**HARWICH ZONING BOARD of APPEALS PUBLIC HEARINGS**

**Wednesday, March 31, 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.

The meeting was called to order at 7PMby the Chairman, David Ryer. He 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

Members present: David Ryer, Al Donoghue, Jamie Armstrong, Chris Murphy, Brian Sullivan and Tim Bailey.

Mr. Ryer also noted that comments from the Health Department on all of the cases were available for review through the Accela Citizens access portal. He authorized Shelagh Delaney to stamp all of the case documents.

**Case # 2020-53 (Continued from 1.27.21)**

Helen Murdock, Trustee, through her agent, Susan Ladue of Eastward Companies has applied for a Variance from the total Site Coverage requirements of Section 325-52 and Table 3, Height and Bulk regulations in order to add a pool and patio. The application is in accordance with in MGL Chapter 40A §10. The property is located at **23 Bascom Hollow**, Map 97, Parcel B2-10 in the RR and WR Zoning Districts.

Mr. Ryer told the Board that he had received a written request by the Applicants to withdraw the case without prejudice. He then moved that the Board accept the request to withdraw Case #2020-53 without prejudice. Mr. Armstrong seconded the motion. The Board voted 5-0 in favor.

**Case # 2021-05**

Phil Boire and Julia Christopher have applied for a Special Permit to build a second story bath addition at the rear of 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 **21 Ocean Ave.**, Map 6B, Parcel L32 in the RH-2 Zoning District.

Mr. Donoghue read the case into the record. Members voting on this case: Mr. Donoghue, Mr. Armstrong, Mr. Murphy, Mr. Sullivan and Mr. Bailey.

Phil Boire introduced himself and his wife, Julia Christopher and said that his family had owned this house since 1960 and that they just want to add a 2nd floor bathroom over the existing 1st floor bathroom with no change in the footprint. But since the house is already within the setback, he needs a Special Permit. He asked that the Board grant the Special Permit.

Mr. Ryer noted that the project fits the requirements of the Gale Case with an intensification of one or more pre-existing non-conformities and no new non-conformity. It did not appear that there would be any substantial detriment to the neighborhood. He suggested that the Board impose a restriction on summer construction because of the density of the neighborhood.

There were no public comments.

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

Mr. Donoghue moved and Mr. Armstrong seconded the motion that the Board grant a Special Permit to build a second story bath addition at the rear of 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 **21 Ocean Ave.,**  the Board having found that the project will intensify one or more existing non-conformities, create no new non-conformity and not constitute a substantial detriment to the neighborhood with 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, 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. Vote: 5-0-0

**Case # 2021-06**

Kathleen C. Reilly, through her agent, Paul Muldoon has applied for a Special Permit to construct a one-story screened porch addition 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. The property is located at **2 Northern Ave**, Map 6, Parcel E6-59 in the RH-1 Zoning District.

Mr. Donoghue read the case into the record. Members voting on this case: Mr. Donoghue, Mr. Armstrong, Mr. Murphy, Mr. Sullivan and Mr. Bailey.

Paul Muldoon introduced himself as the owner’s agent and architect and noted that the house is on the corner of Hiawatha Road and Northern Ave. and that it is pre-existing, non-conforming as to the front and rear setbacks. Applicants are looking to construct a screened porch on the front similar to others in the neighborhood. It will be an intensification of one or more existing non-conformities but there will be no new non-conformity.

There were no public comments.

Mr. Donoghue said that he thought it would be a nice look in the neighborhood and Mr. Sullivan agreed. Mr. Murphy moved to close the public hearing with a second by Mr. Sullivan. The Board voted unanimously in favor.

Mr. Ryer said that he believed that the case fit the requirements of the Gale Case for a Special Permit with an intensification of an existing non-conformity and no new non-conformity with no substantial detriment to the neighborhood. He suggested a condition restricting summer construction because of the density of the area.

The Architect, Paul Muldoon said that the construction vehicles could be parked on the Applicants’ property and not on the street. Mr. Murphy suggested that the restriction be that all vehicles associated with the project be parked on the Applicants’ property and not on any public street or road. Mr. Donoghue agreed.

Mr. Donoghue moved and Mr. Murphy seconded the motion that the Board grant the requested Special Permit to construct a one-story screened porch addition 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 and Table 2 Area Regulations as set forth in MGL Chapter 40A §6 for the property located at **2 Northern Ave**, the Board having found that there will be an intensification of one or more existing non-conformities, no new non-conformity and no substantial detriment to the neighborhood. This Special Permit is granted subject to the following two conditions: 1) that for the life of the approved project, all construction vehicles will be parked on the Applicants’ property and not on any public street or road 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. Vote: 5-0-0

**Case # 2021-07**

James F. Diverio & Regina Diverio, through their agent, George Avery have applied for a Special Permit to expand the size of the front porch 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. The property is located at **14 Union St.**, Map 6B, Parcel L102 in the RH-2 Zoning District.

Mr. Donoghue read the case into the record. Members voting on this case: Mr. Donoghue, Mr. Armstrong, Mr. Murphy, Mr. Sullivan and Mr. Bailey.

The Applicants’ builder, George Avery introduced himself as their agent and presented the case restating relevant portions of the application and adding that by widening the porch, the steps can be moved to the side and further away from the street. So although the project will intensify an existing non-conformity, it will also improve it.

There were no public comments.

Mr. Armstrong moved to close the public hearing with a 2nd by Mr. Sullivan.

Mr. Donoghue then moved and Mr. Sullivan seconded the motion that the Board grant the requested Special Permit to expand the size of the front porch 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 and Table 2 Area Regulations as set forth in MGL Chapter 40A §6 for the property located at **14 Union St.**, the Board having found that there will be an intensification of one or more existing non-conformities, no new non-conformity and no substantial detriment to the neighborhood. This Special Permit is granted subject to the following 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. Vote: 5-0

**Case # 2021-08**

Pallavi Verma, Trustee, through her agent, Attorney William Crowell has applied for a Special Permit (or in the alternative, a Variance) to create finished habitable space in the basement of 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 (or Chapter 40A §10). The property is located at **5 Flake Yard Road**, Map 7, Parcel A43 in the RH-1 Zoning District.

Mr. Donoghue read the case into the record. Members voting on this case: Mr. Donoghue, Mr. Armstrong, Mr. Murphy, Mr. Sullivan and Mr. Bailey.

Attorney William Crowell introduced himself and restated relevant portions of the application adding that this property had been before the Board a few years ago with upgrades and additions. This permit is to add habitable space by way of a new work-out area and family room in the basement of a pre-existing, non-conforming single family dwelling. There is no change to the footprint, no increase in noise, odor, fumes, traffic or congestion and no substantial detriment to the neighborhood. Attorney Crowell also suggested that his client could have all of the construction vehicles park on her property and not on the public ways. Mr. Ryer agreed that would be a condition. He also said that he agreed that the project fit the requirements of the Bylaw and the Gale Case with an intensification of existing non-conformities, no new non-conformity and no substantial detriment to the neighborhood.

There were no public comments.

Mr. Donoghue moved to close the public hearing with a 2nd by Mr. Murphy. The Board voted unanimously in favor.

Mr. Donoghue then moved and Mr. Murphy seconded the motion that the Board grant the requested Special Permit to create finished habitable space in the basement of 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 and Table 2 Area Regulations as set forth in MGL Chapter 40A §6 for the property located at **5 Flake Yard Road,** the Board having found that the project will intensify one or more existing non-conformities, create no new non-conformity and offer no substantial detriment to the neighborhood. This Special Permit is granted subject to the following two conditions: 1) that for the life of the approved project, all construction vehicles will be parked on the Applicant’s property and not on any public street or road, 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. Vote: 5-0-0

**Case # 2021-09**

Kevin M. and Nancy S. Haley, through their agent, Attorney William Crowell have applied for a Special Permit (or in the alternative, a Variance) to renovate a pre-existing, non-conforming cottage in order to add a 4th bedroom and to convert a garage to a kitchen/dining room as well as a Special Permit to replace/add to existing retaining walls. 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 (or Chapter 40A §10). The property is located at **22 Quason Lane**, Map 7, Parcel B7 (aka **19 Pine Street)** in the RH-1 Zoning District.

Mr. Donoghue read the case into the record. Members voting on this case: Mr. Donoghue, Mr. Armstrong, Mr. Murphy, Mr. Sullivan and Mr. Bailey.

Attorney William Crowell introduced himself and restated relevant portions of the application noting that the property is also known as 19 Pine Street. The owners are looking to renovate the accessory dwelling with no plans for the main house. The cottage has a garage area where the Applicants are looking to expand the habitable space as well as to add a 4th bedroom to the 2nd floor. The Board of Health has already approved the plan. Attorney Crowell argued that the Gale Case applies with an intensification of existing non-conformities, no new non-conformity and no substantial detriment to the neighborhood. He added that the Applicants were withdrawing the request regarding the retaining wall and the shed.

After questions from the Board regarding the designation of the accessory structure, Attorney Crowell said that is has been a secondary residence on the property for over 60 years, since before zoning requirements. Mr. Ryer said that he thought it should be referred to as an accessory apartment and that the Applicants may lose their “grandfathered” rights as a 2nd residence with the granting of a Special Permit.

Mr. Armstrong said that he was willing to support the granting of a Special Permit with the removal of the shed and the retaining wall from the application. Mr. Murphy agreed.

Bill Hurley of 20 Quason Lane asked if both of the retaining walls were going to be removed and the owner, Mr. Haley said that they would be removed and graded nicely so that they will look much better. He added that there may be some curbing.

Mr. Donoghue then moved and Mr. Murphy seconded the motion that the Board grant the requested Special Permit to renovate a pre-existing, non-conforming cottage in order to add a 4th bedroom and to convert a garage to a kitchen/dining room according to the plans provided and 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 **22 Quason Lane (a/k/a 19 Pine Street),** the Board having found that the project constitutes an intensification of one or more existing non-conformities, no new non-conformity and no substantial detriment to the neighborhood. This Special Permit is granted subject to the following three conditions: 1) that for the life of the approved project, all construction vehicles will be parked on the Applicants’ property and not on any public street or road, 2) this does not apply to the existing retaining walls shown on the submitted site plan from Moran Engineering dated 2/8/2021, and 3) 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. Vote: 5-0-0

**Case # 2021-10**

Anthony W. Patz, through his agent, Attorney William Crowell has applied for a change in a Variance granted by the Board as Case 2009-24 in order to add a bedroom above a pre-existing, non-conforming attached garage as well as a Variance for the existing landscape walls bordering the drive. In the alternative, the applicant requests a Special Permit. The application is pursuant to the requirements of in MGL Chapter 40A §10. The property is located at **97 Great Western Road**, Map 45, Parcel X18 in the RR Zoning District.

Mr. Donoghue read the case into the record. Members voting on this case: Mr. Ryer, Mr. Donoghue, Mr. Armstrong, Mr. Murphy and Mr. Sullivan.

Attorney William Crowell introduced himself and the Applicant, Tony Patz as well as Kathy DeMeyer of Encore Construction. He noted that the property was the subject of a Variance granted by this Board about 10 years ago. That Variance had a condition on it limiting the use of the second floor of the garage to storage only. The owner is now looking to move one of the bedrooms from his house into that space in order to expand his kitchen area. There will be no increase in the number of bedrooms. The request is to amend the original Variance to remove the restrictive condition. Attorney Crowell argued that the same topographical conditions apply as 10 years ago and that the hardship is that the owner cannot use his home sufficient to his needs. There will be no substantial derogation from the purpose or intent of the bylaw and no substantial harm to the public good.

Mr. Ryer said that he would support removing the restriction for the use of the garage 2nd floor but wanted to handle the retaining walls as a Special Permit with the exception that any approval be limited to those sections of the walls that are on the Applicant’s property and not beyond.

Mr. Murphy said that he thought that the request was reasonable to amend the Variance to allow for a bedroom and Mr. Sullivan agreed but wanted to know why the driveway walls needed a Special Permit. Attorney Crowell answered that the retaining walls are considered structures because they are designed to give support. They have to meet the setbacks unless that are 4’ or less and you can’t use a Variance to later get a Special Permit.

There were no public comments.

Mr. Donoghue moved to close the public hearing with a 2nd by Mr. Armstrong. The Board voted unanimously in favor.

Mr. Ryer moved and Mr. Armstrong seconded the motion that the Board grant an amendment to the Variance granted as Case #24 in 2009 by removing and revoking the condition limiting the use of the second floor of the garage to storage as well as a Special Permit for the walls bordering the driveway under the bylaw to the extent that they are on the subject property at **97 Great Western Road**, the Board having found that there will be no derogation from the purpose or intent of the bylaw nor any substantial detriment to the neighborhood or public good. This Special Permit is granted subject to the following two conditions: 1) that for the life of the approved project, all construction vehicles will be parked on the Applicants’ property and not on any public street or road, 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. Vote: 5-0-0

Mr. Ryer moved to accept the Minutes of the February 24th meeting with a second by Mr. Murphy. The Board voted unanimously in favor.

Mr. Ryer reminded Board members to complete their required Ethics Training and send the form to the Clerk’s Office.

Mr. Donoghue moved to adjourn the meeting with a second by Mr. Sullivan.

The Board voted unanimously in favor.

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

Board of Appeals Recording Clerk