

**MINUTES
TOWN OF HARWICH
ZONING BOARD OF APPEALS
6:30PM WEDNESDAY, FEBRUARY 28, 2024
TOWN HALL - GRIFFIN ROOM**

RECEIVED
TOWN CLERK
HARWICH, MA
2024 APR 10 P 1:38

MEMBERS PARTICIPATING: Chairman Brian Sullivan, Kenneth Dickson, Al Donoghue, David Nunnally, Timothy Bailey, John August, and Chris Murphy

ALSO PARTICIPATING:

I. CALL TO ORDER; RECORDING NOTICE

Mr. Sullivan opened the meeting of the Town of Harwich Zoning Board of Appeals on Wednesday, February 28, 2024, at 6:30PM. Members of the Board introduced themselves for the record.

II. PUBLIC HEARINGS

Case No. 2024-03 DFN INC., c/o Daniel Serber, 177 Huntington Ave, Ste 1703 #73069, Boston, MA 02115, owner of the property located at **0 Depot Rd Assessors' Map 64, Parcel S1**, in the RR Zoning District. The Applicant seeks a Variance, from §325-54B Non-conforming Uses, and §325-Attachment 1, Table 1, Use Regulations to construct a large-scale ground mounted solar array, pursuant to the Harwich Zoning By-laws §325-52 and MGL Chapter 40A Section 10. (Continued from January 31, 2024)

Mr. Donoghue read Case No. 2024-03 as presented.

Mr. Sullivan stated he would have the applicant restate their case and noted Mr. August has completed the Mullin rule to participate in this matter.

Mr. Yergatian with BSC Group and Michale Patterson with Nextgrid presented their case.

Mr. Patterson gave a summary of the proposed project stating they are requesting a Use Variance for a large-scale ground mounted solar; he also noted this variance was previously approved by the board in 2021.

Mr. Sullivan stated at the last meeting there were discussions regarding possible conditions and stated that Town Counsel had reviewed the proposed conditions and have decided that a condition would be for the applicants enter into a decommissioning agreement with the Town.

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

Mr. Donoghue moved to close the Public Hearing, seconded by Mr. Murphy.

Vote: 7:0 in favor. Motion carried. Public Hearing Closed.

Mr. Sullivan assigned the voting members.

Members of the Board Voting: Al Donoghue, Brian Sullivan, David Nunnally, Chris Murphy, and Kenneth Dickson.

Mr. August questioned if the lots around the lot will continue to be used as gravel pits.

Mr. Patterson stated that they will not. Mr. Patterson then presented existing and proposed plans to the Board noting there will be a chain link fence around the property.

The Board had no further questions.

Mr. Donoghue moved to **grant a Use Variance for Case No. 2024-03 DFN INC.**, c/o Daniel Serber, 177 Huntington Ave, Ste 1703 #73069, Boston, MA 02115, owner of the property located at **0 Depot Rd Assessors' Map 64, Parcel S1**, in the RR Zoning District, from §325-54B Non-conforming Uses, and §325-Attachment 1, Table 1, Use Regulations to construct a large-scale ground mounted solar array, pursuant to the Harwich Zoning By-laws §325-52 and MGL Chapter 40A Section 10, due to the shape/topography of the land, as the failure of the Board to make this grant will result in a substantial hardship to the applicant. The Board further finds that the condition is specific to this property and does not generally affect the entire district. There will be no substantial detriment to the public good by the granting of this Variance and that its granting will not nullify or substantially derogate from the intent or purpose of the Bylaw. All work shall be performed in accordance with the plans. Said grant and approval are subject to the following conditions.

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:

1. Granting of the Use Variance is subject to the Applicant entering into a decommissioning agreement/contract with the Town of Harwich, for the photovoltaic system (solar array) project.
2. It is a condition of this Variance that the Applicant fully complies with all the provisions of Bylaw Article XXIII. Large-Scale Ground-Mounted Photovoltaic Arrays, including conducting all reviews by, and obtaining all approvals of, the Planning Board which are specified in Article XXIII, including, but not limited to, the posting of the surety specified in Section 325-148.
3. That for the life of the approved project, all construction vehicles will be parked on the Applicant's property and not on any public street or road.
4. 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 the Harwich Zoning Bylaw, as these may be amended from time to time.

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

Motion carried. Use Variance Granted

Case No. 2022-19 Matthew C. and Pamela A. Menzel, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at **25 Cross St, Assessors' Map 14, Parcel S5**, in the RM zoning District. The Applicant seeks an extension to the Special Permit, to raze and replace a non-conforming detached garage, pursuant to the Harwich Zoning By-laws §325-54 and MGL Chapter 40A Sections 6.

Mr. Donoghue read Case No. 2022-19 as presented.

Attorney Crowell presented his case to the Board, stating they are requesting a 6-month extension to their previously approved special permit, sitting covid, the unavailability of builders and costs of materials.

The Board did not have any questions.

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

Mr. Dickson moved to close the Public Hearing, seconded by Mr. Murphy.
Vote: 7:0 in favor. Motion carried. Public Hearing Closed.

Mr. Sullivan assigned the voting members.

Members of the Board Voting: Al Donoghue, David Nunnally, Timothy Bailey, John August, and Kenneth Dickson.

Mr. Donoghue moved to close discussion, seconded by Mr. August.
Vote: 5:0 in favor. Motion carried. Discussion Closed.

Mr. Donoghue moved to **grant an extension to the Special Permit for Case No. 2022-19 Matthew C. and Pamela A. Menzel**, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at **25 Cross St, Assessors' Map 14, Parcel S5**, in the RM zoning District, to raze and replace a non-conforming detached garage, pursuant to the Harwich Zoning By-laws §325-54 and MGL Chapter 40A Sections 6. The extension will be for six month period, until November 25, 2024, to the Special Permit granted on May 25, 2022, and said decision filed with the Town Clerk on June 9, 2022, and recorded on June 30, 2022, in Book 35223 Page 225 at the Barnstable County Registry of Deeds, to raze and replace a non-conforming detached garage, pursuant to the Harwich Zoning By-laws §325-54 and MGL Chapter 40A Section 6. Any relief not expressly granted hereunder is hereby denied. Said grant and approval are subject to the conditions included in Decision filed with the Town Clerk on June 9, 2022.

Motion seconded by Mr. Dickson. Vote 5:0 in favor.
Motion carried. Extension for a Special Permit Granted

Case No. 2024-04 James & Irene Najjar, 118 East 5th Street Brooklyn, NY 11218, owner of the property located at **20 Vacation Lane, Assessors' Map 72, Parcels L274**, in the RR Zoning District. The Applicant seeks a Special Permit or in the alternative a Variance from §325-Attachment 2, Area regulations and §325-54 non-conforming structures and uses, to construct a deck addition on pre-existing non-conforming single-family dwelling pursuant to the Harwich Zoning By-laws §325-52 and -54 and MGL Chapter 40A Sections 6 & 10.

Mr. Donoghue read Case No. 2024-04 as presented.

Mr. Sullivan stated the board received several abutters letters.

Mr. Donoghue read the letters.

Jams and Irene Najjar owners presented their case to the board, giving a summary of the proposed deck extension noting that they will not be increasing the existing non-conforming setback.

Mr. Najjar stated the stairs on the side of the structure will be removed.

There were no questions from the Board.

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

Mr. Dickson moved to close the Public Hearing, seconded by Mr. Murphy.
Vote: 7:0 in favor. Motion carried. Public Hearing Closed.

Mr. Sullivan assigned the voting members.

Members of the Board Voting: Al Donoghue, Christopher Murphy, Timothy Bailey, John August, Kenneth Dickson.

Mr. Donoghue moved to close discussion, seconded by Mr. August.
Vote: 7:0 in favor. Motion carried. Discussion Closed.

Mr. Donoghue moved to **grant a Special Permit** for **Case No. 2024-04 James & Irene Najjar**, 118 East 5th Street Brooklyn, NY 11218, owner of the property located at **20 Vacation Lane, Assessors' Map 72, Parcels L274**, in the RR Zoning District, from §325-Attachment 2, Area regulations and §325-54 non-conforming structures and uses, to construct a deck addition on pre-existing non-conforming single-family dwelling pursuant to the Harwich Zoning By-laws §325-54 and MGL Chapter 40A Sections 6. The proposed structure will be an intensification of pre-existing, non-conformities and will not be substantially more detrimental to the neighborhood than the current structure because it will not create any additional negative impacts with respect to traffic, noise, odor, and congestion. Granting is consistent with the Harwich By-laws, MGL Chapter 40A, Gale, Deadrick and related cases as there will be an intensification of one or more existing non-conformities, 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 plans submitted with this application. Said grant and approval are subject to the following conditions.

1. During the life of the project, there shall be no demolition, exterior construction or new landscaping between June 30th and Labor Day of any year.
2. That for the life of the approved project, all construction vehicles will be parked on the Applicant's property and not on any public street or road.
3. 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. c 40A, Sec. 7 and the Harwich Zoning Bylaw, as these may be amended from time to time.

Motion seconded by Mr. Dickson. Vote 5:0 in favor.
Motion carried. Special Permit Granted

Case No. 2024-05 Clifford & Rebecca Willy, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at **9 Hiawatha Road, Assessors' Map 6, Parcel G5-1**, in the RH-1 Zoning District. The Applicant seeks a Special Permit, or in the alternative a Variance, from §325 Attachment 2, Table 2, Area Regulations, and §325 Attachment 3, Table 3, Height & Bulk Regulations 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.

Mr. Donoghue read Case No. 2024-03 as presented.

Attorney Crowell presented their case to the Board, giving a summary of the proposed project, stating that they are seeking a special permit to raze and replace the existing single-family dwelling. Mr. Crowell noted the proposed setbacks, building and site coverage. Mr. Crowell stated this meets the requirements of the Gale and Detrick cases and requests the Board to grant the special permit.

Mr. Sullivan and the applicants discussed how water runoff would be managed.

Mr. August asked for clarification on the height of the structure.
Mr. Crowell stated it is calculated based off the average grade.
Mr. Sullivan asked if there were comments from the public.

Mr. Donoghue moved to close the Public Hearing, seconded by Mr. Murphy.
Vote: 7:0 in favor. Motion carried. Public Hearing Closed.

Mr. Sullivan assigned the voting members.

Members of the Board Voting: Al Donoghue, David Nunnally, Christopher Murphy, Timothy Bailey, and John August.

Mr. Nunnally moved to close discussion, seconded by Mr. August.
Vote: 7:0 in favor. Motion carried. Discussion Closed.

Mr. Donoghue moved to **grant a Special Permit for Case No. 2024-05 Clifford & Rebecca Willy**, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at **9 Hiawatha Road, Assessors' Map 6, Parcel G5-1**, in the RH-1 Zoning District, from §325 Attachment 2, Table 2, Area Regulations, and §325 Attachment 3, Table 3, Height & Bulk Regulations 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 will be an intensification of pre-existing, non-conformities and will not be substantially more detrimental to the neighborhood than the current structure because it will not create any additional negative impacts with respect to traffic, noise, odor, and congestion. Granting is consistent with the Harwich By-laws, MGL Chapter 40A, Gale, Deadrick and related cases as there will be an intensification of one or more existing non-conformities, 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 plans submitted with this application. Said grant and approval are subject to the following conditions.

1. During the life of the project, there shall be no demolition, exterior construction or new landscaping between June 30th and Labor Day of any year.
2. That for the life of the approved project, all construction vehicles will be parked on the Applicant's property and not on any public street or road.
3. 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. c 40A, Sec. 7 and the Harwich Zoning Bylaw, as these may be amended from time to time.

Motion seconded by Mr. Murphy. Vote 5:0 in favor.
Motion carried. Special Permit Granted

Case No. 2024-06 David Crosbie, c/o Benjamin E. Zehnder, 62 Route 6A, 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, or in the alternative a Use Variance, from §325 Attachment 1, Table 1, Use Regulations and, to convert a pre-existing non-conforming two-family dwelling into a Multifamily dwelling and construct a new Self Storage Building. The applicant also seeks a Special Permit, or in the alternative a dimensional Variance, from §325 Attachment 3, Table 3 Height & Bulk Regulations to increase the pre-existing, non-conforming site coverage in the RR Zoning District portion of the property, pursuant to the Harwich Zoning By-laws §325-52 and -54 and MGL Chapter 40A Sections 6 & 10.

Mr. Donoghue read the case as presented.

David Crosby owner, and Attorney Zehnder presented their case to the Board.

Mr. Zehnder gave a summary of the proposed project noting it is in a split zone lot, and the 2 use variances that would be required, one to convert the two-family dwelling into a multi-family and to construct a self-storage unit in the RR portion of the lot.

Mr. Zehnder noted that the previous proposal had 3 buildings but that the current proposal only has 1 new proposed self-storage building.

Mr. Zehnder stated the hardship is due to the shape of the lot and the fact it is in 2 different zoning districts, also stating there would be financial hardship.

The Board and the applicants had discussion on whether this project also needed a use variance for Mixed Use Development. After discussion there was an agreement to re-advertise the case to include the use variance for Mixed Use Development and that the case would be continued to the next public hearing.

Mr. August moved to continue Case **2024-006 David Crosbie**, c/o Benjamin E. Zehnder, 62 Route 6A, Suite B, Orleans, MA 02653, owner of the property located at **481 Depot Street, Assessors' Map 36, Parcel B1**, to the first case heard on March 27, 2024, at 6:30PM, seconded by Mr. Dickson.

Vote 5:0 in favor. Motion carried; case continued.

III. APPROVAL OF MINUTES

A. January 31, 2024, Meeting Minutes.

Mr. Donoghue moved to approve the Minutes of the January 31, 2024, meeting as published, seconded by Mr. Ryer.

Members of the Board voting: Al Donoghue, Brian Sullivan, David Nunnally, Timothy Bailey, Chris Murphy, Kenneth Dickson, John August.

Vote 6:0 Motion carried. Minutes Approved.

IV. NEW BUSINESS

V. OLD BUSINESS

VI. CORRESPONDENCER/BRIEFINGS

VII. ADJOURN

Mr. Dickson moved to adjourn, seconded by Mr. Donoghue.

Vote 6:0 in favor. Meeting adjourned at 9:00 PM.

Respect fully submitted,

Rachel Lohr
Board Secretary