

**HARVARD PLANNING BOARD
MEETING MINUTES
January 28, 2008**

Co-Chair Mary Essary opened the meeting at 7:33pm in the Hapgood Room of the old library.

Members Present: Mary Essary, Joe Sudol, Barbara Brady, Kara McGuire Minar and Leo Blair (Associate Member)

Others Present: Liz Allard (LUB Admin), Mark Lanza (Town Counsel), Paul Willard, Don Green, Al Combs, Richard Breyer (Harvard Hillside), Valerie Hurley (Harvard Press), Rhonda Sprague, Bruce Gallagher, Lucy Wallace (BOS)

Approval of Minutes

Sudol made a motion to accept the minutes of November 5, 2007 as amended. Brady seconded the motion. The vote was unanimously in favor of the motion.

Brady made a motion to accept the minute of December 3, 2007 as amended. Essary seconded the motion. The vote was unanimously in favor of the motion by Brady and Essary.

Escrow Account Refund – Westward Orchards

Allard informed the members that the work permitted under a Special Permit for Westward Orchards is complete with the exception of a final driveway inspection, which is paid for out of a separate account. With \$1,374.00 remaining in the escrow account established for this permit, Allard requested the Board return that amount to Westward Orchard. Sudol made a motion to refund \$1,374.00 to Westward Orchards. Brady seconded the motion. The vote was unanimously in favor of the motion.

Proposed Amendments to Chapter 90 Scenic Road Bylaw

Sudol explained to the members the amendments made to the Scenic Roads Bylaw expand the bylaw to identify detail for work on stone walls and shade trees, including more definitions and expanding Mass General Law (MGL). As this is an amendment to a general bylaw no public hearing on the subject matter is necessary. Once the language is agreed upon a document will be posted at Town Hall and the Board can request the Board of Selectmen place it on the warrant for the Annual Town Meeting.

Brady was looking for an understanding to the two definitions of a tree that have been seen. One gives a tree size of one and half inches in diameter, while the other is a four inches diameter. Brady believes the one and a half inch tree is a relatively small tree. Brady feels it would be nice to determine which is better to use. Sudol explained the Bylaw currently uses the same definition as the Public Shade Tree Act, MGL Chapter 87. Sudol explained the four-inch definition may have come from other towns' bylaws. Blair asked if it is correct that the Tree Warden is the only person who can remove trees within the right of way and he is bound to the statute, and he can not be bound to expand the definition of tree to larger than one and a half inch tree. Sudol stated it would be easier if the Scenic Road Bylaw was consistent with the Public Shade Tree Act, since an applicant may need to get both permits for work to be conducted. Blair agrees with Brady that one and a half inch tree is small. Essary stated the Board should accept the Bylaw as a draft and leave the definition of a tree as an open question and request comments from the Tree Warden.

Sudol agreed to take another look at the proposed Bylaw and the definition of tree. Since our procedure is more defined than that of the Tree Warden the Board can be more relaxed as to what they can ask an applicant to provide at the time of filing. Sudol believes it is a burden to require an applicant to identify all of the trees within the right of way, regardless if they intent on cutting them or not. Sudol will circulate his findings in regards to the definition of tree prior to the next meeting.

Continuation of a Special Permit Modification – Donald Walter, Lot 102 Lovers Lane (Map 17D Parcel 29.1). Opened at 7:55pm

Nominations for Town Caucus

Both Essary and Brooks's terms are up for re-election this year. Essary and Brooks are willing to run for another three-year term. Sudol will be at the caucus to nominate both Essary and Brooks.

Continuation of the Protective Bylaw Amendments Hearing – Chapter 125-2, 126-16 D and H. Opened at 8:00pm

Continuation of the Protective Bylaw Amendments Informal Hearings – Chapter 125-2 Structure, Chapter 125-40 Lighting and Chapter 125-46E Associate Members. Opened at 8:48pm

Proposed Town Center Overlay District Special Permit, Chapter 125-53

Sudol has drafted a Town Center Overlay District that would allow a Business by Special Permit. Under this district shared sewer systems would be more permissible than currently allowed. Sudol explained the draft incorporated the Master Plan recommendations. It was noted that all of the recommendations of the Master Plan centered on creating a viable and vital Town Center. The intent of the district was to allow an increase in activity on a very limited basis and only by special permit. People who think this is an open book for Town Center should take a closer look at the provision. Don Green stated without a full Town septic system the center cannot be developed. Blair stated really what this overlay district is, is a mechanism for growth. This overlay district anticipates sewage. The fear is that once there is a sewage system single-family homes will be converted to three family homes. This overlay district would also allow restaurants in a residential area. Blair feels the real issue is that we are kidding ourselves if we go forward with this overlay district without sewage. Blair added there is a low impact approach to this without an overlay district.

Sudol explained there are limitations to locations because of septic, but even if the general store has septic that does not solve the economic issues it faces. There is also the historic district that place even more restrictions on the town center. Essary would like a chance to re-write the introduction. Members agreed that there is already a multi-conversation bylaw, so why does this overlay address that subject. McGuire Minar wants to know why we are talking about housing expansion in a Town Center Overlay District provision.

Sudol explained this overlay district reflects the work of two committees that worked for months on the language. This draft had been sent around for comment from the Board members previously. As for the references to housings, those recommendations came from the Master Plan.

Paul Willard asked what would be considered a professional service. Sudol stated that would be something like an account or small office. Willard asked if a use that is not mentioned in the provision would it be permitted. Lanza stated no, because zoning is not exclusive. Green wanted to know where the cars going to park with an allowed increase of business. Essary explained that this provision does not address parking, but others within the Protective Bylaw do. Brady believes if the Board is going to go down this route we need to develop a plan that does not fragment Town Center. Sudol stated parking was discussed and locations were determined, but not completed. Brady would find it very important for the Town to find certain areas that are available for parking. She does not think it should be solved on an individual basis.

Lucy Wallace, chair of the Board of Selectmen, wanted to make certain that residents understood that a Town Center septic system would have limiting capacity. There is a self-limiting capacity that was not clear to the public. Also, Wallace noted that the Master Plan discusses the conversation of single-family homes into multi-family homes.

Essary will attempt to re-write the purpose and other sections as recommended this evening for the next meeting.

Adjournment

Brady made a motion to adjourn the meeting at 10:31pm. McGuire Minar seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Kara McGuire Minar, Clerk (in Brook's absence)

Harvard Planning Board

Continuation of a Special Permit Modification Hearing Meeting Minutes

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

January 28, 2008

This hearing was opened at 7:55pm by Co-chair Mary Essary under M.G.L. Chapter 40A and "The Code of the Town of Harvard" Chapter 125-29 in the Hapgood Room of the old library

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

Others Present: Liz Allard (LUB Admin), Mark Lanza (Town Counsel), Paul Willard, Don Green, Al Combs, Richard Breyer (Harvard Hillside), Valerie Hurley (Harvard Press), Rhonda Sprague and Bruce Gallagher

This hearing was continued from January 7, 2008 for a Special Permit modification filed on behalf of Donald Walter at Lot 102 Lovers Lane, Harvard.

The applicant's representative has requested the hearing be continued to the next meeting of the Planning Board. No new evidence was taken. McGuire Minar made a motion to continue the hearing until February 4, 2008 at 7:50pm. Essary seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Kara McGuire Minar, Clerk (in Brooks absence)

Harvard Planning Board

Protective Bylaw Amendments Hearing – Chapter 125-2 & 16 D & H

Meeting Minutes

January 28, 2008

This hearing was opened at 8:00pm by Co-Chair Mary Essary under M.G.L. Chapter 40A §5 and the Code of the Town of Harvard, the Protective Bylaw §125-50 in the Hapgood Room of the old library.

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

Others Present: Liz Allard (LUB Admin), Mark Lanza (Town Counsel), Paul Willard, Don Green, Al Combs, Richard Breyer (Harvard Hillside), Valerie Hurley (Harvard Press), Rhonda Sprague and Bruce Gallagher

Essary explained as discussed at the last meeting, moving forward with this bylaw amendment would be contingent on the settlement agreement between Fruitlands and the ZBA. The Board requested a representative of the Board of Selectmen (BOS) be present to update the Board as to the status of the settlement agreement. There was no representation from the BOS. Essary suggested the hearing be continued to the next meeting.

Blair asked for clarification: as he understands it, the Town is looking for is amendment on the merits of settling the lawsuit. Lanza stated on merits alone. Blair asked if these amendments are being designed to settle an issue that is specific to Fruitlands, why the detrimental requirements wouldn't be greater. As written now Blair could claim to be a museum and open a bar and grill in his barn. Blair feels that this may be a good way to settle this with Fruitlands, but he does not want to open the door to an awful lot of uses by others down the road. Lanza explained that a two and a half acre lot is the largest lot size you can state under Mass General Law without getting further scrutiny from the Attorney General. This would also apply to frontage. The other approach would be to do an overlay district. Blair asked what would happen if the Town lost the lawsuit. Lanza stated Fruitlands would operate as an unregulated use. Essary added if Fruitlands wins the lawsuit it would justify Fruitlands as an educational use, which would be exempt from sections of the Protective Bylaw.

Sudol stated the problem is that we are putting forth an amendment that was a dispute of the ZBA. Sudol cannot support the amendment unless the ZBA agrees with the settlement agreement. Essary stated the only reason we would move forward on this is if the ZBA agreed to a settlement with Fruitlands. McGuire Minar asked what the binding agreement with Fruitlands is if these amendments pass at Town Meeting. Lanza stated there is no binding agreement signed at this time. Lanza recommended that unless a binding agreement is signed, then the Planning Board should not submit the amendments to the BOS as a warrant article for the 2008 Annual Town Meeting.

Essary stated the minutes from last year need to be reviewed to be certain that the other museum in Town is not greatly affected by this bylaw amendment. McGuire Minar suggested §125-16D be better clarified. McGuire Minar wanted to know where the Harvard Historical Society fit in with these amendments to the Protective Bylaw. Essary cannot answer that question currently, but will need to review the minutes from last year. Blair stated lets say we get past all of this and Fruitlands goes to BOS for a license and the BOS says no, will they sue again. Lanza feels that is true. Blair stated he rather fight it now, rather than roll over if Fruitland doesn't get their way.

Brady asked Lanza if he could expound on the scrutiny of the Attorney General (AG) he had previously mentioned. Lanza stated to adopt three acre zoning the AG may require additional studies, which could result in an unfavorable decision. Blair asked is it the compilation of the individuals involved that Fruitlands wants to continue in the way they have functioned in the past or do they want to go beyond that. Lanza stated they want to change the rules of the game.

Essary believes there is some homework to be done and the Board needs to determine if the ZBA has been satisfied. Rhonda Sprague asked what would keep Fruitlands from selling off portions of their property for development. She was reminded that any person could sell a portion of their property for development and that the Board cannot restrict this use of a property.

Green stated the most disturbing thing right now is that the abutters concerns were addressed in the conditions of the decision issued by the ZBA. Green went back to the ZBA a few days ago to be certain these concerns are being addressed in the settlement agreement and was told they could not talk about that. Why would we negotiate with someone who is suing the Town? Essary believes the ZBA has to agree to the settlement agreement. Essary stated we cannot rehash all of the ZBA's hearings, and furthermore that strategy in discussing how to handle a lawsuit is held away from the public as a standard practice. Fruitlands felt they were an educational institution and were amazed by the decision of the ZBA. Brady stated the Board is not privy to all of the proceedings on this settlement so we do not know what has been agreed too, we only know that we have been asked by the BOS to move forward on these amendments. Essary again stated until the Board know the status of the lawsuit we cannot move forward. Blair asked who asked us to move forward on this. He was informed the BOS requested that the Board hold the hearings on these amendments. Blair wanted to know why they would request that if they know this is part of a settlement agreement. Lanza stated this is part and parcel of the settlement agreement.

McGuire Minar made a motion to continue the hearing until February 4, 2008 at 8:00pm. Brady seconded the motion. Sudol abstained from voting. Final vote was 3-0

Signed: _____
Kara McGuire Minar, Clerk (in Brooks absence)

Harvard Planning Board

Protective Bylaw Amendments Informal Hearing - Chapter 125-2 Definitions "Structure", Chapter 125-40 Lighting and Chapter 125-46E Associate Members

Meeting Minutes

January 28, 2008

This hearing was opened at 8:48pm by Co-Chair Mary Essary under M.G.L. Chapter 40A §5 and the Code of the Town of Harvard, the Protective Bylaw §125-50 in the Hapgood Room of the old library.

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

Others Present: Liz Allard (LUB Admin), Mark Lanza (Town Counsel), Paul Willard, Don Green, Al Combs, Richard Breyer (Harvard Hillside), Valerie Hurley (Harvard Press), Rhonda Sprague and Bruce Gallagher

§125-2 Definition of Structure

The Board is looking to clarify the definition of structure as it relates to a fixed location. Brooks had previously pointed out that without a fixed location is it really a structure. Essary is not sure how to approach this as she knows the Building Inspector (BI) has a very concrete definition of structure. McGuire Minar stated the Board had expressed their desire to have the BI's input. Essary stated she and Sudol have had conversations with the BI and he is very absolute to the term he uses. Blair suggested the Board talk about the intension of a structure rather than its location. Lanza stated that temporary structures are regulated by zoning so you may not want to get into that. Brady feels the definition may be lacking, she does not think there is a problem with the definition, but how it is interpreted. Lanza stated the Boards recourse is to appeal to the ZBA. McGuire Minar asked how a Board that has its own authority could turn it over to the ZBA because someone does not read the terms the same. Brady believes the Board agrees that changing this definition will not correct the current issues. Blair asked Essary if she spoke to the BI. Essary stated she has and he believes that a fixed location is something that can not be removed such as a retaining wall. Blair has asked if he can take a shot at talking with the BI. The Board agreed that would be acceptable if Blair is willing to do so. McGuire Minar believes there is an independent haphazard interpretation of the law. Sudol believes what the building code states as a structure may differ from the definition within the Protective Bylaw and there is a need of education of the BI of those differences. Blair believes the issue is the BI needs to use the definition that is in the Bylaw regardless of what he thinks the definition of structure is. Lanza stated that is not optional. Blair suggested inviting the BI to come talk to the Board. Blair asked Essary how speaking with BI went. Essary stated his contention is he is going by the State building code. Essary thinks having the BI come before the Board is not an appropriate way to handle the situation. Blair stated he would not speak with the BI on this subject.

The Board agreed to not proceed with this amendment and agreed to find an alternative to clarifying the definition of structure with the Building Inspector.

§125-40 Lighting

Sudol stated the Lighting provision within the Protective Bylaw was put together to protect the night sky for the observatory that no longer exists here in Town. McGuire Minar stated she would like to see some demonstration on the foot-candles mentioned within the amended provision. Essary noted that motion activated lights should be considered. Sudol has noted that if amendments are made to this provision, changes will also have to be made to §125-39D Screening by deleting §125-39D(1). As well §125-38 Site plans will need revisions on the lighting requirements. Bruce Gallagher asked the Board if the consumption of energy come into play

when considering the amendments. Sudol stated they did not. Blair suggested a requirement to use energy efficient lighting wherever possible. Lanza stated that cannot be done through the Protective Bylaw, the State building code could regulate it, because that would be exclusion from zoning.

Sudol recommended the Board hold the required public hearing for amendment to §125-40 Lighting on February 25, 2008. The Board unanimously agreed to the recommendation.

§125-46E Associate Member

Sudol has drafted text in regards to increasing the responsibility of the associate member. Sudol will circulate the draft for comments. Sudol recommended the Board hold the required public hearing for amendments to §125-46E Associate members on February 25, 2008. The Board unanimously agreed to the recommendation.

Signed: _____
Kara McGuire Minar, Clerk (in Brook's absence)