



Harwich Planning Board

Harwich Planning Board
Town Hall, 732 Main Street, Harwich, MA – Griffin Room
MINUTES

Tuesday, July 11, 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.

Planning Board Members present: Duncan Berry, Craig Chadwick, Mary Maslowski, Ann Clark Tucker, Emily Brutti and Harry Munns.

Mr. Berry called the meeting to order and read the following notice:

I. 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.

All attendants joined in reciting *the* **PLEDGE OF ALLEGIANCE**

II. PUBLIC HEARINGS

Case # PB2023-20 (Continued from 6.27.23) Main Street Stone Horse, LLC, through its agent, Attorney William Riley is seeking a modification of a Site Plan Special Permit (PB2019-13) in order to reduce patios and walkways and increase parking. The application is pursuant to the Code of the Town of Harwich §325-55, in accordance with MGL c. 40A Section 9. The property is located at 878 Route 28, Assessor's Map 25, Parcel A2. The property is located in the Commercial High Density (CH-1) Zoning District.

Mr. Berry read the legal posting into the record.

Attorney William Riley of Chatham introduced himself as representative of the Applicant and gave a brief history of how the project came to be before the Board for a modification to the original Special Permit. Alterations had been made to the approved plan in order to accommodate the change from J1 Visa residents to H2B residents, and others during Covid restrictions. The owner has been in a difficult financial position but is willing to address some of the neighbors' concerns about noise and those mentioned by the Board at the last meeting. Attorney Riley also said that he had been working with the Building Commissioner, Jack Mee to take care of a punch list of items required before there can be any extension of the current Temporary Certificate of Occupancy that is due to expire on September 15, 2023. He said that the owner is willing to erect a fence but does not want to do any additional landscaping to replace the failed plantings from the original landscape plan. He will also replace broken lights with solar walkway lights and replace broken metal pipe handrail sections. The owner would like to finish the walkways with asphalt instead of concrete and does not see the benefit of level grading the area where the dumpster is but will instead ask the on-site manager to assist people with their trash disposal. Attorney Riley told the Board that the Gazebo from the original plan has recently been removed and that the owner is not willing to gate off the access point from the property to Old Colony Road to assist with noise control. The owner just received an estimate from the sprinkler installation in the front building and feels that the expense is too great and would rather change the use of that building to a single-family use.



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Ms. Clark Tucker expressed her sense of frustration and solidarity with the Building Commissioner who had written to the Board sharing a detailed report of repeat problems including Building Code violations and non-compliance with federal ADA requirements. Things seem to keep breaking like the lights and handrails, the landscaping has been allowed to wither and the owner's proposed solutions are inadequate. Solar lights won't match the illuminance and safety of electrical lights. And there should be a maintenance plan with maintenance staff to replace and repair things that are broken. Staff needs to be proactive and not reactive. This just keeps dragging on. She suggested a performance bond and a schedule as to when the Board can expect things to be done.

Ms. Brutti agreed and said that the execution on the original plan has been very different than what was approved. Mr. Chadwick also stressed the importance of appropriate staffing for property management and maintenance.

Jack Mee, the Building Commissioner shared some history on his attempts to work with Attorney Riley and the owner toward a final Certificate of Occupancy. But it's been frustrating for him to see things get repaired and then break again. His biggest issue right now is that there are people living in the front building and it is not sprinkled. That is a potentially dangerous situation.

Mr. Munns asked if there were any circumstances under which the Commissioner would agree to extend the Temporary Certificate of Occupancy past the September 15, 2023 deadline. Mr. Mee said that if the owner was working in good faith toward the remaining items and if the Board approved, he would absolutely require that people be moved out of the front building. Then, if there were only a few minor tasks left, he would work with Attorney Riley and the owner to cross the finish line.

Mr. Berry said that he thought he could condense the "punch list" items that need to be addressed as follows:

- 1. Written schedule of Actions
- 2. Performance Bond
- 3. Finalize Dumpster Access (steps or grading?)
- 4. Sprinkler Plan
- 5. Lighting Plan: Solar vs. Wired
- 6. Parking: Location/Final Count/Gravel vs Paved
- 7. Definitive Position on Old Colony Access
- 8. Detailed Landscaping Plan
- 9. Screening/Stockade
- 10. Maintenance Plan

Ms. Maslowski added that the Applicant needs to submit an updated "As Built" plan in order for the Board to make a determination regarding which changes will be allowed as part of a modification and which will be required to match the originally approved plan and conditions. Mr. Chadwick also asked how many parking spaces will be approved and where will they be.

Attorney Charles Sabatt spoke on behalf of Oliver Homes, LLC, the owners of 39 and 43 Old County Road. He asked if the total number of parking spaces would be 27 or 31 and added that his clients are looking for fencing and landscape screening at the border of the property and screening around the large patio area. He suggested that the Board require the owners to put in more patios as approved in the original special permit as well as a condition that the owners maintain the landscaping.



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Ms. Maslowski moved and Mr. Chadwick seconded the motion that Case 2023-20 be continued until no earlier than 6:30 on Tuesday, July 25, 2023. The Board voted unanimously in favor.

Planning Board Business

Informal discussion:

Attorney Andrew Singer and his client, Mark Zippo regarding paving of South Westgate Road. The original Definitive Subdivision was approved in 2007. (PB2007-36)

Attorney Singer introduced himself and his client, Mark Zippo. He said that the issues involve the interpretation of conditions set forth in a Decision by the Board in Case PB2007-36 for a 7-lot Definitive Subdivision and Open Space Residential Development serviced by a pre-existing road (South Westgate Road) as well as in part, a new road. In 2016, approximately 500 feet of the original road was paved by the owner at that time and in May of 2023, the current owner, Mark Zippo, paved an additional 220 feet of the original road.

There has been opposition to the paving of the original road by the owners of the horse farm because they, in part, interpret a condition in the original subdivision plan as requiring the entire combination of both roads remain unpaved. Attorney Singer argued that he and his client interpret that condition to be limited to the new portion of the road for the lots created by the 2007 decision. He added that if the Board agreed, then nothing further needs to be done. But if the Board believes that a closer look at the terms and conditions of that original subdivision plan is required, Mr. Zippo will apply for a modification to that plan.

Mike Lewis of 209 South Westgate (who had written comments to the Board) said that his interpretation of the original permit was to limit paving on the road in order to keep the equine area rural. He added that gravel is easier for him to maintain once the developer is gone. His wife, Jen Lewis also spoke asking the Board about how the Town would balance deeded rights with changes to the road. Her sister, Lisa Wilson, owner of the horse farm at the end of the road asked the Board about who would take over the responsibility of plowing over what she claimed was a poor paving job.

Attorney Singer concluded by saying that the question boils down to what rights and responsibilities do private owners have over a private road.

The Board determined that the questions in this case required referral to the Town Counsel for a legal opinion. Parties will be notified once that opinion is received.

New Business:

- 1) Vote for a partial release of Covenant for Chloe's Path (PB2016-03)

John O'Reilly of J.M. O'Reilly & Associates, Inc. told the Board that he had submitted a request to release 6 of the 7 lots on Chloe's Path, a subdivision created by Case # PB2016-02 along with a completed As-Built Road Profile Plan, compaction testing by Briggs Engineering and an estimate to complete by Lawrence-Lynch Corp. Mr. O'Reilly noted that the original plan for the subdivision was for affordable housing but the developers have now reverted back to the use as single family lots. Lot 8 has significant



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wetland and endangered species issues so it was decided to the Harwich Conservation Trust. The owners are fine with leaving any lot of the Board's choosing in covenant.

The Board made a decision to request review by the Town's subcontracted Engineer, VHB to determine an estimate on a cost to finish. This issue will come before the Board again on July 25, 2023 if a response is received from VHB by that time.

Mr. Munns asked if the Board would be amenable to electronic "packets". There was a mixed response. Shelagh Delaney will work toward creating a Drop Box Account for those who wish to access it. Paper copies will be available to any of the members who would still prefer that.

Ms. Maslowski moved and Mr. Chadwick seconded the motion to accept the minutes of 6/27/23 as submitted. The Board voted unanimously in favor.

Ms. Maslowski then moved to adjourn 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