**HARWICH ZONING BOARD of APPEALS PUBLIC HEARINGS**

**Wednesday, December 9, 2020 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.

Zoning Board of Appeals Chairman, David Ryer called the meeting to order and read the following statement into the record.

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

**Or by computer, tablet or smartphone,**
<https://global.gotomeeting.com/join/272127301>

**As well as via telephone.**
United States: +1 (872) 240-3212
**Access Code:** 272-127-301

Mr. Ryer read the following case into the record and informed the Board that the Applicants had sent a written request for a continuance until the February 24, 2021 meeting.

**Case # 2020-40**

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 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.

Mr. Ryer moved to grant the requested continuance until 7PM on February 27, 2021. Mr. Armstrong seconded the move. The Board voted unanimously in favor. 5-0-0

**Case # 2020-41**

Craig LeBlanc of Cool Change LLC through his agent, Robert O’Neill of GenCon applied for a Variance from the requirements of §325-16 and §325-42 (L) to create a lot for boat maintenance and repair with a structure to house these activities. The application pursuant to the requirements of MGL Chapter 40A §10. The property is located at **282 Route 28**, Map 12, Parcel G2-1 in the CH-1 Zoning Districts.

Mr. Donoghue read the case into the record.

Robert O’Neill, representing Craig LeBlanc presented the case. He introduced the Engineer for the project, Stuart Clark and the Architect, Steve Moreel. He told the Board that the Applicant was requesting a Variance from the east side setback requirement on Tyler Lane and added that the lot is a pork chop shape with 2 easements that impact potential use and locations for a structure. The intention is to use a portion of the lot for a building for boat maintenance and repair operations. The Applicant has met with the owners of the Villa Roma, abutters to the west side, and have received their approval.

Mr. Ryer asked for an explanation as to the hardship claimed by the Applicant. Mr. LeBlanc said that the shape of the lot, the flood plain and the parking and drainage easements have significantly limited the use of the lot and any potential location of a building.

Mr. Donoghue asked about the location of the septic system and Stuart Clark answered that the Applicants had already spoken with the Board of Health and determined that a Title V compliant system will go on the east side of the lot by Tyler Lane.

Mr. Armstrong asked for details on the size of the building. Mr. LeBlanc answered that it will be 4680 sf . The business is part of Allen Harbor Marina operations. There will be no boats parked outside of the building. He added that he believed that there will be no noise pollution outside of the building.

Brian Sullivan asked about the lighting plan. Mr. LeBlanc told him that there will be a light at the peak facing Route 28 and one over the entry door. There will be no lighting shining toward Tyler Lane. Mr. Sullivan also asked if there were any plans for landscaping and fencing and he was told that the plans were to plant Lelands along the north side and fencing in the rear. The Applicant is willing to work with neighbors for a fencing plan on the west side.

Mr. LeBlanc clarified the property lines for Mr. Murphy and noted that although the distance from Tyler Lane is 12’, it is another 10’ to the actual pavement.

Mr. Donoghue then spoke of a letter sent by an abutter, Linda Reid and asked the Applicant to address her concerns.

Linda Reid of Trenton, New Jersey said she has owned the property at 276 Route 28 for 50 years and that she is concerned about the visibility of the building and the tidiness of the landscaping as well as the light pollution. She said that if the building doesn’t affect her enjoyment of her property, she would have no problem with it.

Mr. LeBlanc said that the Applicant would be open to adjusting the fence height and the height of the entry light to limit any light exposure to the abutters.

Mr. Donoghue noted that there was also a letter sent in support of the project by an abutter named Mr. Tyler.

Mr. Sullivan asked about roof drainage and Mr. Clark clarified that the gutters will direct the runoff to a filtration area toward the rear of the building.

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

Mr. Ryer said that he felt that the Applicant had met the burden of showing the requirements for a Variance. He moved to grant the requested Variance to Section 325-16 and 325-42L and a Variance to construct a stockade fence 8’ in height according to the plans submitted. He made a motion that the Board hereby grant a Variance, having found that the Applicant meets the requirements of the Bylaw and of M.G.L.Sec.10, ch.40A, as the shape of the lot is unique and it is further restricted by a parking easement in favor of an abutter and the 100 year flood zone, and that the failure of the Board to make this grant will result in a substantial hardship to the Applicant as there appears to be no reasonable use that can be made of the property in the absence of a Variance. The Board further finds that this condition is specific to this property and does not generally affect the entire district, and that there will be no substantial detriment to the public good by the granting of this Variance and that its granting will not nullify or substantially derogate from the intent or purpose of the Bylaw. All work shall be performed in accordance with the plans submitted with this application.

These Variances shall be subject to the following conditions:

1. During the life of the project, all construction vehicles shall be parked on the property and not on Rte. 28 or Tyler Lane.

2. All repair work shall be performed inside the enclosed building to be erected on the property and there shall be no outside storage of boats on the property.

3. The existing six-foot high stockade fence running along the north westerly property line of applicant’s property between its property and the property of abutter Linda Reid shall, prior to the completion of construction, be replaced with a new six-foot high stockade fence with the finished side facing the property of Ms. Reid. The applicant shall maintain this fence in reasonable repair.

4. The existing six-foot high stockade fence running along the west property line of applicant’s property between its property and the property of abutter Linda Reid shall, prior to the completion of construction, be replaced with a new eight-foot high stockade fence with the finished side facing the property of Ms. Reid. The applicant shall maintain this fence in reasonable repair. This fence shall run at a minimum three feet past the end of the building to be constructed by applicant toward Rte. 28, but may, at applicant’s discretion, run longer, but for not more that fifty-two feet from the start of construction, which shall be at the intersection of the northwesterly and west property lines of applicant.

5. Any lighting to be placed around the doors of the building to be constructed by applicant shall not be higher than eight-feet.

6. Any lighting placed at the peak of the roof of the building to be constructed by applicant shall be directed to shine on the parking lot subject to the easement dated June 6, 2003, and shall be properly shielded so they do not shine onto the abutting property of Ms. Reid. The lights shall be turned off when the abutting restaurant ceases activity for the night.

7. Applicant shall fill in with suitable evergreen trees the existing plantings along its north property line to maintain a uniform height to shield the building to be constructed by applicant from the condominiums to the north of applicant’s property.

8. It is a condition of this approval that a violation of the terms and conditions of this Variance may be enforced as a violation of the Harwich Zoning Bylaw pursuant to M.G.L. ch.40A, Sec.7 and the Harwich Zoning Bylaw, as these may be amended from time to time.

This motion was seconded by Mr. Donoghue. The Board voted unanimously in favor. 5-0-0

Mr. Ryer authorized Shelagh Delaney to stamp all documents associated with this case.

**Case # 2020-42**

Alfred P. Quirk, Jr. and Sheila Quirk, through their agent, Attorney William Crowell have applied for a Special Permit or in the alternative, a Variance to renovate an existing garage to create habitable space within the west side setback. 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 **11 Prince Charles Drive,** Map 110, Parcel S26 in the RL Zoning District.

Mr. Donoghue read the case into the record.

Attorney Crowell introduced himself and Rick Roy, the builder and noted that the property is off of Route 124, almost into Brewster. The Applicants only want to change the interior of the garage but the garage is pre-existing, non-conforming as to the western setback and the addition of habitable space within the setback has triggered the need for a Special Permit,. The height of the garage is below the 30’ limit. Attorney Crowell argued that the Gale Case applied as this is an intensification of an existing non-conformity, no new non-conformity and no substantial detriment to the neighborhood.

Mr. Ryer noted that the location of the property allowed for construction vehicles to be off the road and did not feel any requirement for a restriction on summer construction.

Mr. Donoghue moved and Mr. Sullivan seconded the motion to close the public hearing. The Board voted unanimously in favor. 5-0-0

Mr. Ryer moved to grant the Special Permit to renovate an existing garage to create habitable space within the west side setback for the property at **11 Prince Charles Drive** according to the plans submitted**,** the Board having found that the project represents an intensification of an existing non-conformity, adds no new non-conformity and does not present a substantial detriment to the neighborhood. This Special Permit shall be subject to the following condition: **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 and the Harwich Zoning Bylaw, as these may be amended from time to time.**

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

Mr. Ryer authorized Shelagh Delaney to stamp all documents associated with this case.

**Case # 2020-43**

Manijeh Lawrence, through her agent, Attorney William Crowell has applied for a Special Permit or in the alternative, a Variance to alter and renovate habitable space of a pre-existing, non-conforming single family dwelling. The application is pursuant to the Code of the Town of Harwich, Table 2, Area Regulations and Table 3, Height & Bulk Regulations as set forth in MGL Chapter 40A §6. The property is located at **24 Central Ave,** Map 6B, Parcel L91 in the RH-2 Zoning District.

Mr. Donoghue read the case into the record.

Mr. Ryer asked Attorney Crowell if he approved of moving forward with the case despite the fact that there was a minor error in the legal advertisement with the mention of a garage where no garage exists. Attorney Crowell said that he wanted to move forward and that as long as the address, map, parcel and abutters list were correct, there shouldn’t be a problem.

Attorney Crowell introduced himself and Manijeh Lawrence, the owner/Applicant and noted that the property is in the “Campground” neighborhood on a small lot. The project will square off the footprint at the rear of the house, demolish a portion of the house and renovate the remainder.

The house is 2.4’ from the western lot line. The plans will bring it .1’ closer. There will be new steps on the southerly side and on the east. The building coverage percentage will go from 40.3% to 43.3% and the site coverage will go from 45.39% to 53.27%. The Applicant has already been to the Board of Health and received approval for the project with a 3 bedroom limit.

Attorney Crowell argued that this application fits the requirements of the Gale case with intensifications of existing non-conformities, no new non-conformity and no substantial detriment to the neighborhood. There will be no increase in noise, traffic, odor, fumes, congestion or the like.

Mr. Ryer suggested a restriction on summer construction because of the density of the neighborhood and the size of the streets.

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

Mr. Donoghue moved that the Board grant the Special Permit to alter and renovate habitable space of a pre-existing, non-conforming single family dwelling for the property located at **24 Central Ave,** the Board having found that the project represents an intensification of existing non-conformities, adds no new non-conformity and does not present a substantial detriment to the neighborhood. This Special Permit shall be subject to **two conditions: 1) that no demolition, exterior construction nor new landscaping occur between the dates of June 30th and Labor Day of any year and, 2) 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 and the Harwich Zoning Bylaw, as these may be amended from time to time.**

The Board voted unanimously in favor. 5-0-0

Mr. Ryer authorized Shelagh Delaney to stamp all documents associated with this case.

**Case # 2020-44**

Andrew and Karrin Plotner through their agent, Brian Wall of Cape Coastal Builders have applied for a Special Permit (or in the alternative, a Variance) to demolish and replace 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. The property is located at **11 Hiawatha Road,** Map 6, Parcel G5-2 in the RH-1 Zoning District.

Mr. Donoghue read the case into the record. He later added comments from the Health Department regarding changing the opening of the “bonus room” so as to comply with the limit to the number of bedrooms.

Brian Wall of Cape Coastal Builders introduced himself as well as Peter Hopple and Peter Barnard of Cape Coastal Builders and Dan Croteau of Moran Engineering. Mr. Wall noted that the existing ranch style house was built around 1950 and is a pre-existing, non-conforming single family dwelling as to area, frontage and side and rear setbacks. The proposal is to demolish and rebuild a 2 story single family house with a garage. The north side will improve and become conforming, the south side will remain the same. The building coverage will improve. It will not cause any undue nuisance, hazard or congestion. He also stated that there will be no new non-conformity and that the plans will be compliant with the requests from the Health Department. The project will not be substantially more detrimental to the neighborhood, there will be no increase in bedrooms and there will be a new septic system. The structure will be raised above the flood plan level.

Mr. Armstrong asked for clarification on where height is determined from given the FEMA requirements and Dan Croteau said it is from the top of the foundation at 13.1’.

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

Mr. Donoghue moved that the Board grant the requested Special Permit to demolish and replace a pre-existing, non-conforming single family dwelling for the property located at **11 Hiawatha Road,**

the Board having found that the project represents an intensification of existing non-conformities, adds no new non-conformity and does not present a substantial detriment to the neighborhood. This Special Permit shall be subject to  **two conditions: 1) that no demolition, exterior construction nor new landscaping occur between the dates of June 30th and Labor Day of any year and, 2) 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 and the Harwich Zoning Bylaw, as these may be amended from time to time.**

The Board voted unanimously in favor. 5-0-0

Mr. Ryer authorized Shelagh Delaney to stamp all documents associated with this case.

Mr. Ryer told the Board that James Hilliard had resigned his place on the Board and thanked him for his dedication and service. Mr. Donoghue volunteered to take over as the Board Clerk. Mr. Ryer nominated Mr. Donoghue as Clerk and made a motion to accept that nomination. Mr. Armstrong seconded the motion. The Board voted unanimously in favor. 5-0-0

Mr. Murphy moved to accept the Minutes of the October 28, 2020 meeting with a second by Mr. Armstrong. The Board voted unanimously in favor. 5-0-0

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

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

Board of Appeals Recording Clerk