**HARWICH ZONING BOARD of APPEALS PUBLIC HEARINGS**

**Wednesday, January 27, 2021 at 7:00 p.m.**

**VIA REMOTE ACCESS**

**MINUTES**

The Harwich Zoning Board of Appeals held a public hearing **via remote access** as noted below to hear the following cases.

**This meeting was by REMOTE PARTICIPATION ONLY.** Call in instructions were posted on the meeting Agenda on the Board of Appeals web page.

Members present via remote access: David Ryer, Al Donoghue, Jamie Armstrong, Chris Murphy and Brian Sullivan.

Chairman David Ryer opened the meeting at 7PM by reading the following notice:

Pursuant to Governor Baker’s March 12, 2020 order Suspending Certain Provisions of the Open Meeting Law, G.L.c30A Sec18 and the Governor’s March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, this meeting of the Town of Harwich Board of Appeals on Wednesday, May 27, 2020 at 7pm will be conducted via remote participation to the greatest extent possible. Specific information and the general guidelines for remote participation by members of the public and/or parties with a right and/or requirement to attend this meeting can be found on the Town of Harwich website at [www.harwich-ma.gov](http://www.harwich-ma.gov).

For this meeting, members of the public who wish to watch the meeting may do so in the following manner on Channel 18 or by watching the simulcast at:

https://harwich18.dyndns.org/cablecast/public/Live. aspx?ChannellD=1

Mr. Ryer then authorized Shelagh Delaney to stamp all documents associated with the cases in this meeting.

Mr. Ryer told the Board that he had received requests from Cases 2020-51, 2020-53 and 2020-54 to continue until February 24, 2021 at 7PM. He made a motion to allow for those continuances with a second by Mr. Donoghue. The Board voted unanimously in favor. 5-0

Mr. Ryer then noted that Case #2020-40 had been continued from the December 9, 2020 meeting. He read the case into the record.

**Case # 2020-40 (Continued from December 9, 2020)**

Jonathan & Sarah Vanica, Trustees of the Vanica Living Trust through their agent, Attorney Sarah Turano-Flores have applied for a Special Permit (or in the alternative, a Variance) to add demolish and replace a pre-existing, non-conforming single family dwelling and residential accessory structure on a pre-existing, non-conforming lot. The application is pursuant to the Code of the Town of Harwich, §325-22 and Table 2, Area Regulations and §325-14(Q) as set forth in MGL Chapter 40A §6. The property is located at **2 Quason Lane,** Map 7, Parcel A50-0-R in the RH-1 Zoning District.

Attorney Sarah Turano-Flores introduced herself as well as Rick Roy, the project manager, Kevin Dauphine the architect and Sean Riley of Coastal Engineering. She noted that revised plans had been submitted earlier in the week and asked that the Board accept those.

Ms. Turano-Flores said that the single family dwelling on the lot is pre-existing, non-conforming as is the accessory building. The lot is constrained by the proximity of the coastal bank which limits possible locations of the septic system. That in turn has limited possible locations for a garage. The applicants want to turn the accessory building into a garage with bedrooms above. There is a driveway easement that has been in place since 1929. The lot was originally a part of the Ayer Lane Development. The Pine Street development came along later and even though that runs along the side of the property, there is no access to it. The frontage for this lot is only on Quason Lane. Ms. Turano-Flores argued that the use will not change and that proposed new structure will be in keeping with the architecture of the neighborhood, will further stabilize the coastal bank and will have adequate facilities for drainage, water and sewage. She said that the intensification of existing non-conformities will not be a substantial detriment to the entire neighborhood and asked that the Board consider their request favorably.

Mr. Ryer asked Attorney Turano-Flores to address concerns raised by the northerly abutter, Mr. Griffin regarding the change of the shed into a 2-story garage.

Ms. Turano-Flores referred to a recent case, Comstock vs. Zoning Board of Appeals of Gloucester which referred to additional zoning protections for accessory structures. The shed is a pre-existing, non-conforming accessory structure and the replacement will be the same, although larger.

Mr. Sullivan said that he had no problem with the demolition and reconstruction of the main house as proposed but was struggling with the change from a shed to a garage with living quarters above. He said he was inclined to approve the building of a garage but not the habitable space above.

Ms. Turano-Flores answered that the Special Permit is not for a change in use. The Comstock Case allows the accessory building to be altered by Special Permit. The building will still be an accessory structure and that the new building will be heavily screened with vegetation.

Dan Griffin of Pine Street who sent photos and a letter to the Board in opposition to the application continued to argue that the boundary with Pine Street should be required to have a 25’ setback. He had a problem with changing a shed to a garage which will be 7 times larger and a full story higher. He said that he was not in agreement with the Applicant’s argument and believed that this will be a substantial detriment to the neighborhood.

Mr. Ryer countered by telling Mr. Griffin that the standard for the Board to decide is whether the project intensifies existing non-conformities, creates no new non-conformity and is not a substantial detriment to the entire neighborhood, not just one lot.

Mr. Ryer moved to close the Public Hearing. Mr. Donoghue seconded the motion The Board voted unanimously in favor. 5-0

Mr. Ryer further addressed the problem the Board was having with replacing the shed with a garage. He said that both were in fact accessory structures and that he was inclined to give the benefit of the doubt to the applicants. He did not see a substantial detriment to the entire neighborhood. Mr. Murphy, Mr. Armstrong and Mr. Donoghue agreed.

Mr. Sullivan said that he would approve the project as it related to the house but not the garage.

Mr. Ryer moved that the Board grant the requested Special Permit to add, demolish and replace a pre-existing, non-conforming single family dwelling and residential accessory structure on a pre-existing, non-conforming lot pursuant to the Code of the Town of Harwich, §325-22 and Table 2, Area Regulations and §325-14(Q) as set forth in MGL Chapter 40A §6 for the property located at **2 Quason Lane,** Map 7, Parcel A50-0-R, according to the plans submitted, the Board having found that the proposal will intensify existing non-conformities, create no new non-conformity and not be a substantial detriment to the neighborhood subject to the following three (3) conditions:

1. **That no demolition, exterior construction nor new landscaping occur between the dates of June 30th and Labor Day of any year;**
2. **It is a condition of this approval that a violation of the terms and conditions of this Special Permit may be enforced as a violation of the Harwich Zoning Bylaw pursuant to G.L. ch 40A, Sec. 7, as these may be amended from time to time;**
3. **No kitchen shall be installed in the accessory structure with bedrooms.**

Mr. Armstrong seconded the motion. The Board voted 4 in favor (Mr. Ryer, Mr. Donoghue, Mr. Armstrong and Mr. Murphy) with 1 opposed (Mr. Sullivan). The motion passed. 4-1

**Case # 2020-45**

Wychmere Harbor Real Estate, LLC, through its agent, Attorney Andrew Singer has applied for a further amendment to Special Permit Decisions granted through Cases 2019-28 and 2020-32, or in the alternative, a new Special Permit to make additional alterations to 2 pools and associated hardscape areas. The application is pursuant to the requirements of MGL Chapter 40A §6. The property is located at **23 Snow Inn Road, Unit 12**, Map 8, Parcel P2-12 in the RH-3 and RL Zoning Districts.

Mr. Donoghue read the case into the record.

Attorney Andrew Singer introduced himself and noted that the application is to amend a Special Permit first issued by the Board as Case 2019-28 and then amended as Case 2020-32 according to a memo submitted on January 20, 2021. Applicants would like to install an infant pool with a natural grass lawn between the pool and the beach club. This has received approval from the Conservation Commission as a minor amendment.

Mr. Ryer asked that Attorney Singer address concerns sent by an abutter (Tom Cosmer) regarding keeping the use of the property for members only and not opening to the public. Attorney Singer responded that the club will remain private.

The Board had no questions and there were no additional comments from the public.

Mr. Donoghue moved to close the public hearing with a second by Mr. Murphy. The Board voted unanimously in favor. 5-0

Mr. Ryer said that he believed that the changes were minor and would not present a substantial detriment to the neighborhood.

Mr. Donoghue moved that the Board grant the requested further amendment to the Special Permit granted as Permit 2019-28 and amended as 2020-32 with all of the original conditions remaining in place and the Club remaining as a private club, according to the plans submitted, the Board having found that the Applicants meet the requirements of the Bylaw. Mr. Armstrong seconded the motion and the Board voted unanimously in favor. 5-0

**Case # 2020-46**

John E. Fantasia, through his agent, Michael Woessner has applied for a Special Permit to upgrade and renovate an existing porch of a pre-existing, non-conforming dwelling. The application is pursuant to the Code of the Town of Harwich, Table 2, Area Regulations as set forth in MGL Chapter 40A §6. The property is located at **3 Bayberry Lane,** Map 10, Parcel X5 in the RH-1 Zoning District.

This case was paused to allow the Applicants to work out computer access issues.

Mr. Donoghue read the case into the record.

The owner, John Fantasia noted that the project will only change the jalousie windows of the porch and raise the floor to match the level of the house. There will be no air-conditioning but there will be heat in the floor to turn the porch into a 3-season room. There will be no change in the footprint.

It was noted that Mr. Ralph Galeota of 7 Bayberry Lane had sent in a note of support for the project.

Mr. Ryer added that the plan intensifies existing non-conformities. He moved to close the public hearing with a second by Mr. Sullivan. The Board voted unanimously in favor. 5-0

Mr. Ryer said that he believed that the project would not be substantially more detrimental to the neighborhood than the existing structure.

Mr. Ryer moved that the Board grant the Special Permit to upgrade and renovate an existing porch of a pre-existing, non-conforming dwelling pursuant to the Code of the Town of Harwich, Table 2, Area Regulations and the Gale Case as set forth in MGL Chapter 40A §6 for the property located at **3 Bayberry Lane,** according to the plans submitted, the Board having found that the project will intensify existing non-conformities and not subject the neighborhood to any substantial detriment. This Special Permit is granted subject to the following conditions:

1. **All construction vehicles are to be parked on the Applicant’s property and not on the street;**
2. **It is a condition of this Special Permit that a violation of the terms and conditions of this Special Permit may be enforced as a violation of the Harwich Zoning Bylaw pursuant to G.L. ch 40A, Sec. 7, as these may be amended from time to time.**

Mr. Murphy seconded the motion. The Board voted unanimously in favor. 5-0

**Case # 2020-47**

David Scott Sloan, Trustee of 49 Snow Inn Road Nominee Trust, through his agent, Attorney Andrew Singer seeks to amend a Special Permit granted in Case 2020-29 in order to accommodate required egress stairs. The application is pursuant to the Code of the Town of Harwich, §325-54, as set forth in MGL Chapter 40A §6. The property is located at **49 Snow Inn**

**Road,** Map 15, Parcel N2 in the RL Zoning District.

Mr. Ryer read the case into the record.

Attorney Andrew Singer presented the case and noted that after receipt of a Special Permit in Case 2020-29, Applicants were told by the Building Inspector that a second means of egress was required. The plans submitted with this application show the location of that second egress. It will be no closer to Snow Inn Road. The Conservation Commission has already approved the project as an Administrative Field Change. It presents no substantial detriment to the neighborhood. He asked that the Board grant the requested Amendment.

Mr. Ryer said that he also believed that this minor change will only intensify what is already the subject of the Special Permit granted in Case 2020-29 and not be a substantial detriment to the neighborhood.

Mr. Ryer then moved to close the public hearing with a second by Mr. Murphy. The Board voted unanimously in favor. 5-0

Mr. Donoghue then moved that the Board grant the requested amendment to the Special Permit granted in Case 2020-29 with all of the original conditions remaining in affect. Mr. Ryer seconded the motion. The Board voted unanimously in favor. 5-0

**Case # 2020-48**

Robert E. Crowley and Susan J. Crowley have applied for a Special Permit or in the alternative, a Variance to convert an existing garage/studio into an Accessory Apartment. The application is pursuant to the Code of the Town of Harwich, §325-14, §325-Table 2 - Area Regulations and Table 3, Height and Bulk Regulations as set forth in MGL Chapter 40A §6 and/or §10. The property is located at **17 Charlene Lane**, Map 113, Parcel S1-8 in the RR Zoning District.

Mr. Ryer read the case into the record.

Susan Crowley introduced herself and told the Board that she is looking to convert a detached garage into an apartment. She spoke about the site coverage including permeable surfaces and how that shouldn’t be added to the total. She reminded the Board that she had withdrawn Case 2020-30 and has reapplied saying that she believes her numbers now qualify for the Board to grant either a Special Permit or a Variance. She reminded the Board that she had withdrawn her last application because the Board told her she did not have the requisite site coverage or lot size but wants the Board to reconsider.

Mr. Ryer said that in order to qualify under Section 325-51H, the total floor area of the apartment compared with the main house has to be a certain percentage and the lot size has to be large than what the Applicant has. Mrs. Crowley said that her lot was only 1,133 square feet short of what is required and that is why she wants the Board to grant a Variance to that requirement. She added that the Town needs affordable housing.

Mr. Ryer explained that because the lot size falls short for the granting of a Special Permit, the Applicant needs a Variance. The requirements for the Board to grant a Variance are insufficient because he said that he believed that the Applicant could not show that the lot shape, topography or soil would qualify as a hardship.

There were no comments from the public but an abutter had sent in a letter in opposition of the project.

Mr. Ryer moved to close the public hearing with a second by Mr. Murphy. The Board voted 4-1 in favor.

Mr. Ryer said that even with the apartment bylaw having been amended by the Town, the Applicant still falls short of the required 20,000 square feet of lot size. A Variance is therefore required but he felt that the conditions were not met for the granting of a Variance. The members all agreed that although they were sympathetic to the Applicant’s plight, the conditions for granting a Variance were not met.

Mrs. Crowley requested a withdrawal of the application.

Mr. Ryer moved that the Board grant the request for a withdrawal in Case 2020-48 with a second by Mr. Sullivan. The Board voted unanimously in favor. 5-0

**Case # 2020-49**

David P. Panza and Rosemary B. Panza, through their agent, Attorney Paul Tardif, have applied for a Special Permit to raze a pre-existing, non-conforming single family dwelling and replace it with a 2 story single family dwelling on the same foundation. The application is pursuant to the Code of the Town of Harwich, §325-54 as set forth in MGL Chapter 40A §6. The property is located at **123 Deep Hole Road**, Map 25, Parcel C1-B2 in the RR Zoning District.

Mr. Donoghue read the case into the record.

Attorney Paul Tardif introduced himself and restated details of the application adding that the current 1-story single family dwelling will be replaced with a 2-story single family dwelling in essentially the same footprint but with a bump out on the Beach Hill Road side and the addition of a compliant porch. He argued that the Gale Case applied with intensifications of existing non-conformities, no new non-conformity and no substantial detriment to the neighborhood.

There were no public comments.

Mr. Ryer moved to close the public hearing with a second by Mr. Murphy. The Board voted unanimously in favor. 5-0

Mr. Ryer agreed that the project fit the requirements of the Gale Case with intensifications of existing non-conformities, no new non-conformity and no substantial detriment to the neighborhood. The Board agreed.

Mr. Ryer then moved that the Board grant the requested Special Permit to raze a pre-existing, non-conforming single family dwelling and replace it with a 2 story single family dwelling on the same foundation, according to the plans submitted and pursuant to the Code of the Town of Harwich, §325-54 as set forth in MGL Chapter 40A §6 for the property located at **123 Deep Hole Road**, upon a finding that the application meets the requirements of the Gale Case with intensifications of existing non-conformities, no new non-conformity and no substantial detriment to the neighborhood. This Special Permit is granted subject to the following 2 conditions:

1. **That no demolition, exterior construction nor new landscaping occur between the dates of June 30th and Labor Day of any year;**
2. **It is a condition of this Special Permit that a violation of the terms and conditions of this Special Permit may be enforced as a violation of the Harwich Zoning Bylaw pursuant to G.L. ch 40A, Sec. 7, as these may be amended from time to time.**

Mr. Murphy seconded the motion. The Board voted unanimously in favor. 5-0

**Case # 2020-50**

Andrew and Erica Merrill, through their agent, Chris Cannon of Arch-itects 33 have applied for a Special Permit to construct 2 Shed Dormers on a pre-existing, non-conforming single family dwelling. The application is pursuant to the Code of the Town of Harwich, §325-54 as set forth in MGL Chapter 40A §6. The property is located at **19 Braddock Street**, Map 7, Parcel F7 in the RH-1 Zoning District.

Mr. Donoghue read the case into the record.

Chris Cannon Arch-itects 33 introduced himself and presented the case restating relevant portions of the application adding that the 2 dormers would be within the setback thereby triggering the need for the Special Permit. The owners are extending the garage with a second floor and a kitchen.

There were no public comments.

Mr. Ryer moved to close the public hearing with a second by Mr. Murphy. The Board voted unanimously in favor. 5-0

Mr. Ryer then said that he believed that the project fir the requirements of the bylaw and the Gale Case with intensifications of existing non-conformities, no new non-conformity and no substantial detriment to the neighborhood. The Board agreed.

Mr. Ryer moved that the Board grant the Special Permit to construct 2 Shed Dormers on a pre-existing, non-conforming single family dwelling according to the plans provided and pursuant to the Code of the Town of Harwich, §325-54 as set forth in MGL Chapter 40A §6 for the property located at **19 Braddock Street** upon a finding that the application meets the requirements of the Gale Case with intensifications of existing non-conformities, no new non-conformity and no substantial detriment to the neighborhood. This Special Permit is granted subject to the following 2 conditions:

1. **That no demolition, exterior construction nor new landscaping occur between the dates of June 30th and Labor Day of any year;**
2. **It is a condition of this Special Permit that a violation of the terms and conditions of this Special Permit may be enforced as a violation of the Harwich Zoning Bylaw pursuant to G.L. ch 40A, Sec. 7, as these may be amended from time to time.**

Mr. Murphy seconded the motion. The Board voted unanimously in favor. 5-0

**Case # 2020-52**

Mark Jacobson and Renee Brown have applied for a Variance from the side setback requirements to construct an in-ground pool. The application is in accordance with in MGL Chapter 40A §10. The property is located at **17 Chase Street**, Map 4, Parcel S6-1 in the RH-2 Zoning District.

Mr. Donoghue read the case into the record.

Tim Kelley introduced himself as the contractor and agent for the owners. He told the Board that the owners hope to place their pool in a location convenient to the house and not on the far side where it would disturb neighbors that already are at odds with the owners.

Mr. Ryer asked Mr. Kelley to convince the Board why the soil condition, shape, topography or current structures would present a hardship to the owners. These are the requirements for the granting of a Variance. Mr. Murphy reminded the Applicant that placing the pool on the alternate side could be done by right.

Mr. Kelley restated that the alternate location is farther from the house and near neighbors who have not been open to the idea of the pool.

Mr. Kelley asked to withdraw the application.

Mr. Ryer moved to close the public hearing with a second by Mr. Donoghue. The Board voted unanimously in favor. 5-0

Mr. Ryer moved that the Board grant the request for a withdrawal in Case 2020-52 with a second by Mr. Murphy. The Board voted unanimously in favor. 5-0

Mr. Ryer congratulated Mr. Murphy and Mr. Sullivan as they have both been appointed to the Board of Appeals as full members. He noted that Tim Bailey would be joining the Board as an alternate.

Mr. Ryer moved to accept the Minutes of the December 9, 2020 meeting with minor adjustments and Mr. Murphy seconded the motion. The Board voted unanimously in favor. 5-0

Mr. Ryer moved to adjoin the meeting with a second by Mr. Sullivan. The Board voted unanimously in favor. 5-0

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

Board of Appeals Recording Secretary