

HARVARD ZONING BOARD OF APPEALS
MINUTES OF MEETING
September 10, 2008
APPROVED: December 10, 2008

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

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

Others Present: Liz Allard, Mark Lanza, Carter Scott (Transformations, Inc.), Barbara Henderson, Warren Henderson, Rick Dickerson, Valerie Hurley (Harvard Press), Sally Carrona, Bob La Pierre, Chris Ashley(BHPWMC), Steve Nigzus, Anne Carlisle, Ron Ricci, Bob Donaldson, Willie Wickman, Darrell Wickman, Garry Baer, Peter Warren, Bruce Leicher (BHPWMC), Jeff Ritter, Bob Blanck(BHPWMC), Gary Shepard (Ross Assoc.), Rick & Roxanne Mace, Susie McCrae, Shane Long, Eric Broadbent, Bill Johnson(BHPWMC), Bruce Linstad and Michael Kilian

Continuation of a Comprehensive Permit Hearing – Transformation, Inc., Stow Road (Map 36 Parcel 85 & 86.1). Opened at 7:37pm, suspended at 8:40pm and reopened at 8:45pm

Variance Hearing – Steve Nigzus, 26 Madigan Lane (Map 16 Parcel 9). Opened at 8:40pm

Trail Ridge Bond Reduction Request

Mark O'Hagan was before the Board to request that the recommended bond reduction submitted by Nitsch Engineering be approved. Mr. O'Hagan explained Steve Ventresca, of Nitsch Engineering, had conducted a review of the site about a month ago. Nitsch has recommended the bond be reduced to \$176,029.00. Since the roadway will remain private way, Mr. O'Hagan is also requesting that items #39, As-Built and Acceptance Plan, and #40, Roadway Maintenance, be removed from the total of the bond. Chris Tracey would not have a problem with releasing #40, but would like to get conformation from Nitsch as to what #39 is for.

Robert Capobianco made a motion to accept the request of Fairway Partners to reduce the bond to include the reduction of items #39, As-Built and Acceptance Plan and #40, Roadway Maintenance as long as those reductions are appropriate. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion. Liz Allard will confirm with Nitsch Engineering that it would in fact be appropriate to reduce the bond an additional \$54,909.15 in regards to road maintenance.

Special Permit hearing – Richard & Roxanne Mace, 38 Peninsula Road (Map 26 Parcel 49). Opened at 9:18pm

Amendments to the Code of the Town of Harvard, Chapter 135 Hearing. Opened at 10:48pm

Adjournment

Steve Moeser made a motion to adjourn the meeting at 10:50pm. 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)
September 10, 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 and Orville Dodson

Others Present: Liz Allard, Mark Lanza, Carter Scott (Transformations, Inc.), Barbara Henderson, Warren Henderson, Valerie Hurley (Harvard Press), Sally Carrona and Bob La Pierre

This hearing was continued from July 23, 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.

Carter Scott explained to the Board that a revised application and supporting material was submitted due to the declining housing market. Ed Marchant, the financial consultant, was present to present his financial review of the project. Mr. Marchant explained that the maximum land value is based on an appraisal by Mass Housing and paid for by the applicant. Chris Tracey asked if the Board had the ability to challenge the appraisal of the lot, would it change the incremental profit. Mr. Marchant stated no, it would not, adding, it is very difficult to challenge an appraisal, but he has had the occasional challenge that has had some impact in getting appraisals revised. Mr. Marchant stated the unusual thing about this particular application was the level of detail or lack there of that was provided. The costs given seemed reasonable on construction cost. Site Development costs in general are okay. Mr. Marchant stated that property taxes are one of the toughest line items to assess. Upon reviewing the Assessor's documents, Mr. Marchant found that the Town of Harvard has this property assessed at a very high number. Mr. Marchant believes the soft cost contingency was too high. Mr. Marchant stated the revenue costs are a best guess. Being in a 40B development has an impact on the market rate units. Mr. Marchant does not think the units were a low ball price as presented in the application. With the affordable units he has a particular interest in, Mr. Marchant is not sure he agrees with the \$171,000 sale number. Mr. Marchant reminded the Board that all of these cost will be reviewed by the monitoring agent of the subsidizing agency. Mr. Marchant thinks \$171,000 is the highest number you will see for the affordable units.

Mr. Marchant had comments on the affordable units all having two bedrooms and only one bathroom, he suggested a half bath be added to each of these units. Mr. Marchant also commented on the fact that none of the single family homes are affordable units. Mr. Marchant believes Mass Housing would be interested in how the total number of units will be allocated between the market rate and the affordable units, particularly if

there are differences between the information submitted with the Project Eligibility Letter application and the current plan. Mr. Marchant believes some of the affordable units are smaller than required. Mr. Marchant is concerned with the spatial location of the affordable units. The East and West Serpentine Way lots each have two affordable units that are adjacent to each other; in fact one building on the West lot only has affordable units in it. Mr. Marchant questioned if the Board requires one affordable unit be constructed for each three market rate units, how this will be accomplished should be discussed.

Steve Moeser asked if Mr. Marchant had any comments on the proposed condominium fees. Mr. Marchant stated that those numbers were included and he believes the amount associated is low. Mr. Marchant stated you can lower the sale price by increasing the condo fees, most developers do not want to do that. Mr. Tracey asked who bases what the condo fees are. Mr. Marchant stated a condition can be placed in the decision that requires a review by the monitoring agent at the time of a sale of a unit to determine what the fee should be.

With another hearing to be opened at this time Chris Tracey made a motion to suspend this hearing until 8:45pm. Steve Moeser seconded the motion. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

The hearing was reopened at 8:45pm

Bob La Pierre, a resident, wanted to know what the estimated condo fee is. Mr. Marchant stated his calculation was \$75, where Mr. Scott's was \$57. Mr. La Pierre stated he was aware of an association within the same area that has a fee of over \$200 a month. Mr. La Pierre stated he is familiar with some projects where the condo fees were presented as low and once the project was done the developer raised them. Mr. Tracey stated the Board will have to deal with that when the time comes.

In regards to the size of the affordable units, that Mr. Marchant had stated earlier, Mr. Scott stated that the February 2008 information from Mass Housing available online supports his unit sizes. Mr. Marchant believes Mr. Scott needs to get a sign off from the subsidizing agency.

In regards to the proposed use of private wells in comparison to a Public Water Supply, Mr. Scott presented the Board with examples of similar projects. Both projects presented are in Boxborough.

Mr. Scott stated he had met with the Fire Chief today to discuss any outstanding issues. The Fire Chief stated to Mr. Scott he would submit his comments of that meeting to the Board.

Liz Allard asked Mr. Scott why he has chosen to propose a separate for each building. Mr. Scott explained this manner will make the maintenance of those wells the responsibility of each home owner rather than the association.

Rick Dickson, a resident and realtor, stated he was impressed with the development in Townsend by Mr. Scott, if we all had homes that were energy efficient we would not be scratching our heads on how to heat our homes. Mr. Dickson is impressed with the look of the first floor masters, which are hard to find.

Robert Capobianco made a motion to continue the hearing until September 24, 2008 at 8:30pm. Orville Dodson seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Liz Allard, Clerk

**Zoning Board of Appeals
Variance Hearing Meeting Minutes
Steve Nigus, 26 Madigan Lane (Map 16 Parcels 9)
September 10, 2008**

This hearing was opened at 8:40pm by Chairman Chris Tracey under M.G.L. Chapter 40A §10 and the Protective Bylaw, the Code of the Town of Harvard, §125-45B in the Town Hall Meeting Room

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

Others Present: Liz Allard, Mark Lanza, Valerie Hurley (Harvard Press) and Steve Nigus

This hearing is for a Variance filed on behalf of Steve Nigus for the installation of a subsurface sewer pipe within 100' of a wetland at 26 Madigan Lane, Harvard.

Steve Nigus explained to the Board that he has decided to add an addition to the existing building that would remove the sewer line outside of the 100' buffer zone and would not require a Variance. Mr. Nigus formally requested that his application for a Variance be withdrawn without prejudice.

Robert Capobianco made a motion to accept the withdrawal without prejudice on an application filed on behalf of Steve Nigus for the request for a Variance to install a sewer line within 100' of a wetland buffer zone at 26 Madigan Lane. Orville Dodson seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Liz Allard, Clerk

**Zoning Board of Appeals
Special Permit Hearing Meeting Minutes
Richard & Roxanne Mace, 38 Peninsula Road (Map 26 Parcel 49)
September 10, 2008**

This hearing was opened at 9:18 by Chairman Chris Tracey under M.G.L. Chapter 40A §6 and the Protective Bylaw, the Code of the Town of Harvard, §125-3 in the Town Hall Meeting Room

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

Others Present: Liz Allard, Mark Lanza, Rick Dickerson, Valerie Hurley (Harvard Press), Chris Ashley (BHPWMC), Anne Carlisle, Ron Ricci, Bob Donaldson, Willie Wickman, Darrell Wickman, Garry Baer, Peter Warren, Bruce Leicher (BHPWMC), Jeff Ritter, Bob Blanck (BHPWMC), Gary Shepard (Ross Assoc.), Rick & Roxanne Mace, Susie McCrae, Shane Long, Eric Broadbent, Bill Johnson (BHPWMC), Bruce Linstad and Michael Kilian

This hearing is for a Special Permit filed on behalf of Richard & Roxanne Mace for the altering of a pre-existing non-conforming structure by adding a detached garage at 38 Peninsula Road, Harvard.

Gary Shepard, of Ross Associates, was present to represent the applicant. Mr. Shepard stated the application of a proposed three car garage on a pre-nonconforming lot in terms of land area and frontage. Mr. Shepard stated the nonconforming house has been occupied since the 1950's. In 2007 the addition to increase the square footage vertically was approved by the ZBA. The garage would have been allowed at the time the lot became nonconforming. It was stated that the proposed garage does not meet the current set backs. Mr. Shepard stated if the use would have been permitted at the time the Bylaw was enacted then the proposal can be allowed. Mr. Shepard believes the garage would have been allowed and not more detrimental to the neighborhood. Mr. Shepard further explained that the garage will have recharge trenches, will be 32 x 34 feet in size, one story high and consistent with the other lots in the area. Mr. Shepard explained the tree clearing that had been about a year ago. The Mace's have been cooperative with that process and have complied with the requirements of the Conservation Commission (Concom). During that process the garage was also permitted by the Concom.

Chris Tracey asked Town Counsel Mark Lanza what his take was on the tree clearing in regards to the condition the ZBA had in the decision for the addition, which states the shore line shall remain in its natural vegetated state. Attorney Lanza stated this is a violation of the Special Permit which is a zoning violation and can be handled several ways, either through restoration, fines or through court proceedings. Mr. Tracey feels that the Concom has better expertise to determine what should be done for restoration.

Steve Moeser stated to Mr. Shepard within the Bylaw there are certain requirements to meet for a Special Permit and have you addressed those in your presentation, specifically 125-46C(1)(a). Mr. Shepard stated recharge trenches will be used to hold and infiltrate a 25 year storm, the planting of the trees are to be used as erosion controls and will absorb nutrients. Mr. Shepard stated he is not purposing something that is not necessarily unusual for the area, most homes have garages

Susie McCrae, an abutter, stated in keeping with the neighborhood, most homes are seasonal cottages and this house has changed the look of the area. Ms. McCrae does not have faith in this process since violations have been over looked. Ms. McCrae does not want to see any more building on the peninsula.

Bruce Leicher, of the Bare Hill Pond Watershed Management Committee, thinks the process has broken down between Town Boards. The Concom stated their jurisdiction was strictly the Wetland Protection Act and not zoning or view shed. It is unclear how the ZBA could allow additional work to take place on this property. Mr. Leicher stated the trees were cleared in November of 2007 and no one is certain as to when the Certificate of Occupancy (CO) was issued. Mr. Leicher asked if a violation of the decision was present should a CO not been issued. Attorney Lanza stated that a CO should not have been issued if there was a violation of the Special Permit decision. Mr. Leicher believes the proposed garage will be a substantial change in the neighborhood.

Mr. Shepard believes one of the primary concerns of the Concom was the view shed even though it is not in their purview. Mr. Shepard explained that the original plan submitted to the Concom had a larger number of trees than what was finally permitted. Rick Mace explained that the arborist was told that the Concom wanted as large as trees as possible planted. The arborist goal was to restore the canopy as quickly possible. Mr. Mace added that under the Order of Conditions issued by Concom he is required to have a professional monitor the trees for five years.

Robert Hughes, a resident, would like the Mace's to wait ten years for the site to re-vegetate itself before being allowed to do any additional work.

Darrell Wickman lives directly across from the home and this is the only one that he can see from his home, he objects to this application.

Ann Carlisle, a resident, is concerned that if this process is allowed to go head it will proliferate around the pond. She agrees with waiting to see what the site looks like in the future before allowing any additional building.

Peter Warren, a member of the Board of Selectmen, stated this property is part of the Fiske Warren land and that there are there covenants as to what can be done on the properties.

Mr. Tracey assumes the support of the garage would be positive if there is additional restoration of the view shed. Mr. Tracey cannot believe in this day and age someone

does not know that you can not do this work without a permit, but sure enough someone was out there today on Peninsula Road cutting trees without a permit within the buffer zone of the pond.

Eric Broadbent, an abutter, is amazed how the trees were cut right up to and beyond the property line. Mr. Broadbent believes the Mace's are trying to do the right thing now. Mr. Broadbent stated he does see a much different landscape then he did before the work was done. Mr. Broadbent has concerns with the new structure in regards to drainage and runoff. Mr. Broadbent would like to see the water quality of the pond monitored.

Jill Lashua, a resident, is concerned with what is going to be happening to the pond if activity such as this is allowed to continue. Ms. Lashua thinks the house screams "look at me". Ms. Lashua is concerned with what the Concom permit and that it is not being followed. Ms. Lashua submitted letters from two other residents on her road that were unable to attend.

Mike Kilian, a resident, asked what impact the garage would have on the view shed. Mr. Kilian finds it strange the ZBA would permit something that would compound the problem. Mr. Kilian is very concerned about the five year plan of the Concom, what if the property is sold and was a bond not required. Mr. Kilian does not see the Town being active enough on protecting our interest. Mr. Kilian would like to see a long term restitution.

Mr. Tracey asked if the ZBA wanted to engage a consultant would the Mace's be agreeable with that. Rick Mace did not know how the Concom would feel about changes to the approved plan. If that would be a positive outcome he may be agreeable.

Steve Moser asked Attorney Lanza if there is a violation of the original decision does that involve the ZBA again. Attorney Lanza stated no, it goes to the Zoning Enforcement Officer.

Mr. Shepard was a little concern about getting another consultant, who may have a different opinion.

Jeff Ritter, of Slough Road, would like the ZBA to disapprove the project. The ZBA should take into consideration the size of the structure.

Chris Ashley, a resident and member of the pond committee, has seen the ZBA make recommendations to make the setbacks. It appears that there is no regard to the setbacks in this respect.

Gary Bear, of Clinton Shore, stated those of us who are stewards of the pond have seen destruction on the pond before and would like the Town to protect our resources. The outside consultants do not care about our Town.

Shane Long, of Clinton Shore, stated all you can do is deny this appeal for a garage. Mr. Long would like to wait and see what happens in five or ten years.

Mr. Tracey suggested with so many different boards and committees in Town involved with this location that a group meeting with Board of Selectmen, ZBA, the Zoning Enforcement Officer, Bare Hill Pond Watershed Management Committee, the Concom Agent, a member of Concom, Attorney Lanza, the Mace's and representation in order to come to one resolution rather than making the applicant go from board to board.

Orville Dodson asked if there are any issues on the front of the property. It is Mr. Tracey's understanding there are not.

A public meeting will be scheduled with above mentioned Boards and Committees before the next hearing.

Chris Tracey made a motion to continue the hearing to October 1, 2008 at 7:30pm. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Liz Allard, Clerk

Zoning Board of Appeals
Amendments to the Code of the Town of Harvard Hearing Meeting Minutes
September 10, 2008

This hearing was opened at 10:48pm by Chairman Chris Tracey under M.G.L. Chapter 40A and the Protective Bylaw, the Code of the Town of Harvard, §125 in the Town Hall Meeting Room

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

Others Present: Liz Allard and Mark Lanza

This hearing for amendments to the Code of the Town of Harvard, Chapter 135 Zoning Board of Appeals and the Comprehensive Permit Rules and Regulations.

With the lateness of the meeting Steve Moeser made a motion to continue this hearing to October 1, 2008 at 8:00pm. Orville Dodson seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Liz Allard, Clerk