**MINUTES**

**HARWICH PLANNING BOARD**

**TUESDAY, OCTOBER 4, 2022 6:30 PM**

**TOWN HALL, GRIFFIN ROOM**

**MEMBERS PARTICIPATING:** Duncan Berry, Chair, Mary Maslowski, Ann Clark Tucker, David Harris and William Stoltz.

Also attending: Meggan Eldredge, Assistant Town Administrator

I**. RECORDING NOTICE: CALL TO ORDER**

Chairman Berry called the meeting of the Harwich Planning Board to order on Tuesday, October 4, 2022 at 6:30 PM and read the recording notice.

**II. PLEDGE OF ALLEGIANCE**

Chairman Berry invited all attendees to join him in the Pledge of Allegiance.

**III. PUBLIC HEARING\*\***

 **A. Case No. PB2022-17 Mason Family Realty Trust, Kenneth and Jill Mason, Trustees owner/applicant,** Atty. William Crowell, representative, seeks approval of a Waiver of Site Plan Review and two (s) use special permits for Mixed Use development in the Village Commercial Overlay District for a portion of the “Mason Jar Condominiums” complex (Units 1,2 and 3). The proposal seeks to convert the former restaurant establishment into a commercial art studio and a residential unit on the first floor. No changes are proposed to units 2 and 3. The request is pursuant to the Code of Town of Harwich Section 325-55.F, -51.L and -5.1.M. The subject property is located at 544 Route 28, Assessors ID 14/F4-C1-1, F4-C1-2 and F4-C1-3, located in the C-V zoning district in the Commercial Village Overlay District.

Chairman Berry read the request as presented. Attorney William Crowell introduced the owner, Kenneth Mason. Attorney. Crowell presented his narrative describing the subject property in detail and the reasons for their requests. He also explained that the project meets the requirements for a mixed use development. He asked that the Board approve the two special permits and the waiver of the site plan.

Assistant Town Administrator Meggan Eldredge shared information about the zoning tables and other notes. Board members asked questions and Atty. Crowell responded with answers.

Chairman Berry asked for any questions or comments from the public. None were offered. He noted that there will be changes to the plan, breaking out the square footage to two zones and adding a pathway to the studio. He asked the Board members if they had any objections. Ms. Maslowski suggested the change of the wording regarding the zoning and Atty. Crowell agreed. The condition will be that the changes on the plan will be subject to the Engineering Department’s approval.

Ms. Maslowski moved to close the Public Hearing, 2nd. Vote 5:0 in favor. Motion carried unanimously. Public Hearing closed.

 Ms. Maslowski moved to approve the following recommended changes to the submitted plans:

 1. The subject property, 544 Route 28 Harwich Port Assessor’s Map 14 Parcel F4-C1-1 is located in the C-V overlay zoning district

2. The property is under a condominium form of ownership and has access and parking according to the agreement.

3. The rear portion of the lot in the R-M zone currently has a two story building and was granted a variance and special permit to operate a tree service business, storage above and no residential use.

4. The main part of the building is a two story structure with retail sales use on the lower level and a residential unit on the second floor and Applicants received a variance to create an additional residence for year round employee in the C-V zoning district.

5. Pedestrian access to the rear building is available from the Route 28 sidewalk via a four foot easement as shown in the documents.

6. The main structure was previously operated as a restaurant. A second residential unit is located on the second floor.

7. The proposal constitutes a mixed use development under the Harwich Zoning By-Laws.

8. The applicant has applied under Section 325 - 5.1 subsection A, L and M under the Harwich Zoning By-Laws.

9. The buildings on site are pre-existing, nonconforming and with the terms of various dimensional requirements, no changes are proposed.

10. For each mixed use development there should be a minimum of five thousand feet per lot area for each residential unit in a commercial district and the minimum of ten thousand feet per lot area for each commercial unit.

11. The total lot size for C-V and R-M combines approximately 16, 079 square feet. The Board has determined that the Plan shows each zone’s square footage separately.

12. Staff’s rough calculations shows approximately 16,000 square feet in the C-3 district, therefore there can be 3 units. Two units exist and a third residential unit can be created.

13. The new commercial unit will be located at the front of the building, facing the street at ground level pursuant to the criteria in the Harwich Zoning ByLaws.

14. The proposal’s narrative details all units having an aggregate floor area of 2,573 square feet, 36% of the total floor area of all uses, 5,591 square feet.

15. The proposed commercial use is conducive to supporting the local business and the residential unit will add an additional unit to the local housing options. Mixed use development is encouraged in the Villages and under the Town Planning Initiatives and in the current general Planning patterns.

16. The site parking and access via recorded easement plan is generally undefined gravel spaces located to the rear of the property and adequately screened. Four spaces are dedicated for the use of 546 Route 28.

17. Site parking is pre-existing non-conforming as to the current parking standards.

18. A mixed use development is considered a new use. The applicant has applied for a waiver of site plan review.

19. The applicant shall provide adequate access and landscaping to the retail studio.

20. There shall be an outdoor landscaped public area.

21. Subject to the Board of Health review and approval, the system should be adequate for the proposed operation of the proposed use.

22. The proposed use and development will not adversely affect the neighborhood and the property is in an appropriate location for the proposed use.

23. There will be no nuisance or serious hazard to vehicles or pedestrians by the proposed uses.

24. The proposal meets a standard to grant a waiver of site review as the applicant does not propose changes to the building.

25. The application was date stamped by the Town Clerk on August 15, 2022 and includes the applicable and relevant required documents.

26. The Planning Board did post and give notice for Public Hearing

Motion seconded by Mr. Stoltz

Attorney Crowell noted that two members of the Board are missing due to illness and reminded the Board that they need a 5:0 vote.

The vote was 5:0 in favor. Motion carried unanimously.

Ms. Maslowski moved to adopt and grant the mixed use development, a Commercial Village Overlay special permit and vote on the waiver of site plan review for 544 Route 28 subject to the following conditions:

**Conditions of Approval**

* The project shall obtain Board of Health approval under said Board’s septic and other applicable regulations.
* The amended Site Plan shall demonstrate compliance for:
	1. the per unit square footage requirement relative to the particular zoning district (zoning compliance table) and
	2. there shall be an outdoor landscaped area

pursuant to the Mixed Use bylaw sections 325-51.M (2) and (4).

* Landscape and pedestrian access to new commercial unit shall be shown on the amended plan.
* All changes required to the Site Plan under this decision are subject to approval of and discretion of the Town’s Engineer/Designee for compliance.
* All Lighting and Signage must comply with the Town Code.
* The project shall be undertaken consistent with the plans referenced in the application material set out above.
* Changes to the site not authorized under this decision may require further Planning Board review and modification to this decision and any relief not expressly granted hereunder is hereby denied.
* This Decision shall run with the property.
* This Decision shall not be effective until it is recorded with the Barnstable County Registry of Deeds.

Motion seconded by Mr. Harris.

Vote 5:0 in favor. Motion carried unanimously.

**B. Case No. PB2022-19 Eastward Companies, William Marsh, President,** seeks approval of a Modification of an approved Definitive Subdivision is Said subdivision plan to waive construction off certain portion of the sidewalk in front of Lot 5 & Lot 6. Said subdivision is known as Bascom Hollow. The application is pursuant to the Code of the Town of Harwich Chapter 400 and MGL c. 41 Section 88 K-GG. Bascom Hollow is located on Map 97 in the R-R & W-0R overlay zoning districts.

Susan Ladue was present virtually to represent Eastward Companies. She restated details of the application and the narrative letter. She described the application, what it entails, the work that is presently being done on the property and why they are asking for a waiver. She understands that if the waiver is granted, there may be a fee of $1,900.00.

Ms. Eldredge reviewed the staff comments and noted that they were in agreement with the reasons for the waiver. Waiving the $1,900.00 will be a Board decision.

Board members asked questions and Ms. Ladue responded with answers. Chairman Berry asked for any questions or comments from the public. None were offered.

Ms. Maslowski moved to close the Public Hearing, seconded. Vote 5:0 in favor. Motion carried unanimously.

Ms. Maslowski moved to vote and adopt the Modification as presented with all necessary details, and conditions, seconded. Vote 5:0 in favor. Motion carried unanimously.

Ms. Maslowski moved to approve the waiver to exempt the construction of sidewalks as shown on the plan, seconded. Vote 5:0 in favor. Motion carried unanimously.

**C. Case No. PB2022-21 715 Harwich LLC, Saumil G. Patel, Manager,** Atty. Howard Cahoon, Jr. Representative, seeks approval of a Special Permit for Mixed Use as well as a Site Plan Review Special Permit in the Harwich Center Overlay pursuant to the Code of Town of Harwich Section 325-51.M,-51.O and -55. The property is located at 715 Main Street, Assessors ID 40-D7-1 in the C-V zoning district.

Attorney Cahoon introduced himself and the project architect who, together with Attorney Cahoon, explained the details of the request adding that the Applicant had worked closely with the Harwich District and Historic Commission.

Ms. Eldredge noted that the Board of Health wanted to inform the Planning Board that the system was designed in 1989 and does not have the required capacity for the plan noting that an update was required. Board members asked questions and Atty. Cahoon and the architect replied with answers. Chairman Barry asked for comments or questions from the public. None were offered.

Ms. Maslowski moved to close the Public Hearing, seconded by Mr. Stoltz. Vote 5:0 in favor. Motion carried unanimously.

Ms. Maslowski moved to approve the Mixed Use Special Permit as presented with all necessary details and conditions (read at the meeting). The motion was seconded by Ms. Tucker. Vote 5:0 in favor. Motion carried unanimously.

Ms. Maslowski moved to approve the Site Plan Review Special Permit and read for the record all details and conditions. Motion was seconded by Mr. Stoltz. Vote 5:0 in favor. Motion carried unanimously.

**D. Case No. PB2022-22 721 Harwich LLC, Saumil G. Patel, Manager,** Att. Howard Cahoon, Jr. Representative, seeks approval of a Special Permits for Mixed Use and Site Plan Review pursuant to the Code of Town of Harwich ss325-51.M and -55. The property is located at 721 Main Street, Assessors ID 40-D5-1 in the C-V zoning district.

Attorney Howard Cahoon explained the details and benefits of the Plan with assistance from the project Architect. The Applicant noted that they agreed that if a second egress is necessary, the Town’s Building Commissioner can approve any changes. HDHC approval may be required if it is visible from the street,

Ms. Maslowski moved to approve the Special Permits as presented with all necessary details and conditions, seconded. Vote 5:0 in favor. Motion carried unanimously.

Ms. Maslowski moved to grant Special Permit proposed as presented, the Applicants having satisfied requirements of the Bylaws. The motion was seconded. Vote 5:0 in favor. Motion carried unanimously.

**PUBLIC MEETING**

1. Covenant Release - PB2019-43 Eastward Homes, Elijah Woods & Lucy Lane (Partial).

Chairman Barry asked Board members if they had questions on this item. There were none.

Ms. Maslowski moved adopt the finding of fact which she read in detail and noted that all administrative requirements have been met. The motion was seconded. Vote 5:0 in favor. Motion carried unanimously.

Ms. Maslowski moved to approve the partial release from the Planning Board for 8 lots shown on the approved plan by Eastward Companies for the subdivision known as Elijah’s Wood. The motion was seconded. Vote 5:0 in favor. Motion carried unanimously.

B. Requests for Inspection - Sign Off/As-Built Continued case: Main Street Stone Horse, LLC, PB2019-13 - Request to continue to October 25, 2022.

C. Briefings, Correspondence, Advisory Opinions

Chairman Barry noted that the Long Range Planning Committee has had one meeting and will be posting their minutes. All Board members were invited to attend. William Stoltz and Ann Clark Tucker stated that they will not be able to attend the next meeting.

Ms. Maslowski moved to adjourn, seconded. Vote 5:0 in favor. Motion carried unanimously.

Respectfully submitted,

Judith R. Moldstad

Board Secretary