

**MINUTES
TOWN OF HARWICH
ZONING BOARD OF APPEALS
6:30PM THURSDAY, JANUARY 29, 2025
TOWN HALL – GRIFFIN HEARING ROOM**

MEMBERS PARTICIPATING: Chairman Brian Sullivan, Al Donoghue, Christopher Murphy, Kenneth Dickson, and John August.

ALSO PARTICIPATING: Rachel Lohr Zoning Compliance Officer.

MEMBERS ABSENT: Timothy Bailey, and David Nunnally.

I. CALL TO ORDER; RECORDING NOTICE

Mr. Sullivan opened the meeting of the Town of Harwich Zoning Board of Appeals on Wednesday, January 29, 2025, at 6:30PM. Members of the Board introduced themselves for the record.

II. PUBLIC HEARINGS

Case No. 2025-01, Daniel & Jessica Turk, c/o James M. Norcross Esq., P.O Box 707, Chatham, MA 02633, owner of the property located at **1684 Orleans Rd, Assessors' Map 113, Parcel W1-2, and 240 Pleasant Bay Rd, Assessors' Map 113, Parcel W2** in the RR Zoning District. The Applicant seeks a Variance from §325 – Attachment 2, Table 2, Area Regulations, to create a new panhandle lot, pursuant to the Harwich Zoning By-laws §325- 52 and MGL Chapter 40A Section 10.

Mr. Donoghue read Case No. 2025-01 as presented.

Mr. Sullivan read comments submitted from internal departments and a letter submitted by an abutter.

Attorney James Norcross presented the case to the Board.

Mr. Norcross presented a handout to the Board members.

Mr. Norcross presented the case to the Board, giving a history of the lots stating the previous owners and how the lot is currently developed. Mr. Norcross described to the Board how the new panhandle lot would be created by taking a portion of 240 Pleasant Bay Rd to give 35ft of frontage to 1684 Orleans Rd creating a panhandle lot where no frontage currently exists, but that it would still lack the required minimum lot size of 40,000sq ft, for the zoning district the lot is located in.

Mr. Norcross gave a summary of the structures that are located on 240 Pleasant Bay Rd and how 1684 Orleans Rd is developed with a commercial garage. Mr. Norcross argued that this case met

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the requirements of a Variance as the lot has a unique hardship as this is a developed land locked lot. Mr. Norcross argued a literal enforcement of the by law would greatly reduce the use of the lot as it would not allow them to construct a single-family dwelling. Mr. Norcross argued that granting relief would not be a substantial detriment to the entire neighborhood.

Mr. Norcross provided a list of the size of lots in the same neighborhood.

Mr. Sullivan stated questioned when the easement to 1684 Orleans Rd. was created.

Mr. Norcross stated when 1684 Orleans Rd was sold separately from 240 Pleasant Bay Rd, but that since now the properties are now held in common ownership the easement had been expunged.

Mr. Sullivan stated that he feels this could be a self-created hardship as the property owners should have known the lot size and frontage requirements when they purchased the properties.

Mr. Norcross stated that as part of the hardship is that the owners would like to construct a single-family home they would move into and then sell 240 Pleasant Bay Rd, and without the Variance they would not be able to do so.

Mr. Dickson stated that he thought it met the qualifications for the Variance.

Mr. August stated he agreed with Mr. Dickson and that the proposed use would be more in line with the neighborhood. Mr. August stated the future home would need to comply with all zoning regulations.

Mr. Norcross agreed.

Mr. Murphy stated that he thought a single-family home would be beneficial to the neighborhood but thought that no further relief should be granted for the lot.

Mr. Donoghue stated he agreed with Mr. Dickson.

The Board discussed that they would like to see a single-family home instead of the current commercial garage as the use of the lot.

An abutter Cathy Carhart spoke to the board stating that the Turk's purchased their property knowing the zoning regulations and that they had clear cut the property. Ms. Carhart also felt the current structure is not an eye sore. Ms. Carhart stated she had concerns about previously stored oil tanks on the lot.

Nancy Ladue spoke to the Board stating she has a deeded egress from 240 Pleasant Bay Rd.

Mr. Norcross stated they are not aware of any easement.

An abutter Bethany Opishinski spoke to the Board with concerns about keeping the neighborhood residential and that a new commercial business would increase the traffic on an already busy intersection. Ms. Opishinski stated she was in favor of the Board granting the Variance.

Mr. Norcross reiterated that a single-family home would be an improvement to what is there now and inline with the rest of the neighborhood.

Information Submitted as part of this application which will be incorporated in this decision include:

1. Application and Narrative.
2. Certified Plot Plan by Paul E. Sweetser, P.L.S., dated 07/05/2024 and revised 01/27/2025.
3. Interdepartmental Comments.
4. Site Summary Dated 01/15/2025.
5. A duly advertised hearing on 01/29/2025.

Mr. Dickson moved and Mr. Murphy Seconded that the Board, after viewing the Property in question and 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 lots are located in the RR Zoning Districts.
2. The proposed Panhandle lot at 1684 Orleans Rd will have an area of 29,515 sq ft, short of the 40,000 sq ft lot area requirement.
3. 1684 Orleans Rd will have frontage on Orleans Rd of 35ft and a length of 142.42 feet which meets the requirement for a panhandle lot where the width is at least 35' and the length is not greater than 300 ft.
4. In conjunction with the Application a 4,999 sq ft section of 240 Pleasant St will be subdivided to combine with 1684 Orleans Rd with 35 ft of frontage on Orleans Rd, where no frontage currently exists and increase the size of 1684 Orleans to 29,515 sq ft.
5. 240 Pleasant Bay Rd will remain conforming at 40,894 sq ft
6. There are no impacts with respect to traffic, noise, odor, and congestion.
7. Review and approval by the Harwich Planning Board is required.
8. 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.

Members of the Board voting: Brian Sullivan, Al Donoghue, Christopher Murphy, Kenneth Dickson, and John August.

The Board Voted 5-0-0 in favor, accepting the findings and conditions.

Mr. Dickson moved to close the Public Hearing, seconded by Mr. August
Vote: 5:0 in favor. Motion carried. Public Hearing Closed.

Mr. Sullivan assigned the voting members for the case.

Members of the Board voting: Brian Sullivan, Al Donoghue, Christopher Murphy, Kenneth Dickson, and John August.

Mr. Murphy stated he believed a nonconforming use of a structure can contribute to the uniqueness of the existing lot.

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

Mr. Donoghue made a motion to grant the Variance.

Mr. Donoghue moved to **grant the Variance** for Case No. **2025-01, Daniel & Jessica Turk** c/o James M. Norcross Esq., P.O Box 707, Chatham, MA 02633, owner of the property located at **1684 Orleans Rd, Assessors' Map 113, Parcel W1-2, and 240 Pleasant Bay Rd, Assessors' Map 113, Parcel W2** in the RR Zoning District, from Attachment 2, Table 2, Area Regulations, to create a new panhandle lot, pursuant to the Harwich Zoning By-laws §325- 52 and MGL Chapter 40A Section 10. The grant and approval are subject to the following conditions:

1. Review and approval by the Harwich Planning Board is required.
2. 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. Variance Granted

Case No. 2025-02, DMTL, LLC, c/o William D. Crowell, Esq., & Michael G. Donovan, Esq., P.O Box 185, Harwich Port, MA 02646, owner of the property located at **10 Route 28, Assessors' Map 10, Parcel C4**, in the CH-1, RM, and West Harwich DCPC Zoning Districts. The Applicant seeks a Special Permit or in the alternative a Variance from §325-54 A (7) "Alteration or extension of other structures", and §325 – Attachment 2, Table 2, Area Regulations, to construct and addition and renovate on a pre-existing nonconforming barn. pursuant to the Harwich Zoning By-laws §325-52 and 54 and MGL Chapter 40A Sections 6 and 10.

Mr. Donoghue read Case No. 2025-02 as presented.

Mr. Donoghue read comments submitted from internal departments.

Attorney Michael Donovan presented the case to the Board on behalf of the property owners.

Mr. Donovan presented the case to the Board giving a summary of the proposed project, noting that this property is in 2 zoning districts but that all construction will be taking place within the commercial portion of the lot.

Mr. Donovan stated that the barn is currently and antique retail shop and gave summary of the proposed renovations noting the interior alterations will be creating habitable space within the setback but that the second-floor addition would be conforming to zoning regulations. Mr. Donovan reiterated there will be no changes to the setbacks and that the building and site coverage will be conforming. Mr. Donovan stated the only nonconformity regarding the existing structure is the west side setback being 2.3ft from the side lot line. Chairman Sullivan asked for clarification if they were adding habitable space within the setback without changing the setback. Mr. Donovan stated that was correct, and that other than interior renovations there would be no other work within the setback.

Mr. Donovan stated that the Building Commissioners denial letter referenced §325-54 (A)(7)(a) of the Harwich Zoning Code, and that he felt the proposed project met the requirements of said section which would allow the project to be permitted by right. Mr. Donovan also argued that the scope of work that is being conducted within the setback does not meet the definition of addition / extension as stated in the zoning codes definitions.

Board Member Christopher Murphy stated he thought it met the criteria of the §325-54 (A)(7)(a).

Chairman Sullivan stated he thought the project should be granted as a matter of right, and that the Building Commissioners decisions should be overturned.

The Board discussed the possibility of overturning the Building Commissioners denial.

Mr. August asked if there would be a condition to obtain site plan approval by the Planning Board.

Mr. Sullivan stated there would.

Information Submitted as part of this application which will be incorporated in this decision include:

1. Application and Narrative.
2. Certified Plot Plan by TS Land Surveying, Inc., dated 08/19/2024.
3. Design drawings by Ted Smith Architect, LLC dated 09/12/2024 sheets, A1.1, A1.2, A1.3, A2.1, A2.2, E1.1, E1.2, A2.1, A2.2.
4. A letter dated 11/14/2024 by the Harwich Building Official denying the Building Application.
5. Interdepartmental Comments.
6. Site Summary Dated 01/16/2025.
7. A duly advertised hearing on 01/29/2025.

Mr. Sullivan moved and Mr. Murphy Seconded that the Board, after viewing the Property in question and 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 lot is in the CH-1 and RM Zone.
2. The portion of the lot in the CH-1 district is conforming with 33,401 sf where 20,000 is required.
3. The proposed work relates solely to the existing barn located to the southwest of the main buildings which is conforming regarding all setbacks.
4. The proposed addition/extension will conform to current setbacks and coverage for the zoning district in which the existing structure and addition/extension are located; and the nonconformance concerns the size of the lot in question and/or the frontage of said lot and/or an encroachment of the existing structure.
5. The proposed addition and renovations will not be within the setbacks, and resulting building coverage will remain conforming at 20.3%.
6. The existing site coverage is non-conforming at 72.5% but will be conforming at 70% with the proposed addition, renovations, gravel removal and relocation of sheds.
7. Petitioner is only using land in CH-1 District for its setback and coverage calculation; however, Petitioner does not waive its position that it has the right to use the land in both zoning districts for purposes of calculating coverages, which would be significantly more advantageous to it.

Members of the Board voting: Brian Sullivan, Al Donoghue, Christopher Murphy, Kenneth Dickson, and John August.

The Board Voted 5-0-0 in favor, accepting the findings and conditions.

Mr. Dickson moved to close the Public Hearing, seconded by Mr. Donoghue
Vote: 5:0 in favor. Motion carried. Public Hearing Closed.

Mr. Sullivan assigned the voting members for the case.

Members of the Board voting: Brian Sullivan, Al Donoghue, Christopher Murphy, Kenneth Dickson, and John August.

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

Mr. Donoghue made a motion to grant the special permit.

Mr. Donoghue moved to **Overturn** the Building Commissioner refusal to issue a building permit for Case No. **2025-02, DMTL, LLC**, c/o William D. Crowell, Esq., & Michael G. Donovan, Esq., P.O Box 185, Harwich Port, MA 02646, owner of the property located at **10 Route 28, Assessors' Map 10, Parcel C4**, in the CH-1, RM, and West Harwich DCPC Zoning Districts, the Board of Appeals **OVERTURNS** the decision by the Harwich Building Commissioner to deny the issuance of a permit application to construct an addition and renovate a pre-existing nonconforming barn. It is the determination of the Harwich Board of Appeals that the application for building permits is reasonable and a matter of right. The granting of this building permit is

without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of MGL Chapter 40A sections 6, and 10.

The proposed addition and renovations will not be within setbacks. Building Coverage will remain conforming and with the removal of designated gravel areas and relocation of a shed, per the site plan, site coverage will become conforming within the CH-1 zone. The Appeal Board's decision is further consistent with the Harwich By-laws, MGL Chapter 40A, as there will be no substantial detriment to the entire neighborhood, on a 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.

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

Motion carried. Denial Overturned.

Case No. 2025-03, Jamie & Michelle Goncalves, c/o William D. Crowell, Esq., & Michael G. Donovan, Esq., P.O Box 185, Harwich Port, MA 02646, owner of the property located at **14 Pasture Ln, Assessors' Map 32, Parcel F1-34**, in the RR Zoning District. The Applicant seeks a Special Permit or in the alternative a Variance from §325-54 A (1)(a) "Alteration or extension of single- or two-family residential structures", §325 – Attachment 2, Table 2, Area Regulations, and §325 – Attachment 3, Table 3, Height and Bulk Regulations for a renovation of, and addition to their pre-existing nonconforming single-family dwelling. pursuant to the Harwich Zoning By-laws §325-52 and 54 and MGL Chapter 40A Sections 6 and 10.

Mr. Donoghue read Case No. 2025-03 as presented.

Mr. August read comments submitted by internal departments.

Mr. Donoghue recused himself from the case.

Attorneys Michael Donovan and William Crowell presented the case to the Board.

Mr. Donovan gave a summary of the proposed project noting the location of the lot and the existing nonconformities.

Mr. Donovan stated they are proposing to add a front porch within the setback, intensifying the current nonconforming front setback, and an addition to the rear of the dwelling. The addition will be conforming to the setbacks but that with the addition and the front porch they would be intensifying the pre-existing building coverage.

Mr. Donovan argued it met the requirements under the gale case and would not cause a substantial detriment to the entire neighborhood and asked the Board to grant the Special Permit.

Mr. Dickson stated he thought it was in character with the neighborhood and met the conditions of the Gale case.

Information Submitted as part of this application which will be incorporated in this decision include:

1. The Petitioner's Zoning Board of Appeals application and narration.
2. Certified Site Plan by TerryA. Warner, P.L.S., dated 05/24/2024 and revised 11/07/2024.
3. Design drawings by AB Design Collaborative LLC., dated 03/18/2024 and revised 08/08/2024, 10/09/2024, 10/28/24, and 11/15/2024, sheets G-000.00, DM-100.00, A-100.00, A-101.00, A-102.00, A-200.00, A-201.00, and A-300.00.
4. A letter dated 12/02/2024 by the Harwich Building Official denying the Building Application.
5. Interdepartmental Comments.
6. Site Summary Dated 01/16/2025.
7. A duly advertised hearing on 01/29/2025.

Mr. Sullivan moved and Mr. Murphy Seconded that the Board, after viewing the Property in question and 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 lot is in the R-R Zone.
2. The Property is at the corner of Pasture Lane and Corner wood Drive. The frontage along those two streets is conforming at 189.67' where 150' is required
3. The lot is pre-existing non-conforming regarding area requirements with 10,200 sf but will remain unchanged.
4. The property has two front setbacks, each of which requires a minimum of 25' The easterly front setback, along Pasture Road, is currently non-conforming at 21.6' and is proposed to be reduced to 15.5' due to the proposed porch. The northerly front setback, along Corner wood Drive, is conforming at 26.2' and will remain unchanged.
5. The required southerly setback is currently non-conforming at 10.1' and will remain unchanged. The west setback is conforming at 42' and will remain so.
6. The existing building coverage is currently nonconforming at 18.5% with 15% maximum and will remain non-conforming at 22.5%.
7. Site coverages are conforming and will remain so conforming, going from 24.8% to 24.9% where 25% is maximum.
8. The proposed project will result in an intensification of the existing, nonconforming easterly front setback to the addition of the front porch and the creation of additional habitable space within the required 20' southerly setback due to the proposed additional finished space in the southerly portion of the basement.
9. The addition and renovations will not create any additional negative impacts with respect to traffic, noise, odor, and congestion.
10. A violation of the terms and conditions of this Special Permit may be enforced as a violation of the Harwich Zoning Bylaw pursuant to M.G.L. Chapter 40A, Sec. 7 and the Harwich Zoning Bylaw, as these may be amended from time to time.

Members of the Board voting: Brian Sullivan, Al Donoghue, Christopher Murphy, Kenneth Dickson, and John August.

The Board Voted 5-0-0 in favor, accepting the findings and conditions.

Mr. Dickson moved to close the Public Hearing, seconded by Mr. Murphy
Vote: 5:0 in favor. Motion carried. Public Hearing Closed.

Mr. Sullivan assigned the voting members for the case.

Members of the Board voting: Brian Sullivan, Al Donoghue, Christopher Murphy, Kenneth Dickson, and John August.

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

Mr. August made a motion to grant the special permit.

Mr. August moved to **grant the Special Permit** for Case No. **2025-03, Jamie & Michelle Goncalves**, c/o William D. Crowell, Esq., & Michael G. Donovan, Esq., P.O Box 185, Harwich Port, MA 02646, owner of the property located at **14 Pasture Ln, Assessors' Map 32, Parcel F1-34**, in the RR Zoning District, from §325-54 A (1)(a) "Alteration or extension of single- or two-family residential structures", §325 – Attachment 2, Table 2, Area Regulations, and §325 – Attachment 3, Table 3, Height and Bulk Regulations for a renovation of, and addition to their pre-existing nonconforming single-family dwelling. Pursuant to the Harwich Zoning By-laws §325-54 M.G.L 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. 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 4:0 in favor.
Motion carried. Special Permit Granted

Case No. 2025-04, John & Roberta Shaw, Trustees of Shaw Nominee Trust, c/o William D. Crowell, Esq., & Michael G. Donovan, Esq., P.O Box 185, Harwich Port, MA 02646, owner of the property located at **175 Gorham Rd, Assessors' Map 24, Parcel R4**, in the RR Zoning District. The Applicant seeks a Special Permit or in the alternative a Variance from §325-54 A (1)(a) "Alteration or extension of single- or two-family residential structures", and §325 – Attachment 2, Table 2, Area Regulations, to construct an addition on their pre-existing nonconforming single-family dwelling. pursuant to the Harwich Zoning By-laws §325-52 and 54 and MGL Chapter 40A Sections 6 and 10.

Mr. Donoghue read Case No. 2025-04 as presented.

Mr. Donoghue read comments submitted from internal departments, and a letter from an abutter.

Attorneys Michale Donovan and William Crowell presented the case to the Board on behalf of the property owners.

Mr. Donovan gave a summary of the proposed project noting the location of the lot and the existing nonconformities. Mr. Donovan stated they are before the Board as the proposed addition and bulkhead would be constructed within the pre-existing nonconforming setback intensifying the setback slightly by 1.4ft.

Mr. Donovan stated the building and site coverage would remain conforming.

Mr. Donovan stated that during construction they would not access the property from Winding Way.

Mr. Donovan stated that proposed project would not be substantial detriment to the entire neighborhood and that this met the elements of the Gale case and asked the Board to grant the Special Permit.

Mr. August stated the site plan shows an exclusive use easement to access the property from Winding Way.

Information Submitted as part of this application which will be incorporated in this decision include:

1. The Petitioner's Zoning Board of Appeals application and narration.
2. Certified Site Plan by TS Land Surveying, Inc., dated 11/25/2024.
3. Design drawings by Yoana K. Guzman., dated 11/12/24 and revised 11/22/24, sheets A-1, A-2, S-1 and S-2.
4. A letter dated 12/02/2024 by the Harwich Building Official denying the Building Application.
5. Interdepartmental Comments.
6. Site Summary Dated 01/16/2025.
7. 1 Letter from an abutter.
8. A duly advertised hearing on 01/29/2025.

Mr. Sullivan moved and Mr. Dickson Seconded that the Board, after viewing the Property in question and 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 lot is in the R-R Zone.
2. The lot is pre-existing non-conforming in regard to area requirements with 32,669 sf and non-conforming frontage of 69.56' but will remain unchanged.

3. The property has non-conforming setbacks on the North and South sides. each of which requires a minimum of 20'. The South side setback of 18.4' will be unchanged. The North Side setback of 8.2' will be intensified to 6.8' with the proposed expansion of the Great Room and location of the bulkhead.
4. The existing building coverage is conforming and going up to 7.5%.
5. Site coverage is conforming and will remain so, going from 14.2% to 14.6% where 30% is maximum.
6. Building height is conforming and will be unchanged.
7. The proposed addition on the Northerly side of the dwelling and creation of additional habitable space will result in only an intensification of the pre-existing nonconforming north side setback and will not constitute a substantial detriment to the entire neighborhood.
8. The addition will not create any additional negative impacts with respect to traffic, noise, odor, and congestion.
9. 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. Access to the site from Winding Way by construction vehicles is denied.
10. The Special Permit and the issuance of a Building Permit are subject to the approval of the Conservation Department, Historic Commission and Board of Health
11. A violation of the terms and conditions of this Special Permit may be enforced as a violation of the Harwich Zoning Bylaw pursuant to M.G.L. Chapter 40A, Sec. 7 and the Harwich Zoning Bylaw, as these may be amended from time to time.

Members of the Board voting: Brian Sullivan, Al Donoghue, Christopher Murphy, Kenneth Dickson, and John August.

The Board Voted 5-0-0 in favor, accepting the findings and conditions.

Mr. Dickson moved to close the Public Hearing, seconded by Mr. August
Vote: 5:0 in favor. Motion carried. Public Hearing Closed.

Mr. Sullivan assigned the voting members for the case.

Members of the Board voting: Brian Sullivan, Al Donoghue, Christopher Murphy, Kenneth Dickson, and John August.

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

Mr. Donoghue made a motion to grant the special permit.

Mr. Donoghue moved to **grant the Special Permit** for Case No. **2025-04, John & Roberta Shaw, Trustees of Shaw Nominee Trust**, c/o William D. Crowell, Esq., & Michael G. Donovan, Esq., P.O Box 185, Harwich Port, MA 02646, owner of the property located at **175 Gorham Rd, Assessors' Map 24, Parcel R4**, in the RR Zoning District, from §325-54 A (1)(a)

“Alteration or extension of single- or two-family residential structures”, and §325 – Attachment 2, Table 2, Area Regulations, to construct an addition on their pre-existing nonconforming single-family dwelling. Pursuant to the Harwich Zoning By-laws §325-54 M.G.L 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. 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. Access to the site from Winding Way by construction vehicles is denied.
2. The Special Permit and the issuance of a Building Permit are subject to the approval of the Conservation Department, Historic Commission and Board of Health
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 M.G.L. Chapter 40A, Sec. 7 and the Harwich Zoning Bylaw, as these may be amended from time to time.

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

Motion carried. Special Permit Granted

Case No. 2025-05, Richard Gacek, c/o William D. Crowell, Esq., & Michael G. Donovan, Esq., P.O Box 185, Harwich Port, MA 02646, owner of the property located at **19 Pine Wood Ln Assessors’ Map 4, Parcel T1-29**, in the RH-1 Zoning District. The Applicant seeks a Special Permit or in the alternative a Variance from §325-14 (T)(3)(K) “Supplemental Regulations”, §325-54 (A) “Nonconforming Structures”, and §325 – Attachment 2, Table 2, Area Regulations, to convert a pre-existing non-conforming accessory residential structure into an ADU. pursuant to the Harwich Zoning By-laws §325-52 and 54 and MGL Chapter 40A Sections 6 and 10.

Mr. Donoghue read Case No. 2025-05 as presented.

Mr. Donoghue read comments submitted from internal departments.

Attorney William Crowell presented the case on behalf of the property owner.

Mr. Crowell gave a summary of the proposed project noting the location of the lot. Mr. Crowell stated they are not proposing any changes to the primary dwelling and that the footprint of the garage is not changing.

Mr. Crowell stated that because the structure does not conform to setback regulations and that they are converting the structure to an ADU under the by-law they are required to obtain a special permit.

Mr. Crowell stated the proposed project is not a substantial detriment to the entire neighborhood, and that the proposed ADU met the requirements of the by law and ask the Board to grant the Special Permit.

Mr. Dickson stated he believed it meets the criteria of the by law.

Information Submitted as part of this application which will be incorporated in this decision include:

1. The Petitioner's Zoning Board of Appeals application and narration.
2. Certified Site Plan by Moran Engineering Assoc. dated 12/09/2024.
3. Design drawings by Patriot Builders, Inc., dated 11/20/2024 and revised 12/03/2024, and 12/09/2024, sheets A1-3, A2-3, A3-3, EX-1.
4. A letter dated 12/16/2024 by the Harwich Building Official denying the Building Application.
5. Interdepartmental Comments.
6. Site Summary Dated 01/16/2025.
7. A duly advertised hearing on 01/29/2025.

Mr. Sullivan moved and Mr. Dickson Seconded that the Board, after viewing the Property in question and 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 lot is in the RM Zone.
2. The lot is pre-existing non-conforming in regard to area requirements with 11,216 sf and conforming frontage of 161.12.
3. The existing garage permitted in 1993 was approved with non-conforming setbacks on the East and South side of the structure and will remain unchanged.
4. The existing garage is a detached accessory structure with unfinished space on the first floor and finished space on the second floor. Because the proposal includes converting the space into an ADU it is adding habitable space within the setback by converting the first-floor garage into a living room and kitchen. The second floor is already finished space, and the added dormer will not be created within the setback.
5. The existing building and site coverage are conforming and will remain unchanged.
6. Building height is conforming and will be unchanged.
7. The proposed ADU is under 1000sf with at least one off-street parking space, will not constitute a substantial detriment to the entire neighborhood and will not create any additional negative impacts with respect to traffic, noise, odor, and congestion.
8. The Special Permit and the issuance of a Building Permit are subject to the approval of the Board of Health
9. A violation of the terms and conditions of this Special Permit may be enforced as a violation of the Harwich Zoning Bylaw pursuant to M.G.L. Chapter 40A, Sec. 7 and the Harwich Zoning Bylaw, as these may be amended from time to time.

Members of the Board voting: Brian Sullivan, Al Donoghue, Christopher Murphy, Kenneth Dickson, and John August.

The Board Voted 5-0-0 in favor, accepting the findings and conditions.

Mr. Dickson moved to close the Public Hearing, seconded by Mr. Murphy
Vote: 5:0 in favor. Motion carried. Public Hearing Closed.

Mr. Sullivan assigned the voting members for the case.

Members of the Board voting: Brian Sullivan, Al Donoghue, Christopher Murphy, Kenneth Dickson, and John August.

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

Mr. Donoghue made a motion to grant the special permit.

Mr. Donoghue moved to **grant the Special Permit** for Case No. **2025-05, Richard Gacek**, c/o William D. Crowell, Esq., & Michael G. Donovan, Esq., P.O Box 185, Harwich Port, MA 02646, owner of the property located at **19 Pine Wood Ln Assessors' Map 4, Parcel T1-29**, in the RH-1 Zoning District, from §325-14 (T)(3)(K) "Supplemental Regulations", §325-54 (A) "Nonconforming Structures", and §325 – Attachment 2, Table 2, Area Regulations, to convert a pre-existing non-conforming accessory residential structure into an ADU. Pursuant to the Harwich Zoning By-laws §325-54 M.G.L 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. The Special Permit and the issuance of a Building Permit are subject to the approval of the Board of Health
2. A violation of the terms and conditions of this Special Permit may be enforced as a violation of the Harwich Zoning Bylaw pursuant to M.G.L. Chapter 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. 2025-06, 33 Dunes Rd LLC, Owners Richard & Ellen Fox, c/o Taylor Ogg., 28 Nicolettas Way, Mashpee, MA 02649, owner of the property located at **33 Dunes Rd Assessors' Map 5, Parcel W1-5**, in the RL Zoning District. The Applicant seeks a Special Permit or in the alternative a Variance from §325-54 A (7) "Alteration or Extension of other Structures" and

§325 – Attachment 2, Table 2, Area Regulations, to construct a pool, pursuant to the Harwich Zoning By-laws §325-52 and 54 and MGL Chapter 40A Sections 6 and 10.

Mr. Donoghue read Case No. 2025-06 as presented.

Mr. Sullivan stated the applicant has requested to withdraw the application without prejudice.

Members of the Board voting: Brian Sullivan, Al Donoghue, Christopher Murphy, Kenneth Dickson, and John August.

Mr. Sullivan made a motion to accept the request to withdraw Case No. 2025-06 without prejudice.

Seconded by Mr. Donoghue Vote: 5-0
Motion Carried. Application Withdrawn

III. APPROVAL OF MINUTES

A. December 19, 2024, Meeting Minutes.

Mr. Sullivan moved to approve the Minutes as amended for the December 19, 2024, meeting as printed, seconded by Mr. August.

Members of the Board voting: Brian Sullivan, Al Donoghue, Christopher Murphy, Kenneth Dickson, and John August.

Vote 4:0:1 in favor, with Mr. Dickson abstaining, Minutes Approved.

IV. NEW BUSINESS

A. Discussion regarding memo to the Select Board.

The Board discussed the Chairs MEMO to the Select Board regarding needing a larger meeting room equipped to handle large hearings and crowds.

B. Conflict of Interest Compliance.

The Board discussed completing the required Conflict of Interest Compliance Training.

C. Volunteer Fair Participation.

Mr. Sullivan updated the Board on the Volunteer Fair.

V. OLD BUSINESS

VI. CORRESPONDENCE/BRIEFINGS

VII. ADJOURN

Mr. August moved to adjourn, seconded by Mr. Dickson.
Vote 5:0 in favor. Meeting adjourned at 9:37 PM.

Respectfully submitted,

Rachel Lohr
Board Secretary