

Harwich Planning Board Agenda
Tuesday, April 14, 2020 – 6:30 PM
Griffin Room, Town Hall, 732 Main Street, Harwich

This meeting will be held VIA REMOTE PARTICIPATION.

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DIAL IN INSTRUCTIONS FOR AUDIO PARTICIPATION:

JOIN THE MEETING BY TELEPHONE: **1 (872) 240-3311**

ACCESS CODE: **115-562-309**

I. Call to Order Pursuant to Governor Baker’s March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor’s March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, this meeting of the Harwich Planning Board is being conducted via remote participation. No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public can adequately access the proceedings as provided for in the Order. A reminder that persons who would like to listen or view this meeting while in progress may do so by logging in or calling in as specified above on this agenda.

II. Public Hearing

A. *Continued* **PB2019-45 Royal Apartments LLC**, as owner, Alex Bardin, Representative, seeks approval of a Multi-Family Use Special Permits in the Harwich Center Overlay District and a Site Plan Review Special Permit for the proposed use and additional parking and other appurtenances pursuant to the Code of the Town of Harwich §§325-51.D and -51.O and 325-55. The property is located at 328 Bank Street, Map 41, Parcel N4 in the M-R-L, Harwich Center Overlay and Historic Districts. Continued from March 10, 2020. ***Please Note: the applicant has requested a continuance to May 12, 2020***

B. *Continued Hearing from March 10, 2020 on proposed* **Amendment to the Harwich Zoning Codes:**

Article ____: To amend the Code of the Town of Harwich, §325-4 and Attachment 4 – The Zoning Map, by extending the Industrial (I-L) Zoning District westerly along Queen Anne Road and the existing I-L zoning district as shown on the amended Zoning Map, dated January 23, 2020, a copy of which is on file in the Town Clerk’s Office.

Please Note: At the request of the Planning Board Chair, no testimony will be taken at this meeting. The hearing will be continued to Thursday, May 28, 2020, no sooner than 6:30pm.

III. Public Meeting*

- A. New Business:
- B. Meeting Minutes: March 10, 2020
- C. Old Business: Further discussion - proposed zoning amendment re: “Essential Services”
- D. Briefings and Reports by Board Members

IV. Adjourn

*Per the Attorney General’s Office – Boards/Commissions may hold an open session for topics not reasonably anticipated by the Chair 48 hours in advance of the meeting following “New Business”.

Next Planning Board Meeting (Subject to Change) – Tuesday, April 28, 2020.
Authorized Posting Officer: Elaine Banta, ebanta@town.harwich.ma.us or 508-430-7511

HARWICH PLANNING BOARD
PUBLIC HEARING NOTICE

REMOTE PARTICIPATION INSTRUCTIONS FOR
TUESDAY, APRIL 14, 2020 6:30 PM - 9:00 PM (EDT) (ONLY)

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Charleen Greenhalgh

From: Benjamin E. Zehnder <BZehnder@latanzi.com>
Sent: Monday, March 23, 2020 4:15 PM
To: Charleen Greenhalgh; David Michniewicz
(dmichniewicz@coastalengineeringcompany.com); Alex Bardin
Cc: Elaine Banta; David Reid (dsreid@verizon.net); Shelagh Delaney
Subject: RE: April 14th continuance for Royal Apartments

Hello Charleen:

Would you present the Planning Board this request to continue the Royal Apartments LLC matter to the meeting of May 12?

My best to all.

Ben

Benjamin E. Zehnder
La Tanzi, Spaulding & Landreth
8 Cardinal Lane; P.O. Box 2300
Orleans, MA 02653
(508) 255-2133
(508) 255-3786 (fax)
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bzehnder@latanzi.com
Orleans/Provincetown/Barnstable



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From: Charleen Greenhalgh <cgreenhalgh@town.harwich.ma.us>
Sent: Tuesday, March 17, 2020 8:55 AM
To: Benjamin E. Zehnder <BZehnder@latanzi.com>; David Michniewicz
(dmichniewicz@coastalengineeringcompany.com) <dmichniewicz@coastalengineeringcompany.com>; Alex Bardin
<alexcbardin@gmail.com>

Cc: Elaine Banta <ebanta@town.harwich.ma.us>

Subject: April 14th continuance for Royal Apartments

Hi Ben, Dave and Alex:

You are scheduled to be before the Planning Board on April 14th for PB2019-45. At this time it is very unlikely that we will be able to have a "physical" meeting, it would all be by remote participation only, at least that is the projection at this time. If you would be willing to continue the hearing it would be appreciated. The following dates are April 28th (which looks to be packed) or May 12th.

Please let me know how you would like to move forward.

Thanks,
Charleen

Charleen Greenhalgh
Town Planner
Town of Harwich
732 Main Street
Harwich, MA 02645
508-430-7511
508-430-4703 fax
cgreenhalgh@town.harwich.ma.us

Town Hall Hours – Monday - Friday: 8:30am-4:00pm

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Accepting wire and disbursement instructions by email is dangerous, especially changes to those instructions. Verify by calling the originator of the email using previously known contact information prior to sending funds.

**HARWICH PLANNING BOARD
HARWICH TOWN HALL - 732 MAIN STREET- GRIFFIN ROOM
TUESDAY, MARCH 10, 2020 – 6:30 PM
MEETING MINUTES**

BOARD MEMBERS PRESENT: Mary Maslowski; William Stoltz; Craig Chadwick; Duncan Berry; and Arthur Rouse. David Harris was present via remote participation (telephone).

BOARD MEMBERS ABSENT: Chairman Joseph McParland; Vice-Chairman Alan Peterson.

OTHERS PRESENT: Town Planner, Charleen Greenhalgh; Michael Doucette; Steven Haas; Cyndi Williams; Bruce Young; Alan Hall; Edward Hall; Bob Birch; Theresa Johnson; Jermaine Campbell; Dusty Eldredge; Bob Gould; Peter Napolitano; Charles Lombard; Mr. Fabrizio, Tom Birch; David Ryer; and others.

CALL TO ORDER – In the absence of both the Chairman and the Vice-Chairman, the Board decided that Mary Maslowski would be the acting Chair, and she called the meeting to order at 6:42 PM, with a quorum present.

Ms. Maslowski announced the Recording & Taping Notification: As required by law, the Town may audio or video record the meeting. Any person intending to either audio or video record this open session is required to inform the chair.

Ms. Maslowski recused herself from the hearing and Mr. Berry assumed the role of acting Chair for the next two cases.

PB2020-01 Donna Smith, 296 Route 28, Site Plan Review Special Permit and Use Special Permit

Representatives: Michael Doucette and Steven Haas

Mr. Berry re-opened the hearing at 6:43 PM by reading the legal notice into the record. Applicants seeks approval of a Site Plan Review Special Permit and a Use Special Permit with waivers pursuant to the Code of Town of Harwich §§325-13, ¶IV Line 30 & 32A, -14.O, -55, -51 and -107 to renovate and expand the existing recreational use via a 4-station mobile bungee trampoline, construct and operate a new snack shack with Fast Food / Take Out and expand and improve the parking and vehicle access. The property is located at 296 Route 28, Map 12, Parcel H1, in the C-H-1 and R-R zoning districts and the A-E Special Flood Hazard Area overlay. Continued from February 11, 2020.

Mrs. Greenhalgh clarified that this hearing requires a unanimous vote.

Michael Doucette and Steven Haas explained the proposal. They are expanding the site to include a snack shack, updated parking, and will be adding a four station mobile bungee trampoline. The snack shack will be solely plant based food items. Everything will be vegan, there will be no soy, gluten, or dairy. The updated and expanded recreation area keeps in theme with the current business. This is the 60th season this business has been in operation. This

business has been around longer than Sesame Street. The season is typically April through September. Not much has changed in 60 years, hence why they would like to move forward and expand and update the business. This is a healthy, positive, active option for folks in town, as well as tourists. This will be done with good taste, and within the theme of Harwich.

Mr. Rouse asked if the existing trampolines will be updated. It was responded no, but new ones will be added.

Mrs. Greenhalgh provided comments from other Town Department and the Planning report. Health: A fully compliant septic systems will be required prior to any building permit issuance. No variances from State or Local Regulations will be granted for new construction. As the plan is shown, the septic design flow is appropriate for the proposed use. Four test holes and two percolation tests still need to be scheduled with the Health Department. Installation of a grease strap is strongly recommended, as the lack of grease trap will severely limit any future food service plans (i.e. prepared hot foods, fried foods, homemade ice cream, etc.). The applicant will need to meet with the Health Director prior to food permit issuance, and will need to address several areas of concern, such as dry storage and floor plan layout. All of the Health Department issues can be addressed with the applicant directly during the permitting phase, and none of the Health Department concerns should negatively impact the Planning Board decision. Fire, Police, & Highway: No concerns. Building: Building Permit Required. Conservation: Approved by Conservation Commission on January 8, 2020. Only conditions were no chemical use on property (fertilizers, etc.)

Planning Staff Comments: 1. The Town Engineer and Town Planner met to review this application and plans on January 14, 2020. A list of questions/concerns was provided to Stephen Haas, P.E. on January 17th. Staff then met with Mr. Haas on January 23rd. Revised plans were submitted on January 27, 2020, which address most of our concerns. 2. The plan does need to be stamped by a P.L.S, as new setbacks are shown. 3. It is recommended that although the parking is primarily stone and shell, the parking lines should be lined annually before the trampoline season begins. 4. Currently the establishment to the east of this site (#302 Route 28) accesses its dumpster via the subject property. This access will be closed off. 5. The food truck use and the additional outdoor recreation use are allowable in the C-H-1 zoning district through the special permit process. 6. The rear portion of the property is located within the R-R Zoning District. No development is proposed within this area of the lot. 7. At this time exterior lighting details have not been provided; staff recommends that this be a condition of approval. 8. Any signage will require a Sign Permit from the Building Department. 9. The applicant is aware that they may need a MassDOT Access Permit for the enlarged driveway and extended use. 10. The Board may wish to impose restriction/conditions for the seasonal snack shack. 11. The waivers requested are reasonable.

Mr. Chadwick asked about hours of operations, it was responded typically 9 am to 10 pm. He had additional questions on who is responsible for inspections. Bruce Young, fire inspector, responded that he has never done an inspection there, but it would be flagged during the building permit phase if he needed to inspect it.

Board members asked additional questions on the bungee trampolines and the sail covers, all which were answered.

Cyndi Williams spoke in support of the application. She stated that this compliments what we have, and it adds to that corner of Route 28.

Mr. Chadwick made the motion to close the public hearing at 7:09 PM, seconded by Mr. Stoltz, unanimously so voted via rollcall.

On a motion from Mr. Chadwick, seconded by Mr. Stoltz, the Board vote unanimously by rollcall vote (5-0-0) to adopt the following findings of fact:

1. Said parcel is located within the C-H-1 and R-R Zoning Districts.
2. The Restaurant, Fast Food/Take Out use is permitted by Special Permit by the Planning Board.
3. The business operation is contained wholly within the C-H-1 district.
4. The proposed use will not adversely impact traffic flow and safety.
5. The proposed use will be compatible with surrounding land uses.
6. The specific site is an appropriate location for the use.
7. There will be no nuisance or serious hazard to vehicles or pedestrians.
8. The snack shack operation is seasonal by nature.
9. The applicant must comply with all local and state food service regulations for the snack shack operation.
10. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

On a motion by Mr. Chadwick and seconded by Mr. Stoltz, the Planning Board voted unanimously by rollcall vote (5-0-0) to approve with conditions the Use Special Permit for PB2020-01 Donna Smith, TR, pursuant to §325-13 ¶IV.32.A, §324-14(O) and §325-51 for a Restaurant, Fast Food – Take Out (Snack Shack) at property located at 296 Route 28, Map 12, Parcel H1, in the C-H-1 and R-R zoning districts and the A-E Special Flood Hazard Area overlay. The decision is based on the above findings and the fact that the application meets the necessary requirements and criteria for approval pursuant to the Code of Town of Harwich, with the following conditions:

1. The snack shack must obtain a permit from the Health Department prior to operation.
2. There shall be no table service provided to customers- take-out food only.

On a motion from Mr. Chadwick, seconded by Mr. Stoltz, the Board vote unanimously by rollcall vote (5-0-0) to adopt the following findings of fact:

1. Said parcel is located within the C-H-1 and R-R Zoning Districts.
2. The Outdoor Recreation Use is permitted by Special Permit by the Planning Board.
3. The business operation is contained wholly within the C-H-1 district.
4. The proposed use will not adversely impact traffic flow and safety.
5. The proposed use will be compatible with surrounding land uses.
6. The specific site is an appropriate location for the use.
7. There will be no nuisance or serious hazard to vehicles or pedestrians.
8. The trampoline operation is seasonal by nature.

9. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

On a motion by Mr. Rouse and seconded by Mr. Chadwick, the Board voted unanimously by rollcall vote (5-0-0) to approve the Use Special Permit for PB2020-01 Donna Smith, TR, pursuant to §325-13 ¶IV.30 and §325-51 for an expansion of the Outdoor Recreation Use (Trampolines) at property located at 296 Route 28, Map 12, Parcel H1, in the C-H-1 and R-R zoning districts and the A-E Special Flood Hazard Area overlay. The decision is based on the above findings and the fact that the application meets the necessary requirements and criteria for approval pursuant to the Code of Town of Harwich.

On a motion by Mr. Stoltz and seconded by Mr. Chadwick, the Planning Board voted unanimously by rollcall vote (5-0-0) to approve the following waivers pursuant to §400, as requested base on the facts presented by the applicant:

1. Drainage calculations and drainage area map.
2. Detail Plan Contents.
 - a. Dumpsters.
 - b. Service areas, Loading areas, Sidewalks, Easements and Freestanding signs.
 - c. Subsurface drainage and Drainage facilities.
 - d. Utilities: Gas.
 - e. Specifications, details and cross sections for: Lighting, Fencing and Retaining walls.
3. Landscaping Plans.

On a motion from Stoltz, seconded by Mr. Chadwick, the Board vote unanimously by rollcall vote (5-0-0) to adopt the following findings of fact:

1. The property is located within the C-H-1 and R-R zoning districts.
2. The uses are allowable by Special Permit.
3. The access is over the existing westerly curb cut on Route 28.
4. The existing easterly curb cut on Route 28 will be closed off.
5. The waivers requested do not substantially derogate from the purpose and intent of this bylaw.

On a motion by Mr. Chadwick and seconded by Mr. Stoltz, the Planning Board voted unanimously (5-0-0) to approve with conditions case number PB2020-01 Donna Smith, TR, for a Site Plan Review Special Permit with waivers pursuant to the Code of Town of Harwich §325-55 to renovate and expand the existing recreational use via a 4-station mobile bungee trampoline, construct and operate a new snack shack with Fast Food / Take Out and expand and improve the parking and vehicle access for property located at 296 Route 28, Map 12, Parcel H1, in the C-H-1 and R-R zoning districts and the A-E Special Flood Hazard Area overlay. The decision is based on the aforementioned findings of fact, the fact that the application meets the necessary requirements and criteria for approval pursuant to the Code of Town of Harwich. The following conditions are imposed:

1. Signage shall comply with the requirements of the Code of the Town of Harwich and the Building Department.
2. Lighting shall comply with the requirements of the Code of the Town of Harwich.

3. Any changes to the site plan, other than those resulting from MassDOT review and approval, shall be subject to further Planning Board review and approval.
4. This decision shall be recorded at the Barnstable Registry of Deeds prior to the issuance of a building permit.
5. Conformance with all review procedure requirements outlined pursuant to §400-18.G Inspection, certificate of completion and as-built plan, of the Code of the Town of Harwich shall be met.
6. Seasonally the parking line will be relined.

PB2020-02 Steve Gopoyan & Swavi Osev, 346 Route 28 and 0 Sisson Road, Site Plan Review Special Permit and a Use Special Permit

Mr. Berry re-opened the hearing at 7:22 PM. Emulous E Hall, et als., as owners, seeks approval of a Site Plan Review Special Permit and a Use Special Permit with waivers, pursuant to the Code of Town of Harwich §§325-13, ¶IV Line 30, -55 and -51 to construct a miniature golf course and expand and improve the parking and vehicle access. The property is located at 346 Route 28 and 0 Sisson Road, Maps 21, Parcels N1 & N2, respectively, in the C-H-1 and R-M zoning districts. Continued from February 11, 2020.

The applicant requested a continuance to April 28, 2020.

Mr. Chadwick made the motion to continue the hearing to April 28, 2020 no earlier than 6:30 PM, seconded by Mr. Stoltz, unanimously so voted via roll call (5-0-0).

Ms. Maslowski return to the table.

PB2019-45 Royal Apartments LLC, 328 Bank Street, Multi-Family Use Special Permits

Ms. Maslowski re-opened the hearing at 7:74 PM. Applicant seeks approval of a Multi-Family Use Special Permits in the Harwich Center Overlay District and a Site Plan Review Special Permit for the proposed use and additional parking and other appurtenances pursuant to the Code of the Town of Harwich §§325-51.D and -51.O and 325-55. The property is located at 328 Bank Street, Map 41, Parcel N4 in the M-R-L, Harwich Center Overlay and Historic Districts. Continued from February 11, 2020.

Attorney Zehnder sent an email to Mrs. Greenhalgh requesting a continuance to April 14, 2020.

Mr. Chadwick made the motion to continue the hearing to April 14, 2020 no earlier than 6:30 PM, seconded by Mr. Berry, unanimously so voted via rollcall (6-0-0).

ZONING AMENDMENT PUBLIC HEARING – IL Zoning District

Ms. Maslowski opened the hearing at 7:25 PM by reading the legal notice into the record. In accordance with the provisions of MGL c.40A §5, the Harwich Planning Board will hold a public hearing on Tuesday, March 10, 2020 not earlier than 6:30 pm in the Donn B. Griffin

Room, Harwich Town Hall, 732 Main Street, Harwich, to consider an amendment to the Harwich Zoning Codes.

Article ___: To amend the Code of the Town of Harwich, §325-4 and Attachment 4 – The Zoning Map, by extending the Industrial (I-L) Zoning District westerly along Queen Anne Road and the existing I-L zoning district as shown on the amended Zoning Map, dated January 23, 2020, a copy of which is on file in the Town Clerk’s Office.

Mrs. Greenhalgh explained the following:

On January 28, 2020 the Planning Board voted unanimously to send the proposed zoning amendment relative to the expansion of the Industrial Zoning District to the Board of Selectmen to begin the public hearing process pursuant to MGL c.40A, §5. The proposed amendment was sent to the Board of Selectmen on January 29, 2020.

On February 3, 2020 Board of Selectmen voted to refer the proposed zoning amendment relative to the expansion of the Industrial Zoning District to the Planning Board. This was forwarded to the Planning Board on February 4, 2020.

The legal notice for this amendment was sent to the Cape Cod Chronicle on February 12, 2020 for publication in the February 20 and February 27, 2020 editions.

On February 19, 2020 the required notice and copies of the full text and revised zoning map, were posted on the Planning Board’s Town Webpage and copies were made available at the Town Clerk and Community Development Offices. A copy of said posting is attached. Additionally, the legal notice was posted with the Town Clerk.

On February 20, 2020, the abutting towns – Dennis, Brewster, Chatham and Orleans, the Cape Cod Commission and the MA Department of Housing and Community Development were notified via regular mail about the pending zoning amendment.

The public hearing for this zoning amendment is scheduled for Tuesday, March 10, 2020, not earlier than 6:30 pm. The process for the hearing is as follows:

1. The hearing must be opened, and the legal notice must be read into the record.
2. The proposal should be explained.
3. The hearing must allow for public comments.
4. The Board should discuss and deliberate.
5. If the Board is ready to close the public hearing, do so; otherwise the hearing should be continued to a date and time certain.
6. If the hearing is closed, the Board must then vote on a recommendation to the Town Meeting. This vote does not need to occur on the same night as the public hearing; but the Board must decide when it will take the vote up at a future meeting. A positive motion is also preferable, and the vote should be by rollcall.

The property owners within this area approached the Town Planner about the expansion of the Industrial (“I-L”) Zoning District in 2019. After several conversations and careful mapping of

the proposed expansion, the discussion was brought to the Planning Board. There is a need for additional I-L Zone land in Harwich, as most existing areas are built out. The land involved, directly adjacent to the existing I-L zoning district, lends itself to I-L zone uses.

Ms. Maslowski read letters of opposition into the record from Staci Robichaud, Ty Cosgrove, and Donald and Denise Montgomery.

Alan Hall and Edward Hall spoke in favor of the proposal. The property in question has been in their family since 1888. The objections are interesting because their family owned most of that land at one point. North Harwich has always been the industrial section of town. It is unfortunate that the Cape has grown so much, so fast, that we can't keep up with the needs. They are trying to figure out what to do with this lot, but no one wanted it because it's residential. They would like this to be done the right way. This road is the oldest road in the Town of Harwich. It's been here a long time. This expansion would bring more jobs, and more income. This is a win-win situation. They could petition the Town with an article, or they could have the Planning Board promote this. They felt this option was the best option.

Ms. Maslowski clarified for everyone that the Board is the proponent of this zoning amendment. The Board took a positive vote to recommend this zoning amendment to town meeting.

Mrs. Greenhalgh stated that this is already on the Town meeting warrant. It will take a 2/3 vote to be approved. This is a multi-phase process.

Bob Birch, owns a commercial building and lives on Queen Anne Road. This has always been residential property. This is not a good idea. When he first researched commercial land on Queen Anne Road, he went to the Town and asked why this section wasn't considered commercial, and he was told it would never happen. He chose to move to 76 Queen Anne Road, which is directly across the street. The building and boat yard are not in the commercial district. Adding 35 acres of industrial property, what will happen? We'll have an industrial park directly across from him, and his neighbors probably feel the same.

Mrs. Greenhalgh clarified that some maps are in conflict. One shows the land as commercial, one does not.

Theresa Johnson read a copy of her letter of opposition into the record.

Jermaine Campbell spoke to the value of land. She recently purchased a condo at 96 Queen Anne Road because there were woods. The Road was a concern because she walked it many times and there are no sidewalks. Large vehicles are barreling down. There is a metal shed across the street. What about the Herring River? This will overshadow that. She is very upset. She disagrees with the plan.

Alan Hall said he contacted the conservation trust, and they had no interest in the land. They did their due diligence. Under agricultural use, buildings can be put in residential areas. They believed this was the best interest for the Town. He respects everyone that lives in the area, this is just the process.

Dusty Eldredge, 2 King Henry Road, has lived in Harwich his whole life. The land is East Harwich has gone from trees to industrial area. There were no Condo's. That was approved by the state after he brought the land. It was all residential when he bought his land. Across the street was the Boat yard and discount fuel. Everything behind it was residential, and nothing commercial could be build. He's had 3 accidents in front of his house because the traffic is out of control. This Road is already very dangerous. Traffic is going to be much worse. This will be a problem.

Bob Gould, Queen Anne and 124, said he's seen considerable changes. He's had to move his house back to facilitate the trucks that go down Queen Anne Road. There are hazardous turns, and this will be a considerable liability and cost to the Town.

Mr. Fabrizio, 80 Queen Anne Road, has lived in Harwich since 1963. He bought his house 16 years ago because of the privacy. Now that is being taken away. What will that do to the property value? People speed on that Road. Putting an industrial park there is going to cause a lot more congestion. What about the environment?

Peter Napolitano, 136 Queen Anne Road, lives across from the family pantry. At least 3-4 days there's a police detail stopping traffic in front of family pantry. An industrial park will be over whelming. Adding people and businesses will be overwhelming. This Road is a cut through as it is. Add in construction, and demolishing the beautiful land will be detrimental. The Road can't take it.

A lengthy discussion ensued.

Mrs. Greenhalgh stated that there has been no discussion of an industrial park; however it one were to be proposed base on the land areas involved and the number of lots created, it would trigger a mandatory review of the Cape Cod Commission.

Edward Hall asked what the zoning requirements for a solar farm are.

Mrs. Greenhalgh responded that they are not allowed in the residential district, thus it would require a Use Variance Permit and Site Plan Review, unless done by a public utility company.

Edward Hall agrees that traffic is a problem on that Road. Police should put a cruiser to help regulate traffic. See something, say something.

Alan Hall, clarified that if the lots are buildable, they could probably put 5 houses, or a 40 B, or a farm. What can he do? He doesn't want everyone mad at him. He doesn't care what they do, and he respects them. They're paying taxes on the property, and he understands and agrees, but there has to be a common denominator. There's a process that's going to have to be founded. Residential lots will also increase traffic. It doesn't go away with residential. The problem is still there.

Peter Napolitano, stated that as soon as it goes industrial, the wheels will go into motion. Residential cars will not impact the road, but industrial industry's will. This is the first step of becoming an industrial park.

Mrs. Greenhalgh stated there is an isolated wetland which would have to abide by the conservation requirements. That small area is also a natural heritage area. Conservation measures would still have to be met.

Charles Lombard provided an account and history of growing up in North Harwich.

Tom Birch would like to see the hearing left open.

Mr. Stoltz made the motion to continue the hearing to April 14, 2020 no earlier than 6:30 PM, seconded by Mr. Rouse. A roll call vote was taken. Mr. Rouse, Mr. Harris, Mr. Berry, Ms. Maslowski, and Mr. Stoltz voted in the positive, Mr. Chadwick voted in opposition. The hearing was thereby continued to April 14, 2020.

MEETING MINUTES: Mr. Chadwick made the motion to approve the minutes from February 25, 2020, seconded by Mr. Berry, unanimously so voted via rollcall.

Discussion regarding the proposed zoning amendment regarding "Essential Services"

David Ryer, Zoning Board of Appeals, spoke against the deletion of Essential Services. Mrs. Greenhalgh sent it to Town Counsel and the Building Commissioner and have not heard from either of them.

Mr. Ryer discussed cases from 2017 and 2019, as these applications were applied for by private companies. Even though they were doing utility work, it was on behalf of a public service company. Municipal use does not apply, because the use has to be owned by the Town of Harwich. They needed a Special Permit of Variance, and neither of them would have qualified. He argued his case using the zoning table, and cited the sewer project with Robert B. Our. There will be more situations with the sewer work.

Ms. Maslowski asked if the work was being done for the town.

Bruce Young clarified that yes it was contracted by the Town to Robert B. Our, West Newbury is the Owner of the property in question.

Ms. Maslowski would like clarification from Legal Counsel. Town Council needs to come up with a definition.

Mrs. Greenhalgh clarified that a public hearing was already held, and the Planning Board already voted on recommending this to the Town Meeting. The amendment will be on the warrant. There was a positive motion from the planning board in support. The procedural posture of moving forward, it has to go on the warrant. It was explained that it does not mean that at the Town

Meeting the Board can't make the recommendation to post-pone. The Board may also wish to wait to get advice from Town Counsel that says otherwise.

The Board asked that Town Counsel be notified again and that the Board would take this up at a future meeting.

BRIEFINGS AND REPORTS BY BOARD MEMBERS:

Mr. Berry updated the Board on his ethical scenario with the DCPC. He will not be in the Town for the meeting anyway, so it is a moot point.

Mrs. Greenhalgh stated the DCPC meeting will be Thursday afternoon on March 19, 2020.

Ms. Maslowski stated the CPC meeting is Thursday night at 6pm in this room. They have asked procedurally all entities with outstanding CPC funds to come give an update on use of money and report status of project.

ADJOURNMENT:

Mr. Berry made the motion to adjourn at 8:46 PM, seconded by Mr. Chadwick, unanimously so voted via rollcall (6-0-0).

Respectfully submitted,

Kathleen A. Tenaglia, Board Secretary

Adopted:

Charleen Greenhalgh

From: Amy E. Kwesell <AKwesell@k-plaw.com>
Sent: Monday, March 23, 2020 3:44 PM
To: Charleen Greenhalgh
Cc: Joe Powers; John Giorgio
Subject: RE: HARW Proposed Deletion of "Essential Services" Definition from the Bylaw

Thanks – it appears that both involve temporary storage of construction materials?

In my opinion, Case 2019-38 (related to the sewer) could fall under Municipal Use as the storage is related to the sewer project which is the use.

In Case 2017-38 (National Grid) the storage was associated with a utility project but it appears that the storage was also temporary? Also, we would need to know if the DPU issued a zoning exemption to National Grid pursuant to G.L. c. 40A, § 3.

You stated that Ray was going to weigh in – has he yet?

I ask because I am wondering if temporary storage associated with projects even needed a special permit as the use is the project, not necessarily the temporary storage.

Thanks,

Amy

Amy E. Kwesell, Esq.

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From: Charleen Greenhalgh <cgreenhalgh@town.harwich.ma.us>
Sent: Monday, March 23, 2020 3:28 PM
To: Amy E. Kwesell <AKwesell@k-plaw.com>
Cc: Joe Powers <jpowers@town.harwich.ma.us>; John Giorgio <JGiorgio@k-plaw.com>
Subject: Re: HARW Proposed Deletion of "Essential Services" Definition from the Bylaw

Hi Amy:

In Case 2019-38 this was the Owner the property applying on behalf of Robert Our to allow for the storage of sewer related materials.

In Case 2017-38, this was National Grid.

If you need further information, please let me know.

Best,
Charleen

From: Amy E. Kwesell <AKwesell@k-plaw.com>
Sent: Monday, March 23, 2020 3:22:28 PM
To: Charleen Greenhalgh
Cc: Joe Powers; John Giorgio
Subject: HARW Proposed Deletion of "Essential Services" Definition from the Bylaw

Charleen,

As we discussed, it is my opinion that in certain circumstances, a use can fall under “Municipal Uses” (allowed in every zoning district) and “Essential Services” (requires a Special Permit from the Zoning Board of Appeals in every zoning district) thus creating conflicting provisions.

With regard to the recent sewer pump stations, I had opined that pump stations being constructed outside of the public way were Municipal Uses but also fell under the definition of Essential Services and therefore needed a special permit.

The Bylaw defines “Municipal Use” as “*A use, whether in a structure and/or on a parcel of land, owned and/or operated by the Town of Harwich.*”

The Bylaw also defines “Essential Services” as “*Services and appurtenant structures, facilities, uses or equipment provided by governmental agencies, including the Town of Harwich, or provided by public utility or public services companies, including but not limited to water distribution systems, Town-owned marinas, docking areas, fish piers, off-loading facilities, retaining walls, jetties and similar structures, gas and electric distribution, systems for telecommunications and sewerage systems.*”

In Drumme v. Town of Falmouth, 87 Mass.App.Ct. 127 (2015), the Court held that the Town of Falmouth required a special permit to operate a wind turbine at its wastewater treatment facility even though Falmouth sought to “operate a windmill for municipal purposes in a district where all such purposes are permitted as of right.” The Court based its decision on a separate provision of the Falmouth Zoning Bylaw that specifically designated windmills as an accessory use by special permit noting “it logically follows that windmills could not have been intended to fall within the more general municipal purpose as of right...” Id. at 129. In so holding the Court relied on both language with the Falmouth By law and the general rule of statutory construction that “a statutory expression of one thing is an implied exclusion of other things omitted from the statute” Id. (citations omitted). Therefore, as the pump stations appeared to fit within the definition of Essential Services, it was my opinion, that an argument existed that pump stations are meant to be excluded from the definition of Municipal Use.

By deleting the definition of “Essential Services”, any municipal use would be allowed in every zoning district without the need for a Special Permit which appears to be the intent of Town Meeting.

Zoning Board of Appeals Chairman Ryer states below that he is concerned about the deletion of “Essential Services” and states that the following two recent projects rely on said definition:

- ? Case 2019-38, a use that was neither owned nor operated by the Town but was a use operated by the applicant, the West Newbury Development Corporation.
- ? Case 2017-38, a gas pipeline project where Paul Cuddy, Trustee of Harwich Commons LLC sought to store materials in connection with the gas pipeline project on Halls Path.

Before opining on suggested zoning amendments, I do need more information on said projects:

Were they utility company projects?

Or private projects servicing a select amount of residents?

Or were they simply a Town project being constructed by a private company?

Best regards,
Amy
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From: Charleen Greenhalgh <cgreenhalgh@town.harwich.ma.us>
Sent: Wednesday, March 11, 2020 9:03 AM
To: Amy E. Kwesell <AKwesell@k-plaw.com>; John Giorgio <JGiorgio@k-plaw.com>
Cc: Joe Powers <jpowers@town.harwich.ma.us>; Raymond Chesley <rchesley@town.harwich.ma.us>
Subject: FW: Proposed Deletion of "Essential Services" Definition from the Bylaw

Hi Amy and John:

There is a continued discussion regarding conversations last year that Amy and I had about the Harwich definition of "Essential Services" when the issue about the sewer pump houses came up and it was determined that because of the definition ZBA approval was required. We discussed the fact that "Municipal Uses" were allowable by right in all zoning districts, but because of the definition of Essential Services, the special permits were needed. What we discussed further was the need to delete the definition of Essential Services.

Attached please find the zoning amendment which moved forward. The public hearing for this was on February 25th. The Board voted unanimously to recommend the amendment to the Town Meeting.

What followed is a series of emails below from the Chair of the Zoning Board of Appeals, who raised concerns about the deletion of Essential Services. It was back on the Planning Board Agenda last night, to allow the ZBA Chair to have an opportunity to speak on the matter.

On behalf of the Planning Board, and myself, we would be interested to hear what your opinion is on this matter. I have also asked the Building Commission to provide an opinion.

I am available to discuss this further.

Respectfully,
Charleen

Charleen Greenhalgh

Town Planner
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508-430-4703 fax
cgreenhalgh@town.harwich.ma.us

Town Hall Hours – Monday - Friday: 8:30am-4:00pm

From: David Ryer [<mailto:nammaddog@gmail.com>]
Sent: Friday, February 28, 2020 2:40 PM
To: Charleen Greenhalgh <cgreenhalgh@town.harwich.ma.us>
Subject: Re: Proposed Deletion of "Essential Services" Definition from the Bylaw

Hi Charlene,

What is unfortunate is that the Planning Board did not seek any input from the BOA on the proposed change to the Code prior to setting a date for a public hearing on it. I did send you my initial comments in the afternoon prior to the hearing, but the BOA did not meet until February 26th, so I did not have a chance to discuss this with our members prior to the 26th.

In any event, the case I cited to you, Case 2019-38, would not fall under the definition of "Municipal Use". Municipal Use is defined as "a use, whether in a structure and/or parcel of land, owned and/or operated by the Town of Harwich". In Case 2019-38, the use was neither owned nor operated by the Town. It was a use operated by the applicant, the West Newbury Development Corporation. So, absent the provisions of "ESSENTIAL SERVICES", this applicant would have had to meet the requirements for a variance, which it was unlikely to be able to do, with the adverse consequences to the Town noted in my prior e-mail. The BOA had a similar situation with Case 2017-38 where Paul Cuddy, Trustee of Harwich Commons LLC applied for a Special Permit to store materials in connection with the gas pipeline project on Halls Path. Again, this would not have qualified as a Municipal Use since it was not the Town undertaking this use. The BOA was able to grant the applicant a Special Permit as an ESSENTIAL SERVICE. Again, absent this the applicant would have been required to obtain a variance, which it was unlikely to do.

So, the BOA feels strongly that the provisions of ESSENTIAL SERVICE benefit the Town and should be retained in the Bylaw. I recommend that you withdraw this proposed change from the draft Warrant so that the Planning Board, the BOA, and Town Counsel can work out a solution to retain these provisions, but avoid a conflict with the definition of Municipal Use. Failing this, on behalf of the BOA, I will have to oppose this proposed change before the Select Board when it considers the Warrant and at Town Meeting, if necessary. Please let me know your decision so that I will know how to proceed.

Dave

On Fri, Feb 28, 2020 at 8:55 AM Charleen Greenhalgh <cgreenhalgh@town.harwich.ma.us> wrote:

Hi Dave:

Apologies, but I cannot have a conversion via email like this and include your Board Members. It is unfortunate that you or a representative was not present at the Planning Board Hearing on Tuesday night.

I guess I am confused as to the ZBA's concerns. Sewer work would clearly fall under the definition of "Municipal Use", as we clearly pointed out to Town Counsel. "Municipal Use" is allowable by right in ALL zoning districts.

The Planning Board held the public hearing on this amendment on Tuesday evening. No one spoke for or against the amendment and therefore the Planning Board voted unanimously to approve and recommend the zoning amendment to the Town Meeting.

Charleen

Charleen Greenhalgh

Town Planner

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From: David Ryer [mailto:nammaddog@gmail.com]

Sent: February 27, 2020 2:31 PM

To: Charleen Greenhalgh <cgreenhalgh@town.harwich.ma.us>

Cc: Al Donoghue <al@donoghue.org>; Chris Murphy <murphcxr@gmail.com>; James Armstrong <captjamiearmstrong@yahoo.com>; Michael Cupoli <attorneycupoli@gmail.com>; James Hilliard <jh@connhill.com>;

Kathleen Muller <kathleenxxx@aol.com>; Shelagh Delaney <sdelaney@town.harwich.ma.us>

Subject: Re: Proposed Deletion of "Essential Services" Definition from the Bylaw

Hi Charlene,

I discussed this with our Board at last night's meeting and all present agreed that the deletion of "ESSENTIAL SERVICES" from the Code will make the Board's job a lot harder going forward in light of the continuing sewer project and other Town projects. It will also impose a greater burden on Town contractors by requiring them to meet the requirements for a variance in connection with Town projects. For example, in Case #2019-38, decided at the Board's January 29, 2020 meeting, West Newbury Development Corporation was granted a Special Permit to store materials and equipment connected to the sewer project at a vacant location on RTE.137, close to the work being performed. It is unlikely that this applicant could have met the requirements for a variance at this location. This would have required the applicant to transport the materials to the Robert B. Our site on Great Western Road, necessitating between 20 to 40 roundtrips a day of large trucks through Harwich Center. This would have not been good for the applicant or the Town. The Board was able to avoid this by granting the applicant a Special Permit.

Accordingly, the Board of Appeals recommends that "ESSENTIAL SERVICES" be retained in Articles Sec.325-2 and 325-13.

It seems to me that the conflict can be resolved by amending the definition of "ESSENTIAL SERVICES" to delete the words I have bracketed in bold so that it reads as follows:

ESSENTIAL SERVICES

Services and appurtenant structures, facilities, *****uses***** or equipment provided by governmental agencies, including the Town of Harwich, or provided by public utility or public service companies, including but not limited to water distribution systems, *****Town-owned***** marinas, docking areas, fish piers, off-loading facilities, retaining walls, jetties and similar structures, gas and electric distribution, systems for telecommunications and sewerage systems.

Please review this with Town counsel and see if this satisfies the concern.. Thanks,

Dave

On Tue, Feb 25, 2020 at 6:13 PM Charleen Greenhalgh <cgreenhalgh@town.harwich.ma.us> wrote:

Hi Dave:

This was done on the recommendation of Town Counsel. The current definition of "Municipal Use" and "Essential Services" definitions and within the use table are in conflict. I would be more than happy to discuss this more or you may wish to watch the Planning Board meetings where this was discussed.

Charleen

Charleen Greenhalgh

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From: David Ryer [mailto:nammaddog@gmail.com]

Sent: February 25, 2020 2:55 PM

To: Charleen Greenhalgh <cgreenhalgh@town.harwich.ma.us>

Cc: Al Donoghue <al@donoghue.org>; chris murphy <murphcyr@gmail.com>; James Armstrong <captjamiarmstrong@yahoo.com>; James Hilliard <jh@connhill.com>; Kathleen Muller <kathleenxxx@aol.com>; Michael Cupoli <attorneycupoli@gmail.com>; Shelagh Delaney <sdelaney@town.harwich.ma.us>

Subject: Proposed Deletion of "Essential Services" Definition from the Bylaw

Hi Charlene,

I don't understand why the Planning Board wants to delete this definition. We recently had a number of cases come before the Board of Appeals seeking Special Permits in connection with the sewer and gas line projects. Without this definition, the BOA would have had to find legal justification for the issuing of Variances which, as you know, requires that a much higher standard must be met. Rather than a complete deletion, why not a revision of the language if there is a problem with the present definition?

All the best,

Dave Ryer