

Please see my responses below in red.

Amy E. Kwesell, Esq.
KP | LAW
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 654 1811
F: (617) 654 1735
C: (857) 378 9218
akwesell@k-plaw.com
www.k-plaw.com

This message and the documents attached to it, if any, are intended only for the use of the addressee and may contain information that is PRIVILEGED and CONFIDENTIAL and/or may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of this message and attachments thereto, if any, and destroy any hard copies you may have created and notify me immediately.

From: Brian Sullivan <gbsullivan24@hotmail.com>
Sent: Friday, July 21, 2023 1:05 PM
To: Amy E. Kwesell <AKwesell@k-plaw.com>
Cc: Jack Mee <jmee@town.harwich.ma.us>; Joe Powers <jpowers@town.harwich.ma.us>; Meggan Eldredge <meldredge@town.harwich.ma.us>
Subject: Fw: Request for opinion regarding Round Cove Resort

Hi Amy

I am writing again to ensure I have properly stated the issues the Board seeks your opinion on. One issue I need clarity about is setbacks when there are structures with multiple uses on a common lot. Please note that the Zoning Code does not appear to address application of code when two or more structures are built (or planned) with different Uses intended. It appears to address only one Use per a lot and not multiple Uses on the same common lot.

Now that an 81X plan has been filed there is no question we have one common lot. The clarification is how to apply setback requirements when there are two or more uses on the same lot. The Harwich Zoning By-laws 325 Attachment 2, Table 2 Area Regulations indicate that in an RH-2 district the following.

1. Hotel and motel are permitted: lot area of 40,000 plus 2,000 per rental unit. Lot frontage of 150; Front Setback is 50 as well as rear and side setbacks of 50
2. Any other permitted use: Lot area of 40,000; Lot Frontage of 150; Front Setback 25; Side Setback 20; Rear Setback 20'

Opinion request:

1. When more than one structure is built (or to be built) on a lot which individual structures do or may have different Uses, in this case Residential and the other Hotel/motel, is each structure on a common lot (single lot) required to meet the setback based Solely upon how the structure is (or will be) used. So, for Round Cove Resorts the Hotel/motel facility structures must meet lot line setbacks of 50' and the two-family home is required to have

front setback of 25', then side and rear setbacks of 20'. Or if the above is not how to apply setbacks.....

In my opinion, as the dimensional regulations apply to uses, and not the district as a whole, each use on a lot will need to meet the setbacks for that specific use. This makes it confusing as the Town of Harwich Zoning Bylaw does not prohibit more than one primary or principle use on a lot.

2. As two different uses are coexisting on one common lot, is the greater requirement, which in this case is 50' setbacks of the Hotel/motel Use, apply to all structures on the common lot regardless of a different Use which otherwise would require less setback if the only Use on the lot?

See above response, in my opinion each use is a primary or principle use and therefore each use has its own setback.

C. When multiple structures are situated on a common lot, which meet the setbacks to the lot lines as required, are there regulations on how close or distance there must be between each structure with habitable space?

It does not appear so in the Zoning Bylaw, however, the Building Commissioner and Fire Department should weigh in.

D. I may have asked this before; as to when a residential use (two family) becomes a hotel/motel use, when the residence is owned by the owner of the hotel/motel, and now on the same lot, and rents the residence. Is this determined by the nature of the rentals, such as short term (nights, weeks) or longer term (6 or 12 months), or by some other factor?

In my opinion, we need to rely on the definitions of "hotel" and "motel". To become a hotel use, the rental must be to "transient lodging, food and other related services within which access to the individual units is provided by common interior corridors. The individual units do not have cooking facilities." For motel, "a building or complex of buildings providing transient lodging accommodations with separate outside entrances for each unit. The individual units do not have cooking facilities." The transient lodging requirement and no kitchens will most likely keep this use as residential (rental).

Thank you for reviewing this by early next week. Our meeting is next Wednesday July 26th.

Best regards,
Brian

Harwich Board of Appeals Motion Case No. 2023-05 Round Cove Resort

Case No. 2023-05 Round Cove Resort Owner, LLC & 4 Cove Landing Road, LLC, c/o Marian Rose, Esq., PO Box 67, Dennisport, MA 02639, owner of the property located at 2173 Route 28, 4 Cove Landing Rd., & 2 Swan Drive, Assessors' Map 115, Parcels S1-3, R2 & H5-2, in the RH-2 Zoning District. The Applicant has been granted a Special Permit to change, alter and expand the pre-existing nonconforming motel/hotel use and amenities and to raise and replace three one story structures with three two story structures intended for hotel/motel use, resulting in an increase of twelve units. The proposed intensification of pre-existing, non-conformities will not be substantially more detrimental to the neighborhood than the current structures and will not cause or contribute to any undue nuisance, hazard, or congestion in the neighborhood. Granting is consistent with the Harwich By-laws and MGL Chapter 40A, as there will be an intensification of one or more existing non-conformities and no substantial detriment to the entire neighborhood. Any relief not expressly granted hereunder is hereby denied. All work shall be performed in accordance with the plans submitted with this application. Said grant and approval are subject to the following conditions.

1. The Applicant shall install screening of over twenty mature evergreen trees of sizes varying from 8-10 feet to 14-16 feet planted at a grade higher than 2 Cove Landing's dwelling, in accordance with the plans submitted by Applicant. The Applicant shall properly maintain all such trees and shall in a timely manner replace any trees that die or otherwise become unsightly with trees of similar size and type.
2. Only 4 rear-facing exterior lights shall be placed on the rear second floor decks of Buildings identified as A and B on plans submitted by the Applicant, and they shall all be dark sky compliant and linked to motion sensors to limit their use during evening and nighttime hours. In addition, each night the window treatments for each occupied rear-facing room in Buildings A and B shall be closed and black-out drapes shall be drawn over all rear-facing doors and windows. Lights shall be turned off in any rear facing unoccupied room.
3. The Applicant shall follow its established policies and processes to avoid, lessen, and, if necessary, terminate any offensive conditions on its property in a timely manner. Should Applicant's staff become aware of any potentially unreasonable noise, calibrated efforts shall be made to engage and, if necessary, relocate the

source of noise to another more isolated location on the over 22-acre property of Applicant. Applicant shall follow the guidelines of the Harwich Noise Bylaw which applies to organized events and to the Applicant's restaurants.

4. Plantings throughout the project's area will be enhanced with a particular emphasis on increasing naturalized areas within the 0–50-foot buffer zone.

5. Roof runoff shall be collected and treated on the Applicant's property using infiltration basins that are sized for a 100-year 24-hour storm event. Hardscape runoff shall also be treated using infiltration basins that are sized for a 100-year, 24-hour storm event.

6. All of the redeveloped structures shall be connected to the existing onsite Wastewater Treatment Facility, which is governed by a Groundwater Discharge Permit issued by the Massachusetts Department of Environmental Protection.

7. During the life of the project, all construction vehicles shall be parked on the Applicant's property and not on any public street or road.

8. It is a condition of this approval that a violation of the terms and conditions of this Special Permit may be enforced as a violation of the Harwich Zoning Bylaw pursuant to M. G.L. ch.40A, Sec.7 and the Harwich Zoning Bylaw, as these may be amended from time to time.