

**HARVARD ZONING BOARD OF APPEALS  
MINUTES OF MEETING  
March 21, 2007  
APPROVED: April 11, 2007**

Chairman Chris Tracey called the meeting to order 7:10m at in the Hildreth House.

**Members Present:** Chris Tracey, Steve Moser, James DeZutter and Robert Capobianco

**Others Present:** Gary Shepard (Ross Assoc.), Leon Piasecki, Mary Ann Piasecki, Paul Willard, Albert Barbieri, Don Walter, Theresa Ledoux, Tony Marolda, Stanley Murphy, Vicary Maxant, Mike Molinan, William McCurdy, Kathy Fricchione, Paula Johnson, Valerie Hurley (Harvard Press), Mike Ivas (MHOC), Adam Costa (BBM Law), Gerry Welch (MHOC), Kyle Hedrick, Pat Hatch, Michele Page, Dan Page, David Craig, John Coke and George Dimakarakos (Stamski & McNary).

**Variance Hearing – Donald Walter, 20 Lovers Lane, Map 17C Parcel 29.1.** Opened at 7:10pm

**Continuation of a Comprehensive Permit Hearing – Massachusetts Housing Opportunity Corporation, 262/264 Ayer Road, Map 4 Parcels 39 & 40.** Opened at 7:45pm

**Comprehensive Permit Hearing – Massachusetts Housing Opportunities Corporation, 15 Littleton Road, Map 17D Parcels 14 & 17.** Opened at 8:38pm

**Adjournment**

Chris Tracey made a motion to adjourn the meeting at 10:08pm. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_  
James DeZutter, Clerk

**Harvard Zoning Board of Appeals  
Variance Hearing Meeting Minutes  
Donald Walter, 20 Lovers Lane, Map 17C Parcel 29.1  
March 21, 2007**

The public hearing was opened at 7:10pm by Chairman Chris Tracey under MGL Chapter 40A, Section 10 and the Code of the Town of Harvard, the "Protective Bylaw", Chapter 125, Section 31B as amended.

**Members Present:** Chris Tracey, Steve Moeser, James DeZutter and Robert Capobianco

**Others Present:** Gary Shepard (Ross Assoc.), Leon Piasecki, Mary Ann Piasecki, Paul Willard, Albert Barbieri, Don Walter and Theresa Ledoux.

This hearing is for a Variance request filed on behalf of Donald Walter to allow a third reduced frontage lot to be served from a common driveway at 20 Lovers Lane, Harvard.

Gary Shepard, of Ross Associates, was present to represent the applicant. Mr. Shepard explained to the members the site contains an eleven (11) acre lot on Lovers Lane. Donald Walter has owned the lot since 1992. The site meets the requirements for a second lot. Mr. Shepard explained one of the first things realized when designing the site is that it would be easier and faster to connect the newly created lot to the existing common driveway. In order to do that the applicant would need permission from the abutters to modify the covenant for the driveway. At this point it was determined the additional reduced frontage lot on the existing common driveway would be in violation of the Protective Bylaw (125-31B) given there is no hardship. Reaching that conclusion a design was created with a single driveway contained to the site in question.

A Special Permit from the Planning Board (PB) was required for the hammerhead lot. PB asked why it was not designed to connect to the common driveway. It was explained to the PB that the Bylaw does not allow for a third reduced frontage lot on a common driveway. The construction of the single driveway will not require the cutting of any historic trees, but will require the removal of a portion of the stone wall. Flooding occurs across the street in the spring. The PB approved the Special permit with the following condition:

an amendment to the Protective Bylaw is adopted and approved by the Office of the Attorney General which allows a common driveway to provide access to more than two Hammerhead Lots, or, alternatively, the Applicants diligently seek and obtain from the Board of Appeals a variance which would allow said common driveway to provide access to Lot 102....."

Hence the applicant is in front of the ZBA because the PB conditioned him to try and get a variance from ZBA. Paul Willard, Chairman of the Conservation Commission, stated

the Commission would prefer the driveway be off the common driveway, but had no other reason not to issued a permit with the driveway off the road.

Mr. Shepard stated if the variance is approved the applicant would have to go back to PB for approval. Al Barbieri, legal representation for the applicant, explained to the members the negotiations with the abutters has not gone well to this point. Mr. Barbieri stated the abutters were present and could explain it better themselves.

Jim DeZutter stated right in the beginning of this hearing you stated the applicant did not have a hardship and in order to issue a Variance the ZBA needs proof of a hardship. Mr. Barbieri explained the only reason they are in front of the ZBA is because the PB placed the condition on the Special Permit. Mr. Barbieri further explained the PB is pursuing an amendment to the Protective Bylaw at the Annual Town Meeting (ATM) that would allow for a third reduced frontage lot on a common driveway. Steve Moeser asked Mr. Barbieri if he was certain the amendment was going to be on the warrant at ATM. Mr. Barbieri did not know for certain.

Robert Capobianco stated the ZBA has to know the applicant has control of the land, correct him if he is wrong, but you do not have that from the abutters. Mr. Barbieri stated his client does not have the ability to have that control. Mr. Capobianco would like to know that they have something in writing from the abutters.

Mr. DeZutter asked if 20 Lovers Lane had been sold. Donald Walter stated it has and the new owner has no preference to either plan. Mr. Barbieri stated if the ZBA votes to grant the Variance he would be in contact with the abutter's attorney to come up with an agreement.

Leon Piasecki, an abutter, wanted to be certain the ZBA had received the abutter's letter. Mr. Tracey stated they had. Mr. DeZutter asked if they still stand by that letter. Mr. Piasecki stated they did.

Mr. Tracey noted letters had been received from Building Commission dated January 4, 2007, from the Board of Health dated January 11, 2007, from the Planning Board dated January 8, 2007 and the Conservation Commission dated January 8, 2007. An additional letter from the Planning Board to the Conservation Commission dated January 11, 2007 was also part of the record. A letter from the abutters submitted on March 13, 2007 was read into the record.

Mr. Barbieri stated the abutters had an attorney whom he has been in contact with and they had thirteen (13) requests in order to allow connection to the common driveway. Mr. Barbieri's response was attached and submitted to the record. Mr. Tracey thanked him and stated he did not think this had any bearing at all on the Variance.

Mr. DeZutter explained the ZBA has had Variances before them previously that have been denied and the applicant went to the Town to have a new bylaw passed. If presented properly this amendment shall too pass. The issue of the covenant would have

to be hammered out later by the applicant and abutters. Mr. DeZutter is still not seeing the hardship.

Robert Capobianco made a motion to close the evidence portion of the hearing. Steve Moser seconded the motion. The vote was unanimously in favor of the motion.

Steve Moeser stated the ZBA has heard nothing about a hardship nor have we heard anything that may change any words that would allow for a Variance.

Jim DeZutter made a motion to deny the Variance based on the lack of a hardship. Steve Moser seconded the motion. The vote was unanimously in favor of the motion. (Tracey, Moeser and DeZutter).

Signed: \_\_\_\_\_  
James DeZutter, Clerk

**Harvard Zoning Board of Appeals**  
**Continuation of a Comprehensive Permit Hearing Meeting Minutes**  
**Massachusetts Housing Opportunity Corporation, 262/264 Ayer Road**  
**March 21, 2007**

The public hearing was opened at 7:45pm by Chairman Chris Tracey under MGL Chapter 40B, Section 20 23 and the Code of the Town of Harvard, the “Protective Bylaw”, Chapter 125, Section 46F as amended.

**Members Present:** Chris Tracey, Steve Moeser, James DeZutter and Robert Capobianco

**Others Present:** Tony Marolda, Stanley Murphy, Vicary Maxant, Mike Molinan, William McCurdy, Kathy Fricchione, Paula Johnson, Valerie Hurley (Harvard Press), Mike Ivas (MHOC), Adam Costa (BBM Law), Gerry Welch (MHOC) and George Dimakarakos (Stamski & McNary).

This hearing was continued from February 21, 2007 filed on behalf of Massachusetts Housing Opportunity Corporation for eight (8) residential structures each with an affordable unit at 262/264 Ayer Road, Harvard.

Chris Tracey reviewed were the application was to this point and what new information has been received. A letter from the abutters dated February 16, 2007 was to be reviewed by Town Counsel, the ZBA has not heard from him on that. The funding for the Ayer Road Traffic Study has been approved by the Selectmen. Questions have been raised as to the control of the site. Mr. Tracey would like a status of the LIP letter, any information in regards to the 21E evaluation and an update as to the water quality consultant’s review. The admin explained she had received an email from Savas Danos, the water quality consultant, today stating he is still reviewing the application.

George Dimakarakos, of Stamski and McNary, explained Nitsch Engineering has issued another review letter, dated March 12, 2007, of the responses to their initial review of the project. The second set of responses from Nitsch is pretty straight forward according to Mr. Dimakarakos. More information has been provided on Stormwater Management by use of a Stormceptor. Members at this time had no comments to the Nitsch report. Mr. Tracey noted the Nitsch report stated they could not review the commercial portion because they do not know what is going in there. Mr. Dimakarakos stated the plans calls for 6,000 feet retail and 2,000 retail or office. A restaurant will not be an option; the sewage disposal system is not sized to have it. Robert Capobianco asked the applicant if they would be willing to having a covenant to this effect. Mr. Dimakarakos stated the Board of Health (BOH) would require some type of covnant to this effect. Adam Costa, legal representation of the applicant, stated it could be a condition and not a covenant.

Steve Moeser asked if they were any closer to an agreement on the retail space. Mr. Welch stated they are not. Mr. Tracey stated he is still not sure how it will be crafted to the decision. The ZBA may have to go over some of these issues with another counsel. It is Mr. Costa understanding the commercial area would be encompassed within the 40B decision because it was a request of the Town to have the commercial space. There has been no request for a Variance to allow for the parking the rear of the commercial space. The applicant would be proceeding at their own risk with that development.

Mr. Dimakarakos stated the Conservation Commission requested alternative analysis be prepared for them to review. The Commission has stated they prefer the plan that has 3 separate wells, known as Alternative #2. The net result was a reduction in sewage flow, causing the commercial space to be all retail or a limit on the amount of office. The applicant is proceeding with the plan with the three wells. A new Notice of Intent will be submitted to the Commission for the construction of the buildings, roadways and septic within the buffer zone. A copy of the alternative plan was sent to Nitsch engineering a few weeks ago for their comments. Mr. Tracey asked what impact does it have to the site in general. Mr. Dimakarakos stated not much, just to the septic system and clearing will be eliminated within the wetland. Jim DeZutter asked if the leaching field is smaller with the change in the wells. Mr. Dimakarakos stated they are slightly smaller.

Mr. Moeser questioned the questions within the Nitsch report in regards to the visual sight of buildings on the southern portion of the property. Mr. Dimakarakos stated the buildings would not be seen since the abutting property does not have a dwelling close to the site.

Mr. Dimakarakos stated a review from Nashoba Associated Boards of Health has been conducted. More testing was done today and the Sanitarian Ira Grossman is reviewing those results. The applicant has not been before the BOH. It has been discussed by BOH at their last meeting, but the applicant was not there. Mr. Tracey asked if the applicant would be requesting any other exemptions from the BOH. Mr. Dimakarakos stated they were not. Mr. DeZutter asked what the time line is for approval from BOH for the septic and wells. Mr. Dimakarakos stated the State will permit the wells; the septic could take some time for approval. The applicant does not want to wait for that approval and would like it to be conditioned within the ZBA decision they obtain the permits. Additionally the use of the sand filter requires approval from the State.

Mr. Tracey mentioned a letter dated March 21, 2007 from the Planning Board and asked the members if they wanted him to read it aloud. Mr. Capobianco stated Mr. Tracey could read it, but he thinks the PB concerns are environmental. The letter was not read. Mr. Capobianco asked for clarification on the sewage disposal system, has it been approved by the BOH. Mr. Dimakarakos stated they are 99% of the way there. The wells are still under review with the State and the Conservation Commission. Mr. Capobianco thinks the main point of the PB letter is when a developer comes in they should make sure they have a well and septic before moving forward and here we are moving in parallel.

Tony Marolda, a Town resident, asked if the Board had received his email. Mr. Tracey stated they had. Mr. Marolda stated if reducing the number of units would lessen the impacts residents would like to see that. Mr. Marolda stated the applicant had submitted a letter to the Conservation Commission that stated they looked at twenty-eight (28) units which they claimed it is not economical. But under Chapter 40B Section 20 says a zero (0) profit would be non-economic.

Mark Browbowski, legal representation for the applicant, stated MHOC is structured as a nonprofit but would like to be treated as a Limited Dividend Company (LDT). They create a LDC when they develop projects such as this.

Gerry Welch stated the financial summary request was received late today. They will respond at a later date due to the limited time they had to review it.

Mr. Browbowski will get us a new document that states there is an extension clause, which will cover the control of the site issue. Mr. Tracey stated on page 4 of the Purchase and Sales Agreement it states "permits and approvals, of 44 units" and "over 33 units" can you respond to this at a later date. Mr. Welch stated that they would respond later.

Mr. Marolda would like to have an opportunity to have input in regards to the financial report of Ed Marchant. Mr. Tracey stated if you have other concerns or questions please send them to Liz Allard, the Administrative Assistant and we can review them and determine if they need to be addressed by the consultant.

Mr. Browbowski asked if Mr. Marchant was coming to the next meeting. Mr. Tracey stated he would ask for him to be here. Mr. Browbowski asked if it is assumed the Board is not going to make major changes to the plan, which would change the proforma. Mr. Tracey stated this is correct.

At 8:38pm Steve Moeser made a motion to suspend hearing for a minute to open and continue the hearing that was scheduled for 8:30pm. Bob Capobianco seconded the motion. The vote was unanimously in favor of the motion.

At 8:39pm the hearing was reopened.

A letter was received today from MS Transportation Systems in regards to school busing and the location of a bus stop on the site. Mr. Welch read the letter for the record. Mr. Capobianco asked if MS Transportations plan was workable. Mr. Tracey believes so. A concrete waiting area will be wider in that area.

Mr. Tracey asked about the LIP application status. Mr. Costa stated a letter dated December 27, 2006 had been submitted for the file approving the project as a LIP.

Mr. Welch stated a full scale testing had been conducted on the site in regards to the 21E status. Some contaminated soils were found and a remediation plan was developed. Mr. Welch will submit a copy of the report for the file, along with any other appropriate documents.

Kathy Fricchione, an abutter of the property, asked about the use of trees for screening of the buildings at the back of the property. These trees will need the approval of the Conservation Commission since they would be in the buffer zone. The plan does call for trees to be planted. Abutters were hoping they could have taller trees across that area. Mr. Tracey asked if this would be discussed with the Commission. Mr. Welch stated it would. It was also explained to the abutter that these trees will get taller in height.

Chris Tracey made a motion to continue until the hearing until April 11, 2007 at 7:00pm. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_  
James DeZutter, Clerk



**Harvard Zoning Board of Appeals  
Comprehensive Permit Hearing Meeting Minutes  
Massachusetts Housing Opportunity Corporation, 15 Littleton Road  
March 21, 2007**

The public hearing was opened at 8:38pm by Chairman Chris Tracey under MGL Chapter 40B, Section 20-23 and the Code of the Town of Harvard, the "Protective Bylaw", Chapter 125, Section 46F as amended.

**Members Present:** Chris Tracey, Steve Moeser and Robert Capobianco

**Others Present:** Valerie Hurley (Harvard Press), Mike Ivas (MHOC), Adam Costa (BBM Law), Gerry Welch (MHOC), Kyle Hedrick, Pat Hatch, Michele Page, Dan Page, David Craig, John Coke and George Dimakarakos (Stamski & McNary).

This hearing is for a Comprehensive Permit filed on behalf of Massachusetts Housing Opportunity Corporation for twelve (12) condominium units with three (3) affordable units at 15 Littleton Road, Harvard.

At 8:38pm Robert Capobianco made a motion to continue the hearing to 8:50pm. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

The hearing was reopened at 8:57pm.

Chris Tracey made a motion to appoint Robert Capobianco the Temporary Clerk for these hearings. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Mark Browbowski, legal representation for the applicant, explained the project as filed is a Local Initiative Project (LIP), signed by the Board of Selectmen. This property was brought to the applicant by the former Town Administrator, Paul Cohen, who was approached by the property owner. A letter from the Department of Housing and Community Development, dated February 5, 2007, was received giving preliminary approval under LIP. A letter dated March 9, 2007 from the Ad Hoc committee was read into the record by Mr. Browbowski.

The project is proposed as twelve (12) two bedroom condominiums. The site will be serviced by town water; wastewater will be processed on site. A water main will be extended from the existing hydrant. There will be two septic systems on site, each serving two buildings. Stormwater will be infiltrate. This project will require Conservation Commission approval for the work within the buffer zone created by a wetland across the street. The only work within the buffer zone is grading and utilities.

Walk ways have been incorporated throughout the site. Parking spaces were shown on the plan, one space is provided within the garage and the other is just outside the garage. Plans have been submitted to Nashoba Associated Boards of Health (NABH). Plans have been sent to Nitsch Engineering along with drainage analysis for their review.

Traffic for this project will be minimal. A review of the project was submitted today by the ZBA traffic consultant, Earth Tech. The comments within the review will need to be addressed by the applicant. The question of stopping distances was noted in the report. Gerry Welch, of MHOC, believes they have covered this in the application. He added the comment made by Earth Tech refers to highways and not town roadways. The applicant will look into this further. Robert Capobianco asked if this sight distance take into account bad weather roads. George Dimakarakos, from Stamski & McNary, stated he is not a traffic expert, but that is his understanding of it. There may be some vegetation in the way of the first enter/exit location that may need to be removed.

Mr. Welch stated a large amount of time was put into the design of this project with the Ad Hoc committee. The key design was to make these look similar to the other dwellings on the common. These blend not only in size but in the look as well. Each building is a three unit building. Every unit interior is different because of the way they have been designed structurally outside. The applicant designed the four buildings to blend with the two other existing houses close to them. All cars and garages will be hidden by landscaping and retaining walls. Building Two as designed has two fronts. The walk ways connects to a pedestrian easement to the town center that already exists. The existing easement will need to be updated.

Steve Moeser asked about visitor parking. Three spots have been designated for guests. Some units have parking for two cars within the garages allowing for guest parking in front of the garages. Mr. Dimakarakos stated Building Four does not have much in the way of extra parking. Mr. Capobianco asked if the walk ways could be pushed back to help with parking. Mr. Dimakarakos stated the septic is the driving factor here.

The site is comprised of two distinct lots, which allow for smaller and separate sewage disposal systems. Under Mass General Law Chapter 41 Subdivision Control Laws Section 81X, Requirements for Registered Plans, the ZBA would have the power to endorse the Approval Not Required (ANR) plan because this is a Chapter 40B project.

Mr. Moeser asked about Stormwater Management on the site. Mr. Dimakarakos stated a significant amount of drainage collects off the property. The plan does not include grades off the property. The Stormwater has been calculated using a 100 year storm. The analysis shows a decrease in runoff from the site.

For the record Chris Tracey reviewed what items have been received from other Boards and Commissions in Town. The Fire Chief has reviewed the plan and will submit his request, which he has discussed with the applicant, in writing. An email was received from Rich Nota, the DPW Director, dated January 23, 2007, expressing his concern with runoff from the site. A letter dated March 5, 2007 was received from the Planning Board.

They have reviewed a preliminary site plan. The revised plans will address their issues. The Planning Board has also requested an additional affordable unit. The applicant will consider it. The Conservation Commission sent a letter dated March 14, 2007 commenting on the isolated wetland across the road. The applicant has filed a Notice of Intent with the Commission.

A Landscape Plan was submitted. This plan will need to be sent to the landscape consultant.

Michele Page, an abutter, asked what the plan is for landscaping the on the eastside abutting 5 Littleton Road. Mr. Welch stated he is not sure as to what is there now for vegetation, but will take a look at that. Ms. Page also asked about the septic system, will it have any effect on any other system in the area. Mr. Dimakarakos stated it would not. Dan Page, an abutter, wanted to know the scale of the plan to determine where the shared system is. Mr. Dimakarakos stated the system is ~30 feet from the property line.

Ms. Page stated she has documentation that shows they had purchased the existing right of way. Mr. Welch stated they have researched the easement and that it is an existing right of way owned by the Town. Ms. Page asked if that could be changes, in order to limit the amount of individuals walking through the back of her property. Mr. Welch does not believe so since the easement is well over 100 years old. Furthermore, the Ad Hoc Committee wanted to have this connection to the center of town without having to go up Littleton Road.

David Craig, an abutter, asked for clarification of right of way. Mr. Capobianco believes the abutters must have had a title search done when they purchased their property, you should go back to the attorney that did the title search and determine if you did purchase this easement. The applicant stated at the next meeting they would have a copy of the plan showing the path. Ms. Page asked that other alternatives be explored to eliminate the traffic at the rear of her property.

Kyle Hedrick, an abutter, believes the dual use for that right of way, foot and auto traffic is a bit dangerous. Pat Hatch, an abutter, asked if the right of way would go over 3 Littleton Road septic system. She was informed it did not.

Mr. Tracey asked if the members of the ZBA have permission to access the site to review the easement. Mr. Welch stated yes. Mr. Tracey then asked the abutter if they may access their properties. They all agreed the ZB A could access their properties to view the easement.

John Coke, an abutter, asked if water drainage was adequately addressed and as for landscaping, he would like to know will there be some screening for privacy. Mr. Welch further explained both of these subjects to Mr. Coke.

Mr. Craig asked if sight line studies have been done. Mr. Welch showed the plan which shows the elevations profiles of buildings for the project. Mr. Craig asked if there is an opportunity to attach to the proposed septic systems. Mr. Dimakarakos stated there is no additional room in the systems.

Chris Tracey made a motion to continue the hearing until April 11, 2007 at 7:30pm. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_  
Robert Capobianco, Temporary Clerk