**HARWICH ZONING BOARD of APPEALS PUBLIC HEARING**

**Wednesday, July 31, 2019 at 7:00 p.m.**

**Griffin Meeting Room, Harwich Town Hall**

**MINUTES**

On Wednesday, July 31, 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: David Ryer, Chairman, Dean Hederstedt, Kathleen Muller, Al Donoghue, Mike Cupoli and Jamie Armstrong.

Mr. Ryer told everyone that the meeting was being video recorded and available through Channel 18.

Case 2019-26 was moved to the end of the meeting by agreement of the parties.

**Case #2019-27**

Robert M. Lothrop applied for a Variance to construct an 80’ long retaining wall within the setback. The application is pursuant to the Code of the Town of Harwich, §325 Table 2, Area Regulations as set forth in MGL Chapter 40A §10. The property is located at **51 John Joseph Road,** Map 62, Parcel P13 in the RR Zoning District.

Members voting on this case: Ms. Muller, Mr. Hederstedt, Mr. Ryer, Mr. Donoghue and Mr. Armstrong.

Mr. Ryer started the discussion by explaining to the Applicant that the Board required a certified plot plan which was not a part of the material submitted. He suggested that the matter be continued until August 28, 2019 and the Applicant agreed.

Ms. Muller moved and Mr. Hederstedt seconded the motion to continue Case # 2019-27 until 7:00 PM on Wednesday, August 28, 2019. The Board voted unanimously in favor.

**Case #2019-28**

Wychmere Harbor Real Estate, LLC, a/k/a Wychmere Beach Resort, through its agent, Attorney Andrew Singer applied for an Amendment to Special Permit No. 10-39 or in the alternative, a new Special Permit to alter, extend or change a pre-existing, non-conforming recreation or amusement services and restaurant facility. The application is pursuant to the Code of the Town of Harwich, §325-54(B) as set forth in MGL Chapter 40A §6. The property is located at **23 Snow Inn Rd**, **Unit 12** Map 8, Parcel P2-12 in the RH-3 and RL Zoning Districts.

Mr. Ryer noted that a letter from the Attorney on the case, Andrew Singer had requested that the case be continued until October 30, 2019.

Mr. Hederstedt moved to continue Case # 2019-28 until Wednesday, October 30, 2019 with a second by Ms. Muller. The Board voted unanimously in favor.

**Case #2019-29**

Wilfried H. Pietsch and Mary Anne Pietsch applied for a Special Permit to change out decking and railings on an existing deck 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 as set forth in MGL Chapter 40A §6. The property is located at **11 Lakeside Terrace**, Map 72, Parcel 283 in the RR Zoning District.

Mr. Donoghue read into the record comments from the Senior Health Inspector noting that there is a requirement for a passing Title V inspection prior to approval of any Building Permit and that if the property is served by cesspools, a compliant system will need to be upgraded.

Members voting on this case: Ms. Muller, Mr. Hederstedt, Mr. Donoghue, Mr. Armstrong and Mr. Cupoli.

Mr. Wilfried Pietch introduced himself and his wife and presented the case restating details of the application and adding that the deck had originally been permitted in 1988. Now one side of the deck does not meet setback regulations and the couple wants to do repairs and change out handrails within the setback which requires a Special Permit. There will be no new non-conformity and no detriment to the neighborhood.

Mr. Ryer said that the legal requirements of the Gale Case and the Bylaw for granting a Special Permit have been met and all agreed.

Mr. Hederstedt moved to close the public hearing with a second by Ms. Muller.

Mr. Hederstedt then moved and Mr. Cupoli seconded the motion to grant the requested Special Permittochange out decking and railings on an existing deck of a pre-existing, non-conforming single family dwelling according to the plans provided, 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 **11 Lakeside Terrace**, Map 72, Parcel 283 in the RR Zoning District, the Board having found that there will be an intensification of an existing nonconformity, no new non-conformity and no substantial detriment to the neighborhood. The Board voted unanimously in favor. 5-0-0

**Case #2019-30**

Lucille J. Van Baaren, through her agent, R. Scott Ricci applied for a Special Permit to create a small 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 **19 Alden Street**, Map 26, Parcel A1-33 in the RM Zoning District.

Mr. Donoghue read into the record comments from the Senior Health Agent saying that the property is limited to 4 bedrooms but that the Health Department had no issues with the project as proposed.

Mr. Scott Ricci introduced himself as the builder and the owner, Lucille Van Baaren. He argued that the small addition will upgrade some rotting wood and straighten an existing jog in the house. The setback is 18.4’ and improves as you go along that side of the house. There will be no new non-conformity and there has been no objection from any of the neighbors. He added that the crew can all park “off-street” during the construction.

Mr. Ryer said that the addition will be a minor change extending along an existing non-conforming line which satisfies the requirements of the Gale Case. All members of the Board agreed.

Ms. Muller moved to close the public hearing with a second by Mr. Hederstedt.

Mr. Hederstedt moved and Mr. Armstrong seconded the motion to grant the requested Special Permitto create a small addition onto a pre-existing, non-conforming single family dwelling according to the plans provided and 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 **19 Alden Street**, Map 26, Parcel A1-33 in the RM Zoning District, the Board having found that there will be an intensification of an existing nonconformity, no new non-conformity and no substantial detriment to the neighborhood. There is a condition that all contractors will park “off-street” during the construction process. The Board voted unanimously in favor. 5-0-0

**Case #2019-26**

William Marsh, Trustee of the Deerfield Nominee Trust, through his agent, Susan Ladue of Eastward Companies applied to appeal the Building Commissioner’s denial decision regarding a rear setback or, in the alternative, a Variance to build an industrial metal building. The application is pursuant to the Code of the Town of Harwich, §325 Table 2, Area Regulations as set forth in MGL Chapter 40A §10. The property is located at **4 Deerfield Road**, Map 45, Parcel T1-7 in the IL Zoning District.

This case was moved to the end of the meeting by agreement of the parties.

Members voting on this case: Ms. Muller, Mr. Hederstedt, Mr. Donoghue, Mr. Ryer and Mr. Cupoli.

Mr. Donoghue read into the record comments from the Health Inspector saying that an approved disposal construction permit with floor drain conditions will be required prior to the building permit approval.

There was also a note from the Town Planner saying that the property is currently before the Planning Board for Site Plan Review approval and that the Planner supports the request for a Variance due to the unique shape of the lot.

Attorney William Riley of Riley and Norcross in Chatham presented the case along with William Marsh of Eastward Companies. They offered enlarged drawings and photos of the site location and proposed building. Attorney Riley said that he disagreed with the determination of the Building Commissioner who believed that a 50’ rear setback is required. He referred to Planning Board minutes from a 2007 meeting which approved the subdivision without the 50’ setback requirement. He noted that there would be no purpose served by applying the newer standard.

Attorney Riley also argued for a Variance detailing how the lot has no access from Depot Street and that it has a curved triangular shape. Requiring the 50’ setback would reduce the size of any potential building rendering the lot half the value. That would be a substantial financial hardship for the owners. He added that there would be no derogation from the purpose or intent of the bylaw and no substantial harm to the public good.

Mr. Marsh added that the building and site coverage totals would be below the limits and that there would be 37% green space.

Mr. Ryer referred the Applicants to Section 325-18C and the Definitions in the Code regarding corner lots, saying that if this lot qualified, there may not be a need for a Variance.

Mr. Cupoli said that if the Applicants were to use the “corner lot argument” he would want them to come back at a later date with provable evidence that the lot qualifies under that definition. He said he would, however, be able to vote for a Variance. Mr. Ryer agreed that the requirements for a Variance seem to be met.

Tom Evans of 90 Great Western Road spoke regarding his concern that the subdivision has become littered with old boats, trailers, cars and futons and that the owner, Mr. Marsh should be required to mitigate the situation as part of any Variance.

Attorney Riley suggested that his client would be willing to place a fence around some of the lots to restrict the dumping of boats from the owner of Karl’s Cape Cod Boat Shop whose owner is a friend of Mr. Marsh and who uses the lots for overflow.

Mr. Ryer said that he believed that the Board does not have the authority to place conditions on lots that are not before the Board. Attorney Riley said that his client would make a commitment to demand the removal of the vehicles, boats, trailers, etc. by Karl’s Boatyard.

Mr. Hederstedt moved to close the public hearing with a second by Mr. Donoghue.

The Board discussed the details of the case making a determination that the case fit the requirements of MGL Chapter 40A §10 for the granting of a Variance with a uniquely shaped lot which would cause a hardship for the applicant were the 50’ setback required and that there will be no derogation from the intent or purpose of the bylaw and no substantial harm to the public good if the Variance were granted. Mr. Ryer said he wanted a condition that the lot be landscaped.

Mr. Hederstedt moved and Mr. Cupoli seconded the motion to GRANT the requested Variance to build an industrial metal building pursuant to the Code of the Town of Harwich, §325 Table 2, Area Regulations as set forth in MGL Chapter 40A §10 for the property located at **4 Deerfield Road**, Map 45, Parcel T1-7 in the IL Zoning District according to the plans provided, the Board having found that the lot has a  unique shape which would require a substantial financial hardship for the applicant to adhere to the Code and the Variance can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the By-Law. There is a condition that the lot be landscaped. The Board voted unanimously in favor. 5-0-0

Mr. Hederstedt moved to approve the minutes from the June 26, 2019 meeting with a second by Mr. Donoghue.

Mr. Donoghue moved and Ms. Muller seconded the motion to nominate Mr. Dean Hederstedt to take over the position as Clerk of the Zoning Board of Appeals and for Mr. David Ryer to continue for another year as Chairman. The Board voted unanimously in favor.

Mr. Donoghue moved to adjourn with a second by Mr. Armstrong.

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

Board of Appeals Recording Clerk