

HARVARD ZONING BOARD OF APPEALS
MINUTES OF MEETING
May 23, 2007
APPROVED: November 7, 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: Liz Allard, Mark Lanza, George Dimakarakos (Stamski & McNary), Paula Johnson, Vicki Maxant, Stanley Murphy, Brad Taylor, William McCurdy, Mike Jacobs (MHJ Assoc.), Robert Mignard (Fire Chief), Valerie Hurley (Harvard Press), John Drummey, Gerry Welch (MHOC), Mike Ivas (MHOC), Mark O'Hagan, Adam Costa and Mark Bobrowski

Comprehensive Permit Hearing – Massachusetts Housing Opportunities Corporation, 15 Littleton Road, Map 17D Parcels 14 & 17. Opened at 7:15pm

Continuation of a Comprehensive Permit Hearing – Massachusetts Housing Opportunity Corporation, 262/264 Ayer Road, Map 4 Parcels 39 & 40. Opened at 8:12pm

Trail Ridge Questions

Mark O'Hagan, of Fairways Partners, was present to discuss the determination Town Counsel had made on Mr. O'Hagan's previous request. The first was for the conversion of a deck to a sunroom. Robert Capobianco asked if Mr. O'Hagan was here asking for just one (1) of the fifty-two (52) units to be changes or all of the units. Mr. O'Hagan stated right now they are asking for one (1), but other potential buyers could make the same request. Chris Tracey asked if Mr. O'Hagan has spoken with the Board of Health (BOH) to determine if this change does not affect the room count, which in turn would affect the septic system capacity. Mr. O'Hagan stated he had and the BOH had no real concerns. Mr. Capobianco asked if this change would change the value of the units and the percent profit. Mr. O'Hagan stated the percent profit will be within the final proforma. Mr. Tracey explained to the members the BOH has it noted on their permits that a condo deed is required and the master deed will delineate the bedroom count. Attorney Lanza stated clearly this is a deminimus change.

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.

Mr. Tracey stated the ZBA was not clear on the requested waiver within the decision, which was an oversight on part of the ZBA. Attorney Lanza agreed this was just a Scribner's error and the ZBA may want to state that within a modified decision.

Robert Capobianco moved that the Board of Appeals (i) confirm its decision to waive the minimum building setback requirement of the Town's Protective Bylaw to allow the deck of one unit in Building 10 of the Trail Ridge Affordable Housing Project to be set back 28 feet from the nearest lot line, as shown on the plans approved by the Board in its Modification Decision dated September 28, 2005; and (ii) determine that construction of a four-season porch in lieu of said deck is a *de minimus* modification to the approved building construction plans which does not require a formal public hearing by the Board. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

The Board voted unanimously to allow Chris Tracey to sign the Modification Decision on behalf of the Board.

Adjournment

Chris Tracey made a motion to adjourn the meeting at 10:10pm. Steve Moeser 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 23, 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 and Robert Capobianco

Others Present: Liz Allard, Mark Lanza, George Dimakarakos (Stamski & McNary), Paula Johnson, Vicki Maxant, Stanley Murphy, Brad Taylor, William McCurdy, Mike Jacobs (MHJ Assoc.), Robert Mignard (Fire Chief), Valerie Hurley (Harvard Press), John Drummey, Gerry Welch (MHOC), Mike Ivas (MHOC), Adam Costa and Mark Bobrowski

This hearing was continued from May 9, 2007 and is for a Comprehensive Permit filed on behalf of Massachusetts Housing Opportunity Corporation (MHOC) for twelve (12) condominium units with three (3) affordable units at 15 Littleton Road, Harvard.

George Dimakarakos, Stamski & McNary, stated the letter dated May 15, 2007 is in response to the letter dated April 5, 2007 from Nitsch Engineering and Earth Tech letter dated March 21, 2007. Revised drainage calculations have been submitted. To date there has been no response from Sandy Brock at Nitsch Engineering or Jeff Maxtutis at Earth Tech. The application is still in front of the Conservation Commission (Concom), who is waiting for comments from Nitsch before closing the hearing. Once comments are received from Nitsch and a revised plan is completed the applicant will submit plans to the Board of Health (BOH). Mr. Dimakarakos explained the purpose of the cut and fill report was in regards to the comments made by Nitsch. Mr. Dimakarakos has met with the Fire Chief, Robert Mignard, who has asked for the widening of a driveway and the movement of a landscape island for better accessibility of his equipment. Chris Tracey stated the ZBA is looking for the resolution of engineering and traffic concerns. The financial review will be done at the next meeting.

Mr. Tracey stated the BOH had asked him to attend their meeting to speak with them about this project and the Ayer Road project. Mr. Tracey made clear to the BOH what the role of each board is in respect to local rules and regulations and how they are affected by a Chapter 40B project. The BOH is very concerned about lofts and finished basements, along with other areas that could be turned into bedrooms and the over use of the septic system. The position Mr. Tracey got from the BOH was that they would not support issuing septic permits for a plan that look like this. Mr. Tracey would like to have these issues resolved before signing a comprehensive permit.

Steve Moser stated he has not had an opportunity to review the Stamski & McNary letter from May 15, 2007 since the members had just received it and would like time to review it before making any comments.

Fire Chief Mignard was present and stated he has spoken with Mr. Dimakarakos several times in regards to this site. Chief Mignard stated site access, as he understands it, is tight but he is comfortable he can fit his apparatus in there. Apparatus coming from Littleton would have a difficult time getting into the site so two feet has been added to the width of the driveway. Parking near building one and two required the re-movement of a landscape island to aid in being able to maneuver apparatus. The buildings are proposed with sprinklers. Chief Mignard recommended once a final construction plan is submitted it should be reviewed by Maurice Pilette of Mechanical Design Ltd.

Mr. Moeser wanted to know if the front doors are handicapped accessible. He was informed they are not. Mr. Moeser asked if any of the affordable units are handicap accessible. Gerry Welch, of MHOC, stated they could install chairlifts within the garages if requested. Mr. Moeser thinks there is a standard within the regulations that require a certain number be handicapped accessible.

Members asked why the two existing lots are going to remain two separate lots. Mr. Dimakarakos explained the lots will be divided due to the septic systems. Mr. Tracey asked the applicant if they are intend on going to go to the Planning Board for the Approval Not Required (ANR) endorsement of the plan. Mr. Dimakarakos believes the ZBA can sign the ANR. Attorney Lanza agreed with Mr. Dimakarakos statement. Mr. Tracey looking for clarification, stated the applicant will be creating two new lots that are non-conforming, but is acceptable because it is a 40B application. Attorney Lanza asked if there is enough frontage and access for the site, because these are the only questions needed to be asked for an ANR endorsement. Attorney Lanza added density is the most commonly requested waiver in regards to a comprehensive permit. Input from the BOH will be needed as to how they feel about the separate septic systems.

Mr. Dimakarakos stated the ConCom had concerns in regards to additional runoff entering the abutting property. Additional work has been done to determine runoff flows. The revised plans and drainage calculations have been submitted showing the swales draining away from the abutting property.

Mr. Tracey has been on the site to review the proposed walking path. He feels this is a good idea and should be allowed. Any issues the abutters may have are not the ZBA issues. Robert Capobianco stated if it is a legal right, then it is a legal right, it is an issue for some Board, but not this one.

Mr. Tracey stated the BOH would like something within the condo fees to ensure funds are in place for the reserve septic systems

Mr. Capobianco asked how the northern slope will be stabilized. Mr. Dimakarakos stated with erosion fabric and then ultimately vegetation. Mr. Moeser asked if there is a

thirteen (13) foot of grade change on that slope. Mr. Dimakarakos explained the area would be constructed with two retaining walls, one at the edge of the parking lot and one at the toe of the slope. The design is for a six (6) foot drop over twelve (12) feet. Nitsch did comment on retaining walls and wanted to see additional input.

Mr. Moeser noted the revised plans submitted details the up hills septic system that are shared by three or four homes in the area as requested by the ZBA.

Valerie Hurley, from the Harvard Press, asked if the walking path was already in existence. She was informed that it is. Ms. Hurley asked if there are any plans to enhance it. She was informed there are not. Mr. Tracey asked the applicant if he knew of any restrictions that would not allow you to improve the easement on the land you own at 5 Littleton Mr. Welch is not aware of any restrictions.

Mr. Welch requested Ed Marchant, the ZBA's financial consultant, have a report prepared for the next meeting. Also, Mr. Welch requested Nitsch Engineering have their final comments in for that hearing as well.

The ZBA has requested both Planning Board and BOH submit comments on the requested waivers. Mr. Dimakarakos will get the Board the current list of waivers. Mr. Tracey noted the BOH can not comment on the waivers since they do not have a complete plan in front of them to review, could the applicant get them the most recent plan.

The ZBA will request a report from Mr. Marchant by June 6, 2007 at the latest.

Chris Tracey made a motion to continue the hearing to June 13, 2007 at 8:00pm. 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 23, 2007

The public hearing was opened at 8:12pm 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: Liz Allard, Mark Lanza, George Dimakarakos (Stamski & McNary), Paula Johnson, Vicki Maxant, Stanley Murphy, Brad Taylor, William McCurdy, Mike Jacobs (MHJ Assoc.), Robert Mignard (Fire Chief), Valerie Hurley (Harvard Press), John Drummey, Gerry Welch (MHOC), Mike Ivas (MHOC), Adam Costa and Mark Bobrowski

This hearing was continued from May 9, 2007 on a Comprehensive Permit filed on behalf of Massachusetts Housing Opportunity Corporation (MHOC) for eight (8) residential structures, each with one (1) affordable unit each at 262/264 Ayer Road, Harvard.

A financial review by Ed Marchant has been received. Mr. Marchant is planning on attending the June 13, 2007 meeting to discuss his report.

Gerry Welch, of MHOC was under the impression that the Board would review the financial report since Michael Jacob's, MHOC financial consultant, is present this evening. Mr. Jacob's did not have time to prepare written comments for this evening in response to Mr. Marchant's review.

Fire Chief, Robert Mignard, was present and stated he has reviewed the sites accessibility. Chief Mignard has had several conversations with George Dimakarakos from Stamski & McNary. He is comfortable with access, areas are tight but the apparatus does fit according to the numbers. The cistern will have 30,000 gallons which has been moved from its original location. Chief Mignard noted at this point he does not know what will be going into the commercial building so he is not prepared to comment on that portion of the project. He will need more information before he is willing to make any comments. The buildings will have sprinklers, smoke detectors and two hour fire walls. Chief Mignard would like to see some construction details on the two hour fire walls. Mr. Tracey asked if this would be part of Mechanical Design Ltd. review. Chief Mignard stated yes. Once the final construction plans are submitted to the Building Inspector, Chief Mignard will sit down with him and review the plan.

Steve Moeser asked what the separation is between the buildings in the right hand corner of the plan. Mr. Dimakarakos stated twenty-one (21) feet. Mr. Dimakarakos thinks it is three (3) to six (6) feet before you get into fire requirements between buildings. Mr. Moeser asked if the plan calls for the installation of a well just for the cistern. Mr. Dimakarakos stated yes. Mr. Moeser asked if the cistern is used for the sprinklers as well. Mr. Dimakarakos stated there will be a thirteen (13) hour sprinkler system that will be an extension of the cistern or it will be its own cistern. It will not be in association with the Public Water Supply (PWS) and will require a generator. James DeZutter asked if the cisterns are enclosed structures. Mr. Dimakarakos stated yes they are like septic tanks. The question of testing the fire systems was raised. Chief Mignard stated inspections would be in his purview and testing would be done once a year. Robert Capobianco asked who test all the electric system and the pumps that go into the houses for fire protection. Mr. Dimakarakos stated this is something done by the condo association and will be with in the Master Deed.

Adam Costa, legal representation for MHOC, would like to further discuss the financial review tonight since Mr. Jacob is here this evening. Mr. Tracey would like to give the abutters and members time to review and comment on the report. Mr. Tracey would like Mr. Marchant to have an opportunity to make comments on Mr. Jacob's comments.

Mr. Tracey noted differences between plans the BOH has and statements made to the Conservation Commission. Mr. Welch explained the units are different because of the elevations on the site. There are eight different floor plans, with approximately 1,600 square feet per unit. The initial review showed the sale price would not make the project economical, so they increased the square footage and the amenities within. The end units have been changed to two bedrooms to be able to increase the sale price. The units square footage have not changed but the lower levels are being finished now to increase the number of bedrooms, but the entire site has been reconfigured to stay at 32 bedrooms.

The applicant will gladly sit down with the BOH to ease their minds on the number of bedrooms and lofts not becoming bedrooms. Each building is a bit different than each other. Robert Capobianco asked what the total square footage is for the site. Mr. Welch stated it is on the proforma. Mr. Capobianco wants to be certain that the footage stays the same. Mr. Tracey thinks this is impossible for our financial consultant to properly review the plans since the plan he has does not have the finished basements. Mr. Welch stated they have responded to Mr. Marchant and explaining that the additional space would be finished.

Mr. Tracey stated the BOH would not sign the permit for the septic system based on this plan. Mr. Tracey added MHOC has not met with the BOH as of yet for them to express these concerns. Mr. Tracey wanted to know if the applicant is thinking of submitting proposed plans for each of the units. Mr. Welch stated right now we have fifty-one (51) bedrooms. Mr. Tracey asked Attorney Lanza should the ZBA have approval of final floor plans before issuing the permit. Attorney Lanza stated not so much final, but at

least preliminary. Mr. DeZutter stated when it comes to making the BOH happy you are going to need to give detail plans for each building.

George Dimakarakos stated the 58,640 total square feet will not change. Mr. Tracey has reminded the BOH they would like written comments from them in regards to the waivers.

Mark Bobrowski, MHOC's legal representation, stated Mr. Jacobs would like to comment on the financial review when Mr. Marchant is present on June 13th. Mr. Moeser stated there are questions within the report, can we assume the financial consultants will talk and get this information to Mr. Marchant before the next meeting. Mr. Bobrowski stated they have been speaking currently and will continue to do so.

Mr. Capobianco stated the last paragraph on page five (5) of Mr. Marchant's report, in regards to the request for additional information for site improvements and landscaping bothers him, he does not understand it. Mr. Bobrowski stated they have given Mr. Marchant all of the information they have and they do not now what else they can do. The engineers need to verify with each other that these are the costs. Mr. Capobianco cannot understand why we cannot get this information, construction costs are what they are. Mr. Bobrowski stated one, the risk is on the applicant and two, the cost will be higher than predicted.

Mr. Tracey would like to make the presumption that the applicant has taken into consideration the cost of the commercial component on this site.

Attorney Bobrowski explained that the initial approval from the Department of Housing and Community Development (DHCD) approved four (4) one (1) bedroom units and four (4) two (2) bedroom units which have now changed to a total of 32 bedrooms. This change does not trigger a major change, which is considered a minor acceptable change.

Mr. Tracey asked if the architectural plans have to be stamped under the statute. Attorney Bobrowski read from the 760 Code of Massachusetts Regulation 31.02(2)(a) & (c), which states these plans need not have an architect's signature.

Attorney Bobrowski submitted proposed conditions for the Comprehensive Permit for the ZBA's review. These conditions have been reviewed by Attorney Lanza. The conversion of the lofts would have to be enforced by the Town though the building inspector. Mr. Moeser stated the ZBA has been encouraging you to go to the BOH for months and now you are saying that the BOH will not respond in time. The members discussed the concerns the BOH has over lofts being converted into bedrooms. Mr. DeZutter stated we are dealing with a lot of what if's, he suggested the applicant get a hold of the BOH as soon as possible and see when they can discuss these issues with them. Mr. Tracey stated the ZBA in no way has slowed down the process with the BOH. It makes sense that you get in touch with the BOH now so that you do not have to come back to us and revise the permit. Attorney Bobrowski stated the applicant is not prepared to apply to the BOH prior to the issuing of a comprehensive permit. He added if the

BOH has concerns about the lofts turning into bedrooms, we a happy to condition that these will not be converted.

Mr. Tracey polled the members as to how they would feel about approving a comprehensive permit prior to the applicant meeting with the BOH. Mr. Capobianco stated if the applicant has not met with BOH, my acceptance is low. However, if it is just that the BOH did not have the time on their next agenda to hear them, then that would be different. Mr. DeZutter agrees with Mr. Capobianco.

Attorney Bobrowski stated this application has been before the ZBa for two years. Mr. Capobianco stated the ZBA has asked from the very beginning for the applicant to go to the BOH. Mr. Capobianco asked if the Board could move on to something else more productive. Mr. Welch stated they have never been invited to come in and talk with the BOH. Mr. Tracey stated it is his understanding that you chase the BOH, they do not chase you. The ZBA wants comments from BOH before moving forward.

Attorney Bobrowski asked that the hearing on June 13, 2007 be the possible close of this hearing. Mr. Tracey stated the Board will do their best.

John Drummey, an abutter to the property, stated the ZBA has been clear that the applicant needs to go to BOH, is it my understanding that Attorney Bobrowski wants you to approve this plan without going to the BOH. Mr. Tracey stated yes, I believe this is correct, it is not unusual that the ZBA issue a permit requiring them to get approval. Mr. Tracey explained the process in regards to the waivers. Drummey asked if Nitsch is reviewing the commercial component of the project. He was informed that they are.

Chris Tracey made a motion to continue the hearing to June 13, 2007 at 8:30pm. James DeZutter seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Steve Moeser, Clerk