

HARVARD ZONING BOARD OF APPEALS
MINUTES OF MEETING
February 21, 2007
Approved: March 14, 2007

Chairman Chris Tracey called the meeting to order 7:38pm at in Town Hall Meeting Room.

Members Present: Chris Tracey, Jim DeZutter and Robert Capobianco.

Others Present: Mike Ivas (MHOC), Gerry Welch (MHOC), Valerie Hurley (Harvard Press), George Dimakarakos (Stamski & McNary), Mark Lanza, Adam Costa, Paul Willard, William McCurdy, Kathy Fricchione, Paula Johnson, Meg Bagdonas and Brad Taylor.

Continuation of a Comprehensive Permit – Massachusetts Housing Opportunities Corporation, 262 & 264 Ayer Road, Map 4 Parcels 39 & 40. Opened 7:38pm

Minutes

James De Zutter made a motion to accept the minutes of January 31, 2007. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

Proposed Museum Bylaw

Members of the ZBA have reviewed the proposed museum bylaw on the warrant for the Annual Town Meeting in March. Mr. Lanza explained the provision was generated to clear up uses within the protective bylaw. Mr. Tracey asked why commercial use as an accessory use, is not permitted by the ZBA or the Planning Board. Mr. Tracey added that Fruitlands is not just a museum but a business being run within the agricultural/residential (AR) district. Mr. Lanza stated under 125-16 there are several institutional uses that require approval from town boards. Mr. Tracey asked as currently written, will this new provision allow Fruitland to construct a 200 room inn without any other approval. Mr. Lanza stated no. Mr. Lanza stated every secondary use does not have to be considered an accessory use. Mr. Capobianco asked if Fruitlands could take down the tent and build a function facility with 180 seats, as long as they comply with the other standards. Mr. Lanza stated they could build a restaurant with 100 seats or a function facility with 180 seats. Mr. Tracey asked if they would need a Special Permit to build either of those structures. Mr. Lanza stated no but Site Plan approval would be required. Mr. Lanza added an inn is not allowed within the AR district. Both Mr. Tracey and Mr. Capobianco stated a restaurant would not be allowed with the district either.

Mr. Tracey stated the opinion from the Zoning Enforcement Officer was that there is a component of educational use, but not enough to be considered educational; Mr. Lanza wrote a decision based on that information and now has written a provision to the bylaw that will negate that decision. Mr. Lanza stated it will not negate the decision issued by the ZBA, the use of Fruitlands under M.G.L. Chapter 40 A §3 is not an educational use, the proposed provision does not change that. Under Chapter 40A §3, it limits the

permitting by the ZBA to dimensional use. Mr. Lanza further explained Fruitlands operations and structures are non-conforming and would require a Special Permit under the current Bylaw. The proposed provision would require Site Plan review. Mr. Tracey asked if under Site Plan review the number of events or dinners served could be conditioned. Mr. Lanza stated items such as lighting, noise and/or traffic can be discussed under Site Plan review but these items should really be addressed under the issuing of a common victuallar, alcohol beverage license and/or an entertainment license.

Mr. Tracey feels the proposed bylaw may open up the door to many land owners in Town. Mr. Lanza explained if Fruitlands were to drop the lawsuit and the provision does not pass at Town Meeting then they will still be non-conforming. However if the lawsuit is dropped and the provision is passed the conditions written within the ZBA's decision will be gone.

Adjournment

Robert Capobianco made a motion to adjourn the hearing at 9:55pm. James DeZutter seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
James DeZutter, Clerk

**Harvard Zoning Board of Appeals
Comprehensive Permit Meeting Minutes
Massachusetts Housing Opportunities Corporation
262 & 264 Ayer Road, Map 4 Parcels 39 & 40
February 21, 2007**

The public hearing was opened at 7:38pm 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), Mark Lanza, Adam Costa, Paul Willard, William McCurdy, Kathy Fricchione, Paula Johnson, Meg Bagdonas and Brad Taylor.

This hearing was continued from January 31, 2007 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.

Chris Tracey reviewed where the ZBA is at with the application. George Dimakarakos, from Stamski & McNary, explained the letter submitted this evening is a follow up on the ten items provided by Adam Costa previously in regards to the items the ZBA had requested at the previous meeting. Mr. Dimakarakos explained he is preparing an alternative analysis to submit to the Conservation Commission. The Commission has also asked for additional information for the entire project. The next meeting scheduled with the Commission is Thursday March 1st. Mr. Tracey asked if the Commission is waiting for response back from the Department of Environmental Protection (DEP). Mr. Dimakarakos stated DEP is not planning on issuing any further comments on the project. It is now the responsibility of the applicant to convince the Commission the site is being developed in the only way possible. Mr. Dimakarakos further explained DEP could intervene once the Order of Conditions is issued from the Commission if they feel the permit has not been written properly. Paul Willard, Chairman of the Conservation Commission, stated everything stated by Mr. Dimakarakos is correct. Mr. Willard added the Commission does have concerns in regards to septic and we would like to know what is going on with Board of Health (BOH) before moving forward. James DeZutter wanted to be clear that DEP is not going to supply any more information in regards to this project. Mr. Willard stated that was correct. Mr. DeZutter asked if all the new information generating for the Commission is being sent to DEP. He was informed it was.

The septic design has been submitted to the Nashoba Associated Boards of Health. No meeting has been scheduled with the Harvard BOH, nor has the applicant received any

comments from the BOH as of yet. Mr. Tracey stated there may be some confusion with the BOH as to the granting authority for the septic system under Chapter 40B. Mr. Tracey requested a letter be sent to the BOH explaining that under Chapter 40B the BOH is the granting authority for the state permit, but the ZBA grants waivers to the local bylaws.

As a matter of clarity Mr. Capobianco asked if the intention of the applicant is to have the ZBA approve a preliminary plan and then at a later time approving a final plan. It is Mr. Tracey understanding the ZBA will be approving a basic plan which would be conditioned for final plan approval. Mr. Tracey asked Mark Lanza if this process is acceptable. Mr. Lanza believes the process that was used for Trail Ridge should be followed again for this permit. Mr. Lanza stated the ZBA reviewing a complete plan prior to construction is better for everyone. Mr. Tracey asked if the review of the complete plan would be a posted public hearing. Mr. Lanza stated it can be conditioned to be. Mr. Capobianco feels this would be a back and fourth process and wanted to know why the ZBA can not get the final plans as soon as possible and have the consultants review it and then be done with it. Mr. Lanza explained further, using the example of landscaping, he explained the level of a landscape plan you would get now as compared to prior to building which would include more detail. Mr. Tracey stated he is hearing Mr. Lanza loud and clear, but he is also hearing Mr. Capobianco loud and clear. Mr. Capobianco stated there are many items, such as the façade, he would like to know about before voting on the plan. Adam Costa stated it is his client's intention to provide as much information as possible to the ZBA, but there are certain plans that would not be appropriate at this time. Mr. Capobianco would like to know what these buildings are going to look like; he would like to know what the trees are going to be and what is the surface of the roads are going to be before signing off.

Moving forward with the letter, Mr. Dimakarakos stated they have not received any information from the post master as of yet. The school buses will pick up on Ayer Road, but will not go into the development. Mr. Capobianco asked where a bus stand or parking for parents dropping off and picking up their children would be. Mr. Dimakarakos stated they are not proposing a bus stand, but cars can park in the commercial area. Mr. Capobianco asked how many feet is it from the sidewalk to the first parking spot within the commercial area. Mr. Dimakarakos stated about 100 feet. Mr. Capobianco stated this is one argument as to why the parking within the commercial area should be in the front of the building. Mr. Tracey has mixed feelings on this issue. If spaces are available during inclement weather then they will be used, but if not umbrellas and boots can be used. Mr. Lanza stated it is not clear that a waiver could be granted for the setback of the commercial building since it is not a part of the Chapter 40B. Mr. Lanza added the applicant runs the risk that a waiver is required and if someone questions it the permit could be appealed.

Mr. Tracey asked Kathy Fricchione if the Ad Hoc committee had any questions in regards to the bus stop. Ms. Fricchione stated they had just requested sidewalks for children to get to the street. Mr. DeZutter explained how cars will line up in the right lane during bad weather, whether you want it to happen or not. Gerry Welch suggested

running it by the traffic consultant to see what they have to say. Mr. Tracey stated most traffic consultants do not deal with school bus issue. Mike Ivas stated that if this development holds to the law of averages, it would be three maybe four children waiting for the bus. Mr. Welch asked if it would be appropriate to have something within the residential regulations that would not allow parking in that area. Mr. Tracey agreed with it being a regulation.

The applicant and its representative have been waiting for return comments from the ZBA's engineering consultant since January 25th. Mr. Tracey had been informed by the administrative assistant that information from Nitsch Engineering would be received by the 14th of March.

A Landscape Plan was submitted. Plantings are coded on the plan. Hemlocks will be planted along the property line. Additional hemlocks may be planted behind the last building closest to the basin for additional screening. This will require approval from the Conservation Commission as it will be within the buffer zone. Shrubbery and ground cover will be planted around and in front of the building. Brad Taylor, a resident, asked how tall the trees would be in the north east area. He was informed seven – eight feet. Mr. Taylor then asked why not any larger. Mr. Welch explained an elevation profile was done and the elevation from Glenview Drive is level to the site. Mr. Tracey added the trees would have to twenty- five feet high to hide the buildings. Ms. Fricchione stated the abutters would like to limit the light and noise from the sight.

Mr. Welch explained the retaining wall will be a versa-lok wall, a description was submitted with the landscape plan. There are no proposed lights for the roadway, just for the driveways themselves, which has also been submitted with the landscape plan. Mr. Tracey asked about the lighting on the back decks of the last building. Mr. Welch stated the buildings would have the required lighting at all doorways. Mr. Welch added that residents of the development would not be allowed to do anything to the outside of the building without approval of the residential board. Mr. Welch recommended putting a regulation, regulating the lighting direction.

Information in regards to the materials to be used on the outside of the building will be submitted for the ZBA review. Mr. Capobianco asked if the design plan shown is what the buildings will look like. Mr. Welch stated they would.

Mr. Tracey explained to those in attendance that the ZBA can retain the right to review the proforma, as was required by Trail Ridge within the permit. Mr. Tracey stated the ZBA would like to maintain control over the site. Mr. DeZutter believes the arrangement with Trail Ridge was because of the on going issues within Boxboro. Mr. Tracey added an independent audit review can be done at any time. Flipping the project can be done provided the profit is not over the 20% limit. Mr. Tracey asked Mr. Lanza if it can be permitted that the project can not be transferred. Mr. Lanza stated no, but can be conditioned that the ZBA be notified if the ownership of the project changes.

A letter dated February 16, 2007 written by Kathy Fricchione was read into the minutes. Ms. Fricchione explained she would like to give the abutters and residents a voice. A copy was given to MHOC. Mr. DeZutter asked if we had any indication that the Board of Selectmen (BOS) are going to response to this letter. Ms. Fricchione stated no.

Another letter received today from additional concerned residents was briefly reviewed by Mr. Tracey for the record. Mr. Tracey stated it would be appropriate to address the letter at some point, but not tonight since he and others had just received it. In response to the letter, Mr. Welch stated whatever questions individuals want answered they will do. Mr. Capobianco asked if MHOC had ever received a federal tax exemption. Mr. Welch stated no, they are not tax exempt, but are non profit. Mr. Costa explained the applicant has applied to the Department of Housing and Community Development (DHCD) and has met the standards or they would not be here. DeZutter is concerned the ZBA may get involved with something they should not or do not want to get into. The ZBA asked Mr. Lanza to review the letter and the concerns addressed within it. Mr. Lanza will highlight the legal issues in which the ZBA should respond to. Sections in error in regards to Conservation Commission were pointed out.

Mr. Tracey asked if the ZBA has received any input from the Water Quality consultant. The admin stated we had not. The school bus stop concern will be addressed by MHOC traffic consultant.

Christopher Tracey made a motion to continue the hearing until March 21, 2007 at 7:30pm. James DeZutter seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
James DeZutter, Clerk