

**MINUTES
TOWN OF HARWICH
ZONING BOARD OF APPEALS
6:30PM WEDNESDAY, MARCH 27, 2024
TOWN HALL - GRIFFIN ROOM**

2024 APR 25 P 12:30
RECEIVED
TOWN CLERK
HARWICH MA

MEMBERS PARTICIPATING: Chairman Brian Sullivan, Al Donoghue, David Nunnally, John August.

ALSO PARTICIPATING: Rachel Lohr Zoning Compliance Officer, Amy Kwesell Town Counsel

I. CALL TO ORDER; RECORDING NOTICE

Mr. Sullivan opened the meeting of the Town of Harwich Zoning Board of Appeals on Wednesday, March 27, 2024, at 6:30PM. Members of the Board introduced themselves for the record.

II. PUBLIC HEARINGS

Mr. Sullivan made a motion to reorder the agenda, moving Case No. 2024-06 to the last item to be heard under Public Hearings. Seconded by Mr. Donoghue

Members of the Board voting: Brian Sullivan, Al Donoghue, David Nunnally, John August.

Motion seconded by Mr. Donoghue. Vote 4:0 in favor.

Motion carried.

Case No. 2024-07 Mathew and Jenifer Davis, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at **67 Ginger Plum Lane, Assessors' Map 5, Parcel G1-4**, in the RH-1 Zoning District. The Applicant seeks a Special Permit or in the alternative a Variance from §325-54 Non-conforming Structures and Uses and §325 Attachment 2, Table 2, Area Regulations, §325 Attachment 3, Table 3 Height and Bulk Regulations to raze and replace a pre-existing nonconforming single-family dwelling, pursuant to the Harwich Zoning By-laws §325-54 and MGL Chapter 40A Sections 6.

Mr. Donoghue read Case No. 2024-07 as presented.

Mr. Sullivan noted comments submitted by internal departments.

Mr. Crowell gave a summary of the proposed project stating the proposed new single-family home will be more parallel to the road than the previous structure. Mr. Crowell also stated the proposed setbacks noting they will be intensifying one setback but decreasing the north setback.

Mr. Crowell stated the building and site coverage will remain conforming and that no new non-conformities will be created.

Mr. Crowell stated this case meets the requirements of the Gale and Deidrick case and requested the Board grant the Special Permit.

Mr. Sullivan questioned the setback from the access to the basement.

Mr. Crowell stated they are ground level but are considered a structure.

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

Mr. Crowell stated he was not sure if construction would start before summer.

Mr. Sullivan asked if they will be able to maintain construction vehicles on the property.

Mr. Crowell stated they would.

Mr. Sullivan asked for comments from the public.

Mr. Donoghue moved to close the Public Hearing, seconded by Mr. Nunnally
Vote: 4:0 in favor. Motion carried. Public Hearing Closed.

Mr. Sullivan assigned the voting members.

Members of the Board voting: Brian Sullivan, Al Donoghue, David Nunnally, John August.

The Board had no further questions.

Mr. August moved to close discussion, seconded by Mr. Donoghue.
Vote: 4:0 in favor. Motion carried. Discussion Closed.

Mr. Donoghue moved to **grant a Special Permit** for **Case No. 2024-07** Mathew and Jenifer Davis, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at **67 Ginger Plum Lane, Assessors' Map 5, Parcel G1-4**, in the RH-1 Zoning District, from §325-54 Non-conforming Structures and Uses and §325 Attachment 2, Table 2, Area Regulations, §325 Attachment 3, Table 3 Height and Bulk Regulations to raze and replace a pre-existing nonconforming single-family dwelling, pursuant to the Harwich Zoning By-laws §325-54 and MGL Chapter 40A Section 6. Granting is consistent with the 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 and as the proposed structure will not create any additional negative impacts with respect to traffic, noise, odor, and congestion. 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. 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 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. August. Vote 4:0 in favor.

Motion carried. Special Permit Granted

Case No. 2024-08 Katharina Zuellig, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at **708 Main St, Assessors' Map 41, Parcel B5**, in the CV and Harwich Center Overlay Zoning Districts. The Applicant seeks a Special Permit or in the alternative a Variance from §325-54 Non-conforming Structures and Uses and §325 Attachment 2, Table 2, Area Regulations to relocate the pre-existing nonconforming single-family dwelling on the same lot, construct an addition with an attached deck, and detach the existing shed from the rear of the dwelling and relocate on the same lot, pursuant to the Harwich Zoning By-laws §325-54 and MGL Chapter 40A Sections 6.

Mr. Donoghue read Case No. 2024-08 as presented.

Mr. Sullivan read comments from the Health Department.

Mr. Crowell gave a summary of the proposed project, noting the history of the lot and structure.

Mr. Crowell stated this project has already received approval from the Harwich Historical Commission and Historic District.

Mr. Crowell stated they would like to move the house further back from the road, noting that this is not a raze and replace, but a relocating of the existing structure. Mr. Crowell pointed out that the shed will only be 5ft from the lot line but that this is allowable as the shed is less than 100sq feet.

Mr. Crowell stated they would address the Board of Health issues once the septic permit is applied for but that any changes to the interior that may need to be made would not affect the footprint of the structure.

Mr. Crowell explained the proposed setbacks, and stated the project meets the requirements of the Gale and Deidrick cases and requested the Board grant the Special Permit.

Mr. Sullivan asked what the construction time frame is.

Mr. Crowell stated the owner would like to start as soon as possible, but asked if the Board would impose a time restriction on the Board.

Mr. Sullivan discussed the possibility but noted this lot has room to have construction vehicles on the lot.

Mr. August stated that he has concerns about construction going on in the summer while town events will be held during the same time frame.

Mr. Crowell suggested conditioning construction to be only during working hours.

Mr. Sullivan suggested June through Labor Day construction is limited to Monday – Friday during daytime hours.

Mr. Sullivan asked if the property would be fenced during construction.

Mr. Donoghue stated this section of the Town is busy and noted his concerns.

Mr. Sullivan asked for comments from the public.

Mr. Nunnally moved to close the Public Hearing, seconded by Mr. Donoghue.
Vote: 4:0 in favor. Motion carried. Public Hearing Closed.

Mr. Sullivan assigned the voting members.

Members of the Board voting: Brian Sullivan, Al Donoghue, David Nunnally, John August.

The Board discussed possible conditions.

Mr. Donoghue moved to close discussion, seconded by Mr. August.
Vote: 4:0 in favor. Motion carried. Discussion Closed.

Mr. Donoghue moved to **grant the Special Permit** for **Case No. 2024-08 Katharina Zuellig**, c/o William D. Crowell, Esq., 466 Route 28, Harwich Port, MA 02646, owner of the property located at **708 Main St, Assessors' Map 41, Parcel B5**, in the CV and Harwich Center Overlay Zoning Districts., from §325-54 Non-conforming Structures and Uses and §325 Attachment 2, Table 2, Area Regulations to relocate the pre-existing nonconforming single-family dwelling on the same lot, construct an addition with an attached deck, and detach the existing shed from the rear of the dwelling and relocate on the same lot, pursuant to the Harwich Zoning By-laws §325-54 and MGL Chapter 40A Sections 6. Granting is consistent with the 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 and as the proposed structure will not create any additional negative impacts with respect to traffic, noise, odor, and congestion. 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. During the life of the project, all site work, including demolition, construction and landscaping during June 30th and Labor Day of any year should be limited to daylight hours, Monday through Friday and conclude by 5PM. During the life of the project the applicant will suspend all site work during special Harwich community events scheduled in the vicinity of Harwich center and Brooks Park neighborhoods.
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. Nunnally. Vote 4:0 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, to convert a pre-existing non-conforming two-family dwelling into a Multifamily dwelling, a Special Permit, or in the alternative a Use Variance, from §325 Attachment 1, Table 1, Use Regulations to construct a new Self Storage Building, a Special Permit, or in the alternative a Use Variance, from §325 Attachment 1, Table 1, Use Regulations to create a Mixed Use Development. 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. **(Continued from 02.28.2024)**

Mr. Donoghue read Case No. 2024-06 as presented.

Mr. Sullivan made a motion to re-open the hearing.

Seconded by Mr. Nunnally

Vote 4-0 in favor motion carries Public Hearing re-opened.

Mr. Zehnder asked that the Board vote to continue the hearing.

Mr. Sullivan stated that he would like to discuss with the Board the possibility of approving a variance to create a new non-conformity.

Ms. Kwesell stated the applicant is requesting a valid request for a continuance.

Mr. Sullivan asked the Board to have a discussion about the creation of the new non-conformity and the possibility of approval.

Mr. Zehnder stated the proposed project has already been reduced in size and stated that at previous hearings they have already argued what the hardship is, and that reducing the building size again would be a hardship for the property owners.

Mr. Sullivan and the applicant discussed the zoning line discretion of the IL Zoning Boundary line, and how that has changed the site plan and application.

Mr. Sullivan discussed possibilities of re-advertising to include the new dimensional variance and stated he was not sure if re-advertising was necessary.

Mr. Zehnder stated he disagreed, and noted that if the Board wanted to, they could submit a new narrative.

Mr. Sullivan came to an agreement with the applicant.

Mr. August stated that with the new site plan the storage building is now entirely within the RR portion of the lot, but that the hardship of the split zone lot was still present.

Mr. Sullivan stated he believes the proposed project is in accordance with the neighborhood.

Ms. Kwesell stated the split zone lot meets the hardship requirements.

Mr. Donoghue stated he does not have any comments.

Mr. Zehnder asked the Board to vote to amend the application and re-advertise the project.

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

Mr. Donoghue moved to close the Public Hearing, seconded by Mr. August.
Vote: 4:0 in favor. Motion carried. Public Hearing Closed.

Mr. Sullivan assigned the voting members.

Members of the Board voting: Brian Sullivan, Al Donoghue, David Nunnally, John August.

Mr. Sullivan moved to continue and re-advertise **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 to the next public hearing on April 27, 2024, at 6:30pm.

Motion seconded by Mr. August. Vote 4:0 in favor.
Motion carried. Case No. 2024-06 continued.

III. APPROVAL OF MINUTES

A. February 28, 2024, Meeting Minutes.

Mr. Sullivan moved to approve the Minutes of the February 28, 2024, meeting as published, seconded by Mr. Nunnally.

Members of the Board voting: Brian Sullivan, Al Donoghue, David Nunnally, John August.

Vote 4:0 Motion carried. Minutes Approved.

IV. NEW BUSINESS

A. Process to update Zoning Map and reference in Harwich Zoning Code.

The Board discussed the process of updating the Zoning Map, and how confirmation for split zone lots can be made for applications before it will be heard by public hearing.

V. OLD BUSINESS

A. Building Height Regulations.

The Board and Zoning Compliance Officer discussed building height regulations and how the building height should be determined and confirmed by staff.

VI. CORRESPONDENCER/BRIEFINGS

VII. ADJOURN

Mr. Sullivan moved to adjourn, seconded by Mr. Nunnally.

Vote 4:0 in favor. Meeting adjourned at 7:53 PM.

Respect fully submitted,

Rachel Lohr
Board Secretary