



TOWN OF HARWICH
732 Main Street, Harwich, Massachusetts 02645

ZONING BOARD OF APPEALS

Notice of Appeal/Application and Petition for Public Hearing, ("APPLICATION")

This Application *does not* apply to Comprehensive Permits.

Please refer to the Rules and Regulations of the Town of Harwich Board of Appeals for documentation requirements.

This original completed and signed notice ("Application"), along with a certified abutters list and twelve (12) copies of all plans, sketches, statements, site plans or other supporting documents per the attached checklist must be presented to the Building Department prior to being filed with the Town Clerk. The required documentation, ALL of which must be submitted on the date of filing, is listed on this Application. **THE RULES AND REGULATIONS ("RULES") OF THE TOWN OF HARWICH BOARD OF APPEALS APPLY TO ALL APPEALS AND APPLICATIONS AND SHOULD BE CONSULTED BEFORE FILING AN APPEAL OR APPLICATION TO ENSURE COMPLIANCE WITH THEM.**

To the Zoning Board of Appeals, Harwich, MA:

(We, I) hereby petition your Board for a public hearing on the request for action checked below:

- (X) Appeal from decision of or refusal of permit application by the Building Inspector, Selectmen or Planning Board or other administrative officer or officers.
- () Application for a Variance from requirements of the Harwich Zoning By-Law.
- () Application for a Special Permit that is subject to Board of Appeals approval.

I/we am/are the owner[s]/agent of the property involved in this petition, which is located in Harwich, MA at the following address:

10 McGuerty Road . Said property is further described on

Assessor's Map #117 and Parcel # X1-E-0 located in the RR Zoning District as shown on the attached plan.

Describe Petition/Appeal: Appeal of Decision of Building Commissioner denying request for enforcement regarding fence over 7 feet high located on property at 5 Connecticut Avenue, East Harwich.

Relief requested - Cite specific Bylaw Section(s): Overturn decision of Building Commissioner and issue decision requiring Building Commissioner to take enforcement action.

Signature of Owner (or Agent) Peter F. Wall
(Written authorization by the owner must accompany an Application signed by agent.)

Date July 24, 2023

Owner Name Peter F. Wall

Phone No. (508) 432-7032

Mailing Address: P.O. Box 212, E. Harwich, MA

Agent Name: Brian J. Wall, Esq.

Phone No. (505) 888-5700

Mailing Address: Route 6A, Sandwich, MA 02563

Has a petition previously been submitted for this property (Y/N) No.

If yes, the date of original hearing _____ Petition No. _____ Decision _____

For Appeal Only:

Reason for Denial: _____

Denial From: _____ Date of Denial: _____

Within 14 days following any Board decision, the Board will file its decision with the Town Clerk. A building permit will not be issued during the appeals period, until 21 days after the Board of Appeals decision has been filed with the Town Clerk or if an appeal to that decision has been filed during that time. It is the **applicant's responsibility** to have the decision recorded at the Barnstable County Registry of Deeds or Land Court, whichever may be applicable, and to present copies of that recording to the Town Clerk and to the Building Department with all Building Permit application requirements.

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RECEIVED
TOWN CLERK
HARWICH, MA

Please be advised that an incomplete Application may result in a delay in processing your Application and **may result in a denial by the Board** without consideration of the merits of the Application. **IT IS YOUR RESPONSIBILITY TO REVIEW THE RULES THAT APPLY TO YOUR APPEAL/APPLICATION AND TO MAKE SURE BEFORE FILING THAT YOUR APPLICATION/APPEAL COMPLIES WITH THOSE RULES.** The burden of proof is on the petitioner, not on the Town. If you do not understand the criteria, legal counsel should be sought. Either the petitioner or his/her agent is required to appear at the hearing to present the Application.

All applicants for hearing before the Board of Appeals must complete the Application and submit along with it the supporting documentation listed herein to the Building Department for review and subsequent filing with the Town Clerk. The Building Department accepts Applications during posted hours. You are strongly encouraged to submit your Application to the Building Department well in advance of the filing deadline to allow adequate time for staff review for completeness. **All information, including the applicable fee made payable to the Town of Harwich, must be submitted with the Application.**

Please submit the following, sorted and grouped into **twelve (12) packets along with one (1) Certified Abutters List** (Available from the Assessors Department. A separate application and fee is required):

X **The original Application (additional stamped copies can be provided at a nominal fee):**

- Signed by the owner or agent.
- If signed by an agent, a letter of authorization signed by the owner must also be included.

X **A typewritten narrative to explain the project , the purpose for this Application and the relief requested, with citations to the applicable provisions of the MGL and the Harwich Zoning Bylaw.**

N/A **The original and eleven (11) copies of a Certified Plot Plan with topographical information plan (not septic plans) not more than five (5) years old (total of 12 copies):**

- 8½" x 11" or larger. *Larger plans must be folded.*
- Scale no greater than 1" = 50'
- Original stamped and signed by a Professional Engineer (as allowed by law), or a Professional Land Surveyor.
- Certified Plot Plan **must** indicate:
 - the locus;
 - the parcel or parcels of land involved;
 - the existing building or buildings;
 - the proposed building or buildings and/or additions to, or alterations of existing buildings with all dimensions set forth;
 - the location of the septic;
 - the Town of Harwich zoning requirements applicable to the property, as well as existing and proposed dimensions for: frontage, front, sides, and rear setback distances, building height(s), building stories, building and site coverage and parking requirements (if any);
 - all perimeter dimensions (existing and proposed);
 - location and width of abutting and on-site street and drives, parking, existing topography;
 - a grading plan, areas of proposed and retained vegetation, distinction between upland and wetland.
- Building Plans drawn to scale:
 - Floor layout (for existing structure and proposed additions and/or alterations)
 - Proposed front, side, and rear elevations

X **Certified Abutters List**

X **Check made payable to "Town of Harwich" for \$315.00.**



TROY WALL ASSOCIATES

ATTORNEYS AND COUNSELLORS AT LAW
A PROFESSIONAL ASSOCIATION OF INDIVIDUAL PRACTITIONERS*

90 ROUTE 6A, SANDWICH, MASSACHUSETTS 02563
TELEPHONE: (508) 888-5700

ROBERT S. TROY
rst@troywallassociates.com

BRIAN J. WALL
bjw@troywallassociates.com

July 27, 2023

G. Brian Sullivan, Chair
Zoning Board of Appeals
Town of Harwich
732 Main Street
Harwich Center, MA 02645

Re: **Peter F. Wall, 10 McGuerty Road, East Harwich
Appeal of Decision of the Building Commissioner
Regarding 5 Connecticut Avenue, East Harwich**

Dear Mr. Sullivan:

Please be advised that I represent the above-referenced Petitioner, Peter F. Wall ("Wall"). This is an appeal of a decision of the Building Commissioner denying Wall's request for zoning enforcement.

BACKGROUND

Wall owns and resides full-time at 10 McGuerty Road in East Harwich. Abutting Wall's property to the rear is a property with an address of 5 Connecticut Avenue and owned by You Xin and Huang Su. Both properties are in the Rural Residential (RR) Zoning District.

This past Spring, the owners of 5 Connecticut Avenue constructed a stockade fence along their rear property line. The fence sections are approximately 6 feet in height. These fence sections are installed on posts such that the bottom of the fence is, approximately, 16+ inches above grade. As a result, the top of the fence is more than 7 feet above grade (approximately 7.5 feet in height). Photographs of the elevated fence are attached as **Exhibit 1**. Upon information and belief, no permit for the fence was applied for or issued.

Pursuant to § 325-17 of the Harwich Zoning Code and 780 CMR 105.2.2 of the Building Code, fences are permitted on any premises in Harwich so long as the fence is not over seven (7) feet high.

Wall contends that the subject fence violates the Harwich Zoning Code and the Building Code because it was constructed without a permit and is more than 7 feet high.

On or about May 30, 2023, Wall filed a complaint regarding the fence. On June 9, 2023, Wall followed-up on his complaint by visiting Town Hall and having a discussion with the Building Commissioner. The Building Commissioner agreed that, since the fence was more than 7 feet high, it required a Building Permit. He also confirmed that the owners of 5 Connecticut Avenue had not applied for a Building Permit. Nevertheless, the Building Commissioner advised that he was not going to take any enforcement action. Wall requested that this decision be put in writing.

On June 30, 2023, the Building Commissioner confirmed in writing that he was not taking any enforcement action and that he considered the 6-foot fence installed 16 inches above-grade as still being “a 6-foot fence.” See, Exhibit 2.

Wall is aggrieved by the decision of the Building Commissioner and seeks the Board of Appeals to overturn the decision and to require the Building Commissioner to take enforcement action.

ARGUMENT

Pursuant to § 325-17 of the Harwich Zoning Code, fences may be maintained on any premises.

Under 780 CMR 105.2.2 of the Building Code, fences not over 7 feet in height are exempt from the requirements of the Building Code and do not require a Building Permit. Fences over 7 feet high require a Building Permit.

Pursuant to § 325-2 of the Harwich Zoning Code, height of buildings and structures is measured from the average grade at the base of the structure to the top of the structure. This section also states that “[a] structure shall include such elements as ... fence ... or other attached structure.”

Applying § 325-2 to the subject fence confirms that it is to be measured from the average grade at the base of the fence to the top of the fence and that all parts of the fence are included in the measurement, including the posts to which the fence is attached. This method of measurement inexorably leads to the conclusion that the fence is more than 7 feet high.

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CONCLUSION

Wherefore, for the foregoing reasons, the Petitioner respectfully requests that the Board of Appeals overturn the decision of the Building Commissioner and issue a decision requiring the Building Commissioner to take enforcement action with respect to the fence.

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. J. Wall". The signature is written in a cursive style with a large initial "B".

Brian J. Wall

Enclosures

Cc: Peter F. Wall

EXHIBIT 1





EXHIBIT 2

TOWN OF HARWICH
Building Department
732 Main Street
Harwich, MA 02645



Telephone: (508) 430-7506

By First Class Mail

June 30, 2023

Peter F. Wall
P O Box 212
10 McGuerty Road
E Harwich, MA

Re: FOLLOW UP ON COMPLAINT FILED

Dear Mr. Wall,

The Harwich Building Department has received your written complaints alleging zoning violations at your neighbor's property. As we discussed at the Building Department counter, I do not see cause to take any action on this issue. You had asked and I have provided you the language from the building code which states "Work Exempt form Permit" R105.2.2 Fences not over seven feet high.

Within your complaint you stated that he installed a 6-foot fence that is 16 inches off the ground. This is still a 6-foot fence. A six-foot stockade fence is allowed as a matter of right through the State Building Code as well as the Harwich Zoning Bylaws

This correspondence also serves as a zoning determination under Section 7 of Massachusetts General Laws Chapter 40A, which may be appealed by a 'person aggrieved' under Sections 8 & 15 of Massachusetts General Laws Chapter 40A.

Respectfully,

Jack Mee
Harwich Building Commissioner

Cc: File

7020 1810 0000 9207 8924