

HARVARD ZONING BOARD OF APPEALS
MINUTES OF MEETING
September 12, 2007
APPROVED: NOVEMBER 7, 2007

Chairman Chris Tracey called the meeting to order 7:37pm at in the Town Hall Meeting Room.

Members Present: Chris Tracey, Steve Moser and Theodore Maxant

Others Present: Liz Allard (LUB Admin), Kathy Farrell, Melissa Robbins, Doug Deschenes and Orville Dodson

Special Permit & Variance Hearing – Kathryn Farrell, 119 Tahanto Trail, Map 26 Parcel 59. Opened at 7:37pm

Potential Associate Member – Orville Dodson

The members met with Orville Dodson to discuss his interest in becoming an associate member of the ZBA. Mr. Dodson stated the ZBA seems to be a Board that is sort of a catch all of things going on in Town. After a further discussion between Mr. Dodson and the members the Board request a letter be sent to the Board of Selectmen recommending that Orville Dodson be appointed as an associate members to the ZBA.

Adjournment

Theodore Maxant made a motion to adjourn the meeting at 9:00pm. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Steve Moser, Clerk

**Harvard Zoning Board of Appeals
Special Permit & Variance Hearing Meeting Minutes
Kathryn Farrell, 119 Tahanto Trail, Map 29 Parcel 59
September 12, 2007**

The public hearing was opened at 7:37pm by Chairman Chris Tracey under MGL Chapter 40A, Section 6 & 10 and the Code of the Town of Harvard, the "Protective Bylaw", Chapter 125 §3A(3) as amended.

Members Present: Chris Tracey, Steve Moeser and Theodore Maxant

Others Present: Liz Allard (LUB Admin), Kathy Farrell, Melissa Robbins and Doug Deschenes

This hearing is for a Special Permit & Variance request filed on behalf of Kathryn Farrell for the extension to a pre-existing structure on a pre-existing nonconforming undersize lot creating insufficient side yard setbacks at 119 Tahanto Trail, Harvard.

Kathy Farrell was present, as well as her representation Attorneys Douglas Deschenes and Melissa Robbins. Attorney Deschenes explained the application had been submitted for a Special Permit for an extension to the existing house on a pre-existing non-conforming lot. The project calls for the removal of an existing porch, deck and attached garage, which will be replaced with the proposed extension. The extension will consist of a two car garage, $\frac{3}{4}$ bathroom and a family room. Attorney Deschenes explained in order to accomplish the extension the Farrell's are also seeking a Variance on the side set back of forty (40) feet. The lot is a pre-existing non-conforming lot which requires a Special Permit because the land area is less than the current zoning of 1.5 acres. The current frontage exceeds the zoning requirement of seventy-five (75) feet. The proposed structure will be set back from the road further than the existing.

Steve Moeser asked why the applicant thinks she needs a Variance. Attorney Deschenes explained a hardship would be created for the owners if the extension is not allowed. Attorney Deschenes further explained the room over the garage could be used as an office allowing the Farrell's to work from home. This extension would also update the home to be more consistent with others in the neighborhood. If the extension was to be pushed back on the lot it would create a reduction in set backs due to the lots shape. The most impact on the lot is topography changes. Photos of the site were presented. Mr. Moeser stated the Variance is being requested for a one point six (1.6) foot reduction of the forty (40) foot side yard setback, why can't the structure be pushed back from that side yard. Attorney Deschenes stated the topography of the lot limits the options available. Attorney Deschenes further explained the garage is planned at twenty (24) feet which is standard for a garage and the bath and stairway are at a minimum size. Attorney Deschenes argued in terms of a hardship with determent to the public good, this project would bring the home far more into conformance with the neighborhood. Evidence was submitted showing that each of the abutters have signed off with no objections to this proposed project.

The Board of Health agreed to the addition as along there is a plan showing the septic and a restrictive covenant requiring any new owners who want to increase the room count would require a new septic system and the new space cannot be used as a bedroom. The covenant restricts the property to three (3) bedrooms.

The applicant is aware of the river on southern portion of property that will require a filing with the Conservation Commission.

Mr. Moeser was still wondering why a Variance is needed. Chris Tracey explained Variances are very difficult to grant as the hardship needs to be significant. Adding to that is the confusion between a Special Permit and a Variance. Mr. Tracey further explained the applicant is creating a new non-conformity with the side yard set back. Mr. Tracey stated unfortunately he did not hear enough from the applicant's representative when it comes to moving the house and the existing topography, unless it goes beyond the 2:1 line.

Mr. Moeser asked why two (2) feet could not be taken off the bathroom. Attorney Deschenes stated he would like the ZBA to take a look at the level of hardship we are requesting. Mr. Tracey asked why does your hardships have an impact to the size of the rooms. Attorney Deschenes stated twenty-four (24) feet is a safe size for the garage, the bath is not substantially large, the stairs are by the building code and is a few feet between the wall, but if you take that area out then you have the door for the bathroom right up to the wall. If the extension is moved further back you may have to dig into the hill, causing additional disturbance to the existing hill.

Mr. Moeser stated historically we have not granted Variances to something like this, he did not see the hardship. Theodore Maxant stated these are small lots and it is not detrimental to Harvard and he would vote for the Variance. Mr. Tracey stated he would not grant a Variance.

Mr. Moeser explained the façade of the existing structure does not exceed the existing set back from the centerline of the road, so the extension could be pushed forward to be at the same setback. A re-design of the proposed extension was shown to the applicant, which would shift the entire extension over and outside the forty (40) foot setback. A condition could be placed within the Special Permit that a revised set of plans showing the new addition within the front setback and the side yard setback shall be submitted to the Building Inspector and reviewed and approved by the ZBA prior to the issuance of a building permit. The applicant agreed to this condition and requested the Variance be withdrawn without prejudice. Steve Moeser made a motion to accept the withdrawal of the requested Variance without prejudice. Chris Tracey seconded the motion. The vote was 2-1 with Theodore Maxant in opposing the withdrawing of the Variance.

Correspondence from other Town Boards and Commissions were read into the record.

Steve Moser made a motion to close the evidence portion of the hearing. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion.

After a brief discussion Steve Moeser made a motion to grant a Special Permit in harmony with the requirements of the Protective Bylaw, including §125-46C(1)(a) to include the following conditions:

1. The forty (40) foot side yard set back shall be maintained.
2. The set back established by the pre-existing structure will not be exceeded in respects to the front of the structure from the centerline of the roadway.
3. The applicant will present the Building Commissioner a re-designed plan showing conformance with the forty (40) foot side yard setback to be reviewed and approved by the ZBA prior to the issuance of a building permit.
4. The applicant shall comply with all State and local Board of Health regulations.
5. The applicant shall comply with all State and local Conservation Commission regulations.

Chris Tracey seconded the motion. The vote was unanimously in favor of the motion in a vote of 3-0.

Signed: _____
Steve Moeser, Clerk