

**HARVARD ZONING BOARD OF APPEALS
MINUTES OF MEETING
September 24, 2008
APPROVED: DECEMBER 10, 2008**

Chairman Chris Tracey called the meeting to order at 7:33pm 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, Mark Saganich, Richard Butler, Nicole & Armand Bassi, Anne & Frank Payson, Valerie Hurley (Harvard Press), Judy Gustafson and Warren Henderson

Special Permit Renewal Hearing – Bell Atlantic Mobile of Massachusetts Corporation, LTD., Pinnacle Road (Map 18 Parcel 20). Opened at 7:33pm

Administrative Appeal Hearing – Armand & Nicole Bassi, 127 West Bare Hill Road (Map 30 Parcel 48). Opened at 8:00pm

Special Permit Hearing – Armand & Nicole Bassi, 127 West Bare Hill Road (Map 30 Parcel 48). Opened at 8:18pm

Continuation of a Comprehensive Permit Hearing – Transformation, Inc., Stow Road (Map 36 Parcel 85 & 86.1). Opened at 9:12pm

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
Special Permit Renewal Hearing Meeting Minutes
Bell Atlantic Mobile of Massachusetts Corporation, LTD.,
Pinnacle Road (Map 18 Parcel 20)
September 24, 2008**

This hearing was opened at 7:37pm by Chairman Chris Tracey under M.G.L. Chapter 40A and §125-27 in the Town Hall Meeting Room

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

Others Present: Liz Allard, Mark Lanza, Michael Giaimo (Robison & Cole, LLP)

This hearing is for the renewal of a Special permit filed on behalf of Bell Atlantic Mobile of Massachusetts Corporation for the renewal of a Special Permit for a wireless communications facility on Pinnacle Road (Map 18 Parcel 20), Harvard.

Michael Giaimo was present to represent the applicant. Mr. Giaimo stated there are no proposed changes to the current use of the fire tower. The application is the same as it was five (5) years ago. Mr. Giaimo stated the area is an isolated location. The application was filed with the ZBA since they were the original Special Granting Authority. Mr. Giaimo stated Bell Atlantic has a license agreement with Department of Environmental Management (DEM). Chris Tracey read the letters received from the Conservation Commission, the Building Inspector and the Planning Board into the record. Steve Moeser asked who was responsible for maintenance of the tower. Mr. Giaimo stated that DEM is responsible. The April 23, 2008 letter submitted to the Commonwealth of Massachusetts was not accepted by the Commonwealth of Massachusetts. Mr. Giaimo will get an executed copy to for the file. Mr. Giaimo requested the five year renewal period be extended. The Board did not agree with that request, but instead will make the expiration date of the renewed permit to be the same date as the expiration of the license agreement with DEP, that being November 25, 2012.

Robert Capobianco made a motion to close the hearing. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Robert Capobianco made a motion to issue a renewal of the Special Permit for Bell Atlantic Mobile of Massachusetts Corporation, LTD. to expire on November 25, 2012. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Liz Allard, Clerk

Zoning Board of Appeals
Administrative Appeal & Special Permit Hearing Meeting Minutes
Armand & Nicole Bassi, 127 West Bare Hill Road (Map 30 Parcel 48)
September 24, 2008

This hearing was opened at 8:00pm by Chairman Chris Tracey under M.G.L. Chapter 40A §15 and the Code of the Town of Harvard Chapter 125-45A; at 8:18pm the hearing under M.G.L. Chapter 40A and the Code of the Town of Harvard Chapter 125-46 the Protective Bylaw was also opened in the Hall Meeting Room

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

Others Present: Liz Allard, Mark Lanza, Mark Saganich, Richard Butler, Nicole & Armand Bassi, Anne & Frank Payson and Valerie Hurley (Harvard Press)

This hearing is for an Administrative Appeal filed on behalf of Nicole and Armand Bassi for an opinion for the Harvard Inspector of Buildings/Zoning Enforcement Officer in regards to the expansion of an existing structure at 127 West Bare Hill Road, Harvard. The hearing for the Special Permit was open at 8:18pm.

Mark Saganich was present to represent the applicants, Nicole and Armand Bassi. Mr. Saganich explained to the members that he submitted a building permit application in July, at which time the Building Commissioner noted the lot size was less than currently allowed for a hammerhead lot. A written decision was made by the Building Commission on July 30, 2008. Mr. Saganich referred to his letter dated July 21, 2008 to the Building Commission in which he explains why he feels the structure is a conforming structure on a non-conforming lot and therefore §125-3 does not apply. Chris Tracey read the preamble to §125-3, which states “.....a structure or use may be extended or otherwise changed only as provided in this Bylaw.” Mr. Saganich stated the house conforms, but the lot does not conform. Mr. Tracey disagrees with everything Mr. Saganich had to say. Mr. Tracey explained it does not matter whether it is the structure or the lot is non-conforming, there is a non-conformity. Mr. Saganich asked then what does §125-4B mean. Since Town Counsel shall be present soon for the next hearing, Mr. Tracey suggested an answer be given by him once he arrives. Mr. Tracey does not think that the Building Commissioner would issue a permit for a structure that is conforming on a non-conforming lot. Mr. Tracey personally does not think he would over turn the Building Commissioners decision.

The Special Permit hearing was opened at 8:18pm in order to discuss both applications simultaneously.

Mr. Saganich explained that the foundation would still be used but a large portion of the house will be demolished. The only plot plan received is a sketched plan by Ross Associate. Members asked if the proposed work is shown anywhere on a plan and are the

setbacks also shown. Mr. Saganich showed the members the plan dated October 2007 that shows the existing structure and its setbacks, with the additions added and indicated dotted line. Steve Moeser would like to see a site plan that is clear to the setbacks.

Town Counsel, Mark Lanza joined the meeting at 8:29pm.

The applications before the ZBA were explained to Attorney Lanza. Attorney Lanza stated this is a very interesting issue, twice this has been addressed by the highest court in the State. In both cases the court ruled it is the existence of the structure makes it non-conforming. Attorney Lanza added you can not divorce one thing from another. The requirement for a Special Permit is in the Bylaw and not Mass General Law. Mr. Tracey asked what §125-4B means. Attorney Lanza stated that any changes had to be authorized under the Bylaw. The owner is allowed to keep what they had when it became non-conforming, but changes have to come before the Town.

Mr. Tracey read the comments received by other Town Boards and Commissions into the record. The Board of Health (BOH) letter states there should be a condition that unfinished space is to remain unfinished to be consistent with the existing septic system.

Rich Butler, 31 Candleberry Lane, was curious since the size of the house is relatively small, how much bigger will this house be. Mr. Saganich stated there would be a 73% expansion of the foot print. The total square footage has expanded from 5,258 square feet to 9,094 square feet.

Ann Paxton, 126 Bare Hill, is a bit confused, the house is going to be on the existing foundation, but there is a discussion of dashed areas. The plan submitted was explained to Ms. Paxton; also the house will be 17 feet longer. Ms. Paxton is concerned about run off; she explained that currently rainwater runs down the existing driveway and across the street. Ms. Paxton is concerned with the additional impervious surface with the turn around of the driveway. Mr. Saganich stated the water flows to the back of the house. Mr. Tracey explained that the topography of the site would cause new impervious areas to flow towards the back of the property.

As for the comments made by the BOH, the ZBA can condition the decision that requires a permit for a six bedroom home be issued before a building permit is issued.

The members asked if the expansion would require any tree clearing. Mr. Saganich explained that brush up to two to three inches have been cleared and that trees between the two driveways have been left. There have been a few trees have been removed for the septic system.

The Land Court plan, 5605, Plan 9 Lot 3, dated Nov 6, 1972 will need to be submitted.

Robert Capobianco made a motion to close both the administrative appeal and the special permit hearing. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

After a brief discussion Steve Moeser made a motion to uphold the decision made by the Building Commissioner. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

Robert Capobianco made a motion to grant the Special Permit with conditions that require the applicant to comply with the Wetland Protection Act, the Harvard Wetland Protection Bylaw and obtain a permit from the Board of Health for a six-bedroom septic system before a building permit is issued. Steve Moeser 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 24, 2008**

This hearing was opened at 9:12pm 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 and Valerie Hurley (Harvard Press

This hearing was continued from September 10, 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 read into the record additional comments received from other Town Boards and Commissions. The comment received from the Building Commissioner in regards to building code compliance. Mr. Scott supplied additional information in regards to the Board of Health letter pertaining to Public Water Supplies and private septic systems. Carter Scott has response to BOH letter. The Planning Board letter was in reference to the subdivision of the lot into five separate lots. Town Counsel, Mark Lanza, stated the ZBA is the granting authority of all local and State regulations as they pertain to a Comprehensive Permit application. Mr. Tracey asked Mr. Scott if he is looking for approval from the ZBA for a subdivision. Mr. Scott stated yes. Mr. Tracey added with the Town accepting the road at an Annual Town Meeting. Mr. Scott again stated yes. Mr. Tracey asked if the application request a waiver from Chapter 130, Subdivision Control Bylaw. Mr. Scott stated yes, and added to meet the requirements of a Public Water Supply the roadway would need to be a public way.

Mr. Scott explained that if the roadway was accepted by Town Meeting it would be cleaner for the Department of Environmental Protection (DEP). DEP still may approve the septic systems if it is a private way or deny it if it is a public way. Mr. Tracey stated he has yet to have an explanation as to what the benefit is to having this parcel subdivided into five lots. Mr. Scott stated this configuration works better for in weighing out the permitting process. Mr. Scott further explained that the Public Water Supply (PWS) would have a radius that would not allow building within that radius and would move structures closer to Interstate 495. Mr. Scott believes a PWS will have obstacles in working properly, where as the individual wells will work. Mr. Scott added that the cost of maintaining a PWS was a deciding factor in determining to design with individual wells. Mr. Scott stated that a PWS tends to be chlorinated; where as private wells do not; this will be healthier. Mr. Scott commented on the book submitted to the file, "The Hidden Messages in the Water", in which the author has discovered that molecules of water are effected by our thoughts, words and feelings and that a PWS would be

maintained by the use of chemicals therefore interfering with this ability that a private well would have.

Robert Capobianco asked about the last comment on the BOH letter dated September 24, 2008 in regards to not waiving Chapter 145. Attorney Lanza stated that in order for the ZBA to deny a requested waiver significant health concerns have to be proven, otherwise the Housing Appeals Committee will up hold the request. Mr. Capobianco wants to make certain that there is a condition that requires the applicant to demonstrate compliance with Title V. Mr. Scott stated the State is very clear that the need for affordable housing out weighs BOH regulations. Mr. Tracey stated it is very difficult to support waivers that have no back up to them.

Mr. Scott has meet with the Fire Chief who was acceptable with the plan, with minor change that he would get to the ZBA. During Ed Marchant's review he noted the size of some of the affordable units; Mr. Scott stated the requirements on unit sizes are not hard and fast rules, if it was he would comply with it. Mr. Scott added that this application is not a Local Initiative Program and that is what Mr. Marchant was referring to.

With no further questions or evidence to be provided Robert Capobianco made a motion to close the evidentiary portion of the hearing. Steve Moser seconded the motion. The vote was unanimously in favor of the motion.

The members agreed to deliberate on the decision of the following dates as needed: September. 30, October 1, 7 and 8 at 7:30pm in Town Hall meeting room.

Signed: _____
Liz Allard, Clerk