

**HARVARD ZONING BOARD OF APPEALS
MEETING MINUTES
September 9, 2009
APPROVED: October 15, 2009**

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 (LUB Admin), Mark Lanza, Gerry Welch, Mary & Paul Wood, Judy Alexander, Lyle Webster and George Dimakarakos (Stamski & McNary)

Variance and Special Permit Hearing – Judith Alexander, 79 Finn Road (Map 37 Parcel 4).
Opened at 7:33pm

Special Permit Hearing – Mary & Paul Wood, 5 Wilroy Avenue (Map 26 Parcel 5). Opened at 8:07pm

Orville Dodson left the meeting at 9:05pm

Continuation of Final Plan Approval - Massachusetts Housing Opportunities Corporation,
Littleton Road (Map 17D Parcel 14 & 17)

Revised landscape plan was submitted and sent to Nitsch as well. Snow storage areas have been added and trees removed from drainage areas. Revised plan for the retaining walls was submitted and references the correct and current building code. Nitsch recommends changes to the guardrail. Members discussed whether they wanted to impose those recommendations. George Dimakarakos does not think a vehicle will go through the guardrail as proposed. Robert Capobianco stated that wood rots and steel would remain forever and could be painted another color. Gerry Welch does not think there is a large change in cost to use steel and was willing to use a steel guardrail. The members agreed a steel guardrail shall be installed.

Mr. Capobianco would really like to see a fence that is curved at the top so that a child could not climb over. Chris Tracey would also prefer a fence with a curve at its top. Mr. Dimakarakos stated the fencing proposed is used at daycares in Massachusetts. Steve Moeser would prefer the fence would not have a curve. Mr. Capobianco asked then why have a fence at all. Mr. Dimakarakos believes one should be required for safety.

Plans will be recorded as an attachment to the Comprehensive Permit.

Chris Tracey made a motion to accept the plans as revised. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

A Construction Management Plan will be provided at pre-construction meeting. Flow test shall take place prior to framing of the buildings.

Approve Comprehensive Permit Rules and Regulations

With all questions regarding the attorney fees answered Chris Tracey made a motion to approve the Comprehensive Permit Rules and Regulations as revised. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

Minutes

Robert Capobianco made a motion to accept the minutes of July 7, July 21 and August 13, 2009 as submitted. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Adjournment

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

Signed: _____
Liz Allard, Clerk

**Harvard Zoning Board of Appeals
Variance & Special Permit Hearing Meeting Minutes
Judith Alexander, 79 Finn Road (Map 37 Parcel 4)
September 9, 2009**

This hearing was opened at 7:33pm by Chairman Chris Tracey under M.G.L. Chapter 40A and the Code of the Town of Harvard Chapter 125-3A&B in the Town Hall Meeting Room

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

Others Present: Liz Allard (LUB Admin), July Alexander and Lyle Webster

This hearing is for a Variance and Special Permit filed on behalf of Judith Alexander for additions to a preexisting non-conforming structure at 79 Finn Road, Harvard.

Robert Capobianco made a motion to waive the reading of the legal notice Orville Dodson seconded the motion. The vote was unanimously in favor of the motion.

Lyle Webster and Judith Alexander were both present. Mr. Webster explained the home had been in the family for 35 years. Recently Mrs. Alexander's daughter and her family had moved back into the home and they need room to grow. The additions will consist of a 400 square foot bedroom and a 200 square foot addition to the existing porch which will provide Mrs. Alexander her own entrance into the dwelling. Both additions do not meet the 75' setback from the center line of the roadway. In addition a portion of the proposed porch does not meet the 2:1 setback as required in 125-3B(4). Mrs. Alexander is currently working with the Board of Health (BOH) to install a new septic system.

Chris Tracey recognized letters from other Boards and Commissions including the Conservation Commission, Planning Board, Building Commissioner, and Board of Health.

Steve Moeser asked if the ZBA cared what the septic system permit is for. Mr. Tracey stated if the ZBA issues a decision it would be subject to meeting the requirements of BOH per these plans. Mr. Moeser asked if they had taken a look at any other solutions to avoid the Variance. Mr. Webster stated he looked at coming out the back, but that would upset the present location of the bedrooms. The present layout of structure will work well as to not cause too much additional construction cost. Mr. Tracey explained to Mr. Webster and Mrs. Alexander that the request for a Special Permit before the ZBA is a permit which the ZBA has latitude on, but a Variance is much harder to get. The granting of a Variance is outlined in the Bylaw which includes substantial proof of hardship. Mr. Webster explained the topographical hardship created by the original builder for the proposed extension of the existing porch. This location also makes the most sense for egress separate from the others using the house and make for a suite of rooms for Mrs. Alexander. For clarity, Robert Capobianco asked Mr. Webster if the hardship is the way the structure is laid out and that the septic system is to the east of the structure limiting that side of the house. Mr. Webster stated that was correct. Mr. Capobianco believes the applicant is attempting to comply with the law as it relates to the structure and this is the only location that makes sense for the porch.

Mr. Tracey stated that each time this comes before the ZBA it is very confusing as whether or not a Variance is truly needed. Mr. Capobianco feels there are sufficient findings that show due to the layout of the structure this is the only location for the porch. Mr. Moeser stated based on ZBA decisions in the past he does not see the hardship here. Mr. Capobianco reminded Mr. Moeser of other Variances issued by the ZBA. Mr. Capobianco reminded the members that you judge each application on there merits. Mr. Tracey does not believe that the 2:1 setback is required

since the addition would have been allowed prior to the adoption of the Bylaw. Town Counsel, Mark Lanza, was going to be present at the meeting within the next half hour, so Mr. Tracey asked the applicant if she was willing to suspend the hearing until Mr. Lanza's arrival to get clarification on whether or not a Variance was actually needed. Mrs. Alexander agreed.

Chris Tracey made a motion to continue the hearing to 8:30pm. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

The hearing was reopened at 8:37pm

Attorney Lanza interpolated 125-3 and agreed that a Variance was not required as the proposed additions would have been allowed at the time of the acceptance of the Bylaw and the structure only became nonconforming solely due to the creation of the Bylaw.

On Mrs. Alexander's behalf Mr. Webster made a request to withdraw the Variance without prejudice. Chris Tracey made the motion to accept the request to withdraw without prejudice. Steve Moser seconded the motion. The vote was unanimously in favor of the motion.

Chris Tracy made a motion to close the hearing and grant the Special Permit to Judith Alexander for the proposed additions to a pre-existing nonconforming structure at 79 Finn Road. The findings should explain that the proposed additions are not increasing the non-conformity to the setback or lot size and that a Variance is not required. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Liz Allard, Clerk

**Harvard Zoning Board of Appeals
Special Permit Hearing Meeting Minutes
Mary & Paul Wood, 5 Wilroy Avenue (Map 26 Parcel 5)
September 9, 2009**

This hearing was opened at 8:07pm by Chairman Chris Tracey under M.G.L. Chapter 40A and the Code of the Town of Harvard Chapter 125-11 in the Town Hall Meeting Room

Members Present: Chris Tracey, Robert Capobianco and Orville Dodson

Others Present: Liz Allard (LUB Admin), Mary and Paul Wood

This hearing is for a Special Permit filed on behalf of Mary and Paul Wood for the conversion of a seasonal residence to year-round residence at 5 Wilroy Avenue, Harvard. J

Robert Capobianco made a motion to waive the reading of the legal notice Orville Dodson seconded the motion. The vote was unanimously in favor of the motion.

Mary Wood explained that in June 2004 the Zoning Board of Appeals issued a Special Permit for the purpose of reconstructing a pre-existing nonconforming structure at 5 Wilroy Avenue. At the time the Wood's were still working in the State of New York as school teachers and only resided in the dwelling during the summer months. In order to reconstruct the dwelling at that time the Wood's needed to file with Nashoba Associated Boards of Health to upgrade the existing sewage disposal system and file with the Conservation Commission for work within 100' of Bare Hill Pond. Certificates of Compliance have since been issued by both Nashoba Associated Boards of Health and the Conservation Commission.

In July of this year the Wood's submitted Voter Registrations forms to the Harvard Town Clerk as they have now retired from their teaching positions in New York. On July 28, 2009 Town Clerk Janet Vellante notified the Wood's that their residence at 5 Wilroy Avenue was not their primary domicile and they could not register to vote in the State of Massachusetts. Mrs. Vellante further explained that the Wood's would need to obtain a Special Permit from the Zoning Board of Appeals under the Protective Bylaw Chapter 125-11 for Special Permit for the conversion of a seasonal residence to a year-round residence in order to register as a voter in the State of Massachusetts. For that reason the Wood's filed an application for a Special Permit.

Chris Tracey reviewed the requirements under 125-11. The Board of Health (BOH) Certificate of Compliance states it expired in 2007. The members were confused by this and will need clarification from the BOH.

Mr. Tracey read letters from others into the record. Those included the Planning Board, Town Clerk, Conservation Commission and the Building Commissioner.

After a brief discussion Robert Capobianco made a motion to close the hearing and grant a Special Permit allowing the Woods to convert the premises at 5 Wilroy Avenue from seasonal to year round, providing the BOH submits a letter stating they have no objections within 45 days. Chris Tracey seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Liz Allard, Clerk