**HARWICH ZONING BOARD of APPEALS PUBLIC HEARING**

**Wednesday, April 24, 2019 at 7:00 p.m.**

**Griffin Meeting Room, Harwich Town Hall**

**MINUTES**

On Wednesday, April 24, 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: James Hilliard, Kathleen Muller, James Armstrong and Mike Cupoli.

**Case #2019-04 (CONTINUED from March 27, 2019)**

Thomas and Ann Chipman applied for a Special Permit to build an addition onto 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 **20 Bayberry Road**, Map 24, Parcel K1-5 in the RR Zoning District.

All four members present voted on this case.

Ms. Muller read into the record a Memo from the Senior Health Agent saying that the Board of Health has no issues with the proposed plan.

Dan Croteau of Moran Engineering presented the case along with the owner, Tom Chipman. Mr. Croteau restated the details of the application adding that the proposed work is to the rear of an existing non-conforming cottage. There will be no new non-conformity and the addition will come no closer to the either the street or side which are existing non-conformities. The septic system has already been upgraded and the owners will bring the property to FEMA compliance. They are also looking to build to current energy codes. Mr. Croteau said that the footprint will not change but the orientation of the roof will change.

Ms. Muller asked for and received clarification of updated zoning compliance numbers.

 Ms. Muller then made a motion to close the public hearing with a second by Mr. Cupoli.

The Board all stated that they agreed that the project fits the requirements of the Gale Case and Section 325-54(5) with an intensification of existing non-conformities, no new non-conformities and no substantial detriment to the entire neighborhood.

Mr. Cupoli moved and Mr. Anderson seconded the motion to GRANT the requested Special Permit to build an addition onto a pre-existing, non-conforming single family dwelling pursuant to the Code of the Town of Harwich, §325 and based upon the reasoning of the Gale Case as set forth in MGL Chapter 40A §6 for the property located at 20 Bayberry Road, the Board having found thatthe project will intensify existing non-conformities, add no new non-conformity and offer no substantial detriment to the entire neighborhood.

The Board voted unanimously in favor. 4-0

**Case #2019-10**

16 Middleton Drive LLC, through its agent, Paul Galvin applied for a Special Permit to build a new second floor addition onto 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 **16 Middleton Drive**, Map 5, Parcel P3-1 in the RH-1 Zoning District.

All four members present voted on this case.

Ms. Muller read into the record a Memo from the Senior Health Agent saying that the Board of Health has no issues with the proposed plan.

The builder, Paul Galvin presented the case and restated details of the application adding that the request is for a Special Permit to add habitable space to the 2nd floor within the setback with no change in the footprint.

There were no public comments and the Board had no questions.

Mr. Cupoli made a motion to close the public hearing with Ms. Muller seconding the motion.

The Board all stated that they agreed that the project fits the requirements of the Gale Case and Section 325-54 with the intensification of existing non-conformities, no new non-conformities and no substantial detriment to the entire neighborhood.

Mr. Cupoli moved and Mr. Armstrong seconded the motion to GRANT the requested Special Permit to build a 2nd floor addition onto a pre-existing, non-conforming single family dwelling pursuant to the Code of the Town of Harwich, §325-54 and based upon the Gale Case as set forth in MGL Chapter 40A §6 for the property located at **16 Middleton Drive**, the Board having found thatthe project will intensify existing non-conformities, add no new non-conformity and offer no substantial detriment to the entire neighborhood.

The Board voted unanimously in favor. 4-0

**Case #2019-11**

Philip J. and Beth A. Dowd, through their agent, Jasen Muto of Muto Construction applied for a Special Permit to construct a new dormer addition onto a pre-existing, non-conforming 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 **12 Grove Street**, Map 6B, Parcel L52 in the RH-2 Zoning District.

All four members present voted on this case.

Ms. Muller read into the record a Memo from the Senior Health Agent noting that the dwelling is limited to 3 bedrooms and the Board of Health had imposed a number of conditions on a variance granted in 2013 but that they had no issue with the proposed dormer construction.

Jasen Muto presented the case for the applicants and restated the details of the application adding that there will be no change in the footprint of the house but instead a raising of ceiling height on the second floor via the addition of a dormer in order to allow more habitable space. The Applicants had already been before the Historic District and Historic Commission. Mr. Muto said that there would be no new non-conformity and no substantial detriment to the neighborhood.

Ms. Muller made a motion to close the public hearing with Mr. Cupoli seconding the motion.

The Board all stated that they agreed that the project fits the requirements of the Gale Case with the intensification of existing non-conformities, no new non-conformities and no substantial detriment to the entire neighborhood.

Mr. Cupoli moved and Mr. Armstrong seconded the motion to GRANT the requested Special Permit to build a dormer addition onto a pre-existing, non-conforming single family dwelling pursuant to the Code of the Town of Harwich and based upon the Gale Case as set forth in MGL Chapter 40A §6 for the property located at 12 Grove Street, the Board having found thatthe project will intensify existing non-conformities, add no new non-conformity and offer no substantial detriment to the entire neighborhood. There is condition that no substantial demolition, new construction nor new landscaping occur between June 30 and Labor Day of 2019 or 2020.

The Board voted unanimously in favor. 4-0

**Case #2019-12**

Nicky V. Realty Trust LLC (Paul Votze, Trustee), through its agent Attorney William Crowell 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 (a)(5) as set forth in MGL Chapter 40A §6 and §10. The property is located at **82 Shore Road,** Map 5, Parcel P1-16 in the RH-1 Zoning District.

All four members present voted on this case.

Ms. Muller read into the record a Memo from the Senior Health Agent saying that the Board of Health will require an application for a fully compliant 4 bedroom Title V system for this project.

Attorney William Crowell presented the case for the applicants introducing himself and Chris Child of Patriot Builders. He restated the details of the application and added that the project will create a new dwelling which will be closer to the easterly boundary line by 5 feet but will improve the setbacks on both the north and south sides. The building coverage will remain conforming but the site coverage which is non-conforming will be intensified in its non-conformity.

He asked that the Board grant the Special Permit in accordance with the findings of the Gale Case saying that the project will intensify existing non-conformities, create no new non-conformity and not be substantially more detrimental to the neighborhood than the existing dwelling.

Mr. Cupoli asked if the site coverage could be diminished to a conforming percentage by removing a portion of the driveway and Attorney Crowell told him that it would not make a significant enough difference.

There were no public comments.

Ms. Muller moved to close the public hearing and Mr. Armstrong seconded the motion.

The Board all stated that they agreed that the project fits the requirements of the Gale Case with the intensification of existing non-conformities, no new non-conformity and no substantial detriment to the entire neighborhood.

Mr. Cupoli moved and Mr. Armstrong seconded the motion to GRANT the requested Special Permit to demolish and replace a pre-existing, non-conforming single family dwelling pursuant to the Code of the Town of Harwich, §325-54 and based upon the Gale Case as set forth in MGL Chapter 40A §6 for the property located at 82 Shore Road, the Board having found thatthe project will intensify existing non-conformities, add no new non-conformity and offer no substantial detriment to the entire neighborhood. There is a condition that no substantial demolition, new construction nor new landscaping occur between June 30 and Labor Day of 2019 or 2020.

The Board voted unanimously in favor. 4-0

**Case #2019-13**

Mark D. Moleski and Karen K. Maynard, Trustees of The Moleski and Maynard Living Trust, through their agent, Attorney William Crowell applied for a Special Permit and, if needed, a Variance to demolish and replace a pre-existing, non-conforming single family dwelling where because of FEMA regulations, the height will exceed the required limit. The application is pursuant to the Code of the Town of Harwich, §325-54 (a)(5) as set forth in MGL Chapter 40A §6 and §10 . The property is located at **119 Julien Road**, Map 16, Parcel W4-4 in the RL Zoning District.

All four members present voted on this case.

Ms. Muller read into the record a memo in support of the variance from the Town Planner, Charleen Greenhalgh. She also read into the record a Memo from the Senior Health Agent with a list of 7 action items that the Applicants need to comply with before the Board of Health will sign off of any building permit.

Attorney William Crowell presented the case for the applicants introducing himself, Mark Moleski, Karen Maynard and the architect, Karen Kempton. He restated the details of the application and asked that the Board decide the case in 2 separate actions; one for a Special Permit for the demolition and replacement of the pre-existing, non-conforming single family dwelling and one for a Variance for the non-conforming roof height. He noted that the project has been complicated by the fact that the lot sits within a FEMA flood zone. Attorney Crowell said that although the building coverage is compliant, the site coverage is not and that non-conformity will be intensified as well as the sideline to the retaining wall. He added that under the ruling of the Gale Case, a Special Permit for these intensifications of existing non-conformities could be granted with a finding of no substantial detriment to the neighborhood.

Attorney Crowell then argued the case for the granting of a Variance for the project’s newly non-compliant roof height. For this house, the height is currently determined by the Base Flood Elevation (BFE) of the closest AE Zone. That measurement would make this ridge height compliant. But there are currently changes impending through the Planning Board where the measurement will change to the Average Mean Grade. That new standard will make this height non-compliant. Although the new rule will not go into effect until at least May, it will be retroactive to January 2019. He argued that the ridge height needs to be higher because the building needs to comply with FEMA regulations. He noted that the lot is uniquely shaped and situated in the VE Zone with a dip which would make the additional height less noticeable. Attorney Crowell asked the Board to grant the Variance because the size, shape and topography of the lot are unique and the impending changes to determining ridge height in FEMA zones have created a hardship for the Applicants.

The Board asked for more detail from the architect, Karen Kempton who spoke of the steel “I Beam” construction and the 9’ ceiling height. The Building Commissioner, Ray Chesley said that only the zoning regulations and design choices determine the rules for ridge height and suggested more information from the project engineer because he questioned whether the building might be built to a conforming height despite the FEMA regulations.

Mr. Hilliard asked Mr. Moleski if the changes in determining height in FEMA zones were causing an impact which could be considered a hardship and he replied that the lot in question is different because it is in a wave zone. Mr. Hilliard then said that he felt that the Board could offer relief in the form of a Variance without substantial derogation from the intent of the bylaw in order for the Applicants to comply with the changes in determining height in flood zones.

Ms. Muller made a motion and Mr. Cupoli seconded the motion to close the public hearing.

The Board members all stated that they agreed that the project needed both a Special Permit for the demo and reconstruction of the home and a Variance for the newly non-compliant ridge height. The Special Permit can be granted based on Section 325-54 and the Gale Case with the intensification of existing non-conformities, no new non-conformities and no substantial detriment to the entire neighborhood. The Variance may be granted based upon the requirements of MGL 40A Section 10 with a showing of unique soil, shape and topography issues and a showing of a hardship.

Mr. Cupoli moved to GRANT the requested Special Permit to demolish and replace a pre-existing, non-conforming single family dwelling based upon the plans provided and Section 325-54 of the Code of the Town of Harwich and the findings of the Gale Case, the Board having determined that there will an intensification of existing non-conformities and no substantial detriment to the neighborhood. The Board voted unanimously in favor. 4-0

Mr. Cupoli then moved and Ms. Muller seconded the motion to GRANT the requested VARIANCE for the non-compliant ridge height according to the plans provided and based upon MGL Chapter 40A Section 10, the Board having found that there are unique qualities to the soil, shape and topography of the lot and a hardship created with the change of the Town’s system on how to determine ridge height within a FEMA zone with no substantial derogation from the intent of the bylaw. The Board voted unanimously in favor. 4-0

Mr. Cupoli made a motion and Mr. Armstrong seconded the motion to approve the minutes from the March 27, 2019 meeting.

Ms. Muller moved and Mr. Cupoli seconded the motion to adjourn the meeting.

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

Board of Appeals Recording Clerk