

HARWICH PLANNING BOARD
HARWICH TOWN HALL
732 Main Street - DONN B. GRIFFIN ROOM
TUESDAY, SEPTEMBER 11, 2018 - 6:30 PM
MINUTES

BOARD MEMBERS PRESENT: Chairman Jim Joyce, James Atkinson; Joseph McParland; David Harris; Craig Chadwick; and Allan Peterson

BOARD MEMBERS ABSENT: Mary Maslowski

OTHERS PRESENT: Charleen Greenhalgh, Town Planner; Attorney William Crowell; Ty Cronin; Dan Croteau, Moran Engineering; Peggy Rose; Scott Golding, DT&M Attorneys at Law; Thaddeus Eldredge; Brian Paradee; Sharon Mitchell; Ellen G. Pelan

CALL TO ORDER - 6:30 PM by Chairman, Joyce with a quorum present.

There was a brief moment of silence to honor the victims of 9/11.

Chairman 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 the open session is required to inform the Chair. Ellen G. Pelan of 12 Echo Woods Rd. informed the Chairman that she would be audio recording the meeting.

PB2018-30 Emulous E. Hall, Trs., et als., as owner, Sea Street Production LLC, d/b/a Salt Block Food Truck, Douglas J. Ramler, Use Special Permit, 346 Route 28

Representatives: None

The Chairman re-opened the hearing of the Harwich Planning Board (the "Board") at 6:32 pm by reading the Legal into the record. The application seeks approval of a Use Regulations Special Permit (Restaurant, Fast Food/Take Out) pursuant to the Code of the Town of Harwich §325-13.¶ IV, 32A, to operate a mobile food vending operation for property located at 346 Route 28, Map 21 Parcel N1 in the C-V district. This is a continuation from 8-14-18.

Mr. Atkinson asked if the Board needed to do anything retroactively to approve the location of the food truck during the 2018 summer season. Ms. Greenhalgh explained that the applicant would have to apply again if they decide to move the location.

On a motion by Mr. McParland, seconded by Mr. Atkinson, the Board voted unanimously to withdraw the application without prejudice.

PB2018-32 Ty Cronin & John Doherty, as applicants, c/o William Crowell, Esq., Drive O Rama, Inc., as owner

Representatives: Attorney William Crowell; Ty Cronin; Dan Croteau, Moran Engineering

The Chairman opened the hearing by reading the Legal into the record. The application, with waivers, seeks approval for a Mixed Use Special Permit via construction of a 3 bay garage/storage with apartment above and Site Plan Review Special Permit pursuant to the Code of the Town Harwich §§325-7.C, -51.M and -55 and Article V Use Regulations. The property

location is at 211 Route 28, Map 11, Parcel X2-B in the C-H-1 and R-H-1 (a de minimis portion) Zoning Districts.

Mr. Crowell provided an overview. The application proposes a retail fishing supply store and a 3-bay garage for storage of landscaping equipment, with an apartment above. Landscape business operations are to be run off-site. There will be the minimum of 33% floor space dedicated to commercial use. There will be one residential unit. The lot is larger than the 10,000 square foot requirement. Parking is adequate for the use and sight-line is adequate along Grey Neck Rd. Requirements have been met pursuant to §325-51.M. There will be no detriment to the neighborhood and no storage of landscape supplies on the premises. The use of the property will be of light intensity. Trucks will be stored in the garage at night. There will be no customer contact at the site. This is an appropriate use in the CH1 Zone and there is appropriate access.

Ms. Greenhalgh read from the Staff Report. The Town Engineer performed his own drainage calculations as he was originally concerned with the proposal. He found that the proposed detention area is adequate to handle the run off for all storms up to the 100 year storm. The new development will raise the grade at the south portion of the lot about 2.5 feet. Therefore, there will be 10' of grassy area drainage to the south and west of the lot. The run off from grass areas are generally insignificant, and the adjacent lots are graded such that if there is periodic ponding during or after significant storms, it would be concentrated at the property line and would quickly infiltrate into the soil. The submitted drainage calculations show that the dry wells are adequate to handle the runoff from the existing and proposed roofs.

She continued, the Police Department, from a public safety / criminal justice perspective has no issue with this proposal, provided that the line of sight leading from Grey Neck Road looking west on Route 28 remains clear of obstructions. The Board of Health noted that this site is currently served by a cesspool and will require a new septic system to be designed to accommodate the proposed use. Any new use beyond the current retail use will require the septic system to be fully compliant with all State and Local Regulations. The Building department noted that a Building permit will be required. Two means of egress from dwelling units is required. Primary means of egress cannot be thru a garage.

Mrs. Greenhalgh noted that the existing building on the property will continued to be use for retail sales. The property is completely within a FEMA Flood Zone, elevation AE11'. The new building will be required to be built to proper Building Code and FEMA standards, this should not be an issue or concern. The applicant is working with the Building Commissioner on the second means of egress. Abutters were notified via certified mail on August 21, 2018. Administrative and filing requirements have been met. Staff recommends approval of the waiver requested. Standard conditions are recommended and are noted in the draft motion.

Mr. Atkinson asked for clarification that there would be no landscape equipment or supplies stored outside. Mr. Crowell confirmed.

Mr. Chadwick asked whether the existing curb-cut on Route 28 will be used. Mr. Croteau responded that the Route 28 curb-cut will be used for exit only.

Peggy Rose, 87 Grey Neck Rd, asked if the applicant was also purchasing the property across the street. Mr. Crowell responded that they are not. Mrs. Greenhalgh noted that the property across the street had previously received a site plan approval for boat storage.

Scott Golding, Attorney representing the owners of 110 Grey Neck Rd, spoke to concerns with where the building is sited. It is set way back on the property and there is a lot of parking. His clients, who are behind the property on Grey Neck Road, are concerned with the hours of operation, number of vehicles and employees coming and going, as well as the potential for associated noise. He also spoke to a concern with the drainage swale and landscaping of the public area. He also asked if the residence will be occupied by a year-round tenant. He questioned whether the storage of landscape equipment was an allowable use in this zone. He believes that this is a threshold issue. He also asked what types of plantings will be there. His clients would prefer a more enhanced buffer.

Ms. Greenhalgh stated that a 1-bedroom apartment would allow for 2 occupants only.

Mr. Crowell responded to the questions. The business will not operate out of this site. Trucks and equipment will be stored inside the garage; hours of operation would typically be from 7am to 7pm during the busy season. There will be no equipment or vehicle maintenance performed on site. The only noise will be from vehicles turning on or off. Per Mr. Croteau, the siting of the building on the lot has to do with the septic system location and the zoning bylaws regarding setback requirements which are 25 feet from the road and 10 feet from the side and rear lot lines. Mr. Crowell continued, that they do not know yet if the apartment will be occupied by a year-round tenant or not. The Mixed Use bylaw and threshold are not defined, but he believes that the Board does have the discretion to make this decision. It is in essence a commercial garage, but not conducting business on this site. The site makes sense for the type of mixed use. The garage is accessory to the use as an apartment.

Mr. Croteau spoke to the landscaping questions. They will only be removing trees that are necessary. Mr. Cronin is a one-person landscaper. Everything will be stored inside. Because this is within the floodplain and the area has been raised, this will drain towards the North rather than the South. Drainage is improved with the parking lot, and roof drainage will go into the storm drains. General grasses and plants are proposed. There will be a 6' stockade fence at the South and West property lines. This will be a modest use of the property with a one-person business and a one-bedroom apartment.

Mr. Crowell pointed out that this is a much less intense use of the property than what could be allowed there.

Mr. Harris asked for clarification on the noise associated with the use and whether or not maintenance of equipment will happen at the site. Mr. Cronin stated that he brings his equipment to be serviced off-site.

Mr. Chadwick asked about the gate at the split-rail. Mr. Croteau responded that the gate will be maintained.

There was no other Board or public input. On a motion by Mr. McParland, seconded by Mr. Atkinson, the Board voted unanimously to close the public hearing at 7:12 pm.

On a motion by Mr. McParland, seconded by Mr. Atkinson, the Board voted unanimously to approve the following findings of fact:

1. The property is located primarily within the CH-1 zoning district.
2. A de minimus portion of the property is located within the R-H-1 zoning district.
3. The site is currently being used for a retail sales.
4. The parking as proposed is adequate for the existing and proposed uses of the property.
5. The plan provides for efficient and safe disposal of surface water, based on the Town Engineer's review.
6. The use is allowable with a special permit and it is consistent with the Zoning Code.
7. There will be no nuisance or serious hazard to vehicles or pedestrians.
8. The property is located within the FEMA Flood Zone, AE El. 11'.
9. The existing access off Route 28 and Grey Neck Road will remain and a new access, for the new building, is proposed on Grey Neck Road.
10. The waivers requested do not substantially derogate from the purpose and intent of this bylaw.

On a motion by Mr. McParland, seconded by Mr. Atkinson, the Board voted unanimously to approve the waiver for submittal of full drainage calculations.

On a motion by Mr. McParland, seconded by Mr. Atkinson, the Board voted unanimously to approve case number PB2018-32 Ty Cronin & John Doherty, as applicants, c/o William Crowell, Esq., Drive O Rama, Inc., as owner, for a Mixed Use Special Permit via construction of a 3 bay garage/storage with apartment above pursuant to the Code of the Town Harwich §325-7.C and Article V Use Regulations, for property located at 211 Route 28, Map 11, Parcel X2-B, based on the aforementioned findings of fact 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. McParland, seconded by Mr. Atkinson, the Board voted unanimously to approve with conditions case number PB2018-32 Ty Cronin & John Doherty, as applicants, c/o William Crowell, Esq., Drive O Rama, Inc., as owner, for a Site Plan Review Special Permit, for a the construction of a 3 bay garage/storage with apartment above and creation of additional parking pursuant to the Code of the Town Harwich §325- -55 for property located at 211 Route 28, Map 11, Parcel X2-B in the C-H-1 and R-H-1 (a de minimis portion) Zoning Districts. The decision is based on the aforementioned findings of fact and the fact that the application meets the necessary requirements and criteria for approval pursuant to the Code of Town of Harwich and with the following conditions imposed relative to the Site Plan Review:

1. Lighting and Signage shall conform to the Zoning Code.
2. The Site Plan Special Permit decision shall be recorded at the Registry of Deeds.
3. The Site upon completion shall be inspected and signed-off by the Town Planner or a designated Planning Board Member.
4. Any changes to the plan shall be subject to further Planning Board review.

The Chair then took items out of order as the next applicant was meeting with the Board of Health in the meeting room next door.

Minutes – August 14, 2018

On a motion by Mr. McParland, seconded by Mr. Atkinson, the Board voted to approve the Minutes from August 14, 2018. Vote: 5-0-1 with Mr. Peterson abstaining.

Advisory Opinions

Zoning Board of Appeals – Mr. McParland spoke to the fact that many of the current applications are within the old campground area. No other comments from the Board on the Historic District and Historical Commission or the Zoning Board of Appeals agendas.

Ms. Greenhalgh gave an update on Zoning Amendments that she would like to work on including:

Building heights within the Flood Plain District. Allowing existing structures to elevate at or above the flood elevations by right, more to come on this.

Sign Code. There have been a number of issues with “A-Frame” type signs.

Accessory Apartment. There is a desire to make such uses allowable by right under specific circumstances.

Old Business

Mr. McParland is a representative to the Capital Outlay Committee and is willing to address any questions or comments. Mr. Atkinson mentioned that \$200,000 has been requested for the update of Local Comprehensive Plan. Mr. McParland will support this. Mr. Atkinson also stated that the Community Preservation Committee will meet Thursday 9/13/2018 & 9/20/2018.

PB2018-33 Heirs of Mark Nickerson, et al, and Robbins Family Trust

Representatives: Thaddeus Eldredge

Chairman Joyce opened the hearing at 7:31 pm and asked that applicants in the future follow protocol by bringing any issues or concerns to the Town Planner. The Board is happy to hear any and all comments from citizens, but it would be advantageous to all parties concerned, if issues were brought to the Town Planner prior to the meeting.

Brian Paradee, 26 Echo Woods Rd, spoke to the fact that he did send an email to the Chairman earlier that day but was unsure if he sent it to the correct address.

Mr. Eldredge gave an overview. They are proposing a 5-lot subdivision. It will be a cluster subdivision because of Natural Heritage Habitats. He provided an explanation of what it means to have to file with and comply with Natural Heritage requirements. Application has been made with Natural Heritage and Endangered Species Program (“NHESP”). Mr. Devine is the owner of 22 acres per the Assessors records. NHESP views this as one property, so this would be considered segmentation, developing one portion of the property at a time. Development of more than 5 acres may trigger a MESA review. NHESP is willing to sign a no-take letter.

The Board has requested a shared driveway and an area for snow piling. He just met with the Board of Health who is positive with this proposal and will be providing written comments. NHESP sign-off is expected this week; the Homeowners Association documents are to be done this week. The street name of “Periwinkle” is not acceptable, they would recommend “Blossom”.

Mr. Eldredge reviewed the total request. 60% open space is required by NHESP. 30% is required under Harwich bylaw. The existing landscape area to the north is more suitable to turtles. They may come back in the future to develop the open space to the West. The applicant does not have rights to Echo Woods and does not intend to create 40,000 square foot lots.

Ms. Greenhalgh reviewed the Staff Report. The Conservation department requires additional permits/review of the NHESP. The Highway department noted the "Snow Removal Easement" of 25ft at the back of the cul-de-sac and all efforts to keep snow within this area will be made. It is not unreasonable to expect a snow pile from an area this size to exceed 25ft if we have any significant snow storms, especially since most of our residential roads are plowed with pickup trucks and 1-ton dump trucks. One question would be, does this snow removal easement mean there is no driveway to Lot #3? Also how about the placement of a fire hydrant which would typically go at the end of the water main for flushing purposes? As to the question of road names, other than not duplicating Periwinkle, the Highway Department has no preference with the other two options. The Board of Health noted that this subdivision and Environmental Impact Report are scheduled for review by the Board of Health on Tuesday, September 11th at 7:00 pm. The plans appear to meet all health department requirements in regards to Title 5 and Board of Health Regulations 1.2.11. Anticipate a favorable ruling from the Board of Health regarding both the EIR and Definitive Subdivision approvals.

The Planning Staff had the following comments:

1. The surveyor has provided an area for the piling of snow during snow removal. The shared driveways have been designed to allow for this area. Please refer to Detail 2 on the Definitive Subdivision Plan, Sheet 1 of 7.
2. As the Board of Health has not yet rendered a decision on this definitive plan, the Planning Board cannot render a decision. Further, any Board of Health conditions/requirement will need to be noted on the Definitive Plan prior to endorsement.
3. Natural Heritage and Endangered Species Program review and approvals also need to be received prior to the Planning Board rendering a decision.
4. The open space will be protected by a Homeowners' Association and the Conservation Commission. The Planning Board will need to see these documents and acceptance by the Conservation Commission prior to approval and/or endorsement of the plan.
5. The applicant is seeking four approvals:
 - a. Open Space Residential Development – Special Permit
 - b. Share Driveway – Special Permit for Alternative Access
 - c. Panhandle Lot
 - d. Definitive Subdivision
6. The waivers requested are reasonable; however in lieu of constructing a sidewalk, an amount will need to be determined for the cost of construction of a sidewalk and the applicant will pay, in lieu of performance, an amount equivalent to the cost of constructing the waived sidewalk to the Town of Harwich to be used for sidewalk construction.
7. The recommended road name is: Flounder Circle (as this is a short road).
8. At this time the recommendation is to continue the public hearing, after hearing from all parties present at the public hearing, to a date and time certain to allow for the additional reviews and/or approvals from other agencies and for the Board to receive the necessary documentation for the Homeowners' Association and Conservation Commission acceptance.

Mr. Atkinson stated that the Board has no choice but to continue the hearing; however the public should be heard. Ms. Greenhalgh also stated that the Board can only discuss and act on what is before the Board.

Mr. McParland spoke to his concern with the Town Engineer's comments. Mr. Eldredge responded that there is currently no drainage at the end of Periwinkle, this will be taken care of with the new drainage plan. Mr. Atkinson spoke to public comments and asked when Mr. Eldredge may have additional information, considering when this could be continued to. Mr. Eldredge spoke to the configuration of the open space and lots. Mr. Chadwick asked about the waiver requested regarding the buffer on the South side. Mr. Eldredge explained this.

Sharon Mitchell, 4 Periwinkle Way, knows that the extension of Periwinkle Road will go in front of her house. She wanted to know how close the road will be and what does the "cart path" mean. Mr. Eldredge responded that the pavement will be 9' off of the property line. The cart path was shown on a Land Court plan. It is described on one end and the other, but is severed at Mrs. Mitchell's property. The cart path will be relocated within Lot 1.

Mr. Paradee spoke to the ownership of the Lots. He found that Mr. Devine owns all of the Lots east of Echo Woods, except for 2 of the Lots. Regarding Open Space, it will be used for an aggregate for septic. The NHESP map shows this whole area as a Priority Habitat. He has questions/comments. 1) Regarding the open space. The Waiver for open space should not be granted. Open Space should be in perpetuity. 2) For turtles, this needs to be maintained. 3) Is there a fee for the Home Owners association? The Town should not have to incur the costs of maintaining the open space for the turtle habitat. What is the Board's responsibility moving forward? He asks that this be put on hold.

Mr. Atkinson stated that any future development has to come back to the Planning Board, Board of Health, Conservation Commission, and NHESP.

Mr. Paradee asked for clarification on the definition of Open Space. Ms. Greenhalgh clarified that 30% Open Space is required by the Town, and 60% is required by the NHESP.

There was a brief recess at 8:15 pm.

Mr. Atkinson apologized for his comments and clarified that they were not intended to be critical of Mr. Paradee or his comments.

Ms. Pelan spoke to her concerns. She has spoken with many people in the Town, and wants to know why a cluster subdivision was chosen. She is concerned with the area marked as Open Space off Echo Woods. She asked if someone buys Lot 1, what would they actually be buying, just Lot 1? Mr. Eldredge responded that it would be just Lot 1 and that the Open Space will remain as-is. Echo Woods is a private road, would the new lots be part of this subdivision and pay into maintaining the Road. It was clarified that the new lots will not be part of the Echo Woods subdivision nor would they pay into maintaining Echo Woods road. Ms. Pelan would like to see the western open space be made permanent.

David Jordan spoke to concerns for the other animals living in the area. He listed a number of animals that he has seen in this area, it is rich with nature.

On a motion by Mr. McParland, seconded by Mr. Atkinson, the Board voted unanimously to continue the public hearing for PB2018-33 Heirs of Mark Nickerson et al to October 23, 2018, no earlier than 6:30 pm in the Griffin Room, Harwich Town Hall for the following reasons:

1. Pending ruling from the Board of Health regarding both the EIR and Definitive Subdivision approvals.
2. Home Owners Association documents
3. NHESP ruling on Open Space

Adjourn

On a motion from Mr. McParland, seconded by Mr. Atkinson, the meeting adjourned at 8:35pm.

Respectfully submitted,

Amy Banford, Board Secretary

Adopted: September 25, 2018