

**HARWICH PLANNING BOARD  
HARWICH TOWN HALL - 732 MAIN STREET- GRIFFIN ROOM  
TUESDAY, JULY 9, 2019 – 6:30 PM  
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; Chamber of Commerce Director, Cyndi Williams; Chad Brubaker; John McElwee; William Crowell; William Riley; Jeff Kracht; Nina Schuessler; Cheryl Doran; Lauri Gillespie-Lee; and others.

**CALL TO ORDER** – 6:38 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.

**PB2019-03 Harwich Retail LLC, Site Plan Review, 48 & 52 Route 28**

Representative: Chad Bruker

Chairman Joyce re-opened the hearing at 6:39 pm. The applicant seeks approval of a Site Plan Review Special Permit with waivers to construct a 7,489± SF retail structure and a Use Special Permit for structures requiring twenty or more parking spaces. The application is pursuant to the Code of the Town of Harwich §325-09, -51 and 55. The properties are located at 48 & 52 Route 28, Map 10, Parcels D4-1 and 2, in the C-H-1 & R-R Zoning Districts. Continued from 6/25/19.

Mr. Brubaker read a letter of request to the Board. *Dear Chairman Joyce and Members of the Planning Board, Please accept this letter as notice that Harwich Retail LLC, as applicant, respectfully requests to withdraw, without prejudice, its' application (PB2019-03) with the Town of Harwich Planning Board. We appreciate the Board's time and consideration of our application. Sincerely, Chad D. Brubaker*

Mr. McParland made the motion to accept the applicants request to withdraw without prejudice PB2019-03, seconded by Ms. Maslowski, unanimously so voted.

**PB2019-23, Edson Eldredge - 2-lot Definitive Subdivision, 1022 Queen Anne Road**

Representative: John McElwee and William Crowell

Chairman Joyce opened the hearing at 6:40 pm by reading the legal notice into the record. The applicant seeks approval of a 2-lot Definitive Subdivision with waivers and a panhandle lot pursuant to the Code of the Town of Harwich §325.18(Q) and MGL c.41, §81K-GG. The property is known as 1022 Queen Anne Road, Map 74, Parcel W-2 in the R-R & W-R Zoning Districts.

Mr. McElwee explained that the proposed plan is a two lot subdivision, with one of lots having a panhandle for access. The panhandle complies with the zoning requirements. He continued to state that the lots are on the northerly side of Queen Anne Road between Cemetery Road and Route 39. The site is located in the R-R district and in the drinking water protection district. Mr. McElwee continued to discuss the waivers requested.

Mrs. Greenhalgh read staff comments into the record as follows: Engineering: All site drainage shall be controlled, contained, and infiltrated on-site. Fire: Will require adequate "House Numbering" at the road. Health: At a meeting of the Board of Health on June 11, 2019, a discussion took place regarding a request to consider a 2 lot definitive subdivision plan prepared by Coastal Engineering Company, dated May 31, 2019. The Board unanimously approved the definitive subdivision plan request with the following conditions: 1) The lots shall be served by Town Water; 2) Lot 1 shall be served by municipal sewer within 45 days of availability; 3) Lot 2 shall be designed with a fully compliant septic system exiting the building on the street side, if installed prior to sewer service. If developed after sewer is available, connection is required immediately; and, 4) Approval is contingent upon sign off from the Assessor's Department. Police, Conservation and Highway: No concerns.

She then read Planning Staff Comments: 1. There has been some question as to the ownership of this property; however it is not the Planning Board jurisdiction to question ownership. A deed and plan have been provided, the applicant/owner has signed the application and the surveyor has stamped the subdivision plan. 2. Board of Health notes will need to be added to the plan prior to plan endorsement. 3. The request is also for a panhandle lot to serve as frontage and access for Lot 2. 4. The first request is reasonable as this is a panhandle lot subdivision and there is no roadway to be constructed. 5. The second request for no covenant, I have a concern with. What assurances does or will the Board have to ensure that property bounds are set? A simple covenant for Lot 2 only would be appropriate relative to the concrete bounds to be set. 6. The request for topography I cannot support, but I leave this to the Planning Board's decision. 7. The Planning Board has adequate time to consider and take action on this application. It would be appropriate to hear from the Town Engineer and if there are any changes required to the plans, these could then be addressed by the applicant. At this time it is the opinion of staff to continue this matter to a date and time certain.

Mr. McParland questioned who owned the property and asked to see the Deed, which Mrs. Greenhalgh provided this.

Mr. Crowell stated that he and Attorney Michael Ford both did extensive title research. During the real estate transfer, they had a Title Originator approve the Title with the existing deed. Mr. Crowell stated that he is unsure why the Title is being questioned. He continued to state that he certainly does not believe this is the Planning Boards jurisdiction, but they have a deed, title, and a plan. The deed has been the same since 1931.

Mr. Stoltz said he has questions on the frontage of Queen Anne Road. Mr. Crowell stated that it is as shown on the plan.

William Riley handed out copies of other deeds associated with the property to the Planning Board members. A lengthy discussion ensued on the deed verbiage.

Ms. Maslowski stated that she does not believe it is the Boards purview to discuss this. Mr. McParland stated he does not disagree, but he wanted to make sure that the Title existed. Mr. Chadwick agreed.

Chairman Joyce opened up public comment.

Jeff Kracht, 1032 Queen Anne Road, stated that he is the abutter to the North of the property. Mr. Kracht stated that he is very excited to be part of the Harwich community that cares about old houses, history, tree, open space, and he really does not want a drive way right next to his lot line that may have weekly rentals. As far as the Title is concern, the lot has always been 110' x 500'.

Mr. McParland asked how big his lot is and who is behind him. Mr. Kracht stated that his lot is about 2/3 of an acre, and his neighbors are Phil and Lauri Lee.

Nina Schuessler, 1040 Queen Anne Road, has been a Harwich resident for 43 years. She stated that over Memorial Day weekend, a bunch of trees were being cut down, and it was a concern. She was told they were cutting down dead trees in the woods. She is concerned to say there is a driveway going to another house, says it is a road. That area has changed with the Preserve development coming in, and the neighbors have had to accept that. She is concerned about nature, and that it's going to change the neighborhood. At the time she purchased her house, she asked if they could subdivide the lot and have a panhandle lot with an acre and a quarter, and they were told no, it was not appropriate. She doesn't understand why they could do it now. It is very concerning, and she is not happy about it. She is very much against it.

Cheryl Doran, 36 Old heritage Way, 17 years ago she was told no one could ever build behind her. She will be losing her privacy. Many mature trees will be cut down. She does air-BnB at her house, and people like it because it is quite and has lots of privacy. When she purchased the property, she was told they were unknown owners, and it could never be sold. She is against this.

Laurie Gillespie-Lee, 44 Old Heritage Way, has been in Harwich over 8 years. When they moved to their current property about a year and a half ago, and they were aware of the Preserve development being built. But the proposed subdivision is showing something very large. This is a quiet, working class neighborhood. If this is subdivision is approved, she asks that some sort of buffer be placed to mitigate noise and to keep the nice nature look around the property.

Mr. McParland made the motion to continue the hearing to August 13, 2019 no sooner than 6:30 pm, seconded by Mr. Chadwick. Unanimously so voted.

**PB2019-24, Wendy Grant Walter - Use Special Permit, 55 Bank Street**

Representative: William Crowell

Chairman Joyce opened the hearing at 7:10 pm by reading the legal notice into the record. The applicant seeks approval of a Use Special Permit for an Accessory Structure with a bedroom. The application is pursuant to the Code of the Town Harwich §325-13, -14.Q, -51 and §400,

Table 1 for the residential, accessory building with bedrooms. The property is located at 55 Bank Street, Map 14, Parcel X14 in the R-L Zoning District.

Mr. Crowell explained that this structure was constructed pursuant to two legal building permits, approved 9/28/18 and 3/8/19. The septic system has been upgraded to accommodate the extra bedroom. This property will not be rented out. This will not be a nuisance, and will not impact traffic in any way.

Mrs. Greenhalgh read staff comments into the record as follows: Police: No concerns. Health Department: The septic system has been upgraded to accommodate the new bedroom. This accessory structure does not contain a kitchen; should cooking facilities be added to the structure the septic tank must be updated to include a two compartment tank or two tanks in series. Planning Staff Comments: 1) The application neglected to indicate that this property is also within the C-V zoning district, this is not a fatal flaw in the Board moving forward. 2) The waivers requested are reasonable. 3) At this time it would appear that all requirements have been met. 4) Standard conditions, including the condition from the Board of Health, are recommended.

Mr. Stoltz asked if the lot was big enough for 5 bedrooms. It was responded yes the septic is in. Mr. Stoltz asked what the 12' x 12' addition was. Mr. Crowell stated that he was told it was a tool shed. Mr. Stoltz asked why it was not shown on the certified plot plan.

It was responded that it is shown on a plan provided within the case file and it was included in the electronic packet. It was an oversight that it was not included in the hard packet, but it was shown in the Power Point on the screen.

Mr. Chadwick asked where the driveway is for the garage. It was responded that it was labeled shell drive. Mr. Chadwick asked if Mr. Crowell would clarify what happened. Mr. Crowell explained that the permits were originally approved with the provision it was approved, but not for a bedroom. The septic was upgraded, and can now be used as a bedroom.

No public Comment.

Mr. McParland made the motion to close to the public hearing at 7:27 pm, seconded by Ms. Maslowski, unanimously so voted.

On a motion from Mr. McParland and seconded by Mr. Harris the Planning Board voted unanimously to adopt the following findings:

1. The property is located primarily within the R-L Zoning District.
2. The use is consistent with the Zoning Code and will not adversely affect the neighborhood.
3. The site is an appropriate location for such use.
4. The accessory structure will not contain a stove and therefore it is not a kitchen and is not an accessory apartment as defined in §325-2 - Word usage and definitions "Dwelling, Single-family with Accessory Apartment".

5. The proposed parking area will provide sufficient off street parking which meets the minimum requirements of Town Code, and as such, there will be no nuisance or serious hazard to vehicles or pedestrians.

On a motion by Mr. McParland, seconded by Ms. Maslowski, the Board voted unanimously to approve with conditions the Use Special Permit and waivers for PB2019-24 Wendy Grant Walter, Trustee, for an Accessory Structure with a bedroom, pursuant to the Code of the Town Harwich §325-13, -14.Q, -51 and §400, Table 1 for the residential, accessory building with bedrooms, for property located at 55 Bank Street, Map 14, Parcel X14 in the R-L and C-V Zoning Districts. The approval is 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 accessory structure is not an accessory apartment pursuant to §325-2 Word usage and definitions “Dwelling, Single-family with Accessory Apartment” and shall not contain a kitchen.
2. Per the Health Department, the accessory structure does not contain a kitchen; should cooking facilities be added to the structure the septic tank must be updated to include a two compartment tank or two tanks in series.
3. Any change of use, other than the accessory structure with bedroom, shall comply with all other requirements of the zoning code.
4. The special permit decision shall be recorded at the Registry of Deeds.
5. Any changes to the plan shall be subject to further Planning Board review.

#### **PB2019-25, Christopher Our, et al, 7 Lot Preliminary Subdivision Plan, 0 & 11 Littlefield Pond Road**

Chairman Joyce stated that the 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.

Mrs. Greenhalgh read an email into the record: *On behalf of our client, R. B. Our Co. Et Al, Down Cape Engineering respectfully requests an extension of the Planning Board hearing to July 23, 2019 for the Preliminary Subdivision off Littlefield Pond Road, Harwich. This subdivision is on the Board of Health agenda for July 9, 2019.*

Mr. McParland made the motion to continue PB2019-25 to July 23, 2019 to no early than 6:30 pm, seconded by Ms. Maslowski, unanimously so voted.

#### **Advisory Opinions:** Board of Appeals- July 31, 2019

Regarding Case #2019-26 Deerfield Nominee Trust, 4 Deerfield Road, Mrs. Greenhalgh stated that this was currently before the Planning Board for Site Plan review; however the building does not meet the rear yard setback requirement. The Planning Board did indicate to the applicant that when it went to the Board of Appeals for a variance, the Planning Board would send a letter. The applicants are appealing the building commission’s decision of what the rear setback is, and in the alternative requesting a variance. Under Site Plan Review the Planning Board cannot waive a

setback requirement. Mrs. Greenhalgh read the following letter draft: *This property is currently before the Planning Board ("Board") for Site Plan Review Approval. During the Board's initial hearing it was realized that the proposed building was within the rear yard setback (25' where 50' is required). The Planning Board supports the request for a variance in light of the unique shape of the lot in relation to Deerfield Road and Depot Street. The Board does support the Building Commissioner's decision that this is a rear yard setback and therefore does not support the appeal.*

Mr. Chadwick asked if the rear setback is where the arrow is shown. It was responded yes. He then asked to clarify what frontage and rear lot is. Mrs. Greenhalgh stated that the "rear lot line" is the opposite of the frontage, and frontage is taken from the road.

Mr. McParland said he was confused that there are two request. Mrs. Greenhalgh clarified that there were two requests, one request to appeal the building commissioner's decision that this is a "rear lot line" and in the alternative a request for a variance. Ms. Maslowski clarified the confusion for the Board.

Ms. Maslowski made the motion to send the proposed draft letter to the Zoning Board of Appeals, seconded by Mr. McParland, unanimously so voted.

### **Briefings and Reports by Board Members**

Mrs. Greenhalgh stated last year (2018) the Board had 39 applications. As of June 30<sup>th</sup> of this year, they have already seen 27 applications. The fees paid has almost reached \$35,000. Plus, all the work the Board did for the Town Meeting with zoning amendments. She commended the Board.

Chairman Joyce commended Mrs. Greenhalgh and the Board. Feedback from the Board of Selectmen has been very positive. Mr. Joyce is really proud of the Board and everything that has been done. He continued to thank Mrs. Greenhalgh for everything.

Mr. McParland asked if they have a vacancy. It was responded that there are two alternate positions open.

A lengthy discussion ensued regarding overlay districts, historic districts. This would be a future agenda item.

Adjourn at 7:54 PM on a motion from Mr. McParland, seconded by Mr. Harris. Unanimously so voted.

Respectfully submitted,  
*Kathleen A. Tenaglia*, Board Secretary.

Adopted: July 30, 2019