

**HARWICH PLANNING BOARD  
HARWICH TOWN HALL - 732 MAIN STREET- GRIFFIN ROOM  
TUESDAY, JULY 30, 2019 – 6:30 PM  
MEETING MINUTES**

**BOARD MEMBERS PRESENT:** Chairman Jim Joyce; Mary Maslowski; Craig Chadwick; William Stolz; David Harris, and Joseph McParland.

**BOARD MEMBERS ABSENT:** Vice-Chairman Alan Peterson.

**OTHERS PRESENT:** Town Planner, Charleen Greenhalgh; Thaddeus Eldredge; Daniel Ojala; Gary Winstone; Doris and Richard D'Ambrosio; and others.

**CALL TO ORDER** - 6:35 PM by Chairman Joyce with a quorum present.

Chairman Jim Joyce 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.

It was noted that this meeting was originally scheduled for July 23, 2019; however due to the tornado that hit Harwich, all functions to be held on July 23<sup>rd</sup> were cancelled. All abutters for applications were renotified via regular mail about the continuation of matters to this July 30, 2019.

**PB2019-22, Ronald M. Remondino and Lisa Stoker, Site Plan Review Special Permit & Special Permits for Mixed Use & Village Commercial Overlay, 521 Route 28**

Chairman Joyce re-opened the hearing at 6:36 pm. Mrs. Greenhalgh stated that the owners requested a continuance to August 27, 2019.

Ms. Maslowski made the motion to continue the hearing to August 27<sup>th</sup> no earlier than 6:30 pm, seconded by Mr. McParland. Unanimously so voted.

**PB2019-19, Gary Darman, Trustee of the Freeman Ellis Family Realty Trust, Two Lot Definitive Subdivision, Off Orleans Road**

Representative: Thaddeus Eldredge, PLS, East-SouthEast, Inc.

The hearing was re-opened at 6:37 pm by Chairman Joyce. Applicants seek approval of a two (2) Lot, one (1) parcel Definitive Subdivision pursuant to M.G.L. c.41 §81K-GG, and §400 of the Code of Town of Harwich for property located off Orleans Road (just west of #1051 Orleans Road), Map 52 and 62 (there is currently no parcel ID associated with this parcel), and within the R-R and the W-R overlay districts. This is a proposed panhandle subdivision with no road proposed. This was a continuation of the public hearing from June 11, 2019.

Mr. Eldredge reviewed the proposal. He explained that the two lot subdivision was once owned by Freeman Ellis, and is still owned by the Freeman Ellis heirs. The property is three acres near Thompson's Field. They are looking to cut out two buildable lots, and there is also another parcel that has frontage, but it is an unbuildable lot.

Mrs. Greenhalgh read her staff report into the record as follows: Engineering/Survey: The following comments were received from the Town Engineer based on his review of the 06-17-2019 plans and related information: Topographical Plan. Test pits don't appear to have been conducted at the location of the proposed infiltration systems. It is recommended that test pits be performed at the time of construction and prior to the installation of the proposed drainage system. Any revisions to the drainage system resulting from the test pit exploration shall be submitted to the Town Engineer for review. The proposed vertical curve closest to Route 39 is 80-feet long which is less than the 100-foot minimum required. A waiver from this design standard may be required. Stormwater Management Drainage Calculations. The drainage calculations reference "ESE drainage contribution area map", however it is not clear that this map is included in the submitted information. What surface treatment for the proposed driveways was included in the calculations? How is the roof runoff from the proposed houses intended to be managed? Building: Building Permits required. Storm Water Drainage Regulations may apply. Conservation: Locus on the plan is incorrect. Entirely within Priority Habitat 356 for rare or endangered species. No approval with Natural Heritage provided. Fire: Ensure that house numbers on road (Orleans Road) are clearly marked. Highway: No snow or ice services by Town on shared driveways. Health: At a meeting of the Board of Health on June 11, 2019, the Board unanimously approved the definitive subdivision plan request with the following conditions: 1) the lots shall be served by town water. 2) Fully compliant septic systems are required to serve the dwellings. Police: No concerns.

Mrs. Greenhalgh continued with her comments. 1) On May 24, 2019 an email was sent to Mr. Eldredge regarding the submittal. Revised plans and additional information were submitted on May 31, 2019 and June 18, 2019. 2) A Special Permit for the "shared driveway" has been filed and the public hearing is July 23, 2019. 3) Natural Heritage and Endangered Species Program has commented on this application. A copy of their letter is attached hereto. 4) The representative has requested a waiver from a municipal lien certificate from the Assessor. The municipal lien certificate comes from the Treasurer/Collector. 5) The waiver for the plan and profile, Waiver Item #2, is no longer necessary in that the revised Topographical Plan provides a plan and profile. 6) Within Lots 1 and 2 there are areas shown as "Preservation Area" and "Development Area" The development for each of these lots would be restricted to the "Development Area" based on the plan; it should also be noted as a condition in the decision. 7) There is an additional parcel associated with the division of land. It shows as "Preservation Area 3". This parcel does not have frontage and therefore is not a buildable lot; this should be so noted on the plan and noted as a condition in the decision. 8) It is important to note that the Planning Board cannot get involved in any ownership issues or matters. 9) The Planning Board has adequate time to consider and take action on this application; decision must be rendered and filed with the Town Clerk by September 9, 2019.

Mr. Chadwick stated that parcel 3 does not have frontage so it's not a buildable lot. He continued to ask if it could ever become a buildable lot if the shared driveway is extended. Mrs. Greenhalgh stated no, the shared driveway would not grant frontage. She continued to state that unless a Subdivision Road was installed, you could not have two panhandle lot.

Mr. Eldredge clarified that the Roadway in the back is Middle Road, and is an ancient way. If the box turtle was no longer an endangered species, and conservation removed their condition, and if

Middle Road was appropriately built up, then in theory the lot could be a buildable lot. He continued to state that that is a slim chance though.

Mr. Stoltz asked how wide the shared driveway is. Mr. Eldredge responded 20 feet paved.

Chairman Joyce asked why there was a Delta in the length between Mr. Eldredge's calculation and the Town Engineers calculation of where the lot ends. Mr. Eldredge said where does the lot end? The lot has a curve to it. The shape factor works better with a curve. Chairman Joyce stated he only asks to make sure that the same methodology is being used. Mrs. Greenhalgh stated that she agrees, but because it is so close, it's understandable.

There was no public input. Mr. McParland made the motion to close to the public hearing at 6:51 pm, seconded by Ms. Maslowski, unanimously so voted.

On a motion from Mr. McParland, seconded by Ms. Maslowski, the Board voted unanimously (5-0-0) to adopt and approve the following findings of fact related to the request for Panhandle Lots:

1. Lot frontage and lot width within the panhandle portion is 35 feet wide.
2. The length of the panhandle portion is slightly longer than the maximum 300'; however this is not a substantial deviation and therefore is found to be safe and adequate.
3. Suitable access by a driveway to such lot is provided within the panhandle and the access is wide enough and otherwise satisfactory for a driveway.
4. The panhandle lot meets the shape number requirements, being less than or equal to 22.

The Board members reviewed the criteria for granting a Definitive Subdivision and following a motion by Mr. McParland and seconded by Ms. Maslowski, the Board voted unanimously (5-0-0) to adopt the following findings of fact:

1. Said subdivision for residential uses are permitted in the R-R and W-R zoning districts.
2. Said subdivision does not adversely affect the neighborhood.
3. All lots demonstrate compliance with minimum dimensional requirements for frontage, area and shape.
4. Board of Health requirements shall be met.
5. Natural Heritage and Endangered Species Program requirements shall be met.

On a motion from Mr. McParland, seconded by Ms. Maslowski, the Board voted unanimously (5-0-0) to approve the following waivers from the Subdivision Rules and Regulations pursuant to §400, Article II:

1. Municipal Lien Certificate submittal.
2. Length of Panhandle to allow 325 feet where a maximum of 300 feet is required.
3. Vertical Curve of 80 feet where 100 feet is required.

On a motion from Mr. McParland, seconded Ms. Maslowski, the Board voted unanimously (5-0-0) to approve with conditions PB2019-19 Gary Darman, Trustee of the Freeman Ellis Family Realty Trust, a two (2) Lot, one (1) parcel Definitive Subdivision shown on a plan entitled "Definitive Subdivision Plan for Freeman Ellis Family Realty Trust, Route 39, Harwich, Massachusetts, prepared by East-SouthEast, LLC, dated 04-01-2019, revised 06-17-2019, scale

1" = 40', Sheet 1 of 2", with waivers and a panhandle lot pursuant to M.G.L. c.41 §81K-GG, and §400 of the Code of Town of Harwich for property located off Orleans Road (just west of #1051 Orleans Road), Map 52 and 62 (there is currently no parcel ID associated with this parcel), and within the R-R and the W-R overlay districts. The following conditions are imposed:

1. Board of Health requirements/conditions shall be added to the Definitive Plan prior to the endorsement of the plan.
2. Test pits shall be performed at the time of construction and prior to the installation of the proposed drainage system. Any revisions to the drainage system resulting from the test pit exploration shall be submitted to the Town Engineer for review and approval.
3. Waivers approved by the Planning Board shall be added to the Definitive Plan prior to the endorsement of the plan.
4. A Planning Board Covenant and Agreement shall be required.
5. The Natural Heritage and Endangered Species Program deed reference shall be noted on the plan prior to endorsement and all requirements shall be met.
6. The Special Permit for the alternative access deed reference shall be noted on the plan prior to endorsement and all conditions shall be met

**PB2019-26, Gary Darman, Trustee of the Freeman Ellis Family Realty Trust, Use Special Permit, Off Orleans Road**

Representative: Thaddeus Eldredge, PLS, East-SouthEast, Inc.

The hearing was opened at 6:56 pm by Chairman Joyce reading the legal notice into the record. Applicants seek approval of a Use Special Permit for Alternative Access (via a shared drive) with waivers. The application is pursuant to the Code of the Town Harwich §325-18.P, and -51. The property is located off Orleans Road (just west of #1051 Orleans Road), Map 52 and 62 (there is currently no parcel ID associated with this parcel and this case will be heard concurrently with Planning Board case 2019-19 for a Definitive Subdivision) in the R-R & W-R Zoning Districts.

Mr. Eldredge stated that it makes the most sense to have a shared driveway instead of making two curb cuts. It was also already reviewed with the Town Planner previous to the filing and she and other staff concurred.

Mrs. Greenhalgh read her staff report into the record as follows: Fire: No concerns. Police: No concerns. Engineering: Comments were provided that pertained to the Definitive Subdivision Plan PB2019-19. Planning Staff Comments: 1) The request is reasonable as this reduces the number of curb-cuts along Route 39 (Orleans Road). 2) Although the applicant has requested a waiver from the submittal of a plan and profile, the plans received on June 18, 2019 (Topographical Plan) clearly shows both; therefore, a waiver is not required. 3) The reasons/explanation provided for this request are valid and a shared driveway does appear to be superior to access from the lot frontage. 4) Standard conditions are recommended.

No comments or questions were made by either the Board or the Public.

Mr. McParland made the motion to close to the public hearing 6:59 pm, seconded by Ms. Maslowski, unanimously so voted.

Following a motion by Mr. McParland and seconded by Ms. Maslowski the Planning Board voted to adopt (5-0-0) the following findings:

1. The alternative access proposed is superior to the existing access as it would reduce the number of curb cuts onto Route 39 (Orleans Road).
2. The alternate access is proposed to be paved to a width of 20 feet and provide for drainage.
3. Access is over the pan-handle portion of Lot 2 which would meet the frontage requirement of 35 feet pursuant to §325-18.P.
4. The use is consistent with the Zoning Code and will not adversely affect the neighborhood.
5. The specific site is an appropriate location for such a shared driveway.
6. There will be no nuisance or serious hazard to vehicles or pedestrians.

On a motion from Mr. McParland, seconded by Ms. Maslowski, the Board unanimously (5-0-0) voted to approve with conditions the Use Special Permit for Alternative Access for Lot 1 pursuant to the Code of the Town Harwich §325-18.P and §325-51 via the pan-handle portion of Lot 2, for property located off Orleans Road (just west of #1051 Orleans Road), Map 52 and 62 (there is currently no parcel ID associated with this parcel) in the R-R & W-R Zoning Districts; based on the fact that the application meets the necessary requirements and criteria for approval pursuant to the Code of Town of Harwich with the above findings and following conditions.

1. The special permit decision shall be recorded at the Registry of Deeds.
2. Any changes to the site plan shall be subject to further Planning Board review.

**MEETING MINUTES-** Mr. McParland made the motion to adopt the minutes from June 25, 2019 and July 9, 2019, as written, seconded by Ms. Maslowski; unanimously so voted.

**PB2019-25, Christopher W. Our, Mark Giarrusso, Janet S. Our, Briyan Blandard and Scott O. Our, Preliminary (7) Lot Subdivision, 103 and 105 Old Harwich Brewster Road**  
Representative: Daniel A. Ojala, PE, Down Cape Engineering

The meeting was opened by Chairman Joyce reading the legal notice into the record. Applicants seek approval of a seven (7) lot preliminary subdivision plan pursuant to the Code of the Town of Harwich c.400, Article II as set forth in MGL c. 41 §88 K-GG for property is located at 0 & 11 Littlefield Pond Road (Map 77, Parcels C22 & C20, respectively) and 103 and 105 Old Harwich Brewster Road (Map 65, Parcels R2 & R3, respectively) in the R-R and W-R zoning districts. Continued from July 9, 2019.

Mr. Ojala stated that a division of land to the western portion of lots 6 and 7 is proposed. They will be extending Fish and Game Road, and the Rod and Gun Club will have a nicer drive in. This will also provide frontage for some additional lots. The Ours, and some of their family members, own the western portion of the lots. Some of the lots are burdened by the electrical easement, but the lots are still large enough to build on. The topography is not bad, there are some kettle holes. The road is a gentle 5%, natural depression can be used for drainage. Some of the lots are in a Zone II, but area certainly large enough, and farm enough away from the wells. The Health Department has already seen this proposal, and approved it with the Zone II conditions. He continued to state that all parties signed the application and it is a joint venture.

He continued to explain the lots in detail. There will be underground utilities and the dwellings will be connected to town water. There is some noise from Fish and Game.

Mr. McParland asked where the Fish and Game Club is located, and Mr. Ojala pointed it out on the map. Mr. McParland asked if that is gated. It was responded that yes it is.

Mr. Ojala continued to explain the lots, and stated that the Ours do a very nice job. He also commented on the engineers concern with a side walk. He stated that there is not a lot of traffic, and it wouldn't be a good candidate for sidewalks. If the Board agreed they would be able to donate to the sidewalk fund for an area that does need it.

Mr. McParland asked what the Board of Health said. Mr. Ojala read the approval letter with conditions, which are: The Harwich Board of Health will not consider any variances from Title 5 or Harwich Board of Health Regulations for any of the lots. The subdivision will be served by Town Water. Each lot will be restricted to one bedroom per 10,000 square feet of land.

Mr. Chadwick asked at what point this would go before the Conservation Commission. Mr. Ojala stated that they will double check, and if there are any requirements they will go before the Board.

Mrs. Greenhalgh read her staff report into the record as follows: Conservation: Need state approval for development – endangered species habitat. Health: The Board of Health reviewed this application on Tuesday, July 11, 2019. They approved the application with the conditions: The Harwich Board of Health will not consider any variances from Title 5 or Harwich Board of Health Regulations for any of the lots. The subdivision will be served by Town Water. Each lot will be restricted to one bedroom per 10,000 square feet of land. Engineering: Comments are anticipated for the July 23, 2019 meeting. Police, Fire and Highway: No concerns.

She continued with her comments. 1) All lots appear to meet the lot shape requirement. 2) There is an electrical easement on Lot 5; a dwelling will not be allow within the easement, is there adequate area remaining for a dwelling? 3) The property is made up of four (4) parcels: 103 and 105 Old Harwich Brewster Road (Map 65, Parcels R2 & R3, respectfully); 11 Littlefield Pond Road (Map 77, Parcel C20); and 0 Littlefield Pond Road (Map 77, Parcel C20). It does not appear that the entirety of all the parcels is shown on the plan. There are two "Remainder Lots" shown, which were not calculated in the filing fee. An additional \$210 may be required. 4) Within the "Remaining Lot" areas and a portion of Lot 5 an "Existing Roadway Easement" is shown. Where does this easement start and stop? 5) The property does fall under Natural Heritage and Endangered Species Program ("NHESP") jurisdiction; it is strongly recommended that the applicant, once preliminary approval is received, file with NHESP before returning with the definitive submission. 6) As the Board only has until August 2, 2019 to take action on this application, it is recommended that the Board make a decision this evening. This is a preliminary subdivision application and therefore there are three options available: a. Approve. b. Approve with conditions and/or modifications. c. Deny

Mrs. Greenhalgh stated that this is a good opportunity for the Board to make suggestions to the applicant. This will not be set in stone at this point.

Mr. Stoltz asked if noise from the gun club was an issue. Mrs. Greenhalgh responded that she did not think so. She also stated that when people inquire about lots in this area staff lets them know. Mr. Ojala said the Real Estate Agents have to let potential clients know. Chairman Joyce stated that the majority of the activity at the club goes on during the weekends. The club hours operate later on in the morning, and there is trap shooting Wednesday and Friday beginning at Noon, and Saturday and Sunday beginning at 10 am. So those are all considerations. Any Natural Heritage conditions will also help to preserve the trees.

Mr. Ojala stated that that was also brought up at the Board of Health meeting as well, and they will be trying to preserve what they can.

Mr. McParland asked if his clients intend to develop right away. Mr. Ojala responded he thought so, it is a good market they might as well do it.

Gary Winstone, homeowner on Fish and Game Road. He stated that is not opposed to the development, or to the gun club, however he is concerned with the increased noise from the Gun Club with the development. He stated that the Gun Club has been very accommodating, but since Hybrid Homes cleared the areas, the noise has increased. He is concerned that if these lots are also cleared, that the noise will greatly increase. The paved road to the Gun Club is also a concern. People have put up stop signs, and many do not adhere to those signs. There are many children in the area. It is a concern that there will be an accident. Can the road access be pushed so it is not directly across? They were also told that the gun club is 24/7 access to indoor shooting, and 8 am access to outdoor shooting. He stated it is not the indoor shooting that is the problem, but the outdoor shooting. The club is aware of the issue and is working on it. Mr. Winstone asks that they please leave as many trees as possible. He has no objections to either the club or the development, but please keep as much of a buffer as possible. Noise is truly a concern.

Mrs. Greenhalgh stated that she certainly understands his concerns, but the Gun Club is not in front of the Board, so they cannot impose any conditions to the club.

Chairman Joyce thanked Mr. Winstone for his comments, and stated that the comments were well spoken and politely done. Mr. McParland stated that when firing inside, no sound can be heard outdoors. Mr. Winstone agreed that indoor shooting is not the problem.

Richard D'Ambrosio, 13 Littlefield Pond Road, stated that his wife and he will be most affected due to the close proximity. In December of 2016, they were the first in the subdivision. They put down a deposit, and the builder, Mark Giarrusso, asked if they would slide to the next lot, so they could build a road. They agreed. They were told the berm would be fixed, and plantings will be done, but they never were. They have asked repeatedly, but nothing happens. Because of this they are very wary of any promises that will be made. The trees coming down are going to impact the noise greatly.

Chairman Joyce asked if they have spoken to Selectmen about the problem. Mr. D'Ambrosio responded no, but Mark Giarrusso said weeks ago that Speakman was going to come over in 1 weeks' time to fix the berm. That was weeks ago, Mr. D'Ambrosio is pleading for the Board to force Mark Giarrusso to make this lot livable.

Ms. Maslowski asked if there is a Bond remaining? Mrs. Greenhalgh stated there is, but this has nothing to do with the work covered by the bond. This is a private matter and there is nothing the Planning Board or the Board of Selectmen can do.

Mr. Ojala stated that one of the owners is struggling right now, but the Ours have a lot more juice than he does to get this done. He is fully confident the Ours will follow through with what they say. A discussion ensued regarding planting locations and the berm.

Mr. D'Ambrosio stated that they are south of the road and the lots, which is the direction of the prevailing winds. Will anything be done to limit debris from road construction? Mr. Ojala stated that a binder will be put down right away.

Mr. D'Ambrosio also stated that the lot was not staked. Mr. Ojala said that he was the one who staked it, but he could do it again if someone removed the stakes.

Mr. Stoltz asked if the Northwest corner is for a future Road. Mr. Ojala stated that it is for Fish & Game.

Mrs. D'Ambrosio, wanted to clarify that the agreement mentioned regarding the berm was a written signed legal agreement, it was not a verbal agreement. Mrs. Greenhalgh stated the agreement is not with this Board, it's a civil matter.

Mr. McParland made the motion to approve, with conditions and/or modifications, the preliminary plan entitled "Preliminary Subdivision Plan off Land, Off Littlefield Pond Road, Harwich, MA", prepared by R.B. Our Co. Et Al, dated June 10, 2019, scale 1" = 40', by Down Cape Engineering, Inc., subject to the issues raised by all Town departments, including requirements of the Board of Health review, the Town Engineer and the Town Planner and review and sign-off from NHESP shall be required prior to the Planning Board rendering a decision on a Definitive Plan application, seconded by Ms. Maslowski, unanimously so voted.

## **BRIEFINGS AND REPORT BY BOARD MEMBERS**

Chairman Joyce commended everyone for a job well done post Tornado, and encouraged others to Thank all of those who responded. He also stated that he has resigned, and this is his last meeting. He continued to state that the Planning Board has been very careful in its approach, and taken time in areas that needed it, but have also acted quickly when needed. He is very pleased with the Board, and stated it has been a distinct honor and privilege serving. He thanked everyone for everything.

Mr. Chadwick extended his thanks to Chairman Joyce for his leadership and help. He continued to state that there have been some interesting public hearings that have been hard to control, and that he did it well. Also he would like to piggy back on Chairman Joyce's Tornado comment, and would also like to commend the DPW and town hall employees. Everyone has been great. Mr. Chadwick stated that it is amazing how well, and quickly, things were back to semi-normal. Mr. Chadwick thanked Mrs. Greenhalgh and Ms. Banta for all the work. He requests that an item be put on a future agenda to discuss "process and protocol", so everyone is under the same understanding moving forward, not just for the Cape Cod Commission, but for other areas as



well. He gave the example of closing the public hearing of Harwich LLC. He continued he would have liked to have several things on the record, but did not have the opportunity to do so.

Chairman Joyce said that feedback is a gift that we learn from, and listening helps to build trust.

Mrs. Greenhalgh stated that this will be placed on a future agenda.

Steven Ford, Selectman liaison, thanked Chairman Joyce for his thoughtful and effective leadership. He stated that the town will miss him greatly, and come back soon.

Chairman Joyce stated that he will certainly be back, and if they don't like Georgia, they certainly will be back again.

**BOARD ELECTIONS** – Deferred to next meeting.

**ADJOURNMENT:** The motion was made by to adjourn at 8:01 PM. The motion was made by Mr. McParland, seconded by Ms. Maslowski. Unanimously so voted.

Respectfully submitted,

Kathleen A. Tenaglia, Board Secretary.

Adopted: August 27, 2019