

**HARVARD ZONING BOARD OF APPEALS**  
**MINUTES OF MEETING**  
**June 13, 2007**  
**APPROVED: November 7, 2007**

Chairman Chris Tracey called the meeting to order 7:10pm at in the Town Hall Meeting Room.

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

**Others Present:** Mark Lanza, Valerie Hurley (Harvard Press), Michael Crouse (GPR, Inc.), Cal Goldsmith (GPR, Inc.), Wendy Sisson (Conservation Commission), William McCurdy, Mark & Shiohwoei Hastings, Gerry Welch (MHOC), Mike Ivas (MHOC), Steven Ventresca (Nitsch Engineering), Paula Johnston, Vicary Maxant, Stanley Murphy, John Drummey, Kathy Fricchione, Deborah Drummey, Brad Taylor, Anne Fergerson, George Dimakarakos (Stamski & McNary), Ed Marchant, Mark Bobrowski and Adam Costa.

**Continuation of a Special Permit Hearing – Alice Schmidt, 58 Bolton Road, Map 22 Parcel 13.** Opened at 7:10pm

**Associate Members**

The Board agreed that they need help actively recruiting additional members. It was recommended that a letter will be sent to the Board of Selectmen (BOS) and copy Tim Bragan as well. The members busy scheduled do not allow for time to look for a new members.

**Minutes**

Chris Tracey made a motion to accept the minutes as written for April 11, 2007 and May 9, 2007. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

**Special Permit Hearing – Mark & Shiohwoei Hastings, 110 Warren Avenue, Map 27 Parcel 13.** Opened at 7:30pm

**Continuation of a Comprehensive Permit Hearing – Massachusetts Housing Opportunities Corporation, 15 Littleton Road, Map 17D Parcels 14 & 17.** Opened at 8:12pm

**Continuation of a Comprehensive Permit Hearing – Massachusetts Housing Opportunity Corporation, 262/264 Ayer Road, Map 4 Parcels 39 & 40.** Opened at 8:41pm

**Adjournment**

Chris Tracey made a motion to adjourn the meeting at 10:12pm. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

**Harvard Zoning Board of Appeals**  
**Continuation of a Special Permit Hearing Meeting Minutes**  
**Alice Schmidt, 58 Bolton Road, Map 22 Parcel 29**  
**June 13, 2007**

The public hearing was opened at 7:10pm by Chairman Chris Tracey under MGL Chapter 40A, Section 6 and the Code of the Town of Harvard, the "Protective Bylaw", Chapter 125, Section 3 as amended.

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

**Others Present:** Liz Allard

This hearing was continued from May 9, 2007 and is for a Special Permit filed on behalf of Alice Schmidt for the renovation of a pre-existing non-conforming structure at 58 Bolton Road, Harvard.

Applicant has requested to withdraw the application. Steve Moeser made a motion to accept the request to withdrawal. Robert Capobianco 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  
Mark & Shiowwoei Hastings, 110 Warren Avenue, Map 27 Parcel 13  
June 13, 2007**

The public hearing was opened at 7:30pm by Chairman Chris Tracey under MGL Chapter 40A, Section 6 and the Code of the Town of Harvard, the "Protective Bylaw", Chapter 125, Section 3 as amended.

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

**Others Present:** Mark & Shiowwoei Hastings, Mike Crouse (GPR, Inc.), Cal Goldsmith (GPR, Inc.), Wendy Sisson (Conservation Commission) and Liz Allard

This hearing is for a Special Permit filed on behalf of Mark & Shiowwoei Hastings for the demolition and reconstruction of a pre-existing non-conforming dwelling at 110 Warren Avenue, Harvard.

Cal Goldsmith and Mike Crouse, of GPR, Inc., were both present to represent the applicant. Mr. Goldsmith stated the house was built in 1950 prior to the Protective Bylaw and area and frontage make it non-conforming. The wetland district line is tied into elevation and so the revised plans show the elevations and notes have been added to the plan. An existing house is on the site with a large porch made of concrete in the back of the house. The preference would be to keep the porch intact, but if during construction it has to be removed, a deck will be put in its place. A filing was made with the Conservation Commission and an Order of Conditions has been issued. The enlargement of the building would be in the back away from the pond. The only area that would be closer the pond is a small bump out at the back of the house that will be squared off. The existing house and the proposed house sit at the sixty (60) foot line off the edge of the pond. Mr. Goldsmith stated the ZBA needs to reach a finding that is not more detrimental to the neighborhood. The argument would be the porch patio in the back would be reduced by the construction of the deck and the corners of the house and deck would not be more detrimental. Robert Capobianco question the term "porch". The definition was looked up and found to be of a covered area and adjoining an area and having a separate roof. Essentially Mr. Goldsmith is referring to a concrete patio and not a porch.

No comments had been received from the Bare Hill Pond Watershed Management Committee. Chris Tracey explained how they usually comment on issues on the pond in regards to lawn care. An email had been received from Rich Nota, the Public Works Director, who commented on the shared driveway with a parcel of Conservation Land. Mr. Nota believes since Mr. Hastings has control of the gate on the driveway an understanding of responsibility of the use, care, access and security of the driveway

should be established. Wendy Sisson, Vice Chair of the Commission, was present and explained a driveway covenant was drawn up in 1993 allowing the easement over Conservation Land. There is a gate at the top of the driveway that restricts access. The Commission would like the access to that area to be available from dawn to dusk. Mr. Goldsmith was under the impression that when the land was donated it was to be left in its natural state. Ms. Sisson is not sure of the details, but that is the intent of the Commission who do not want to see swimming or boats being launched from this area. The driveway covenant was a requirement by the ZBA in 1993 when the property went from seasonal to year round use. The change of the gate has opened up a boat load of issues, with people using the area more and more. Mr. Hastings believes Rich Nota's concerns are addressed by this driveway covenant.

Theodore Maxant believes if you open up that gate it is going to bring in more individuals. Parking would become an issue. Ms. Sisson stated there is parking available, but it is limited. Ms. Sisson suggested limiting the amount of time you are allowed to park. Mr. Goldsmith stated this is really an issue between the Commission and the Hastings and not part of this application. Mr. Maxant explained how the area was used in the past. At present there are no parking spaces for anyone because the gate is locked. The ZBA requested any documentation on this issue be submitted to them.

Mr. Maxant asked if any trees will be removed from the site. Mr. Maxant is concerned with there not being a buffer strip between this parcel and the abutting Conservation Land. Mr. Goldsmith stated there is no intention to clear cut, and if there are any trees removed there should be a buffer strip to the Conservation Land and one will be provided. Mr. Goldsmith thinks the only place there would be clearing is for the turn around. Mr. Hastings has no interest of taking down any more trees than need be.

The Board requested the applicant or his representative submit the driveway covenant, the Order of Conditions issued by the Conservation Commission, the Board of Health permit and obtain comments from the Bare Hill Pond Watershed Management Committee.

Chris Tracey made a motion to continue the hearing until June 27, 2007 at 7:00pm. 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, Map 17D  
Parcels 14 & 17  
June 13, 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, Robert Capobianco Theodore Maxant

**Others Present:** Mark Lanza, Valerie Hurley (Harvard Press), Wendy Sisson (Conservation Commission), William McCurdy, Gerry Welch (MHOC), Mike Ivas (MHOC), Steven Ventresca (Nitsch Engineering), Paula Johnston, Vicary Maxant, Stanley Murphy, John Drummey, Kathy Fricchione, Deborah Drummey, Brad Taylor, Anne Ferguson, George Dimakarakos (Stamski & McNary), Ed Marchant, Mark Bobrowski and Adam Costa.

This hearing was continued from May 23, 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.

Board of Health (BOH) letter dated June 13, 2007 was sent to MHOC stating there concerns over the configuration of the units has been addressed. Both Chris Tracey and Robert Capobianco attended the BOH meeting last night. The applicant was present at that meeting as well. The BOH is comfortable with the resolution that the applicant has put forth. Deed restrictions will be put in place and a restriction can be placed within the comprehensive permit. Steve Moeser noted that he did not see the language in the BOH letter in regards to the Littleton Road site and changing the lofts. Gerry Welch, of MHOC, stated there is only one unit that the BOH had an issue with in this project. Within the others you have to walk through the loft area to get to the second bedroom. Unit 3B has a storage room on the second floor that could be finished off as a bedroom, the air handler will be located in that room so that it can not be converted into a bedroom. Attorney Mark Bobrowski stated a restriction can be made regarding that one unit, which will also be within the master deed. Wendy Sisson, Vice Chair of the Conservation Commission, asked if the applicant had an updated plan for that change. Attorney Bobrowski stated the final plan will be submitted once all aspects have been completed. Mr. Tracey asked Attorney Lanza if the comprehensive permit could be conditioned to require the abutters be notified of the hearing on the final plans. Attorney Lanza stated they could.

Steve Moeser asked Mr. Tracey “you were at the BOH last night, are you confident that they are satisfied with the plans”. Mr. Tracey explained there are number of issues and items they still need to address and then the applicant takes the risk of obtaining the permits from BOH and not having to come back to this Board to amend the permit.

George Dimakarakos, of Stamski & McNary stated the Nitsch Engineering review letter was received at about 5:00pm tonight and it was pretty straight forward. Nitsch was not able to review the drainage since they did not have the report, but it will be sent to them for their comments. Mr. Dimakarakos believes everything within the letter can be conditioned. There is nothing in letter that would be needed before closing the hearing. Conservation will not close until there is a favorable decision with the drainage by Nitsch. Ms. Sisson asked if this hearing could be closed before other Boards have closed their hearings. Mr. Tracey stated yes, but the Board could place conditions within the permit requiring all permits are obtained.

Mr. Tracey asked if there were any comments from Steven Ventresca, of Nitsch Engineering. Mr. Ventresca stated the amount of retaining walls that will be on site should be reviewed by a structural engineer as to how they are constructed and how the drainage swale will be completed. Mr. Dimakarakos thinks one of the retaining walls is mislabeled and is a guard rail on the plan. Mr. Dimakarakos reviewed the plan and determined the retaining wall is in fact mislabeled and should be a guardrail. Mr. Moeser asked what the retaining walls would be constructed of. Mr. Dimakarakos stated poured concrete and block wall depending on what a structural engineer determines. Mr. Capobianco wanted to be certain real stone would be used. He was informed there would. Mr. Moeser asked what the amount of fill will be on the site. Mr. Dimakakos stated 8,985 cubic yards. Mr. Ventresca stated, as suggested in their letter dated June 13, 2007, Nitsch recommends a condition that the applicant provides a construction management plan that includes at a minimum, truck routes, fill sources and contact information. It was determined at twenty (20) cubic yards per truck load that would equate to four hundred and forty-five (445) truck loads for this location.

Attorney Bobrowski stated the Board needs to make a decision of whether or not they want the project to move along at a fast or slow pace. He would think the Board would not want to drag this out and would want to get the fill in sooner rather than later. Gerry Welch stated all concrete, fill and grading would be done first and then the construction would begin. That portion of the work could be done in sixty–ninety (60–90) days. Mr. Tracey asked Mr. Welch if he was saying there would be trucks coming in for sixty–ninety (60–90) days straight. Mr. Welch stated the truck deliveries would be sporadic. Mr. Capobianco would like to know if those deliveries would be made through the school district. Attorney Bobrowski stated the management plan would be part of the final plan and would come to the ZBA for approval. Attorney Lanza thinks this is a reasonable request. Mr. Moeser asked Mr. Dimakarakos if there is anything within the Nitsch letter that would change the site plan. Mr. Dimakarakos stated no.

Chris Tracey made a motion to suspend this hearing until 9:45pm to open the hearing scheduled for 8:30pm. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

This hearing was reopened at 9:45pm at which time Robert Capobianco made a motion to continue the hearing until June 27<sup>th</sup> at 7:30pm in conjunction with the applicants other filing at 262/264 Ayer Road. Steve Moeser 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  
Map 4 Parcels 39 & 40  
June 13, 2007**

The public hearing was opened at 8:41pm 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, Theodore Maxant and Robert Capobianco

**Others Present:** Mark Lanza, Valerie Hurley (Harvard Press), Wendy Sisson (Conservation Commission), William McCurdy, Gerry Welch (MHOC), Mike Ivas (MHOC), Steven Ventresca (Nitsch Engineering), Paula Johnston, Vicary Maxant, Stanley Murphy, John Drummey, Kathy Fricchione, Deborah Drummey, Brad Taylor, Anne Ferguson, George Dimakarakos (Stamski & McNary), Ed Marchant, Mark Bobrowski and Adam Costa.

This hearing was continued from May 23, 2007 for a Comprehensive Permit filed on behalf of Massachusetts Housing Opportunities Corporation (MHOC) for eight (8) residential structures each with one (1) affordable unit at 262/264 Ayer Road, Harvard.

George Dimakarakos, of Stamski & McNary, stated revisions have been made to the floor plans as requested by the Board of Health (BOH). The questions is do the changes have any affect to the financial review. Mike Jacobs, the financial consultant for MHOC, stated no because the square footage is the same. The units will be either 2,200, 1,800, or 1,300 square feet. Mr. Jacob added everything is in sync and the numbers are not changing. Chris Tracey asked Ed Marchant, financial consultant for the ZBA, if he agreed with everything that was said. Mr. Marchant stated he assumed the number that were in the proforma were going to be used, initially the plans he had did not support those numbers, but he is now being told that the revised plans support those numbers. Mr. Marchant explained his report was done based on industry standards, which are the standards established within the 40B review guidelines. The other standards are what the cost to build the buildings.

Mr. Marchant reviewed his report dated May 23, 2007. Mr. Marchant noted the architectural floor plans need to be updated and that he only reviewed the engineered plans as a comparison of the size of the units as compared to the architectural plans. Mr. Marchant based the value of the site on existing zoning requirements. Department of



Housing and Community Development (DHCD) now requires an appraisal of the site, but due to the time of filing the applicant has not done the appraisal as of yet. Mr. Marchant determined what could be constructed by right and by use. Given that he does not have an appraisal value to use, he used the value on the proforma. A decrease in the approved land value would increase the developer's fee. This does not mean the developer would get less money for the land. The land value is important to a developer; it is important because that is what the developers are entitled to in profits. Here the developer is not close to the 20% return. The State will only take into consideration the appraised value.

Mr. Marchant reviewed the construction costs with Sandra Brock at Nitsch Engineering. Ms. Brock thought the one cost that was high was the septic system cost. It was determined the applicant engineer would contact Ms. Brock to discuss this, as of the other day this still has not happened. Mr. Marchant believes the applicant's attorney realizes that an appraisal needs to be done. Water supply costs were thought to be low, due to the unknown water quality.

Mr. Marchant tried to compare this site to other 40B's in his review. This site has extra ordinary cost due to no public water or sewage. Some of the basements in the market units would be finished. The site has 58,640 square feet total. Mr. Marchant determined the residential building cost of \$93.48 per square foot; however the applicant needs to verify the actual residential square footage. Mr. Marchant noted there are no drawings or outline specs for handicap spaces. The commercial portion is impossible to assess without the proper information. Mr. Marchant stated as a Board you would want some type of plan that shows what is going to make up that space. Mr. Marchant thinks for the interest of the Town and the Board you will need drawings. The applicant has assumed a construction cost of \$100 per square foot, which sounds high, but Mr. Marchant does not know exactly what they are building. Mr. Marchant stated the proforma provided was thorough and money has been provided for an appraisal.

As for the projected revenue Mr. Marchant did comparisons with Trail Ridge and did some research on sale prices and the types of units to be built. Mr. Marchant stated selling units off paper is not easy. Trail Ridge has reduced the prices by 3%. Mr. Marchant took a look at those numbers and the site (Trail Ridge), which is a very attractive site, but has no visibility. There are some other attractions, such as two bedroom units and end units with two car garages. There is a disadvantage on Ayer Road because there will be one bedroom units. Most people may argue that the market rate units are more marketable at Trail Ridge. Mr. Marchant believes the asking prices on Ayer Road are aggressive given that there is limited demand for a one bedroom unit at this price point in Harvard.

As for the affordable units, pricing is based on median income and individuals pay no more than 30% of their median income. The condo fees tend to be low balled, and Mr. Marchant does not know what the cost of a Public Water Supply would be. Mr. Marchant suggested at a later date ask the applicant to submit condo fees schedule based on other condo fees that have been in use for at least three years. The eligibility letter

states what the affordable can be sold at \$131,200 for one bedroom units and \$146,800 for two bedroom units, the proforma is a bit higher than that.

Mr. Tracey asked if it is acceptable to put all of the affordable units on the interiors of each building. Both Attorney Lanza and Bobrowski stated it was. Attorney Bobrowski stated DCHD will have a list of requirements that will have to meet before they will sign off on it.

Steve Moeser stated in the proforma report it shows costs for the commercial portion of the plan. This is a combined project because the septic system is conjoined and they plan on going to the Planning Board for site plan review. If the applicant did not build the commercial portion how will this project be affected. Attorney Bobrowski stated they would build an additional residential building.

Mr. Tracey read into the record a letter from the Conservation Commission dated June 2007 pertaining to a financial review of twenty-eight (28) units rather than the proposed thirty-two (32) units. Mr. Marchant has not done a review of the proforma showing the construction of twenty-eight units.

Mr. Marchant has spoken with commercial developers and appraisers to try and get a feel of the commercial area. You have to anticipate the use and sale of the commercial space is reasonable. Who knows what the revenue will be for that space. Attorney Bobrowski stated it would be subject to DHCD coming up with a methodology. Mr. Marchant stated DHCD knows nothing about commercial development, so they will not have any idea how to deal with this part of the project. The commercial space makes the cost certification a bit difficult and you need to figure out how to deal with this.

Mr. Moeser asked if the commercial cost does not include the soft cost or the acquisition cost. Mr. Marchant stated the line item they have used is \$1.4 million, which means that would be a loss. Mr. Moeser asked by taking their commercial component out of this would it make the intended profit going down. Mr. Marchant stated if you take the commercial component out and replace it with residential unit it would be a greater profit. Mr. Tracey explained to Mr. Moeser if this Board granted a permit that excluded the commercial the building the applicant would make a lesser profit. Mr. Marchant added the Board really needs a more detailed analysis. The commercial space would be attractive space more than the residential space.

Wendy Sisson, Vice Chair of the Conservation Commission, asked given the comment that the one bedrooms units are less marketable, what about changing the one bedroom units to two bedroom units. Mr. Tracey explained the number of bedroom is driven by the capacity of the septic system.

Keith Cheveralls asked if it has been determined if related parties would be involved with the development of this project. Mr. Marchant stated it is not uncommon that the contractor is a related party. Mr. Welch stated the contactors are part of their business.

Mr. Tracey stated plans need to be submitted to the BOH and more information on the build out of the commercial building. Mr. Tracey added if in two weeks the Board closes the hearing then he is anticipating what we have it what we have. If that impacts the financial we would have to come back to Mr. Marchant for another review. Nitsch has similar concerns on the commercial building. The Board would like both Mr. Marchant and Mr. Ventresca to come back to the next meeting.

James DeZutter made a motion to continue the hearing until June 27, 2007 at 7:30pm to be opened in conjunction with the applicant's other filing at 15 Littleton Road. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

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