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Emily Mitchell

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**COMMONWEALTH OF MASSACHUSETTS
TOWN OF HARWICH PLANNING BOARD
DEFINITIVE SUBDIVISION PLAN
CERTIFICATE OF APPROVAL/ DECISION**

Case No.: PB2022-12
Applicant/ Owner: Eastward MBT, LLC, Trustee, Eastward Companies Business Trust
Barnstable Registry: Deed Book 34692 Page 11; Plan Book 604 Page 59
Property Address: Off (0) Orleans Road (Route 39); Map 63 Parcel C3
Decision Date: July 8, 2022

Findings

1. The subject property (Map 63 Parcel C3) is approximately 8.64 acres (7.08 ac+/- upland) located off the south side of Rte. 39/ Orleans Road near Little Lane and Hidden Pond Circle.
2. Applicant Eastward Companies submitted a definitive plan for approval to subdivide the property pursuant to MGL Ch. 81 s. 41S and Harwich Code Ch. 400, Article II. The subdivision would create five (5) single family residential building lots. There are also two, proposed open space lots- parcels "A" and "B." Lot access would be from a new subdivision road named "Turtle Run."
3. The Applicant previously submitted a corresponding preliminary subdivision plan (accepted by the Town Clerk 11/3/21, Case PB2021-24) and the Board rendered a written decision approving the same dated 12/3/21.
4. The property is located in the Rural Residential (RR) zoning district and the Drinking Water Resource Protection ("DWRPD" or "WRD") zoning overlay district.
5. The proposed plan is a cluster/ open space residential development (OSRD) which use is permitted 'by right' in the DWRPD subject to the requirements set out in section 325-51E of the Harwich Zoning Bylaw. No special permit is required per the Bylaw's Table of Uses/ Table 1.
6. The Applicant prepared and submitted a conventional, grid subdivision as a basis for establishing the number of proposed building lots in the OSRD during the preliminary plan proceedings. In its decision on the preliminary plan, the Planning Board determined that the OSRD was designed consistent with the relevant provisions from the Harwich Zoning Bylaw and Subdivision Rules and Regulations, and was preferable and superior in design to a conventional grid subdivision plan with regard to protection of natural features and scenic resources on the site.
7. The definitive plan application was filed and accepted by the Town on 4/19/2022, revised 4/28/22.
8. The Town's consulting Engineer, VHB, provided written reports to the Planning Board on the subdivision and stormwater design, dated May 3, 2022.
9. Town Planning staff provided a written report dated April 29, 2022.

10. Plans and documents submitted in support of OSRD definitive plan approval are as follow:
- Turtle Run Subdivision off Route 39, Harwich, MA, Stormwater Report, including drainage calculations, prepared for Eastward Homes Business Trust by Clark Engineering, LLC, dated April 6, 2022;
 - Stamped Plan Set, Subdivision East Harwich prepared for Eastward Homes Business Trust by Clark Engineering, LLC and Outermost Land Survey, Inc. dated 4/8/22 inclusive of the following sheets:
 - Cover sheet
 - "Division Plan," Sheet 1;
 - Topography Plan, Sheet 2;
 - Road Plan View, Sheet 3;
 - Plan & Profile of Road, Sheet 4;
 - Drainage & Paving Details, Sheet 5;
 - Water Main Details, Sheet 6;
 - Erosion Control Plan, Sheet 7;
 - Erosion Control Details, Sheet 8;
 - Erosion Control Detention Area Plan, Sheet 9.
11. For purposes of the Planning Board's subdivision review and decision-making, and as referred to herein, the above-referenced "Division Plan," Sheet 1 is considered the "Definitive Plan."
12. There are freshwater inland wetlands, including pond area (known as "Hidden Pond"), and corresponding buffer zones on the property that influence the proposed development.
13. The property is not located in the Pleasant Bay Watershed.
14. The property is not mapped in special flood hazard zone.
15. In February 2022, the Conservation Commission issued a positive determination confirming the accuracy of the wetlands delineation as depicted on the definitive plan. Wetland areas and their buffer zones are contained entirely in the proposed open space Parcel "A." None of the proposed building lots or the subdivision infrastructure is located within wetlands or buffer zones thereto.
16. The property is mapped in its entirety as Priority Habitat for rare and endangered species under MESA. The Applicant filed with the Commonwealth's Natural Heritage and Endangered Species Program and obtained a 'no take' letter dated 1/10/2022 requiring the Applicant to implement a construction-period turtle protection plan.
17. The proposed open space contains all the wetlands, pond area, and wetland buffer zones located on the property, as well as a portion of the existing so-called "Middle Road." The portion of Middle Road on locus is a private, variable width, approximately 8-10' 'ancient' travelled way, unimproved and approximately 1,100 sq. ft. in area; it provides access to at least one property abutting locus. The portion of Hidden Pond on locus is approximately 9,721 sq. ft. Open Space Parcel A has a total land area of 4.96 +/- acres (4.71 +/- acres not including Hidden Pond or Middle Road); Open Space Parcel B includes some proposed drainage easement areas and is approximately .52 acres in size. Even exclusive of the Hidden Pond and Middle Road areas on-site, more than 60% of the land area of the property is proposed to be set aside as permanent open space (comprised of the two open space parcels, A & B). Turtle Run has been aligned with Middle Road

- so as not to interfere with (and to facilitate) any existing rights of way and laid out with a common access point to and from Orleans Road.
18. The proposed OSRD, including the roadway, drainage facilities, open space parcels and building lots, are consistent with the applicable dimensional and design provisions of the Harwich Zoning Bylaw (Harwich Code, Chapter 325, Section 51E and Tables/ Attachments 1, 2 & 3). Of particular emphasis:
 - a. The Zoning Compliance Table on the Definitive Plan accurately represents the allowable dimensional requirements for an OSRD, as well as other relevant dimensional requirements;
 - b. The proposed open space is connected on-site, adjacent and connected to abutting open space land, allows for access and views from the building lots and roadway to the open space, provides vegetated buffers along wetlands and contains the site's most sensitive resource areas- wetlands and their buffer zones.
 19. Subject to the recommended conditions of approval set out herein, the subdivision is consistent with the applicable requirements of the Town's subdivision rules and regulations (Harwich Code Chapter 400, Article II), Board of Health recommendations for the subdivision and MGL Ch. 41 sections 81K through 81GG. In particular, the subdivision:
 - Meets administrative filing and plan preparation requirements of Harwich Code section 400-10 and Appendix 4 thereto;
 - Meets the procedural requirements of Harwich Code Section 400-11(C);
 - Meets street design standards of Harwich Code Section 400-12(A-D), and Appendix 3 (Figures 1,2 & 3) and Appendix 2 (Table 1) thereto, including but not limited to right of way width, improved road width, dead end road length and cul-de-sac standards;
 - Meets drainage standards of Harwich Code Section 400-13(A) and Appendices 1 and 2 (Tables 1 through 4) thereto.
 - No sidewalks are necessary because the proposed new road, "Turtle Run," is defined and treated as a 'Way' under Harwich Code Chapter 400, Article I and its Appendices, which is in definition designed and intended to serve 5 or fewer lots.
 - The Definitive Plan shows that Turtle Run has a center island in the cul-de-sac, which may be planted at the Applicant's option.
 - Of particular note, road length is approximately 830 LF, less than the maximum 1200 LF allowed; and there is the required centerline offset from surrounding roadways.
 - As depicted or set out in Appendix 2, Table 1 and Appendix 3, Figure 4 of Town Code Ch. 400, Article II, the subdivision will require a cleared line of sight from vegetation and other obstructions at the proposed new intersection of Turtle Run and Rte. 39.
 20. The OSRD received a Stormwater Permit under the town's Local Stormwater and Illicit Discharge Regulations from the Board of Selectmen on May 23, 2022.
 21. The subdivision obtained Board of Health approval, with conditions, by letter decision dated May 26, 2022; there are Board of Health restrictions noted on the face of the Definitive Plan. The subdivision will require a nitrogen aggregation plan and there are limitations on the total number of bedrooms in the subdivision as it is located in a Zone II.

22. A permit or approval from Town DPW will be needed to allow new road access for Turtle Run to Orleans Road, an improved public way.
23. Per the definitive plan, the water line installation will require trenching across Orleans Road and the subdivision will require connection to the municipal water system in that area. The Applicant will review and permit this work with the Town Water Department and DPW and provide details to these departments for the same prior to commencing this work.
24. The Applicant will establish a Homeowner's Association for the subdivision, and a corresponding Declaration of Protective Covenants. The Declaration of Protective Covenants will, among other things, incorporate maintenance obligations for the subdivision facilities such as the roadways and drainage infrastructure, including the terms of the stormwater operations and maintenance plan. The Declaration of Protective Covenants will also include the agreed upon language as set forth in the letter dated June 28, 2022 from Attorney Senie, on behalf of certain abutting property owners, to the Harwich Planning Board and applicant's counsel Attorney William F. Riley.
25. The Board opened and held a duly-noticed public hearing on the definitive plan approval application on May 24, 2022. The hearing was continued until June 14, 2022 and further continued to June 28, 2022. The public hearing closed on June 28, 2022.

RECORD OF VOTE/ DETERMINATION

Present, acting and voting on the matter at its hearing session on June 28, 2022 were Board members Mr. D. Berry, Chair; Mr. C. Chadwick; Mr. D. Harris; Ms. M. Maslowski; Ms. A. Tucker; and Mr. W. Stoltz ("Mullin Rule" Certification).

The Board voted unanimously (6-0) in case number PB2022-12 to grant definitive subdivision approval for the plan referenced above, with said approval subject to the following conditions:

Conditions of Approval

1. The subdivision is also subject the requirements and conditions of the Local Stormwater Permit (Harwich Local Stormwater and Illicit Discharge Regulations) in addition to those drainage requirements set out in the Harwich Subdivision Rules and Regulations (Harwich Code Chapter 400, Article II).
2. The Applicant shall permanently restrict, for open space, conservation and natural resource protection purposes, in a deed or conservation restriction donated or granted for nominal consideration, pursuant to and consistent with Harwich Zoning Bylaw Section 325-51(E)(6) and MGL Ch. 184 ss. 31-33 or MGL Ch. 40 sec. 8C, the land shown as Open Space Parcels A & B on the definitive plan, which are to be preserved primarily in their existing open and natural state. The open space grant and restriction shall be subject to and secured by the Covenant, and shall be recorded prior to any individual conveyance of a lot or lots or building thereon. It is anticipated that the Open Space parcels will be deeded to the Harwich Conservation Commission to hold for conservation purposes in perpetuity per MGL Ch. 40 sec. 8C.
3. The Applicant shall enter into a 'standard form' Covenant as performance guarantee for the subdivision work and other obligations set out herein, which Covenant shall run with the subject property, shall be held on the five lots to be served by proposed Turtle Run, and shall be executed prior to or at the time the definitive plan is endorsed by the Board.

- Pursuant to Harwich Code Chapter 400, Article II, the Board may, upon request and from time to time, substitute types of security used as a performance guarantee.
4. No individual lot or lots shall be conveyed or built upon until released from Covenant or other security.
 5. This subdivision Certificate of Approval/ Decision shall be recorded with the Barnstable County Registry of Deeds together with the approved definitive plan and covenant; recorded copies of the same shall be provided to the Town's building and planning departments prior to commencement of any subdivision work or lot construction.
 6. The Applicant shall meet the requirements of Harwich Code Section 400-11(E)-(G) for the subdivision, including the inspection and as-built plan requirements therein, prior to, as the case may be, full or partial release of the Covenant or other security.
 7. The subdivision work shall be performed and completed pursuant to and consistent with the plans and documents referenced in the application materials set out above and the specifications set out in Harwich Code Section 400-15.
 8. The definitive plan shall be revised and provided to the Board prior to endorsement to include the following:
 - a. The definitive plan shall specify thereon as an additional note that the allowed use of the building lots is for 'single family residential use' only.
 - b. The applicable flood zone shall be included on the definitive plan as an additional note.
 - c. The title "Division Plan" shall be revised to "Subdivision Plan."
 - d. Note #2 shall be revised as follows "No building lot or subdivision infrastructure is located within wetlands protection jurisdiction."
 - e. The definitive plan shall specify thereon as an additional note that all utilities within the subdivision shall be located underground.
 - f. The following additional BOH restrictions shall be noted on the face of the definitive plan:
 - i. Locus is within a Zone II;
 - ii. The Subdivision is subject to the conditions in BOH approval letter dated May 26, 2022.
 - g. Assessors parcel number noted shall be corrected to Parcel C3 (vs. C2).
 - h. The zoning compliance table shall be revised to show that the minimum required front setback in the OSRD is 15 ft. (i.e. by deleting the phrase "1/2 of..." in the 'proposed' front setback entry). Further, the front setback line shall be depicted or noted for 'panhandle' Lot 3.
 9. The minimum required front setback for the OSRD shall be 15 ft. For the proposed 'panhandle' lot, Lot 3, front setback shall be measured from a line parallel to the street line located at the rear of the 'panhandle' portion of the lot.
 10. The subdivision shall be served by and connected to municipal water service.
 11. All utilities within the subdivision shall be located underground.
 12. The Applicant shall grant or reserve for itself, its heirs, successors and assigns a drainage easement over those areas depicted on the definitive plan as 'drainage easement' as and when said Lots are conveyed. The grant or reservation and recording of the easement shall be subject to and secured by the Covenant.

13. Any cul-de-sac plantings in Turtle Run shall not interfere with safe sightlines and sight distances for vehicular traffic. If a subdivision sign is proposed, it shall not interfere with the line of sight from Turtle Run to Rte. 39.
14. No building may be located within the areas denoted as "Natural State Areas" on lots 2, 3, 4 & 5, and said natural areas shall be vegetated sufficient to visually buffer lot development from abutting properties.
 - a. In addition to the required bounds at lot corners, angle points, etc. for Lots 2 & 3, the 50' 'Natural State Area' line shall also be bound and marked.
 - b. These additional bounds shall be depicted on and added to the Definitive Plan prior to endorsement.
15. As an OSRD is a specific zoning use and requires establishment under the Harwich Zoning Bylaw by way of, among other things, definitive subdivision approval, any proposed further division or re-division of the property or portion thereof, or any lot or road reconfiguration of the land, shall require subdivision modification under Chapter 400, Article II of the Harwich Code and MGL Chapter 41 sec. 81W in order to determine and ensure consistency of the OSRD with the Harwich Zoning Bylaw.


Duncan Berry, Chair 

CERTIFICATION PAGE FOLLOWS

This Decision has been filed with the Town Clerk on JUL 08 2022

Emily Mitchell
Town Clerk

This is to certify that twenty days have elapsed after this Decision was filed in my office and no appeal from said Decision was filed in my office.

Emily Mitchell
Town Clerk
Date: AUG 24 2022