

**HARVARD ZONING BOARD OF APPEALS  
MINUTES OF MEETING  
SEPTEMBER 19, 2007  
APPROVED: NOVEMBER 7, 2007**

Chairman Chris Tracey called the meeting to order at 7:45pm in the Town Hall Meeting Room.

**Members Present:** Chris Tracey, Robert Capobianco, James DeZutter and Orville Dodson.

**Others Present:** Adam Costa (BB&M), Mark Lanza, Valerie Hurley (Harvard Press), Mary Ellen Jones (Harvard Hillside), Kathryn Fricchione, William McCurdy, Paula Johnston and Greg Fricchione

**Deliberation of the Comprehensive Permit for MHOC 262/264 Ayer Road**

Chris Tracey reviewed the discussion from the previous meeting. Mr. Tracey asked Attorney Lanza, in regards to the contaminated soils on site, if the ZBA could ask the applicant for additional details the ZBA may deem needed with the final plans. Attorney Lanza stated he could imagine the applicant would have a problem with this since all documents are a matter of public records. It is Attorney Lanza's understanding that the area of contamination is not within the residential area and is contained to the parking lot and the commercial area. Mr. Tracey wants to make certain CEA knows what this area is going to be used for in the future so that the remediation is done in away to protect the residents.

As for the waiver request to the Protective Bylaw Chapter 125-32 and Chapter 145-1A, Robert Capobianco had previously stated if an impermeable barrier between the septic system and the wetland was a condition he would allow the waiver. Mr. Tracey explained the waiver pertains to the fill of the primary and the reserve area. The members agreed to leave the location and materials of the septic system up to the Board of Health. The members were acceptable to the granting of the waivers to Chapter 125-32 and 145-1A.

Waiver to Chapter 125-39 is in reference to sight standards for driveways, the encroachment on the buffer strip and driveway lengths. Mr. Capobianco asked if there should there be a restriction on the driveway since the width is less than the required width. Mr. Capobianco also asked how many guest parking spots are there on the plan. Mr. Tracey noted there are nine (9) visitor spaces on the plan. Mr. Capobianco thinks there should be one tenant parking space for each bedroom, with thirty-two (32) visitor spaces. It was noted that the plan has no garage space or parking spaces in front of the units for the affordable units. Orville Dodson asked how many units are like this. Mr. Tracey stated there are five (5) one (1) bedroom units with no garage and three (3) two (2) bedrooms with no garage.

James DeZutter stated with lack of public transportation here in Town, there should be a condition to address this. It was recommended the permit be approved subjected to a plan showing a parking space for each of the bedrooms within the residential area, a total of 64 spaces. There should be two (2) visitor spots per building plus use of the commercial spaces for additional overflow. The visitor parking spaces shall not be designated in front of the garages for each unit. The deeded parking spaces are to be within one hundred (100) feet of the perimeter of the building.

The deceleration lane on the north bound side of Ayer Road was discussed. This lane is within the Right of Way (ROW) on the plan and not on the property. The plan does not call for a left turn lane traveling from the south. A condition can be placed within the permit that would required the deceleration lane to be constructed as shown on the plan and approved by the Board of Selectmen at the applicants expense. The Board can not require the left turn lane, but it can recommend it to the applicant. It would be up to the Town to bring the roadway up to a public safety standard. The recommendation will be made within the Permit.

The applicant was agreeable to allowing at some point in the future to an easement adjacent to the parcels.

Mr. Capobianco asked if the Board could have a condition that a Special Permit will be needed when a change of occupancy occurs in the commercial area. Attorney Lanza stated the ZBA could not condition the requirement of a Special Permit in the Comprehensive Permit. The applicant or its successor shall certify to the Building Inspector each time there is a change in use that it will not interfere with the septic system.

The requested waiver to the Protective Bylaw 125-39C was potentially requested when there was a second driveway on the plan, Attorney Lanza will clarify with the applicant representative.

Parking area for school pick drop off/pickup was designated at the exit. The Board would like the final plan to show a designated turnout for up to three vehicles on the double exit side of the driveway and the proposed concrete island to be removed and replace with a painted double lane.

### **Executives Session**

At 9:45pm James DeZutter 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 with 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 only to adjourn the meeting. Robert Capobianco seconded the motion and a roll call vote was taken.

At 10:12pm Robert Capobianco made a motion to come out of Executive Session only to adjourn the meeting. James DeZutter seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_  
Robert Capobianco, Clerk (in the absence of Moeser)