**HARWICH ZONING BOARD of APPEALS PUBLIC HEARING**

**Wednesday, January 29, 2020 at 7:00 p.m.**

**Griffin Meeting Room, Harwich Town Hall**

**MINUTES**

On Wednesday, January 29, 2020 at 7:00 PM, the Harwich Zoning Board of Appeals held a Public Hearing in the Griffin Meeting Room at the Harwich Town Hall, 732 Main Street to hear the following cases.

Members present: David Ryer, Chair, James Hilliard, Clerk, Kathleen Muller, Al Donoghue, Mike Cupoli, Jamie Armstrong and Chris Murphy.

Mr. Ryer called the meeting to order and noted to all that the meeting was being video recorded. He also stated that although there were 9 cases scheduled to be heard, he planned on ending the meeting no later than 10:30 PM. Applicants of cases 2020-04, 2020-05, 2020-06 and 2020-07 had been notified in advance in order to give them an opportunity to request a continuance until the February 26, 2020 meeting. Because those applicants opted for continuances until the February 26th meeting, Mr. Ryer moved to continue Cases #2020-04, 2020-05, 2020-06 and 2020-07 until 7PM and consecutively after that time on Wednesday, February 26, 2020 with a second by Mr. Hilliard. The Board voted unanimously in favor.

**Case #2019-28 (Continued from 7/31/19 and 10/30/19)**

Wychmere Harbor Real Estate, LLC, a/k/a Wychmere Beach Resort, through its agent, Attorney Andrew Singer has applied for an Amendment to Special Permit No. 10-39 or in the alternative, a new Special Permit to alter, extend or change a pre-existing, non-conforming recreation or amusement services and restaurant facility. The application is pursuant to the Code of the Town of Harwich, §325-54(B) as set forth in MGL Chapter 40A §6. The property is located at **23 Snow Inn Rd**, **Unit 12** Map 8, Parcel P2-12 in the RH-3 and RL Zoning Districts.

Members voting on this case:

Mr. Ryer, Mr. Hilliard, Ms. Muller, Mr. Donoghue and Mr. Murphy.

Mr. Hilliard read the case into the record and noted that there were updated comments from the Conservation Commission who heard the details of this case on January 22 and approved the changes made. There was also a memo from the Senior Health Agent saying that there will need to be additional review by the Board of Health regarding Food service and the Pool.

Attorney Andrew Singer presented the case referring to the Summary of Reasoning sent in advance to the Board. He also introduced the Wychmere Harbor Club GM, Mike Charlotte and other members of the project team. He handed out elevations added at the request of the Planning Board and reminded the Board that this case had been continued from the July meeting and later from the October ZBA meeting. The plans had changed as reflected in the set recently given to the Board members. He stated that the Applicants are requesting permission to make improvements to the beach club facilities at the southern end of the property, looking to replace the existing restaurant, pools, pool outbuildings and concrete and wooden decks. The long time recreational and amusement services are pre-existing, non-conforming because they predate current zoning regulations. The Applicants are seeking to either amend a Special Permit granted in 2010 or in the alternative, they request a new Special Permit under 325-54(B) which provides that a lawfully pre-existing structure used for a lawfully non-conforming use may by Special Permit be changed, altered, or razed and replaced with a new structure(s) in the same location provided that the Board determines that the proposal will not be substantially more detrimental to the neighborhood than the existing structure.

Attorney Singer continued by saying that there will be no change or intensification in the existing use. The building coverage will remain the same and the proposed work will conform to dimensional requirements. The site coverage, although non-conforming will improve and there will be added green space. The restaurant building will be raised to comply with flood zone standards and the Coastal Pavilion will be relocated further away from the wetland resource area. Attorney Singer noted that the Conservation Commission had approved the plan but has asked that the Applicant reduce the use of fertilizers which it intends to do with the use of some synthetic lawn products and other permeable materials for a portion of the project. There will be no increase in congestion and sufficient parking for the needs of the guests and membership. All runoff will be contained on site with no adverse impact to surface or groundwater quality. Stormwater, lighting and landscaping plans have been submitted. There will be no increase in the number of seats. There is a summer traffic management plan that includes a shuttle bus system and staggered event planning. There will be continued Site Plan Review with the Planning Board in February. He concluded that the proposal will not adversely affect the public health, safety, convenience or general welfare of the Town.

There was discussion and clarification between the Board and the Applicants regarding details of the project, parking, emergency access and hours of operation. There were no comments from the public.

Ms. Muller made a motion to close the public hearing with a 2nd by Mr. Donoghue.

The Board voted unanimously in favor.

The Board discussed the case and all agreed that the same use and reconfigured structures will not be substantially more detrimental to the public than the existing use and decided not to amend the 2010 permit but to instead grant a new Special Permit. Mr. Cupoli suggested a condition restricting summer construction.

Mr. Hilliard moved to Grant a new Special Permit to alter, extend or change a pre-existing, non-conforming recreation or amusement services and restaurant facility according to the plans provided and pursuant to the Code of the Town of Harwich, §325-54(B) as set forth in MGL Chapter 40A §6 for the property located at **23 Snow Inn Rd**, **Unit 12** Map 8, Parcel P2-12 in the RH-3 and RL Zoning Districts, the Board having found that the project intensifies existing non-conformities, creates no new non-conformity and will not be substantially more detrimental to the neighborhood. There is a condition that there be no significant exterior building, demolition nor new landscaping during the period between June 30th and Labor Day of any year. There was a second by Mr. Murphy.

The Board voted unanimously in favor. 5-0-0

**Case #2019-38 (Continued from 12/4/19)**

John Matthews of West Newbury Development Corporation, through his agent, Abigail Rose of Robert B. Our Co. has applied for a Special Permit for a Temporary Change of Use in order to store materials and construction equipment associated with the Town of Harwich Sewer Project. The application is pursuant to the Code of the Town of Harwich, §325-54 and Table 1, Use Regulations, PP II, Line 3 “Essential Services” as set forth in MGL Chapter 40A §6. The property is located at **160 Route 137,** Map 86, Parcel M12-2 in the CH-2 Zoning District.

Members voting on this case:

Mr. Ryer, Mr. Hilliard, Ms. Muller, Mr. Donoghue and Mr. Armstrong.

Mr. Hilliard read the case into the record as well as noting that there was a memo from the Senior Health Agent which stated that there are Board of Health Regulations which prohibit the storage of hazardous materials which include paving and other petroleum based construction materials.

Abby Rose and Christopher Our of Robert B. Our Company presented the case first apologizing for missing the previous meeting saying that there had been a mix up in communication. Mr. Our restated details of the application asking for a temporary change of use special permit to store materials and equipment which are a part of the Town’s Wastewater sewage plan. He explained that they are leasing a vacant building and its lot for storage of equipment needed for the wastewater treatment project as well as a staging area for the daily transfer of materials associated with the project. The contract ends in October of 2021. He added that no asphalt is being stored.

Mr. Ryer said that he believed that the circumstances meet the criteria for a Special Permit under the “Essential Services” portion of the Code but wanted some limiting conditions including a 2 year time limit, compliance with the conditions noted by the Senior Health Agent and a return of the property to its original condition within 90 days of the completion of the project. All of the Board members agreed.

There were no public comments.

Mr. Donoghue moved to close the public hearing with a second by Ms. Muller. The Board voted unanimously in favor.

Mr. Hilliard moved to grant the requested Temporary Change of Use in order to store materials and construction equipment associated with Town of Harwich Sewer Project according to the information provided and pursuant to the Code of the Town of Harwich, §325-54 and Table 1, Use Regulations, PP II, Line 3 “Essential Services” as set forth in MGL Chapter 40A §6 for the property located at **160 Route 137,** Map 86, Parcel M12-2 in the CH-2 Zoning District with the following 3 conditions: 1) This Temporary Change of Use will expire 2 years from the filing of the decision in this case; 2) Compliance is required with the conditions noted in the memo from the Senior Health Agent which memo is incorporated into the decision; and 3) The property will be returned to its original state within 90 days of the completion of the project. Mr. Donoghue seconded the motion

The Board voted unanimously in favor. 5-0-0

**Case #2020-01**

Timothy M. Blanchard and Kerry A. Blanchard, Trustees of the KNT Realty Trust, through their agent, Attorney Paul Tardif have applied for a Variance to allow for a 24’ wide newly created panhandle lot where 35’ is required. The application is pursuant to the Code of the Town of Harwich §325-18Q as set forth in MGL Chapter 40A §10. The property is located at **2 Saltwater Lane, a/k/a** **14 Saltwater Lane, a/k/a 123 Riverside Dr.,** Map 4, Parcels A1-A5, A1-A6, A1-A7, A1-A8 and A1-A9 in the RL Zoning District.

Members voting on this case:

Mr. Ryer, Mr. Hilliard, Ms. Muller, Mr. Donoghue and Mr. Cupoli.

Mr. Hilliard read the case into the record and noted that there was a memo by the Conservation agent saying that she did not foresee any issues with the proposal. There was also a memo from the Health Agent stating that there would need to be fully compliant septic systems before the issuance of any building permits. The record includes a memo from the Town Planner saying that the project has the support of the Planning Board.

Attorney Paul Tardif presented the case along with the Applicant, Tim Blanchard and restated the details of the application adding that the parcel was created in 1966 and subdivided in 1974 with 4 buildable lots and 1 unbuildable lot. There was a 2004 Planning Board application for approval of a Definitive Subdivision of 2 lots. Town Counsel was called to see if an ANR was more appropriate which required appearing before the ZBA for relief from the frontage requirement. Neither was voted on. The applicant is seeking to reconfigure the plan in order to have 2 lots that comply with the 40,000 square foot lot requirement rather than 4 (four) 10,000 square foot undersized lots or 1 (one) 80,000 square foot oversized lot. Applicants have been before the Planning Board and received a letter of support via the Town Planner for this request for a Variance from the requirement of a 35’ wide panhandle.

Attorney Tardif argued that the shape of the lot is uniquely compressed due to the panhandle access and the proximity of wetlands. A literal enforcement of the Code would cause significant financial hardship to the owners who believed they were purchasing 4 lots and are now hoping for 2. He argued that there would be no substantial harm to the public good and no derogation from the intent or purpose of the bylaw.

Mr. Ryer stated that he believed that there was a valid case for a variance given the wetlands involvement and the substantial loss of hundreds of thousands of dollars for the applicants with the elimination of 1 lot. All members of the Board agreed.

There were no public comments.

Ms. Muller moved to close the public hearing with a second by Mr. Donoghue. The Board voted unanimously in favor.

Mr. Hilliard moved to grant the Variance to allow for a 24’ wide newly created panhandle lot where 35’ is required pursuant to the Code of the Town of Harwich §325-18Q according to the plans provided as set forth in MGL Chapter 40A §10 for the property located at **0,** **2, 6, 10 and 14 Saltwater Lane, a/k/a 123 Riverside Dr.,** Map 4, Parcels A1-A5, A1-A6, A1-A7, A1-A8 and A1-A9 in the RL Zoning District, the Board having found that owing to the shape and topography of the lot, there would be a hardship with a literal interpretation of the Code. There will be no derogation from the intent of the bylaw and no harm to the public good. There is a condition that there be no new construction, demolition nor new landscaping between June 30 and Labor Day of any year. The Board voted unanimously in favor. 5-0-0

**Case #2020-02**

The Royal Apartments LLC, through its agent, Alex Burdin, has applied for a Variance, to convert the use of the property from a nursing home/assisted living use to multi-family dwelling residential use. The application is pursuant to the Code of the Town of Harwich, §325-52 and Table 1, Use Regulations as set forth in MGL Chapter 40A §10. The property is located at **328 Bank Street,** Map 41, Parcel N4 in the MRL Zoning District.

Members voting on this case:

Mr. Ryer, Mr. Hilliard, Ms. Muller, Mr. Donoghue and Mr. Armstrong.

Mr. Hilliard read the case into the record and noted that there was a memo by the Conservation agent saying that she recommended a silt fence or some other method to protect the wetland area during any construction.

There were a number of letters from abutters all in opposition to the proposed project.

Attorney Ben Zehnder introduced himself, Dave Michniewicz of Coastal Engineering, Alex Bardin of The Royal Apartments, LLC and other representatives of the project. Attorney Zehnder presented the case and restated details of the application adding that the request is for a Variance from the requirements limiting multifamily use to 8 units per acre. He said the project is to reconfigure the existing multi-unit building which has been used as a senior living center and then a nursing home. The Applicants have been to the Planning Board which was supportive of the plan. They will be returning on February 11th.

Attorney Zehnder went on to say that the proposal is for 26 units, 5 studios, (14) 1 bedroom and (7) 2 bedroom apartments. The site is in the MRL zoning district which is primarily taken up by Grassy Pond and its associated wetlands and which has only 2 lots over 10 acres, both of which have multifamily apartments or condos on them: Country Meadows and Pine Oaks Village. They offer important alternatives to the expenses of single family dwelling ownership. Attorney Zehnder added that the Town appears to want more affordable housing but has set unreasonably high expectations and limited zones where multi-family units might be approved.

Mr. Michniewicz gave details of the parking configuration and the stormwater runoff proposal. Septic use should be slightly less that what it was when the site was used as a nursing home.

Alex Bardin of the Royal Apartments, LLC and Newman Properties continued saying that there are already studio-like rooms within the building which could be easily transformed into apartments without a lot of structural work. He explained that there would be market rate rentals with yearly leases. There will be no exterior structural changes.

Mr. Ryer said that he would like to see the addition of a traffic study along with the plan and that he felt that the standards to meet the granting of a variance had not yet been met. He offered written suggestions as to possible conditions for this multi-family project.

Ms. Muller was concerned about the small size of the units and the resulting potential for density. Mr. Donoghue suggested limiting sublets and wanted to be sure that no parking will be allowed at the library.

Mr. Armstrong noted that there is currently an empty building and a need for this type of housing in town. Mr. Cupoli had concerns regarding the limitations of the site for parking and wanted more information about the lighting plan. Attorney Zehnder responded that there are sufficient parking spots per the Town’s requirement and there is a lighting plan which is compliant with the Town Code. Mr. Ryer added that Article XXII of the Bylaw covers that and would be a condition.

Public commentary started with Attorney David Reid who has been hired by the owners of the Winstead. He argued that the past uses of the property as a nursing home and assisted living facility were not comparable to the proposed use as multi-family housing. He handed out printed information to the Board members and argued that he believed the requirements of a variance had not been met.

Members of the public speaking in opposition included Jean Mongillo of 327 Bank Street and Ray Marquis of Country Meadows condominiums.

After some discussion, Attorney Zehnder asked for a straw poll to see how the Board was leaning regarding the vote for the current proposal and then requested a continuance.

Mr. Ryer moved to continue Case #2020-02 be continued until no sooner than 7PM on Wednesday, February 26, 2020 with a second by Mr. Hilliard. The Board voted unanimously in favor.

**Case #2020-03**

Andrew Hall, Successor Trustee of the Emulous Hall Realty Trust through his agent, Attorney Andrew L. Singer, has applied for a Variance, to redevelop a previously disturbed and commercially-used portion of property located in 2 zoning districts in connection with a seasonal, miniature golf course. The application is pursuant to the Code of the Town of Harwich, §325-52 and Table 1, Use Regulations as set forth in MGL Chapter 40A §10. The property is located at **346 Route 28 and 0 Sisson Road,** Map 21, Parcels N2-0 and N1-0 in the CH-1 and RM Zoning Districts.

Members voting on this case:

Mr. Ryer, Ms. Muller, Mr. Donoghue, Mr. Cupoli and Mr. Armstrong.

Mr. Hilliard read the case into the record and noted that there were a number of letters from members of the Beach Plum Condo Association all in opposition to the proposal.

There was a memo from the Senior Health Agent stating that the Board of Health had no concerns and a memo from the Conservation Agent saying that the project was approved with conditions by the Conservation Commission.

Attorney Andrew Singer presented the case restating details of his Summary of Reasoning handed in advance to the Board. He introduced Dan Croteau of Moran Engineering who would go over specifics of his plan later in the presentation. Attorney Singer reminded the Board of the split zone of the lot in questions and that the Planning Board will be hearing the case in 2 weeks. Building and site coverage will comply and significant vegetation will be retained as well as the addition of a landscaped “green screen” between the lot and the Beach Plum condo area. The use of the residential zone are for commercial use will be seasonal with environmental benefits of proper drainage and screening. The proposed use is less in intensity than what the lot could potentially be used for. The location lends itself to continuation of the recreational use of the “Go-Cart” business to the south with shared parking. Lighting will be on poles lower than the ridge leading to the condos and capped with “dark sky” compliant heads with further protection from the “green screen” of new plantings. Attorney Singer responded to concerns regarding the dates of use by saying that it will be limited to summer time with additional weekend use in May and September.

Mr. Hilliard asked if parking was sufficient for clientele and staff. Attorney Singer answered in the affirmative.

Mr. Ryer wanted more on the argument for changing the use of the residential portion to commercial as well as the potential closing of the Harold Street curb cut while adding one onto Sisson Road. He suggested no food or drink service.

Mr. Donoghue suggested limiting the number of holes on the course to 18. Mr. Armstrong wanted the hours of the Go Carts and the golf course to match and an assurance that there would be a net addition of trees. The landscape architect answered with details from the plan regarding the addition of cedars and junipers so that the condo owners will look out their windows and see green.

Mr. Cupoli suggested flipping the parking so that it would be in the residential area but Dan Croteau answered that there was too much potential for that being more offensive to the abutters because of the noise, light and less green space.

After some discussion, Mr. Ryer moved to continue Case #2020-03 until no sooner that 7PM on Wednesday, February 26, 2020 with a second by Mr. Murphy. The Board voted unanimously in favor.

Mr. Ryer moved to approve the Minutes from the December 4, 2019 meeting (with one grammatical adjustment) and a second by Mr. Hilliard. The Board voted unanimously in favor.

Mr. Ryer moved to adjourn with a second by Mr. Cupoli**.** The Board voted unanimously in favor.

Authorized Posting Officer: Shelagh Delaney, sdelaney@town.harwich.ma.us

Board of Appeals Recording Clerk