

**HARVARD ZONING BOARD OF APPEALS**  
**MINUTES OF MEETING**  
**May 9, 2007**  
**APPROVED: June 13, 2007**

Chairman Chris Tracey called the meeting to order 7:03pm at in the Town Hall Meeting Room.

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

**Others Present:** Mark Lanza, Barbara Callaghan, Loretta Fata, Doug Coots, Amy Bernhardt, Keith Cheveralls, William McCurdy, Mark O'Hagan (Fairways Partners), Gil Smith, Justin Smith, Bill Donnelly, Dan Wolfe (Ross Assoc.), Steve & Joan Burns, M.E. Jones (Harvard Hillside), Jack Guswa, Paula Johnson, Brad Taylor, Meg Bagdonas and Valerie Hurley (Harvard Press)

**Special Permit Hearing – Michael Callaghan, 32 Turner Lane, Map 21 Parcel 56.**  
Opened at 7:03pm

**Trail Ridge Questions**

Mark O'Hagan, of Fairways Partners, was present to discuss with the members the conversion of a deck to a four-season room at the Trail Ridge Project on Littleton County Road. The request is for unit 8A, which is an end unit. Robert Capobianco asked what keeps this from becoming a bedroom. The room would be accessed from the main portion of the interior by a six foot wide opening from the family room. Mr. Capobianco stated a couple of French doors and you would have a private room. Steve Moeser asked if this change would be something the developer would be looking to do on other units. Mr. O'Hagan stated no, but others could request it. Mr. Moeser asked if adding another room does anything to the room count as it relates to the septic system. Chris Tracey would like know if you added the room and divided by two does it effect the room count. Mr. O'Hagan stated there is a deed restriction imposing the number of bedrooms. The members agreed they would like the Board of Health to review the plan and give the ZBA their recommendation. The decision will need to be reviewed to determine if there is a restriction on the number of bedrooms.

Mr. O'Hagan was also present to discuss a provision made within the final decision in regards to a waiver to 'setbacks'. The approved plans, except with respects to one of the units in Building 10, provide a minimum of at least a 30' setback from the property line. One unit in Building 10 evidences a setback of 28' of the deck from the property line.

Mr. O'Hagan is requesting a letter be sent to the Building Inspector clarifying the ZBA's intention that the setbacks, as set forth on the approved plans, were intended to be effectively waived.

Members discussed both issues with Town Counsel who would like an opportunity to review the decision before commenting. The members requested Mr. O'Hagan attend the May 23, 2007 meeting at 9:30pm to further discuss the issues.

**Town Center Planning Committee Appointment**

The Planning Board has requested a representative from the ZBA be selected to serve on the Town Center Planning Committee, a sub-committee of the Planning Board. The members concluded their current schedules do not allow for additional duties. A letter will be sent to the Planning Board thanking them for including the ZBA, but at this time they can not offer any additional time to the Town Center Planning Committee.

**Special Permit Hearing – Doug Coots & Amy Bernhardt, 14 Ayer Road, Map 17D, Parcel 9.** Opened at 7:40pm

**Election of Officers**

Robert Capobianco made a motion to nominating Chris Tracey as Chairman of the ZBA and Steve Moeser as the Vice Chair and Clerk. Chris Tracey seconded the motion. The vote was unanimously in favor of the motion.

**Special Permit Hearing – Alice Schmidt, 58 Bolton Road, Map 22 Parcel 29.** Opened at 8:00pm

**Continuation of a Comprehensive Permit Hearing – Massachusetts Housing Opportunity Corporation, 262/264 Ayer Road, Map 4 Parcels 39 & 40.** Opened at 8:40pm

**Continuation of a Comprehensive Permit Hearing – Massachusetts Housing Opportunities Corporation, 15 Littleton Road, Map 17D Parcels 14 & 17.** Opened at 9:08pm

**Adjournment**

Chris Tracey made a motion to adjourn the meeting at 10:25pm. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_  
Steve Moeser, Clerk

**Harvard Zoning Board of Appeals  
Special Permit Hearing Meeting Minutes  
Michael Callaghan, 32 Turner Lane, Map 21 Parcel 56  
May 9, 2007**

The public hearing was opened at 7:03pm by Chairman Chris Tracey under MGL Chapter 40A §6, the Zoning Act and the Code of the Town of Harvard, the “Protective Bylaw”, Chapter 125 §3 as amended.

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

**Others Present:** Dan Wolfe, Barbara Callaghan and Loretta Fata

This hearing is for Special Permit filed on behalf of Michael Callaghan for the reconstruction of an existing garage on a pre-existing nonconforming lot at 32 Turner Lane, Harvard.

Chris Tracey made a motion to waive the formal reading of the legal notice. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Dan Wolfe was present to represent the applicant, who is proposing the demolition of the existing garage at the back of the lot and the construction of a new garage with two (2) bays with storage above. The parcel is nonconforming. The existing house was built approximately in 1910. The nonconformity is from the center line of the right of way and the sideline. New garage will be nine (9) feet from the sideline; the existing garage is two (2) feet. From the centerline of the right of way the new garage will be thirty-six (36) feet, the existing garage is twenty-two (22) feet. The plans have been revised based on the comments submitted by other Town Boards. The revisions show the work will be outside of Conservation Commission boundaries.

Mr. Wolfe explained the comments from the Planning Board, in regards to the attendance at their February 12, 2007 meeting, the Board was informed the existing garage would be demolished and a new garage would be built. Mr. Wolfe stated the applicant has every right to take a nonconforming parcel and increase its dimensional character. Robert Capobianco questioned the lot line shown on the plan. Mr. Wolfe explained this is just to show the parcel which will be transferred. Steve Moeser asked what is to become of the lot you are taking this parcel from. Mr. Wolfe explained the adjoining lot is a large parcel of land that will not be made nonconforming by selling this portion of this parcel. Mr. Capobianco asked if the Turner property a conforming lot. Mr. Wolfe was not sure if it has the appropriate frontage. Mr. Wolfe further explained the additional parcel was created to be added to the Callaghan parcel. Mr. Capobianco asked if it is a nonconforming lot, which is not buildable, then how can the Planning Board create a lot that is nonconforming. Mr. Wolfe explained the Planning Board did not create a lot, they created a parcel and if it is not conveyed then it would revert back to the over all piece (Turner). Barbara Callaghan explained the parcel was purchased to get more room

around the garage. Mr. Capobianco asked if the Turner lot is a nonconforming lot, then how can they take a piece off. Mr. Wolfe explained they can take a nonconforming parcel and reduce the area as long as they do not reduce it below the required area. Mr. Tracey asked if you have a nonconforming parcel and add an additional nonconforming parcel, do the rules apply to the new parcel as well. Mr. Wolfe stated, with no disrespect to the Planning Board, the Planning Board has issued comments without knowing clearly what the ZBA does. Mr. Tracey suggested this question should be addressed by Town Counsel, who will be attendance later this evening.

Mr. Capobianco asked if the loft would be heated. Mr. Wolfe stated there would be no heat, no water, no septic connection; it would be used for storage only. Mr. Moeser asked about the comment made by the Bare Hill Pond Watershed Management Committee in regards to phosphorus use in the vicinity of the pond. Mr. Moeser asked if the applicant was amenable to a condition limiting the use of phosphorus. Mr. Wolfe stated they would be alright with the condition. Mr. Tracey asked if the plan submitted is what will be visually seen. Mrs. Callaghan explained the door would be on the other side of the structure and there will be no dormers.

Chris Tracey made a motion to continue the hearing until 8:50pm in order to discuss the nonconformity issues with Town Counsel. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

At 8:53pm the hearing was reopened.

Mark Lanza asked if the garage would comply with current the zoning. Mr. Wolfe stated no. Mr. Lanza explained the applicant needs one of two things, a Special Permit to change the prior single family use or a Variance if it is intensifying the nonconformity. Mr. Wolfe explained the new garage will decrease the off sets to the property line. Mr. Lanza would advise the applicant obtain a Special Permit. Mr. Lanza noted the applicant should be put on notice that someone could appeal Special Permit on the bases that a Variance is needed. The Planning Board letter states the applicant should comply or get a Variance. Both Mr. Capobianco and Mr. Moeser agree with Counsel. Mr. Capobianco pointed out that every time the ZBA has issued a Special Permit it has been for an addition to an existing structure and not a brand new structure. Mr. Tracey asked Mr. Lanza if it is inappropriate for the ZBA to issue a Special Permit for a new structure on a new parcel. Mr. Lanza stated that should be a Variance.

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

After a brief discussion Robert Capobianco made a motion to issue a Special Permit with the conditions of no phosphorus fertilizers is to be used on the lawn and the existing garage is to be removed. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_ Steve Moeser, Clerk

**Harvard Zoning Board of Appeals  
Special Permit Hearing Meeting Minutes  
Doug & Amy Bernhardt, 14 Ayer Road, Map 17D Parcel 9  
May 9, 2007**

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

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

**Others Present:** Doug Coots, Amy Bernhardt, M.E. Jones (Harvard Hillside) and Valerie Hurley (Harvard Press)

This hearing is for a Special Permit filed on behalf of Doug Coots and Amy Bernhardt for an addition to a pre-existing nonconforming house at 14 Ayer Road, Harvard.

Chris Tracey made a motion to waive the formal reading of the legal notice. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Doug Coots explained to the members he plans to remove an existing deck and replace it with an addition. The original building constructed in the late 1800’s was 4,148square feet. A renovation in 1996 was an additional 820 square feet, which consisted of a garage. The current proposed addition would be an additional 240 square feet. Access would be from the rear of the workshop from the outside. The lot is nonconforming due to the lot size and set back from the center line of the road. The addition will be a book binding shop. Mr. Coots is a member of the Historic Commission; the Commission found the addition is non-applicable since it would not be viewed from a public way. The Building Inspector, Conservation Commission, Board of Health, Department of Public Works and the Planning Board had no objections to the proposal.

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

After a brief discussion Robert Capobianco made a motion to issue a Special Permit with no additional conditions. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_  
Steve Moeser, Clerk

**Harvard Zoning Board of Appeals  
Special Permit Hearing Meeting Minutes  
Alice Schmidt, 58 Bolton Road, Map 22 Parcel 29  
May 9, 2007**

The public hearing was opened at 8:00pm by Chairman Chris Tracey under MGL Chapter 40A §6, the Zoning Act and the Code of the Town of Harvard, the “Protective Bylaw”, Chapter 125 §3 as amended.

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

**Others Present:** Gil Smith, Justin Smith, Dan Wolfe (Ross Assoc.), M.E. Jones (Harvard Hillside) and Valerie Hurley (Harvard Press)

This hearing is for a Special Permit filed on behalf of Alice Schmidt for the renovation of a pre-existing nonconforming structure at 58 Bolton Road, Harvard.

Chris Tracey made a motion to waive the formal reading of the legal notice. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Gil Smith explained to the members he is interested in expanding the rear of the existing house. The members had questions as the configuration of the lots and is there a record of this lot being a separate lot. Dan Wolfe, who was present to represent another applicant this evening, stated the plan submitted with the application is a work sheet and is not intended to be a certified plan. The worksheet was done to determine the shape and size of the lot. The two hundred (200) foot build circle would not fit anywhere on this lot. The structure is to close the property line where it jogs out, thirty-eight (38) feet instead of the required forty (40) feet. The application was filed as an addition to an existing to a nonconforming structure. The addition will not create any additional nonconformities. The site has over two hundred (200) feet of frontage.

Robert Capobianco stated the deed shows three parcels, which was recorded on November 9, 2006. Chris Tracey asked if the applicant had been to the Board of Health (BOH) yet. Mr. Smith stated he met with the BOH last night. The opinion of the BOH was they would like to see a Title V approval system be installed to take it from a repair to a replacement, which would make it a four bedroom system. Mr. Smith would like to use the plan approved by the BOH in February 2007, which is a repair that will keep the system in compliance as a three bedroom. If a new Title V system is to be installed additional testing will be needed and a new plan will need to be designed.

Steve Burns, an abutter to the property, expressed concern over an upgraded system for the water filtration that could be a noisy. Currently there is one within the area that creates a lot of noise. Mr. Smith asked if there is radon in the water and is that why this type of system is needed. Mr. Burns did not know the answer as to why such a system

was installed. Mr. Tracey suggested to Mr. Burns he address his concerns of the noisy system to the BOH Administrative Assistant.

The members agreed a site plan and a radius of what the applicant is looking for will be needed. The ZBA will need for the record a plot plan showing the expansions with dimensions, most importantly the 38 feet. The plan should show where things are going to be once work is complete. The ZBA also needs to know what the square footage is currently, what may have been added over the years and what this addition increase will be. Mr. Gill stated the additional floor area will be 1,360 square feet. The ZBA will also need written resolution from the BOH.

A copy of the plan will be sent to the Bare Hill Pond Watershed Management Committee for their comments.

Steve Moeser made a motion to continue until June 13, 2007 at 7:00pm. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_  
Steve Moeser, Clerk

**Harvard Zoning Board of Appeals**  
**Continuation of a Comprehensive Permit Hearing Meeting Minutes**  
**Massachusetts Housing Opportunity Corporation, 262/264 Ayer Road**  
**May 9, 2007**

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

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

**Others Present:** Mark Lanza, Keith Cheveralls, William McCurdy, Bill Donnelly, M.E. Jones (Harvard Hillside), Jack Guswa, Paula Johnson, Brad Taylor, Meg Bagdonas and Valerie Hurley (Harvard Press)

This hearing was continued from April 11, 2007 on a Comprehensive Permit filed on behalf of Massachusetts Housing Opportunity Corporation for eight (8) residential structures, each with one (1) affordable unit at 262/264 Ayer Road, Harvard.

A continuance was requested by the applicant's legal representation. Chris Tracey asked Mark Lanza if the ZBA could discuss the application even though the applicant was not present. Mr. Lanza stated it was alright to discuss the application as it was the applicant's choice not to be here.

Mr. Tracey had distributed an outline of follow-up items to the members for their review and comments several days ago. Item 1, a revised plan showing the elevation of the rear building being reduced in height, was requested today through the applicant's engineer, Stamski & McNary by the ZBA's administrative assistant.

Item 2, what would happen if the Public Water Supply fails the pump test. Robert Capobianco asked if the applicant should test a second area for a back up. Steve Moeser stated the pump test is only giving you a snap shot of what is there when the test is done. Mr. Tracey believes there is no additional space to put a well if the approved well location fails. James DeZutter asked if the ZBA had any history of this happening. Mr. Capobianco this issue is combined with the septic system upstream from the wells, creating a potential for contaminated water. There are two possible solutions to this problem move the wells or install a tight tank. Mr. Tracey asked Mr. Lanza how other small Towns, without public septic or water, deal with this type of project. Mr. Lanza stated it is up to DEP to permit the conforming wells and this matter is not really before the ZBA. Mr. Capobianco asked if there is any way to let individuals buying a unit aware the septic system is up gradient of the septic system. Mr. Lanza stated no, this is a matter between the buyer and the seller. Mr. Capobianco asked if the plan showing the



septic system up gradient can be recorded and noted on the deeds. Mr. Lanza stated this was acceptable.

Keith Cheveralls, a resident, asked if there is going to be a home owner association and wouldn't that be the place for this type of information. Mr. Cheveralls stated a typical condo document should be reviewed by counsel and approved by the ZBA.

The hearing was temporally recessed at 8:54pm to open and continue another hearing. This hearing was re-opened at 9:08pm.

Item 2 also asked the questions of the lofts, which in another development have become bedrooms. It will be appropriate to have a special condition as a deed restriction in the Master Deed and then on each deed, require these lofts remain lofts.

Mr. Capobianco asked if the commercial portion is going to be allotted a certain amount of septage and down the road a new tenant comes in, how will the limited amount of septage will be regulated. Mr. Moeser explained the amount septage available within the commercial area is based on the size of the allowable use of the structure, which are 2,000 square feet of office space and 6,000 square feet of retail or all retail. Mr. Lanza suggested a condition be included that although the ZBA is granting the waiver for the commercial area the law as we know it is unsettled as to if a Variance is needed, so the applicant proceeds at their own risk. Mr. Lanza stated the ZBA should wait for the applicant to request additional waivers. Mr. Cheveralls asked if this meant the commercial component is part of the Local Initiative Program Application. Mr. Tracey explained the commercial component is part of the 40B application and therefore there is additional input needed, such as financial review and comments from the Planning Board as well as Nitsch has not reviewed the commercial portion of the plan. Mr. Cheveralls stated the Department of Housing and Community Development (DHCD) guidelines states it should be separate from the 40B.

Mr. Lanza noted the Zoning Protective Bylaw would require site plan review by the Planning Board. Mr. Lanza has received a memo from the applicant's legal representation, Mark Browbowski, stating the applicant plans on filing with the Planning Board for site plan review. Mr. Tracey asked if this means the ZBA should renew the contract with Nitsch to include the review of the commercial portion. Mr. Lanza stated this is a decision of the ZBA. Mr. Moeser asked what if there are changes through the site plan approval. Mr. Lanza stated that is a risk the applicant takes.

Mr. Capobianco again asked what safeguards are in place to keep the amount of septic limited to what it needs to be. It was stated the Building Inspector issues an occupancy permit which should trigger a check on the septic. Mr. Tracey asked if the BOH issues a permit and Department of Environmental Protection (DEP) issues a permit do the members have any other safety issues in this regard. Mr. Capobianco is alright with this as long as the previously mentioned recorded plan is done.

The hearing was temporally recessed at 9:38pm to open and continue another hearing.

This hearing was re-opened at 9:42pm.

Mr. Tracey asked Mr. Lanza if the ZBA can ask for an easement on each side of the property into the commercial portion to reduce future curb cuts on Ayer Road. Mr. Lanza stated they could.

Mr. Capobianco asked if there is a bus stop shed proposed. The plan was reviewed and there is no shed proposed. Mr. DeZutter stated he believes in this day and age people are going to wait with their children until they get picked up, so a shed would not be used. The members are alright with individuals parking on the side of the drive while waiting for bus pick up.

Mr. Tracey noted in the March 1, 2007 letter to the Conservation Commission from MHOC's legal representation, contains a proforma that is different than one submitted by Mark Jacobs to the ZBA. Mr. Cheveralls pointed out the in the DHCD guidelines the proforma should be done after the peer review is done.

Both Mr. Tracey and Mr. DeZutter feel that if the ZBA is going to be asked to permit the entire project, the residential and commercial areas, then they want Nitsch to review it.

The members decide they would request Ed Marchant to attend the next meeting to report on the financial review to date.

Steve Moeser made a motion to continue the hearing until May 23, 2007 at 8:00pm. James DeZutter seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_  
Steve Moeser, Clerk

**Harvard Zoning Board of Appeals  
Comprehensive Permit Hearing Meeting Minutes  
Massachusetts Housing Opportunity Corporation, 15 Littleton Road  
May 9, 2007**

The public hearing was opened at 8:54pm 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, Keith Cheveralls, William McCurdy, Bill Donnelly, M.E. Jones (Harvard Hillside), Jack Guswa, Paula Johnson, Brad Taylor, Meg Bagdonas and Valerie Hurley (Harvard Press)

This hearing was continued from April 11, 2007 and 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 8:54pm this hearing was open, Robert Capobianco made a motion to continue the hearing until 9:30pm. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

At 9:38pm this hearing was re-opened. A continuance was requested by the applicant’s legal representation. Steve Moeser made a motion to continue the hearing until May 23, 2007 at 7:00pm. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_  
Steve Moeser, Clerk