

**HARVARD ZONING BOARD OF APPEALS  
MINUTES OF MEETING  
SEPTEMBER 4, 2007  
APPROVED: November 7, 2007**

Chairman Chris Tracey called the meeting to order at 7:45pm in the Hapgood Room of the former Town Library.

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

**Others Present:** Adam Costa (BB&M), Mark Lanza, Valerie Hurley (Harvard Press), Paula Johnson, Brad Taylor, Keith Cheveralls, Kath Fricchione, Ron Ricci and William McCurdy.

**Final Deliberation and Acceptance of the Comprehensive Permit for Massachusetts Housing Opportunities Corporation - 15 Littleton Road, Map 17D Parcels 14 and 17**  
Town Counsel Attorney Mark Lanza handed out a final revision of the permit. Attorney Lanza explained changes have been made to the requested waivers as discussed with the applicants Attorney, Mark Browbowski. Robert Capobianco asked if Section 2.1c needs an actual date. Attorney Adam Costa, representative for the applicant, stated he has made attempts to obtain the information and has been told there is an extension through the end of this month. Mr. Capobianco would want Attorney Lanza to verify this information prior to the final signing of the permit. Attorney Lanza suggest ending the sentence at “amended”. On the off chance this information is not obtain the ZBA could hold an emergency meeting for the board to sign a denial based on lack of control of the site.

Mr. Capobianco asked if there should be additional detail as to which guardrail the ZBA is referring to in Section 3.11.9. The members agreed a better description as to which guardrail the ZBA is referring to shall be added. Additional language was added to Section 3.11.5, in which any such walls with vertical height in excess of three (3) feet shall have a safety barrier acceptable to the ZBA.

Chris Tracey asked Steve Moeser if the language in Section 3.11.3 cover his concerns with the source of the fill. Mr. Moeser suggested adding language that laboratory analysis of fill material will be required. The members agreed to this addition.

Mr. Tracey asked if the ZBA would want an additional review of the project cost accounting done by a certified public accountant as required by the Department of Housing and Community Development (DHCD) (Section 3.6). Attorney Lanza stated the ZBA should reserve the right to hire an account to conduct an audit.

Mr. Tracey asked if the word “permit” should be added as well to Section 3.10k. Attorney Lanza stated the Building Commissioner cannot issue a building permit prior to that permit being obtained.

Mr. Capobianco asked if the plans will be required to be recorded. Attorney Lanza stated this would be up to the ZBA. Mr. Capobianco stated it cannot hurt anything and gives future owners some indication as to what they are getting into. Mr. Tracey asked if the review of the final condominium documents by Attorney Lanza is a condition within the permit. Attorney Lanza stated there is such a condition and the Board of Health (BOH) will want to make sure there are certain provisions within the condo documents as well. A condition will need to be added that states there is to be compliance with any and all State and Federal requirements.

After an executive session (see Executive Session below) with respects to potential litigation between the applicant and the ZBA the meeting resumed.

Mr. Capobianco asked if Section 3.35.1, in reference to requested waiver to Chapter 125-39C (1), should only apply to the driveway for units 1 and 2. The members agreed that the reference to Chapter 125-39B (7) should be removed from the waiver section and placed within the conditions.

Mr. Capobianco believes the revised language for the waiver to Chapter 145-3C adds nothing to the waiver and should be removed if the ZBA is going to grant the waiver. The members agreed they wanted the original language to remain.

Robert Capobianco made a motion to accept the proposed Harvard Condominium Comprehensive Permit, once changes made tonight have been incorporated and reviewed by the members the Chairman Chris Tracey is authorized to sign the final permit. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

#### **Deliberation of the Comprehensive Permit for Massachusetts Housing Opportunities Corporation 262/264 Ayer Road, Map 4 Parcels 39 and 40**

The members scheduled another meeting to further discuss this permit for September 19<sup>th</sup> at 7:30pm with a location to be determined.

Mr. Tracey had questions in regards to the commercial portion of this project. Mr. Tracey asked how the commercial portion relates to the entire project. Attorney Lanza stated it is shown on the same site; however no relief from the ZBA is being requested for this portion of the project. Attorney Lanza stated there is an outstanding *Appeals of Ipswich* case in which the ruling could require the applicant to obtain a variance for the commercial portion of the project or seek a modification to the comprehensive permit, but currently it is a use by right.

Mr. Tracey is concerned with the septic system being used beyond its capacity by the commercial building since the ZBA will not be a part of the review of the site plan.

Mr. Tracey stated he does not believe the ZBA individually receive the 21E. Mr. Tracey has reviewed a portion of the report, but not it in its entirety. Mr. Tracey asked if the ZBA could include a condition in regards to the requirements under the 21E. Attorney Lanza will fashion a carefully drafted condition. Attorney Lanza stated the best way to

cover this concern is to require the Licensed Site Professional (LSP) be responsible for the required actions within the 21E and provide written evidence to the Building Commissioner. Mr. Capobianco recommended that the ZBA require another firm review the site in addition to the LSP.

The requested waivers were reviewed and changes made by the members. The members want to make it clear that Chapter 125-30E is for the residential area only as to relief of the lot boundaries.

Mr. Capobianco asked if the requested waiver to Chapter 125-32 can be condition in a way that will require the septic system to be designed in such a way that it does not leach into the wetlands. Attorney Lanza stated they could. The members agreed this condition should be added to the permit.

### **Executives Session**

At 8:20pm Chairman Chris Tracey made a motion that the ZBA go into executive session pursuant to Massachusetts General Laws Chapter 39, Section 23B (3) to discuss strategies with respect to potential and pending litigation between MHOC and Fruitlands Museum, Inc. and because a public discussion of this matter will have a detrimental effect on the litigating position of the Board. The Board will return to open session in approximately twenty (20) minutes. Robert Capobianco seconded the motion and a roll call vote was taken.

At 8:52pm the ZBA resumed the regular meeting

### **Adjournment**

Steve Moeser made a motion to adjourn the meeting at 10:05pm. James DeZutter seconded the motion. The vote was unanimously in favor of the motion.

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