

HARVARD ZONING BOARD OF APPEALS
MINUTES OF MEETING
April 11, 2007
APPROVED: June 13, 2007

Chairman Chris Tracey called the meeting to order 7:15pm at in the Town Hall Meeting Room.

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

Others Present: Mark Lanza, William McCurdy, Paula Johnson, Mary-Ellen Jones, Anne Marie Arnold, Joseph Sudol, Chris Perela, Valerie Hurley, Mary Essary, Stanley Murphy, Kathy Fricchione, Keith Cheveralls, John Drummey, Vicary Maxant, Lisa Karanikolas, Abby Hutchinson, Lynn Seymour, Mike Ivas (MHOC), Gerry Welch (MHOC), Tony Marolda, Brad Taylor, Anne Ferguson, Meg Bagdonas, Ron Ricci, Mark DeWandel, Julie DeWandel, Don Ritchie, Sandy Brock (Nitsch Engin.), George Dimakarakos (Stamski & McNary), Adam Costa, Lorin Johnson, Paul Willard, George Watkins and Savas Danos.

Continuation of a Comprehensive Permit Hearing – Massachusetts Housing Opportunity Corporation, 262/264 Ayer Road, Map 4 Parcels 39 & 40. Opened at 7:15pm

Comprehensive Permit Hearing – Massachusetts Housing Opportunities Corporation, 15 Littleton Road, Map 17D Parcels 14 & 17. Opened at 9:28pm

Minutes

Robert Capobianco made a motion to accept the minutes of March 14, 2007 and March 21, 2007 as written. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Adjournment

Chris Tracey made a motion to adjourn the meeting at 10:02pm. Steve Moeser 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 Hearing Meeting Minutes
Massachusetts Housing Opportunity Corporation, 262/264 Ayer Road
April 11, 2007

The public hearing was opened at 7:15pm 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: Mark Lanza, William McCurdy, Paula Johnson, Mary-Ellen Jones, Anne Marie Arnold, Joseph Sudol, Chris Perela, Valerie Hurley, Mary Essary, Stanley Murphy, Kathy Fricchione, Keith Cheveralls, John Drummey, Vicary Maxant, Lisa Karanikolas, Abby Hutchinson, Lynn Seymour, Mike Ivas (MHOC), Gerry Welch (MHOC), Tony Marolda, Brad Taylor, Anne Ferguson, Meg Bagdonas, Ron Ricci, Mark DeWandel, Julie DeWandel, Don Ritchie, Sandy Brock (Nitsch Engin.), George Dimakarakos (Stamski & McNary), Adam Costa, Paul Willard, Lorin Johnson, George Watkins and Savas Danos.

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

Adam Costa, legal representation for MHOC, stated Mike Jacobs was present this evening to discuss the Pro-Forma of this project. Mr. Jacobs is the financial consultant for MHOC. Chris Tracey reviewed the documents received since the last meeting.

Mr. Tracey explained concerns from other Town Boards and residents prompted him to invite them to the hearing to discuss the issues. A letter from the Planning Board was received at the last meeting. Mr. Tracey explained the issues raised by the Planning Board should be addressed with the issuance of a permit from the Board of Health and the Department of Environmental Protection.

Mary Essary, the Chair of the Planning Board, explained the reason the letter was written was to express their continuing concerns with the environmental impacts on the site. Mrs. Essary stated during the Sheehan Special Permit filing the Planning Board worked with the Conservation Commission to reduce the buffer zone impacts. Mrs. Essary asked to what extents are we asked to deviate from standard procedure and is it different with a 40B filing.

Mr. Tracey asked Lorin Johnson of the Board of Health (BOH) if he could comment on the status of the filing with the BOH. Mr. Johnson stated that since he is new on the

BOH and he does not feel comfortable commenting on it. Mr. Johnson added the BOH has talked about it off and on, but to try and sum it up would be hard to do right now.

George Dimakarakos, of Stamski & McNary, stated additional deep hole testing was done today with the BOH and additional perk test will need to be done when it is drier out. Mr. Dimakarakos noted changes to the present BOH rules have removed the need for one of the waivers requested in the initial application. Mr. Tracey noted the ZBA would be looking to the BOH for comments on any waivers the applicant has asked for.

Mr. Tracey asked if anyone present from the Conservation Commission (Concom) would like to comment on the status of the project as far as they are concerned. Paul Willard, Chairman of the Concom, stated the Concom is in the process of reviewing a Notice of Intent filed with them for the installation of the wells. Alternatives had been requested to relocate the wells outside the bordering vegetated wetland (BVW). The Concom agreed that Alternative Two, which called for three wells outside the BVW, was the preferred option. Mr. Willard further explained the Concom has not seen a filing for the entire project as of yet. Mr. Willard asked if the ZBA had received a request for a waiver from the Wetland Protection Bylaw. Mr. Dimakarakos stated the application did not request any waivers from the Wetland Protection Bylaw, but the application did predate the new set backs established within the Rule and Regulations that go along with that bylaw. Mr. Tracey asked if the work in the buffer zone is acceptable to the Concom. Mr. Willard stated if this were a new filing under the new Rules & Regulations it would not be allowed.

Mrs. Essary asked if the new rules that now codify the set backs have been historically used in the past by the Concom. Mr. Willard stated yes they have. George Watkins, a member of the Concom, would like people to know under the Wetland Protection Act there is an alternatives test in which the applicant has to show there is no other alternative to the plan and the Concom does not have to take into consideration the profit of the project. Mr. Dimakarakos feels the way the application has been submitted to the Concom meets the requirements. Mr. Tracey asked Mark Lanza, Town Counsel, if the plan went to Concom and major changes were made would the applicant have to come back in front of the ZBA. Mr. Lanza stated yes and added the decision should state what type of changes would cause a re-file with the ZBA. Mrs. Essary wanted clarification to what Mr. Watkins had to say, do those alternatives include the lowering the density. Mr. Dimakarakos stated there is no alternative needed for work within the buffer zone or the BVW. Sandy Brock, of Nitsch Engineering, agreed with what Mr. Dimakarakos stated and added that they have to meet all the standards, but buffer zone is not one of the requirements for an alternative. Mr. Watkins stated that he was referring to the Wetland Protection Bylaw and not the Harvard Wetland Protection Act.

The hearing was temporarily recessed to open and continue the hearing that was scheduled for 7:30pm.

Tony Marolda, a Harvard resident, stated the alternatives submitted to the Concom included a lower density that included 28 units instead of 32. The outcome was that

alternative was not economic. Mr. Marolda asked what type of business is MHOC, a non-profit or Limited Dividend Liability. Mr. Marolda asked if Concom look at fewer units. Mr. Willard stated no, the Concom agreed with the finding by Nitsch Engineering in which Alternative Two was the best alternative. Mr. Marolda stated that at the Concom meeting Alternative Two was only a 5% profit and the reduction to 28 units would be a 1% profit. What is a reasonable profit?

Ms. Brock explained the process of her companies review. The plans as submitted are preliminary and are not construction documents, she looks at the plans to determine if it is feasible to the site and not economical. Ms. Brock looked at the soils, wetlands and building codes. Alternative Two was selected because they look at protecting the environment and it had the least impact on the site. Once a general agreement is reached that the project is technically feasible the plan is submitted to the other permitting boards in town. After the other boards have issued their permits, a final construction drawing has to be approved by the ZBA. Mr. Tracey asked Ms. Brock how many projects she has reviewed over the years. Ms. Brock stated maybe 30 - 50 40B applications over the years. The range of those applications has been extremely variable from very small to large. Ms. Brock added the commercial portion is the odd variable on this project. Ms. Brock again stated they have not reviewed the commercial area. They did however ask some questions in regards to that portion and have given some suggestions as how it should be permitted. Ms. Brock stated this is pretty typical 40B application. Mr. Tracey asked given all the factors are this project an appropriate development. Ms. Brock stated appropriate is a difficult word, this is not an uncommon site that would be developed as a 40B. Ms. Brock added she does not take into consideration to the impacts of the neighborhood. There is a large amount of fill on the site and those impacts have been addressed. Based on the information submitted this project is buildable.

In regards to the revised plan showing three wells outside the bordering vegetated wetland (BVW), rather than one well within the BVW, Savas Danos, the Water Quality consultant, stated any changes from one board may have a profound impact on other board's results. The commercial development in the front has been determined to be retail use because of the size of the septic system. Mr. Danos stated the devil is in the details. The Town of Harvard has some very unique water characteristics that could affect the out come of the project. Mr. Tracey noted a peer review had been submitted on April 6, 2007. The Concom has chosen an alternative they are comfortable with and Nitsch agreed. Mr. Danos stated in the case were you have three wells the Zone 1 radius, is based on the yields of these wells. The only buildings that can be built within the Zone 1 radius are those associated with the wells. Mr. Tracey noted the review has been done assuming the wells will be approved by DEP for use. Mr. Tracey stated it seems strange to permit wells within such close proximity to the septic system. Mr. Danos stated the DEP requires a rigorous testing scheduling due to the fact it is a public water supply. Mr. Tracey asked if it can be determine any if there is any contamination to the wells from the septic system. Mr. Danos stated these will be bedrock wells and you may not be able to determine that for years. Mr. Tracey asked how deep the wells will be. Mr. Danos stated he may want to ask the neighbors how deep theirs are and that could give you some indication, but there is no way of telling prior to the drilling of the well. Mr. Tracey

asked if the water over time becomes contaminated by the septic system what would be the solution. Mr. Danos stated you would end up with a water system with a higher level of treatment. Ms. Brock added you have to realize these are State standards that are being used all over the State and creating a baseline.

Mr. Capobianco asked Mr. Lanza if it would be appropriate if potential contamination of the well water is an issue could it be conditioned within the permit that the developer is responsible to resolve. Mr. Lanza does not think that is allowable. Mr. Capobianco asked is there anyway we can let the buyer know the wells are so close to the septic system. Mr. Lanza thinks this is between the seller and the buyer and not in our purview.

Anne Marie Arnold, a resident of Town, addressed the issue of senior housing within Town. Ms. Arnold stated what we really need is a senior group; we would love to see if we can have a senior area. Ms. Arnold added if the applicant wants to build it they should age restrict it. This would be a positive for the Town. Ms. Arnold stated seniors are leaving Town because there is no where to go here in Town. Mr. Tracey explained the developer has met with many Town boards to determine what the Town needs. Ms. Arnold added this particular developer may not have heard from those groups that would like it age restricted. Gerry Welch explained they had discussed this issue and because of that discussion a lot of the units are first floor master bedrooms, we did however decide it was not suitable to be age restricted.

Keith Cheveralls, a resident of Town, is concerned by the commercial component not being subjected to the peer review. Mr. Cheveralls believes the peer review should include this comment. Mr. Tracey had stated earlier due to the sizing of the septic system the commercial portion would be limited to all retail or 6,000 square feet retail and 2,000 square feet office. Mr. Tracey stated if it is a 'use by right' with site plan review, it will be a part of the decision as to what types of uses will be allowed. The applicant will have to appease the Building Inspector in order to get a building permit. Mr. Tracey explained if the applicant is saying 2,000 sq. ft. office and 6,000 sq. ft. retail and a restaurant is allowed by right but not feasible by the septic system design than it is up to the Building Inspector to determine that. Mr. Lanza stated the septic system will identify the uses allowed. Mr. DeZutter stated a use by right is nice to have, but if the site can not handle a large septic system or wells those are limiting factors which will come into play when the permits are issued. Mr. Capobianco asked if he was looking to become a tenant do I have to go to the BOH. Mr. Lanza stated the septic system permit will be issued allowing only certain uses. Mr. Capobianco asked if the commercial unit should be limited to the amount of gallons used. Mr. Dimakarakos stated yes there will be a finite amount of gallons for commercial portion. When an occupancy permit is issued for the commercial building the BOH permit should be reviewed.

The hearing was temporarily recessed to open and continue the hearing that was re-scheduled for 8:30pm.

A Citizens Petition had been received by the ZBA in which in the petitioners raised questions as to whether or not certain individuals are appropriate for review of this application. Tony Marolda, a Town resident and one of the petitioners, spoke as the representative of the petition. The petition requests a seconded public accounting firm review the project. The petitioners believe Ed Marchant has a conflict of interest with this application. Mr. Tracey asked if a signed version of the petition was available. Mr. Marolda stated it has been sent electronically and confirmed as received. Mr. Tracey explained to Mr. Lanza the letter is from one abutter and other interested parties. Mr. Lanza stated it should be submitted and made part of the file and it is up to the Board as to how much weight they want to give it. Mr. Tracey asked that a signed petition be submitted for the record. Mr. Capobianco would like to know if Mr. Marchant has worked for the MHOC team. Mr. Marchant stated no. Mr. Tracey explained how there is a small pool of professionals that have 40B experience. The ZBA has never worked with Mr. Marchant before. Mr. Lanza stated having an individual that understands both sides of the application process is good, but the ZBA wants to be careful of any biases.

Mr. Marchant agrees with Mr. Lanza that an individual that understands both sides of the coin is good to have. Mr. Marchant gave his background and towns he has work in. He has never worked for the developer to the best of his knowledge. He has no ties to MHOC. In certain case he has recommended that boards deny a permit. Mr. DeZutter asked if he had ever made denial based on the review of the financial standings. Mr. Marchant stated no. Mr. Moeser asked if Mr. Marchant is an advocate of 40B's. Mr. Marchant stated yes, as long as they are done properly.

Robert Capobianco made a motion to continue with Mr. Marchant's services. James DeZutter seconded the motion. Steve Moeser abstained from voting. The vote was unanimously in favor of the motion, 3-0.

Mr. Capobianco suggested the financials for 28 units be reviewed. Mr. Moeser would like to minimize the cost and asked if information gathered from other projects can be utilized. Mr. Marchant tries to use a lot of previous work if applicably.

MHOC financial consultant, Mike Jacob, was present. Mr. Jacob stated he has tried to provide as much detail as possible. He did make a mistake on the affordable sales prices as those are too high for the 2 bedroom units. He will have to revise this. Mr. Marchant has received the revision. Mr. Marchant still has some open items for his review. Much has been covered in the pro-forma sent to him. Mr. Tracey asked the members if they are all right with the two finance consultants emailing information to each other as long as we are copied on the emails. The members agreed they are all right with this.

Adam Costa, legal representation for MHOC, stated he has concerns regarding the status as non profit and Limited Liability Dividend (LLD). Mr. Costa stated MHOC is a non profit entity. Under Mass General Law it can be a LLD to make a profit not greater than 20%. A for profit entity will be created for this project. The profits will be directly delivered back to MHOC to be used for operation cost. Mr. Moeser asked why they are doing that. Mr. Costa stated this is the general rule. Mr. Tracey thinks it was miss read

by the community because MHOC is a non profit entity. Mr. DeZutter stated this project is a for profit project up to 20% and has been from the beginning. Mr. Lanza stated this is consistent under 40B as Mr. Costa has described. Mr. Lanza added that the LLD may not be created for some time after the permit is issued. Mr. Capobianco can not understand why we need two corporations here.

Mr. Costa requested a detailed agenda for the next hearing. Any interested party in Town can address the ZBA with their questions prior to the next meeting. Mr. DeZutter asked if the ZBA was going to discuss the commercial portion and if it will be reviewed by Nitsch. This will be the first item at then next meeting. Mr. DeZutter asked what kind of input we can expect from Concom or BOH. An agenda item will address the input from the BOH in regards to the requested waivers. Mr. Dimakarakos stated if any boards have any questions or request they should be submit the ZBA. The problem is Concom has not received the whole plan yet so they can only comment on the wells. Mr. Moeser thinks it is the applicant's job to get the input from those boards. Mr. Capobianco asked where the applications with both Concom and BOH stood. Mr. Dimakarakos stated the Concom still needs a filing for the entire project and BOH is requiring additional testing.

Steve Moeser made a motion to continue the hearing until April 9, 2007 at 8:30pm. 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
April 11, 2007**

The public hearing was opened at 7:43pm 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: Mark Lanza, Paula Johnson, Mary-Ellen Jones, Anne Marie Arnold, Valerie Hurley, Mike Ivas (MHOC), Gerry Welch (MHOC), Dan Page, Sandy Brock (Nitsch Engin.), George Dimakarakos (Stamski & McNary) and Adam Costa.

This hearing was continued from March 21, 2007 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.

The hearing was opened at 7:43pm; Chris Tracey made a motion to continue the hearing until 8:30pm. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

The hearing was reopened at 8:40pm. Chris Tracey made a motion to continue the hearing until 9:00pm. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

The hearing was reopened at 9:28pm.

George Dimakarakos stated he had received the Board of Health (BOH) review today. This review will require some changes to be made to the plan. The peer review from Nitsch has been received, but they have not replied to that review. Mr. Dimakarakos is scheduled to meet with the Fire Chief tomorrow. They have had their first meeting with the Conservation Commission (Concom). The Concom would like to know what the responses are of the review by Nitsch before closing the hearing. Mr. Tracey asked about Nitsch’s comment that the project is not feasible. Mr. Dimakarakos stated they feel after we provide more information it will be seen as feasible. Sandy Brock, of Nitsch Engineering stated they have a concern about access and how you can get in and out.

Dan Page, an abutter to the property, asked about the shared septic system which abuts the property area wants to make sure we can dump all of this septic and can it work. Steve Moeser noted the abutting system is up hill from this project and asked if Ms. Brock could comment on that topic. Ms. Brock thinks it is a legitimate question and would ask the applicant to sketch that system in on the plan for her review. Mr. Page also asked about the walking path, which was discussed at the last hearing. Mr. Lanza thinks

this may not be an issue for ZBA because it is off site. Mr. Page stated residents have a lot of concern with the car traffic in that area. Mike Ivas stated this is not something they are pressing for; it was brought to them by the Ad Hoc committee.

The parcels are currently two separate parcels. The proposal is to have two lots with two condominium associations; each will have its own septic system.

Financial components will be discussed at the next meeting.

Chris Tracey made a motion to continue the hearing until May 9, 2007 at 9:00pm. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Robert Capobianco, Clerk