

**HARVARD ZONING BOARD OF APPEALS
MINUTES OF MEETING**

August 9, 2007

APPROVED: November 7, 2007

Chairman Chris Tracey called the meeting to order at 7:37pm in the Hildreth House.

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

Others Present: Liz Allard (LUB Admin), Mark Lanza (Town Counsel), Mary Ellen Jones (Harvard Hillside), Bonnie Chandler (Harvard Post), Mark O'Hagan (Fairway Partners), Tom Ruthland (Nashoba Paper), Adam Costa (BB&M, LLP) and Mike Ivas (MHOC)

Trail Ridge – Administrative Requests

Mark O'Hagan of Fairway Partners was present to discuss with the ZBA authorizing Sandra Brock of Nitsch Engineering to review site improvements to the Trail Ridge development on Littleton County Road in relation to outstanding work items in order to reduce the bond amount currently being held. A revised bond amount would be submitted by Nitsch for the ZBA's review and then Mr. O'Hagan would ask for authorization from the ZBA to reduce the bond. Chris Tracey asked Liz Allard to send Nitsch a request to review the infrastructure and then report to the ZBA for their approval.

Mr. O'Hagan asked the ZBA to accept the street address list previously prepared by the Building Inspector. In order for the roadway to be designated as Trail Ridge Way the name would have to be accepted by this ZBA for the benefit of the process. Attorney Mark Lanza stated if the access way was named on the plan then there is nothing for the ZBA to do. The final approved plans did in fact have a name on the roadway. Chris Tracey made a motion to not amend the permit but to send the Building Commissioner a letter accepting the numbers he has assigned to the buildings on Trail Ridge Way. James DeZutter seconded the motion. The vote was unanimously in favor of the motion.

Mr. O'Hagan discussed the division of monitoring duties with CHAPA as the affordable requirements and an agency, to be determined later, as the financial review monitoring component. Attorney Lanza stated the permit contemplates one stop shopping, but CHAPA will no longer do the review as they have done in the past. Mr. O'Hagan is asking for a minor modification to allow CHAPA to only review the affordable portion of the project. The low dividend monitoring will be done at a later date and then approved by the ZBA. Mr. O'Hagan further requested the vote be taken this evening and then have Attorney Lanza write up the modified permit. James DeZutter made a motion to modify the Comprehensive Permit for Trail Ridge to reflect the above mentioned change and allow the Chairman, Chris Tracey, sign the modification on behalf of the entire ZBA. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

Deliberation of Comprehensive Permit for MHOC – 15 Littleton Road

A schedule was determined in order to get the decisions completed by the time allotted.

- August 14, 2007 at 7:30pm with a location to be determined, for final deliberation of 15 Littleton Road.
- August 29, 2007 at 7:30pm, with a location to be determined, to accept the decision of 15 Littleton Road.
- September 20, 2007 at 7:30pm, location to be determined, to deliberate on 262/264 Ayer Road, if Steve Moser cannot make this date then September 4 at 7:30pm, location to be determined.
- September 26, 2007 at 7:30pm, in the Town Hall Meeting Room to accept the 262/264 Ayer Road decision.

Robert Capobianco still feels there needs to be one visitor parking space for each unit. Mr. Capobianco also has a problem with an SU-30 vehicle having to back out and will not be able to turn around once it pulls into the property. Plan shows three visitor parking locations, will need an additional nine (9). Some of the units have availability for visitor parking in front of the garage. The issue is if an emergency vehicles does have to come in and the roadway is loaded with cars it could cause a safety issue. Chris Tracey asked Attorney Lanza if the addition spaces could be a condition of the decision. Attorney Lanza stated it could.

Mr. Capobianco questioned the design of the guardrail and the drop off associated with it. Does the Board feel a guardrail is going to be enough to keep a toddler from going off that edge? Mr. Capobianco would want to see more of a barrier than a split rail barrier. Mr. Tracey suggested a keystone fence be put up behind the guardrail. Steve Moeser is not concerned with this grade or the guardrail. Mr. Capobianco thinks it is too much of the drop off not to be addressed. Mr. Moeser suggested establishing a height for the top post, perhaps three feet eleven inches (IS THIS RIGHT??).

Mr. Capobianco addressed the subject of splitting the lot to circumvent Department of Environmental Protection (DEP) Title V Regulation 310 CMR 15.011(1)(c). Attorney Lanza stated a DEP regulation is not the purview of the ZBA. Attorney Lanza added there would be no legal basis for not endorsing the Approval Not Required (ANR) plan. The ZBA's approval of the ANR plan is in no way endorsing a violation of Title V. Attorney Lanza stated the only items you can look at when endorsing an ANR is does the site have access and frontage, then it is entitled to endorsement. Approval is not usually an agreement that the lot conforms to all of the Town requirements or State requirements.

Mr. Tracey has had a discussion with Ira Grossman, the Town Sanitarian, in regards to the requested waiver. The first two requested waivers, 145-1(D), 145-1(F)(3), in his opinion are reasonable. The third requested waiver, 145-3(C) is to allow the expansion trenches between the primary trenches, less than ten (10) feet. The ZBA has not gotten

any input from the Board of Health (BOH) in writing on any of these waivers. The requested waivers are in respects to the rules and regulations of the BOH. Mr. Tracey asked if the ZBA denies this waiver, what the path of appeal is. Attorney Lanza stated the applicant would have to appeal the decision the Housing Appeal Committee. The applicant could go to BOH and ask them to approve the waiver and then ask ZBA to modify the permit. Mr. Capobianco feels that since the expansion is allowed under Title V the applicant will receive the waiver one way or another. Mr. Tracey stated the reason to have a discussion on this aspect is that the BOH has restrictions that are allowed by Title V. Mr. Capobianco stated the rational as he understands it is because of the typical soils we have here in Harvard. Mr. Tracey asked if the ZBA is comfortable with this not being a health and safety issue. Mr. Capobianco stated no. Mr. Capobianco asked if the ZBA can require that the applicant find an alternate location for the system. Attorney Lanza stated no. Mr. Tracey added if it meets Title V then the applicant would receive the waiver from the Housing Appeal Committee.

Mr. Tracey is not comfortable granting the waiver and going against years of BOH permitting requirements. Mr. Tracey is frustrated the ZBA did not get clarity from the BOH on this issue. Attorney Lanza suggested the waiver be granted with a condition that the BOH submit a letter that they do not disapprove the waiver to the ZBA though the Building Commissioner prior to the issuance of a building permit.

Mr. Tracey stated the waiver, 125-32(C)(2)(b), to allow septic system grading on an adjacent property, which in this case the adjoining property is a related party to the applicant. Mr. Tracey questioned should the Board grant that waiver with the creation of an easement for the purpose of maintaining the system on that lot. The members agreed to granting the waiver with the previously mentioned condition.

Mr. Capobianco is satisfied with his previous concerns with the retaining walls since the guardrail height will be addressed.

The list of suggested conditions was reviewed. Items were revised and/or omitted.

A request to delay the approval of this application was discussed. Attorney Lanza stated he would be glad to review any input from any other counsel as to conditions for the permit, but to date has not received any input. Any discussion Attorney Lanza does have with any other counsel shall be discussed with the ZBA as well.

A resident of Harvard has stated concerns about the Public Water Supply that severs this parcel. These concerns were received after the close of the hearing. Mr. Tracey asked Attorney Lanza if it is proper for the ZBA to condition the requirement that any and all requirements of the Water Commission be completed. Attorney Lanza stated all local rules and regulations have to be contended with. Mr. Capobianco asked if the water system can be extended by the Water Commission or by Annual Town Meeting. Attorney Lanza stated that is a condition that can be approved by the ZBA. The ZBA would not be granting an extension of the water system or any waivers. The ZBA would be granting a connection to the system.

The ZBA could condition an amount to be donated to the Town for the Municipal Affordable Housing Trust Fund. Attorney Lanza on behalf of the ZBA will speak with the applicants counsel to see how they feel about this condition.

Adjournment

Chris Tracey made a motion to adjourn the meeting at 10:30pm. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Steve Moeser, Clerk