

Harwich Planning Department

Planning & Community Development
Christine Flynn, Director
Shelagh Delaney Planning Assistant
(508) 430-7511



To: Harwich Planning Board
From: Christine Flynn, Planning & Community Development Director
Date: January 4, 2024
RE: PB 2023-34 Two-Family Dwelling Special Permit Application

Applicant: George & Karen Oliver, Oliver Homes, LLC
Applicant's Representative: Kent Drushella
Assessor's Map/Parcel: 14 B9
Property Physical Address: 86 Miles Street
Zoning District: Rural Low Density (RL)
Development Type: Residential

Project Description:

The applicants are proposing to construct a second dwelling unit, as a Two-Family Dwelling, connected by a covered (roofed) walkway to the existing house. The proposed second dwelling is approximately 2,766 Square Foot Residential Dwelling with 3 Bedrooms, 3.5 Bathrooms, and attached garage. The lot area is 1.18 acres (47,565 square feet).

Project Background:

This case is a return to the Planning Board by the owners of 86 Miles Street for a Two-Family Use Special Permit after their initial case was brought forward (Case 2023-04) against some objection from residents of the street abutting north of the property (Grassy Pond Drive). Applicants withdrew without prejudice after numerous meetings. The currently submitted plan has adjusted the size and location of the second structure.

Applicable Laws & Regulations:

The Applicants have applied for a Use Special Permit pursuant to the Code of the Town of Harwich sections: 325 -51 Special Permit and 325-51 (N): Two-Family Dwelling

Project Review Process:

On 10/24/23 the Applicants' representative submitted the Special Permit application. The public hearing notice was advertised in the Cape Cod Chronicle on November 9, 2023 and November 16, 2023. On 11/02/23 copies of the application package were sent to the following Departments inviting them to comment on the project.

Town Board(s) Correspondence:

The application was sent to the Building, Health, Water, Fire, Conservation, Public Works, and Police Departments. All but the attached comments from the Board of Health, Building Commissioner, and Town Counsel came back as “No Comment”.

Hearing Date:

The Special Permit Public Hearing was opened on 11/28/23 and continued until January 9, 2024.

Planning Staff Comments:

The Applicants are seeking a Use Special Permit in accordance with the requirements of the Zoning Bylaw 325-51 section (N) Two-Family Dwelling.

Opinions from the Building Commissioner and Town Counsel addressed the following three issues:

1. The property contains 47,565 square feet of area and 127.66 feet of lot frontage. The Residential Low Density (RL) district requires 40,000 square feet and 150 feet of frontage. Therefore, the property is nonconforming as to frontage.
2. Additional access to an abutting public road would be allowed as a matter of right. The proposed application has an additional access to Grassy Pond Road.
3. The proposed roof covering the walkway connecting the two dwelling units is a “common roof or series of roofs”, the proposed structure does qualify as a two-family dwelling.

All structures, current and proposed, comply with Harwich Zoning requirements as to height, setback, building coverage and site coverage. The determination of density is usually based upon compliance or noncompliance with setback and lot coverage requirements. After reviewing the proposed Special Permit Application for a Two-Family Dwelling, the application meets the criteria in Harwich Zoning section 325-51(N) Two-Family Dwelling.

If a special permit for the proposed use, as a two-family dwelling, is approved by the Planning Board, then §325-54(A)(1)(a) & (c) apply and the Building Commissioner must then determine if the proposed extension will conform to current setbacks and lot coverage of the RL District and if it does, a building permit may be issued. If not, Section 325-54(A)(2) would apply.

Application and Hearing Documents Included the following:

- 1) Form A and Project Narrative;
- 2) Site Plan with Zoning Compliance Table by East-Southeast, LLC. dated **03/03/23**,
REVISED 10/18/23;
- 3) Building Floor Plan and Elevation Set Pages A4 and A5 by Zibrat & McCarthy, LLP;
- 4) Color Rendering (2 pages) of the proposed project by Imperial Landscaping & Masonry;
- 5) 10 Pages of photos and renderings of the proposed project.
- 6) Abutter Application;
- 7) Application Fee.
- 8) Public Correspondence:
 - In addition, the Board reviewed letters received from neighbors who opposed the original and current application. They include – the Connollys, the Cummings, Mr. Denofio, Ms. Hagan, the Johnsons, the McCarthys, Mr. Moynagh, Ms. O’Leary, Mr. Sheehan, the Simpsons, Ms. Smith, The Sytsmas, the Tobins and Mr. Whitty

Board Review:

Upon review, if the Board needs additional information for consideration the Board may make a motion to continue Public Hearing for PB2023-34, 86 Miles Street, Harwich, MA to a date and time certain no earlier than 6:30 PM in the Griffin Town Hall Meeting Room.

If the Board has exhausted their review, the Board may close the public hearing. Once closed the Board may deliberate and make a motion.

Motion: To either approve, approve with conditions, or deny Two-Family Dwelling Special Permit PB2023-34 86 Miles Street, Harwich, MA.

The Board shall review the proposal in conformance with section 325-51 (N) Two-Family Dwelling as well as standard Special Permit provisions as outlined in 325-51. This section of the Bylaw requires the Planning Board to make a series of findings listed below:

Section 325-51 Special Permits

“A. Conditions of approval.

- (1)** The Board of Appeals or Planning Board shall not approve any application for a special permit, except a special permit for a site plan, unless it finds that in its judgment all of the following conditions are met:
 - (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.”

Section 325-51N Special Permit states:

“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.”

The Zoning Bylaw defines a two-family dwelling as “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.”

Findings:

1. The Board can move to grant the requested Special Permit under Sections 325-51 and 325-51N to change the use to a Two-Family, the Board having found that the Applicants have met Harwich Zoning Bylaw requirements because:
 - a) A common roof or series of roofs connects the dwelling units;
 - b) The lot is in the RL Zoning District and the size exceeds the required 40,000 sf minimum;
 - c) The floor area for each unit exceeds the minimum required 800 sf;
 - d) There will be 2 off-street parking spaces per unit.
2. The Board can deny the requested Special Permit for specific stated reasons.
3. The Board can vote to continue the case until January 23, 2024.