

**Harvard Planning Board
Meeting Minutes
February 2, 2009
APPROVED: March 16, 2009**

Chairman Joseph Sudol called the meeting to order at 7:32pm in the Town Hall Meeting Room

Members Present: Joseph Sudol, Barbara Brady, Peter Brooks, Craig Bardenheuer and Lisa Fox (Associate Member)

Others Present: Richard Breyer (Harvard Hillside), Liz Allard (LUB Admin), Bruce Ringwall (GPR, Inc.), Valerie Hurley (Harvard Press), Mark Lanza, Mark Magowan (Ross Assoc.), Tim Arnold, Al Barbieri, Ron Ricci, Ned & Susan Leeming, Tim Firment, Bruce Leicher (FIAT), Bill Johnson (FIAT), Elaine Lazarus (FIAT), Steve Rowse (FIAT), Bonnie Heudorfer (FIAT), Rick Maiore (FIAT), Peter Warren and Leo Blair

Approval Not Required – Westchester Company, Inc., Old Mill Road (Map 4 Parcel 56.1)

Mark Magowan, of Ross Associates, was present to present the plan on behalf of the Westchester Company. Magowan explained the lot currently consist of 3.64 acres and will be divided into a 1.50 acre lot and a 2.14 acre lot. The 1.50 acre lot will retain the existing dwelling. Brady stated she briefly reviewed the site and determined that both lots are accessible from the roadway. Brooks made a motion to endorse the plan as submitted. Bardenheuer seconded the motion. The vote was unanimously in favor of the motion.

Refund Escrow Account – Fox Realty Trust, Stow Road

Allard informed the members that there are no outstanding issues with the application for Fox Realty Trust on Stow Road. Brooks made a motion to refund \$585.00 to Fox Realty Trust, the remaining balance of escrow account, 83000-22525. Bardenheuer seconded the motion. The vote was unanimously in favor of the motion.

Minutes

Brady made a motion to accept the minutes of January 26, 2009 as amended by Bardenheuer and Brady. Bardenheuer seconded the motion. The vote was unanimously in favor of the motion.

Continuation of an Ayer Road Special Permit Hearing – Wheeler Realty Trust, 196/198/200 Ayer Road (Map 8 Parcel 40). Opened at 7:45pm

Bylaw Amendments Drafts

Sudol has a meeting with the Board of Selectmen tomorrow to review the proposed Zoning Amendments. An outline has been written and circulated for members. Town Counsel Mark Lanza will review all drafts before the public hearings on February 23rd. Lanza suggests being specific when it comes to what is and is not allowed for drive-thru amendment and how they are allowed.

Continuation of a Special Permit, Driveway Site Plan & Scenic Road Consent Hearing – Richard & Keyo Russell, 81 Old Littleton Road (Map 18 Parcel 11.2). Opened at 8:30pm

Continuation of a Site Plan Review – Fruitlands Museum, 102 Prospect Hill Road (Map 16 Parcel 35)

Sudol had a couple of questions; he understands a liquor license approval by the Board of Selectmen (BOS) subject to the Planning Board (PB) site plan review and ABC issuance; an entertainment license is also under review by the BOS.. Based on these licenses; what is changing now or in the future in the operation of Fruitlands in comparison to a few years ago? Sudol added the site plan shows a large area for parking a large number of vehicles, which implies the number of functions are going to be more and/or the season for functions is going to

be longer. Ringwall stated parking has not been increased; the meadow on the right of the drive has been used for years for such events as summer concerts. In accordance with the Bylaw requirements, parking is generally how the meadow is used. Sudol stated the PB asked for some indication as how that area was used previously. Firment stated Fruitlands attempted to show that the field has been used as parking, as shown in the photo submitted. Firment stated the only time he has seen heavy use of that parking area is when we have the apple fest here in Town. The immediate points are the functions changing and is Fruitlands planning on doing more functions. Fruitlands is not except for community type events such as winter fest. All of that is subject to the entertainment license. Anything beyond that would require Fruitlands to return to the BOS for approval.

The question Sudol and the Board has is pre-existing uses and the so forth. PB now has a site plan that must be approved and conditioned which sets the baseline of what may be a totally new use of that facility. Sudol's concern is, strictly as one Board member, that we have a new Bylaw that allows the museum by right, which allows it to have a restaurant with a liquor license, we are heading in a direction where we are getting away from the museum being the primary use and in time maybe come an accessory use to a large restaurant, or a small restaurant with many functions occurring during the year. This is a residential zone, it has been brought up that commercial requirements can not be applied because this is not a commercial zone, but as you look at this it goes more and more in the direction that the museum is not going to be the main function, it's going to be all the weddings, shows and concerts. PB is going to be asked to review a site plan which recognizes this type of facility in a residential area. PB would not be addressing set backs from the road on the parking lot, not addressing buffer zone, which again if this were a commercial zone all of that would come into play. PB is struggling with the fact that they need to approve a plan that now becomes the basis and we can not go back and visit, once this is approved we are sort of stuck with it and what ever happens.

Firment is disappointed that PB is going back to the museum as an accessory use and in fact takes offense to that. Firment stated that admissions have been up 38%, that is people coming into the museum. The museum is growing, if anything events are down. Admission to the museum is important to what Fruitlands does, everything is focused upon the museum first, that's Fruitlands endowment, that's Sarah Endicott Sears contribution to the Town. The fact that it is a restaurant based business is off the mark. It is not the case that there is one bite of the apple; Fruitlands would come back as required for any changes.

Sudol thinks the intent is clear that Fruitlands now wants to make the Tea Room a place where there maybe entertainment, whether or not a pre-existing use of the Tea Room is the question. The fact that Fruitlands is lengthening its season and its functions for the entertainment license tells the PB that Fruitlands is planning on more. Sudol is not saying that Fruitlands is planning on turning this into a business or commercial zone, but every indication he sees is expanding that part of the operation and when does that cross the line of a pre-existing use and a new use. Sudol stated that the PB can not condition the Site Plan approval to require that Fruitlands comes back before PB if there is going to be a hard structure put in place of the tent. Firment asked if Sudol was saying that the PB could not make that requirement. Sudol stated he is not sure. Once you have site plan approval with a location of the tent approved and Fruitlands stays within those parameters, Fruitlands does not have to come back to PB. Firment stated that was not true and this had been discussed at the previous meeting. Ringwall reviewed what was discussed at the meeting last week, at which Sudol was not in attendance for.

Ringwall explained that PB is worried about what could happen on this site once Site Plan approval is granted. In conversation with Fruitlands they have agreed they want to do as Site Plan approval with conditions that if Fruitland alters the parking by ten (10) cars are more, or any new pavement of parking would require Fruitlands to come back to the PB. Also any alteration to the temporary structure, whether it was a different size tent or if it was a change to a year round closed permanent structure, would require Fruitlands to come back to the PB. GPR reads the Bylaw as any development, any building, any construction requires Site Plan approval, Fruitlands

has volunteered to come back to PB when any of those events occur. The PB did discuss at the last meeting that there are other seasonal tents on the site for picnicking area and display area and addressed those as that some thing dealt with by the Building Inspector to get the permits for those temporary structures and know that they are there. Fruitland does not want a permit so they can do what ever they want to do.

Sudol asked if the PB did go through all of the requirements for Site Plan at the previous meeting. Brady stated the PB has gone through them and the one sticking point was the change from a temporary tent to a permanent structure. Brady added that she reviewed the Bylaw and 125-38D, and it looks to her as if Fruitlands could not make any changes to the existing tent without coming back to the PB. Brady further explained to Sudol the Ringwall and Firment stated at the previous meeting that Fruitlands was willing to create a condition within the Site Plan approval that any change to the tent would require them to come back before PB.

Sudol asked how the Tea Room is accessed from the field area. Ringwall stated it is essentially a straight walk from the parking area to the Tea Room. Ringwall added Fruitland uses saw horses to direct the pedestrian traffic during large events. Sudol asked under Fruitlands current licenses what are the time frames for the current uses. Firment stated the tent is down from November to February and the Tea Room has similar type time frame. The liquor license is an annual license. Firment stated Fruitlands does not have the intent of running the Tea Room all year long unless there is a need. Sudol asked what are the number of functions per year. Firment stated sixty-five (65) per year on average, with the numbers down this last year.

Firment will submit information on what types and how long other tents are set up on a temporary bases. Firment again invited a member of the PB to join the Master Plan Committee for Fruitlands. Brady will draft a decision for the Boards review by the next meeting. PB will have Town Counsel Lanza will review the decision.

Potential Zoning Amendments Presented by the Fiscal Impact Analysis Team (FIAT)

The FIAT members introduced themselves to the Planning Board (PB) members. Elaine Lazarus explained FIAT's mission. FIAT was present this evening to discuss potential zoning amendments that could help improve the commercial zone. Lazarus explained currently the commercial zone is not generating additional tax base or being used in the manner that it should. The Bylaw makes use in the commercial zone difficult. Building size has always been a restriction for larger business coming to Town. The Master Plan has fluctuated as to what people want -stay rural or have some conveniences. One of the questions is is the commercial zone producing revenue or is it producing service. Sudol asked how FIAT felt on the size of the commercial zone. Lazarus stated it may not be the size, but taking a look at the land and what is useable and what is not because of wetlands. Bonnie Heudorfer stated there is plenty of room in the commercial zone for businesses that could be supported by the Town. Sudol stated currently building sizes and septic issues limit businesses coming into Town. Bill Johnson thinks the biggest impediment has not been infrastructure, but residents not wanting this type of development in there neighborhood. Lazarus stated the Town is over burdening our residential tax base.

FIAT is proposing that at Annual Town Meeting (ATM) a warrant article is presented that would direct the Board of Selectmen to appoint a cross-functional task force to examine and recommend appropriate commercial development, require zoning ordinance change, require infrastructure and appropriate policies within the commercial district. FIAT believes there is no need to waste time changing zoning if the Town is not on board with using the commercial zone as a commercial zone. Brady stated different boards and committees need to work together to be proactive about it. The PB appreciates the work FIAT has done and hopes it can work.

Bardenheuer asked what the time frame to get things rolling would be. Rick Maiore stated a start date would be established and an end date would be open ended. It is not a quick solution. Bardenheuer asked how do we actually be certain this once established it is used and not put on

a shelf somewhere, who is going to be the torch carrier. Lazarus stated the Town may need to hire a Planner or an Economic Developer.

FIAT is looking for public support at ATM from the PB. Sudol does not think there is any question that the PB would support this. Bardenheuer would like to see this happen on relatively short term.

Adjournment

Brady made a motion to adjourn the meeting at 11:15pm. Bardenheuer seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Peter Brooks, Clerk

Harvard Planning Board

Continuation of an Ayer Road Special Permit Hearing Meeting Minutes

Wheeler Realty Trust, 196/198/200 Ayer Road (Map 8 Parcel 40)

February 2, 2009

Chairman Joseph Sudol opened the meeting at 7:45pm in the Town Hall Meeting Room under M.G.L. Chapter 40A and the Code of the Town of Harvard, Chapter 125-52, the Protective Bylaw

Members Present: Joseph Sudol, Barbara Brady, Kara McGuire Minar, Craig Bardenheuer and Lisa Fox (Associate Member)

Others Present: Richard Breyer (Harvard Hillside), Liz Allard (LUB Admin), Bruce Ringwall (GPR, Inc.), Valerie Hurley (Harvard Press), Mark Lanza, Ron Ricci, Ned & Susan Leeming, Peter Warren and Leo Blair

This hearing was continued from January 26, 2009 on an Ayer Road Village Special Permit filed on behalf of Wheeler Realty Trust for the construction of a commercial building and an affordable elderly housing building at 196/198/200 Ayer Road (Map 8 Parcel 40)

Sudol summarized where the Board was at with this application to this point. Brooks had asked for a level of service for the intersection, which has been received and reviewed by our consultant and accepted by them. Brady and Bardenheuer had no new questions. Sudol knows the applicant wanted to know if the time frame could be extended as currently allowed. Special Permits are valid for two (2) years from the date of issuance. Allard explained that permits can be extended as long as the extension process is completed prior to the expiration. Brooks believes that the two (2) year time period can not be extended within the original permit, under the Zoning Act, M.G.L. Chapter 40A, Special Permits are only valid for two (2) years unless substantial use or construction has commenced. Sudol does not have an issue with the applicant constructing the housing facility first and then the commercial space later, but would like to know who the tenants are prior to the construction of the commercial building. If the commercial building is not built within the two (2) year period an extension should be requested in the proper amount of time.

As for traffic issues the applicant has agreed to require reflectors in the roadway and the widening of the driveway at the exit for a right turning lane.

With no further questions Bardenheuer made a motion to close the hearing. Brady seconded the motion. The vote was unanimously in favor of the motion.

The members discussed the contents of the decision. Sudol wants crosswalks to be labeled on the plan, pedestrian signage and widening of the driveway at the roadway starting at the eastern edge of the Dunkin' Donuts drive. A revised plan will be submitted. There were no issues with the lighting plan or the landscape plan. Brooks asked what kind of maintenance agreement will there be for the common driveway. Ringwall stated there is an association agreement that exist, which the Planning Board has on file. Sudol asked if there were any objections from the Board members. Brady stated she had a hard time grappling with the massing of the residential building, but the applicant has done a great job to break up the massing in the back of the site. Bardenheuer stated his biggest issue was focused around traffic and that has been addressed. Sudol will draft a decision for the March 2nd meeting.

Signed: _____
Peter Brooks, Clerk

Harvard Planning Board

Continuation of a Special Permit, Driveway Site Plan & Scenic Road Consent Hearing Meeting Minutes

Richard & Keyo Russell, 81 Old Littleton Road (Map 18 Parcel 11.2)

February 2, 2009

Chairman Joseph Sudol opened the hearing at 8:30pm in the Town Hall Meeting Room under M.G.L. Chapter 40A and the Code of the Town of Harvard, Chapter 125-31, the Protective Bylaw and Chapter 90, Scenic Roads

Members Present: Joseph Sudol, Barbara Brady, Kara McGuire Minar, Craig Bardenheuer and Lisa Fox (Associate Member)

Others Present: Richard Breyer (Harvard Hillside), Liz Allard (LUB Admin), Bruce Ringwall (GPR, Inc.), Valerie Hurley (Harvard Press), Mark Lanza, Ron Ricci, Ned & Susan Leeming, Peter Warren and Leo Blair

This hearing was continued from January 26, 2009 for Special Permit, Driveway Site Plan and Scenic Road Consent filed on behalf of Richard and Keyo Russell for the construction of a single-family dwelling on a hammerhead lot with a driveway longer than 500' on designated scenic road at 81 Old Littleton Road (Map 18 Parcel 11.2)

Sudol stated from the last time there was a hearing there are two (2) open questions, the view easement and width of the driveway in regards to sections 125-39B(4) & (7) of the Protective Bylaw. Ringwall stated the radius is the same as it has been on other driveways over 500' that he has brought before the Planning Board (PB). Ringwall added that a SU-30 vehicle can get in and turn around here. Ringwall feels requiring shoulders installed is ludicrous, why increase the amount of pavement. Sudol believes that 125-39B(4) does not negate Tables 1 and 2 of that section. The width of the driveway over 500' requires the width of the driveway and the width and the shoulders determines the curvature of the driveway. The driveway from the road on up has applied that width all the way up. Sudol believes the purpose for the requirements is a safety issue. Ringwall thinks all of the safety issues, truck issues and fire department issues were addressed. Sudol thinks he knows what Ringwall is trying to indicate because you have the turn around area on one side of the driveway that applies to width of the driveway where as the shoulder is applied to both sides of the driveway. Sudol stated you don't meet the requirements for the width of the driveway in that area. Ringwall stated he does not and the requirements Hamwey Engineering suggested is over sized. Sudol asked what the width of the driveway is up to the turn around. Ringwall stated the driveway varies from sixteen (16) feet to twelve (12) feet wide, with twelve (12) feet on the curve with two (2) feet of shoulder on either side. Sudol asked if Ringwall was agreeable to compacting the outside of the curve without putting any pavement down. Ringwall asked how much. It was agreed three feet on either side. Fox thinks there is a large discrepancy between Hamwey's letter and what is on the plan.

Ringwall present the new view easement. The final version created four (4) different easement areas. Area A is a no cut area, no structures to be established in that area and personal property can be placed there but can not obstruct view. Area B shall have no buildings or other structures that interfere with the view, nor shall personal property interfere with said view. Any building or structure to be erected the dose not interfere with the view shall be painted or stained in a natural hue and value similar that naturally occurring in the surrounding easement area A and B and shall not extend in height above the natural growth of trees. Further said buildings or structures shall not be lighted upon exteriorly or interiorly such that the light is visible from the building on Lot B between the hours of 7:30pm and 6:00am. Area C is another no cut area with some fluidity to

coincide with the final location of the new house. Area D is the same as area B in restrictions. Brady asked what the material difference was between area A and area C. Ringwall stated that area C is a new space of the easement that was not incorporated previously. Attorney Al Barbieri was present to represent the Pierce's and stated that the Pierce's will receive the privacy they were looking for with the building of a new house on the adjoining lot under this revised view easement. Bardenheuer asked if the easement has been reviewed by all of the interested parties. Ringwall stated it had been.

Susan Leeming, a resident of Whitney Road, questioned the number of lots. It was explained that once is all said and done there will be two new lots and the existing house lot at 81 Old Littleton Road. Leeming stated living in the area and having a driveway that exits on to Old Littleton Road the sight distance is limited. Leeming read a letter from the new home owners of 81 Old Littleton Road, who unable to be present at the hearing. Letter was in reference to the available sight distances from the driveway of 81 Old Littleton Road.

Ned Leeming, a resident of Whitney Road, stated the highway department has increased the roadway which has increased the speed of cars on Old Littleton Road. Bicyclist have taken to this road regularly as well. The proposed entrance leaves a very limited view up the hill and down the hill to vehicles exiting. The view up the hill is obstructed by not only trees but the stone wall as well. This is a potentially dangerous situation whether it be from an on coming car or a bike which you can not hear coming.

Ringwall stated the stone wall area contains a lot of shrub growth that will be cleared out and could potentially make sight line better for 81 Old Littleton Road. Sudol stated the PB looked at the sight distances earlier on in the process. The Bylaw is a bit subjective when addressing sight distances. The Board can only look at the site and determine if a distance is sufficient currently.

Susan Leeming added that the owner at 81 Old Littleton Road just had another near miss the other day. Ned Leeming asked when a site walk was conducted and did members physically stand where a car would exit the driveway. Sudol stated the site walk was conducted in September and when the PB went out they did put a car in the location of the driveway and walked up the road to determine the sight distance.

Brady this is clearly a concern of the PB and the deliberations will work out whether this can be made safe with all of the changes made to the plan.

Brady made a motion to close the evidentiary portion of the hearing. Bardenheuer seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Barbara Brady, Clerk (In Brooks absence)