhat longer than the existing garage in order to make space for storage and a small workshop. He noted that the property is somewhat unique in that it is the smallest house in the neighborhood and the garage is an original building from the early days of automobiles with a wooden floor. The new garage would add value to the neighborhood and granting the requested dimensional Variance would not derogate from the intent or purpose of the bylaw. The new garage will not be substantially more detrimental than the existing garage and upon completion, all disturbed areas will be restored and landscaped.

Mr. Doane and Mr. Burke questioned whether the conditions required for a Variance were met. Mr. Burke noted that the Gale case applies only to residential structures and Section 325-54(A)-1, 2, 3, 4 and 5 also deal only with residential structures which are non-conforming. Mr. Hilliard asked if the neighbor’s garage was the same length and Mr. Nickerson told him that it was. Ms. Muller was concerned about the size of the garage expansion but was satisfied when Mr. Nickerson explained that his father-in-law is moving into the house which does not have a basement.

Ms. Muller moved and Mr. Doane seconded the motion to close the public hearing. All voted in favor. Mr. Doane then **moved to** **GRANT the Dimensional Variance** to construct a garage according to the plans provided. Mr. Hilliard seconded the motion. Ms. Muller, Mr. Hilliard, Mr. Doane and Mr. Previd voted in favor. Mr. Burke voted against. **4-1-0.**

**Case #2016-20**

Vincent Camelio and Marilyn Camelio have applied for a Special Permit to construct a one-story addition. The application is pursuant to the Code of the Town of Harwich Section 325: Table 2, Area Regulations and Section 325-54. A.(2) as set forth in MGL Chapter 40A Section 6. The property is located at 15 Helena Ave., Map 14, Parcel A16-8 in the RM Zoning District.

Members voting on this case: Mr. Doane, Mr. Hilliard, Ms. Muller, Mr. Campbell and Mr. Previd.

Presenting along with the owner, Vincent Camelio was the builder, Chris Childs who noted that the property is a non-conforming lot consisting of approx 7535sf located in the RM zone. There is an existing SF dwelling that is approx 1679sf.

Applicants are looking to build an addition which will be 4.3’ from the side set back where 20’ is required. They would like the house to be more easily accessible to them as they grow older. The existing structure is approx 3.0’ from the eastern sideline. Therefore the new addition would be less non-conforming than the existing structure.

The front setback is 2.0 where 25’ is required. The rear setback is 62 and will remain unchanged. The side setbacks are 3.0’ and 19.4’. The building coverage is 1019 and applicants are looking to make it 1287, or 17% where 20% is required. The site coverage requirement is 35% and the applicants are looking to go from the current 25.7% to 27.1%, still under the zoning requirement.

There were no comments from the public and the Board had no questions.

Mr. Campbell moved and Mr. Doane seconded the motion to close public hearing. All voted in favor.

Mr. Hilliard then moved and Mr. Doane seconded the **motion to** **GRANT the SPECIAL PERMIT** to build the addition according to the plans stamped and provided. There were no conditions. **All voted in favor.** **5-0-0**

**Case #2016-21**

Angelo A. Kyriakides, Trustee and Susan M. Kyriakides, Trustee have applied for a Special Permit to expand an existing garage and remove a shed. The application is pursuant to the Code of the Town of Harwich Section 325: Table 2, Area Regulations and Section 325-54. A.(2) (a)(b)(c) as set forth in MGL Chapter 40A Section 6. The property is located at 78 Bank Street, Map 14, Parcel W8 in the R-M Zoning District.

Members voting on this case were Ms. Muller, Mr. Previd, Mr. Burke, Mr. Doane and Mr. Hilliard.

Presenting along with the owner, Angelo Kyriakides was his attorney, William Crowell who spoke about the history of the case and how Mr. Kyriakides had come before the Board in December of 2015. Mr. Kyriakides withdrew without prejudice on the advice of the Board that he re-work the plans and perhaps remove 2 old growth trees in order to build by right. The applicants are looking for a Special Permit to expand the garage and add a breezeway between it and the antique house. The plan includes a laundry area in the expanded garage as well as a workshop and a bathroom with storage above. Attorney Crowell told the Board that he and Mr. Kyriakides had met with the Building Commissioner for several hours to create a plan which connects the garage to the main house thereby making it a part of the residential structure. Mr. Kyriakides added that the main house had been built in the 1790’s and added to many times over the years. Attorney Crowell said that the proposed addition would still keep the total site and building coverages below what is required. He asked that the Board grant the Special Permit saying that the addition would intensify a non-conformity but add no new non-conformity. It would also not be substantially more detrimental to the neighborhood than the existing structure.

Mr. Burke said that he believed that the breezeway did not make the garage a residential structure and the Gale Case would therefore not apply saying that by case law, the connection requires more than a roof. He stated that he believed that the applicant needed to argue for a Variance and had not argued a substantial hardship yet. Attorney Crowell countered with details of another case brought before the Harwich Zoning Board of Appeals which had a breezeway connecting 2 buildings and the Board considered it a duplex. He also noted that the proposed garage would be less non-conforming than the existing shed which will be removed. He repeated the reasoning of the Building Commissioner, David Riquinha as written in his Denial Letter dated 8/16/16; “Upon construction of the covered walkway, the garage will be a part of the single family dwelling and is eligible for improvement under the same protections listed for a single or two-family residential structure listed in the Harwich Zoning By-Law”.

Mr. Doane suggested again that the Applicants remove the old growth trees and move the addition to that area or in the alternative, to create an “EL” off of the garage in lieu of the breezeway.

Mr. Hilliard said that he thought that the Board should not be second guessing the Building Commissioner on his interpretation of what makes a building a residential structure and noted that if the same plan were built today, it would receive a permit. He thought that people with older buildings shouldn’t be penalized.

Ms. Muller asked why the Board was even talking about covered walkways and thought the Applicant was playing a game.

Attorney Crowell then argued for a Variance saying that the old growth trees were valuable and made the property unique as did the antique nature of the main house. There would be a considerable financial hardship to move the garage rather than work with what is already there.

Katrina Ryan of 580 Route 28, a direct abutter to the property spoke in favor of the project noting that the roof of the garage is in total disrepair and needs help. She agreed with Mr. Kyriakides that the trees were valuable and spoke of how he had cared for the trees on his property even removing dead branches from those that could have affected her condo. She did bring up a question as to the future expansion of the house which Mr. Kyriakides said he would build at some point by right but had no concrete plans at the moment.

Kathryn Ermilio of 74 Bank Street said that she had no problem with the projected addition but wondered if there were plans to change the septic system. The Applicant told her there were not.

Attorney Crowell asked that the Board vote first on the request for a Special Permit.

Mr. Doane moved to close the public hearing and Mr. Previd seconded the motion, The Board voted unanimously in favor.

**Mr. Hilliard moved to approve the Special Permit to expand the garage and add the covered breezeway according to the plans provided. There was no Second so the Board did not vote on the request for the Special Permit. NO ACTION**

**Mr. Hilliard then moved to GRANT the Variance** requested according to the plans provided. Mr. Doane seconded the motion. Mr. Hilliard voted in favor and Mr. Campbell, Ms. Muller, Mr. Doane and Mr. Burke voted against the motion. 1-4-0

**The Motion FAILED.**

**Case #2016-22**

Holly Tarleton has applied for Special Permit or in the alternative, a Variance to construct a raised walkway/deck. The application is pursuant to the Code of the Town of Harwich Section 325: Table 2, Area Regulations and Section 325-54. A.(2) as set forth in MGL Chapter 40A Section 6 and Section 10. The property is located at 130 Forest Street, Map 31, Parcel A12 in the R-L Zoning District.

Members voting on this case were Mr. Previd, Mr. Campbell, Ms. Muller, Mr. Doane and Mr. Hilliard.

Presenting along with the owner, Holly Tarleton, was her attorney, William Crowell who introduced Ms. Tarleton as the owner and the builder. The proposed raised walkway and deck will extend over the renovated carport but will not change the footprint of the house. It will, however, intensify an existing non-conformity making the Gale Case apply. The site coverage will increase slightly but still remain well below the required limit of 30%. After some questions from the Board on the details of the length and height of the walkway, Attorney Crowell asked that the Board grant the request for the Special Permit saying that the new deck and walkway will not be a substantial detriment to the neighborhood nor offer any additional noise, odor, fumes or congestion.

Mr. Doane asked if the lots on the northwest side of the property might be buildable and Ms. Tarleton explained that because of the reduced frontage of those lots and the high water table, they are not. Mr. Burke thought the additional means of egress from the building was a plus.

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

**Mr. Previd then moved and Mr. Doane seconded the motion to GRANT the Special Permit** according to the plans submitted. **The Board voted unanimously in favor. 5-0-0**

**Case #2015-24 (heard before 2016-23)**

Abcan, LLC., Richard Orbon, Manager has applied for a Special Permit or in the alternative, a Variance to construct an addition to a pre-existing, non-conforming single family dwelling. The application is pursuant to the Code of the Town of Harwich Section 325: Table 2, Area Regulations and Section 325-54. A.(2)(c) as set forth in MGL Chapter 40A Section 6 and Section 10. The property is located at 87 Willow Street, Map 3, Parcel J2-2 in the R-H-1 Zoning District.

Members voting on this case were Mr. Burke, Mr. Previd, Mr. Campbell, Ms. Muller and Mr. Hilliard.

Presenting along with the owners was their attorney, William Crowell who introduced the 2 principals of Abcan, LLC, Richard and Maggie Orbon along with Patrick Ellis, the builder. The proposal is an addition to a pre-existing, non-conforming dwelling. The addition would come no closer to the westerly lot line so Attorney Crowell said that the application meets the requirements for a Special Permit under the Bylaws. There would be no substantial detriment to the neighborhood and with the shed being removed, the site and building coverage will be less than the requirements.

Mr. Hilliard asked if there had been any correspondence from abutters and was told that there was not. None of the other Board members had any questions.

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

**Mr. Previd then moved and Mr. Campbell seconded the motion to GRANT the SPECIAL PERMIT** to construct the addition according to the plans submitted and stamped and including the removal of the shed as noted. **The Board voted unanimously in favor. 5-0-0**

**Case #2016-23**

David M. Cook, Candace Cook and Katherine S. Moore have applied for Variances to add a garage and a second story to their existing dwelling. The application is pursuant to the Code of the Town of Harwich Section 325: Table 2, Area Regulations and Table 3, Height & Bulk Regulations as set forth in MGL Chapter 40A Section 10. The property is located at 130 Cottonwood Road, Map 93, Parcel A1-15 in the R-L Zoning District.

Members voting on this case were Mr. Hilliard, Ms. Muller, Mr. Previd, Mr. Doane and Mr. Campbell.

Mr. Previd read comments from the Board of Health into the record.

Presenting along with the applicants was their attorney, William Crowell who told the Board that the builder, Mr. Willoughby, now in custody for similar fraudulent dealings with other property owners, built the foundation for the garage in the wrong location, too close to the street and encroaching upon the side setbacks. He said that he would take care of “everything” but took the Cook’s $40,000 downpayment and then left town. The site coverage is now 31.6% where it should be 30%. The proposed building coverage will be 19.6% where it should be 15% maximum. The applicants are seeking Variances for the street and westerly sideline, for the building coverage and for the site coverage. Attorney Crowell argued that there is a unique shape to the coverage due the oddly poured foundation and that the Cook’s have a significant financial hardship if they were required to dig up the foundation to make it compliant. He said there would be no substantial derogation from the intent or purpose of the bylaw and no substantial detriment to the publc good. He asked that the Board grant the Variances.

Mr. Hilliard asked if moving the foundation would change its structural integrity and he was told by Attorney Crowell that after discussion with a structural engineer, the owners were told that it definitely would. Mr. Doane asked if the garage could be built 5’ back from the front edge of the poured foundation and then jackhammer the remainder. Attorney Crowell told him that the Cook’s had gotten an estimate to do just that and the cost was almost $4,000. Mr. Doane also asked if the house was a 2-family noting that he had seen a separate address. The Cooks explained that their son lived downstairs but the house is a one family split level.

Mr. Burke said that he thought that the financial hardship would be enough to carry the day and that the degree of relief being sought would constitute a dimensional variance. The side setback relief is minimal and the street setback relief could be considered minimal because the street is a dead end.

Mr. Previd moved to close the public hearing and Mr. Campbell seconded the motion. All voted in favor.

**Mr. Previd then moved and Mr. Campbell seconded the motion to GRANT the VARIANCES** according to the plans submitted. **Mr. Hilliard, Ms. Muller, Mr. Campbell and Mr. Previd voted in favor. Mr. Doane abstained. The MOTION PASSED. 4-0-1**

Mr. Doane moved and Mr. Hilliard seconded the motion to accept the minutes from ther 8/31 meeting. The Board voted unanimously in favor.

At 9:33 PM, Mr. Doane moved and Mr. Campbell seconded the motion to adjourn the meeting.

The Board voted unanimously in favor.

Submitted by Shelagh Delaney

Board Secretary