

**Harvard Planning Board
Meeting Minutes
June 18, 2007
APPROVED: July 16, 2007**

Chair Mary Essary called the meeting to order at 7:45pm in the Town Hall Meeting Room.

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

Others Present: Attorney Mark Lanza, Valerie Hurley (Harvard Press), Theresa Ledoux, Al Barbieri, Don Walter and Liz Allard (Land Use Board Admin)

Escrow Account Refunds

Sudol made a motion to refund Robert Andrews of 25 Blanchard Road \$50.10 from the escrow account established for his Special Permit application. Brooks seconded the motion. The vote was unanimously in favor of the motion.

Sudol made a motion to refund the Harvard Conservation Trust \$150.00 from their escrow account established for their Special Permit application on Slough Road. Brooks seconded the motion. The vote was unanimously in favor of the motion.

Review and Vote Scenic Road Consent – Shasta, 50 Westcott Road, Map 32 Parcel 93

Brooks referenced the plan and application as material received and relied upon and changed the right of appeal to reflect the sixty (60) appeal period. This is the default period, since we have no appeal period specified for scenic road consents.

Brooks made a motion to grant the consent to the scenic road application of Theodore Shasta at 50 Westcott Road. Sudol seconded the motion. The vote was unanimously in favor of the motion.

Master Plan Implementation Committee & Town Center Planning Committee Joint Efforts

Essary suggested having a joint meeting to get everyone at the same table to decide what the plan is and what the process shall be. Sudol agreed, saying that this question was brought up at the MPIC, and they thought this would be appropriate. There are issues that could impact getting agreement on a overlay district; the basic one being the town center septic system. Tim Clark summarized for the MPIC the status of the Town Center septic system. However this was not an impediment to developing a town center overlay and the center could be developed without affecting the amount of septage available without violating the bylaw. Essary thinks a summary needs to be developed of the history of town center septage because there are so many people that are new to town and are unaware of the many previous discussions and decisions that have taken place. Essary will send a note to all the TCPC members welcoming them and telling them of this plan and see which night, June 26 or 28th, would work for them.

Review and Vote Modification of a Special Permit – Lot 2 Stow Road (Map 38 Parcel 12)

McGuire-Minar arrived at this time. Sudol stated under condition one (1) the revision date of the plan will be added. Brooks made a motion to approve the modification of the Special Permit of Paul & Hillary Kavanagh, noting the original decision was issued to Stephen Maka. Sudol seconded the motion. The vote was unanimously in favor of the motion. McGuire-Minar left the meeting.

Special Permit Modification – Donald Walter, Lot 102 Lovers Lane, Map 17D Parcel 29.1.

Opened at 8:15

Ayer Road Traffic Study by CDM

Sudol has reviewed the Ayer Road Traffic study prepared by Camp, Dresser and McGee. A set of comments were drafted for the Board of Selectmen (BOS). Sudol requested the Board review and comment on this draft. Blair stated when Devens is fully developed people are going to find Route 110 as a short cut, so this study, which does not consider Devens development, does not provide an accurate study at this time. There are ways to discourage traffic on Ayer Road. Essary agrees on taking any steps to discouraging traffic on Ayer Road. Essary thinks the letter needs to address Blair's point about discouraging traffic on Ayer Road. Blair thinks spending money on this now with the unknown of Devens does not make sense. Brooks stated if the Master Plan calls for the development of Ayer Road then maybe we should update Ayer Road to accommodate truck traffic. Essary stated that the reason that Donlean's is not coming to Harvard is not because of the access but that Harvard cannot support a large grocery store. Sudol stated this study assumed two big box developments on Ayer Road, but noted that we are allowing our commercial zone to be eaten up by 40B's and that the tax base for commercial does not provide any significant increase in tax revenues. Sudol is concerned this study will be brought to Annual Town Meeting in 2008 by the BOS. This concern should be part of the letter to BOS.

Scenic Road Consent – Kavanagh, Lot 2 Stow Road (Map 38 Parcel 12)

Members have visited the site and reviewed the plan approved by the initial Scenic Road Consent. The plan did not show the location of trees. The members have determined the applicant will need to file for a modification to the Scenic Road Consent.

Adjournment

Essary made a motion to adjourn the hearing at 9:35pm. Sudol seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Peter Brooks, Clerk

Harvard Planning Board

Special Permit Modification

Donald Walter, Lot 102 Lovers Lane (Map 17D Parcel 29.1)

June 18, 2007

This hearing is for a Special Permit modification filed on behalf of Donald Walter at Lot 102 Lovers Lane (Map 17D Parcel 29.1) was opened at 8:15pm

Members Present: Mary Essary, Joseph Sudol, Peter Brooks and Leo Blair (Associate Member)

Others Present: Attorney Mark Lanza, Valerie Hurley (Harvard Press), Theresa Ledoux, Al Barbieri, Don Walter and Liz Allard (Land Use Board Admin)

Essary noted for the record that this hearing was being recorded, so that absent members could view the tape and therefore be eligible to vote.

The reading of the legal notice was waived by Al Barbieri, legal representation for Don Walter.

Essary read the section of the decision dated December 4, 2006 in regards to the common driveway. Since this decision was approved the applicant has applied to the ZBA, which has been made moot by the amendment approved by Annual Town Meeting. The Town is still waiting for the Attorney General approval on the amendment. When previously presented to the Board it was stated that it was becoming difficult to come to an agreement with the abutters, so Planning Board (PB) suggested the applicant apply for the modification of the Special Permit.

Barbieri described to the Board the process that has been under taken to obtain an agreement with the abutters. After the PB meeting there was a Conservation Commission (Concom) meeting. Because the applicant was unsure which way we were going to access the sight, he obtained an Order of Conditions allowing the applicant to build the driveway within the buffer zone. Barbieri stated that at that meeting the abutters were present and this meeting got heated. After the meeting Barbieri and Walter met with the abutters in the hall and discussed what they wanted to do. The abutters obtained an attorney, which outlined thirteen (13) items in which detailed mostly how the house could be built. Barbieri stated we agreed to the items that addressed the driveway only. There has been no response from their attorney since. The applicant went to the ZBA, at which time a letter from the abutter had been sent to ZBA stating that the applicant was being unreasonable; the ZBA denied the Variance.

Essary asked what arguments were presented to the ZBA by Gary Shepard, of Ross Associates, Inc. Barbieri stated Shepard did not have many arguments to the Variance. Walter remembers Shepard arguing curb cuts, stone wall removal and the ability to stay outside the 100' buffer zone with a common driveway.

Theresa Ledoux, an abutter, stated that she did not think Shepard presented any arguments for the variance. Ledoux stated after the Concom meeting the applicant and his attorney asked us to come up with points that we thought were important to the driveway covenant. The abutters felt Walter should have presented a proposal and he never has, other than rejecting the points that were raised. Essary asked what issues were raised with Concom. Walter did not recall any issues with the Concom. Attorney Barbieri was offended by the abutters at that meeting and stated that he was told he was the worst attorney ever. Walter stated in terms of not coming to them with anything, the abutters stopped talking to us. Ledoux again stated that it is our common driveway and they should come to us with a proposal. Walter thought that it was a good idea to have them create the proposal to allow him access off the common driveway.

Brooks stated the problem the PB has is we would like to see the common driveway used, but we would have to allow the owner access his property. This situation is one that cries out for a professional mediator. The PB is not here to mediate, but to make a decision to either allow them to access the driveway from the roadway or conclude that they have not done due diligence.

Barbieri had responded to the abutter's terms, but that has been rejected. PB agreed that the letter from the abutter's attorney was written very hastily and the wording was inadequate to address the concerns that it was trying to address.

Lanza agreed with Brooks in regards to the mediation, but the Board can not require that these individuals go to mediation. Lanza reviewed the conditions within the initial decision. Lanza stated condition 1a is an either or, so obtaining the Variance would be moot since the amendment to the common driveway provision of the Protective Bylaw has passed at Annual Town Meeting. Lanza reviewed the email from the abutter's attorney and clearly some of these demands have nothing to do with the common driveway covenant. It seems likely the biggest obstacles are conditions C & D of the Special Permit. Lanza again stated this cries out for mediation.

Blair asked Walter "do you want to come in on the common driveway and what do you see as a benefit by coming off the common driveway". Walter stated he did want to construct the driveway off the common drive and the benefit to him would be the cost of constructing a smaller driveway. Blair asked Ledoux "do you want the use of the common driveway to occur". Ledoux responded we would like to have the stone wall preserved, but there are other issues that concern us, the possible of a massive house that will be built and how close it would be to the common driveway and the value of our houses as well. Blair stated whatever the size of the house; it is going be there regardless of whether access comes from the common driveway or off Lovers Lane.

There is less flexibility in the house location if the driveway comes off Lovers Lane. Walter does not remember a lot of flexibility as to where the house can be located in relation to the driveway. Blair asked Walter "so you do not see the house location changing if the access changes". Walter stated a home buyer may alter the house location, but he does not see the driveway location changing. It would seem to Blair that this needs to be worked out.

Walter has no problem going to mediation; his concerns are however that he has done everything that has been requested of him. He does not want to have to come back to PB again, he would like a remedy this evening, potentially grant the modification with a condition that mediation be pursued to the best of his efforts. Walter believes there are things that above and beyond his control.

Essary stated the PB members are not professional mediators and understands there are a lot of emotional issues involved here that are getting in the way. Brooks would not be in favor of taking action tonight and ask that they go to mediation and then come back to us for the modification if needed.

Walter stated to Ledoux "what you need to realize is I have an approved lot here, if I am not given access here I can have access elsewhere". Ledoux stated "this is the attitude we have been dealing with". Essary thinks the decision is up to interpretation. The Board unanimously agreed that the applicant and the abutter's should seek mediation before the modification is granted. Walter asked if the mediation would be binding. Lanza replied that it would not, but the board noted that the issue is if the applicant is diligently pursuing this.

Attorney Barbieri asked who pays for the mediator. Lanza stated typically both parties split the cost. Ledoux stated this may be an issue with the other abutters involved. Ledoux thinks this is a cost that should be incurred by the Walters. Attorney Barbieri asked if we can not agree in mediation can we then get the modification. Brooks's thinks we need to get this resolved sooner rather than later, the applicant has been before us long enough.

Ledoux feels that the Board needs to determine who is going to pay for the mediation. Essary stated the PB cannot decide this. Ledoux stated "but you are asking us to go to mediation why should we pay for this". Essary noted that this should be one of the mediation points. She asked if the abutters would be back in town soon, and when Ledoux said they would be, agreed with Brooks' suggestion is a good one and the applicant should come back to the Board on July 16th.

Brooks made a motion to continue the hearing to July 16, 2007 at 8:00pm with the board recommendation to seek mediation as recommended by Town Counsel. Sudol seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Peter Brooks, Clerk