**HARWICH ZONING BOARD of APPEALS PUBLIC HEARINGS**

**Wednesday, July 29, 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.

At 7:00 PM, Mr. Ryer opened the hearing and read the following statement:

**This meeting is by REMOTE PARTICIPATION ONLY. NO IN-PERSON ATTENDANCE OF MEMBERS OF THE PUBLIC WILL BE ALLOWED.** Call in instructions were posted on the meeting Agenda on the Board of Appeals web page.

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

**Those joining the meeting via computer, tablet or smartphone, did so by accessing:**
https://global.gotomeeting.com/join/649646365

**Via telephone:**
United States: +1 (872) 240-3212
**Access Code:** 183-955-669

Members present via remote access: David Ryer, Al Donoghue, Jamie Armstrong, Chris Murphy and Brian Sullivan.

**Case # 2020-21**

Thomas & Ann Chipman have applied for a Special Permit 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 **20 Bayberry Road,** Map 24, Parcel K1-5 in the RR Zoning District.

Members voting: David Ryer, Al Donoghue, Jamie Armstrong, Chris Murphy and Brian Sullivan.

Mr. Thomas and Mrs. Ann Chipman joined the meeting via remote access, GoToMeeting and presented their case restating details of the application and adding that they had been before the Board on one other occasion for an addition but now are hoping to demolish and rebuild a new home on a new foundation. The new foundation will be moved to make the house more conforming. They asked that the Board consider their request and grant the Special Permit.

Mr. Ryer asked the Applicants to address the concerns posited by the Health Department regarding the 2nd floor room. The Chapmans responded that they will adjust their plans to fully comply with the Health requirements.

Mr. Donoghue asked if there would be any new non-conformity with the proposal and the Applicants answered no, that the project would actually make the house less non-conforming.

Mr. Ryer stated that the case appears to meet the standards of the Gale Case and the Bylaw and suggested a restriction on summer construction in the decision.

A direct abutter, Erica Goodman asked what the size of the new home would be and Mr. Chapman answered that it will be approximately 1100 square feet. Ms. Goodman also wanted to know if there was a formal landscape plan and Mr. Chapman answered that there was not.

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

Mr. Donoghue then moved 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 Table 2, Area Regulations as set forth in MGL Chapter 40A §6 for the property located at **20 Bayberry Road,** the Board having found that the project fits the requirements of the Gale Case and the Bylaw, has no new non-conformity and poses no substantial detriment to the neighborhood. There is a condition that there be no construction vehicles allowed to be parked on the street between the dates of Memorial Day and Labor Day of any year. Mr. Ryer seconded the motion. The Board voted unanimously in favor. 5-0-0

Mr. Ryer authorized Shelagh Delaney to stamp all documents.

**Case # 2020-22**

Richard Centrella of Richie’s Garage has applied for a Special Permit to change the use in order to operate a small general auto repair shop. The application is pursuant to the Code of the Town of Harwich, §325-Table 1 - Use Regulations as set forth in MGL Chapter 40A §6. The property is located at **191 Queen Anne Road**, Map 58, Parcel F1 in the IL Zoning District.

Members voting: David Ryer, Al Donoghue, Jamie Armstrong, Chris Murphy and Brian Sullivan.

Mr. Richard Centrella presented his case reminding the Board that he had been before them in for a similar Use Special Permit for the property directly adjacent to the subject property. He explained that newer restrictions by his landlord would cause him to be non-compliant with conditions of the last Special Permit so he needs to move his business hoping to one of the bays in the neighboring building. It is still in the IL Zone and already houses similar businesses.

Mr. Ryer said that he believed that the case meets the requirements of Section 325-51 and that the Board could grant the Special Permit unless there will be a detriment to the neighborhood. He said that he agreed that there would be no nuisance or serious hazard and that the Applicant had proven his case.

There were no public comments.

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

Mr. Ryer moved to grant the requested Special Permit for a change of use in order to operate a small general auto repair shop pursuant to the Code of the Town of Harwich, §325-Table 1 - Use Regulations as set forth in MGL Chapter 40A §6 for the property located at **191 Queen Anne Road**. Mr. Sullivan seconded the motion and the Board voted unanimously in favor. 5-0-0

Mr. Ryer authorized Shelagh Delaney to stamp all documents.

**Case # 2020-23**

Patrick D. O’Connor and Dorothy O’Connor, through their agent, Attorney William Crowell 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-Table 2 - Area Regulations and §325-54 as set forth in MGL Chapter 40A §6. The property is located at **12 Earle Terrace**, Map 12, Parcel N1-29 in the RH-1 Zoning District.

Members voting: David Ryer, Al Donoghue, Jamie Armstrong, Chris Murphy and Brian Sullivan.

Attorney William Crowell introduced himself and presented the case for the Applicants restating relevant portions of the application adding that new house will be somewhat larger and closer to Earle Terrace but still compliant to that setback. The side setbacks will basically remain the same, intensifying a pre-existing non-conformity. The owners own the lot to the rear and south of their property as well as a lot to the north. The Board of Health wants the Applicants to show common ownership through an “81X” plan because the septic system will be placed on one the adjacent lot directly behind the house and Main Street. Attorney Crowell asked that the Board grant the requested Special Permit saying that there will be an intensification of a pre-existing nonconformity, no new non-conformity and no substantial detriment to the neighborhood. The new dwelling will not add noise, odor, fumes, traffic, congestion or the like.

Board members asked a number of questions regarding the additional 2 lots, clarifying that neither of those lots had frontage and therefore, not easily available as buildable lots. Mr. Ryer also asked about the shed which appears to go over the lot line and Attorney Crowell answered that it was the neighbor’s shed encroaching on the Applicants’ property.

Lauren and Ann Keneally of 6 Earle Terrace wanted considerably more clarification on the buildability of the 2 adjacent lots, looking for assurances that neither could become “buildable”. Attorney Crowell and Dan Croteau explained that size and placement of the lots with no frontage makes buildability extremely difficult but they could not guarantee any future change in regulation or intentions of the owners. Ms. Keneally also wanted to know the height of the house. Attorney Crowell answered that it will be compliant to the Town code, less than 30’ high.

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

Mr. Ryer moved 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-Table 2 - Area Regulations and §325-54 as set forth in MGL Chapter 40A §6 for the property located at **12 Earle Terrace**, the Board having found that the project meets the requirements of the Gale Case as it will intensify existing non-conformities, create no new non-conformity and will pose no substantial detriment to the neighborhood. There is a condition that no demolition, exterior construction nor new is allowed between June 30th and Labor Day of any year. The motion received a 2nd from Mr. Donoghue.

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

Mr. Ryer authorized Shelagh Delaney to stamp all documents.

**Case # 2020-24**

Kenneth N. Roger and Jill C. Roger, through their agent, Attorney William Crowell have applied for a Special Permit or in the alternative, a Variance to construct 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 and §325-54 as set forth in MGL Chapter 40A §6. The property is located at **20 Victory Drive**, Map 12, Parcel T4-24 in the RH-1 Zoning District.

Members voting: David Ryer, Al Donoghue, Jamie Armstrong, Chris Murphy and Brian Sullivan.

Attorney William Crowell introduced himself and presented the case for the Applicants restating relevant portions of the application adding that the Applicants will be squaring off the current dwelling thereby creating habitable space within the setback. Attorney Crowell asked that the Board grant the requested Special Permit saying that there will be an intensification of a pre-existing nonconformity, no new non-conformity and no substantial detriment to the neighborhood. The new dwelling will not add noise, odor, fumes, traffic, congestion or the like.

Mr. Donoghue and Mr. Ryer both said that they believed that the project meets the requirements of the Gale Case.

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

Mr. Ryer moved to grant the requested Special Permit to construct an addition onto a pre-existing, non-conforming single family dwelling, pursuant to the Code of the Town of Harwich, §325-Table 2 - Area Regulations and §325-54 as set forth in MGL Chapter 40A §6 for the property located at **20 Victory Drive,** the Boardhaving found that the project meets the requirements of the Gale Case as it will intensify existing non-conformities, create no new non-conformity and will pose no substantial detriment to the neighborhood. There is a condition that no demolition, exterior construction nor new landscaping is allowed between June 30th and Labor Day of any year. The motion received a 2nd from Mr. Murphy.

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

Mr. Ryer authorized Shelagh Delaney to stamp all documents.

**Case # 2020-25**

Richard Gacek, through his agent, Attorney William Crowell has applied for a Special Permit or in the alternative, a Variance to construct a master bedroom addition and a covered porch 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 and §325-54 as set forth in MGL Chapter 40A §6. The property is located at **19 Pine Wood Lane**, Map 4, Parcel T1-29 in the RH-1 Zoning District.

Members voting: David Ryer, Al Donoghue, Jamie Armstrong, Chris Murphy and Brian Sullivan.

Attorney William Crowell introduced himself and presented the case for the Applicants restating relevant portions of the application adding that the property is located south of Route 28. He said that the project is for a master bedroom addition and a covered porch. Attorney Crowell asked that the Board grant the requested Special Permit saying that there will be an intensification of a pre-existing nonconformities, no new non-conformity and no substantial detriment to the neighborhood. The project will not add noise, odor, fumes, traffic, congestion or the like.

Matthew and Nicole Applebaum, of 16 Pine Wood Lane and the rear abutter stated their concern for the project. They said they are worried about storm water runoff and their privacy especially regarding the bedroom over the detached garage and the project’s proximity to their lot line. They stated that they would want some conditions including: the eventual Certificate of Occupancy to match the septic plans; a landscape design plan; a storm water runoff plan; and a condition limiting summer construction.

Attorney Crowell noted that the Board has the authority to issue a special permit under the Gale Case if they find that the project is an intensification of existing non-conformities with no new non-conformity and no substantial detriment to the entire neighborhood and that the Board does not generally require runoff plans. He said that the septic system for the house is for 4 bedrooms. It does not matter where the bedrooms are. That is a Board of Health issue and the Certificate of Occupancy is for the Building Department to issue. But he added that the Applicants would probably agree to a landscape plan.

Mr. Ryer said that he believed that the Applicants had made their case for approval by satisfying the requirements of the Gale Case and that the septic system is a matter for the Board of Health. A remedy at law is available to the neighbors if they feel that there is a runoff problem. He added that the Gale Case allows for an intensification of existing non-conformities including the proximity to an abutter’s lot line provided that there is no substantial detriment to the entire neighborhood.

The Applebaums wanted a restriction going forward saying that a second floor could not be added. Attorney Crowell said that his clients would not agree to that. Mr. Ryer said that if the Applicants wanted a second floor in the future, they would have to return to the ZBA for a Special Permit.

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

Mr. Ryer moved to grant the requested Special Permit to construct a master bedroom addition and a covered porch onto a pre-existing, non-conforming single family dwelling pursuant to the Code of the Town of Harwich, §325-Table 2 - Area Regulations and §325-54 as set forth in MGL Chapter 40A §6 for the property located at **19 Pine Wood Lane** with the condition that no demolition, exterior construction nor new landscaping is allowed between June 30th and Labor Day of any year. There is a second condition that the Applicants will provide and maintain screening evergreens along 14’ of the east side of the project. Mr. Ryer moved to amend the motion with a second by Mr. Donoghue to include an additional condition that any gutter downspouts from the new addition will go into a drywell. There was a 2nd from Mr. Armstrong. The Board voted unanimously in favor of the Original Motion and the Amendment. 5-0-0

Mr. Ryer authorized Shelagh Delaney to stamp all documents.

**Case # 2020-26**

Timothy D. Gallagher and Claire M. Gallagher, through their agent, Attorney William Crowell have applied for a Variance to allow for a pre-existing non-conformity concerning site coverage and a Special Permit, or in the alternative, a Variance to create habitable space over an existing garage of 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 and §325-54 as set forth in MGL Chapter 40A §10 and §6. The property is located at 51 Monomoy Road, Map 5, Parcel K1-A16 in the RH-1 Zoning District.

Members voting: David Ryer, Al Donoghue, Jamie Armstrong, Chris Murphy and Brian Sullivan.

Attorney Crowell introduced himself and the Applicants, Timothy and Claire Gallagher. He noted that the property is south of Lower County Road and that the owners purchased the property about a year ago with the tennis court already in place. When they applied for a building permit to do some upgrades, the Commissioner denied the application because the site coverage was over the limit, in part due to the tennis court. They would like to create a bedroom above the garage which triggers the need for a Special Permit with the addition of habitable space within the setback. But a Variance is also needed to continue on with the project because site coverage is over the allowable limit.

Attorney Crowell argued for the Variance request by saying that the structure, the tennis court, is unique and has been in place for 25 years. The Applicants would suffer a considerable financial hardship were they to have to tear up and remove that tennis court. He also argues that the Board could grant the variance without derogating from the purpose or intent of the bylaw because the lot will still be primarily the location of a single family dwelling. MGL c40A also states that once a potentially non-conforming situation has existed for more than 10 years without any attempt to enforce, it is no longer enforceable. He also noted that the plans had changed to include a dormer and he requested that he be able to change out the revised plans for those originally submitted.

Mr. Murphy stated that he thought it was reasonable to go forward with granting a Variance because nothing will change and there will, therefore be no harm to the public.

There were no public comments.

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

Mr. Ryer then moved to grant the requested Variance from the requirements limiting site coverage, the Board having found that the pre-existing non-conforming site coverage is due to a 25 year old tennis court, that the Applicants would face significant financial harm if they were to have to remove the tennis court and that granting the Variance will not be a substantial derogation from the purpose or intent of the bylaw, nor would it cause significant harm to the public good. There was a second by Mr. Sullivan. The Board voted unanimously in favor. 5-0-0

Mr. Ryer authorized Shelagh Delaney to stamp all documents.

**Case # 2020-27**

Walter J. Moberg, Jr., through his agent, Attorney Michael Ford has applied for a Variance to reconfigure the lot lines of 2 existing lots and a Special Permit for the creation of a new non-conformity. The application is pursuant to the Code of the Town of Harwich, §325-52 as set forth in MGL Chapter 40A §10 and §6. The property is located at 1110 Queen Anne Road, Map 75, Parcel S6 in the RR Zoning District.

Members voting: David Ryer, Al Donoghue, Jamie Armstrong, Chris Murphy and Brian Sullivan.

Attorney Michael Ford introduced himself as the representative of Walter Moberg and his wife and noted that the presentation would be essentially the same for both this Case and Case # 2020-28. He explained that the 2 lots had been one parcel in 1921. The Mobergs have owned 1110 Queen Anne Road and purchased 1112 when it came on the market a few years ago. The goal of changing the lot line will allow each of the houses on the 2 parcels to have 3 bedrooms. The owners have been working with the Board of Health and there will be a deed restriction limiting the bedrooms to 3 for each parcel. The change in lot lines will improve the frontage for 1112 with all of the setbacks remaining the same. The new nonconformity will be in area which requires relief from the ZBA. Each lot will have its own sewer hookup.

In his argument for a Variance, Attorney Ford noted that the shape of the lot for 1112 Queen Anne Road is a unique “pork chop” and the hardship is the fact that it restricts the number of bedrooms. He added that there will be no substantial detriment to the public good. In fact, there will be an improvement as both of the lots are in a water recharge restriction zone. There will also be no derogation from the purpose or intent of the bylaw because each the lots will remain for single family residences already in existence. He asked that the Board grant the requested Variance.

Mr. Murphy said that he thought the change would be practical and an improvement.

Mr. Donoghue asked about the location of the septic. Mr. Moberg answered that it is on the north side of the property behind the house. Although it is set to be a 4 bedroom septic system, they plan on removing one of their bedrooms.

Mr. Ryer said that he would want a condition to be added to the Variance saying that the owners agree to release any future claim of hardship which is self-imposed and any future requirement for the proof of hardship for any future request for a Variance because it will be considered to be self-created.

Joan Graney of 17 Ellis Drive spoke as an abutter and said that she approved of the project but asked for clarification on how the owners could reduce their bedroom count. Attorney Ford explained that the Board of Health considers privacy when determining a bedroom designation. The owners will widen a doorway to remove privacy from one of the bedrooms.

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

Mr. Ryer said that he believed that Attorney Ford’s arguments satisfied the requirements and support the granting of a Variance.

Then Mr. Ryer moved to grant the requested Variance to reconfigure the lot lines of 2 existing lots and a Special Permit for the creation of a new non-conformity pursuant to the Code of the Town of Harwich, §325-52 as set forth in MGL Chapter 40A §10 and §6 for the property located at 1110 Queen Anne Road, the Board having found that there is a unique shape which has caused a hardship to the owners and which granting will not represent substantial harm to the public good nor derogation from the intent of the bylaw. Mr. Armstrong seconded the motion. The Board voted unanimously in favor. 5-0-0

Mr. Ryer authorized Shelagh Delaney to stamp all documents.

**Case # 2020-28**

Walter J. Moberg, Jr., through his agent, Attorney Michael Ford has applied for a Variance to reconfigure the lot lines of 2 existing lots and a Special Permit for the creation of a new non-conformity. The application is pursuant to the Code of the Town of Harwich, §325-52 as set forth in MGL Chapter 40A §10 and §6. The property is located at 1112 Queen Anne Road, Map 75, Parcel S5 in the RR Zoning District.

Members voting: David Ryer, Al Donoghue, Jamie Armstrong, Chris Murphy and Brian Sullivan.

Attorney Michael Ford argued the case for the Applicants stating that this is the other one of the 2 adjacent properties that are the subject of Case 2020-27 and 2020-28. The testimony will be essentially the same but for the requirement of a Special Permit and not a Variance. The property is a pre-existing, non-conforming single family dwelling. This project will intensify an existing non-conformity but add no new non-conformity nor be a substantial detriment to the neighborhood. He asked that the Board grant the Special Permit.

Mr. Ryer moved to incorporate all of the testimony offered in Case # 2020-27 into this case. Mr. Donoghue seconded the motion and the Board voted unanimously in favor. 5-0-0

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

Then Mr. Ryer moved to grant the requested Special Permit to reconfigure the lot lines of 2 existing lots and for the intensification of an existing non-conformity pursuant to the Code of the Town of Harwich, §325-52 as set forth in MGL Chapter 40A §6 for the property located at 1112 Queen Anne Road, the Board having found that there is no substantial detriment to the neighborhood subject to the following condition: that the petitioner acknowledges that in accepting this Special Permit to reconfigure the size of the lot from 43,574sf to 30,217 sf, they have created a condition which cannot be used as a hardship to support any future request for a variance. Mr. Armstrong seconded the motion, The Board voted unanimously to approve the motion. 5-0-0

Mr. Ryer authorized Shelagh Delaney to stamp all documents.

Mr. Ryer spoke about how no vote was taken at the May meeting regarding reorganization of the Board. Mr. Donoghue nominated Mr. Ryer to remain as chairman of the ZBA and Mr. Hilliard to remain as the Board Clerk. Mr. Ryer moved for a vote on those nominations with a second by Mr. Armstrong. The Board voted unanimously in favor.

A motion for Approval of minutes from the June 24, 2020 meeting was made by Mr. Ryer with a 2nd by Mr. Murphy. The Board voted unanimously in favor.

Mr. Ryer then moved to adjourn the meeting with a 2nd by Mr. Murphy. The Board voted unanimously in favor.

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

Board of Appeals Recording Clerk

The Cape Cod Chronicle **Print dates: July 9th and 16th, 2020.**