

Harvard Planning Board
Meeting Minutes
February 5, 2007
APPROVED: February 26, 2007

Chairman Mary Essary called the meeting to order at 7:48pm in the Town Hall Meeting Room.

Members Present: Mary Essary, Kara Minar, Joseph Sudol and Peter Brooks (Associate Member)

Others Present: Bonnie Chandler (Harvard Post), Valerie Hurley (Harvard Press), Mark Lanza, Karen Zaikis (Historical Society), Wade Holtzman (Historical Society), Elaine Lazarus, Eric Broadbent, John Sweeney, Jack Purdy (Historical Society), Paul Donovan (Historical Society), Ed Plante, Robert Marhefka and Bruce Ringwall (GPR, Inc.). The meeting was covered by the cable committee, and will be rebroadcast.

Minutes

Sudol made a motion to accept the minutes of January 8, 2007 as amended. McGuire Minar seconded the motion. The vote was unanimously in favor of the motion.

Sudol made a motion to accept the minutes of 22, as amended. McGuire Minar seconded the motion. The vote was unanimously in favor of the motion.

ANR Approval – Maka Stow Road (Map 38 Parcel 12)

As the Applicant was not represented the Board continued the approval to the February 12th meeting; this is within the timeframe from the file date.

Bylaw Hearings

At 8:05, the Board opened the hearings on the proposed modifications to the bylaws.

Preliminary Plan Presentation – Robert Marhefka, Old Mill/Ayer Road

Bruce Ringwall, of GPR, Inc., was before the Board to present a preliminary plan for the corner of Ayer Road and Old Mill Road. Ringwall explained the site contains a little over eleven (11) acres and has been designed using Chapter 125-13Z of the Protective Bylaw, Mixed-use village development. The design calls for commercial building and an assisted living complex with additional commercial use within the common areas of the complex. Ringwall explained the Ayer Road Village, Chapter 125-52 requires three-hundred (300) feet of frontage on Ayer Road, which is not available on this site. Ringwall further explained the site could contain two sites, one for the commercial portion and one for the residential portion. Testing has been done to obtain a National Pollutant Discharge Elimination System (NPDES), which would be required with the assisted living. The residential portion as proposed would have ninety-two (92) units, each one having a living space, bedroom, a kitchenette and a full bath.

Brooks asked what the proposed square footage of the commercial portion would be. Ringwall stated eight thousand (8,000) square feet, which would be shy of the 30% required. Ringwall stated they are working on filling that gap by either getting a variance or revising the plan. Essary requested a narrative be submitted for the Boards review.

The wetland line is shown on the plan; A Notice of Resource Area Delineation (ANRAD) was done in 2000 or 2001 but has since expired and will need to be re-filed with the Conservation Commission. The well would be down next to the wetlands within the buffer zone. Septic is located on the southern portion of the property.

Essary asked what kind of commercial use is proposed. Ringwall stated business on the upper level with retail on the lower level. McGuire Minar asked if any traffic light were considered on Ayer Road. Ringwall explained access would be on Old Mill Road and did not believe there would be a large increase in traffic because of the nature of the residential complex. Sudol asked where the commercial zone is within the site. Ringwall stated from Ayer Road to the boundaries of Bowers Brook.

Ringwall was asked if the project would be filed as a Chapter 40B, affordable Housing. Ringwall stated it is not the plan; however they will need to see how an assisted living facility falls under affordable housing.

Ringwall explained they viewed the requirement of the buildings not be greater than thirty thousand square feet (30,000) in 125-52F (2) (b) would be met since each section of the residential complex would have a fire wall separating the buildings.

Sudol asked if they took a look at residential units rather than assisted living. Ringwall explained they feel that this is the use that is needed within town. Ringwall added they did not want to design garden style units. Brooks added from a tax prospective this plan is very nice.

Ringwall stated if the site is looked at as one lot then they could increase the commercial area because it would share the septic system with the residential portion of the site. Ringwall questioned 125-30B, Floor area ratio, as to whether it is an additional 10% added to the provision within the Ayer road use. Essary requested that Ringwall send the Board a list of bylaw questions when the narrative is sent.

McGuire Minar asked if there are any additional lighting requirements for this type of facility. Ringwall does not think anything above the general requirements would be required. Essary asked about the uniform size of the units; her experience was that assisted living complexes usually offered a variety of apartments, suitable for the amount of independence of the occupant. McGuire Minar asked about price for the units. Ringwall felt this is getting ahead of the game.

An additional concern of Ringwall is the one hundred and twenty five (125) foot setback from the center line of the road. This will not met on Old Mill Road, they would be looking for a reduction to that set back. Brooks suggested reducing the size of the building. Ringwall stated that is an option, but then you have to look at the feasibility of the project. Ringwall added well siting will drive the location of the driveway.

The Chair summarized that the proposal looks as if it could be supported, but needed to see summary of details in writing before drawing any preliminary conclusions. Additional information and a plan will be submitted to the Board for further review.

Adjournment

McGuire Minar made a motion at 9:59pm to adjourn the meeting. Sudol seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____

Kara McGuire Minar, Clerk

Harvard Planning Board

Continuation of the Proposed Amendments to the Protective Bylaw Meeting Minutes

February 5, 2007

The public hearing was opened at 8:05pm by Chair Mary Essary in the Town Hall Meeting Room.

Members Present: Mary Essary, Kara Minar, Joseph Sudol and Peter Brooks (Associate Member)

Others Present: Bonnie Chandler (Harvard Post), Valerie Hurley (Harvard Press), Mark Lanza, Karen Zaikis (Historical Society), Wade Holtzman (Historical Society), Elaine Lazarus, Eric Broadbent, John Sweeney, Jack Purdy (Historical Society), Paul Donovan (Historical Society), Ed Plante, Robert Marhefka and Bruce Ringwall (GPR, Inc.)

Wind Tower Proposal

Essary explained to the general public present that the Board was starting the discussion process to determine how residences within town feel about allowing wind towers as an accessory (non-commercial) use. John Sweeney presented a power point presentation. Sweeney explained the technology changed has over the years to include small wind turbines sized for households. Those changes include skinny towers and blades that are designed not be so intrusive. The turbine blades have made improvements for efficiency and noise. A tax credit is available.

Brooks asked what the life span of a tower is. Sweeney stated ten (10) years. McGuire Minar asked what the base size is. Sweeney stated there is a four-foot base with guide wires. Sweeney stated indications are here in Harvard you want to get these up higher than thirty (30) feet. The height would vary from one place to another. Sweeney added you want to get two times above any obstructions. Some places may work, where as others may not. As for the noise, a good design generally makes about the same amount of noise as the wind.

Sweeney recommends the Town discuss updating the bylaw to allow residential wind energy systems. He would advise against commercial use of these systems and limit the tower height to 100 – 120 feet. Additional Sweeney recommends a special permit process to allow oversight from the Planning Board. Brooks added there should be a provision that allows for one tower per property. McGuire Minar noted that the setback for cell towers is several times the height, and these limits would need to apply to the wind towers.

Essary commented that there are actually two set-backs for cell towers: one is the fall zone equal to the tower's height, and one is the setback from existing residences, which is there to protect the property values of abutters. She added that you are unable to build within the fall down area, but new structures can be built within the wider set-back, as the tower already exists and has already had whatever impact it would on property value. These setbacks are for commercial towers; there are no similar setbacks for ham radio towers, which would be an accessory use. McGuire Minar asked about light requirements for aircraft on the towers. Sweeney stated they are not required. Brooks asked what the building code requirements were. Sudol stated there are design requirements for the tower, the footing and the base.

Essary noted that this is an informal discussion for the purpose of collecting information and not to cover the details. The objective is to determine if there is a reason to put a committee together to follow through with this subject matter. Sweeney offered additional information from the town of Harwich, which has a bylaw that allows accessory wind tower, and stated that he understood that several other towns were looking at this as well. Princeton and Hull both have wind turbines that supply energy to the town, but these towns have municipal power, and can build such systems for their own benefit.

Essary asked if members of the public had any questions. Jack Purdy asked what the typical voltage of these towers. Sweeney stated they put out 220 volts. Purdy had a concern of line loss in the transmission. Sweeney explained that line losses are a factor for DC; they are minimal for AC, which is one reason why AC was adopted as a standard (I know that from going to the Museum of Science, and watching a show about the Tesla/Edison debate – strange how these little pieces of information come in handy!) volts. McGuire Minar asked if there is any way to meter back any unused energy that could be re-circulated back into the system within Harvard. She was informed no it would just go back into the grid; under current net-metering laws, there is no compensation for excess energy generated.

Sweeney is willing to present this at town meeting or anything else that would need to be done to move this along.

Chapter 125-31B (1)

Essary stated the text for this change can be reviewed at town hall and she would like to postpone discussion to the official hearing on February 12th.

Museum Bylaw

Essary stated one of the important questions that was raised in a previous hearing with regard to this bylaw is how would this apply to other museums within town. Essary followed up with the Historical Society, and found that they are a private museum, operating under a 501c3; they are not on town-owned land, and so they would fall under this bylaw. Jack Purdy, a member of the Harvard Historical Society, is wondering if section G was there to exempt the Society as well. Lanza stated the way it was originally worded it was written to exempt town owned museums; this was clarified at the ZBA hearings by testimony from the original crafter of the bylaw. Purdy stated at the moment the Historical Society does not fall under the bylaw which leaves us in limbo. It was requested the word “Harvard Historical Society” be added to the last line. Essary does not think we can do that, because it would be considered spot zoning. Lanza stated there are certain specific grandfathering clauses that could be added.

Essary explained the problem that arose during the Zoning Board of Appeals (ZBA) hearings with Fruitlands is museums are not specifically mentioned under the bylaw leaving everyone in limbo. Karen Zaikis, a member of the Historical Society, stated that the Historical Society does not meet the lot requirements. Zaikis asked if the Society would have to be excluded by date because we have not always been within the current building, and did not want to preclude a move in the future, if that was necessary.

McGuire Minar quoted a decision from the Mass Supreme Judicial Court (Wilkins, J.; 1987) ruling for the Gardner-Athol Mental Health Association overturned a ZBA ruling, stating that the “statute that prohibits zoning ordinances that bar use of land for educational purposes by non-profit educational corporation, did not require education to be dominant purpose or primary activity of nonprofit corporation. . .” MGLc40A§

Based on this, is the Historical Society as well as other museums automatically exempt? Purdy doubts the Society was created as a museum. Lanza stated the issue is not whether or not it is educational. McGuire asked if it is an educational use under the Zoning Act. Lanza stated right now a museum in the town of Harvard is not provided in the institutional use section of the protective bylaw. Lanza added if this bylaw is accepted the, Harvard Historical Society (HHS) will not be any worse off than it is now. McGuire Minar stated the HHS thinks of itself as a museum. Purdy added what else would it (HHS) be?

McGuire Minar stated it is excluding it by the set backs and other land requirements. It also limits other museums from coming to town. Lanza stated it is narrowly written to allow what is there now for Fruitlands. Lanza added this imposes some limits t within town that a museum could be located by specifying land requirements.

Essary stated the definition of museum has no issues with anyone. Lanza stated in section H of the proposed bylaw, if the frontage was reduced from 200 to 180 feet then the HHS would be allowed as a right. Additionally the HHS could not meet the alcohol beverage provision because it does not have the 100 seat requirement. McGuire Minar asked if it were to have a restaurant, would it have to show the restaurant was an accessory to the educational use.

Brooks thought the ZBA had already been thru this whole issue. McGuire Minar thinks we should not have a bylaw that is tailored to a specific site within the town. Brooks thinks this intentionally narrow to not allow museums all over town.

Purdy stated reducing the frontage requirements would not work for the HHS. The structures on abutting properties are closer than 500 feet and there is seating for about 103. Lanza explained the seating issue only applies if there is going to be a restaurant, as does the alcohol beverage provision. Essary believes maybe this should be broken up into separate sentences so that it is easier to understand. Lanza agrees and stated which way it could be divided. Purdy stated the Police Chief tells him the HHS could serve wine if another individual brings it in. Essary mentioned that one facility that she spoke with said that they would get a victualler license for one day. Lanza stated the Board of Selectmen (BOS) does not allow one day licenses. Lanza added this has nothing to do with the Planning Board.

Essary explained to the public the purpose of this meeting is to try and iron out the wrinkles prior to the official hearing on February 12th.

Sudol asked what the difference is between section H and the decision ZBA issued. Lanza stated the setbacks and other land requirements. Sudol asked if the issues of the use of the property and the setbacks would go away for Fruitlands if this is approved. Lanza stated it is not just Fruitlands, but also would apply to all museums in town. The bylaw should address the three here Fruitlands, HHS and a town museum. Sudol asked what would stop another museum from coming in and putting in a museum with a restaurant. Lanza stated the allowance of a restaurant with the serving of alcohol would still need to be license from the BOS. Any provision above and beyond the zoning bylaw would require licensing from BOS. Essary suggested it should be spelled out within this provision that a restaurant is not allowed by right under this bylaw.

Paul Donovan, a member of the HHS, stated it sounds like we have been in legal limbo for 100 years. Donovan added the board of directors would not want to be limited from serving alcohol as described by Purdy. McGuire Minar asked why other towns do not have museum bylaws. Lanza stated because it is not widely understood under the Zoning Act. Lanza explained what happen with the decision made by the ZBA for Fruitlands. They found them not to be under the educational use of an institution.

Chapter 125-1

Lanza has no changes to Sudol draft of the Purpose. Essary asked if there were any comments from the public. None were offered.

Signed: _____

Kara McGuire Minar, Clerk