**HARWICH ZONING BOARD of APPEALS PUBLIC HEARINGS**

**Wednesday, DECEMBER 29, 2021 at 7:00 p.m.**

**AGENDA**

The Harwich Zoning Board of Appeals held a public hearing **on Wednesday, December 29, 2021 at 7:00PM in the Griffin Room of Town Hall, 732 Main Street, Harwich, MA** as noted below to hear the following cases.

Members of the Board present: David Ryer, Al Donoghue, Chris Murphy, Brian Sullivan and Dave Nunnally.

Chairman, David Ryer called the meeting to order at 7:00 PM and each of the Board members introduced themselves.

Mr. Donoghue read the following case into the record.

**Case # 2021-47**

Jeffrey J. Williams, Trustee, et al through his agent, Jeffrey Swanson has applied for a Special Permit to close and convert a front porch into a master bath in a pre-existing, non-conforming single family dwelling. The application is pursuant to the Code of the Town of Harwich, §325- 54 and §325-Table 2 - Area Regulations as set forth in MGL Chapter 40A §6. The property is located at **52 Pleasant Rd.,** Map 4, Parcel V1-8 in the RH-1 Zoning District.

Members voting on this case: Mr. Ryer, Mr. Donoghue, Mr. Murphy, Mr. Sullivan and Mr. Nunnally.

Theda Swanson introduced herself and restated relevant portions of the application adding that the edge of the existing porch is only 4” from compliance. The request is for a Special Permit to enclose that porch to allow for the creation of a master bath. It will be an intensification of an existing non-conformity.

Mr. Sullivan asked for and was given clarification on the numbers in the application.

Mr. Donoghue suggested a condition restricting summer construction and Mr. Ryer agreed and added that he thought that the project will intensify one or more non-conformities, create no new non-conformity and will not present a significant detriment to the neighborhood more than does the existing structure.

There was no commentary from the public.

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

Mr. Donoghue then moved that the Board grant the Special Permit to close and convert a front porch into a master bath in a pre-existing, non-conforming single family dwelling pursuant to the Code of the Town of Harwich, §325- 54 and §325-Table 2 - Area Regulations as set forth in MGL Chapter 40A §6 for the property located at **52 Pleasant Rd.,** the Board having found that the project will intensify one or more existing non-conformities, complies with the requirements of the Bylaw, Chapter 40A of the MGL, Deadrick, Gale and related cases, and will not subject the neighborhood to any substantial detriment. This Special Permit is subject to the following conditions:

1. Because the property is located in a congested area, there shall be no demolition, construction or new landscaping between June 30th and Labor Day of any year.
2. 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. c 40A, Sec. 7 and the Harwich Zoning Bylaw, as these may be amended from time to time.

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

Mr. Donoghue read the following case into the record.

**Case # 2021-48**

Kerry K. Tyrrell, Trustee of the Kerry K. Tyrrell 2019 Trust, through her agent, Michael Joliat, has applied for a Special Permit to construct a second floor addition on a pre-existing, non-conforming single-family dwelling. The application is pursuant to the Code of the Town of Harwich, §325-Table 2 Area Regulations as set forth in MGL Chapter 40A §6. The property is located at **4 Arbutus Ave.,** Map 18, Parcel X3-4 located in the RR Zoning District.

Members voting on this case: Mr. Ryer, Mr. Donoghue, Mr. Murphy, Mr. Sullivan and Mr. Nunnally.

Michael Joliat introduced himself and restated relevant portions of the application adding that with the 2 dormers on the front and the shed dormer on the back, the 2nd level will include 2 new bedrooms and a bath. He argued that with no change in the footprint, there will be no new non-conformity and no substantial detriment to the neighborhood. He asked that the Board grant the Special Permit.

Mr. Sullivan asked for and was given clarification on the height of the structure after the addition. It will be fully compliant with the Town regulations on height.

Mr. Ryer suggested a condition restricting summer construction and added that he thought that the project will intensify one or more non-conformities, create no new non-conformity and will not present a significant detriment to the neighborhood more than does the existing structure.

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

Mr. Donoghue then moved that the Board grant the Special Permit to construct a second floor addition on a pre-existing, non-conforming single-family dwelling, pursuant to the Code of the Town of Harwich, §325-Table 2 Area Regulations as set forth in MGL Chapter 40A §6 for the property located at **4 Arbutus Ave.,** Map 18, Parcel X3-4 located in the RR Zoning District, the Board having found that the project will intensify one or more existing non-conformities, complies with the requirements of the Bylaw, Chapter 40A of the MGL, Deadrick, Gale and related cases, and will not subject the neighborhood to any substantial detriment. This Special Permit is subject to the following conditions:

1. Because of congestion in the neighborhood, there shall be no demolition, construction or new landscaping between June 30th and Labor Day of any year.
2. 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. c 40A, Sec. 7 and the Harwich Zoning Bylaw, as these may be amended from time to time.

There was a second by Mr. Murphy.

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

Mr. Ryer read the following case into the record. Mr. Donoghue recused himself from voting on this case.

Members voting on this case: Mr. Ryer, Mr. Murphy, Mr. Sullivan and Mr. Nunnally.

**Case # 2021-49**

Michael J. London and Emily K. Friedman, through their agent, Michael Lach of the Harwich Conservation Trust (HCT) have applied for a Dimensional Variance from lot frontage requirements in order to divide their lot into 2 and convey the northerly portion to HCT while maintaining a buildable lot to the south. The application is pursuant to MGL Chapter 40A §10. The property is located at **0 Cherokee Road,** Map 84, Parcel A3 in the Six Ponds Zoning Overlay and the RR Zoning District.

Mike Lach of the Harwich Conservation Trust (HCT) introduced himself and Tom Evans, President of the Board for HCT and then handed larger plans of the property to the Board Members to supersede the plans submitted with the original application. He spoke a bit about the history and purpose of the HCT and added that he was representing Emily Friedman and Michael London in their request for a Variance in order to divide their lot into 2 lots, maintaining 1 buildable lot and transferring the other portion to the HCT. By granting the northerly portion to the HCT, the Applicants will be protecting a 300’ buffer to Walker’s Pond and the conservation land into the future.

Jon Idman, the Town Planner spoke on behalf of the Planning Board in support of this plan because it forwards the purposes of the Six Ponds Special District by protecting the ecology, surface and ground water quality and the scenic element of this district. He added that he believed that the conditions exist for granting the Variance because there is a hardship related to the shape and structure of the land with an ancient way running through the parcel. Nathan Walker Road is a designated scenic way and protecting it is in line with the intent of the DCPC. Because this parcel is in the Six Ponds Special District, there is a 200’ frontage requirement for a buildable lot but the underlying RR district would only require 150 linear feet. The access to the buildable lot is sufficient for Planning Board approval.

Tom Evans, President of the Board of Trustees for the HCT also expressed the support of the HCT for the granting of the requested Variance.

Mr. Murphy moved to close the Public hearing with a second by Mr. Nunnally. The Board voted unanimously in favor.

Mr. Ryer spoke about how this case can be differentiated from other case law which required a minimum lot area of 100,000 sf of lot size per Section 325-97 because the owners had no part in limiting that number. The lot shape is long and narrow and dividing it will satisfy the purposes of the Six Ponds Special District protecting the water quality of Walkers Pond and other key natural resources as well as encouraging the continued use of conservation space. He said that he believed that the requirements for granting a variance had been met.

Mr. Murphy agreed that there was sufficient legal basis to grant the Variance as well as a benefit to the Town. Mr. Sullivan agreed.

Mr. Ryer then moved that the Board grant a Dimensional Variance from lot 200’ frontage requirement in the Six Ponds Special District in order to divide the lot in question into 2 and convey the northerly portion to HCT while maintaining a buildable lot to the south pursuant to MGL Chapter 40A §10 for the property located at **0 Cherokee Road (aka 46 Nathan Walker Road),** Map 84, Parcel A3 in the Six Ponds Zoning Overlay and the RR Zone, the Board having found that the Applicants meet the requirements of the Bylaw and MGL Chapter 40A §10 and failure to grant the Variance would cause a hardship to the Applicants. The Board further finds that these conditions are specific to this property and do not generally affect the entire district and that there will be no substantial detriment to the public good in granting this Variance nor will it nullify nor substantially derogate from the purpose and intent of the Bylaw. All work shall be performed in accordance with the plans submitted with this application.

This Variance is granted subject to the following conditions:

1. Within 12 months from the date of this Motion, Michael J. London and Emily K. Friedman shall convey to the HCT the land identified as the Northerly Section on “Plan of Land #25 and #26 Nathan Walker Rd (#0 Cherokee Road), prepared by BSC Group dated 12/22/2021 (the “Northerly Section”), ***a copy of said plan is attached to this decision***. The deed of grant shall require that the “Northerly Section” shall not be developed by the HCT, its successors or assigns, but shall be held by them and preserved by them for conservation and open space purposes in perpetuity. The HCT shall provide Michael J. London and Emily K. Friedman with its customary form of conservation restriction covenant, which they shall include in said deed.
2. 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. c 40A, Sec. 7 and the Harwich Zoning Bylaw, as these may be amended from time to time.

Mr. Murphy seconded the motion.

Mike Lach clarified that the Applicants had already received a building permit so Mr. Ryer moved to amend the original motion to exclude any mention of a building permit. That amended motion was seconded by Mr. Sullivan and unanimously approved.

The Board voted unanimously in favor. 4-0

Mr. Nunnally moved to accept and approve the Minutes of the 11/17/21 meeting with a second by Mr. Donoghue. The Board voted unanimously in favor.

Mr. Ryer spoke briefly about the incoming Building Commissioner, Robert Piccirilli. He also added that he had not heard any response from the Town Administrator regarding the Board’s request for additional training for affordable housing and 40B Applications.

Mr. Ryer moved to adjourn with a second by Mr. Murphy. The Board voted unanimously in favor.

Motion to approve minutes from the November 17, 2021 meeting. \_\_\_\_\_\_\_\_\_\_\_ 2nd \_\_\_\_\_\_\_\_\_

\* New Business per the Board’s discretion.

Motion to adjourn \_\_\_\_\_\_\_\_ 2nd\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Posting Officer: Shelagh Delaney

Board of Appeals Recording Clerk

The Cape Cod Chronicle **Print dates: December 9 and 16, 2021**