

TOWN OF HARWICH PLANNING BOARD

Duncan Berry Chair, Craig Chadwick Vice Chair, David Harris, Mary Maslowski,

Anne Clark Tucker and Emily Brutti, Members; Harry Munns, Alt. Member

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Certificate of Action

Site Plan Special Permit Approval

June 21, 2023

Gabe & Brooke Leidner

557 Route 28 – Unit 1

Harwich, MA 02645

Dear Gabe & Brooke,

Please be advised that at a duly advertised, posted and noticed public hearing opened on June 13, 2023, the Harwich Planning Board (the ‘Board’) **voted unanimously to approve** with conditions a Modification of a Site Plan Special Permit (PB2019-47) in accordance with the Harwich Zoning Bylaw Sections 325-51 and 325-55 to allow for an expansion of seating to 30 indoor seats and 20 outdoor seats.

**Case No.:** PB2023-18

**Applicants:** Cape Roots Market & Cafe

**Location:** 557 Route 28;Assessor’s Map14, Block V9-203

**Owner:** 525Camelot, LLC, 557 Route 28, Unit 101, Harwich Port, MA 02646

**Zoning District(s):** Village Commercial Overlay District and a portion of the RH1 District.

**Deed Reference:** Book 32189, Page 189

**Decision Date:** June 13, 2023

**SUMMARY OF PROCEEDINGS:**

The public hearing on this matter was opened on Tuesday, June 13, 2023 at 6:30 PM in the Griffin Room at Town Hall as well as via remote participation using GoToMeeting.Due notice was given to all abutters within 300’ of the Subject Property deemed affected as shown on the latest tax rolls of the Town, as well as the four abutting Towns and by publication in the Cape Cod Chronicle on May 25, 2023 and June 1, 2023. The plans were distributed to the Health Department, Conservation Department, Highway Department, Police, Fire and Water Departments for comments. Comments received by each were distributed back to the Applicants.

Acting and voting on the matter at the June 13, 2023 hearing were: Duncan Berry, Chairman, Craig Chadwick, Vice Chairman, David Harris, Mary Maslowski, Emily Brutti, Ann Clark Tucker and Harry Munns.

The Applicants presented the case to the Planning Board who reviewed the materials and asked for clarifications on some of the proposal, specifically, the parking plan. A letter of support was received by Richard Waystack of Avalon Sunset and Raveis Realty offering 10 additional parking spots in the lot behind the building after 5 PM. There was also a letter of concern sent by Bob Cohn of Pleasant Street. After accepting testimony from all parties having an interest in the case, the Board voted to close the public hearing. The vote was unanimous. The members then deliberated and reviewed the criteria for granting a Modification of a Site Plan Special Permit and a parking waiver in accordance with sections 325-51 and 325-55 of the Zoning Bylaw.

The decision in this matter is based upon the application, supporting documentation, public testimony and evidence provided at the hearing. Copies of the official records are located in the Planning Department files and are incorporated into the record by this reference.

**Information Submitted**

* Form A and Narrative;
* Municipal Lien Certificate;
* Property owners authorization letter;
* Plan showing materials and layout dated 5-24-17;
* Floor plans dated 1-10-20 that show proposed additional outdoor seating;
* Floor Plans dated 11-18-19;
* Request for 3 Waivers;
* Abutters Application;
* Fee
* Project review memorandum from Paul Halkiotis, Town Planner dated 6/6/23.

**Vote of the Harwich Planning Board**

On a motion from Ms. Maslowski with a second by Mr. Chadwick, the Planning Board voted unanimously (7-0) to adopt the following findings:

[**(a)**](https://ecode360.com/12263351#12263351)The use as developed will not adversely affect the neighborhood.

[**(b)**](https://ecode360.com/12263352#12263352)The specific site is an appropriate location for such a use, structure or condition.

[**(c)**](https://ecode360.com/12263353#12263353)The additional outdoor seating will all be on the street side of the building and will not create a nuisance or serious hazard to vehicles or pedestrians.

[**(d)**](https://ecode360.com/12263354#12263354)That to the extent that a parking waiver is necessary, there are additional spaces when

1. The upper level residential units are vacant;
2. Raveis Realty evening spaces are allocated as available;
3. A public parking lot is located within 300’ of the building.

**(e)** 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.

On a motion from Ms. Maslowski with a second by Mr. Chadwick, the Planning Board voted unanimously (7-0) to grant a Site Plan Review Special Permit in accordance with the requirements of the Code of the Town of Harwich Sections 325-51, 325-55 and MGL CH 40A sec 9 for the Cape Roots Market and Café, located at **557 Route 28**, Assessor’s Map 14, Parcel V9-203 in the Village Commercial Overlay District and a portion of the RH1 District. The Board found that:

[**(1)**](https://ecode360.com/12263353#12263353)The additional outdoor seating will all be on the street side of the building and will not create a nuisance or serious hazard to vehicles or pedestrians.

[**(2)**](https://ecode360.com/12263354#12263354)That to the extent that a parking waiver is necessary, there are additional spaces when

1. The upper level residential units are vacant;
2. Raveis Realty evening spaces are allocated as available;
3. A public parking lot is located within 300’ of the building.

The following conditions apply:

**Conditions of Approval**

1. The total number of seats at Cape Roots Market & Café will not exceed 50;
2. There shall be no more than 20 outdoor seats;
3. The outdoor seating shall not impede foot traffic on the sidewalk;
4. All previous conditions from earlier Special Permits apply except to the extent that those noted here supersede earlier conditions;
5. All signage shall comply with relevant portions of the Code of the Town of Harwich;
6. This Special Permit shall not take effect until a copy of the Certificate of Action, bearing the certification of the Town Clerk that twenty (20) days have elapsed after the filing of the decision and either that no appeal has been filed or that an appeal has been filed within such time period, is recorded in the Registry of Deeds and indexed under the name of the property owner of record and the parcel address.
7. This Special Permit shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.
8. The proposed use shall operate in conformance with the submitted site plan and application statements referenced in the Decision and operations shall cease no later than 8PM with the premises being vacated by 9PM.
9. The Special Permit will run with the land, conditions of approval shall be binding on all future owners.

IN FAVOR: Mr. Berry, Mr. Chadwick, Ms. Maslowski, Mr. Harris, Ms. Brutti, Ms. Clark Tucker and Mr. Munns.

OPPOSED: None

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Duncan Berry, Chairman Date

Appeal from the above decision may be made pursuant to Massachusetts General Laws Chapter 40A, Section 17, within twenty (20) days of the date of filing hereof with the Town Clerk.

This Decision has been filed with the Town Clerk on:

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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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Twenty Days Elapsed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Town Clerk

cc: Emily Mitchell, Town Clerk

Jack Mee, Building Commissioner

Gail McAleer, Assessor