

## Maren Toohill

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**From:** Maren Toohill  
**Sent:** Wednesday, May 27, 2020 1:05 PM  
**To:** Ed Mullen; Mark Gallagher; Mark Gallagher  
**Cc:** Mark Bobrowski; Joseph Laydon  
**Subject:** RE: Healey Corner/ Glavey

Thank you for forwarding Mr. Gallagher's comments. They will be added to the public record for the Healy Corner applications.

Maren

Maren A. Toohill, AICP  
Town Planner  
978/540-2425  
[MToohill@littletonma.org](mailto:MToohill@littletonma.org)  
Town of Littleton



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**From:** Ed Mullen  
**Sent:** Wednesday, May 27, 2020 12:58 PM  
**To:** Mark Gallagher <[mgallagher@seal-harbor.com](mailto:mgallagher@seal-harbor.com)>; Mark Gallagher <[mgsealharbor@gmail.com](mailto:mgsealharbor@gmail.com)>  
**Cc:** Mark Bobrowski <[mark@bbhllaw.net](mailto:mark@bbhllaw.net)>; Joseph Laydon <[jlaydon@littletonma.org](mailto:jlaydon@littletonma.org)>; Maren Toohill <[MToohill@littletonma.org](mailto:MToohill@littletonma.org)>  
**Subject:** RE: Healey Corner/ Glavey

Dear Mr. Gallagher

Thank you for your email. Your comments are properly directed to the Planning Board, which is responsible for reviewing and endorsing plans showing reduced frontage lots under Section 173-28 of the Zoning Bylaw. I have forwarded your email to the Planning Board. No further response from this office will be forthcoming.

Thank you

Ed Mullen  
Town of Littleton  
Building Commissioner/  
Zoning Enforcement Officer

978-540-2420

[emullen@littletonma.org](mailto:emullen@littletonma.org)

**From:** Mark Gallagher [<mailto:mgallagher@seal-harbor.com>]

**Sent:** Monday, May 25, 2020 8:13 PM

**To:** Ed Mullen <[emullen@littletonma.org](mailto:emullen@littletonma.org)>; Michelle Cobleigh <[mcobleigh@littletonma.org](mailto:mcobleigh@littletonma.org)>; Mark Gallagher <[mgsealharbor@gmail.com](mailto:mgsealharbor@gmail.com)>

**Cc:** Mark Bobrowski <[mark@bbhllaw.net](mailto:mark@bbhllaw.net)>; Joseph Laydon <[jlaydon@littletonma.org](mailto:jlaydon@littletonma.org)>

**Subject:** Re: Healey Corner/ Glavey

Mr Mullen; Please accept this e mail as a request for a zoning opinion as outlined below. Please refer to the following plan which the Town has received from the Applicant Paul Glavey for Healey Corner Sub-division and Open Space Special Permit;

Here is the link for the plan I am referencing;

[https://www.littletonma.org/sites/littletonma/files/uploads/skc-100\\_rev3\\_20200511.pdf](https://www.littletonma.org/sites/littletonma/files/uploads/skc-100_rev3_20200511.pdf)

History;

As you may be aware, the Applicant Paul Glavey as Trustee for Family Trust has been seeking sub division approval and a special permit for an open space plan from the town of Littleton since November of 2018. The most recent plan I have referenced above is a revision of the original plan(s) submitted over this lengthy approval process to address the many shortfalls which have been identified at each of the public hearings. The Applicant is attempting to solidify their density for the property that is being developed. You will re-call we have had a few correspondences over the past few weeks concerning access to the property for two of the lots shown on the prior density yield plan.

The current changes attempt to move the driveway which would serve, in theory, Lots numbered #13 and #14 on the plan. The frontage along the existing town road is more than 185' in length. The Applicant proposes two lots (ANR) on the plan; the first, lot #13, would have the minimum lot frontage of 150' and the second, lot #14, would be a reduced frontage lot having 35' along the existing town road. You may re-call that during your tenure on the Planning Board, there were originally three lots proposed in this area however we pointed out through the development process that the Applicant had overstated the actual frontage on the Town's road which precluded them from having the required frontage for three lots.

Today and for at least the past 20 years there has been an existing "easement" across a portion of the lot frontage above, which services the home of the Oborski's property. The easement was provided by Mr Glavey Sr when he sold the home to the Oborski's and found that the driveway he installed for this lot was not solely on the developed lot. The applicant has claimed through oral testimony that the easement is not "exclusive" in nature and would not preclude the use of this area for frontage to create lot # 14.

Without arguing the merits of the easement language, the fact is , there is a driveway (existing) on the property which the applicant proposes to develop.

### **Town Code;**

Town of Littleton Code section 173. Zoning. 173-28 Street frontage exception;

Lots having less than normally required lot frontage may be created and built upon for residential use, provided that such lots are shown on a plan endorsed by the planning Board "Approved for Reduced lot Frontage."

Plans shall be so endorsed if meeting each of the following, but not otherwise: (Please note there are 7 requirements A-G listed in the code) I am focusing on B below;

### **B. Egress over that frontage shall create no greater hazard owing to grade and visibility limitations than would be normal for a standard lot in the same area.**

### **Discussion;**

I believe we would both agree that the lot shown on the plan and in subsequent plans shows a frontage of 35' (proposed) which would meet the frontage exception requirement of Chapter 173-28. Since my last round of letters, what has changed is the new proposed driveway is now uphill from the previous location. In its new location, the existing topography would limit and or restrict or remove any site distance out of the proposed driveway and create a "greater hazard owing to grade and visibility limitations" in my team's opinion.

In order to meet the requirements for endorsement under (B);

### **Egress over that frontage shall create no greater hazard owing to grade and visibility limitations than would be normal for a standard lot in the same area.**

Unfortunately based upon the existing conditions it would be next to impossible if not impossible to meet this requirement for the following reasons;

2. The down hill side of the proposed driveway would have limited to no visibility due the slope rising an additional 5-7 feet from the driveway plane. This would create a greater hazard than a standard lot within this area and have significant visibility limitations. Any changes in grading would require additional permitting from the conservation committee.

3. Once you move past the impediment above, the area surrounding the driveway is heavily wooded with mature plants and trees. Removal of any of the tree's along scenic roadway would require a special permit including a public hearing and public input. Many of the trees that would need to be removed are not on the subject's property and would diminish or eliminate any viable site distance to exit the property. Poor placement of the proposed driveway would limit or provide no visibility due to the street elevations in the location of the proposed driveway. Further uphill gradient problems in relation to the existing road would further limit site distances. On the down hill side of the proposed driveway, there are extensive wetlands which would preclude clearing the vegetation to enhance your site distance making the driveway location unsafe to the traveling public.

These limitations above all speak to the "than would be normal for a standard lot in the same area". My lot or any of the other lots the Glavey Family have developed in the past 20 years along Harwood were all "standard lots in the same area" and do not share any of the above limitations which would preclude the lot (s) in question from meeting the requirements of Chapter 173-28 (B) in my opinion.

I believe the Author of chapter 173-28 thought through all of the ramifications and listed (7) litmus tests/requirements for the applicant to meet prior to the Planning Board accepting and approving a reduced frontage lot plan for signature. If one requirement is to prove the viability of a proposed lot, the requirement would be found in section (B) "Egress over that frontage shall create no greater hazard owing to grade and visibility limitations than would be normal for a standard lot in the same area." Clearly, the author was concerned and had the foresight to envision a lot which had impediments including wetlands, topography and visibility challenges that would preclude the applicant from meeting this requirement. Lot 14 specifically is an example of this failure to meet the requirement under this chapter.

My request for an opinion is as follows;

Does the location and placement of the driveway proposed on the referenced plan meet all of the requirements of Chapter 173-28?

**Secondly and as important;**

I would like to bring your attention to Chapter 173-25 Shared Driveways;

From the referenced plan, the Applicant is proposing to "add" an additional driveway to their frontage along the existing Town road to service the proposed lot's #13 and #14. As I mentioned previously in this writing, there is an existing driveway which exists on the frontage which serves an adjacent lot owned by the Oborski family. The applicant proposes the addition of a driveway adjacent to the existing driveway, within the 35' frontage, which will service the two additional proposed lots in addition to the existing driveway. In total, the applicant proposes 2 driveways within the 35' frontage to the proposed lot # 14 to service (3) homes. I believe this "addition" would require a "special permit" under Chapter 135 (below) and create a "shared driveway" under Chapter 173-25. Clearly the intent of the applicant plan is to work around the zoning bylaw as it relates to driveways.

Chapter 135;

A.

No driveway which serves three or more residential building lots of any type, may lie on a corridor of land or land area having a width of less than 35 feet.

B.

This article shall apply only to **driveways** constructed after May 3, 1993 and to lawfully existing **driveways** changed after that date to connect with or serve one or more additional lots.

C.

It is the intent to permit adjoining lots to share a driveway, the shared part of which is subject to precautions to ensure that the driveway will be maintained and remain useful for both ordinary and emergency access under all weather conditions, and to ensure that a driveway will not be used as a substitute for a street or as a substitute for mandatory access frontage. After May 3, 1993, a driveway may be constructed or extended to serve more than two lots only in accordance with a special permit authorized by the Planning Board, subject to all applicable provisions of this Bylaw.

Clearly the addition of the new driveway within the 35' entrance to the new lots is an attempt to "as a substitute for mandatory access frontage." and the applicant should not be allowed to "skirt" the zoning ordinance and the proposal should require the applicant to apply for a special permit under this bylaw.

My request for an opinion on Chapter 135 is as follows;

Does the addition of a 2nd driveway on the same lot servicing two additional homes force the applicant to comply with Chapter 135 as a shared driveway?

Chapter 249-32 "Definitive Plan" (b) (IX) (e) ;

Chapter 249-32 as listed above require applicants to; "Maximize distances between proposed drive and the **driveways** to adjacent properties"

I believe the addition of a driveway within the existing recorded easement and within the 35' frontage of the proposed lot violates this provision of the sub division rules.

My request for an opinion on Chapter 249-32 is as follows;

Does the plan provided by the applicant meet the requirements of Chapter 249-32 by adding an additional driveway adjacent to one and other within the 35' access strip for these lots?

Thank you in advance for your time.

Mark M Gallagher

307 Hardwood Road

On Fri, May 15, 2020 at 10:39 AM Ed Mullen <[emullen@littletonma.org](mailto:emullen@littletonma.org)> wrote:

## Good Morning Mark

*I am requesting more time to consult with Town Council, sorry for the delay. With all that is going on in the world please understand the demands on our council and my department are significant.*

*Thank you,*

Ed Mullen

Town of Littleton

Building Commissioner/

Zoning Enforcement Officer

978-540-2420

[emullen@littletonma.org](mailto:emullen@littletonma.org)

**From:** Mark Gallagher [mailto:[mgallagher@seal-harbor.com](mailto:mgallagher@seal-harbor.com)]

**Sent:** Tuesday, May 12, 2020 4:51 PM

**To:** Ed Mullen <[emullen@littletonma.org](mailto:emullen@littletonma.org)>

**Cc:** Mark Bobrowski <[mark@bbhllaw.net](mailto:mark@bbhllaw.net)>; Joseph Laydon <[jlaydon@littletonma.org](mailto:jlaydon@littletonma.org)>

**Subject:** Re: Healey Corner/ Glavey

Ed Thanks for your reply. You deserve time away from the office. I am happy to discuss with you personally if you would like. Just not sure of the protocol with the current restrictions.

Thanks again

Mark M Gallagher

Manager

Seal Harbor LLC

On Tue, May 12, 2020 at 3:34 PM Ed Mullen <[emullen@littletonma.org](mailto:emullen@littletonma.org)> wrote:

*Good Afternoon Mr. Gallagher*

*I am in receipt of your email. Today was a scheduled day off but wanted to confirm receipt.*

*Kind Regards*

Ed Mullen

Town of Littleton

Building Commissioner/

Zoning Enforcement Officer

978-540-2420

[emullen@littletonma.org](mailto:emullen@littletonma.org)

**From:** Mark Gallagher [mailto:[mgallagher@seal-harbor.com](mailto:mgallagher@seal-harbor.com)]  
**Sent:** Tuesday, May 12, 2020 1:34 PM  
**To:** Michelle Cobleigh <[mcobleigh@littletonma.org](mailto:mcobleigh@littletonma.org)>; Mark Bobrowski <[mark@bbhlaw.net](mailto:mark@bbhlaw.net)>; Mark Gallagher <[mgsealharbor@gmail.com](mailto:mgsealharbor@gmail.com)>  
**Cc:** Ed Mullen <[emullen@littletonma.org](mailto:emullen@littletonma.org)>; Joseph Laydon <[jlaydon@littletonma.org](mailto:jlaydon@littletonma.org)>  
**Subject:** Re: Healey Corner/ Glavey

Good Morning Ed; I hope you are doing well in these difficult times and you and your staff are staying healthy. We met at one of the initial Planning Board Meetings before you recused yourself from the Board on the Healey Corner Proposal. I am not sure if your conflict which caused you to recuse yourself has been remedied and no longer exists? For the purpose of this letter I am going to assume it has been resolved. If I am wrong, could you please direct this letter to the correct recipient.

As you know from the initial meetings we both attended; The neighbors and I have been in opposition to the Glavey Family's plan since the inception of the public hearings for final approval which started last September. Doug Peake is one of the neighbors, he asked your office for an opinion relative to Chapter 173 on one of the proposed lot's shown on the original preliminary subdivision plan the Planning Board considered and participated in during fall of 2018. For reference the lot initially appeared on a plan presented by the applicant dated October 26th 2018 (initially). In subsequent plans over the past 18 months the lot numbering has changed, the frontage has changed (diminished) an easement has been located on the plan which was initially missing and the number of lots being requested has changed (lowered from 3 lots to 2 lots due to insufficient frontage) but the existing conditions in the field have not changed.

I have read the letter from Michelle on the opinion Doug requested as well as your opinion which superseded Michelle's opinion. I believe your opinion may not be correct, but before I adopt that opinion, I have a few questions which may help understand your position. For reference I have copied a portion of your letter date May 7th 2020;

**Town of Littleton Code section 173. Zoning. 173-28 Street frontage exception;**

Lots having less than normally required lot frontage may be created and built upon for residential use, provided that such lots are shown on a plan endorsed by the planning Board "Approved for Reduced lot Frontage."

Plans shall be so endorsed if meeting each of the following, but not otherwise: (Please note there are 7 requirements (A-G listed in the code however only (B) is listed in your letter)

**B. Egress over that frontage shall create no greater hazard owing to grade and visibility limitations than would be normal for a standard lot in the same area.**

**Your conclusion;**

**Please let me clarify, The applicant merely need's to demonstrate that access to the lot frontage within the 35' from the main road is possible. It is the official opinion of this office and as the Building Commissioner and Zoning Enforcement Officer that the applicant meets the requirement of 173-28 B.**

## **Discussion;**

I believe we would both agree that the lot shown on the plan and in subsequent plans shows a frontage of 35' (proposed) which would meet the frontage exception requirement of Chapter 173-28.

In order to meet the requirements for endorsement under (B);

**Egress over that frontage shall create no greater hazard owing to grade and visibility limitations than would be normal for a standard lot in the same area.**

Unfortunately based upon the existing conditions it would be next to impossible if not impossible to meet this requirement for the following reasons;

1. The entrance to the lot could not occur over the frontage shown on the plan because the slope of the property. Based upon the topographical information provided the slope greater than a 1/1 slope. Based upon rough measurements the slope appears to be a 1/4 slope (See 80 scale plan dated 5-30-2019 in planning board packet) which would require a significant amount of fill and walls to create a plane for the driveway to rest upon in order to create a safe entrance and exit from the property. (Egress)
2. The proposed driveway on the uphill side of the property would have limited to no visibility due the slope rising an additional 8-10 feet uphill from the driveway plane. This would create a greater hazard than a standard lot within this area and have significant visibility limitations.
3. The proposed driveway on the down hill gradient would require extensive walls (within the wetland and the 50' buffer) and tree's removed on town land to create a limited site distance. This would create greater visibility limitations than a standard lot.
4. There is a significant portion of the proposed driveway within the 35' frontage which is in the wetland rendering it inaccessible. This would create significant visibility limitations.

5. The entire width of the "frontage and "neck" of the proposed lot is within the wetland and the 50' no disturb buffer. Once you move to exit the property, because of the placement of the proposed driveway, you would have limited or no visibility due to the street elevations and location of the driveway in relation to the existing road.

These five limitations above all speak to the "than would be normal for a standard lot in the same area" My lot or any of the other lot's the Glavey Family have developed in the past 20 years along Harwood were all "standard lots in the same area" and do not share any of the above limitations which would preclude the lot (s) in question from meeting the requirements of Chapter 173-28 (B) in my opinion.

This is further bolstered by the Memorandum to the Planning Board dated May 5th 2020 by Amy Green. In this memo she speaks to the viability of an application for special permits required on the development of this lot and the adjacent lot and the low probability of the applicant to meet the permitting requirements to develop these lot (s)

**In your conclusion your opinion is as follows;**

**Please let me clarify, The applicant merely need's to demonstrate that access to the lot frontage within the 35' from the main road is possible. It is the official opinion of this office and as the Building Commissioner and Zoning Enforcement Officer that the applicant meets the requirement of 173-28 B.**

I believe if the Author of chapter 173-28 thought through all of the ramifications and listed (7) litmus tests/requirements if the Planning Board was going to accept a reduced frontage lot plan for signature. If one requirement was going to be to prove "The applicant merely need's to demonstrate that access to the lot frontage within the 35' from the main road is possible" than they would have written the chapter with this language and requirement in place of the sentence "Egress over that frontage shall create no greater hazard owing to grade and visibility limitations than would be normal for a standard lot in the same area." Clearly the author was concerned and envisioned a lot which would have impediments including wetlands, topography and visibility challenges which would preclude the applicant from meeting the "no greater hazard owing to grade and visibility limitations" in the future.

I know as the Chief Zoning Officer there is a great number of requests for clarity which arrive on your desk and in the vacuum of time every word of a chapter may be blended together during any given day. My concern in writing this e mail is you did you know about all of the discussions,

memorandums and information available since your departure from the Planning Board including the plans and updated information I am providing you herein. I would look forward to having a discussion with you to understand if your opinion would or will change based upon the additional information and argument I am presenting to you. I fully understand if you do not agree with my interpretation of Chapter 173-28 as it relates to this specific proposed sub division however your opinion impacts how the Planning Board would interpret 173-28 in future applications including Healey Corner.

Thanks in advance for your time. I look forward to your response.

Mark M Gallagher

307 Hardwood Ave

Littleton Mass 01460

On Mon, May 11, 2020 at 1:01 PM Michelle Cobleigh <[mcobleigh@littletonma.org](mailto:mcobleigh@littletonma.org)> wrote:

Mark,

Joe Laydon is the Assistant Town Administrator

Here is the line for the zoning application

[https://www.littletonma.org/sites/littletonma/files/uploads/zoning\\_application\\_2019\\_1.pdf](https://www.littletonma.org/sites/littletonma/files/uploads/zoning_application_2019_1.pdf)

Michelle

**From:** Mark Gallagher [mailto:[mgallagher@seal-harbor.com](mailto:mgallagher@seal-harbor.com)]

**Sent:** Monday, May 11, 2020 12:55 PM

**To:** Michelle Cobleigh <[mcobleigh@littletonma.org](mailto:mcobleigh@littletonma.org)>

**Cc:** Ed Mullen <[emullen@littletonma.org](mailto:emullen@littletonma.org)>; Joseph Laydon <[jlaydon@littletonma.org](mailto:jlaydon@littletonma.org)>  
**Subject:** Re: Healey Corner/ Glavey

Thanks. I will reply tonight. Would I find the paperwork for the appeal online? Also before I respond who is Joseph Laydon?

Thanks

Mark M Gallagher

Manager

Seal Harbor LLC

On Mon, May 11, 2020 at 11:58 AM Michelle Cobleigh <[mcobleigh@littletonma.org](mailto:mcobleigh@littletonma.org)> wrote:

Hello Mark,

In response to your email below, I offer the following:

My email to Mr. Peeke was a response to a question about a sketch provided and interpretation of Section 173-28B in relation to that sketch, it was not an interpretation of a subdivision plan.

I have added Ed Mullen to this email string. The letter he sent to Mr. Peeke is attached. Please contact him directly regarding the zoning opinion he issued.

Pursuant to Mass. General Laws Chapter 40A, Section 8 and 15, an appeal would be filed to the Littleton Board of Appeals provided such appeal is taken within 30 days from the receipt of the order.

Michelle

**From:** Mark Gallagher [mailto:[mgallagher@seal-harbor.com](mailto:mgallagher@seal-harbor.com)]  
**Sent:** Friday, May 8, 2020 8:35 AM

**To:** Michelle Cobleigh <[mcobleigh@littletonma.org](mailto:mcobleigh@littletonma.org)>; Mark Gallagher <[mgsealharbor@gmail.com](mailto:mgsealharbor@gmail.com)>  
**Subject:** Healey Corner/ Glavey

Good Morning; I hope this finds you safe and healthy during these difficult times. I understand there is a couple of opinions provided by your office this past week on a zoning question for Healey Corner/ Glavey land. Could I get copies of the two opinions and also Ed's e mail address? Lastly can you explain the policy on on appealing a opinion from your offices and what paperwork I need to file? Or who I would work with on that process.

I thought Ed was conflicted out of the decision making on Healey Corner? I must have been wrong.

Thanks and stay healthy!

Mark M Gallagher

Manager

Seal Harbor LLC