

**MINUTES
TOWN OF HARWICH
ZONING BOARD OF APPEALS
7:00PM WEDNESDAY, DECEMBER 27, 2023
TOWN HALL - GRIFFIN ROOM**

RECEIVED
TOWN CLERK
HARWICH, MA
2024 FEB -5 P 3:16

MEMBERS PARTICIPATING: Chairman Brian Sullivan, John August, Al Donoghue, Dave Ryer, Kenneth Dickson, and Tim Bailey

ALSO PARTICIPATING: Rachel Lohr, Zoning Compliance Officer

I. CALL TO ORDER; RECORDING NOTICE

Mr. Sullivan opened the meeting of the Town of Harwich Zoning Board of Appeals on Wednesday, December 27, 2023, at 7:00PM. Members of the Board introduced themselves for the record.

II. PUBLIC HEARINGS

Mr. Dickson moved to move the 481 Depot Street, Case No. 2023-36 to the third case to be heard, and move Case No. 2023-38, 38 Ocean Ave, to be heard first case to be heard, seconded by Mr. Ryer.

Vote 6:0 in favor. Motion carried.

Case No. 2023-38 Nanci C. Hanron, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at **38 Ocean Av, Assessors' Map 6B, Parcel H1-2**, in the RH-2 Zoning District. The Applicant seeks a Special Permit or in the alternative a Variance from s325-Attachment 2, Area regulations and s325-Attachment 3, Height & Bulk regulations, to raze & replace a pre-existing nonconforming single- family dwelling pursuant to the Harwich Zoning By-laws s325-52 and -54 and MGL Chapter 40A Sections 6 &10.

Mr. Donoghue read Case No. 2023-38 as presented.

Attorney Crowell and Nanci Hanron presented their case.

Mr. Sullivan asked if he received an abutters letter.

Mr. Crowell stated he did.

Mr. Sullivan read an email submitted by an abutter.

Mr. Sullivan assigned voting for this Case:

Members of the Board Voting: Al Donoghue, Dave Ryer, Tim Bailey, John August, and Ken Dickson.

Mr. Crowell introduced Dan Speakman the Surveyor/Contractor.

Mr. Crowell stated they are requesting a Special Permit for a raze & replace in accordance with the submitted plans.

Mr. Crowell stated the setbacks for each side of the proposed structure. Mr. Crowell stated they have received approval from Historic.

Mr. Crowell stated they are proposing a new structure in the same footprint with the addition of a porch, and habitable space. Mr. Crowell stated the building and site coverage is preexisting non-conforming and that the non-conformities will be increasing.

Mr. Crowell stated that regarding the comments from the Health Department they are not proposing to increase the number of bedrooms, but that they are going to the Board of Health to request an increase of habitable space.

Mr. Crowell stated he could not make comments regarding the letter from the abutter.

Mr. Crowell stated it would not be a detriment to the neighborhood.

Mr. Crowell stated this case meets the requirements for the Gail case and requests that the Board grant the Special Permit to raze and replace the pre-existing non-conforming dwelling.

Mr. August stated the proposed project is in line with the rest of the homes in the neighborhood but suggested a time condition for the approval.

Mr. Donough, Mr. Baily, and Mr. Dickson agreed with Mr. August.

Mr. Ryer asked for clarification as to where the proposed outside shower is located.

Mr. Sullivan asked what the time frame is for construction.

Mr. Speakman stated as soon as they have a permit.

Mr. Crowell stated that the timeline is mid-February to start construction.

Mr. Sullivan asked about the proposed bulkhead, stating that it is directly abutting a tree.

Mr. Hanron stated that she and her neighbor agreed the tree would be removed.

Mr. Ryer stated the letter from the abutters stating they should seek an answer from the Board of Health.

Mr. Crowell stated that he would like the full basement to be included in the Special Permit granting.

Mr. Sullivan asked for questions or comments from the public.

Mr. Ryer moved to close the Public Hearing, seconded by Mr. Donaghue.

Vote: 6:0 in favor. Motion carried. Public Hearing Closed.

Mr. Ryer stated the case meets the requirements of the Gail Case.

Mr. Donoghue moved to grant a Special Permit for **Case No. 2023-38 Nanci C. Hanron**, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at **38 Ocean Av, Assessors' Map 6B, Parcel H1-2**, in the RH-2 Zoning District, from §325-Attachment 2, Area regulations and §325-Attachment 3, Height & Bulk regulations. The proposed structure and addition of habitable space, indicating with a full basement to be created, will be an intensification of a pre-existing non-conforming dwelling and will not be substantially more detrimental to the neighborhood than the current structures because it will not create additional negative impacts with respect to traffic, noise, odor, and congestion. Granting is consistent with the Harwich Zoning By-laws §325-54 and MGL Chapter 40A Sections 6. Also, the Gale and Dietrich cases and related cases as they may be an intensification of one or more existing nonconformities. No new non-conformity and no substantial detriment to the entire neighborhood on a pre-existing non-conforming lot. Any relief not expressly granted hereunder is hereby denied. All work shall be performed in accordance with the submitted application of said grant and approval subject and conditions. During the life of the project there will be no demolition, exterior construction nor new landscaping between the dates of June 30 and Labor Day of any year. A violation of the terms and conditions of this Special Permit may be enforced as a violation of the Harwich Zoning By-law pursuant to MGL Chapter 40A Section 7 and the Harwich Zoning By-law as they may be amended from time to time.

Motion seconded by Mr. Ryer. Vote 5:0 in favor.

Motion carried. Special Permit Granted

Case No. 2023-39 Michael C. Fleming & Meghan E. Muenzberg, Trustees of the Fleming Family Irrevocable Trust, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at **41 Zylpha Rd, Assessors' Map 13, Parcel Y9-1**, in the RH-2 Zoning District. The Applicant seeks a Special Permit, or in the alternative a Variance, from §325-54 (5) & (6) to raze & replace a pre-existing nonconforming single-family dwelling, pursuant to the Harwich Zoning By-laws §325-52 and -54 and MGL Chapter 40A Sections 6 & 10.

Attorney Crowell and Meghan Muenzberg presented their case.

Mr. Donoghue read the case into the record.

Mr. Donoghue stated they had a letter of support from an abutter.

Mr. Sullivan assigned voting for this Case:

Members of the Board Voting: Al Donoghue, Dave Ryer, Tim Bailey, John August, and Ken Dickson.

Mr. Crowell stated that Dan Speakman is the Surveyor/Contractor and is seated in the audience.

Mr. Crowell stated that they are seeking relief for a raze & replace.

Mr. Crowell stated the setbacks for the proposed structure and that they are increasing non-conformities but will be making one existing non-conformity conforming.

Mr. Crowell stated that they are increasing the non-conformity of the set back from the front of the house to the road but that he believed it would not adversely affect the neighborhood as this is on the dead end of Zylpha Rd, Mr. Crowell stated there will be no change in the number of bedrooms and are not creating any new non-conformities.

Mr. Crowell stated that it will increase the habitable sq footage within the set back. Mr. Crowell stated that this meets the requirements of the Gail Case and asked the Board to grant the special permit.

Mr. Dickson asked for clarification on the setback for the westerly side of the proposed structure.

Mr. Ed Flemming stated he spoke with the abutters and stated they showed them the proposed plans.

Mr. Ryer asked if the septic tank is being moved.

Ms. Muenzberg stated it will be in the backyard where the patio is located.

Mr. August asked why they are shifting the building towards the street.

Mr. Crowell stated his client wanted a three-season porch.

Mr. August asked if this was due to topography.

Mr. Crowel answered no.

Mr. Sullivan asked what the time frame is for construction.

Mr. Crowell stated mid-February.

Mr. Speakman stated they will have room on the lot for construction vehicles.

Mr. Sullivan asked if there were comments from the public.

Mr. Ryer stated it meets the requirements of the by-law and the Gail Case.

Mr. Sullivan opened the Public Hearing.

After no response, Mr. Ryer moved to close the Public Hearing seconded by Mr. Dickson.

Vote 6:0 in favor. Motion carried.

Board discussion followed.

Mr. August moved to close the Board discussion, seconded by Mr. Ryer.

Vote 6:0 in favor. Motion carried.

Mr. Donoghue noted that the Applicants should try and get the work vehicles as close to the project as they can.

Mr. Donoghue moved to grant a Special Permit for, **Case No. 2023-39 Michael C. Fleming & Meghan E. Muenzberg, Trustees of the Fleming Family Irrevocable Trust**, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at **41 Zylpha Rd, Assessors' Map 13, Parcel Y9-1**, in the RH-2 Zoning District, from §325-54 (5) & (6) to raze & replace a pre-existing nonconforming single-family dwelling, pursuant to the Harwich Zoning By-laws §325-54 and MGL Chapter 40A Sections 6. The proposed structure and addition of habitable space to be created will be an intensification of the pre-existing non-conforming dwelling and will not substantially be more detrimental to the neighborhood than the current structure because it will not create any negative impact with respect to traffic, noise, odors, and congestion. Granting is consistent with the MGL 40A Gale/Dietrich and related cases as they may be an intensification of one for more existing non-conformities, no new non-conformity, and no substantial detriment to the entire neighborhood the pre-existing non-conforming lot. Any relief not expressly granted hereunder is hereby denied. All work will be done in accordance with the plans submitted with the application. The grant and approval are subject to the following conditions: During the life of the project there shall be no demolition, exterior construction, or new landscaping during the period of June 30 to Labor Day of any year. A violation of the terms and conditions of this Special Permit may be enforced as a violation of General Law 40A Section 7 and the Harwich Zoning By-law as they may be amended from time to time.

Seconded by Mr. Ryer. Vote 5:0 in favor.
Motion carried. Special Permit Granted.

Mr. Sullivan called a 4-minute break.

Case No. 2023-36 David Crosbie, c/o Benjamin E. Zehnder 62 Route 6,4., Suite B, Orleans, MA 02653, owner of the property located at **481 Depot Street, Assessors' Map 36, Parcel B1** in the IL & RR Zoning Districts. The Applicant seeks a Special Permit from s325-51Q Multifamily Special Permit, S325-54A (2) Nonconforming Structures and Uses, s325-2 Word Uses and Definitions, s325-8 Applicability of Use Regulations (use 39 self-storage), pursuant to the Harwich Zoning By-laws s325-51 and MGL Chapter 40A Section 9. **(Continued from 11.29.2023)**

Mr. Donoghue read Case No. 2023-36 as presented.

Mr. Sullivan noted information he had requested from Town Counsel and the two documents that had been shared with the Applicant and the Board. He also noted for the record that David Ryer and Al Donoghue, who were not present for the 11/29/23 meeting, have completed the requirements of the Mullen Rule and have signed the Mullen Document which was recorded with the Town Clerk. Therefore, both can participate and be available to be assigned by the Chair to vote in this meeting as well as any subsequent meeting as necessary.

Mr. Sullivan assigned voting for this Case:

Members of the Board Voting: Brian Sullivan, Dave Ryer, Tim Bailey, John August, and Ken Dickson.

Mr. Sullivan moved to open the Public Hearing, seconded by Mr. Donoghue.

Vote 6:0 in favor. Motion carried.

Atty. Zehnder was present with David Crosbie and reviewed the details of the proposed project. He also noted what Town Counsel had opined. He requested that if the Board requires a Dimensional Variance or Use Variances, that they have a discussion tonight regarding how the Board views the application considering the requirements in order for the Applicant to plan next moves.

Discussion followed regarding which use, site and building variances would be required.

Board members asked questions and expressed concerns which Atty. Zehnder and Mr. Crosbie answered and addressed. Ms. Lohr, Zoning Compliance Officer also asked questions and contributed information. An extensive discussion followed regarding the different options on how the situation could be addressed. Board members requested specific information from Atty. Zehnder that they feel would be helpful in their decision-making process.

Atty. Zehnder expressed thanks to the Board for their feedback and will supply the requested information. He did not request a straw vote but will request a continuance.

Allen Hall of Depot Street was present and gave a brief history of the zoning process in Harwich. He told the Board about the positive discussions he and Mr. Crosbie have had regarding the proposed project.

Maura Hall was present and expressed her opinion and concerns about the proposed project.

Mr. Ryer moved to close the Public Hearing, seconded by Mr. Dickson.

Vote 6:0 in favor. Motion carried.

Atty. Zehnder requested a continuance to approximately 30 days out.

Mr. Ryer moved that Case No. 2026-36 David Crosbie be continued to the first case heard on January 31, 2024, at 6:30PM, seconded by Mr. Dickson.

Vote 6:0 in favor. Motion carried; case continued.

Mr. August moved to close the Board discussion, seconded by Mr. Dickson.

Vote 6:0 in favor. Motion carried.

Atty. Zehnder will supply updated plans and other requested materials at least 7 days prior to the next meeting.

It was noted by Ms. Lohr and Mr. Sullivan that if there will be a change in the application relief being sought, the Applicant will be required to reapply. Ms. Lohr noted that the filing deadline for the January 31, 2024, meeting is December 28, 2023.

Mr. Ryer moved to waive the fees for filing an additional application, seconded by Mr. Dickson.

Vote 6:0 in favor. Motion carried.

III. APPROVAL OF MINUTES

– November 29, 2023

Mr. Dickson moved to approve the Minutes of the November 29, 2023, meeting as published, seconded by Mr. Donoghue.

Vote 5:0:1 in favor with Mr. Ryer abstaining. Motion carried.

IV. NEW BUSINESS

The Board discussed changing the requirement on the Application to submit a Site Plan in an 11 x 17 size.

Mr. Ryer moved to amend the Notice of Appeal/Application of Petition for Public Hearing, instead of 8 1/2 by 11 certified Plot Plans, full sized certified Plot Plans will be required. The remaining information will remain the same. seconded by Mr. August.

Vote 6:0 in favor. Motion carried.

V. OLD BUSINESS

Discussion of zoning regulations

Mr. Sullivan referred to a meeting that he attended with Ms. Lohr, Zoning Compliance Officer, Jack Mee Building Commissioner and Christine Flynn, Planner and Director of Community Development regarding possible Zoning changes. He summarized the discussion and asked for Board members' feedback. He distributed information discussed at that meeting about split zoning to all Board members. Board members and Ms. Lohr discussed the information, made comments and suggestions.

Ms. Lohr referred to amendments that have already been voted on and passed. She will supply that information to Board members.

VI. CORRESPONDENCER/BRIEFINGS

VII. ADJOURN

Mr. August moved to adjourn, seconded by Mr. Ryer.

Vote 6:0 in favor. Meeting adjourned at 9:29PM.

Respect fully submitted,

Rachel Lohr
Board Secretary