



**COMMONWEALTH OF MASSACHUSETTS  
TOWN OF HARWICH  
PLANNING BOARD  
DECISIONS**

**Modification of a Definitive Plan and  
Use Special Permit - Open Space Residential / Cluster Development**

**Plan Book / Page:** 648 / 50      **Address:** Crocker Rise (previously known as Cove Road)

**Deed Reference(s):** BK/PG - 26103/330, 26658/132 and LCC - 197957  
**Current Deed Reference(s):** 26103/330, 27352/123, 27589/187, 27550/90 and 27623/202

**Map / Parcel(s):** 116 / A1, A2, A4, and 117 / P2, P3, P4-1  
**Current Map / Parcel(s):** 116 / A2-6 through A2-17 and 117 / P3-1 through P3-5 and P3-15, -16, -17

**Case No.:** PB2013-24      **Applicant:** Eastward Homes Business Trust

**Hearing Date(s):** September 10, 2013

**Decision Date:** September 10, 2013

**Hearing**

At a duly advertised and scheduled public hearing held on September 10, 2012, the Town of Harwich Planning Board, acting in the matter of case number PB2013-24 voted to grant the Modification of a 16-lot Definitive Subdivision Plan and Use Special Permit for a 3-lot Open Space Residential / Cluster Development (OSRD) with conditions in accordance with the Code of the Town of and pursuant to Massachusetts General Law Chapter 41 §81K-GG. The subdivision is within the R-R & W-R Zoning Districts.

Specifically, the application sought to modify Condition #2 of the recorded decision (Bk: 27166 / Pg: 175) by substituting and executing a separate Declaration of Restrictions (DR) on the three (3) Open Space parcels in lieu of a Conservation Restriction (CR), pursuant to the Town of Harwich Zoning Code §325-51.F and MGL c. 40A, §9.

The Applicant's proposal and application included a request for the following waiver(s):



- a. Filing fee – waiver of \$525.00
- b. Municipal Lien Certificate (MLC)
- c. §400-14.M.7 Sidewalk Construction - In lieu of fee of \$34,447.00

The Board reviewed the submitted documents and the existing plan for deliberation:

- Narrative with waivers
- Draft Restrictions instrument

### **Findings of Facts**

After public deliberation and hearing from all parties having an interest in the case, the Board members reviewed the criteria for granting a Special Permit for OSRD Subdivision and following a motion by Mr. P. de Bakker and seconded by Mr. A. Peterson, the Board voted unanimously (6-0-0) to adopt the following:

- The applicant has been unable to meet statutory requirement of acceptance of the Conservation Restriction (CR) by an eligible entity pursuant to the Code §325-51.E.6(b).
- A separate provision of the Code, §325-51.F, allows latitude to approve a cluster development with a 'restriction enforceable by the Town'.
- As defined in the Code, 'cluster development' equates to an 'open space residential development'.
- As such, the substitution of such Deed Restriction held in perpetuity on the collective Open Space Areas, enforceable by the Town is an acceptable alternative to a Conservation Restriction.
- Town Counsel opinion states in part "...it is my opinion that the Planning Board may accept a Deed Restriction on the Parcels, in lieu of the CR that would otherwise be required."
- The Restriction is intended to comply with the Code, protect the open space and Zone II areas, and be beneficial to the public.
- A fully executed separate Restriction, in the form of a Declaration of Restrictions imposed and identified on said Plan as recorded with the Registry in Plan Book 648, Page 50 shall preserve and protect the collective Open Space Areas lettered Open Space A, B, and C.
- Standards and dimensional requirements of Code have been met.
- The Open Space generally conforms to the design requirements of the Code.

- The proposed street pattern will provide reasonable vehicular access in an economical manner and minimize adverse impacts on the open space area while providing views and access to the open space for the home sites.
- The building sites have been identified and none are located closer than 100 feet to wetlands or water bodies.

## **DECISIONS**

### **VOTE - USE SPECIAL PERMIT: OPEN SPACE RESIDENTIAL DEVELOPMENT**

On a motion from Mr. P. deBakker and seconded by Mr. A. Peterson, the Board voted to unanimously (6-0-0) **approve** the Open Space Residential / Cluster Development (OSRD) Use Special Permit for Eastward Homes Business Trust, pursuant to the Harwich Code based on the finding that the plan is preferable to and superior in design to a conventional subdivision.

IN FAVOR: J. Atkinson, A Atkinson, Peterson, de Bakker, Kozar, Harris  
 OPPOSED: None  
 ABSTAIN: None

**This Special Permit shall lapse at the end of two years from the date of filing of the Board's decision in the office of the Town Clerk if substantial use therefore has not sooner commences except for good cause or, if construction has not commenced by such date except for good cause.**

### **VOTE - DEFINITIVE SUBDIVISION DECISION**

Mr. de Bakker moved and Mr. A. Atkinson seconded a motion to **approve** the modification of the Open Space Residential / Cluster Development (OSRD) Special Permit Definitive Subdivision plan as shown on the plan entitled 'Modification of Definitive Open Space Residential Development Plan' (Recorded in Plan Book 643, Page 62) in Harwich MA as prepared for Eastward Homes Business Trust, dated October 15, 2012, Revised January 16, 2013, stamped by Peter W. Soule, PLS, with the following conditions and a new standard Planning Board Agreement and Covenant, subject to the following vote for a Release of Covenant:

#### **Conditions of Approval**

1. A fully executed Deed Restriction in the form of a Declaration of Restrictions (Restrictions) imposed on the Open Space Areas collectively and identified on said Plan as recorded with the Registry in Plan Book 648, Page 50 and lettered as Open Space A, B, and C, enforceable by the Town and be imposed by the Eastward Homes Business Trust prior to conveying the Parcels to the Homeowner's Association. Said Restrictions, the purpose of which is the preservation and

protection of the Open Space shall be held in perpetuity and shall be of benefit to the public.

2. Pursuant to §325-51.E.(3)(b) No further division of land which increases the number of lots or results in an alteration to the area to be set aside as open space may occur without a modification of the special permit. Any alteration of lot lines or layout of ways shall require modification of the special permit issued by the Planning Board and shall be in compliance with the governing provisions of this bylaw and the Subdivision Rules and Regulations.

In accordance with MGL Ch. 41 Sec. 81U, which requires a majority vote for approval of a definitive subdivision plan, six of the seven board members voted in favor as follows:

IN FAVOR: J. Atkinson, A Atkinson, Peterson, de Bakker, Kozar, Harris  
OPPOSED: None  
ABSTAIN: None

### **Waivers**

On a motion from Mr. A. Atkinson and seconded by Mr. Peterson the Board voted unanimously to grant only the following waivers:

- a. Filing fee – waiver of \$525.00 and
- b. Municipal Lien Certificate (MLC)

### **Release of Covenant Vote:**

On a motion from Mr. de Bakker and seconded by Mr. Peterson the Board voted to grant a full Release of Covenant for Book 27166 / Page 171 for the remaining lots in Crocker Rise and to place Lot 9 under a new Agreement & Covenant pursuant to the conditions imposed on the grant of a Modification of an Open Space Residential /Cluster Definitive Subdivision case #PB2013-24 for Eastward Homes Business Trust.

  
James P. Atkinson, Chairman

PLANNING BOARD DECISION – CASE NO. PB2013-24

DATE FILED: SEPTEMBER 23, 2013

NAME: EASTWARD HOMES BUSINESS TRUST  
ADDRESS: 155 CROWELL ROAD, CHATHAM, MA 02633

LOCUS: CROCKER RISE (PREVIOUSLY KNOWN AS COVE ROAD)

This is to certify that more than twenty (20) days have elapsed since the filing of the foregoing decision in the office of the Clerk of the Town of Harwich and no appeal from said decision has been filed.

Date Filed SEP 23 2013

Twenty Days Elapsed OCT 14 2013

