

**HARVARD ZONING BOARD OF APPEALS
MINUTES OF MEETING
May 28, 2008
APPROVED: December 10, 2008**

Chairman Chris Tracey called the meeting to order at 7:41pm in the Town Hall Meeting Room

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

Others Present: Liz Allard, Mark Lanza, Carter Scott, Steven Ventresca (Nitsch Engin.), Barbara Henderson, Warren Henderson, Judy Gustafson, Bob La Pierre, Chris Durham, Sherlie La Pierre, Sally Carrona and Rob Carrona

Continuation of a Comprehensive Permit Hearing – Transformation, Inc., Stow Road (Map 36 Parcel 85 & 86.1). Opened at 7:37pm

Adjournment

Steve Moeser made a motion to adjourn the meeting at 10:18pm. Orville Dodson seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Liz Allard, Clerk

Zoning Board of Appeals
Continuation of a Comprehensive Permit Hearing Meeting Minutes
Transformations, Inc., Stow Road (Map 36 Parcels 85 & 86.1)
May 28, 2008

This hearing was opened at 7:37pm by Chairman Chris Tracey under M.G.L. Chapter 40B §21-23 in the Town Hall Meeting Room

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

Others Present: Liz Allard, Mark Lanza, Carter Scott, Steven Ventresca (Nitsch Engin.), Barbara Henderson, Warren Henderson, Judy Gustafson, Bob La Pierre, Chris Durham, Sherlie La Pierre, Sally Carrona and Rob Carrona

This hearing was continued from May 21, 2008 on a Comprehensive Permit filed on behalf of Transformation, Inc. for the construction of twelve (12) single-family detached and twelve (12) condominiums as duplex and triplex homeownership units on Stow Road (Map 36 Parcel 85 & 86.1), Harvard.

Chris Tracey stated new information has been received from the Conservation Commission, Planning Board and Nitsch Engineering. The ZBA meet last week and continued the hearing with no new information received.

Mr. Tracey stated the 180 day deadline to close the hearing is fast approaching. The ZBA would like to extend the deadline, but to a reasonable time as to not drag on hearings. Steve Moeser would like to identify the areas of concern before tonight's hearing is over. The Board, as well as the Conservation Commission, will expect a revised waiver list that details the requested waives and how they apply to the plan. It has been clarified that the applicant is asking for a complete waiver of the Wetland Protection Bylaw. Mr. Tracey stated the applicant has requested a waiver for the entire Wetland Bylaw and if that is what he has asked for, then the Board should take into consideration what the Commission has requested. Carter Scott stated he is taking this application one step at a time. The plan could change and would need reengineering. The engineering has been done on a preliminary basis. Mr. Scott stated that local rules & regulations are usually waived in the interest of affordable housing needs. Mr. Tracey stated the Board will need evidence as to why a waiver should not be granted or we will be defeated on the State level. Attorney Lanza concluded that the applicant need to submit detailed request for waivers as to how specific sections of the Bylaws apply to the plan so that individual Boards and Commissions can submit its recommendation of the granting or denial of those waivers to the ZBA. Mr. Tracey stated he is not inclined to any waiver that is a blanket waiver. Mr. Tracey explained to the applicant that the Board can amend the permit at a later date for any additional waivers rather than permitting a blanket waiver to a bylaw or regulation.

Individual waivers to the Protective Bylaw, Chapter 125 were discussed. §125-9A does not allow for an individual lot for each multifamily dwelling to be a lot in undivided ownership. Mr. Moeser asked what was not being complied with. Mr. Scott stated he would need to ask the engineer. Mr. Moeser stated that it sounds as if the acre and half per unit was required none of the lots would comply.

§125-9C, waiver not required unless more detail can be provided to explain as why it is needed. As for §125-15, B & C the members asked Mr. Scott if he would have a problem with the permit requiring to keep the dust down, no working holiday, Sundays, and during certain hours. Mr. Scott stated he was okay with those conditions. §125-15, Mr. Scott stated fill will be brought in but not taken out. Mr. Moeser asked Mr. Scott to consult with the engineer as to why he cannot comply with that part of the bylaw.

Mr. Tracey asked Mr. Scott if it was his desire to supply any additional information for this Board to make a decision. Mr. Tracey does not want to go back and forth with the engineer, if this is what was submitted, than this is what the Board must make a decision on. Mr. Tracey wants to make sure he is clear on this. Robert Capobianco stated that obviously the applicant's engineer took a broad brush to this project. Mr. Capobianco stated it is a valid point that Mr. Tracey has made. After a discussion in regards to the waivers the Board agreed that they would want more information as to why they are needed and how they apply to the project.

Mr. Scott stated he has reviewed the letter submitted by the Board's engineering consultant and wanted to discuss it this evening. Mr. Scott has not sent it on to his engineer. Mr. Scott explained that he submitted the application as he had previously done in Townsend. Mr. Tracey explained what the Harvard ZBA is use to receiving for a Comprehensive Permit application. Mr. Tracey asked Attorney Lanza if the Board was asking for to much information. Attorney Lanza stated the level of detail is appropriate. The issue here is how much detail should be provided. Attorney Lanza added the State has certain requirements and all of those should be submitted. Mr. Scott believes his engineer had ample information for a preliminary plan review.

Mr. Tracey would like the applicant to review the letter submitted by Nitsch Engineering and submit written comments. Mr. Scott stated it seems Nitsch is looking for definitive plan information and not preliminary plan information. It was suggested that the applicant communicate with Nitsch directly to circumvent the back and forth. Steve Ventresca, of Nitsch Engineering, was present and stated Nitsch is looking out for the best interest of the Town of Harvard. Mr. Ventresca stated the preliminary drainage does not show if it will work; we can not tell from this information if it will or will not work. We can not say yes it can work, there is another level of detail we will need. Mr. Ventresca stated deeds where reviewed to determine how lot 10 is to be used. Mr. Ventresca added the number of bedrooms may be wrong, but the information received was not clear. Mr. Ventresca asked how is the septic system going to work, these are health issues. Mr. Scott stated that issues with other Boards can not be brought up at the ZBA hearings. Mr. Tracey agrees with Mr. Scott, but also agrees with Mr. Ventresca,

answers to these questions would clarify things better. Mr. Tracey encourages Mr. Scott to work with Nitsch to determine if this project is feasible, it may need more work but is it feasible. Mr. Capobianco stated the Nashoba Associated Boards of Health has documentation of testing done on the site if Nitsch wants to take a look at it.

The grade of the roadway is an issue with the Fire Chief and according to Mr. Scott it can not be changed. Mr. Scott added that changing the grade of the roadway would make the project financially unfeasible.

The fire pond is not intended to be used for fire protection on this site. A cistern will be installed. The buildings will not be sprinkled. Mr. Scott is willing to allow the Town to expand the pond for fire protection of the surrounding homes, but does not want to go down that road himself due to the permitting process.

As for the porous pavement Mr. Scott stated Mass Highway uses it, they salt and sand the roads with no issues. Nitsch did not review the profile plan as it was received until after the initial review.

The Fire Chief's final comment was in regards to the lower part of the road and flooding. Mr. Ventresca stated he can not determine if that would happen due to the lack of detail given to review. Mr. Scott will need to review the letter with the Fire Chief.

As for a traffic study, Mr. Scott stated the entire traffic study he submitted did not cost as much as the review proposed by the Boards consultant. Mr. Scott would like three additional quotes for the traffic review.

The Police Chief submitted a letter that states concerns with the road widths and street lights. Mr. Scott would want to minimize light pollution and would not suggest street lighting. Mr. Scott does not see any need for the speed humps.

The Planning Board letter suggests that the affordable units are cluster together and should be dispersed throughout the site. The Board can condition the permit to require the affordable units be dispersed or the subsidizing agent could require it. As for the division of the parcel into five separate lots, Attorney Lanza stated the ZBA should look at it as one application with five lots. Regardless where the affordable are located it can be condition that for every four market rates constructed, an affordable unit shall be constructed. The excess affordable units should be allowed to be dispersed in any manner the applicant wishes. It was the decision of the Board that they are the approving authority for subdivision for Comprehensive Permits, so the last comment in regards to subdivisions by the Planning Board does not apply.

Bob La Pierre, an abutter questioned comment #45 on Nitsch's letter. He would like to know if the water is going to be removed or dispensed. Mr. Scott explained that the plan calls for a reduction of runoff from the site.

Judy Gustafson asked for an explanation of the disruption of the affordable units and how that affects the condominium fees. It was explained that if the affordable units are clustered on one or two lots then the condominium fees collected from those units would be less than other lots. The concern is there would not be enough reserve money to cover the cost a repairing or upgrading the septic system should it be required some time in the future.

Steve Moeser made a motion to continue the hearing to June 25, 2008 8:00pm. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Liz Allard, Clerk