**HARWICH ZONING BOARD of APPEALS PUBLIC HEARING**

**Wednesday, December 04, 2019 at 7:00 p.m.**

**Griffin Meeting Room, Harwich Town Hall**

**MINUTES**

On Wednesday, December 4, 2019 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, Chair, Dean Hederstedt, Clerk, James Hilliard, Kathleen Muller, Al Donoghue, Mike Cupoli, and Chris Murphy

Mr. Ryer called the meeting to order and noted that the meeting was being video recorded.

**Case #2019-38**

John Matthews of West Newbury Development Corporation, through his agent, Abigail Rose of Robert B. Our Co. applied for a Special Permit for a Temporary Change of Use in order to store materials and construction equipment associated with Town of Harwich Sewer Project. The application is pursuant to the Code of the Town of Harwich, §325-54 and Table 1, Use Regulations, PP II, Line 3 “Essential Services” as set forth in MGL Chapter 40A §6. The property is located at **160 Route 137,** Map 86, Parcel M12-2 in the CH-2 Zoning District.

As there was no one present from the Applicants’ team, Ms. Muller moved to continue the case until 7PM on Wednesday, January 29, 2020. Mr. Donoghue seconded the motion and the Board unanimously approved. Mr. Ryer noted that it appears that there is already storage of construction materials at that site without a Special Permit.

**Case #2019-39**

Paul Bonfiglio applied for a Special Permit for a change of use to allow for the sale or rental and repair service of new or used automobiles. 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 **210 Queen Anne Road,** Map 58, Parcel K3-11 in the IL Zoning District.

Members voting on this case:

Mr. Hilliard, Ms. Muller, Mr. Hederstedt, Mr. Donoghue and Mr. Murphy.

Mr. Hederstedt read the case into the record and also referred to comments by the Senior Health Agent which noted that if there are to be floor drains, they cannot discharge to the ground, leaching structure or septic system.

Mr. Paul Bonfiglio presented his case restating details of the application and adding that he will be limiting sales to 1-2 late model vehicles, sold by appointment. There will be no repairs and no storage of oils or fuels on site. He stated that he will not be using more than his 2 allotted parking spaces.

Public comments included those of members of the Harwich Business Association with enforces the rules of the condo association of the subject property. They had concerns that Mr. Bonfiglio’s new business might be in violation of the terms of their agreement. The Board determined that any contractual disagreement would be a civil matter which would not have a bearing on whether or not a Special Permit would be issued. They noted that there are 2 separate streams of approval through the Town: one being the Special Permit before the Board and the other being the proper licensing required by the Town. Mr. Ryer stated that he believed that the requested Use was appropriate for the address in question and felt the requirements for granting a Special Use Permit had been met. The Board agreed.

Mr. Hederstedt moved to close the public hearing with a second by Ms. Muller. The Board voted unanimously in favor.

Mr. Hederstedt moved to GRANT the requested Special Permit for a change of use to allow for the sale or rental and repair service of new or used automobiles pursuant to the Code of the Town of Harwich §325 Table 1 Use Regulations as set forth in MGL Chapter 40A §6 for the property located at **210 Queen Anne Road,** Map 58, Parcel K3-11 in the IL Zoning District, incorporating the conditions noted in the Applicant’s letter of 10/28/19, a copy of which is attached herein and with the condition that all proper licensing will be met and maintained.

There was a second by Mr. Hilliard. The Board voted unanimously in favor. 5-0-0

**Case #2019-40**

James and Lauren Lipscomb, through their agent, Attorney William Crowell, applied for a Special Permit, or in the alternative, a Variance, to replace and expand the wooden deck on an existing non-conforming single family dwelling. The application is pursuant to the Code of the Town of Harwich, §325-54 and Table 2, Area Regulations as set forth in MGL Chapter 40A §6 and if necessary Chapter 40A §10. The property is located at **47 Harbor Road,** Map 15, Parcel U36-1 in the RL Zoning District.

Members voting on this case:

Mr. Hilliard, Ms. Muller, Mr. Hederstedt, Mr. Donoghue and Mr. Cupoli.

Mr. Hederstedt read the case into the record and also referred to comments by the Senior Health Agent which noted that the Board of Health has no concerns with the proposed project. There was another memo from the Assistant Conservation Agent stating that the project has already gone before the Conservation Commission last April and was approved.

Attorney Crowell introduced himself and his client, James Lipscomb and restated details of the application adding that there will be no work done on the dwelling, only the deck which is already pre-existing, non-conforming. He said that this would follow the requirements of the Gale Case with an intensification of existing non-conformities, no new non-conformity and no substantial detriment to the neighborhood.

The Board agreed that the project fit the requirements of the Gale Case and added that it did not appear that there would be a need for a restriction on summer construction.

Mr. Hederstedt moved to close the public hearing with a second by Mr. Cupoli. The Board voted unanimously in favor.

Mr. Hederstedt then moved to GRANT the requested Special Permit to replace and expand the wooden deck on an existing non-conforming single family dwelling according to the plans provided, pursuant to the Code of the Town of Harwich, §325-54 and Table 2, Area Regulations as set forth in MGL Chapter 40A §6 for property located at **47 Harbor Road,** Map 15, Parcel U36-1 in the RL Zoning District, the Board having found that there will be an intensification of existing non-conformities, no new non-conformity and no substantial detriment to the neighborhood. There was a second by Mr. Cupoli. The Board voted unanimously in favor. 5-0-0

**Case #2019-41**

Brian Dolan, Trustee of the Brian Dolan Revocable Trust and Elizabeth Dolan, Trustee of the Elizabeth Dolan Revocable Trust through their agent, Attorney William Crowell, applied for a Special Permit, or in the alternative, a Variance, to enclose an existing porch and construct decks on a pre-existing non-conforming single family dwelling. The application is pursuant to the Code of the Town of Harwich, §325-54 and Table 2, Area Regulations as set forth in MGL Chapter 40A §6 and if necessary Chapter 40A §10. The property is located at **3 Lincoln Ave,** Map 6, Parcel G3-1 in the RH-1 Zoning District.

Members voting on this case:

Mr. Hilliard, Ms. Muller, Mr. Hederstedt, Mr. Donoghue and Mr. Murphy.

Mr. Hederstedt read the case into the record and also referred to comments by the Senior Health Agent which noted that the Health Department has no concerns with the proposed project. He also noted a memo by the Assistant Conservation Agent stating that the Applicants will need to go before the Conservation Commission to get their approval.

Attorney Crowell presented the case. He introduced himself and his clients as well as Kathleen DeMeier of Encore Construction. Attorney Crowell restated details of the case adding that the property is located south of Lower County Road. The house was built in 1995 and it has an existing porch which the owners would like to enclose as well as convert the existing patio to a 2-level deck area which would extend along an existing non-conforming line thereby meeting one of the requirements of the Gale Case. He concluded saying that there would be no substantial detriment to the neighborhood with no additional noise, traffic, odor or congestion.

Mr. Hilliard asked if the 1995 building was the original building and Ms. DeMeier said that it was rebuilt n the same footprint as the original dwelling. Mr. Hederstedt said he believed that the project fit the requirements of the Gale Case and Mr. Ryer agreed saying that he thought a limitation should be placed on summer construction.

Richard Santos of 3 Eastern Ave asked for clarification on the upper deck and whether there would be a stairway down. Ms. DeMeier said that it would be accessible from the second floor only.

Mr. Hilliard moved to close the public hearing with a second by Mr. Hederstedt. The Board voted unanimously in favor.

The Board discussed the case and noted that this project fits the requirements of the Gale Case with intensifications of existing non-conformities, no new non-conformity and no substantial detriment to the neighborhood.

Mr. Hederstedt moved to GRANT the requested Special Permit to enclose an existing porch and construct decks on a pre-existing non-conforming single family dwelling according to the plans submitted pursuant to the Code of the Town of Harwich, §325-54 and Table 2, Area Regulations as set forth in MGL Chapter 40A §6 for the property located at **3 Lincoln Ave,** Map 6, Parcel G3-1 in the RH-1 Zoning District.

There is a condition that no demolition, exterior construction or new landscaping may occur between June 30 and Labor Day of any year

There was a second by Mr. Donoghue. The Board voted unanimously in favor. 5-0-0

**Case #2019-42**

David Joseph, through his agent, Michael Takach of Earth & Stone, LLC applied for a Special Permit to replace an existing retaining wall within the setback. The application is pursuant to the Code of the Town of Harwich, §325 and Table 2, Area Regulations as set forth in MGL Chapter 40A §6. The property is located at **67 Idle Way,** Map 63, Parcel A137 in the RR Zoning District.

Members voting on this case:

Mr. Hilliard, Ms. Muller, Mr. Hederstedt, Mr. Donoghue and Mr. Cupoli.

Mr. Hederstedt read the case into the record and also referred to comments by the Senior Health Agent which noted that the Health Department has no concerns with the proposed project.

Mr. Takach of Earth & Stone, LLC introduced himself and gave details as to the retaining wall structure that is to be replaced. The owners have asked for him to replace the northwest portion of an existing retaining wall that is failing. The structure extends from the house on the northeast corner. Natural stone will be used with a poured concrete footing as the base. Mr. Takach said that there was a letter from an abutter in support of the project. He added that the plan shows curves where the wall changes to accommodate changes in the grade.

Mr. Ryer noted that it appears that the current retaining wall extends beyond the property line. Mr. Takach said that he would rebuild only within the property limits and lower the height of the wall to retain the soil.

Mr. Cupoli moved to close the public hearing with a second by Mr. Hederstedt. The Board voted unanimously in favor.

The Board discussed the case and noted that this project fits the requirements of the Gale Case with intensification of existing non-conformities, no new non-conformity and no substantial detriment to the neighborhood.

Mr. Hederstedt moved to GRANT the requested Special Permit to replace an existing retaining wall within the setback according to the plans provided pursuant to the Code of the Town of Harwich, §325 and Table 2, Area Regulations as set forth in MGL Chapter 40A §6 for the property located at **67 Idle Way,** Map 63, Parcel A137 in the RR Zoning District with the condition that all portions of the new retaining wall stay completely within the property boundaries. Mr. Donoghue seconded the motion. The Board voted unanimously in favor. 5-0-0

Under New Business, Mr. Hederstedt stated that he was offering his resignation from the Board. Mr. Ryer thanked him on behalf of all of the Board members for his many years of service to the Town.

Mr. Ryer then nominated Mr. Hilliard as Board Clerk with a second by Mr. Donoghue. The Board voted unanimously in favor.

The Board then discussed an opinion from Town Counsel, Amy Kwesell concerning defining upland portions of lots within wetland areas.

Mr. Hilliard moved to approve the minutes from the October 30, 2019 meeting with a second by Mr. Murphy. The Board voted unanimously in favor.

Mr. Cupoli moved to adjourn the meeting with a 2nd by Mr. Hilliard. The Board voted unanimously in favor.

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

Board of Appeals Recording Clerk

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