

March 19, 2022

Mr. David Ryer, Chair
Zoning Board of Appeals
732 Main Street
Harwich, MA 02645

RE: ZB2022-16 (Special Permit) - 53 Freeman Street.

Dear Chairman Ryer:

As a direct abutter to the proposed demolition and reconstruction, the Price family (6 Hoyt Road) offers the following comments for the Board's review and consideration.

First and foremost, we respect and acknowledge the applicant's right to petition this body for a special permit.

Although not a legal requirement, as of the submission of this letter, the Applicant has not approached our family to discuss the proposed development. It is our understanding this also applies to the other remainder of the neighborhood. As useful, prior to the reconstruction of 6 Hoyt Road in 2015, letters of support from various abutting property owners were submitted on the project's behalf pertaining to Conversation Commission applications.

I. Application

From our review of the application dated February 7, 2022, and supplemental information available online and at the Building Department, please find the following comments and/or deficiencies:

- The dimensional table within the application predating the denial letter is not filled out in its entirety and fails to correctly list building coverage as a percentage.
- The provided certified Plot Plan is not accompanied by the required topographical information plan as listed in the application.
- Even with the use of a magnifying glass, various pieces of information on the plot plan are illegible, including but not limited to setbacks, dimensions, and other key criteria which are presumed to be important to fully understand the proposed layout and its appropriateness.

II. Regulations, Site, and Characteristics

Special Permit Criteria

In addition to the special permit considerations as outlined in §325-51 (A), criteria for the Applicant's proposed demolition and reconstruction as further defined in §325-54 (A) (5) enables the Board to hear and decide on the suitability of an application based on the following:

(a) The replacement of the structure will not be substantially more detrimental to the neighborhood than the existing structure;

As further described in this letter, we assert that the replacement of this proposed structure, similarly to findings upheld within Massachusetts, creates a substantially more detrimental impact on the neighborhood.

(b) The replacement of the structure will not cause or contribute to any undue nuisance, hazard or congestion in the neighborhood, zoning district or Town;

Although through special permit the Applicant seeks to reconstruct under the existing non-conforming status, the Town recognizes there are special considerations that should be met for said lots, discussed in §325-18, the town requires that corner lot structures are to be set back from all streets to a distance equal to the front yard setback requirement of the district (25'), in-part for safety concerns as described below.

To that end, the intersection of Freeman Street and Hoyt Road has a documented history of being an area prone to accidents and safety concerns on account of its connectivity to Harwich Center and larger transportation corridors (e.g. 39, 124, 28, and Route 6). Due to accident frequency in this area, the Town installed an additional stop sign on Hoyt Road, totaling two, both on the left and right side at the intersection of Hoyt and Freeman for westbound traffic.

Since the Applicant's building permit was denied, to avoid relief for exceeding permissible site coverage, the proposed driveway was significantly reduced to the dimensions of 19.5x24'. Proposed as a four-bedroom home, we maintain that the driveway accessed from Hoyt Road is substantially undersized to support the needs of the proposed residence, which would accommodate a maximum of only two (2) vehicles, a reduction from the existing driveway serving a smaller home. Our driveway at 19x52' (110% larger), for a three-bedroom home can fit up to six (6) vehicles. Taking existing traffic conditions into account, and the fact that Hoyt Road is already at the narrowest width that the Town will accept as a public way (20'), there is no additional on-street parking that could permit additional vehicles without exacerbating dangerous conditions for passive and active users, or obstructing town ways.

Aside from the above, given the proposed height, in comparison to the existing character of the neighborhood, comprised of 1 to 1.5 story homes, it would be expected that shading of our southern facing roof, and light spill would be applicable. Until additional information is provided by the Applicant, the increase of impervious surface on the site and new drainage patterns causes concern for potential increased runoff onto abutting properties. For the Board's consideration, the Applicant in submissions to the Historical Commission has suggested that height of their proposed structure, is comparable by the precedent set at 6 Hoyt Road. We adamantly disagree with this assertion for the following reasons: 1) all conditioned space is limited to the first floor, being a one-story house; 2) The maximum height of the roof is limited to the cupola, with a gradual increase from the first story; and, 3) the house is significantly set back from the road.

Lastly, in the provided Plot Plan, the Applicant proposes to convert what previously served as a garage, which currently sits slightly more than 1' off the side yard lot line, into an "Open Air Cabana and Bar". The change from the prior static use as a garage, to an active living and outdoor entertainment area in our opinion should trigger that the applicant either comply with the 20' side yard setback, or need to seek relief, as supported by Deadrick (2002). Its proximity to the lot line and intended use would suggest that both the abutting property owners would experience increased noise, lighting, and other nuisances which modern zoning regulations provide additional protections from.

(c) The replacement structure will not increase any of the following existing nonconformances: building coverage, site coverage, or setback encroachment.

As noted above, the applicant's proposed conversion of the garage to an outdoor living/entertainment area should not be entitled to maintain its existing nonconforming status and is an intensification of a non-conformity, creating adverse impacts. Most recently, the decision of Commstock (2020) illustrates the importance hardship through site constraints, not otherwise present on this parcel.

(d) The replacement structure will reduce at least one of the following existing nonconformances: building coverage, site coverage, or setback encroachment.

Due to the poor reproduction quality of the Plot plan, it is difficult to evaluate the full proposal as it relates to setbacks, which in at least one location will worsen, and others improved. We acknowledge the proposed building coverage has been reduced; however, with the intent of building upward. Site coverage has increased at the detriment of other aspects.

Lastly, in approving a special permit, the Board of Appeals or Planning Board may attach such conditions and safeguards as are deemed necessary to protect the public and the neighborhood, including but not limited to the following (325-51 B):

- (1) Modification of the exterior features or appearances of the structure or structures.
- (2) Limitation of size, number of occupants, method or time of operation, or extent of facilities.
- (3) Regulation of number, design, and location of access drives or other traffic features.

(4) Requirement of off-street parking or other special features beyond the minimum required by this or other applicable bylaws.

(5) Limitation of the total projected volume of sewage or nitrate discharge from the project based on standard sewage flow projection or nitrate loading calculations to be provided by the applicant when required by the permit granting authority. Such calculations must be reviewed and approved by the Harwich Town Engineer prior to their acceptance as facts by the permit granting authority.

The existing septic system installed in 1996 is already 26 years old, potentially nearing the end of its lifespan. We are concerned that through the increased demands on the aged system, the likelihood for failures and potential water resource and/or environmental degradation as it abuts our property. We understand this is not generally in the purview of this Board.

III. Summary and Recommendations.

In summary, we would ask the Board to consider that while on paper the applicant has in part reduced some non-conformities, the proposed 54% increase in habitable area (75% increase in structure inclusive of the proposed modification to the garage) and near doubling of height oversaturates the lot and exploits the intent of this provision, which enables homeowners' ability to create a suitable housing replacement without undue burden. Given the scale and location of the changes, as supported by Bjorklund (2008) and Bransford (2005), which will be substantially more detrimental and is inconsistent with the immediate character of the community, we'd propose that if authorized by special permit:

- The replacement structure be limited to 1.5 stories;
- The outdoor cabana/bar area either be adjusted to meet the current side yard setbacks, or be required to obtain a variance accordingly; and,
- The parking area should be suitably sized to support needs of the development.

Regarding the issuance of a variance, the Applicant has not demonstrated how intensifying a nonconformity and increasing the overall habitable area at the detriment to pervious surfaces and reducing suitable parking areas in a congested neighborhood is done so as a result of hardship, financial or otherwise. Supported by existing precedent, the Board should feel confident in making such a finding both as it relates to the special permit and/or variance, given it would be based on available information, and not considered arbitrary, capricious, or otherwise. The Applicant points to the decision of Gale in support of this application but does not acknowledge that the special permit was granted to provide relief for the lot's narrowness, steep grade, and scattered ledge outcroppings, all being conditions not currently present on this lot.

Thank you for your time and consideration in this matter.

Sincerely,

The Prices