

HARVARD ZONING BOARD OF APPEALS
MINUTES OF MEETING
March 14, 2007
APPROVED: April 11, 2007

Chairman Chris Tracey called the meeting to order 7:12pm at in Town Hall Meeting Room.

Members Present: Chris Tracey, Steve Moser, Theodore Maxant and Robert Capobianco

Others Present: David Durrant, Gary Shepard (Ross Assoc.), Bob Donell, Mike Milinaro and Mark Lanza.

Special Permit Hearing – Scott Hayward and Deborah Sauvé, 5 Elm Street, Map 17C Parcel 32. Opened at 7:12pm

Special Permit Hearing – Richard and Roxanne Mace, 38 Peninsula Road, Map 26 Parcel 49. Opened at 7:44pm

Minutes

Robert Capobianco made a motion to accept the minutes of February 21, 2007 as amended. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Clerk Appointment

With the absence of the clerk Chris Tracey made a motion to assign Robert Capobianco as the clerk for this meeting. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Allocation of Funds

The administrative assistant has requested approximately \$100.00 be allocated from the Zoning Board budget to purchase a new color print and scanner for the Land Use Boards. Robert Capobianco made a motion to approve the request. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Executive Session

Chris Tracey made a motion that the Board of Appeals go into executive session pursuant to Massachusetts General Law Chapter 39, Section 23B (3) to discuss strategies with respect to pending litigation between Fruitlands Museum, Inc. and the Board of Appeals because a public discussion of this matter will have a detrimental effect on the litigation position of the Board. The Board will return to open session only to adjourn the meeting in approximately sixty (60) minutes. Steve Moeser seconded the motion.

Chris Tracey took a roll call vote of each of the members present.

Adjournment

Robert Capobianco made a motion to adjourn the meeting at 10:13pm. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Robert Capobianco, Temporary Clerk

**Harvard Zoning Board of Appeals
Special Permit Meeting Minutes
Scott Hayward and Deborah Sauvé, 5 Elm Street Map 17C Parcel 32
March 14, 2007**

The public hearing was opened at 7:12pm by Chairman Chris Tracey under MGL Chapter 40A, Section 6 and the Code of the Town of Harvard, the "Protective Bylaw", Chapter 125, Section 3A as amended.

Members Present: Chris Tracey, Steve Moeser and Robert Capobianco

Others Present: David Durrant

This hearing is for a Special Permit filed on behalf of Scott Hayward and Deborah Sauvé for the expansion of a pre-existing nonconforming house at 5 Elm Street, Harvard.

David Durrant explained to the Board the expansion will decrease the non-conformity from four feet to two feet. Mr. Durrant added the impact on the area will be positive. A positive determination was given by the Harvard Historical Commission. The existing deck with sunroom attached is on post. Steve Moeser asked what the square footage of the addition will be. The plan calls for an additional 132 square feet total. The current deck area is 410 square feet. Robert Capobianco asked if the Board should note for the record the square footage so if homeowners come back the Board will know how much of the allowed 15% gross floor area has been used. Mr. Capobianco added how would these numbers be made clear in this application. Mr. Moeser stated they would be made clear in the decision. Chris Tracey explained to Mr. Durrant if he or the homeowners have to come back you will need to determine if the percent of the non-conformity at the time of the creation of the bylaw, which created the non-conformity. 15% of 1,444 square feet equals 217 square feet. Mr. Capobianco asked if the Board should just say the addition is over 15%. Mr. Durrant stated to the best of his knowledge the house has increase over 15% with additions after becoming non-conforming.

Mr. Tracey read into the record a letter dated January 25, 2007 from the Board of Health (BOH) requesting no action take place until compliance is determined. A response letter from Durrant Design dated January 30, 2007 to ZBA was read into the record. Mr. Tracey asked if this has been approved by the BOH. Mr. Durrant stated it has, but a letter of confirmation has not been issued. The admin will follow up with the BOH. Gary Shepard, of Ross Associates, was also present to confirm the applicant had been before the BOH and had received approval from them. Letters from Harvard Historical Commission along with approvals were submitted into the record. A letter from the Conservation Commission dated March 5, 2007 had no comments.

Mr. Moeser asked if the Board needed to establish when the house was built. A copy of the assessor's card will be submitted for the file. Mr. Durrant stated the house was built in the late 1700's, early 1800's. The relief sought is from the 15% gross floor area.

For the record the existing gross floor area is:

Lower level - 1,444 square feet

1st floor, including deck - 1,854 square feet

2nd floor – 1,444 square feet

Additional gross floor area:

1st floor – 1,986 new square feet

Robert Capobianco made a motion to close the public hearing. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

After a brief discussion Steve Moeser made a motion to issue a Special Permit for the expansion of an existing non conforming structure over 15% gross floor area, contingent upon the approval of the BOH. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Robert Capobianco, Temporary Clerk

**Harvard Zoning Board of Appeals
Special Permit Meeting Minutes
Richard and Roxanne Mace, 38 Peninsula Road, Map 26 Parcel 49
March 14, 2007**

The public hearing was opened at 7:44pm by Chairman Chris Tracey under MGL Chapter 40A, Section 6 and the Code of the Town of Harvard, the "Protective Bylaw", Chapter 125, Section 3A(3) as amended.

Members Present: Chris Tracey, Steve Moeser, Theodore Maxant and Robert Capobianco

Others Present: Gary Shepard (Ross Assoc.) and Bob Donell

This hearing is for a Special Permit filed on behalf of Richard and Roxanne Mace for the alteration of a pre-existing nonconforming house at 38 Peninsula Road, Harvard.

Gary Shepard explained to the members the house was built some time in the 1950's, currently it is an existing non-conforming. The plan is to add a second story to the building, along with a new 12x16 deck on the side and entryways in the front. These changes will create a few minor changes to the foot print. Drawings as to what it would look like after construction were shown to the members. The site has a valid Title V permit for the five (5) bedroom house. Mr. Shepard explained the applicant has been before the Conservation Commission for the deck addition. At that time the Commission requested dry wells be added to the plan to trap any roof run off.

The additions will include 192 square feet for the deck and 1,686 square feet of floor space for the second floor. Mr. Shepard stated the change to the structure is not inconsistent to changes in the neighborhood.

Chris Tracey asked about mitigation to reduce impacts to the pond. Mr. Shepard stated a hay bale and silt fence will be installed at the fifty-foot line. Mr. Shepard added there is no need for heavy equipment to go in the back of the house. Mr. Tracey stated a condition will be added in which no work shall occur within the fifty foot area of the pond. Robert Capobianco asked how the no use of fertilizer is being monitored. Mr. Tracey stated it would be under the purview of the Conservation Commission. Mr. Tracey added it requires willingness of the homeowner. An additional condition will state the site needs to be in compliance with the Board of Health.

A letter from the Planning Board dated March 12, 2007 was read into the record. The Planning Board asked if a potential increase in non conformity was being created by the proposed deck, in reference to 125-30 E (7), of the Protective Bylaw. Mr. Shepard explained because the house is not actually parallel to the pond it creates a non conformity at one corner to the pond. This non conformity would have been allowed at the time of the addition. The relief being sought is that the addition is not more

detrimental to the neighborhood. Comments from the Zoning Enforcement Officer were read into the record. Mr. Shepard responded that there are no plans for doors or windows, nor is the basement planned on being finished. Mr. Shepard added if that does happen they would need to go to Board of Health.

The assessor's card will be submitted for the file. The non conformity is the lot area is undersize, the existing structure does not meet zoning and the off set from Bare Hill Pond has not been met.

Conditions shall include the recommendations from Bare Hill Pond Watershed Committee in an email dated February 15, 2007. Any special conditions within the Amended Order of Conditions issued by the Conservation Commission shall be included within the conditions of the decision. A conditions stating the basement will not be finished shall be added as well.

Robert Capobianco made a motion to close the public hearing. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

After a brief discussion Steve Moeser made a motion to issue a Special Permit for the alteration of a pre-existing non-conforming house to include the above mentioned conditions. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Robert Capobianco, Temporary Clerk

**Harvard Zoning Board of Appeals
Executive Session
March 14, 2007**

Members Present: Chris Tracey, Steve Moeser, Theodore Maxant and Robert Capobianco.

Others Present: Liz Allard and Mark Lanza

Robert Capobianco stated the ZBA spent thirty (30) hours developing a decision for Fruitlands, which gave them everything they wanted and in turn they appealed the decision. The Board of Selectmen (BOS) wants to settle this situation sooner rather than later. A Bylaw has been proposed that would allow Fruitlands their use. This bylaw will be on the warrant for Annual Town Meeting (ATM). Mark Lanza has attempted to draft a Settlement Agreement that will be acceptable to Fruitlands if the bylaw passes. Chris Tracey stated because of the complexity of the legal matter there are people who believe if Fruitland took this case through the court system they could win and would be exempt from zoning regulations. Mr. Capobianco asked if the Bylaw is passed will the BOS be the granting authority for common victuallar license, entertainment license and liquor licenses. Mr. Tracey stated the BOS would be the granting authority for those licenses and can mimic within the licenses what the ZBA had within the decision.

The Settlement Agreement was written by the Fruitland attorney, Bob Cox. Mr. Lanza stated Mr. Cox's poly is to continue his law suit even after the ATM passes the bylaw. Mr. Lanza believes the bylaw should not have gone to the warrant until a Settlement Agreement was agreed upon. Mr. Tracey asked for clarification if the litigation has to be agreed upon by the ZBA in order for the lawsuit to be to withdrawn. Mr. Lanza stated if the lawsuit is not dropped and they go to court with a bylaw that has passed ATM then the court decision maybe tainted.

Theodore Maxant left the meeting at this point.

Mr. Lanza stated they need two out of three ZBA members to agree to the Settlement Agreement. Mr. Tracey is concerned with the town submitting a warrant article without a settlement. Mr. Lanza feels the BOS could write a very defendable denial for a liquor license. Steve Moeser asked if the ZBA was confident the BOS will go into depth when issuing a license, such as noise and traffic. Mr. Tracey added is the BOS prepared to stand up and place conditions within their issued license. Mr. Lanza is not just saying that he absolutely agrees this should be done by the BOS, but if the bylaw is passed he will draft a letter to the BOS telling them to add the conditions of the ZBA to any license issued to Fruitlands by them.

Mr. Moeser asked how not having the Settlement Agreement prior to ATM going to affect the lawsuit. Mr. Lanza stated if the conditions within the agreement are agreed

upon it will be a benefit for the town. Mr. Capobianco asked what the advantage is to signing the Settlement Agreement. Mr. Lanza thinks Fruitlands is concerned with the money they are spending on legal fees. Mr. Capobianco asked why Fruitlands would want to stop the case if the amendment passes. Mr. Lanza believes Fruitlands believes they would be looked upon unfavorably if they have to come in front of the BOS for any licenses and that may be why they would want the suit to go away.

Mr. Tracey stated the ZBA needs to agree on where they stand on this issue, so they can report to the BOS next Tuesday in executive session. Mr. Capobianco feels what Lanza suggests is the way to go. Mr. Lanza wants Fruitlands to agree to an additional Settlement Agreement that would cover the conditions of the special permit, which cannot be objected. Additionally, Mr. Lanza believes a Super Notice License should be required. This type of license would require the notification of abutters. Mr. Lanza feels all of the conditions within the Settlement Agreement should be agreed upon and will not be contested.

Conditions of the Settlement Agreement were reviewed by the members and agreed upon. The conditions were as follows:

- Conditions #1 and 2 are void if Bylaw is approved
- Condition #3 is State Law
- Condition #4 and 5 state the obvious
- Condition #6 has to be included in the Agreement
- Condition #7 to be removed
- Condition #8 maybe contested, Lanza will offer to remove the limitation of 100 seats, but leave in the reporting to the ZEO
- Condition #9 and 10 to remain as is
- Condition #11 to be removed
- Condition #12 a requirement of the Fire Chief
- Condition #13 to remain as is
- Condition #14 the bylaw clearly expresses it should be removed
- Condition #15 to remain as is, and
- Condition #16 is to be removed.

Mr. Lanza believes Condition #8 will be the one they will really contest.

This is the position of the board for settlement agreement. Mr. Lanza will not waive on the conditions being attached to any required license. The appeal of ZEO decision also goes away because the Bylaw makes the decision moot.

A position paper will need to be decided on for the ATM and Mr. Lanza will draft a fact sheet for the Board about the bylaw.

Signed: _____ Robert Capobianco, Temporary Clerk