

HARVARD ZONING BOARD OF APPEALS
MINUTES OF MEETING
JANUARY 31, 2007
APPROVED: February 21, 2007

Chairman Chris Tracey called the meeting to order 7:37pm at in Town Hall Meeting Room.

Members Present: Chris Tracey, Jim DeZutter, Theodore Maxant and Robert Capobianco

Others Present: Mike Ivas (MHOC), Gerry Welch (MHOC), Valerie Hurley (Harvard Press), George Dimakarakos (Stamski & McNary), Nathan Lamb (Harvard Hillside), Mark Lanza, William McCurdy, Adam Costa (Blatman, Bobrowski & Mead), Anne Ferguson, Mike Molinao, Paula Johnson, Brad Taylor, Jack Guswa, John Drummey, Meg Bagdonas, Lucy Wallace and Kathy Fricchione

Continuation of a Comprehensive Permit – Massachusetts Housing Opportunities Corporation, 262 & 264 Ayer Road, Map 4 Parcels 39 & 40. Opened at 7:37pm

Chapter 79 Acts of 2006

Mark Lanza explained to the members that a bylaw will be presented at the Annual Town Meeting which would allow a voting board member who misses one hearing maintain the ability to vote on the final decision after reviewing an audio, video or manuscript of the missed hearing. Mr. Lanza wanted to know if the ZBA was interested in being included as one of the boards that would be covered under this bylaw. The members agreed this would be a useful bylaw for them and informed Mr. Lanza they would like to be included.

Proposed Zoning Bylaw Amendments: Chapter 125-2 & 125-16D- Museums

Mark Lanza explained to the members the proposed amendments in regards to museums uses and definition has been in front of the Planning Board for their review. Mr. Lanza does not have sense as to how the Planning Board feels about this proposal. Ted Maxant stated the Historical Society is concerned about the 100 foot limitation. Mr. Lanza stated this bylaw will not make them more nonconforming. Mr. Lanza further explained that if the bylaw passes and Planning Board waives the special permit, the Historical Society will be allowed to continue in the same capacity as they do currently.

Minutes

James DeZutter made a motion to accept the minutes of September 27, 2006, November 8, 2006 and December 13, 2006 as submitted. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

James DeZutter made a motion to accept the minutes of October 11, 2006 as submitted. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion. (Capobianco and Tracey did not vote, as they were not present for this meeting)

Adjournment

Robert Capobianco made a motion to adjourn the meeting at 9:45pm. James DeZutter seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
James DeZutter, Clerk

Harvard Zoning Board of Appeals
Continuation of a Comprehensive Permit Meeting Minutes
Massachusetts Housing Opportunities Corporation
262 & 264 Ayer Road, Map 4 Parcels 39 & 40
January 31, 2007

The public hearing was opened at 7:37pm by Chairman Chris Tracey under MGL 40B, Sections 20-23 and the Code of the Town of Harvard, the "Protective Bylaw", Chapter 125, Section 45.F, as amended.

Members Present: Chris Tracey, Jim DeZutter, Theodore Maxant and Robert Capobianco

Others Present: Mike Ivas (MHOC), Gerry Welch (MHOC), Valerie Hurley (Harvard Press), George Dimakarakos (Stamski & McNary), Nathan Lamb (Harvard Hillside), Mark Lanza, William McCurdy, Adam Costa (Blatman, Bobrowski & Mead), Anne Ferguson, Mike Molinao, Paula Johnson, Brad Taylor, Jack Guswa, John Drummey, Meg Bagdonas, Lucy Wallace and Kathy Fricchione

This hearing was continued from December 13, 2006 for a Comprehensive Permit filed on behalf of Massachusetts Housing Opportunities Corporation for eight (8) residential structures each with four (4) units each to include eight (8) affordable units at 262 & 264 Ayer Road, Harvard.

George Dimakarakos, from Stamski & McNary, explained to the members the hearing with the Conservation Commission (Concom) has been opened for the construction of the well. As part of the issuance of the DEP file number comments were given from DEP to have an alternative analysis to the well be located within the bordering vegetated wetland. Mr. Dimakarakos stated a letter has been submitted to the ConCom and forwarded to DEP which outlines why the well is located where it is. Mr. Dimakarakos feels the applicant is in good shape with the DEP in regards to these concerns. The letter submitted to the Concom explaining the front of the lot is too narrow to put the well up front and the soils there are not suitable for the septic system.

As part of the review process by Nitsch Engineering, a consultant for the ZBA, a more detailed plan was submitted on January 29th. Chris Tracey explained the well permitting process to the general public. James DeZutter asked if it is right to say you may not receive a response from DEP in regards to the letter stating why the well is presented in its current location before tomorrow nights Concom meeting. Mr. Dimakarakos believes he may get a response by tomorrow night.

Jack Guswa, from the Housing Authority, spoke with DEP today and has different understanding of the permitting process. He thought it is up to the Concom to issue the permit and not the DEP. DeZutter stated it is his gut feeling the Concom wants to know

how DEP feels about this before making a decision. Tracey stated the ZBA will go on with the assumption the well location will not change.

Mr. Dimakarakos began the review of the letter dated November 8, 2006 from Nitsch Engineering, along with the responses made by Stamski & McNary in a letter dated January 25, 2007. The first subject matter was the subdivision of the property as it pertains to the residential portion and the commercial portion of the project. Mr. Dimakarakos stated the parcel will not be subdivided both uses will be contained to one lot. Mr. Tracey asked where this issue of commercial use within the residential area of a 40B stood. Mr. Lanza stated the commercial use is allowed as a matter of right with site plan approval from the Planning Board. Mr. Lanza added there is an issue of set back and since the law is not clear, he recommends the applicant obtain a variance if one is needed, which can be a condition within the final decision of the ZBA. Mr. Lanza also stated that since he believes the ZBA does not know what the uses will be in the commercial area, once decided the applicant will have to get whatever variances are necessary for those uses. The Planning Board will still need to do the site plan review. Mr. Tracey pointed out that traffic will be impacted by the use of the commercial area. Robert Capobianco asked if approved, is there anything stopping the applicant from selling off the commercial property. Mr. Lanza stated they would have to come back for a modification of the permit. He added he does not think the commercial area is going to be within the common land for the residential area, but it would need to be intergraded into the water and sewage usage.

A National Pollutant Discharge Elimination System (NPDES) permit will be obtained. Mr. Dimakarakos stated this is a simple process which is required to be obtained seven days prior to the well testing. John Drummey, an abutter, had questions in the permitting process with Concom and the NPDES permit. Mr. Dimakarakos explained the requirements needed to install the well within the bordering vegetated wetland (BVW).

Nitsch's comment #5 is regards to the sizing of the septic system. Mr. Dimakarakos explained the plan is for a system that will be under the 10,000 gallons per day (GPD) requirement for a treatment plant, but over 2,000GPD and because of that they are required to use a re-circulating sand filter. DeZutter asked if this was all under the Board of Health (BOH) purview and has the applicant submitted anything to the BOH. Mr. Dimakarakos stated nothing has been submitted to the BOH and the sand filter has to go to DEP for approval. Mr. Capobianco asked if the sand filter is for the septic system or well water. He was told septic system to reduce nitrogen before recharging to the leach field. Kathy Fricchione, an abutter, had questions about the septic system as to the primary and the reserve areas.

Mr. Dimakarakos stated a Massachusetts Environmental Policy Act (MEPA) filing will not be required. Mr. Dimakarakos stated the permitting process for the well is under way. A Water Quality certification will be required and will be obtained. Once the Order of Conditions are issued by the Concom a deed restriction is recorded pertaining to the limit of fill allowed within the wetland and this becomes the Water Quality Certificate.

In regards to other required permits, the Water Supply Permit has had a preliminary permit issued to test the well, the plans for the septic system will be submitted in the next few days to the BOH, once approval from the BOH is issued DEP will approve the sand filter. Mr. DeZutter asked if the Harvard BOH authorizes a permit for the entire system, including the sand filter, does this not mean anything until DEP approves the sand filter and if so why doesn't the DEP do the approval first and then let BOH do their part. Mr. Dimakarakos did not have an answer to this question. He did add the applicant has asked for waivers from the BOH requirements. Mr. Tracey stated the two waivers requested are to allow grading within 100 feet of the wetlands (145-1A) and a waiver of the percolation rate (145-1D).

Nitsch noted there is a conflict in information in regards to the number of units. Mr. Dimakarakos explained if the commercial portion could not be done then 36 units would be developed instead of 32. Mr. Capobianco asked to see where the wetland line is shown on the plan. John Drummey asked how close the building is to the resource area. Mr. Dimakarakos stated the building is about 60 feet from the wetland line. Mr. Tracey asked if the line still marked in the field. Mr. Dimakarakos stated they have not taken down any flags. Mr. Maxant made the statement why would Concom allow a building within the buffer zone when they do not allow horses and tree cuttings within that area?

Nitsch recommended the applicant provide dimensional characteristics of the roadway and should indicate the type of roadway surface proposed. Mr. Dimakarakos stated a lot of new information has been provided on the revised plan, which has been submitted to Nitsch for their review along with a drainage analysis. There is a layout plan which identifies where the parking spaces will be allowed. Mr. Capobianco asked why some of the garages would not have parking in front of them. Mr. Dimakarakos stated because they would be blocking other garages if they were to park in front of their own garage. Mr. Tracey asked how many and where are the visitor stops. Mr. Dimakarakos stated there are eight visitor's spaces and he pointed them out on the plan. The members agreed the parking space will need to be looked at a bit better.

The revised plan shows handicap curb cuts and crosswalks. Sidewalks will be provided to the individual units, which will depend on the final building plans. Units are not being proposed as handicap accessible, although upon request of a buyer a unit can be made handicap accessible. Mr. Capobianco questioned if the ZBA required the last 40B applicant to have handicap units. Mr. Lanza is not certain but will look into. Mr. Tracey noted that American Disabilities Act compliance is not required under a 40B. Mr. Lanza stated there are no requirements.

A dumpster for the commercial area and mail house has been added to the plan. Residents will have pick up of trash. The postmaster will ultimately determine where the mail house will go. Mr. Capobianco stated the ZBA would like that determine this prior to final approval. Mr. Capobianco asked if there will be a school bus stop since a school bus will not go onto private property. Mr. Dimakarakos stated it he would include a parking area for cars waiting for the bus to drop off and pick up.

Mr. Maxant asked if the applicant goes to the Planning Board and they create a more definitive development plan for parking and handicap access would the 40B override that. Mr. DeZutter stated if health and safety are going to be an issue than they can override the 40B waivers, otherwise the 40B can override the requirements imposed by Planning Board. Stop signs have been added to the plan. Business and project signs will be added to the final plan. Snow storage areas have been shown on the plan.

The rear building has been redesigned to reduce its site from abutting properties. These buildings will now have a walk out basement. The end unit on the northeast building is only one story. Kathy Fricchione asked what happen to the units by reducing there size. Mr. Dimakarakos stated the second floor was designed to be smaller.

A catch basin has been added and day lights toward the wetland. Mr. Tracey asked if we heard from the direct abutter in regards to this issue. Mr. Dimakarakos stated no, but the plan is to trap his water as well and recharge it into the wetlands. The retaining wall will be a concrete structure, at an average of six feet. Mr. Tracey asked they defined the type of the block used and added a landscaping block is what is desired.

Mr. Capobianco stated we keep hearing a final construction document, he asked if the ZBA is going to approve a plan before the final construction plan is submitted. Mr. Lanza reminded the Board the Trail Ridge permit was conditioned to obtain certain approvals after the decision was issued.

Adam Costa, legal representation for the applicant, would like to know by the next meeting what the timetable is for the ZBA to make a decision. Mr. Tracey stated if the applicant wants the ZBA to approve the plan prior to finishing with the BOH, he would assume the applicant will be back asking for additional waivers from the BOH and if they have to come back to get another permit it may be a waste of time. Mr. DeZutter would like to know where the BOH and Concom are headed prior to issuing a permit. Mr. Capobianco stated the ZBA has not seen a fire protection plan; shouldn't we have that in front of us by now? As Mr. Lanza stated earlier the ZBA can condition the permit and then review the fire protection plan, landscaping and other item after that. Gerry Welch stated in other towns they have a peer review for the individual's buildings. Issues such as street lighting, retaining walls and the such will be submitted later. Mr. Capobianco is concerned about the safety and health of the individuals that are going to live there. Mr. Tracey does not have an issue with issuing a permit which is conditioned to require approval from the BOH and Concom.

Meg Bagdonas, an abutter, asked how large the retaining wall will be. Mr. Dimakarakos stated the wall would be six feet above the existing grade. Mr. Capobianco asked if the detention basins would have some type of fencing. Mr. Dimakarakos stated no. Mr. Welch stated a landscaping plan is usually submitted under a separate cover, but we can submit a preliminary plan if so desired. In other towns a landscape consultant reviewed the plan and then they would make comments to the approving body for their approval. Mr. DeZutter asked if they intend on submitting two plans, a conceptual plan and then a

final plan. That is the plan. Mr. Tracey asked the applicant to take a unit and do a typical planting plan for the ZBA to review.

Mr. Capobianco asked what happens if a detail plan is submitted and we do not like it. Mr. Lanza stated the ZBA can disapprove the landscape plan which can be appealed to the Department of Community Housing and Development. Kathy Fricchione asked if the landscaping plan would include screening for the abutters. It would be considered.

Mr. Tracey requested the plans submitted be detailed enough to be sent to our consultants for their review.

The drainage analysis report was sent to Nitsch and Savas Danos for their review. The report covers storm water and hydrology analysis of abutting properties. The drainage system has been completely designed and is reflected on the current plan.

Fire cistern will be available with a dry tap, the buildings will have sprinklers. Mr. Capobianco asked if those will be live water or dry. Mr. Dimakarakos was not sure, that is something that will come with the final plan. Mr. Capobianco explained that in the previous 40B there is a back up generator and pump in case of a power failure, is that what is going to be done here. Mr. Dimakarakos stated he will need to discuss this with the applicant and look into the availability.

Lightings will be general residential lighting. Mr. Capobianco would like to see detail on what they will be doing for lighting.

Robert Capobianco made a motion to continue the hearing until February 21 at 7:30pm. James DeZutter seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
James DeZutter, Clerk