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April 5, 2023

BY EMAIL

Planning Board
Attn.: Shelagh Delaney
Town of Harwich
723 Main Street
Harwich, MA 02645

Email: sdelaney@town.harwich.ma.us

Re: George & Karen Oliver/Oliver Homes, LLC (collectively as “**Applicant**”), Planning Board Applications 2023-4 and 2023-12 (“**Application**” or “**Applications**”), 86 Miles Street, Harwich (“**Subject Property**”)

Dear Chair Berry, and Members of the Planning Board,

This letter is further to our Firm’s representation of the following abutters to the Subject Property, who strongly object to the above Applications before the Board for the reasons enumerated herein: Kathleen F. Hagan, 37 Grassy Pond Road, Thomas J. Simpson, 41 Grassy Pond Road, Katherine Pendergast, Trustee, 4 Grassy Pond Road, and Patti A. Smith, Trustee, 10 Grassy Pond Road.¹

I kindly ask that this letter be made part of the above referenced files. I plan to attend the Board’s hearing on Tuesday, April 11, 2023, and may ask for the opportunity to address the Board further to my clients’ significant concerns regarding the Applications.

¹ We understand that additional neighborhood residents with homes on Grassy Pond Road are also strongly opposed to the Applicant’s proposed development.

I. Zoning/Land Use Characterization of the Subject Property is Lawful Preexisting Nonconforming & What is Proposed is Not an Alteration or Addition/Extension Meriting a Section 6 Finding (M.G.L. c. 40A, §6/& Zoning Bylaw §§ 325-54.A.(1)(a)[2]) & Special Permitting Relief by the Special Permitting Authority

The Subject Property is situated in the Residential – Low Density District (“**RL District**”) in a proximate neighborhood comprised primarily of single-family residences averaging 1,742 sq. ft. on significantly undersized lots averaging 12,618 sq. ft. (*i.e.*, just over a quarter of an acre).² The properties with legal frontage on Grassy Pond Road average a lesser 1,473 sq. ft. on small lots averaging 9,531 sq. ft. In contrast, the Subject Property is approximately 47,565 sq. ft. thus conforming (in area) in the RL District, which generally has a 40,000 sq. ft. requirement.³

The Subject Property is lawful preexisting nonconforming⁴ given its legal (contiguous) frontage of 127.66 feet whereas 150 feet is required in Zoning Bylaw.⁵ As such, it is necessary to determine if the development proposal is:

- (1) as of right (thus from a zoning perspective only requiring a building permit); or
- (2) subject to the so-called Section 6 Finding (of the Zoning Board of Appeals (“**ZBA**”) that the proposed improvement is not substantially more detrimental to the neighborhood⁶) under M.G.L. c. 40A, § 6 and its Zoning Bylaw analogue in §§ 325-54.A.(1)(a)[2] (“**Section 6 Finding**”), as well as special permitting; or

² See Appendix 1 included herewith.

³ As per the submitted site plan in Application 2023-4.

⁴ The Subject Property does not meet today’s requirements for a building lot as it does not have the required contiguous length of road frontage. It is legally non-conforming as it existed as a lot prior to the adoption of the zoning by-laws rendering it non-conforming.

⁵ See Table 2, Area Regulations. Application 2023-12, which requests a special permit for the alternative access driveway, states that the frontage is 127.56 ft. plus 23.58 ft. of Grassy Pond Road frontage, together at a total of 151.14 ft. The Grassy Pond Road frontage is, however, inappropriately reflected as legal frontage given that the requirement is one of contiguous frontage.

⁶ The neighborhood for such purposes generally means the nearby properties impacted by the proposed development. See *Davis v. Zoning Bd. of Chatham*, 52 Mass. App. Ct. 349, 261-62 (2001). The Section 6 Finding also focuses on the detriment to the impacted neighborhood, and not on any general public benefit of what is proposed. For example, in *Corey v. Rector*, 24 LCR 430, (2016), the Land Court, in applying the *not substantially more detrimental standard* to a proposed replacement of a waterfront cottage to a much larger residential rental property with added public beneficial access to the waterway, stated the following:

“The relevant inquiry is whether the expansion and conversion will be ‘substantially more detrimental to the neighborhood’ than the existing residential cottage. This it surely will. The test is *not* the benefit of having new, public areas along the water, available for viewing, picnicking, and fishing year-round, over-riding the significant adverse effects on the seasonal-resident neighbors. *That* type of inquiry and balancing is outside the scope of *G.L. c. 40A, § 6* and the Nantucket zoning bylaw’s provision on the expansion of non-conforming uses”.

(3) subject to variance relief.

M.G.L. c. 40A, § 6 provides as follows in relevant part:

“§ 6. Prior Nonconforming Uses.

Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law required by section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure. Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming [structure or]⁷ use to the neighborhood.” [Emphasis added.]

M.G.L. c. 40A, § 6 allows as of right an alteration, reconstruction, extension or structural change to a single-family residence provided it’s not an intensification. Massachusetts case law indicates that the doubling of the size of an existing single-family residence is an intensification for such purposes.⁸ In contrast, *de minimis* developments, such as a new dormer, a one-story garage addition, an addition/enclosure of a porch/sunroom or similar small-scale additions, such as a storage shed (gardening / pool equipment),⁹ are not intensifications. What the Applicant proposes – *an increase of net area from approximately 3,065 sq. ft. to approximately 6,100 sq. ft.* - exceeds the *de minimis* development threshold.

With the intensification threshold met under M.G.L. c. 40A, § 6, the development’s eligibility for the Section 6 Finding (that the project will not be substantially more detrimental to the neighborhood and therefore meriting special permitting review) requires that it qualify as an alteration, reconstruction, extension or structural change to a single-family residence. If, however,

⁷ See *Willard v. Board of Appeals*, 25 Mass. App. Ct. 15, 13 (1987)(reading into the statute the words “structure or” as indicated “in order to render the state intelligible and so effectuate its obvious intent”).

⁸ See *Bransford v. Zoning Bd. of Appeals of Edgartown*, 444 Mass. 852 (2005).

⁹ See *Bjorklund v. Zoning Bd. of Appeals*, 450 Mass. 357 (2008).

it does not qualify as an alteration, reconstruction, extension or structural change to a single-family residence, then variance relief is necessary. It is important in this context to consider the Zoning Bylaw provisions governing lawful preexisting nonconforming uses/structures.

Zoning Bylaw Article X (Administration & Enforcement), §§ 325-54.A.(1)(a)[1] & [2], provides as follows regarding alterations or additions/extensions:

“A. Nonconforming structures.

(1) Alteration or extension of single- or two-family residential structure.

(a) A preexisting nonconforming single- or two-family residential structure may be altered or extended by right if the Building Official determines that it meets the following criteria:

[1] The proposed addition/extension will conform to current setbacks and coverage for the zoning district in which the existing structure and addition/extension are located; and

[2] The nonconformance concerns the size of the lot in question and/or the frontage.”

(2) If the Building Official determines that a proposed addition/extension to a nonconforming single- or two-family residential structure increases the nonconforming nature of the structure, the applicant may seek a new determination from the Board of Appeals. If the Board of Appeals determines that the alteration or extension will increase the nonconforming nature of the structure, no such alteration or extension may occur unless the Board of Appeals issues a special permit for alteration or extension after finding that the alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconformity.¹⁰ An addition/extension that increases the nonconforming nature of the structure would include:

- (a) A structure built in the same footprint to an increased building height.
- (b) A structure built in the same footprint that does increase the habitable floor area.
- (c) A structure that continues along the same line as an existing encroachment without increasing that encroachment.” [Emphasis added.]

¹⁰ Above cited Zoning Bylaw § 325-54.A.(1)(a)[2] technically requires that the Zoning Board of Appeals makes the Section 6 Finding (of not substantially more detrimental). In other words, it’s a separate action from special permitting

The foregoing concepts of addition/extension and alteration are defined as follows in the Zoning Bylaw, with the former focused solely on change of an existing structure (including its relocation) and the latter without change to the existing structure's exterior building dimensions.

“ADDITION/EXTENSION—Any construction, reconstruction, or other action resulting in a change in the structural parts or height, number of stories, size, use or location of a structure. [Emphasis added.]

ALTERATIONS — Changes in the interior or exterior of a building but without changing the exterior dimensions.”

The Applicant's proposal however involves an additional single-family residence with interposed covered walkways, which is neither an alteration nor an addition/extension. Zoning Bylaw § 325-54.A.(1)(a)[1] and its Section 6 Finding analogue (*i.e.*, § 325-54.A.(1)(a) [2]) should therefore be inapplicable. And if the Applicant's proposal instead relies solely on M.G.L. c. 40A, § 6's reference to extension or alteration the same result should occur.

For example, in *Roma v. Battistelli*, 24 LCR 717 (2016), the Land Court focused on whether an *attached* addition of a pre-fabricated walk-in cooler structure to an Inn's¹¹ lawful preexisting nonconforming building comprised an extension (/enlargement) to that building or, alternatively, new construction (thus in the latter case not comprising an extension or enlargement and, as such, ineligible for special permitting review and requiring a variance). In *Roma*, the Land Court found that as the floor plan of the new cooler structure showed it was accessible only through the preexisting Inn building it was reasonable to characterize it as an extension of the protected Inn structure.

In *Boutin v. Brown*, 20 LCR 473 (2012), the Land Court opined on whether a new standalone pavilion structure at a subject property (the use of which was as a lawful preexisting nonconforming boat club and marina) was an extension of an existing structure. The *Boutin* court found that the pavilion was not an extension of the subject property's preexisting clubhouse structure with footnote mention that “[c]ourts generally describe as extensions those features that cause a structure to occupy more space, but do not result in a new, separate structure”. *See Boutin*, at 478 (also noting that:

“The Pavilion does not extend the Clubhouse as a structure. ‘To extend means to stretch out or to draw out or to enlarge a thing.’ ... An extension of the Clubhouse would result simply in a larger clubhouse. In contrast, construction of the Pavilion resulted in a new Pavilion in the vicinity of a Clubhouse of unchanged dimensions. As stated in the Agreed Email and shown on the Agreed Plan, the Pavilion “is not attached to the [C]lubhouse,’ but is instead freestanding.” [Internal citations omitted.]

¹¹ The use of the subject property as an inn in *Roma* was a lawful preexisting nonconforming use.

The *Boutin* court also found that the pavilion was not an ‘alteration’ of the preexisting clubhouse structure. *See Boutin* at 478-79 (citing to other case precedent holding that an alteration is not “construction of ‘an entirely new building in a different location, which [was] also completely different in appearance and more than four times the size of its predecessor’”).

Based on the foregoing, the Applicant’s proposed development should be ineligible for the application of the Section 6 Finding and associated special permitting. It also should be ineligible for variance relief.¹² That the Applicant has interposed covered walkways between what are in substance two separate single-family residences¹³ should not form the basis to disregard applicable law and set problematic precedent.

II. Who is/are the Special Permitting / Variance Authority(ies) For the Proposed Development?

The ZBA should have sole special permitting jurisdiction over the proposed development in Application 2023-4. This is due to the Subject Property being (as noted above) lawful preexisting nonconforming and several Zoning Bylaw provisions expressly granting special permitting (and Section 6 Finding) review power to the ZBA, with all other special permitting generally within the purview of the Planning Board.¹⁴

Zoning Bylaw Article II (Definitions), § 325-2 provides as follows:

SPECIAL PERMIT GRANTING AUTHORITY — The Board of Appeals established hereunder shall¹⁵ be the special permit granting authority for any

¹² *See infra* note 16.

¹³ The Applicant’s narrative in Application 2023-4 states “[l]ooking to add a 2nd house on the property” *See* Appendix 2 included herewith.

¹⁴ State law makes clear that the special permitting power is subject to the Zoning Bylaw’s general or special provisions. *See* M.G.L. c. 40A, Section 9:

“Zoning ordinances or by-laws shall provide for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit. Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, and shall be subject to general or specific provisions set forth therein; and such permits may also impose conditions, safeguards and limitations on time or use.” [Emphasis added.]

¹⁵ Zoning Bylaw Article II (Definitions), § 325-2 states “... the word ‘shall’ is always mandatory and not merely directory”. Relevant general principles of statutory construction were succinctly stated as follows in *Shirley Wayside Ltd. P’ship v. Bd. of Appeals*, 461 Mass. 469, 277 (2012):

“We determine the meaning of a bylaw ‘by the ordinary principles of statutory construction.’ We first look to the statutory language as the ‘principal source of insight into legislative intent.’ When the meaning of the language is plain and unambiguous, we enforce the statute according to its plain wording ‘unless a literal construction would yield an absurd or unworkable result.’ We ‘endeavor

application requiring such permit to change, alter, or extend a nonconforming structure or use, or for certification of continuance of existing dwellings. The Planning Board established pursuant to MGL c. 41, § 81A shall be the special permit granting authority for all other applications requiring a special permit. [Amended 5-3-2011 STM by Art. 24]” [Emphasis added.]

Similarly, Zoning Bylaw Article X (Administration & Enforcement), § 325-51 also provides as follows:

The Board of Appeals shall have authority to hear and decide applications for all changes, alterations, or extensions of a nonconforming structure or use that require a special permit and for certification of continuance of existing dwellings under § 325-51P. The Planning Board shall have authority to hear and decide all other applications for special permits. [Emphasis added.]

Moreover, Zoning Bylaw Article V (Use Regulations), § 325-11 provides as follows:

§ 325-11. **Uses** subject to other regulations.

Uses permitted by right or by special permit shall be subject to applicable regulations set forth in this bylaw. Uses permitted by variance from the Board, or changes or extensions of nonconforming uses on permit from the Board, shall be required to comply with all applicable provisions of this bylaw not specifically and expressly varied by the Board. The grant of one form of relief by the Board shall not constitute a finding that all other elements of the project or proposal comply with applicable zoning bylaws. [Emphasis added.]

That said, Application 2023-4 seeks special permitting relief for a two-family dwelling based on Zoning Bylaw § 325-51.N. (cited below in section III of this letter). While § 325-51.N.(3) gives the Planning Board use special permitting jurisdiction over two-family dwellings (in respect of the “additional criteria” set out), it does not expressly do so in circumstances involving lawful preexisting nonconforming structures/uses or, for that matter, exempt any required review under M.G.L. c. 40A, § 6 and its Zoning Bylaw analogue (*i.e.*, the Section 6 Finding) or, as applicable, variance relief.¹⁶

to interpret a statute to give effect “to all its provisions, so that no part will be inoperative or superfluous.”” [Internal citations omitted.]

¹⁶ Zoning Bylaw § 325-52. grants variance power solely to the ZBA:

The Board of Appeals shall have the power to hear and decide applications for variances from the provisions of the protective bylaws, including the power to grant a variance authorizing a use or activity not otherwise permitted in the district in which the land or structure is located, except that no variance shall be granted to allow food sales with drive-up or drive-through facilities. Variances may

Application 2023-12, which requests zoning relief for an alternative access driveway based on Zoning Bylaw §325-18.K. may be more appropriate for Planning Board special permitting review, though it too is not without uncertainty in the lawful preexisting nonconforming circumstances.

In view of the foregoing, our clients respectfully request that any special permitting by the Planning Board in respect of Applications 2023-4 & 2023-12 is conditioned on compliance with M.G.L. c. 40A, § 6 and Zoning Bylaw §§ 325-54.A.(1)(a)[1] & [2], including any required variance relief under applicable law.

III. Application 2023-4 – Proposes Two Single Family Residences (Not a Two-Family Dwelling)

In the event that the Planning Board proceeds to special permitting review in this matter it also should find that the proposed residential development fails to satisfy *specific* special permitting additional criteria in Zoning Bylaw § 325-51.N.(3) and *general* special permitting criteria in Zoning Bylaw § 325-51.A.(1).

The *specific* special permitting criteria for a two-family dwelling are set out as “additional criteria” in Zoning Bylaw Article X (Administration & Enforcement), § 325-51.N. (as follows).

be granted by the Board only after a public hearing and only after the Board has made the finding required by the Zoning Act.¹⁹

19. Editor's Note: See MGL c. 40A.

Requirements for a variance are set out in M.G.L. c. 40A, § 10 as follows in relevant part:

The permit granting authority shall have the power ... to grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Except where local ordinances or by-laws shall expressly permit variances for use, no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located....

There is no soil, topographical or shape condition unique to the Subject Property meriting the proposed development, and a less impactful development strategy, including with sole access via Miles Road, is most certainly viable.

“§ 325-51.N. Two-family dwelling. Special permits for two-family dwellings may be granted upon a determination by the Planning Board that the following additional criteria have been met:

- (1) The lot area shall contain a minimum of 40,000 square feet of contiguous upland in all applicable zoning districts; however, in the Drinking Water Resource Protection District (WR) the minimum lot area shall be 60,000 square feet of contiguous upland.
- (2) The floor area for each dwelling unit shall be a minimum of 800 square feet.
- (3) A common roof or a series of roofs shall connect the dwelling units.
- (4) There shall be two off-street parking spaces per each unit.” [Emphasis added.]

Zoning Bylaw § 325-2 defines “Dwelling, Two Family” as follows:

“A building containing two dwelling units, whether side by side, over each other or in any other combination, provided that there is a common roof or a series of roofs connecting the dwelling units.”

A “Dwelling Unit” is, in turn, defined as:

“A building or portion thereof consisting of one or more rooms containing cooking and sanitary facilities and designed for human habitation by one family independent of other facilities.”

As applied in the circumstances, the key (*additional criteria*) issue is whether what is proposed in Application 2023-4 is within scope of the third requirement (§ 325-51.N.(3)) as the other requirements are in all likelihood met. The definition of “Dwelling, Two Family” specifically states “a building”¹⁷ (not two or more buildings), and in which building there is contained the dwelling units (*i.e.*, side-by-side, such as akin to townhouse design, or over each other or other combination). Two single-family residence buildings (plural) externally connected to one another by interposed structures¹⁸ (*i.e.*, walkway, bridge, etc.) should exceed the Zoning Bylaw’s permissible two-family dwelling scope. In other words, what is proposed is not roofing (connected or in series) over the building in which the two-family dwelling units are situated, but rather two buildings (each containing a dwelling unit) with a series of connected structures (themselves not buildings in which the two dwelling units are contained). From a policy perspective, an

¹⁷ Zoning Bylaw § 325-2 defines “building” as “[a] combination of any materials, whether portable or fixed, having a roof or similar covering, to form a structure for the shelter of persons, animals or property.”

¹⁸ A “structure” is defined more broadly than a building as “[a] combination of materials assembled at a fixed location to give support or shelter, such as a building, bridge, trestle, tower, framework, retaining wall, tank, tunnel, tent, stadium, pool, reviewing stand, platform, bin or the like.” Zoning Bylaw § 325-2.

interpretation allowing for the proposed development (in Application 2023-4) opens the door to similar developments of what are essentially two single family residences on all (*otherwise qualifying*) lots in the Town.

The additional *general* special permitting criteria of relevance are set out in Zoning Bylaw § 325-51.A.(1) as follows:

- "(a) The use as developed will not adversely affect the neighborhood.
- (b) The specific site is an appropriate location for such a use, structure or condition.
- (c) There will be no nuisance or serious hazard to vehicles or pedestrians.
- (d) Adequate and appropriate facilities will be provided for the proper operation of the proposed use. This includes the provision of appropriate sewage treatment facilities which provide for denitrification, when the permit granting authority deems such facilities necessary for protection of drinking water supply wells, ponds or saltwater embayments."¹⁹

As what is proposed essentially involves (as noted above) two single-family residences on an undersized lot (*i.e.*, it's not an 80,000 sq. ft. parcel), the site is an inappropriate location for the proposed new structures.²⁰ The site's inappropriateness also is apparent from a density perspective in its nonconforming frontage (*i.e.*, lawful preexisting nonconforming), and due to its location in a neighborhood (particularly the Grassy Pond Road environs) consisting primarily of lawful preexisting nonconforming improved parcels, which are significantly undersized and densely developed based on current Zoning Bylaw dimensional standards. In other words, the development proposal results in a significantly meaningful density-related impact at the Subject Property and by extension to the neighborhood, particularly neighboring Grassy Pond Road homes.

¹⁹ Zoning Bylaw § 325-51.B. provides further that the Board may:

"... attached such conditions and safeguards as are deemed necessary to protect the public and the neighborhood, such as but not limited to the following:

- (1) Modification of the exterior features or appearances of the structure or structures.
- (2) Limitation of size, number of occupants, method or time of operation, or extent of facilities.
- (3) Regulation of number, design, and location of access drives or other traffic features."

²⁰ In late 2013, early 2014, the Subject Property owner sought variance relief from the ZBA to build two residences at the Subject property. The circumstances appear to involve a different development strategy including a proposed approval not required ("ANR") division of the Subject Property into two lots. The application involved was withdrawn without prejudice. *See* Appendix 3 hereto for a copy of the ZBA Decision Case 2014-34.

IV. Application 2023-12 - Alternative Access Driveway – Zoning Bylaw §325-18.K.

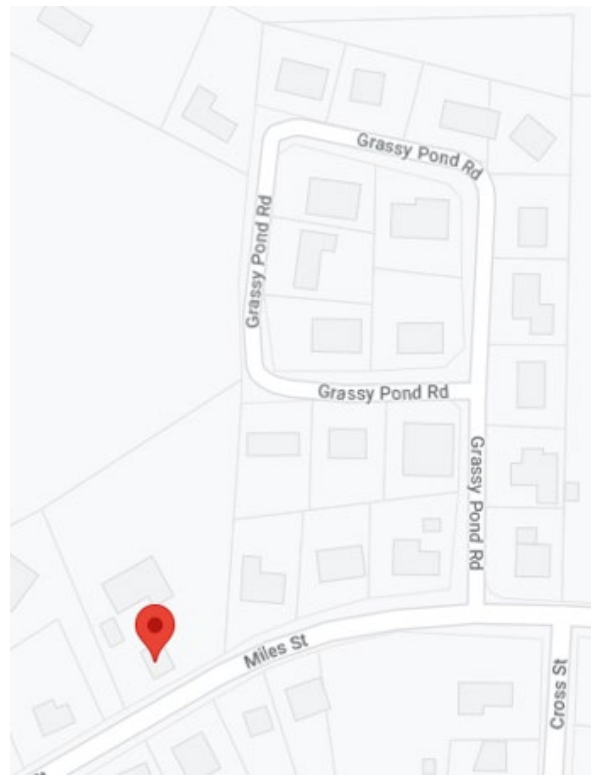
Application 2023-12 is made further to Zoning Bylaw §325-18.K. (cited as follows), which we believe is inapplicable and alternatively unavailable in the circumstances for the reasons discussed below.

§325-18.K. A lot with the required legal frontage must take access along the required legal frontage. No alternate access may be granted from other streets, roads, or ways, nor should access be taken from an easement across an adjacent property without the issuance of a special permit from the Planning Board. In issuing a special permit, the Planning Board shall make the following findings:

- (1) The alternate access proposed is superior to the access along the frontage;
- (2) The proposed alternate access is cleared to a minimum of 16 feet in width and 16 feet in height; and
- (3) When access is proposed from an easement across another lot, the lot providing the easement will have the required legal frontage for the zoning district. [Emphasis added.]

Alternative access is a special exception based on a property owner's *need* to deviate from legal frontage access. Application 2023-12's request for alternative access is not based on need, but rather on a *desire* to essentially position two single-family residences on an undersized lot coupled with the proposed new (*second*) single-family residence having its own frontage access via Grassy Pond Road. It's not an *alternative* driveway. It's an *additional* driveway to achieve that desired objective of the second residence having its own separate and distinct frontage access *as if it were situated on its own lot*. Stated alternatively, the proposal *in substance* interposes a new single-family residence lot within the pre-existing, substantially dense Grassy Pond Road residential neighborhood.²¹ It's understandable that homeowners within the Grassy Pond Road neighborhood strongly object to what is proposed in Application 2023-12.

²¹ Application 2023-12 is essentially trying to achieve what the Subject Property owner tried to previously do in a variance application before the ZBA. See Appendix 3 hereto.



Application 2023-12 also fails to satisfy certain mandatory *specific* special permitting criteria of (above cited) Zoning Bylaw §325-18.K. and *general* special permitting criteria of Zoning Bylaw § 325-51.A.(1). The Subject Property’s “legal frontage” (which, as noted, is lawful preexisting nonconforming frontage of 127.66 feet) is solely off Miles Street. Access to and from the Subject Property must therefore be along Miles Street, which, as noted above, is not what the Applicant proposes for the new second single-family residence. In other words, an “alternative” access does not dispense with mandatory access via Miles Street, but allows by special permit an alternative access (*i.e.*, one of two available possibilities), provided the proposed alternative access meets all three mandatory criteria (1) – (3) set out above (as well as the additional *general* special permitting criteria (discussed below)). Thus, for example, failure to meet any one of the three conjunctive prongs in §325-18.K. disqualifies the proposed alternative access, and the Planning Board is given no power of variance over the mandatory requirements of the Zoning Bylaw.

While standard (2) is met in the proposed site plan and (3) is inapplicable, the Applicant’s proposal falls well short of satisfying prong (1) that “[t]he alternate access proposed is superior to the access along the frontage.” First, Grassy Pond Road, as is illustrated in the above image, already serves as the sole frontage access for 17 densely developed lawful preexisting nonconforming lots, which average approximately 9,531 square feet (.22 acres) in size and with a per-lot average net area of development of approximately 1,473 square feet as compared to nearby Miles Street lots averaging approximately 16,654 sq. ft. (.38 acres) in size and with a per-lot average net area of

development of approximately 2,093 sq. ft.²² Second, the Subject Property's superior frontage access off Miles Street is evidenced by its contiguous legal frontage of 127.66 feet along that street as compared to the significantly smaller frontage of 22.58 feet off Grassy Pond Road. Third, the alleged legal frontage off Grassy Pond Road stated in Application 2023-12²³ is not legal frontage (and does not serve to convert the Subject Property to a conforming parcel). Fourth, Grassy Pond Road is a smaller road than Miles Street with comparatively distinctive sharp curvature points and associated sight distances where driver visibility is concerned. Grassy Pond Road is essentially a *cul-de-sac* road off Miles Street thus accessible to other locations in Town only via Miles Street. Miles Street is therefore superior in its *direct* access to main cross streets to Harwichport, Harwich Center (Bank St., Forest St./South St. and Cross. St.) and the beaches, and also merges at one end with a major road, Route 28. From our clients' perspective, Grassy Pond Road, which notably excludes sidewalks, is a very private, quiet and protected neighborhood space supporting the substantially dense neighborhood of homes having legal frontage on it. In other words, it is a safe space for the Grassy Pond Road community who utilize it (as do their children / grandchildren, and guests) for vehicular and pedestrian use, and with young children having the freedom to ride tricycles, bikes, and play near/in the street. Miles Street is clearly superior to Grassy Pond Road and, as such, the special permit request should be denied on that basis alone.

In closing, we understand that the Subject Property owner has already constructed an access driveway to Grassy Pond Road further to a Department of Public Works ("DPW") Driveway Permit Application.²⁴ We also understand that the DPW issued the permit on February 15, 2022 for *temporary* driveway access to construct a pool at the Subject Property and without any §325-18.K. alternative access in mind, which it in any event is without authority to grant. Oddly, the site plan submitted with Application 2023-12 refers to that temporary driveway access as an "Existing driveway." (It also further references a smaller internal juxtaposed portion of that driveway as a "Proposed Driveway".) The reference to "existing" is misleading in context if it gives the impression that the Applicant requests approval for something permanent (and not temporary) or pre-existing.²⁵

To date, the impact of the new rear driveway access to Grassy Pond Road presents stormwater drainage problems – *see below recently captured image* - with not insignificant risk that further development of the Subject Property, including removal of protective vegetation / trees (to accommodate septic or otherwise), will exacerbate the stormwater problem and associated detriment to the impacted abutting property.

²² See Appendix 1 included herewith.

²³ See Appendix 4 included herewith.

²⁴ See Appendix 5 included herewith.

²⁵ In other words, pre-existing other than pursuant to the abovementioned DPW permit.



On behalf of our clients and based on the foregoing, we respectfully request that the Planning Board deny the requested special permits in Applications 2023-4 and 2023-12 as neither is merited under the Zoning Bylaw. Instead, a more modest development strategy, such as an accessory apartment or structural addition/extension of the existing residence to accommodate a two-family approach and with access solely via Miles Street, is more appropriate for the Subject Property.

Thank you for your consideration.

Sincerely,

Victoria Dalmas, Esq.
Christopher G. Senie, Esq.
Senie & Associates, PC
Counsel to Kathleen F. Hagan, Thomas J. Simpson, Patti A. Smith & Katherine Pendergast

APPENDIX 1
Average Lot Sizes & Net Area Based on Assessor Data

| Address | Living Space (Sq. Ft.) | Lot Size (Sq. Ft.) | Lot Size (Acres) | Comments |
|--|------------------------|--------------------|------------------|----------|
| 4 Grassy Pond | 1226 | 7950 | 0.18 | |
| 5 Grassy Pond | 2326 | 9500 | 0.22 | |
| 6 Grassy Pond | 1968 | 7950 | 0.18 | |
| 10 Grassy Pond | 1640 | 8100 | 0.19 | |
| 11 Grassy Pond | 1380 | 11400 | 0.26 | |
| 12 Grassy Pond | 1280 | 8150 | 0.19 | |
| 14 Grassy Pond | 1092 | 10250 | 0.24 | |
| 15 Grassy Pond | 1450 | 11500 | 0.26 | |
| 20 Grassy Pond | 1120 | 8200 | 0.19 | |
| 24 Grassy Pond | 720 | 8100 | 0.19 | |
| 26 Grassy Pond | 1168 | 7900 | 0.18 | |
| 30 Grassy Pond | 2033 | 13180 | 0.30 | |
| 34 Grassy Pond | 2352 | 9800 | 0.22 | |
| 37 Grassy Pond | 1584 | 10100 | 0.23 | |
| 38 Grassy Pond | 783 | 10000 | 0.23 | |
| 41 Grassy Pond | 1584 | 10250 | 0.24 | |
| 45 Grassy Pond | 1328 | 9700 | 0.22 | |
| AVERAGE (Grassy Pond) | 1473 | 9531 | 0.22 | |
| 72 Miles St | 2242 | 24829 | 0.57 | |
| 76 Miles St | 3656 | 20473 | 0.47 | |
| 79 Miles St | 2226 | 13939 | 0.32 | |
| 80 Miles St | 1060 | 12097 | 0.28 | |
| 82 Miles St | 2161 | 18639 | 0.43 | |
| 83 Miles St | 2122 | 13939 | 0.32 | |
| 85 Miles St | 1062 | 14375 | 0.33 | |
| 86 Miles St | 3434 | 51400 | 1.18 | |
| 87 Miles St | 1456 | 7841 | 0.18 | |
| 92 Miles St | 1573 | 11000 | 0.25 | |
| 96 Miles St | 1960 | 8800 | 0.20 | |
| 98 Miles St | 2388 | 10019 | 0.23 | |
| 102 Miles St | 1872 | 9148 | 0.21 | |
| AVERAGE (Miles St) | 2093 | 16654 | 0.38 | |
| TOTAL AVERAGE (Miles & Grassy Pond) | 1742 | 12618 | 0.29 | |
| 86 Miles St - Proposed | 6100 | 51400 | 1.18 | |

APPENDIX 2
Application Form & Narrative 2023-4

PB2023-4

TOWN OF HARWICH PLANNING DEPARTMENT



PLANNING BOARD APPLICATION SPECIAL PERMITS & SITE PLAN REVIEW FORM A

TO THE TOWN CLERK, HARWICH, MA DATE 1-16-23

PART A – APPLICANT INFORMATION/AUTHORIZATION

| | |
|---|---|
| Applicant Name(s) | George & Karen Oliver Oliver Homes LLC |
| Representative/Organization (Who will serve as the primary contact responsible for facilitating this application?) | Kent Drushella |
| Mailing address | 39 Old County RD |
| Town, ST, Zip | Harwich Port, MA 02646 |
| Phone | 508-280-4300 |
| Fax | _____ |
| E-mail | dru.fam@comcast.net |

The applicant is one of the following: (please check appropriate box)

- Owner Prospective Buyer* Representative for Owner/Tenant/Buyer*
 Tenant* Other* _____

***Written permission of the owner(s) and a municipal lien certificate (where applicable) is required.**

All other forms and information as required in the Harwich Code Chapter 400, Rules and Regulations, shall be submitted as part of this application.

Authorization

Your signature hereby asserts, to the best of your knowledge, that the information submitted in this application is true and accurate; that you agree to fully comply with the Town of Harwich Zoning By-laws and the terms and conditions of any approval of this application by the Planning Board; and authorizes the Members of the Planning Board and/or Town Staff to visit and enter upon the subject property for the duration of the consideration of this application.

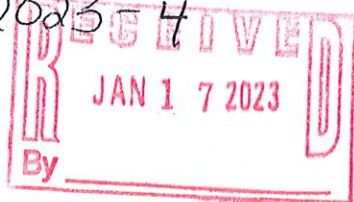
Kent Drushella Kent Drushella 2023-16-23
 Applicant
George & Karen Oliver / Oliver Homes LLC
 Owner(s) – Authorization must accompany application if the owner is not the applicant.

Official use only:

| | |
|---------------------|------------|
| PLANNING DEPARTMENT | TOWN CLERK |
|---------------------|------------|

Case #

PB 2023-4



RECEIVED
 TOWN CLERK
 HARWICH, MA
 2023 JAN 17 P 2:13

PART B – PROJECT LOCATION

Harwich Port

| | | | |
|-----------------------------|------------------------------------|------------------|-------|
| Legal Street Address | 86 Miles Street | Village/Zip Code | 02646 |
| Title Book/Page or L.C.C. # | 14/39-0-R 27,789 Pg 326 | | |
| Map(s) / Parcel(s) | 14/39-0-R | | |
| Zoning & Overlay Districts | | *Historic? | NO |
| Frontage (linear feet) | 127.66 | | |
| Total land area (s.f.) | 47,565 | | |
| Upland (s.f.) | | Wetlands (s.f.) | |

PART C – PROJECT DESCRIPTION

| | | |
|--|--------------|---------------------------------|
| Existing Floor Area in Sq. Ft | Gross: 3,065 | Net: |
| Proposed Floor Area in Sq. Ft | Gross: 6,100 | Net: |
| Change in Sq. Ft + / - | Gross: 3,035 | Net: |
| Existing # of parking spaces | 3 | Proposed # of parking spaces: 5 |
| Existing Use(s) | SFH | |
| Proposed Use(s) | Two Family | |
| <i>Attach a separate narrative if necessary.</i> | | |

The undersign hereby files an application with the Harwich Planning Board for the following special permits as proposed under the provisions of the Harwich Zoning Code: **(check all that apply)**

Site Plan Review § 325-55:

- Any floor area expansion of any structure or expansion of exterior space, other than parking, serving any of the following: commercial, industrial, multi-family or educational use or personal wireless service facility or the creation of a drive-up or drive-through window
- Expansion or reconfiguration of an existing parking lot and/or driveway(s) serving said parking lot.
- Establishment of any new commercial, industrial, multi-family, educational, fast food/take out restaurant or personal wireless service facility.
- Establishment of any new retail use(s) in the Industrial (IL) Zone.
- Waiver of Site Plan § 325-55.F

Article V, Use Regulations:

- Paragraph _____, sub-paragraph # _____
- Paragraph _____, sub-paragraph # _____, supplemental regulation # _____ § 325-14

Article X, Special Permits:

- Structures w/ gross floor area of 7,500+ s.f. § 325-51
- Structures requiring 20 or more new parking spaces § 325-51
- Accessory Apt./Shared Elderly Housing § 325-51.H
- Mixed Use § 325-51.M
- Drinking Water Resource Protection § 325-51.C
- Two Family § 325-51.N
- Village Commercial, Harwich Port § 325-51.L
- *Harwich Center Overlay § 325-51.O
- Signage § 325-27.F Additional Cluster, Excess SF, Non-entry Facades

Other Special Permits:

- Six Ponds Special District - Article XVI
- Wind Energy Systems - Article XVIII
- Large Scale Wind Generation – Article XIX
- Other (i.e. Alternate Access § 325-18.P, Special Cases § 325-44.B)
- Repetitive Petition (MGL Ch 40A, §16): Proposed project evolved from a previously denied plan submitted to the Planning Board on _____ Year/Case # _____

**Note: Projects within the Harwich Center Overlay District may also be within the Harwich Center Historic District. This requires separate filing with the Historic District and Historical Commission. Please inquire for forms and instructions.*

To: Town of Harwich

Planning Dept.

From: Oliver Homes LLC.

George Oliver

825 N. Prospect Ave Unit # 2805

Milwaukee, WI

Project Address: 86 Miles Street, Harwich Port, MA

Looking to add a 2nd house on the property to create a 2 family. To do this have designed it to fit the description as per the standards in the zoning bi-law. To do this it has to be connected by a roof or a series of roofs which this plan does. All other items on the bi laws are meet requiring setbacks, square footage on lot, parking, lot coverage, building coverage. We are not looking for any relief on any items. This house is designed to fit the family needs as they have a handicapped person and this project is set for those special needs. There is no intent to rent the house out, it will be for the families own use.

The agent acting for us in this matter will be Kent Drushella and all communications can handled by him.

Thank You



1-17-22

APPENDIX 3
ZBA Decision Case 2014-34

Town of Harwich
ZONING BOARD OF APPEALS
732 Main Street, Harwich, MA 02645

tel: 508-430-7506 fax: 508-430-4703



CASE NO. 2014-34

APPLICANT: OLIVER HOMES, LLC

PROPERTY: 86 MILES STREET
HARWICH PORT, MA
MAP #14, PARCEL #B9
R-M ZONING DISTRICT

DATE OF HEARING: FEBRUARY 26, 2014



DECISION

LOCATION: The property is located at 86 Miles Street, Map #14, Parcel #3B9 in the R-M Zoning District. The property is non-conforming and contains one single family residence.

REQUEST: The Applicant, requests a Variance as shown on the ANR from the provisions of Article VI, §§325-15, 325-16 and Table 2 of the Harwich Zoning Bylaw. The property currently has two pre-existing structures.

Members of the Board Sitting on This Appeal: Gary Carreiro, Chair, John Burke, Clerk, Dean Hederstedt, Member, Dave Ryer, Member and Franco Previd, Member

PLANS SUBMITTED: ANR by Terry A. Warner, P.L.S. dated 1/22/14.

Mr. Burke read the request into the record.

Departmental Input was received from the Board of Health.

A letter dated 2/13/14 from abutter Sanzone was read into the record and abutter Cummings is in support.

FACTS AND EVIDENCE PRESENTED: Agent for Applicant, Attorney Andrew Singer, submitted the ANR Plan and was accompanied by the owner, Ken Frushella. Attorney Singer reviewed his Summary of Reasoning which is a part of the permanent record. As applicant is seeking a Variance, Attorney Singer feels that it meets the criteria for a Variance. Relief from the Board is being sought as to the size of Lot 2 and the size, frontage and width of Lot 1. Lot 1 will be similar in size to several of the existing lots in the neighborhood. Lot 1 front and westerly is non-conforming. Lot 2 will be a panhandle lot with conforming frontage, with and lot shape will be larger than many of the other lots in the neighborhood. There will be 2 driveways and 2 separate septic systems. Attorney Singer stated that the shape of the property, its development history, relation to the historical development of other lots in the neighborhood including a similar panhandle configuration of two abutting lots to the west of the property, are unique circumstances that result in a substantial hardship, both financial and practical.

Abutter Joe Maloney stated that it is a blighted piece of property and the reconfiguration will change the character of the neighborhood. This will be one of the smallest lots in the area.

Mr. Carreiro asked why the lots had to be configured into the proposed shape. There is not a hardship. The best way to redevelop the property would be to do a two family structure i.e., a house with an accessory apartment. Upon poll of the board Mr. Ryer, Mr. Hederstedt, Mr. Burke and Mr. Previd did not find a hardship.

Mr. Hederstedt moved and Mr. Carreiro seconded a motion to close the hearing. Vote: 5-0-0 to close the hearing.

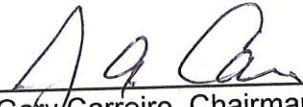
Case #2014-34, 86 Miles Street
Harwich Zoning Board of Appeals

For the above stated said reasons Mr. Burke moved and Mr. Ryer seconded, the Board grant a Motion to Withdraw Without Prejudice for the property located at 86 Miles Street, Harwich Port MA in accordance with the Plans Submitted. Vote: 5-0-0

VOTING IN FAVOR:
Mr. Gary Carreiro, Chair
Mr. John Burke, Clerk
Mr. Dean Hederstedt
Mr. Franco Previd
Mr. Dave Ryer

VOTING IN OPPOSITION:
None

Dated: February 26, 2014



Gary Carreiro, Chairman

Appeal from this decision may be made pursuant to Massachusetts General Laws Chapter 40A, Section 17, within 20 days of the filing with the Town Clerk.

THIS DECISION HAS BEEN FILED WITH THE TOWN CLERK ON MAR 10 2014



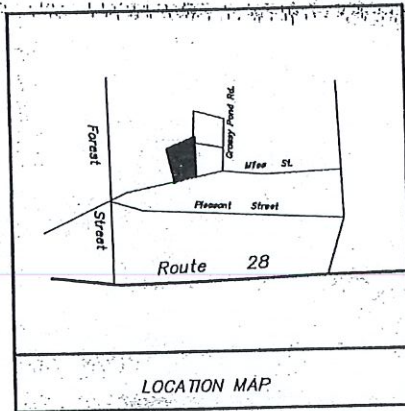
Town Clerk

This is to certify that twenty days have elapsed after this decision was filed in my office and no appeal has been filed.

Date Filed MAR 10 2014

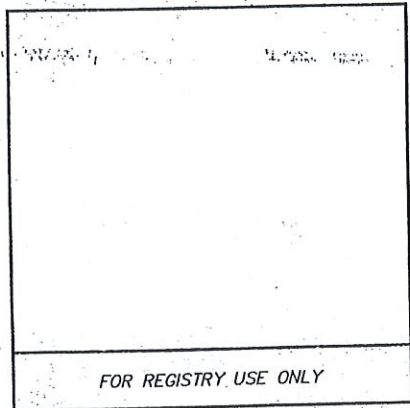
Twenty Days Elapsed MAR 31 2014

Town Clerk



REFERENCES:

L.C.C. 18238A
 PL. BK. 104 PG. 95
 PL. BK. 149 PG. 9
 Bk. 27789 pg. 326



ASSESSORS MAP 14 PARCEL B9

ZONE R-M

SETBACKS:
 FRONT - 25'
 SIDE - 20'
 REAR - 20'

This plan has been prepared in conformity with the rules and regulations of the Registers of Deeds for the Commonwealth of Massachusetts.

1/22/14
 Date
 Terry A. Warner
 Professional Land Surveyor

The above is intended to meet Registry of Deeds requirements and is not a certification to the title or ownership of the property shown. Owners of properties shown are according to current town assessors' records.

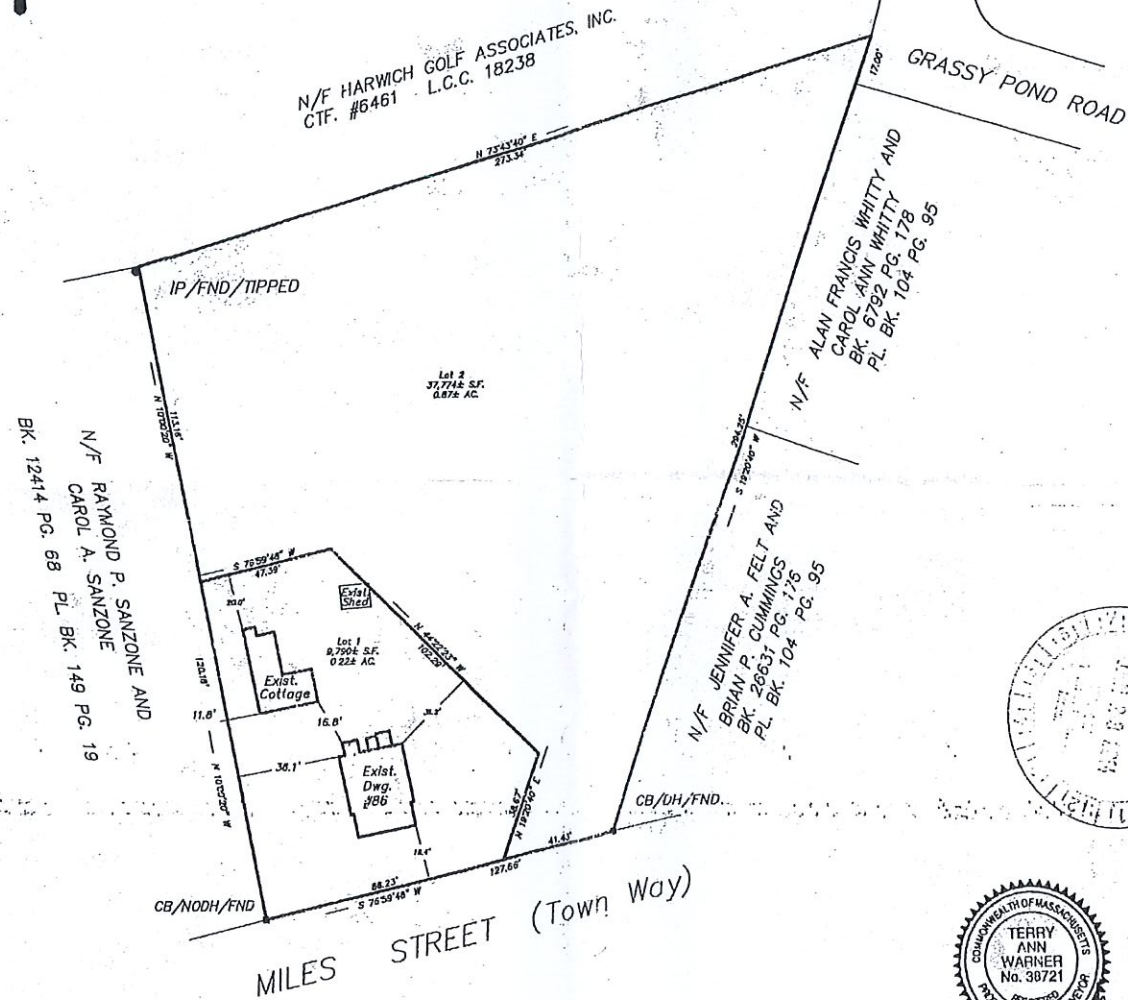
There is no implied compliance with zoning.

APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED

HARWICH PLANNING BOARD

Jan. 2014
 APPLICATION DATE

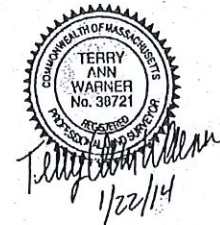
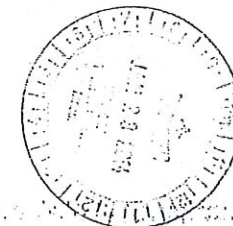
SIGNED DATE



OWNER/PETITIONER: OLIVER HOMES LLC
 36 CROSS STREET
 HARWICH PORT, MA 02646
 BK. 27789 PG. 326

SHAPE NUMBER CALCULATIONS

$910.53 (P) \times 910.53 (P) = 829,065 / 37,774 (A) = 21.95 < 22$



APPROVAL NOT REQUIRED
 PLAN OF LAND

IN
 HARWICHPORT, MA

PREPARED FOR:
 OLIVER HOMES LLC

SCALE: 1"=40' NOVEMBER 25, 2013
 Rev. Jan. 20, 2014

TERRY A. WARNER, P.L.S.
 22 LONG ROAD
 HARWICH, MA. 02645
 (508) 432-8309

RELIEF REQUESTED:

ARTICLE VI, SECTIONS 325-15, 325-16
 TABLE 2 ZONING BY-LAW
 M.G.L. CHAPTER 40A, SECTION 10
 TO DIVIDE A 47,564± S.F. PARCEL INTO TWO RESIDENTIAL LOTS
 BOARD OF APPEALS RELIEF: SIZE, FRONTAGE AND WIDTH OF LOT 1

Scale: 1"=40'



APPENDIX 4
Application Form & Narrative 2023-12

SPECIAL Permit / Driveway

PB2023-12

TOWN OF HARWICH PLANNING DEPARTMENT



PLANNING BOARD APPLICATION
SPECIAL PERMITS & SITE PLAN REVIEW FORM A

TO THE TOWN CLERK, HARWICH, MA

DATE 3/2/2023

PART A – APPLICANT INFORMATION/AUTHORIZATION

| | |
|---|--|
| Applicant Name(s) | Oliver Home LLC |
| Representative/Organization (Who will serve as the primary contact responsible for facilitating this application?) | Kent Drushella 508-280-4300 drufam@comcast.net |
| Mailing address | 39 Old County Rd. |
| Town, ST, Zip | Harwich Port, MA 02645 |
| Phone | 508-280-4300 |
| Fax | - - - - |
| E-mail | drufam@comcast.net |

The applicant is one of the following: (please check appropriate box)

- Owner Prospective Buyer* Representative for Owner/Tenant/Buyer*
 Tenant* Other*

***Written permission of the owner(s) and a municipal lien certificate (where applicable) is required.**

All other forms and information as required in the Harwich Code Chapter 400, Rules and Regulations, shall be submitted as part of this application.



Authorization

Your signature hereby asserts, to the best of your knowledge, that the information submitted in this application is true and accurate; that you agree to fully comply with the Town of Harwich laws and the terms and conditions of any approval of this application by the Planning Board; and authorizes the Members of the Planning Board and/or Town Staff to visit and enter upon the subject property for the duration of the consideration of this application.

Kent Drushella Kent Drushella
Applicant

George Columbus
Owner(s) – Authorization must accompany application if the owner is not the applicant.

Official use only:

| | |
|---------------------|------------|
| PLANNING DEPARTMENT | TOWN CLERK |
|---------------------|------------|

Case #

RD

Special Permit / Driveway

PART B – PROJECT LOCATION

| | | | |
|-----------------------------|---------------------------------|------------------|---------------------|
| Legal Street Address | 86 Miles St. | Village/Zip Code | 02646, Harwich Port |
| Title Book/Page or L.C.C. # | | | |
| Map(s) / Parcel(s) | 14-80 | | |
| Zoning & Overlay Districts | RL | *Historic? | No |
| Frontage (linear feet) | 127.56 Miles, 23.58 Grassy Pond | | |
| Total land area (s.f.) | 47,565 | | |
| Upland (s.f.) | 47,565 | Wetlands (s.f.) | N/A |

PART C – PROJECT DESCRIPTION

| | | |
|--|-------------------------------|------|
| Existing Floor Area in Sq. Ft | Gross: | Net: |
| Proposed Floor Area in Sq. Ft | Gross: | Net: |
| Change in Sq. Ft + / - | Gross: | Net: |
| Existing # of parking spaces | Proposed # of parking spaces: | |
| Existing Use(s) | | |
| Proposed Use(s) | | |
| <i>Attach a separate narrative if necessary.</i> | | |



The undersign hereby files an application with the Harwich Planning Board for the following special permits as proposed under the provisions of the Harwich Zoning Code: **(check all that apply)**

Site Plan Review § 325-55:

- Any floor area expansion of any structure or expansion of exterior space, other than parking, serving any of the following: commercial, industrial, multi-family or educational use or personal wireless service facility or the creation of a drive-up or drive-through window
- Expansion or reconfiguration of an existing parking lot and/or driveway(s) serving said parking lot.
- Establishment of any new commercial, industrial, multi-family, educational, fast food/take out restaurant or personal wireless service facility.
- Establishment of any new retail use(s) in the Industrial (IL) Zone.
- Waiver of Site Plan § 325-55.F

Article V, Use Regulations:

- Paragraph _____, sub-paragraph # _____
- Paragraph _____, sub-paragraph # _____
- Paragraph _____, sub-paragraph # _____, supplemental regulation # _____ § 325-14

Article X, Special Permits:

- Structures w/ gross floor area of 7,500+ s.f. § 325-51
- Structures requiring 20 or more new parking spaces § 325-51
- Accessory Apt./Shared Elderly Housing § 325-51.H
- Mixed Use § 325-51.M
- Drinking Water Resource Protection § 325-51.C
- Two Family § 325-51.N
- Village Commercial, Harwich Port § 325-51.L
- *Harwich Center Overlay § 325-51.O
- Signage § 325-27.F Additional Cluster, Excess SF, Non-entry Facades

Other Special Permits:

- Six Ponds Special District - Article XVI
- Wind Energy Systems - Article XVIII
- Large Scale Wind Generation – Article XIX
- Other (i.e. Alternate Access § 325-18, Special Cases § 325-44.B) _____
- Repetitive Petition (MGL Ch 40A, §16): Proposed project evolved from a previously denied plan submitted to the Planning Board on _____ Year/Case # _____

**Note: Projects within the Harwich Center Overlay District may also be within the Harwich Center Historic District. This requires separate filing with the Historic District and Historical Commission. Please inquire for forms and instructions.*

Oliver Homes
86 Miles Street
Harwich Port, MA



Curb Cut Permit Application

This application is to create a second point of access to the property. Per the zoning bi-law 325-18K which says this.

K. A lot with the required legal frontage must take access along the required legal frontage. No alternate access may be granted from other streets, roads, or ways, nor should access be taken from an easement across an adjacent property without the issuance of a special permit from the Planning Board. In issuing a special permit, the Planning Board shall make the following findings:

(1)

The alternate access proposed is superior to the access along the frontage;

(2)

The proposed alternate access is cleared to a minimum of 16 feet in width and 16 feet in height; and

(3)

When access is proposed from an easement across another lot, the lot providing the easement will have the required legal frontage for the zoning district.

This lot fits all these as shown on the plan.

To clear up some items that will be brought up. There is no easement in place or is needed as the property abuts the Town Public Street of Grassy Pond. Also look close at the street boundaries that abut this property on Grassy Pond and you see there is 23.5' of frontage, more than needed. Because of the history of the street the people on Grassy Pond do not realize or choose to overlook where their land ends and Town of Harwich land starts. The property lines on Grassy have the surveyors stakes in the ground and have blue paint on them to identify the location.

PLEASE TAKE A CLOSE LOOK.

Here is some history of Grassy Pond Road. In 1951 the Grassy Pond Road subdivision was created, the lots varied in size from 7,900 S.F. to 11,500 S.F. The subject property contains 47,565 S.F. which is equivalent in size to 4 or 5 lots on Grassy Pond Road. Grassy Pond Road was taken as a Town Road in 1959. Even if the neighbors want this to be a private road, it is owned by the town and they have to share. This is not a small acreage property. Based on the number of units, 2 dwellings on an acre is compatible with the abutting 4 dwellings on an acre.

Nevertheless, the number of vehicle trips per day to the second dwelling is expected to be fewer than the number to a primary dwelling. Deliveries and mail will be directed to use the entrance on Miles Street. The rear driveway will be used for the family or a caregiver of the handicapped grandchild who will reside in part of this dwelling when the grandchild spends his summers here. The property is trapezoidal in shape with the short edge along the street. This addition will fit well into the back where there is currently lawn. Additional screening can be provided if the board feels it is appropriate.

In the comments made by people how Oliver Homes LLC is a development Company do not know what they are talking about and just making things up as they go, as well with others the 1st night. The Oliver family own 4 properties in Harwich Port, the 1st one purchased in 2003. All are impeccably maintained inside and out. At the time of purchase each were updated and improved using all locale trades and stores. One house is rented out to a 96 year old lady with her family living 2 doors away and could not be happier, plus rent is under market rate to help. They purchased 86 Miles in 2013 and have done nothing but improved the neighborhood. They do not rent this property and use it only for the family.

Oliver Homes LLC. has held all properties since the day they were purchased and have never sold one. They pay all their taxes to Harwich with extremely little or no needs or uses for any tax provided services.



APPENDIX 5
DPW Driveway Permit Application



TOWN OF HARWICH

DEPARTMENT OF PUBLIC WORKS

273 QUEEN ANNE ROAD

HARWICH, MA 02645

PHONE: 508-430-7555

FAX: 508-430-7598

DRIVEWAY PERMIT APPLICATION

PROPERTY OWNER Oliver Homes LLC TELEPHONE
CONTRACTOR Kent Druschella TELEPHONE 508-280-4300
LOCATION OF DRIVEWAY OR CURB CUT
STREET NAME Miles Street HOUSE NUMBER 86
ASSESSORS MAP NUMBER ASSESSORS LOT NUMBER

The purpose of the Town's Driveway rules and regulations is to protect public investment in streets. Temporary stone driveway aprons protect pavement edges from damage during construction process and also are intended to prevent soils from being carried by vehicles or surface water into adjoining drainage systems. Asphalt aprons reduce the likelihood of damage to street pavement caused by vehicles exiting and entering the roadway.

Regulations for Driveway Apron Construction

- 1 Driveway permits are required for any work within the Town owned right-of-way in connection with an existing or new driveway apron that connects to a Town owned road.
- 2 Driveway aprons shall not be constructed in any manner which inhibits the existing drainage systems of the Town Way.
- 3 The cost of relocating any existing Town owned and maintained utilities or structures due to the installation of a new or reconstructed driveway apron shall be the responsibility of the owner and or their contractor.
- 4 Driveways shall not connect to a public street within forty (40) feet of an intersection road or within five (5) feet of a fire hydrant or drainage system, without prior approval.
- 5 Driveways shall be located as to provide maximum sight distance and safety.
- 6 Abandoned driveway aprons shall be removed and reconstructed to match existing area
- 7 For new home or commercial property, temporary aprons are required and must be constructed out of 3/4 to 1 1/2 in gravel to a minimum depth of 8 inches. Upon completion and before an occupancy permit can be issued all driveways must have an apron constructed as follows.
- 8 Driveway aprons onto a public way shall be constructed or reconstructed to have a positive pitch towards the street from the property sufficient enough to prevent the flow of water into the driveway. All openings shall have an apron extending for a minimum of five (5) feet back from the existing roadway pavement

- 9 Modular aprons (cobble, bricks, pavers) are permitted providing that the first five (5) feet are set in a bed of concrete and all joints are mortared and the apron is constructed in the manner noted above.
- 10 Asphalt aprons shall be a minimum thickness of four (4) inches of asphalt and four (4) inches of dense grade processed stone or recycled asphalt product (T-Base).
- 11 Concrete aprons shall have a minimum thickness of six (6) inches of portland cement concrete with six-by-six No. 8 wire reinforcing mesh and 4 inches of dense grade process stone or recycled asphalt product (T-Base)
- 12 Driveways aprons entering a public roadway where a sidewalk exists must construct an apron between and behind the sidewalk where a grass strip separates the sidewalk from the road. In the event the sidewalk has curbing of any nature, then it is the responsibility of the applicant to ensure that all curbing, transitions and slopes conform to A.D.A. standards and curbing set to meet MassDOT standards.
- 13 In the event that a road is resurfaced, the Town will not be responsible to adjust, in any manner, an apron not constructed of asphalt. Asphalt aprons will be adjusted up to five (5) feet from the new road surface or a distance that is required to provide safe and adequate access.

Please be advised that Harwich General By-Law - Article 4, 4-402 and Harwich Zoning By-Law Section 6C concerning corner lot plantings, also MA General Law- Chapter 87, Section 3 about public shade trees are applicable to work involving driveways.

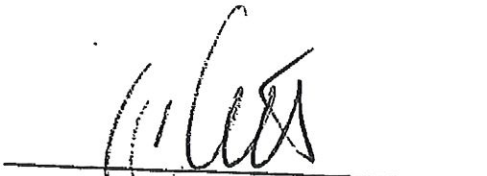
Your signature below indicates that you have read, fully understand and agree to abide by all rules and regulations as listed above.



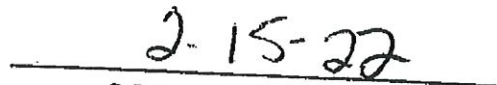
 Signature of Property Owner



 Signature of Contractor



 D.P.W. Director or Agent
 Authorization to Construct



 D.P.W. Director or Agent
 Approval of Construction