**Harwich Planning Board**

**Town Hall, 732 Main Street, Harwich, MA**

**Meeting Minutes**

**Tuesday, June 28, 2022**

**Board Members Present:**ChairDuncan Berry; Mary Maslowski, David Harris, Craig Chadwick, William Stoltz, and Anne Tucker.

**Board Members Absent:** Emily Brutti

**Others Present:** Meggan Eldredge (Assistant Town Administrator)

**Call to Order**: Mr. Berry called the meeting to order at 6:30pm having established a quorum. Pledge of Allegiance recited.

**Public Hearings**  
**PB2022-12 Eastward MBT LLC (continued from 5/24/2022 & 6/14/2022)**

Mr. Berry opened by reading the notice.

Attorney William Riley introduced himself and David Clark, of Clark Engineering. Attorney Riley discussed communicating with Attorney Senie, who is representing abutters, regarding the language in the declaration in protective covenants, which the applicant has agreed to adopt.

Attorney Christopher Senie, introduced himself and discussed the declaration of protective covenants with regards to Open Space being within the lots, noting the applicant does not want to amend the plan. However, agreed to remove the portion stating disturbed open space could be replaced with lawn or bushes. The language will now read “it will remain in its natural state.” He discuss the right of abutters to Middle Rd and gave the Board the letter containing the proposed language to be adopted into the covenant.

Ms. Maslowski motioned to close the public hearing, Seconded by Mr. Chadwick, Vote 6 - 0. Motion carries; public hearing closed

No discussion from the Board.

Ms. Maslowski motioned to adopt the findings set out in the staff report dated 4/29/2022 with a note that public hearing was continued to June 14th and May 25th and stated the applicant has received Storm Water Permit form the Board of Selectmen. Seconded by Mr. Chadwick. Vote 6-0-0 motion carries.

Ms. Maslowski motioned to endorse the plan with conditions as written in the staff report dated 4/29/2022 and the following:

Add new condition: The declaration of covenants will also include the agreed upon language as set forth in Attorney Senie’s letter dated 6/29/2022 given to the Harwich Planning Board and Attorney Riley, and has been agreed to by Attorney Riley on behalf of the applicants.

CONDITIONS OF APPROVAL

1. The subdivision is also subject the requirements and conditions of the Local Stormwater Permit (Harwich Local Stormwater and Illicit Discharge Regulations) in addition to those drainage requirements set out in the Harwich Subdivision Rules and Regulations (Harwich Code Chapter 400, Article II).
2. The Applicant shall permanently restrict, for open space, conservation and natural resource protection purposes, in a deed or conservation restriction donated or granted for nominal consideration, pursuant to and consistent with Harwich Zoning Bylaw Section 325-51(E)(6) and MGL Ch. 184 ss. 31-33 or MGL Ch. 40 sec. 8C, the land shown as Open Space Parcels A & B on the definitive plan, which are to be preserved primarily in their existing open and natural state. The open space grant and restriction shall be subject to and secured by the Covenant, and shall be recorded prior to any individual conveyance of a lot or lots or building thereon. It is anticipated that the Open Space parcels will be deeded to the Harwich Conservation Commission to hold for conservation purposes in perpetuity per MGL Ch. 40 sec. 8C.
3. The Applicant shall enter into a ‘standard form’ Covenant as performance guarantee for the subdivision work and other obligations set out herein, which Covenant shall run with the subject property, shall be held on the five lots to be served by proposed Turtle Run, and shall be executed prior to or at the time the definitive plan is endorsed by the Board. Pursuant to Harwich Code Chapter 400, Article II, the Board may, upon request and from time to time, substitute types of security used as a performance guarantee.
4. No individual lot or lots shall be conveyed or built upon until released from Covenant or other security.
5. This subdivision Certificate of Approval/ Decision shall be recorded with the Barnstable County Registry of Deeds together with the approved definitive plan and covenant; recorded copies of the same shall be provided to the Town’s building and planning departments prior to commencement of any subdivision work or lot construction.
6. The Applicant shall meet the requirements of Harwich Code Section 400-11(E)-(G) for the subdivision, including the inspection and as-built plan requirements therein, prior to, as the case may be, full or partial release of the Covenant or other security.
7. The subdivision work shall be performed and completed pursuant to and consistent with the plans and documents referenced in the application materials set out above and the specifications set out in Harwich Code Section 400-15.
8. The definitive plan shall be revised and provided to the Board **prior to endorsement** to include the following:
   1. The definitive plan shall specify thereon as an additional note that the allowed use of the building lots is for ‘single family residential use’ only.
   2. The applicable flood zone shall be included on the definitive plan as an additional note.
   3. The title “Division Plan” shall be revised to “Subdivision Plan.”
   4. Note #2 shall be revised as follows “No building lot or subdivision infrastructure is located within wetlands protection jurisdiction.”
   5. The definitive plan shall specify thereon as an additional note that all utilities within the subdivision shall be located underground.
   6. The following additional BOH restrictions shall be noted on the face of the definitive plan:
      1. Locus is within a Zone II;
      2. The Subdivision is subject to the conditions in BOH approval letter dated May 26, 2022.
   7. Assessors parcel number noted shall be corrected to Parcel C3 (vs. C2).
   8. The zoning compliance table shall be revised to show that the minimum required front setback in the OSRD is 15 ft. (i.e. by deleting the phrase “1/2 of…” in the ‘proposed’ front setback entry). Further, the front setback line shall be depicted or noted for ‘panhandle’ Lot 3.
9. The minimum required front setback for the OSRD shall be 15 ft. For the proposed ‘panhandle’ lot, Lot 3, front setback shall be measured from a line parallel to the street line located at the rear of the ‘panhandle’ portion of the lot.
10. The subdivision shall be served by and connected to municipal water service.
11. All utilities within the subdivision shall be located underground.
12. The Applicant shall grant or reserve for itself, its heirs, successors and assigns a drainage easement over those areas depicted on the definitive plan as ‘drainage easement’ as and when said Lots are conveyed. The grant or reservation and recording of the easement shall be subject to and secured by the Covenant.
13. Any cul-de-sac plantings in Turtle Run shall not interfere with safe sightlines and sight distances for vehicular traffic. If a subdivision sign is proposed, it shall not interfere with the line of sight from Turtle Run to Rte. 39.
14. No building may be located within the areas denoted as “Natural State Areas” on lots 2, 3, 4 & 5, and said natural areas shall be vegetated sufficient to visually buffer lot development from abutting properties.
    1. In addition to the required bounds at lot corners, angle points, etc. for Lots 2 & 3, the 50’ ‘Natural State Area’ line shall also be bound and marked.
    2. These additional bounds shall be depicted on and added to the Definitive Plan prior to endorsement.
15. As an OSRD is a specific zoning use and requires establishment under the Harwich Zoning Bylaw by way of, among other things, definitive subdivision approval, any proposed further division or re-division of the property or portion thereof, or any lot or road reconfiguration of the land, shall require subdivision modification under Chapter 400, Article II of the Harwich Code and MGL Chapter 41 sec. 81W in order to determine and ensure consistency of the OSRD with the Harwich Zoning Bylaw.

Attorney Riley requested the Board not include language changes to the Declaration of Protective Covenants within the letter from Attorney Senie to the conditions.

The Board and the applicant discussed whether the decision should include the letter and decided to include it in the decision.

Mr. Stoltz requested another condition be added regarding the bounds on Lot 2 and Lot 3 at the natural state line.

Ms. Maslowski amended her motion adding another condition:

New condition: Lot 2 and Lot 3 will be bounded and marked at the natural state line.

Seconded by Mr. Chadwick. Vote 6-0-0. Motion carries;

**PB2022-13 Paul M. and Michelle P. Vasil,**

Mr. Berry opened the hearing by reading the notice.

Attorney William Crowell introduced himself, and Attorney Andrew Singer, representing the owners of Lot 1. He handed the Board documents and discussed relevant portions of the case, noting a covenant that was never recorded and the changes to the subdivision and wetland bylaws when the original subdivision was endorsed in 1988. He discussed the waivers requested, noting the importance of the 5th condition and the modifications do not require a Variance based on an e-mail from the previous Town Planner. He requested the board endorse the plan with the five waivers and release the existing covenant, which has been drawn up by Elain Banta, the Planning Assistant.

Attorney Singer stated his client is in support of the case.

Ms. Maslowski discussed interdepartmental comments and the limited staff report dated 6/23/2022, noting the consideration of a covenant or other security for road construction.

Attorney Crowell asked if the Board routinely requires security for a driveway.

The Board and Attorney Crowell discussed the specifics from the site plan and comments from VHB engineering,

Dan Croteau, the engineer who drafted the site plan, stated the original plan had conservation and flood plain concerns, which have since changed and explained the details of the proposed driveway.

No public comment

Ms. Maslowski closed the public hearing, Seconded by Mr. Chadwick

Ms. Maslowski motioned to adopting the findings with the following changes:

14. The definitive plan application includes:

* + List of waivers requested from the Rules and Regulations dated *June 27, 2022*.
  + Stamped plan entitled “Modification of Plan Bk. 462 Pg. 8 Definitive Subdivision Plan of Land in Harwich Port, Mass.”, *June 24, 2022*, Prepared by Terry A. Warner, P.L.S., Moran Engineering Associates, LLC, South Harwich.
  + Existing subdivision plan: Plan Book 462 Page 8.

Seconded by Mr. Chadwick. Vote 6-0-0; motion carries

Ms. Maslowski motioned to adopt the waiver requests included in the Moran Engineering Associates letter dated June 27,2022.

1. Waiver request from 400-12.C.(2). - End of way 110' diameter turnaround not provided. (Single property driveway proposed.)
2. Waiver request from 400-1l.D. - Waiver requested from Security performance guarantee and covenant requirements. (Single property driveway proposed.)
3. Waivers request from 400- Appendix 4B. - Waiver requested from plan, profile, cross-section, and drainage calculations for roadway. Waivers requested from plan showing topography and USGS benchmark. (Single property driveway proposed and site plan to building department will be required for future work on the single undeveloped lot 2A.)
4. Waiver request from 325-42.H. - Waiver requested from 50' separation distance from existing drivewayon Lot 1 to boundary of Notre Dame Avenue.

Seconded by Mr. Stoltz. Vote 6-0-0; motion carries

Ms. Maslowski moved to approve the application subject to the following conditions of approval:

1. The Applicant shall provide an erosion and sedimentation control plan for construction prior to commencing any subdivision work.

2. The Applicant shall meet the requirements of Harwich Code Section 400-11(E)-(G) for the subdivision, including the inspection and as-built plan requirements therein, prior to, as the case may be, full or partial release of the Covenant or other security.

3. The subdivision work shall be performed and completed consistent with the plans referenced in the application materials set out above and the specifications set out in Harwich Code Section 400-15.

4. This Certificate of Approval/ Decision shall be recorded with the Barnstable County Registry of Deeds together with the approved definitive plan; recorded copies of the decision and plan shall be provided to the town building and planning departments prior to commencement of any subdivision work or lot construction.

5. The Zoning Compliance table shall be revised to show the proposed minimum front, side and rear setbacks.

6. Lot 1 shall access the property from their road frontage and maintain their existing access from Doane Road over the existing driveway as shown on the proposed plan. No access is granted via the proposed driveway to Lot 2A as shown on the proposed plan.

Seconded by Mr. Chadwick. Vote: 6-0-0. Motion Carries;

Ms. Maslowski motioned to release the unrecorded covenant agreement dated April 12, 1989 for the original subdivision plan of land. Seconded by Mr. Chadwick. Vote 6-0-0. Motion carries; covenant released.

**PB2022-14 Kathleen E. and J. Alain Ferry**, **Special Permit**

Mr. Berry opened the hearing by reading the notice.

Attorney Crowell introduced himself and Alain ferry, and discussed relevant portions of the case, noting the detached structure is intended to be used as extra space when family visits and will not have a permanent stove fixture, or cooking facilities. He stated the proposed use will not adversely affect the neighborhood or create a nuisance to the neighborhood and requested the Board grant the Special Permit.

Ms. Eldredge discussed the staff report, noting the Health Department’s comment, which says the department does not have a site plan showing the pool and the property has bedroom restrictions because it is in a Zone 2.

Mr. Stoltz asked when the barn was built and if the deck is existing.

Attorney Crowell responded the barn was completed around 2006 and the deck is on the Moran engineering plan dated June 25, 2020.

Mr. Chadwick asked how many bathrooms on the property.

Attorney Crowell responded there are 3.5 baths.

No further questions from the Board.

Mrs. Borowiec, 8 Fernwood Cir, stated she has no concern with the proposed special permit.

Ms. Maslowski voted to close the public hearing. Seconded by Mr. Chadwick. Vote 7-0. Motion carries; public hearing closed.

Ms. Maslowski moved to adopt the findings set out in the staff report dated 6/22/2022. Seconded by Mr. Mr. Stoltz. Vote 6-0-0. Motion carries;

Ms. Maslowski moved to grant the Use Special Permit with conditions in the staff report dated 6/22/2022. Seconded by Mr. Chadwick. Vote 6-0-0. Motion carries; Use Special Permit granted.

**New Business**The Board discussed the deadline for documents to be added to the application before the public hearing. Ms. Maslowski moved applicant provide all application materials and supplemental material no later than noon on the Thursday prior to the public hearing. Seconded by Mr. Stoltz. Vote 6-0; motion carries

**Advisory Opinions/ Briefings/ Correspondence**  
Nothing of special interest to the Planning Board from other regulatory boards.

**Approval of Minutes:**Mr. Maslowski motioned to approve the minutes for May 24, 2022 and June 14, 2022. Seconded by Mr. Stoltz. Vote: 6-0. Motion carries; minutes approved.

The Board endorsed the plans for PB2022-13

**Adjournment:**

Ms. Maslowski moved to adjourn, seconded by Mr. Chadwick. Vote: 6-0; Motion carried. Meeting adjourned at 8:35 PM.

**Documents Used at Meeting:**

* Planning Board agenda 6/29/22
* Staff report PB2022-12 dated 4/29/2022
* Staff report PB2022-13 dated 6/23/2022
* Staff report PB2022-14 dated 6/22/2022