Harwich Planning Board

Town Hall, 732 Main Street, Harwich, MA – Griffin Room

**MINUTES**

Tuesday, April 25, 2023 – 6:30 PM

This meeting of the Planning Board was held in-person and was also available as a live broadcast on Channel 18.

Members present: Duncan Berry, Craig Chadwick, Ann Clark Tucker, Emily Brutti, Harry Munns and Allan Peterson. David Harris joined the meeting remotely.

Mr. Berry noted the passing of a long-time, past Planning Board member, Larry Brophy.

**Mr. Berry read the Recording Notice; Call to Order**

*According to MA Law anyone who intends to record the meeting must first notify the Chair who will then inform the other attendees at the start of the meeting.*

**Pledge of Allegiance – recited by all**

**Public Hearing**

**Case # PB2023-12 (CONTINUED FROM 4.11.23) Karen & George Oliver of Oliver Homes, LLC, through their agent, Kent Drushella** have applied for a Special Permit for an Alternate Access driveway. The application is pursuant to the Code of the Town of Harwich §325-18 K and MGL c. 40A Section 9. The property is located at 86 Miles St., Assessor’s Map 14 Parcel B9. The property is located in the Residential Low (RL) Zoning District.

AND

**Case # PB2023-04 (CONTINUED FROM 2.28.23 and 4.11.23) Karen & George Oliver of Oliver Homes, LLC, through their agent, Kent Drushella** have applied for a Special Permit for a Two-Family Dwelling in order to build a 2nd residential structure connected by a roof or series of roofs. The application is pursuant to the Code of the Town of Harwich c.325-51 N, in accordance with MGL c. 40A Section 9. The property is located at 86 Miles St., Assessor’s Map 14 Parcel B9. The property is located in the RL Zoning District.

Mr. Berry read both legal notices into the record.

Addressing both cases at once (2023-04 and 2023-12), Attorney Charles Sabatt, representing the owners, introduced himself and the project manager, Kent Drushella. Thad Eldredge, the project engineer, was also present. Attorney Sabatt replied to arguments made by Attorney Victoria Dalmas on behalf of 4 residents of Grassy Pond Road. He disagreed with Attorney Dalmas’ contention that the project should not be heard by the Planning Board because the structures and the lot are, according to her argument, pre-existing, non-conforming, thereby requiring a Section 6 determination by the Zoning Board of Appeals. He argued that permits to build the main house were granted by right because the Building Commissioner saw no non-conformity which would have led to a ZBA hearing. Attorney Sabatt also shared a graph with the Board showing that “unacceptable increase in density” should not be considered a reasonable argument by Grassy Pond residents because their properties are generally denser than the proposed 86 Miles Street Two-Family project. He added that the Applicants were following specific details for a two-family dwelling special permit laid out in the Town Bylaws. The proposal is to build two dwellings connected by a series of roofs as specifically stated in section 325-51N. The bylaw does not limit the size of the residences. Attorney Sabatt also countered suggestions that the owners were “developers” looking to turn the property into condos or vacation rentals. The second home will be used for the family’s disabled child.

Attorney Dalmas spoke next on behalf of her clients, Kathleen Hagan, Patti Smith, Thomas Simpson and Katherine Pendergast, all owners on Grassy Pond Road. Her argument was that the project represents an attempt to introduce a new non-conformity (2 single family homes on one lot) and expand or intensify pre-existing non-conformities – the frontage. She argued that these cases should first appear before the Zoning Board of Appeals for a Section 6 finding that the project does not represent a substantial detriment to the neighborhood.

After hearing both arguments, the Board determined that it required additional guidance from the Zoning Enforcement officer, Jack Mee and Town Counsel. Mr. Berry asked that both attorneys prepare briefs for that review process. Both attorneys agreed to a continuance.

Mr. Chadwick moved and Mr. Peterson seconded the motion that Cases 2023-04 and 2023-12 for 86 Miles Street both be continued until no earlier than 6:30 on Tuesday, May 9, 2023. The Board voted unanimously in favor.

**Case # PB2023-06 (CONTINUED FROM 3.14.23 and 4.11.23) -**The Eastward Companiesapplied for a Modification to an approved Definitive Subdivision Plan known as Dorset Drive, Assessor’s Map 98, Parcels B1-1, B1-2 & B1-3. The proposed modification would reconfigure lot 2 with compliant frontage and create one panhandle lot, reducing the length of the road and conveying one lot to an abutter. The application is pursuant to the Code of the Town of Harwich §400-11 (C). The properties are located in the Rural Residential (RR) and the Drinking Water Resources Protection District (DWRPD) Zoning Districts.

Mr. Berry read the legal posting into the record.

Susan Ladue joined the meeting remotely. Bill Marsh of Eastward Companies and Dave Clark of Clark Engineering were also present. Mr. Clark spoke about how the requests to modify stormwater and road construction have been addressed with the recent submission of revised plans. Mr. Halkiotis said that all of the concerns have been satisfactorily met. He told the Board that they would need to vote on the requested waivers.

Mr. Chadwick moved and Mr. Peterson seconded the motion that the Board grant the requested waivers. The Board voted unanimously in favor by roll call vote.

Mr. Chadwick moved with a second by Ms. Clark Tucker to approve the requested modification of a Definitive Subdivision known as Dorset Drive according to the plans provided in the application. The Board voted unanimously in favor by roll call vote.

**Case # PB2023-07 (CONTINUED FROM 3.14.23 and 4.11.23) Round Cove Resort Owner, LLC and 4 Cove Landing Road Owner, LLC** are seeking a Site Plan Review & Use Special Permit for an increase in allowed hotel/motel use by more than 7,500 square feet of floor area, as required pursuant to the Harwich Zoning By-Law sections 325-9 and 325-51. The proposed building expansion is to create additional hotel rooms and to renovate buildings at Wequassett Resort & Golf Club. The property is located at 2173 Rt. 28, Head of the Bay Resort, Map 115, parcel S1-3 in the Commercial Highway 2 (CH-2) Zoning District.

Mr. Berry read the legal posting into the record.

Attorney Marian Rose of Singer and Singer in Dennisport introduced herself as well as Joe Bologna, Project Engineer, David Hawk, Landscape Architect and Alton Chun, General Manager of Wequassett Resort. Brook and Albert Core of Studio Core Designs also joined the meeting remotely. Attorney Rose addressed the concerns of the abutters, the Sheltons by reminding the Board that the distance between the Shelton’s house and Building B is approximately 167 feet. The distance between their house and Building A is approximately 145 feet. She noted that about 2/3 of the Shelton’s patio is on Wequassett property. Attempts at discussing screening options with the Sheltons have been unproductive. So Round Cove Resort developed a more robust landscape screening plan with trees proposed to be 10-16’ high. She also addressed how the resort manages noise and lighting to minimize any effect on abutters.

Attorney Rose specifically rebutted objections brought up by Attorneys for the Sheltons, Attorney Ford and Riley with an extensive discussion about 4 Cove Landing Road, expunged lot lines and the intent of the resort to use that property as a 2 family dwelling and not to use it for resort use. She reminded the Board that the Resort had filed an 81X submission with the Court to have the commonly-owned properties merged. They were still waiting for the recording of that plan.

Mr. Chadwick asked if there had been any attempts to work with the Sheltons on screening and Attorney Rose replied that there had been attempts but it appeared that the Sheltons had no interest in working with the Resort.

Attorneys Michael Ford and William Riley introduced themselves as representatives of the Sheltons who are the abutters opposing the project. Attorney Ford relayed the history and expansion of Wequassett Inn and then contested that the Inn’s ownership of 4 Cove Landing Road could allow the use of that additional lot coverage to support a calculation for “amenities coverage”. He also argued that the property was never approved for hotel/motel use. Attorney Riley added that they believe that the Case needs to be heard by the Zoning Board of Appeals before it comes to the Planning Board. He added that there would be a negative impact on the Sheltons.

Mr. Halkiotis told the Board that he had just received the written objection of Attorney Ford that afternoon at 2 PM and thinks that he should meet with the Building Commissioner to review the letter. He added that he believes that the Board should continue the case in order to seek advice from the Town Counsel.

Mr. Chadwick moved and Ms. Clark Tucker seconded the motion to continue Case PB 2023-07 until no earlier than 6:30 PM on Tuesday, May 23, 2023 in order that the Board could request and receive an opinion from Town Counsel. The Board voted unanimously in favor.

**Case # PB2023-10 Mark and Andrea Toomey,** through their agent, J. Thaddeus Eldredge, PLS, are seeking a Modification of a Definitive Subdivision Plan. The application is pursuant to the Code of the Town of Harwich §400-11 (C), and MGL c.41 Subdivision Control law. The properties are located at 0 Quinapoxet Way, Assessor’s Map 102, Parcels E1-3 and E1-4 in the Rural Residential (RR) Zoning District.

Mr. Berry read the legal posting into the record.

Attorney William Crowell introduced himself and Thad Eldredge as well as the owners of the property, Mark and Andrea Toomey. In 2019, the Planning Board approved a 2-lot Definitive Subdivision. The owners are now looking to sell one of those lots. The remaining lot meets the shape factor but will be a single pan handle lot with frontage on Long Pond Drive, eliminating the need for a right of way. Attorney Crowell noted that Section 325-18L allows for an “Approval Required” and noted a number of precedential cases.

Mr. Halkiotis said that he had worked with Thad Eldredge to get to this point and that the application has a series of waivers requested specifically related to the building of a road. With no road proposed, the Board should be able to approve those waivers and grant the modification to the subdivision.

Mr. Chadwick moved to approve the requested waivers numbered 1-6 in the Planner’s Review of the project. Mr. Peterson seconded the motion. The Board voted unanimously in favor.

Mr. Chadwick then moved with a second by Mr. Peterson that the Board grant the requested Modification of the Definitive Subdivision (Case PB2019-20). The Board voted unanimously in favor.

**Case # PB2023-11 (CONTINUED FROM 4.11.23) Paul Sweetser,** Agent for Dewitt P. Davenport, Tr**.** is requesting a Special Permit for a Two-Family Use in order to construct a duplex with two 2-bedroom units. The application is pursuant to the Code of the Town of Harwich §325-51N and MGL CH 40A sec 9. The property is located at 958 Orleans Rd., Assessor’s Map 51, Parcel S9 in the Residential Rural (RR) Zoning District.

Mr. Berry read the legal posting into the record.

Paul Sweetser of Sweetser Surveying introduced himself and Christian Davenport of Davenport Companies. They reiterated relevant portions of the application and then specifically addressed the waiver request from the strict interpretation of the Code that requires an owner to reside in one of the residences for at least 6 months of the year. The hope is to offer each of these 2 residences as part of the much needed apartment inventory in Harwich.

Mary Shinkwin of 954 Orleans Road spoke as a direct abutter to the project and asked for screening shrubbery and fencing as well as guarantees that the rear of the property will not be disturbed. She handed the Board written details of her request.

Mike Serijen also spoke as an abutter and relayed his hopes that most of the trees be undisturbed.

Christian Davenport said that the intent is to maintain as many trees as possible but was not comfortable entering into a covenant for a “no touch” section on the lot. Paul Sweetser added that the Davenport properties are well maintained.

Richard Waystack and Art Boden spoke in support of the project as housing advocates. Cyndi Williams of the Harwich Chamber of Commerce noted the difficulties local businesses are having hiring staff when those potential workers have no affordable choices for housing. She asked that the Board approve this 2-family project.

Mr. Halkiotis recommended that the Board continue the case in order for the Applicants and the abutters to work out a mutually acceptable screening plan. He added that the Special Permit can have conditions that once recorded at the Barnstable County Registry of Deeds, will run with the land.

Mr. Chadwick moved with a second by Mr. Peterson that Case PB-2023-11 be continued until no earlier than 6:30 PM on Tuesday, May 9, 2023. The Board voted unanimously in favor.

**Case # PB2023-13 Douglas Deschenes,** Agent for Kevin S. Tomany and Tara E. Kane-Tomanyis requesting a Special Permit in order to construct and maintain a barn and paddock area for 2 horses within the Drinking Water Resource Protection District (DWRPD). The application is pursuant to the Code of the Town of Harwich §325-14E, §325-51C and MGL CH 40A sec 9. The property is located at **230 Church Street**., Assessor’s Map 98, Parcel B3-9 in the Residential Rural (RR) and Drinking Water Resource Protection (DWRPD) Zoning Districts.

Mr. Berry read the legal posting into the record and then noted that the Applicants has requested that the Case be continued until 5.23.23.

Mr. Peterson moved with a second by Mr. Chadwick that Case PB2023-13 be continued until no earlier than 6:30 PM on Tuesday, May 23, 2023. The Board voted unanimously in favor.

1. **Planning Board Business**
2. Mr. Peterson moved with a second by Mr. Chadwick that the Board approve Minutes from February 28, 2023, March 14, 2023 with the addition of one letter on page 1, line 4. The Board voted unanimously in favor.
3. A vote to approve a **request for a Covenant Release for PB2015-12, Arthur’s Way, Mark Smith, Applicant.**

The Board engaged in discussion with the Applicant, Mark Smith who is looking for the release of 2 lots. Mr. Halkiotis told the Board that a number of trees had been removed contrary to the originally approved Definitive Plan and suggested that the amount of the Performance Board include the cost to replace those trees.

The Board agreed on the release of lots 1 and 8 in exchange for a Performance Bond in the amount of $300,000. Mr. Smith estimated a completion date of April 2024.

Mr. Chadwick moved and Mr. Peterson seconded the motion to approve the release of lots 1 and 8 currently held in Covenant contingent upon receipt of a security bond in the amount of $300,000. The Board voted unanimously in favor.

1. Mr. Halkiotis spoke about the language changes to the proposed Amendments as well as the notice problem of 3/28/23. He, on the advice of Town Counsel, suggested an additional meeting of the Board at 4:30 on May 1st to vote on moving the Amendments forward for a vote at Town Meeting.
2. **Adjourn**

Mr. Peterson moved to adjourn the meeting with a second by Mr. Chadwick. The Board voted unanimously in favor.

Authorized Posting Officer: Shelagh Delaney, sdelaney@town.harwich.ma.us or 508-430-7511