**HARWICH ZONING BOARD OF APPEALS**

**Wednesday July 28, 2021**

**MEETING MINUTES**

**BOARD MEMBERS PRESENT:**David Ryer, Al Donoghue, Chris Murphy, Jamie Armstrong, Brian Sullivan and Tim Bailey

**BOARD MEMBERS ABSENT:**None

**CALL TO ORDER**: Mr. Ryer called the meeting to order at 7:02 PM having established a quorum.

**PUBLIC HEARINGS**

**Case # 2021-26 (Cont.)**

Glen R. Sherman and Lisa F. Sherman, through their agent, Timothy Holmes have applied for a Special Permit to construct a new detached accessory dwelling. The application is pursuant to the Code of the Town of Harwich, §325-Table 2, Area Regulations and Table 3, Height & Bulk Regulations as set forth in MGL Chapter 40A §6. The property is located at **20 Deacon’s Folly Road**, Map 46, Parcel M8-2 in the RL-1 Zoning District. Continued from June 30th, 2021.

Mr. Armstrong recused himself from the case. Mr. Murphy could not vote on the case as he had not been present for the initial heating of the case.

Timothy Holmes introduced himself and restated relevant portions of the case, including the changes made to setbacks, site coverage and square footage of ADU. The only relief requested is for site coverage with the applicant is improving from 33.5 % to 31.8 %.

Mr. Ryer noted a discrepancy regarding the front setback on the site plan. The chart says the front setback is 15 ft, however the plan shows 25 ft.

Mr. Holmes said that the error is on the chart and the setback will be 25ft from the road.

The Board had no further questions and there were no additional comments from the public

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

Mr. Donoghue moved that the Board grant the Special Permit  to construct a new detached accessory dwelling. The application is pursuant to the Code of the Town of Harwich, Table 2, Area Regulations as set forth in MGL Chapter 40A §6 for the property located at **20 Deacon’s Folly Rd,** according to the plans submitted, the Board having found that the project will intensify existing non-conformities and not subject the neighborhood to any substantial detriment. All work shall be performed in accordance with the plans submitted with this application. This Special Permit is granted subject to the following conditions:

1. 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. It is a condition of this approval 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. Bailey seconded the motion. No discussion from the board. The Board voted unanimously in favor. Vote: 4-0-0; Special Permit is granted.

**Case # 2021-29**

Theresa M. and Robert G. Siggins, through their agent, Attorney Marian S. Rose has applied for a Special Permit to construct a single-story floor addition and rear patio to 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 **29 Edgewood Road**, Map 6, Parcel E2-6A in the RH-1 Zoning District.

Attorney Marian Rose introduced herself and restated relevant portion of the case, noting letters of support from 3 abutters and use of sonotubes instead of a foundation to preserve the leaching field. The proposal with will not be substantially more detrimental to the neighborhood than the existing non-conformities.

Voting on the case: Messrs. Ryer, Donoghue, Murphy, Sullivan and Armstrong.

Mr. Armstrong asked about a discrepancies between the heights in the narrative and the building plans.

The Board had no further questions and there were no additional comments from the public

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

Mr. Ryer agreed that project meets the requirements of the Gale Case with intensifications of existing non-conformities.

Mr. Donoghue moved that the Board grant the Special Permit  to construct a single-store floor addition and rear patio. The application is pursuant to the Code of the Town of Harwich, Table 2, Area Regulations as set forth in MGL Chapter 40A §6 for the property located at **29 Edgewood Road**,according to the plans submitted, the Board having found that the project will intensify existing non-conformities and not subject the neighborhood to any substantial detriment. All work shall be performed in accordance with the plans submitted with this application. This Special Permit is granted subject to the following conditions:

1. No demolition, exterior construction nor new landscaping on the project to occur between the dates of 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.

Mr. Sullivan seconded the motion. No discussion from the board. The Board voted unanimously in favor. Vote: 5-0-0; Special Permit is granted.

**Case # 2021-30**

Kevin C. and Mary Ann Y. McCarthy, through their agent, Attorney William Crowell has applied for a Special Permit (or in the alternative, a Variance) to demolish and replace the pre-existing, non-conforming single-family residence. 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 **8 Sail Loft Road,** Map 7, Parcel D12 located RH-1 in the Zoning District.

Mr. Murphy recused himself from voting.

Attorney William Crowell introduced himself and Kevin McCarthy, and restated relevant portions of the case, noting an error about site coverage in the narrative. The setback on the East side will improve from 4.8 ft to 9.1 ft and the Northerly setback will increase from 14.5 to 18.2 ft. Mr. Crowell addressed the concerns from an abutter regarding the relocation of a power pole and discussed how the applicant will elect to receive power underground, which will not affect the neighbor’s property, giving the Board correspondence from Eversource. There will be no substantial increased noise, traffic, fumes, odors or the like; No substantial detriment to the entire neighborhood.

Mr. Armstrong asked if the abutter knew about the utility plan.

Mr. Crowell said the abutters have not yet been notified.

Laura Donnelly, 24 Braddock St., said she would like to see the utility plan and had questions regarding how it might affect her property.

Attorney Crowell explained the documents and how the utilities will not be run to the pole directly behind the abutters’ home.

The Board had no further questions and there were no additional comments from the public

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

No further discussion from the Board.

Mr. Ryer agreed that project meets the requirements of the Gale Case with intensifications of existing non-conformities.

Mr. Donoghue moved that the Board grant the Special Permit to demolish and replace the pre-existing, non-conforming single family dwelling. The application is pursuant to the Code of the Town of Harwich, Table 2, Area Regulations as set forth in MGL Chapter 40A §6 for the property located at **8 Sail Loft Rd**,according to the plans submitted, the Board having found that the project will intensify existing non-conformities and not subject the neighborhood to any substantial detriment. All work shall be performed in accordance with the plans submitted with this application. This Special Permit is granted subject to the following conditions:

1. No demolition, exterior construction nor new landscaping on the project to occur between the dates of 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.

Mr. Bailey seconded the motion. No discussion from the board. The Board voted unanimously in favor. Vote: 5-0-0; Special Permit is granted.

**Case # 2021-31**

Deborah A. and Brian J. Walsh, through their agent, Attorney William Crowell has applied for a Special Permit (or in the alternative, a Variance) to demolish and replace the pre-existing, non-conforming single-family residence. 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 **11 Gordon Road,** Map 5, Parcel B4-9 located RH-1 in the Zoning District.

Attorney William Crowell, introduced himself, and restated relevant portions of the case, noting the new dwelling will remove one non-conforming setback and improve one non-conforming setback. There will be no substantial increased noise, traffic, fumes, odors or the like; No substantial detriment to the entire neighborhood.

Mr. Ryer asked if the applicants owned parcel A in the site plan.

Attorney William replied the applicants do not have the deed to parcel A, which is why the setbacks do not include that property.

The Board had no further questions and there were no additional comments from the public

Mr. Ryer will not vote.

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

Mr. Ryer agreed that project meets the requirements of the Gale Case with intensifications of existing non-conformities.

Mr. Donoghue moved that the Board grant the Special Permit  to demolish and replace the pre-existing, non-conforming single family dwelling. The application is pursuant to the Code of the Town of Harwich, Table 2, Area Regulations and the Gale Case as set forth in MGL Chapter 40A §6 for the property located at **11 Gordon Rd**,according to the plans submitted, the Board having found that the project will intensify existing non-conformities and not subject the neighborhood to any substantial detriment. All work shall be performed in accordance with the plans submitted with this application. This Special Permit is granted subject to the following conditions:

1. No demolition, exterior construction nor new landscaping on the project to occur between the dates of 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.

Mr. Sullivan seconded the motion. No discussion from the board. The Board voted unanimously in favor. Vote: 5-0-0; Special Permit is granted.

**Case # 2021-32**

Lindsay Strode appeals the decision of the building commissioner and/or requests necessary relief, regarding the issuance of a Certificate of Occupancy for residential construction, approved under Planning Board case # PB2019-08A&B. The property is located at **362 Great Western Rd**, Map 38, Parcel N1, in the RM Zoning District.

Voting on the case: Messrs. Ryer, Donoghue, Murphy, Sullivan and Armstrong

Mr. Ryer noted no applicant present.

Mr. Ryer asked the secretary if she knew why the applicant is present.

Ms. McKenna replied she was waiting for a letter of withdrawal but did not receive it.

The Board in accordance with Section 3.4 of its Rules and Regulations, elected to proceed with the hearing and discussed the application.

The Board reviewed and discussed the appeal outlined in the application and its associated documents referenced above. The appeal dealt with the application of the so-called “Stretch Energy Code,” Harwich Code Chapter 115, to the applicant’s accessory apartment construction, and the request for a Certificate of Occupancy (CO) for said accessory apartment. The Board discussed that the Stretch Energy Code applied to the accessory apartment; that the applicant had pulled the building permit and signed the associated homeowner’s affidavit on 12/17/2019 certifying that he understood and would fully comply with the applicable sections of the Massachusetts State Building Code, Town of Harwich Code and zoning bylaws and any other applicable law, rule or regulations. The Board felt that the applicant’s accessory apartment was required to comply with the Stretch Energy Code as a condition to issuance of the Certificate of Occupancy and currently does not. The Board felt that it did not have the authority to waive the legal requirements of any law, rule or regulation, such as those contained in the Stretch Energy Code.

Mr. Ryer moved to deny the appeal of the decision of the Building Commissioner. The board upholds the Building Commissioners denial of a Certificate of Occupancy. The homeowner on the 17 of December certified that he would assume full responsibility. The Board does not have authority to override State Building Code

Seconded by Mr. Armstrong.

Vote 5-0-0. The motion carried. The Appeal is denied.

**BOARD REORGANIZTION:**Mr. Ryer moved he will remain as Chair and Al Donoghue will remain as Clerk. Seconded by Armstrong. Vote 5-0. The motion carried. Al Donoghue is appointed Clerk.

**NEW BUSINESS:**

The Board discussed 40B projects possibly coming to the Board of Appeals in the future.

**APPROVAL OF PRIOR MEETING MINUTES**

Mr. Ryer moved to approve the minutes for June. Mr. Armstrong seconded. Vote 5-0

The motion carried; the June minutes were approved

**ADJOURNMENT**

Mr. Ryer moved to adjourn the meeting with a second by Mr. Murphy. The Board voted unanimously in favor; motion carried.  Vote: 5-0 Meeting adjourned.

Respectfully Submitted,

Lecia McKennna, Acting Board Secretary