



COMMONWEALTH OF MASSACHUSETTS  
TOWN OF HARWICH ZONING BOARD OF APPEALS

DECISION  
CASE NO. 2021-49

OWNERS/ APPLICANTS: MICHAEL J. LONDON & EMILY K. FRIEDMAN

PROPERTY: 0 CHEROKEE RD A/K/A 26 NATHAN WALKER RD, (M 84, Pcl A3)

TITLE: Book 34475, Page 278

DATE OF DECISION: December 29, 2021

DECISION

At its meeting on December 29, 2021, The Zoning Board of Appeals (the "Board") voted 4-0 to GRANT a Variance pursuant to MGL Chapter 40A §10 and Section 325-52 of the Harwich Zoning Bylaw from the applicable dimensional provisions (for a 200' frontage requirement) contained in Sections 325-97(B) of the Harwich Zoning Bylaw on order to allow for the creation of 2 lots at the above-referenced property, one for legal transfer to the Harwich Conservation Trust (the Northerly Section) and one buildable lot at the "Southerly Section".

Members of the Board sitting and voting on this Appeal: Mr. David Ryer (Chair), Mr. Chris Murphy, Mr. Brian Sullivan and Mr. Dave Nunnally (associate member).

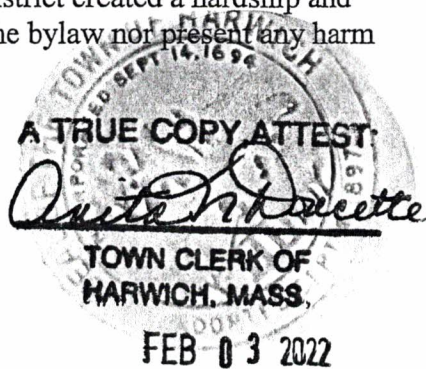
PROCEDURAL HISTORY

1. On November 30, 2021 the Applicants, through their agent, Mike Lach of the Harwich Conservation Trust submitted a request for a Variance in order to divide a single buildable lot into 2 lots along Nathan Walker Road in order to convey the northerly section to the Harwich Conservation Trust and to maintain a buildable lot to the south. The application materials included: A site plan by Robert D. Eldredge dated 4/24/84, later replaced by "A Plan of Land #25 & #26 Nathan Walker (#0 Cherokee Road)" by BSC Group dated 12/22/2021.
2. A duly advertised, public hearing on the Application was held on December 29, 2021.

FACTS AND EVIDENCE PRESENTED

The Applicants, through their representative, Mike Lach of the Harwich Conservation Trust, presented the case. His argument for the Variance was supported by the Harwich Town Planner, Jon Idman. They detailed the requirements under MGL Chapter 40A §10 and spoke as to how the lot shape and the dimensional requirements of the Six Ponds District created a hardship and that issuance of a Variance would not derogate from the intent of the bylaw nor present any harm to the public good. They asked that the Board grant the Variance.

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## RECORD OF VOTE

During the aforesaid public hearing, the following documents, plans and other materials were reviewed by The Board:

1. A site plan by Robert D. Eldredge dated 4/24/84, later replaced by "A Plan of Land #25 & #26 Nathan Walker (#0 Cherokee Road)" by BSC Group dated 12/22/2021.
2. The Petitioners' Zoning Board of Appeals application and narrative.

The Board, after review of the facts, plans, application and evidence presented at this hearing and after deliberations on the same made the following findings:

1. The statutory conditions exist to grant the variance: in particular and without limitation, the dimensional frontage requirements of the Six Ponds District under the Harwich Zoning Bylaw create a hardship for the Applicants especially because frontage of the buildable portion of the sectioned lots would comply with those of the RR Zone in which it sits; the narrow shape of the property is intersected by an "ancient way" and contributes to the hardship. The Applicants will be adding to the "forever protected" conservation inventory within the Six Ponds District with the conveyance of the northerly portion to the Harwich Conservation Trust, so the request is not in substantial derogation to the Bylaw or to the public good.

Based on the aforementioned findings, Mr. Ryer moved and Mr. Murphy seconded the motion that the Board grant a Variance from 200' lot frontage requirement of the Six Ponds Special District in order to divide their lot into 2, to construct a single family residence on the land identified as the "Southerly Section" on "A Plan of Land #25 & #26 Nathan Walker (#0 Cherokee Road)" by BSC Group dated 12/22/2021 (a copy of which is attached to this decision) and to convey the northerly portion to Harwich Conservation Trust (HCT).

### **Conditions of approval:**

- 1) In constructing said residence on the Southerly Section, Michael J. London and Emily K. Friedman shall comply with all other requirements of applicable law and regulations, including but not limited to, the requirements of the Bylaw with respect to the Six Ponds Special District.
- 2) Within twelve (12) months of the date of this Motion, Michael J. London and Emily K. Friedman shall convey to the HCT the land identified as the Northerly Section on "A Plan of Land #25 & #26 Nathan Walker (#0 Cherokee Road)" by BSC Group dated 12/22/2021 (a copy of which is attached to this decision). The deed of the grant shall require that the Northerly Section shall not be developed by the HCT, its successors or assigns, but shall be held and preserved by them for conservation and open space purposes in perpetuity. The HCT shall provide Michael J. London and Emily K. Friedman with its customary form of conservation restriction covenant which they shall include in said deed.

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- 3) 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. c 40A, Sec. 7 and of the Harwich Zoning Bylaw, Article X, as these may be amended from time to time.

The Board voted unanimously in favor 4-0.

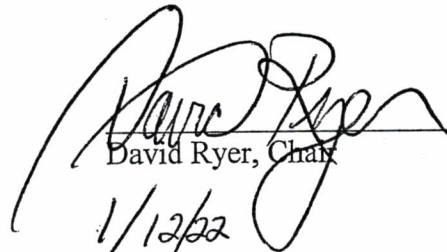
VOTE

IN FAVOR: Ryer, Murphy, Sullivan and Nunnally (associate)

IN OPPOSITION: None

Copies of this Decision and all plans referred to in the Decision have been filed with the offices of the Zoning Board and Town Clerk.

The Variance shall lapse at the end of one (1) year from the date of filing of this Decision in the office of the Town Clerk, which shall not include such time required to pursue or await the determination of an appeal referred to in Massachusetts General Laws Chapter 40A, Section 17 from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

  
David Ryer, Chair  
1/12/22

*Continued on the following page*

Any appeal from this Variance shall be made pursuant to Massachusetts General Laws Chapter 40A, Section 17, within twenty (20) days of the date of filing said Decision with the Town Clerk.

This Decision has been filed with the Town Clerk on:

IAN 12 2022]

Date Twenty Days Elapses:

FEB 02 2022]

  
Town Clerk

This is to certify that twenty days have elapsed after this Decision was filed in my office and no appeal has been filed.

Certification Date: FEB 03 2022

  
Town Clerk

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BARNSTABLE REGISTRY OF DEEDS  
John F. Meade, Register