***Memorandum***

**From**: Paul Halkiotis, Planning & Community Development Director

**To**: Planning Board

**RE**: Case PB 2023-12 – Oliver Homes – Alternate Access Special Permit

**Date**: April 5, 2023

**Applicant**: Oliver Homes LLC.

**Land Owners**: George & Karen Oliver

**Applicant’s Representative**: Kent Drushella

**Land Owners Address:** 25 N Prospect Ave. Unit # 2805, Milwaukee WI & 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:** Alternate Access

**Lot Area:** 1.18 acres

**Project Description:** The property owners have applied for an Alternate Access Special Permit in connection with their Special Permit application for a second dwelling at 86 Miles St, case # 2023-04. The requested alternate access is from Grassy Pond Rd.

**Applicable Laws & Regulations:** The application is for an Alternate Access Special Permit pursuant to the Code of the Town of Harwich section 325-18.K.

**Project Review Process**

On 3/7/23 the applicant’s representative submitted the Special Permit application for an Alternate Access with the following documents:

1. Application Form A and Narrative;
2. Site Plan for Oliver Homes by East-Southeast, LLC dated 2/1/23, revised with parking spaces on 3/3/23;
3. Photos (2);
4. Abutters Application;
5. Fee

The public hearing notice was advertised in the Cape Cod Chronicle on March 23 and March 30, 2023. Copies of the application package were sent to the following Departments inviting them to comment on the project: Health, Water, Fire, Conservation, Public Works, and Police Departments.

On 4/3/23, the Planning Board received letters from Ms. Kathleen Hagan, Ms. Pam O’Neill for Allan Whitty and from Thomas and Mary Ann Simpson in opposition to the project.

**Hearing Date**: The Special Permit public hearing is scheduled for 4/11/22.

**Planning Director’s Comments:**

1. The applicant is seeking an Alternate Access Special Permit in accordance with the requirements of the Zoning Bylaw section 325-18.K. This section of the Bylaw requires the Planning Board to make a series of findings listed below:

*“*[*K.*](https://ecode360.com/12263220#12263220)*A lot with the required legal frontage must take access along the required legal frontage. No alternate access may be granted from other streets, roads, or ways, nor should access be taken from an easement across an adjacent property without the issuance of a Special Permit from the Planning Board. In issuing a Special Permit, the Planning Board shall make the following findings:*

[*(1)*](https://ecode360.com/12263221#12263221)*The alternate access proposed is superior to the access along the frontage;*

[*(2)*](https://ecode360.com/12263222#12263222)*The proposed alternate access is cleared to a minimum of 16 feet in width and 16 feet in height; and*

[*(3)*](https://ecode360.com/12263223#12263223)*When access is proposed from an easement across another lot, the lot providing the easement will have the required legal frontage for the zoning district.”*

1. In February 2022 the applicant’s representative, Kent Drushella, applied for and received a Curb Cut Permit from the Department of Public Works. Mr. Drushella told me that he had requested the Curb Cut permit to make it easier to construct a pool in the back yard. He apparently told the DPW the same thing when he applied for the permit. The pool construction has been completed. The Highway Superintendent and DPW Director were not aware of the provision in the Zoning Bylaw that required a Special Permit for Alternate Access. A copy of the Curb cut permit is attached.
2. It appears that there is enough space to build a driveway connection from Miles St. to the proposed second home or build a connection between the existing driveway leading to the second home. A driveway from Miles St. would cross over the proposed leaching field for the second home, which could require more heavy duty structures to accommodate the additional load.
3. The existing curb cut on Grassy Pond already complies with the 16’ X 16’ clearance requirement, therefore finding # 2 above is not applicable.
4. The Alternate Access from Grassy Pond Rd. is not over an easement. The Right of Way on Grassy Pond Rd. touches side lot line at the rear of the lot, therefore finding # 3 above is not applicable.
5. In consideration of 4 and 5 above, the Board should focus on finding # 1 that requires the Board to decide that the alternate access proposed is superior to the access along the frontage.
6. The proposed alternate access driveway off of Grassy Pond Rd. leads to a proposed attached garage. If the alternate access is not granted, the location of the attached garage may need to be changed.
7. Several residents of Grassy Pond Rd. have indicated opposition to the Alternate Access Special Permit.
8. Since this Special Permit application is in connection with the Special Permit request for a second dwelling at 86 Miles St., the Board should consider the second dwelling application first. If the second dwelling is approved, then the Board should determine whether the access for the second dwelling on Grassy Pond Rd. is superior than accessing the second dwelling from Miles St.