

Harvard Planning Board
Meeting Minutes
February 12, 2007
APPROVED: March 5, 2007

Chairman Mary Essary called the meeting to order at 7:48pm in the Hapgood Room of the Harvard Public Library.

Members Present: Mary Essary, Barbara Brady Kara Minar, Joseph Sudol and Peter Brooks

Others Present: Bonnie Chandler (Harvard Post), Paul Willard, Rob Oliva (Hamwey Engineering), Karen Zaikis (Harvard Historical Society), Jonathan Bollen (Stamski & McNary), William McNary (Stamski & McNary), Paige O'Brien, Maud Ayson (Fruitlands), Bob Anderson (Fruitlands), Rhonda Sprague, Don Green, Pam Browning, Ted Van Duser, Jonathan Williams, Pam Durrant (Fruitlands), Karen Shea, Marcia Croyle and Pablo Carbonell.

Phase II of the Accessory Apartment Bylaw

Brady informed the members she has been working on the second phase of the accessory apartment bylaw, which includes developing criteria that must be met for the certification of a non-40B Local Initiative Program (LIP) units and the development of a deed rider for the accessory apartments. These developments would allow for accessory apartments to become part of the Affordable Housing Inventory. Brady has drafted the five criteria requirements for the Board's review, which she suggests be submitted to the Board of Selectmen (BOS), as the complement to the home rule petition.

A home rule petition would be needed for a tax exemption of accessory apartments. McGuire Minar noted an affordable apartment is federally tax free for a set period of time. Brady has spoken with the Department of Housing and Community Development (DHCD) in regards to a deed rider for accessory apartments; they are willing accept this type of restriction for a rental property. DHDC suggested Harvard come up with a deed restriction for them to review. Brady noted if we put forth something we deem useable it may become the example for other communities. Brady has gone through the DHCD property owner deed rider to try and incorporate it into a rental property restriction. She feels it should be flexible.

Essary stated the Board is on the agenda for the BOS next meeting on February 27th to inform them about warrants being presented by the Planning Board. The home rule petition is something that needs to be voted on at Town Meeting and can be discussed with the BOS at that time. Brady will need to talk to the Assessors about the accessory apartments.

Rhonda Sprague asked if there are criteria for an apartment to be affordable. Essary explained there is a long list of criteria requirements to be considered affordable. The process for getting them registered is not simple and that is why the Board has been working on having a clear process in place that is approved by DHCD. Sprague thinks this is a brilliant move for the Town and the benefits are tremendous.

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

Richard Larkin explained there was a Special Permit issued for Lot 2; this ANR is for Lot 1. McGuire Minar asked if there were still any questions about this lot. Essary stated that Lanza had told the Board that with respect to the setbacks, any common ownership did not affect the lot. Larkin ask what land she was referring to as common ownership. Essary explained at one point in the 80's one parcel was owned by Steven Maka and the other was owned by Patricia & Steven Maka, while they were still married; she understands that his could be considered common ownership. McGuire Minar asked if there is an issue with the property line being too close to a building on an abutting property. Essary stated this would be a zoning issue, which is something we cannot look at. The zoning enforcement agent can look at that before issuing the building permit.

Brooks made a motion to endorse the ANR plan as submitted. McGuire Minar seconded the motion. The vote was unanimously in favor of the motion.

ANR Approval - Turner Lane (Map 21 Parcel 54)

Bill McNary & Jonathan Bolland of Stamski & McNary were present. Stamski explained Arthur Turner and his brother own eleven (11) acres on Turner Lane. They would like to sell a 50 x 50 lot to one of the abutters on Turner Lane. The Callahan's would be adding to their property. The reason for the addition of land is the garage shown on the plan would be rebuilt, as it sits on the lot now it is nonconforming.

Sudol made a motion to endorse the plan as submitted. Brooks seconded the motion. The vote was unanimously in favor of the motion.

Proposed Amendments to the Protective Bylaw, Chapter 125 Hearing. Opened at 8:08pm

Adjournment

Brooks made a motion to adjourn the meeting at 9:50pm Brooks. Sudol seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____

Kara McGuire Minar, Clerk

Harvard Planning Board: By Law Hearings

Proposed Amendments to the Protective Bylaw, Chapter 125 Meeting Minutes

February 12, 2007

The hearing was opened at 8:08pm by Chair Mary Essary in the Hapgood Room of the public Library under M.G.L. Chapter 40A §5, The Zoning Act and the Code of the Town of Harvard, the Protective Bylaw, §125-50

Members Present: Mary Essary, Barbara Brady Kara Minar, Joseph Sudol and Peter Brooks

Others Present: Bonnie Chandler (Harvard Post), Paul Willard, Rob Oliva (Hamwey Engineering), Karen Zaikis (Harvard Historical Society), Paige O'Brien, Maud Ayson (Fruitlands), Bob Anderson (Fruitlands), Rhonda Sprague, Don Green, Pam Browning, Ted Van Duser, Jonathan Williams, Pam Durrant (Fruitlands), Karen Shea, Marcia Croyle and Pablo Carbonell.

Chapter 125-31B (1)

Essary explained the current bylaw allows four lots to share a driveway to access the lots. However, the bylaw allows only two of the lots to be hammerhead or backland lots. The proposed change in the provision would increase the number of hammerhead or backland lots allowed from two to three. The Board has spoken with the Fire Chief and the Police Chief in regards to safety. The Fire Chief sees a driveway as another street, as long as he has access then he is ok with it. One frontage lot would still be required. In Section 125-31B a sentence explaining why common driveways are preferred and in 125-31B (1) a change from two to three lots will be made.

Essary did some research on this and has not found any reason why it was initially limited to two. Brook asked if the Board wants to require the use of a common driveway, or at least change the language from permit to something stronger. The Board agreed.

A question was raised about right to access. Essary stated Lanza has said if in a Special Permit for a lot it is conditioned to be accessed only by a common driveway the applicant can appeal the decision to create their own separate driveway. If no appeal of the condition is made, then that is the only allowed access, citing the condition in the Common Driveway Special Permit issued for the Lovers Lane common driveway. However if no such condition exists, then the owner has the right to access through their own property; this was the case with Rowse, where there was no Special Permit in place either for the hammerhead lot, or for the common driveway. McGuire Minar asked without that provision an individual would be able to access their own property if available. The answer was yes.

125-31D (2) and 125-31B (3)

Essary introduced the discussion by stating that during the Special Permit process for Pachyderm Contracting on Old Mill Road the applicant's representative argued installing the first layer of concrete would be a mistake because damage would be created with construction vehicles entering and exiting the project location during construction, breaking up the concrete. Rob Oliva, the Board's engineering consultant, agreed if the gravel base is installed properly it would be functional during construction, and that Pablo was correct in saying that these vehicles could damage a first layer, if it is put down as mentioned in the current bylaw working.

Essary asked Pablo Carbonell, the owner of Pachyderm Contracting, how he did the construction of the driveway with furthest lot being the first lot completed? Carbonell explained the base coat was installed well enough to provide utilizes under it and the driveways on the other two lots have been completed up to the branches of them. He has an occupancy permit for the furthest lot. Essary believes under the bylaw you can only get the occupancy permit once the driveway is complete. Carbonell stated it is his understanding the private portions of the driveways are not part of the main portion of the driveway. Essary feels it still seems the wording is not clear. Essary asked Oliva if he could make any suggestions for wording; she also asked if we want to insure completion e.g. by placing bonds on them. Brooks stated you do not want to get into bonds on individual lots. Oliva thinks the Board is on the right track with wording. Oliva added the buyer should be aware of the Special Permit and its conditions. Carbonell asked if it stated in the bylaw that a common driveway has to be paved; it is referenced here, but doesn't see that it is required. The Board thought that this was correct, but will check. The Board is looking to remove the bituminous layer requirement to receive the building permit.

Carbonell would like the Board to take into consideration the limitations on the completion of the driveway which may deter small house developers from doing work in Harvard. Paul Willard, Chairman of the Conservation Commission (Concom), cautioned the Board not to be specific of the type of surface used, because some times Concom likes pervious surfaces instead of paving. The Board agreed that it also does not favor impervious surfaces unless appropriate for some reason.

Essary asked Oliva to take a look at 125-31D (2) and note what changes he would suggest so that it is consistent with what he is looking for when he does driveway inspection. Essary asked for Carbonell's comments before the February 26th meeting. Carbonell added the bylaw is unclear as to how long a driveway is to be for construction, it does not even say it needs to be in the approved location, Section D says that it is suitable for construction, but that is contradicted by D2 which is very specific about being essentially the final driveway.

Museum Bylaw (note: Town Counsel was not present)

Essary introduced the discussion by stating that based on the previous informal hearing new text was drafted. Essary explained why the bylaw was proposed: an institutional use is exempt from the Zoning Bylaws for its use only and not its structural requirements. Section H of the proposed bylaw imposes some restrictions on this institutional use. McGuire Minar asked if there is any concern with what Harvard may get from Devens. Brooks asked if a museum has 2.5 acres and 180 feet of frontage it is allowed any where within Town. Yes, but you need permits from BOS & BOH to have an eating establishment. The eating establishment shall function to fund the museum. Question: Are on-site residence are allowed if alcoholic beverages are allowed to be served? Yes, setback only refers to off-site residences. The Board noted that both HHS and Fruitlands have on-site residences, in one case a rental, and in one case a caretakers residence.

Don Green read this and is quite concerned with what is written here because he believes that this side steps the final approval of the ZBA. The decision made by the ZBA had a number of provisions that would be null and void if this bylaw is past. What does the ZBA think? Essary answered that the amendment was sent to the ZBA chair, who felt it inappropriate to comment because of the pending lawsuit.

Sudol stated that he believes that all of the conditions that were outlined by ZBA would be negated. Green wants the eight months it took to create the decision, in which the ZBA decided was best for the town, to be considered.

Rhonda Sprague asked who Mark Lanza is and who asked him to draft this bylaw. She was informed Lanza is Town Counsel. It is Sudol's understanding this came from a discussion with Lanza and Fruitlands attorney to help avoid the lawsuit. Sudol thinks this is very bad idea to make this as a change under the Zoning Bylaw.

Essary stated it was her understanding one of the reasons for putting this in the bylaw was to clarify institutional uses so a museum could not crop up just anywhere, but have some restrictions on lot size, as well as on associated businesses, for example function rentals.

Willard asked if this bylaw were to be adopted could any physical change to Fruitland be created without a Special Permit. Essary stated Site Plan approval would be required. Willard asked if anyone spoken with Fruitlands to determine what it is they would want. Essary stated they have attended previous meetings as well as tonight.

Essary explained the bylaw does not say they can have alcohol, it says other boards have the authority to allow alcohol. Essary agrees with Green in regards to the questions raised about the conditions decided upon by the ZBA. Essary noted that if it is permitted to serve alcohol then there is an additional setback, allowing enough room between the location and the abutting property.

Pam Durrant stated this is not about alcohol and it should not be involved within the definition of museum, which is a town vote. Robert Anderson, president of Fruitlands, stated one of the main purposes of this bylaw is to clean up issues that were not addressed when the original bylaws were written. In discussions with the ZBA we believed we were allowed by right, which the ZBA disagreed with us.

Essary asked members of the Harvard Historical Society (HHS) present if they had any concerns about the wording of this bylaw. Karen Zaikis thinks the way this is written it refers to an eating or social establishment that is used to help fund the workings of the museum. Since the HHS does not have an eating facility established this does not apply to us. Brooks does not think this is trying to regulate the serving of alcoholic beverages.

Green thinks part of the discussion at the ZBA hearings was that alcohol was only being served in the tea room or tent. It is important to be certain that some of the key point such as noise and traffic are not left out.

The Board agreed that it needs to understand the decision issued by the ZBA; Allard will make sure that board members have a copy.

Maud Ayson made comments in regards to the process that was done with Lanza and the ZBA decision in create the bylaw.

Brooks has interruptive issues with the definition as to the four requirements of being a museum. He also had questions about the funding of the eating establishment.

Ayson added there is a very stringent process within the state to becoming a museum. It is not a simple process.

Chapter 125-1

Essary stated that she believed what was covered in the Mass Planning Law section handed out at the last meeting seemed very comprehensive and a good model; the Board agreed. Sudol has not made the mark ups yet from the previous meeting.

Essary asked if anyone had any comments. Brooks seconded the idea that the Board may want to set forth provisions from the Zoning Act.

Green stated things such as protecting the view shed should be clarified. Essary stated the reason why we exist is because there are gray areas within the bylaw that need to be clarified.

Wind Tower

Essary explained wind towers are currently an advisory question for town meeting. The question has been raised and none are provided for currently. It is proposed is as an accessory use only.

McGuire Minar made a motion to continue the hearing until February 26, 2007 at 8:00pm in the Hapgood Room of the Library. Brooks seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____

Kara McGuire Minar, Clerk