

HARWICH PLANNING BOARD  
PUBLIC HEARING NOTICE



The Harwich Planning Board will hold a public hearing beginning no earlier than 6:30 PM on Tuesday, June 22, 2021 in the Griffin Room, 732 Main Street, Harwich, MA to consider the following. Any member of the public having an interest in this matter is invited to attend and provide comment or may submit comments in writing.

**Case No. PB2021-10, Eastward MBT LLC**, as applicant, seeks to modify a Special Permit (PB2013-24) under §325-51.E. of the Code of Town of Harwich to authorize access to 26 Crocker Rise (Assessors Parcel ID 116-A2-12) via a proposed shared driveway located on the abutting property at 28 Crocker Rise (Assessors Parcel ID 116-A2-13).

Written comments may be submitted to the Planning Board at the address shown below or emailing the Planning Assistant, Elaine Banta, at [ebanta@town.harwich.ma.us](mailto:ebanta@town.harwich.ma.us).

All documents related to the above case are available on the Planning Board website or may be viewed by appointment only at the Town Clerk's Office or the Planning Department, Town Hall, 732 Main Street, Harwich, MA 02645.

In accordance with state law, this legal notice will also be available electronically at '[www.masspublicnotices.org](http://www.masspublicnotices.org).' The Town is not responsible for any errors in the electronic posting of this legal notice.

Duncan Berry, Chair  
Cape Cod Chronicle Print Dates: June 3 & 10, 2021

# EASTWARD COMPANIES

May 18, 2021

Harwich Planning Board  
Town Hall  
732 Main Street  
Harwich, MA 02645



**RE: Hidden Cove – Request for Modification of Use Special Permit  
Decision PB2013-24**

Dear Members of the Board:

Eastward Companies is requesting that the Use Special Permit for the Hidden Cove/Crocker Rise Open Space Residential Development (OSRD) be modified to authorize Lot 12 (#26 Crocker Rise) to have its access off of the shared driveway with Lots 13 and 14. The shared driveway for Lots 13 and 14 was approved under the prior OSRD Use Special Permit/ Subdivision Plan approval, by way of the note on the approved plan.

We've submitted the attached information for the Planning Board's review of our request:

1. Recorded Modification Subdivision Plan – 2013
2. Recorded Planning Board Decision - 2013
3. Proposed Site Plan for 26 Crocker Rise showing proposed driveway connection to shared driveway - 4-22-21
4. Driveway Easement Plan - 2020

We're requesting a modification of the special permit decision because we feel that the proposed shared driveway, as shown on the attached site plan, will:

1. Be superior to creating an additional driveway opening onto the Crocker Rise cul-de-sac.
2. Maintain the rural character of the lot, create less disturbance to the topography of the lot and maintain the natural buffer at the front of this lot.
3. Provide safe access to all homes using the shared driveway.

155 CROWELL ROAD, CHATHAM, MA 02633 508-945-2300

May 18, 2021

Page 2

The attached easement plan is provided to show that we've planned for the proposed driveway with an existing easement to the shared driveway. We've applied for the required MLC and the abutter's list.

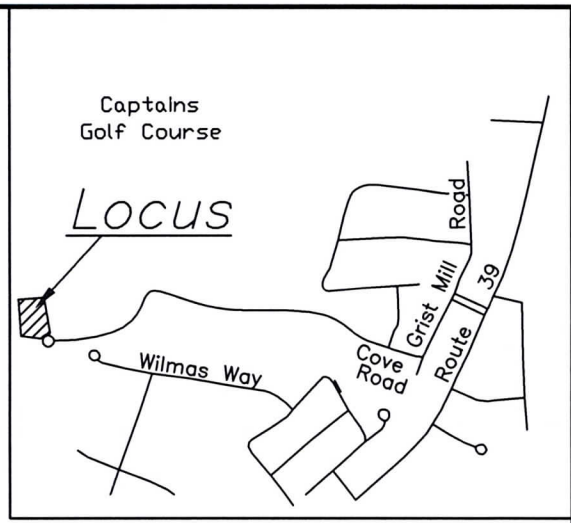
Thank you for your consideration of our request. If you should have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

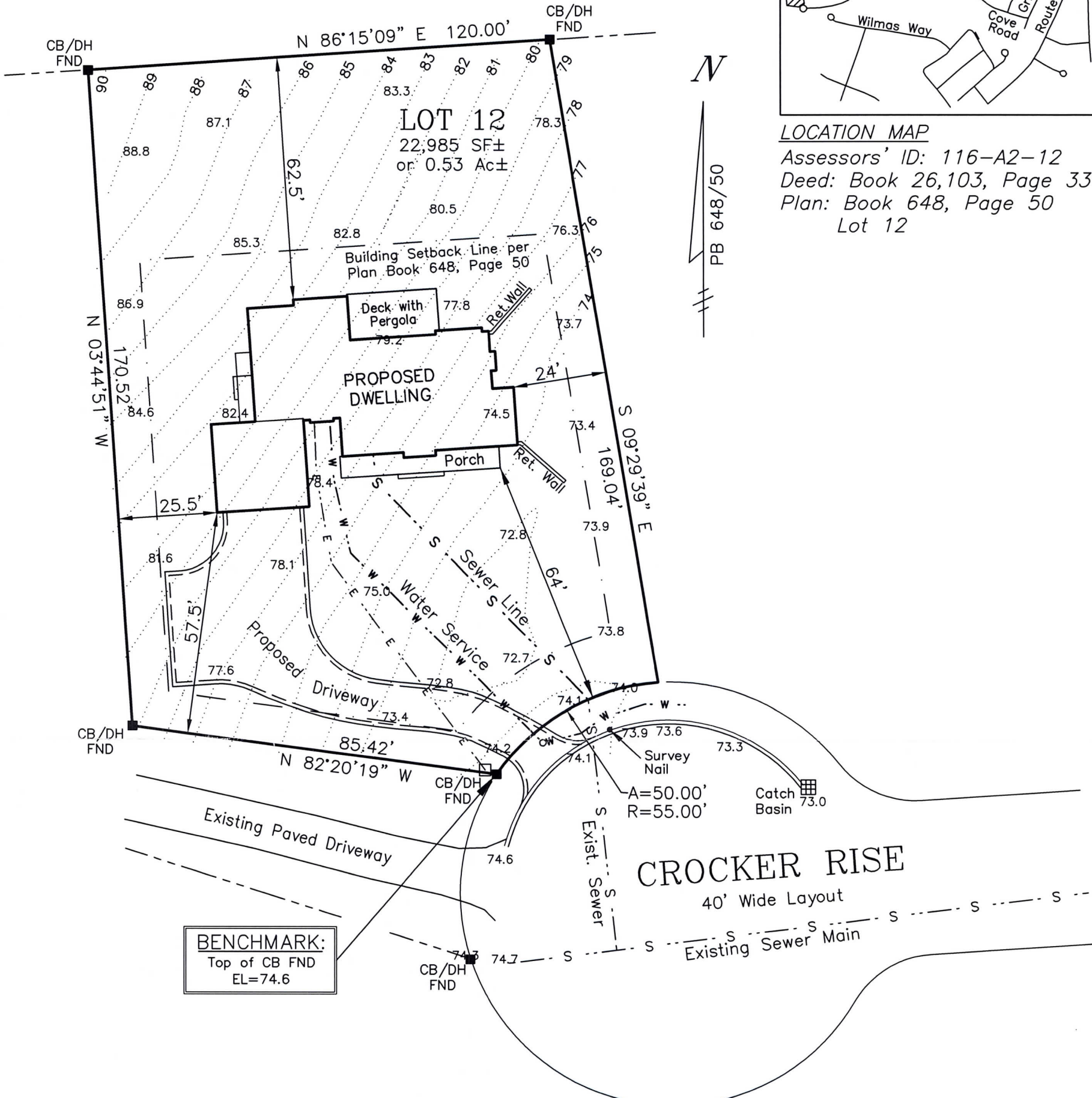


Susan B. Ladue  
Regulatory Specialist





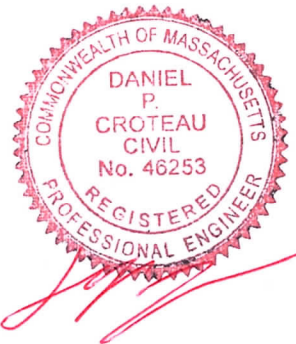
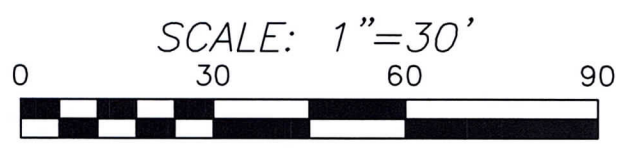
**LOCATION MAP**  
 Assessors' ID: 116-A2-12  
 Deed: Book 26,103, Page 330  
 Plan: Book 648, Page 50  
 Lot 12



**BENCHMARK:**  
 Top of CB FND  
 EL=74.6

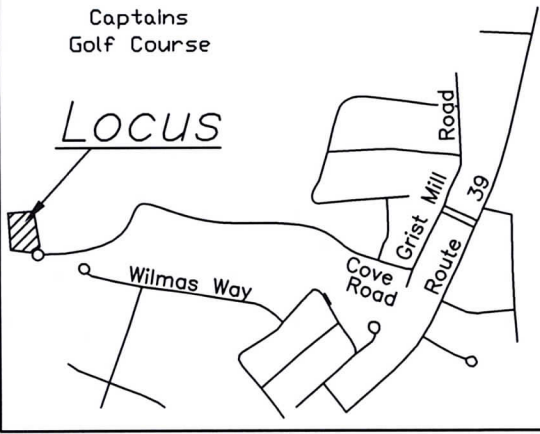
Zoning Compliance

Zone: Cluster RR	Zoning Art.:VI	Proposed
Min Front Setback	15'	64'
Min Side Setback	10'	25.5', 24'
Min Rear Setback	50'	62.5'
Building Coverage	(3,448 sf) 15% max	(2,806 sf) 12.2%

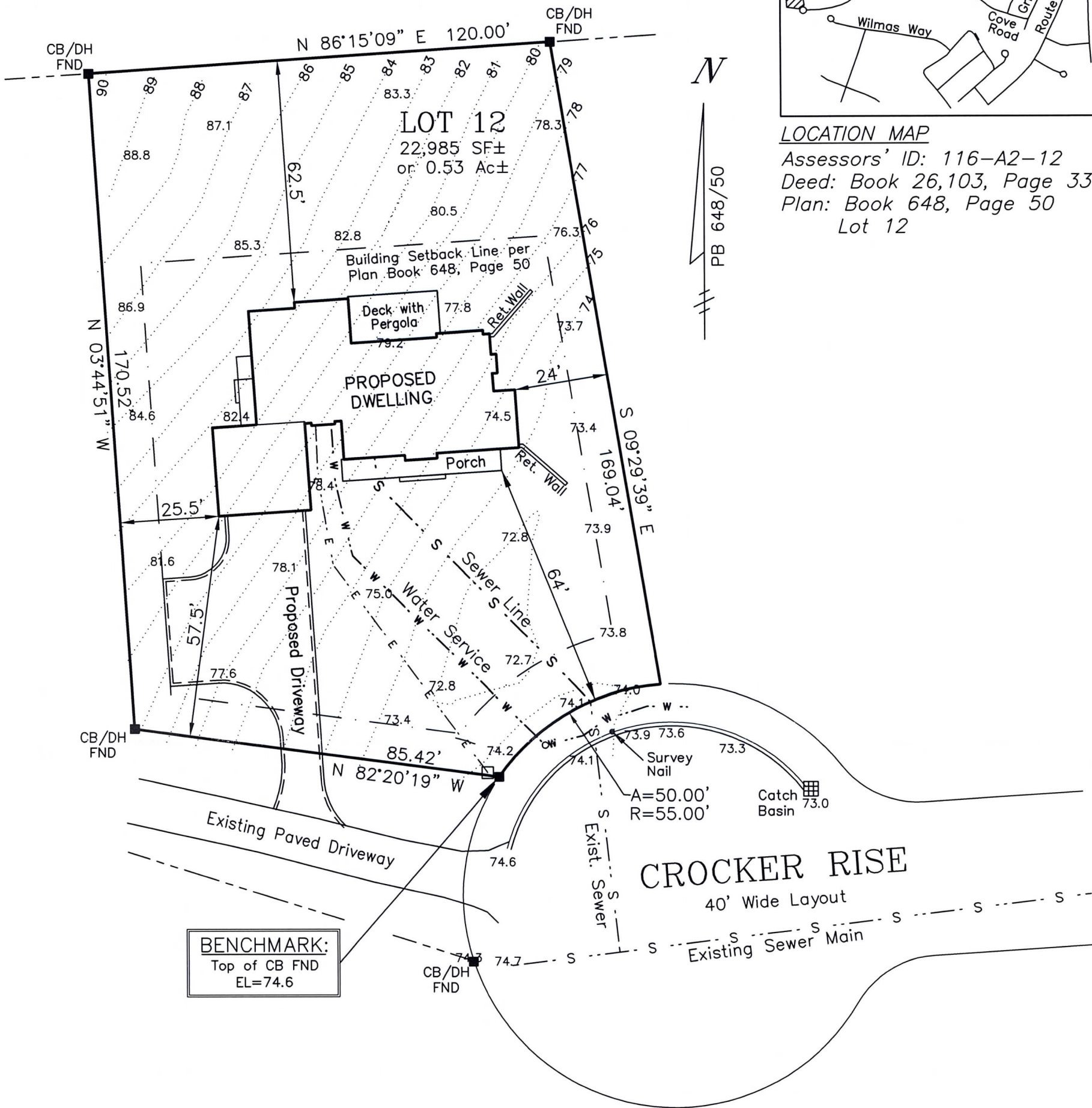


21-057  
 4/23/21

**MORAN ENGINEERING ASSOC., LLC**  
 508-432-2878 941 ROUTE 28, HARWICH, MA  
**PROPOSED CONDITIONS PLOT PLAN IN HARWICH**  
 Prepared For: Eastward Companies  
**26 CROCKER RISE HARWICH**  
 PROJECT: 21-057 DATE: 04/22/21

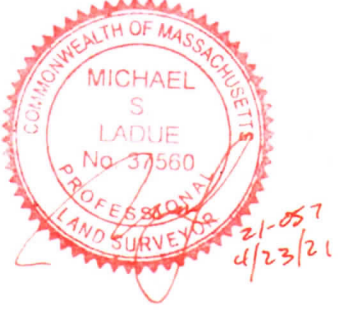
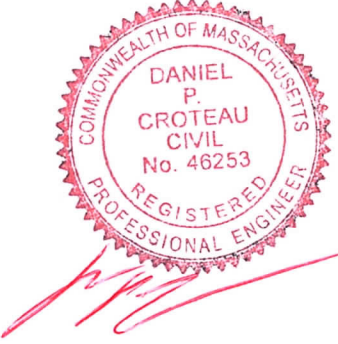
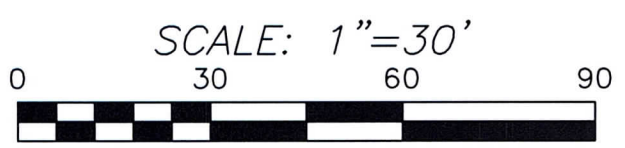


**LOCATION MAP**  
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 Deed: Book 26,103, Page 330  
 Plan: Book 648, Page 50  
 Lot 12



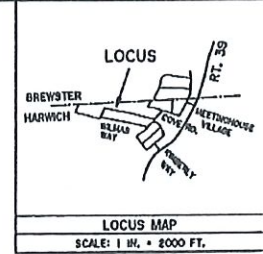
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**MORAN ENGINEERING ASSOC., LLC**  
 508-432-2878 941 ROUTE 28, HARWICH, MA  
**PROPOSED CONDITIONS PLOT PLAN IN HARWICH**  
 (Alternate Driveway Access)  
 Prepared For: Eastward Companies  
 26 CROCKER RISE HARWICH  
 PROJECT: 21-057 DATE: 04/22/21

RECEIVED AND RECORDED  
10 FEB 27 P 1:24  
REGISTRY OF DEEDS  
101



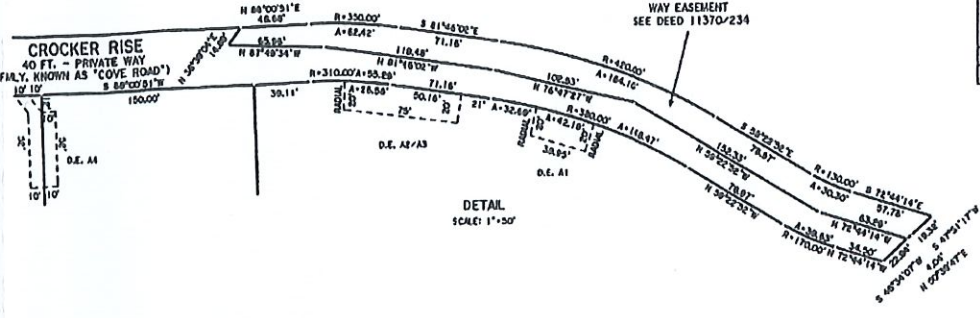
ZONING COMPLIANCE TABLE  
(ZONING DISTRICTS: OSRD, RR, & WR)

SUBJECT	REQ'D	PROPOSED
LOT AREA (SQ. FT.)	12,000	> 12,000
FRONTAGE (FT.)	25	225
LOTS 13 & 14	50	350
ALL OTHER LOTS	15	15
FRONT SETBACK (FT.)	10	10
SIDE SETBACK (FT.)	10	10
REAR SETBACK (FT.)	10	10
PERIMETER SETBACK (FT.) - AS SHOWN ON PLAN FOR LOTS 1 THROUGH 14	50	50
BUILDING COVERAGE (%)	15	15
SITE COVERAGE (%)	30	30

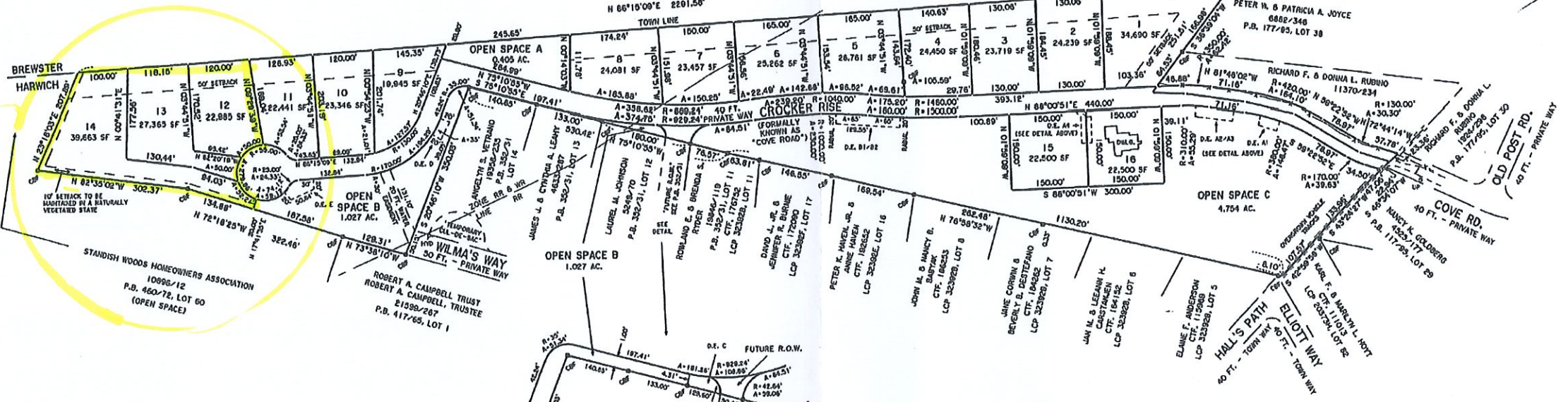
WHERE LOTS ARE SUBJECT TO A 50 FT. PERIMETER SETBACK AS SHOWN ON THE PLAN, SUCH SETBACK SHALL APPLY RATHER THAN THE LESSER SIDE OR REAR SETBACK.

**LEGEND**

CDF CONCRETE BOUND FOUND  
D.E. DRAINAGE EASEMENT  
H HYDRANT  
UP UTILITY POLE  
X WOOD FENCE



648-50



**AREAS**

LOTS	S.F.	AC.
407,403	9,333	52.84
289,201	6,187	34.9%
94,159	2,175	12.3%
<b>TOTAL</b>	<b>771,873</b>	<b>17,715</b>

APPLICATION DATE: October 14, 2012  
APPROVED DATE: January 26, 2013  
SIGNED DATE: February 26, 2013

APPROVED  
HARWICH PLANNING BOARD

*[Signatures]*

I, ANITA N. DOUCETTE, CLERK OF THE TOWN OF HARWICH, HEREBY CERTIFY THAT THE NOTICE OF APPROVAL OF THIS PLAN BY THE PLANNING BOARD HAS BEEN RECEIVED AND RECORDED BY THIS OFFICE AND NO NOTICE OF APPEAL WAS RECEIVED DURING THE TWENTY DAYS NEXT AFTER SUCH RECEIPT AND RECORDING OF SAID NOTICE.

DATE: February 26, 2013  
Anita N. Doucette  
HARWICH TOWN CLERK

I CERTIFY THAT THIS PLAN WAS PREPARED IN CONFORMANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS.

DATE: FEB 26, 2013  
Peter P. Sade  
PROFESSIONAL LAND SURVEYOR



- NOTES**
- LOCUS REF: D.B. 26103/330, 26058/132, C.T.F. 197875; P.B. 643/62, 421/37 (PORTION OF LOT 2), LCP 390970, LOT 2
  - ASSESSOR'S MAP: 116-A1, A2, & A4; 117-P2, P3 & P4-1
  - ZONE: RR-OSRD & WR OVERLAY DISTRICT. SEE ZONE LINE ABOVE.
  - COVENANT TO BE FILED WITH PLAN.
  - THE DRIVEWAYS SERVING THE HOMES ON LOTS 13 & 14 WILL BE A COMMON DRIVEWAY ON LOT 13, APPROXIMATELY 10 FT. WIDE FOR THE FIRST 100 FT. FROM THE C/D-E-31C.
  - SEE HARWICH BOARD OF HEALTH APPROVAL AND CONDITIONS IN A LETTER FROM THE BOARD OF HEALTH TO WILLIAM MARSH, PRESIDENT, EASTWARD HOMES COMPANIES, DATED DEC. 4, 2012.
  - SEE VARIANCE APPROVED BY THE HARWICH BOARD OF APPEALS IN CASE NO. 2013-05 AND RECORDED AT THE BARNSTABLE COUNTY REGISTRY OF DEEDS IN BOOK 26832, PAGE 18 ON NOV. 5, 2012.
  - ANY RIGHTS THAT MAY EXIST IN THE ANCIENT WAY KNOWN AS 'COVE ROAD' WILL BE RELOCATED IN THE PROPOSED 40 FT. WAY SHOWN ABOVE AS CROCKER RISE AND OVER OPEN SPACE 'A'.

OWNER & APPLICANT: EASTWARD HOMES BUSINESS TRUST  
EASTWARD MBT, LLC, TRUSTEE

MODIFICATION OF DEFINITIVE  
OPEN SPACE  
RESIDENTIAL DEVELOPMENT PLAN  
(RECORDED IN PLAN BOOK 643, PAGE 62)  
IN  
HARWICH, MA.  
AS PREPARED FOR  
**EASTWARD HOMES  
BUSINESS TRUST**  
SCALE: 1 IN. = 100 FT. OCT. 15, 2012  
REV. 1/16/2013

SOULE LAND SURVEYING  
103 VESPER POND DRIVE  
BREWSTER, MA. 02631  
(508)255-4720





**COMMONWEALTH OF MASSACHUSETTS  
TOWN OF HARWICH  
PLANNING BOARD  
DECISIONS**

**Modification of a Definitive Plan and  
Use Special Permit - Open Space Residential / Cluster Development**

**Plan Book / Page:** 648 / 50      **Address:** Crocker Rise (previously known as Cove Road)

**Deed Reference(s):** BK/PG - 26103/330, 26658/132 and LCC - 197957  
**Current Deed Reference(s):** 26103/330, 27352/123, 27589/187, 27550/90 and 27623/202

**Map / Parcel(s):** 116 / A1, A2, A4, and 117 / P2, P3, P4-1  
**Current Map / Parcel(s):** 116 / A2-6 through A2-17 and 117 / P3-1 through P3-5 and P3-15, -16, -17

**Case No.:** PB2013-24      **Applicant:** Eastward Homes Business Trust

**Hearing Date(s):** September 10, 2013

**Decision Date:** September 10, 2013



**Hearing**

At a duly advertised and scheduled public hearing held on September 10, 2012, the Town of Harwich Planning Board, acting in the matter of case number PB2013-24 voted to grant the Modification of a 16-lot Definitive Subdivision Plan and Use Special Permit for a 3-lot Open Space Residential / Cluster Development (OSRD) with conditions in accordance with the Code of the Town of and pursuant to Massachusetts General Law Chapter 41 §81K-GG. The subdivision is within the R-R & W-R Zoning Districts.

Specifically, the application sought to modify Condition #2 of the recorded decision (Bk: 27166 / Pg: 175) by substituting and executing a separate Declaration of Restrictions (DR) on the three (3) Open Space parcels in lieu of a Conservation Restriction (CR), pursuant to the Town of Harwich Zoning Code §325-51.F and MGL c. 40A, §9.

The Applicant's proposal and application included a request for the following waiver(s):



- a. Filing fee – waiver of \$525.00
- b. Municipal Lien Certificate (MLC)
- c. §400-14.M.7 Sidewalk Construction - In lieu of fee of \$34,447.00

The Board reviewed the submitted documents and the existing plan for deliberation:

- Narrative with waivers
- Draft Restrictions instrument

**Findings of Facts**

After public deliberation and hearing from all parties having an interest in the case, the Board members reviewed the criteria for granting a Special Permit for OSRD Subdivision and following a motion by Mr. P. de Bakker and seconded by Mr. A. Peterson, the Board voted unanimously (6-0-0) to adopt the following:

- The applicant has been unable to meet statutory requirement of acceptance of the Conservation Restriction (CR) by an eligible entity pursuant to the Code §325-51.E.6(b).
- A separate provision of the Code, §325-51.F, allows latitude to approve a cluster development with a 'restriction enforceable by the Town'.
- As defined in the Code, 'cluster development' equates to an 'open space residential development'.
- As such, the substitution of such Deed Restriction held in perpetuity on the collective Open Space Areas, enforceable by the Town is an acceptable alternative to a Conservation Restriction.
- Town Counsel opinion states in part "...it is my opinion that the Planning Board may accept a Deed Restriction on the Parcels, in lieu of the CR that would otherwise be required."
- The Restriction is intended to comply with the Code, protect the open space and Zone II areas, and be beneficial to the public.
- A fully executed separate Restriction, in the form of a Declaration of Restrictions imposed and identified on said Plan as recorded with the Registry in Plan Book 648, Page 50 shall preserve and protect the collective Open Space Areas lettered Open Space A, B, and C.
- Standards and dimensional requirements of Code have been met.
- The Open Space generally conforms to the design requirements of the Code.





- The proposed street pattern will provide reasonable vehicular access in an economical manner and minimize adverse impacts on the open space area while providing views and access to the open space for the home sites.
- The building sites have been identified and none are located closer than 100 feet to wetlands or water bodies.

## **DECISIONS**

### **VOTE - USE SPECIAL PERMIT: OPEN SPACE RESIDENTIAL DEVELOPMENT**

On a motion from Mr. P. deBakker and seconded by Mr. A. Peterson, the Board voted to unanimously (6-0-0) **approve** the Open Space Residential / Cluster Development (OSRD) Use Special Permit for Eastward Homes Business Trust, pursuant to the Harwich Code based on the finding that the plan is preferable to and superior in design to a conventional subdivision.

IN FAVOR: J. Atkinson, A Atkinson, Peterson, de Bakker, Kozar, Harris  
 OPPOSED: None  
 ABSTAIN: None

**This Special Permit shall lapse at the end of two years from the date of filing of the Board's decision in the office of the Town Clerk if substantial use therefore has not sooner commences except for good cause or, if construction has not commenced by such date except for good cause.**

### **VOTE - DEFINITIVE SUBDIVISION DECISION**

Mr. de Bakker moved and Mr. A. Atkinson seconded a motion to **approve** the modification of the Open Space Residential / Cluster Development (OSRD) Special Permit Definitive Subdivision plan as shown on the plan entitled 'Modification of Definitive Open Space Residential Development Plan' (Recorded in Plan Book 643, Page 62) in Harwich MA as prepared for Eastward Homes Business Trust, dated October 15, 2012, Revised January 16, 2013, stamped by Peter W. Soule, PLS, with the following conditions and a new standard Planning Board Agreement and Covenant, subject to the following vote for a Release of Covenant:

#### **Conditions of Approval**

1. A fully executed Deed Restriction in the form of a Declaration of Restrictions (Restrictions) imposed on the Open Space Areas collectively and identified on said Plan as recorded with the Registry in Plan Book 648, Page 50 and lettered as Open Space A, B, and C, enforceable by the Town and be imposed by the Eastward Homes Business Trust prior to conveying the Parcels to the Homeowner's Association. Said Restrictions, the purpose of which is the preservation and



protection of the Open Space shall be held in perpetuity and shall be of benefit to the public.

2. Pursuant to §325-51.E.(3)(b) No further division of land which increases the number of lots or results in an alteration to the area to be set aside as open space may occur without a modification of the special permit. Any alteration of lot lines or layout of ways shall require modification of the special permit issued by the Planning Board and shall be in compliance with the governing provisions of this bylaw and the Subdivision Rules and Regulations.

In accordance with MGL Ch. 41 Sec. 81U, which requires a majority vote for approval of a definitive subdivision plan, six of the seven board members voted in favor as follows:

IN FAVOR: J. Atkinson, A Atkinson, Peterson, de Bakker, Kozar, Harris  
OPPOSED: None  
ABSTAIN: None

### **Waivers**

On a motion from Mr. A. Atkinson and seconded by Mr. Peterson the Board voted unanimously to grant only the following waivers:

- a. Filing fee – waiver of \$525.00 and
- b. Municipal Lien Certificate (MLC)

### **Release of Covenant Vote:**

On a motion from Mr. de Bakker and seconded by Mr. Peterson the Board voted to grant a full Release of Covenant for Book 27166 / Page 171 for the remaining lots in Crocker Rise and to place Lot 9 under a new Agreement & Covenant pursuant to the conditions imposed on the grant of a Modification of an Open Space Residential /Cluster Definitive Subdivision case #PB2013-24 for Eastward Homes Business Trust.

  
James P. Atkinson, Chairman



PLANNING BOARD DECISION – CASE NO. PB2013-24

DATE FILED: SEPTEMBER 23, 2013

NAME: EASTWARD HOMES BUSINESS TRUST  
ADDRESS: 155 CROWELL ROAD, CHATHAM, MA 02633

LOCUS: CROCKER RISE (PREVIOUSLY KNOWN AS COVE ROAD)

This is to certify that more than twenty (20) days have elapsed since the filing of the foregoing decision in the office of the Clerk of the Town of Harwich and no appeal from said decision has been filed.

Date Filed SEP 23 2013

Twenty Days Elapsed OCT 14 2013

