

TOWN OF HARWICH PLANNING DEPARTMENT



PLANNING BOARD APPLICATION SPECIAL PERMITS & SITE PLAN REVIEW	FORM A
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TO THE TOWN CLERK, HARWICH, MA

DATE March 28, 2024

PART A – APPLICANT INFORMATION/AUTHORIZATION

Applicant Name(s)	Rowoliver Nominee Trust David M. Crosbie & Steven Farnsworth, Trustees
Representative/Organization <i>(Who will serve as the primary contact responsible for facilitating this application?)</i>	Benjamin E. Zehnder 62 Route 6A, Suite B Orleans, MA 02653
Mailing address	481 Depot Street
Town, ST, Zip	Harwich, MA 02645
Phone	David M. Crosbie (774) 836-5799 Benjamin E. Zehnder (508) 255-7766
Fax	
E-mail	david@oehomes.com bzehnder@zehnderllc.com

The applicant is one of the following: *(please check appropriate box)*

- Owner
 Prospective Buyer*
 Representative for Owner/Tenant/Buyer*
 Tenant*
 Other* _____

***Written permission of the owner(s) and a municipal lien certificate (where applicable) is required.**

All other forms and information as required in the Harwich Code Chapter 400, Rules and Regulations, shall be submitted as part of this application.

Authorization

Your signature hereby asserts, to the best of your knowledge, that the information submitted in this application is true and accurate; that you agree to fully comply with the Town of Harwich Zoning By-laws and the terms and conditions of any approval of this application by the Planning Board; and authorizes the Members of the Planning Board and/or Town Staff to visit and enter upon the subject property for the duration of the consideration of this application.

Applicant 03/28/2024

Owner(s) – Authorization must accompany application if the owner is not the applicant.

Official use only:

PLANNING DEPARTMENT	TOWN CLERK
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Case # _____

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 HARWICH, MA

PART B – PROJECT LOCATION

Legal Street Address	481 Depot Street	Village/Zip Code	02645
Title Book/Page or L.C.C. #	Book 31737, Page 23		
Map(s) / Parcel(s)	36-B1		
Zoning & Overlay Districts	IL & RR	*Historic?	not in Historic District
Frontage (linear feet)	276	but house > 100 yr. old	
Total land area (s.f.)	34,900		
Upland (s.f.)	34,900	Wetlands (s.f.)	0

PART C – PROJECT DESCRIPTION

Existing Floor Area in Sq. Ft	Gross:	Net:
Proposed Floor Area in Sq. Ft	Gross:	Net:
Change in Sq. Ft + / -	Gross:	Net:
Existing # of parking spaces	Proposed # of parking spaces:	
Existing Use(s)	Please see zoning table on attached site plan	
Proposed Use(s)		
<i>Attach a separate narrative if necessary.</i>		

The undersign hereby files an application with the Harwich Planning Board for the following special permits as proposed under the provisions of the Harwich Zoning Code: **(check all that apply)**

Site Plan Review § 325-55:

- Any floor area expansion of any structure or expansion of exterior space, other than parking, serving any of the following: commercial, industrial, multi-family or educational use or personal wireless service facility or the creation of a drive-up or drive-through window
- Expansion or reconfiguration of an existing parking lot and/or driveway(s) serving said parking lot.
- Establishment of any new commercial, industrial, multi-family, educational, fast food/take out restaurant or personal wireless service facility.
- Establishment of any new retail use(s) in the Industrial (IL) Zone.
- Waiver of Site Plan § 325-55.F

Article V, Use Regulations:

- Paragraph____, sub-paragraph #____ Paragraph____, sub-paragraph #____
- Paragraph____, sub-paragraph #____, supplemental regulation #____ § 325-14

Article X, Special Permits:

- Structures w/ gross floor area of 7,500+ s.f. § 325-51
- Structures requiring 20 or more new parking spaces § 325-51
- Accessory Apt./Shared Elderly Housing § 325-51.H Mixed Use § 325-51.M
- Drinking Water Resource Protection § 325-51.C Two Family § 325-51.N
- Village Commercial, Harwich Port § 325-51.L *Harwich Center Overlay § 325-51.O
- Signage § 325-27.F Additional Cluster, Excess SF, Non-entry Facades

Other Special Permits:

- Six Ponds Special District - Article XVI
- Wind Energy Systems - Article XVIII Large Scale Wind Generation – Article XIX
- Other (i.e. Alternate Access § 325-18.P, Special Cases § 325-44.B) _____
- Repetitive Petition (MGL Ch 40A, §16): Proposed project evolved from a previously denied plan submitted to the Planning Board on _____ Year/Case # _____

**Note: Projects within the Harwich Center Overlay District may also be within the Harwich Center Historic District. This requires separate filing with the Historic District and Historical Commission. Please inquire for forms and instructions.*

September 2011

Project Narrative
Planning Board
Site Plan Review Application

Zoning Board of Appeals
Special Permits and/or Variances Application

481 Depot Street
Map 36, Parcel B1

Rowoliver Nominee Trust

18
March __, 2024

Prepared by Benjamin E. Zehnder LLC

Applicant Rowoliver Nominee Trust owns a developed 34,890 square foot parcel of land at 481 Depot Street in West Harwich near the Dennis town line. The northerly portion of the property is in the IL (Industrial - Limited) zoning district, and the southerly portion is in the RR (Residential - Rural Estate) zoning district. The applicant proposes converting an existing two-family dwelling to four-apartment multifamily dwelling use and constructing a self-storage building. The proposal requires relief from the Zoning Board of Appeals and the Planning Board.

A. Procedural History:

This proposal was initially heard by the Harwich Planning Board in Case No. PB2023-35 for site plan review of a mixed use under Harwich Zoning Bylaw § 325-55.C(1) – (4), and for a multifamily special permit under Harwich Zoning Bylaw § 325-51.Q on November 28, 2023. The case was continued until after the ZBA heard the matter.

After hearings by the ZBA on November 29, 2023 and December 27, 2023 in Case No. ZBA2023-36, opinions from Town Counsel on the forms of relief required for the proposal, and comments from abutters on the project, the applicant and the ZBA agreed that the applicant would revise its proposal and submit a new application requesting the required relief and incorporating changes suggested by the Board and an abutter. On January 25, 2024 the applicant filed a new application and site plan with the ZBA revising the original proposal to reduce the number of storage buildings to one and requesting the three forms of relief required by the ZBA. These were: (1) a special permit or use variance to allow Self-Storage use in the RR district; (2) a special permit or use variance to change pre-existing, non-conforming Single-Family use to non-conforming Multifamily Dwelling use in the IL District; and (3) a special permit or dimensional variance to increase the pre-existing, non-conforming site coverage on the RR portion of the property. The revised application was accepted as Case No. ZBA2024-06 and on January 30, 2024 the applicant requested withdrawal of its application in Case No. ZBA2023-36 without prejudice.

On February 28, 2024 the ZBA advised the applicant that the case had not been advertised or applied for as a mixed-use development, and voted to approve an amendment of the application to include a use variance as a mixed-use development. The case was continued to March 27, 2024.

On March 4, 2024 the Town informed the applicant that its surveyor had determined that the zoning district division line was not correctly shown on the applicants plans, which were based on the online zoning map. The applicant's surveyor has revised his site plan and updated the zoning compliance table to reflect the Town's placement of that line.

Continued ZBA Case No. 2024-06 was heard on March 27, 2024 but the Board did not have a quorum and the case was not decided. It has been continued to the April 24, 2024 meeting.

B. Requested Relief:

The applicant requests the following zoning relief from the Zoning Board of Appeals:

1. a special permit pursuant to Bylaw § 325-54.A(2), or in the alternative a use variance pursuant to Bylaw § 325-52 from Bylaw Table 1, Use Regulations for a new non-conforming use in the RR district (Use 39: Self-Storage) (for the portion of the proposed self-storage use in the RR district);
2. a special permit pursuant to Bylaw § 325-54.A(2), or in the alternative a use variance pursuant to Bylaw § 325-52 from Bylaw Table 1, Use Regulations to change a pre-existing, non-conforming use in the IL district (Use 9: Single-Family Dwelling) to a new non-conforming use (Use 8: Multifamily Dwelling) (to convert the existing two-family dwelling into four apartment units);
3. a special permit pursuant to Bylaw § 325-51 or in the alternative a dimensional variance from Bylaw Table 3, Height and Bulk Regulations, to increase the existing non-conforming site coverage on the RR portion of the property from 27.5% to 52.8% where the maximum permitted site coverage is 25%;
4. a special permit pursuant to Bylaw § 325-51 or in the alternative a dimensional variance from Bylaw Table 3, Height and Bulk Regulations, to increase the building coverage on the RR portion of the property from 6.5% to 17.6% where the maximum permitted building coverage is 15%;
5. a use variance pursuant to Bylaw § 325-52 from Bylaw Table 1, Use Regulations, for Mixed-Use Development in the IL and RR districts.

The applicant requests Site Plan Review and approval from the Planning Board pursuant to Bylaw § 325-55. Because the Town has determined that the proposed Multifamily Dwelling use request should be heard by the ZBA the applicant withdraws its previous request for a Planning Board Special Permit as sought in its application in Case No. ZBA2023-36.

C. Locus:

The lot was created by deed description in the 1800s and is improved with a 2,400 s.f. dwelling built in 1809, as well as a barn. The property has 267' of frontage along Depot Street. The lot is conforming as to street frontage in both districts where 100 feet is required in the IL district and 150 feet is required in the RR district. The lot is conforming as to area in the IL district where 20,000 square feet is required and is nonconforming in the RR district where 40,000 square feet is required. The lot is not within any overlay district. The property is adjacent to a cranberry bog. The existing house and barn are located on the northerly portion of the lot in the IL district. The house is used as a two-family dwelling containing two apartment units.

D. Proposal:

The revised proposal is: (1) to reconfigure the interior floor plan of the existing two-family dwelling to convert it into a four-apartment multifamily dwelling, and (2) to demolish the existing barn and construct a self-storage building and associated site improvements on both the IL and RR portions of the property.

The house will be reconfigured into four apartments: a two-bedroom apartment (Apt. #1) and a one-bedroom apartment (Apt. #2) on the first floor; a three-bedroom apartment (Apt. #3) on the second floor; and a studio apartment (Apt. #4) in the basement. The construction includes installation of a new exterior staircase and two fire escapes, new interior walls, a new floor system on the second floor, removal of an internal staircase, new partition walls, and construction of a new entryway over the current bulkhead. The applicant proposes a new seven-bedroom septic system.

The remainder of the property will be redeveloped as a self-storage facility. The barn will be demolished and a new one-story steel storage building will be constructed on a slab foundation on areas of the lot in both the IL and RR districts. The building will have a surrounding paved driveway for access and customer parking. The facility will be enclosed by fencing and be staffed and accessible weekdays between 9 A.M. and 5 P.M. via a key-coded gate. Lighting will be fully shielded downward facing fixtures conforming to the outdoor lighting requirements. A concrete pad and dumpster will be provided for trash disposal. A drainage system is proposed for the paved areas with leaching facilities, a rip rap spillway, and a 3' wide vegetated channel with a bio-retention swale. A 3' to 4' high earthen berm is proposed along the entire south property line and approximately 100' of the southwesterly property line, to be planted with a line of 37 3' to 4' tall Emerald Green Arborvitaes trees at 5' on center. This planting is provided in order to provide screening for the abutting property at the request of the owners of that

property. This planting is also provided in order to comply with Bylaw § 325-18(I) which requires screening of activities in IL district from adjoining properties in the RR district.

E. Use Variance Requests:

Bylaw § 325-52 specifically provides that the *“Board of Appeals shall have the power to... .. grant a variance authorizing a use or activity not otherwise permitted in the district in which the land or structure is located...”* The Bylaw exempts from this power to grant use variances only variances *“to allow food sales with drive-up or drive-through facilities.”* Therefore, the Board is authorized to grant the within variance requests.

Section 325-52 requires that the Board make the findings required by the Zoning Act, or M.G.L. c. 40A, § 10. This statute provides that a board may grant a zoning variance where, *“owing to circumstances relating to the soil conditions, shape or topography especially affecting the land or structures, but not the zoning district generally, a literal enforcement of the bylaw would involve substantial hardship to the applicant, provided relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the bylaw.”*

The explicit Bylaw authorization to grant use variances, and the statutory requirement that hardship be owing to circumstances relating to soil conditions, shape or topography are intrinsically irreconcilable. These factors relate to and dictate dimensional concerns such as structure placement, structure height, etc. Therefore, in order to make such authorized use variances available in any instance, some relaxation of the statutory requirements must have been contemplated by the Bylaw. This is supported by Massachusetts case law.

In Cavanaugh v. DiFlumera, 9 Mass. App. CT. 396 (1980), the Appeals Court upheld the grant of a use variance in Agawam for a general store in a residential zoning district:

The requirement of substantial derogation recognizes that the "effect of a variance is to give a landowner a license or permit to use his property in a manner otherwise violative of the zoning ordinance," and that a use variance in particular "permits a use which the ordinance prohibits." Because of this, some derogation from the by-law's purpose is anticipated by every variance. Otherwise, the denial of relief on the basis of a slight or insubstantial departure from the goals of the by-law would prohibit the grant of any variance..." Cavanaugh v. DiFlumera, 9 Mass. App. CT. 396 (1980) (internal citations omitted).

Locus has an unusual lot shape and is unique in being located in both the IL and RR districts. The lot shape resulted from the topography of the abutting cranberry bog and the layout of Depot Street, which angle towards one another and cause the lot to narrow significantly at its southerly end (the bog property abuts Depot Street immediately south of locus). The IL / RR division line divides the property north of that end, leaving the southerly portion of the lot zoned residentially, despite being contiguous to the industrial district. Furthermore, the IL northerly part of the lot is where the existing residential use is located. The applicant could not locate any other parcels in Harwich that have comparable circumstances. This lot location is not only completely unique, it directly relates to the ability of the applicant to use it for economically viable purposes, since uses that are permitted in one portion are not permitted in the other, and vice versa. This forces the applicant to make separate uses co-exist on the property, or else to leave substantial portions of the property unused.

Under a literal enforcement of the Bylaw the existing dwelling on the IL portion cannot be converted to multifamily use, although the building has been used as a house since it was built in the 1809 and can easily be converted to apartments. Likewise, under a literal enforcement of the Bylaw the proposed storage building could not extend onto any of the RR portion of the property. Locating a building large enough to justify the storage business on just the IL portion of the lot would require moving the existing dwelling to the residential southerly end of the property. The significant expense of this option would certainly make the project infeasible and that section of property unusable except for accessory uses and would constitute a substantial economic hardship for the applicant. Moreover, relocation would reduce the historic significance of the house in its original location.

In order to make storage use economically feasible given the high costs of land preparation and construction, as well as the costs of labor and management, the storage facility must be of at least a minimal size and number of units. The structure meets all dimensional setbacks in both districts. The excess building and site coverages in the RR district are offset by the fact that building coverage on the IL portion of the lot is only 30.8%, where 40% is permitted, and site coverage is on that portion is only 44.9%, where 70% is permitted.

The requested use variances can be granted without harming the public good or derogating from the purposes of the use regulations. Aerial photographs show the existing neighborhood industrial and residential developments surrounding locus, and that the property is contiguous with industrial uses north of it along Depot Street. Self-storage and multifamily dwelling uses are each allowed in the respective zoning districts, on the opposite sides of the division line from where they are proposed. This shows that self-storage use and multifamily dwelling use are both appropriate in the neighborhood and will not harm the public good. Additionally, there is already residential use on the IL part of the property and thus continued residential use there will not cause any new harms.

F. Special Permit Request:

Under Bylaw § 325-51 the Board of Appeals may hear and decide applications to change, alter, or extend a non-conforming structure or use requiring a special permit, upon findings that the use will not adversely affect the neighborhood, the site is appropriate, there will be no nuisance or serious hazard to vehicles or pedestrians, and that adequate and appropriate facilities will be provided for the use.

The applicant requests a special permit for its proposal to increase the existing non-conforming site coverage on the RR portion of the property from 25.6% to 52.8%, for the area of the proposed storage building located there, and responds to the Bylaw § 325-51(A)(1)(a) – (d) special permit criteria as follows:

(a) *The use as developed will not adversely affect the neighborhood:*

Self-storage is a very low intensity use. Customers who lease storage units typically store their belongings at the beginning of a lease period and access their units infrequently or only at the end of the lease. Day-to-day business operations do not require equipment or vehicles, do not generate noise, waste, or odor, and are run with only one employee on site. The applicant submits that the proposed development will not adversely affect the surrounding neighborhood.

(b) *The specific site is an appropriate location for such a use, structure or condition:*

Locus is an appropriate location for the proposed self-storage use and buildings. The section of Depot Street between Great Western Road and the Harwich / Dennis town line is part of an industrially zoned and developed area, with nearby industrial and commercial uses including two self-storage businesses, automobile salvage, lawn maintenance, lumber and stone yards, carpentry shops, and commercial cranberry bogs. The applicant's property is physically and visually contiguous with this industrial section of town. The area is easily accessible from both the center of town and the highway and is in a neighborhood where residents go for similar types of business, including the self-storage facilities on Great Western Road and a storage facility on Depot Road which also includes residential use in the form of 2nd floor apartments. The applicant submits that the property is an appropriate location for the proposed buildings and use.

(c) *There will be no nuisance or serious hazard to vehicles or pedestrians:*

The proposal will not result in any nuisance or hazard to vehicles or pedestrians. The proposed self-storage will result in few vehicle trips to or from the property. The existing southerly driveway is proposed for removal and replacement with a larger driveway, with a wider curb cut to Depot Street.

- (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:*

The applicant has designed the new septic system for the dwelling at the property with sufficient additional flow for one employee in the office. Lessees access storage units infrequently for short periods of time and do not need bathrooms facilities.

H. Miscellaneous Zoning Compliance Table Items:

- **Building Height:** Please see building plans filed herewith. Maximum allowable building heights in the RR and IL districts are 30' and 40', respectively. The residential structure will not change in its exterior configuration or height. The storage building has a very shallow roof pitch of ½" over 12" and the framing height is 9'6" (See building plans sheet A3).
- **Interior Landscaping:** The applicant proposes a row of new 3'-4' tall Arborvitae trees planted 5' on center on top of a 3'-4' berm next to the southerly, and a portion of the southeasterly, property lines, to screen the storage buildings, as well as a new vegetated channel along the easterly side. This will comply with Bylaw Section 325-18(I) requirement of such plantings being more than 5' in height.
- **Number of Parking Spaces:** Parking sufficient for the proposed multifamily dwelling (8 spaces) plus one employee of the self-storage business will be provided as noted and shown on the plan. Self-storage customers do not require dedicated parking spaces as they will park in front of their units during loading or unloading.

- END -