***Staff Review***

**RE**: Case PB 2023-34 – George and Karen Oliver – Two-Family Special Permit

**Date**: December 1, 2023

**Applicants**: George and Karen Oliver

**Land Owners**: Oliver Homes, LLC

**Applicants’ Representative**: Kent Drushella

**Land Owners’ Address:** 39 Old County Rd. Harwich Port, MA 02646

**Location**: 86 Miles St. Harwich Port 02646, Assessor’s Map 14, Lot B 9

**Zoning District:** Residential Low (RL)

**Development Type:** Infill – Second dwelling unit connected to the existing principal dwelling unit by a series of roofs.

**Lot Area:** 1.18 acres (47,565 sf)

**Project Size**: 2765.81 residential dwelling

**Project Description:** The property owners are proposing to construct a second dwelling unit connected by a covered (roofed) walkway to the existing house.

**Applicable Laws & Regulations:** The Applicants have applied for a Use Special Permit pursuant to the Code of the Town of Harwich section 325-51 and 325-51 N - Two-Family home and section 325-54(A)(4).

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

**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 section 325-51 Special Permits and section 325-51N Two Family Dwelling and section 325-54(A)(4).

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.

**Application and Hearing Documents Include**

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.

In addition, the Board reviewed letters received from many of the same abutters who opposed the original application as well as commentary from the Building Commissioner and the opinion of Town Counsel.

Special Permit. This section of the Bylaw requires the Planning Board to make a series of findings listed below:

**Section 325-51 Special Permits**

“[**A.**](https://ecode360.com/12263349#12263349)Conditions of approval.

 [**(1)**](https://ecode360.com/12263350#12263350)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)**](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)There will be no nuisance or serious hazard to vehicles or pedestrians.

[**(d)**](https://ecode360.com/12263354#12263354)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.”

In determining adverse affect, the Board should look to specific potential harm that would substantially damage an interest protected by the Bylaw as in property value or safety of the neighborhood including noise, odor, fumes, congestion or traffic based upon the use or development such that a reasonable Board would find a detrimental effect, nuisance or serious hazard.

**Section 325-51N Special Permit states:**

“[**N.**](https://ecode360.com/12263459#12263459)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)**](https://ecode360.com/12263460#12263460)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)**](https://ecode360.com/12263461#12263461)The floor area for each dwelling unit shall be a minimum of 800 square feet.

[**(3)**](https://ecode360.com/12263462#12263462)A common roof or a series of roofs shall connect the dwelling units.

[**(4)**](https://ecode360.com/12263463#12263463)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.”

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 considerable 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 in an attempt to compromise and assuage fears by the neighbors regarding the size of the two-family project.

The Building Commissioner has offered his opinion on the subject and believes that the “application qualifies under Section 325-51N to be considered for a Special Permit.”

Applicants also originally applied for an Alternate Access Special Permit (PB2023-12) which was also withdrawn after the Building Commissioner and Zoning Enforcement Officer as well as Town Counsel (Amy Kwessel) determined that an additional access does not require Board approval. (see attached).

The Board should discuss whether the application complies with the Special Permit requirements in section 325-51 & 325-51N listed above.

If after reviewing all of the documents, letters, opinions and arguments given at the hearing, the Board determines that the application qualifies for a Special Permit under Sections 325-51 and 325-51N, it can close the public hearing and offer one or the other of the following motions:

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:
2. A common roof or series of roofs connects the dwelling units;
3. The lot is in the RL Zoning District and the size exceeds the minimum 40,000 sf required;
4. The floor area for each unit exceeds the minimum required 800 sf;
5. There will be 2 off-street parking spaces per unit.

And under Section 325-54(A)(4) with a finding that:

1. The proposed new construction will conform to current setbacks and coverage for the zone in which it is located;
2. The non-conformance concerns the size of the lot in question or the frontage of said lot.
3. The Board can deny the requested Special Permit for specific stated reasons.
4. The Board can vote to continue the case until January 23, 2024.