**HARWICH ZONING BOARD of APPEALS PUBLIC HEARINGS**

**Wednesday, September 30, 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.

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

Mr. Ryer called the meeting to order and read the following statement:

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 via computer, tablet or smartphone used**
https://global.gotomeeting.com/join/989911157

**By telephone,**
United States: +1 (872) 240-3311
**Access Code:** 989-911-157

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Members present: David Ryer, Al Donoghue, James Armstrong, Chris Murphy and Brian Sullivan.

**Case # 2020-35**

Donald R. Dvorovy, Jr. has applied for a Special Permit to add a second floor office and bath that will increase habitable space 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 **1639 Orleans Rd,** Map 107, Parcel G5-1A in the Rh-1 Zoning District.

Members voting on this case: Mr. Ryer, Mr. Donoghue, Mr. Armstrong, Mr. Murphy and Mr. Sullivan

Mr. Armstrong read the case into the record.

The owner, Don Dvorovy presented the case restating portions of the application and adding that he would not be changing the footprint of the house but adding living space on the second floor via a raised ridge line. Because that is within the setbacks, a Special Permit is required. The overall height of the house will remain the same. The house has a 4 bedroom septic system but only 3 bedrooms and that will remain the same.

Mr. Ryer said that he believed that the petition meets the elements of the Gale Case and the bylaw with an intensification of an existing non-conformity, no new non-conformity and no substantial detriment to the neighborhood. He asked if all of the construction vehicles could be parked on the property and not on the street and Mr. Dvorovy said that they could.

There were no public comments.e added that there are

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

Mr. Ryer moved to grant the Special Permit to add a second floor office and bath that will increase habitable space to 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 1639 Orleans Rd with a condition that all construction vehicles and ancillary construction equipment be parked on the property at 1639 Orleans Road and not on the street and a further condition of this approval is 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. There was a 2nd by Mr. Donoghue. The Board voted unanimously in favor. 5-0-0

Mr. Ryer authorized Shelagh Delaney to stamp all documents in this case.

**Case # 2020-36**

Joseph M. DeLory, et al and Joanne Murnane through their agent, Attorney William Crowell have applied for a Variance from the requirements of §325-18 (R) to construct a 4’ high septic retaining wall within the northern setback line and, if necessary, a Variance from the requirements of §325-17 of the bylaw for the 4’ height of the septic wall. The application pursuant to the requirements of MGL Chapter 40A §10. The property is located at **113 Brooks Rd.**, Map 12, Parcel L4 in the RH-1 and CH-1 Zoning Districts.

Members voting on this case: Mr. Ryer, Mr. Donoghue, Mr. Armstrong, Mr. Murphy and Mr. Sullivan.

Mr. Armstrong read the case into the record.

Attorney William Crowell introduced himself and the Applicant, Joe Delory and restated relevant portions of the application adding that this is not an average Gale Case but instead a request for a Variance for a mounded septic system retaining wall. The property currently has 4 cesspools and it would be in everyone’s interest if the owner were able to upgrade to a Title V compliant septic system. Because of the high water table, the existing garage and deck, the system has to be placed in the northeast corner of the lot. Both the Board of Health and the Conservation Commission have given their approval for the plan. The retaining wall will be 5’ from the lot line but 10’ from the traveled way. Attorney Crowell added that there are unique topographical conditions with the high water table and that existing structures on the lot have forced the location of the septic system and the retaining wall to the proposed location. Dan Croteau of Moran Engineering added that there will be no sight line obstruction with the wall.

Mr. Donoghue said that he believed that the upgrade will be a vast improvement for the neighborhood. Mr. Sullivan agreed and said his review of the property has him agreeing that the sight lines will not be negatively affected. Mr. Armstrong agreed.

In answering Mr. Murphy’s question about the 4’ height of the wall, Dan Croteau said that the leach field needs to be 5’ above the water table adjusted, as needed, by the grade of the land.

Mr. Ryer said that he did not believe that there would be a need for a Variance from the provisions of Section 325-17 and that the Applicant had satisfied the elements required for a Variance from Section 325-18 (R).

There were no public comments.e added that there are

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

Mr. Ryer moved to grant the Variance from the requirements of §325-18 (R) for the building of a 4’ high septic retaining wall pursuant to the requirements of MGL Chapter 40A §10 for the property located at **113 Brooks Rd.**, the Board having found that the shape and topography of the land and the existing structures along with the high water table and wetlands constitute a hardship to the Applicant. There will be no substantial detriment to the public good nor will there be a substantial derogation from the intent and purpose of the bylaw. Because the line of sight will not be negatively affected, the Board has found no need for a Variance from the requirements of Sections 325-17. There are 2 conditions to the granting of this Variance: 1) There shall be no demolition, exterior construction, or new landscaping during the period from June 30 to Labor Day in any year; and 2) It is a condition of this approval that a violation of the terms and conditions of this Variance 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. Donoghue seconded the motion and the Board voted unanimously in favor. 5-0-0

Mr. Ryer authorized Shelagh Delaney to stamp all documents in this case.

**Case # 2020-37**

Claire and Thomas McCabe and Elaine Sweeney, 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, §325-54 (5) and Table 2, Area Regulations as set forth in MGL Chapter 40A §6. The property is located at **25 Grey Neck Lane.,** Map 11, Parcel X8-6 in the RH-1 Zoning District.

Members voting on this case: Mr. Ryer, Mr. Donoghue, Mr. Armstrong, Mr. Murphy and Mr. Sullivan

Mr. Armstrong read the case into the record.

Attorney William Crowell introduced himself and restated relevant portions of the application adding that there are existing non-conformities on all four sides of the house. The project will intensify these existing non-conformities but will improve the setback on the southwest corner. The building and site coverage will remain compliant. The overall ridge height will be below 24’. The Applicants had received a Special Permit a year ago to do a “bump out” but then decided that it would be a better idea to demo and rebuild. He said that there will be no increase in noise, traffic, odor, congestion or the like.

Attorney Crowell asked that the new basement plan be stamped in and added to the plans being reviewed by the Board. He added that plan A3 shows the new foundation plan.

Mr. Ryer said that he thought that the project meets the requirements of the Gale Case with intensifications of existing non-conformities, no new non-conformity and no substantial detriment to the neighborhood. He added that he thought that it was important to restrict summer construction in that area.

There were no public comments.

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

Mr. Ryer moved to grant the 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 (5) and Table 2, Area Regulations as set forth in MGL Chapter 40A §6 for the property located at 25 Grey Neck Lane, the Board having found that the project represents an intensification of existing non-conformities, no new non-conformity and no substantial detriment to the neighborhood. There are two conditions with this Special Permit; 1) There shall be no demolition, exterior construction, or new landscaping during the period from June 30 to Labor Day in any year, and 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. There was a second by Mr. Armstrong. The Board voted unanimously in favor. 5-0-0

Mr. Ryer authorized Shelagh Delaney to stamp all documents in this case.

Mr. Ryer told the Board that he has on numerous occasions contacted Don Howell and requested that he interview Chris Murphy and Brian Sullivan to recommend one of them to the Board of Selectmen as an additional full member, but has not heard back from him.

Mr. Murphy made a motion to approve the minutes from the July 29, 2020 meeting with a 2nd by Mr. Donoghue. The Board voted unanimously in favor.

Mr. Sullivan made a motion to approve the minutes from the August 26, 2020 meeting with a 2nd by Mr. Murphy. The Board voted unanimously in favor.

Shelagh Delaney reminded the Board that there is only one meeting for both November and December. The date of that combination meeting is December 9, 2020.

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

Board of Appeals Recording Clerk