

**HARVARD ZONING BOARD OF APPEALS
MEETING MINUTES
FEBRUARY 13, 2013
APPROVED: March 13, 2013**

Chairman Chris Tracey opened the meeting at 7:06pm in Volunteer's Hall at the Public Library under Chapter 40A and the Code of the Town of Harvard Chapter 125

Members Present: Chris Tracey, Steve Moeser, Robert Capobianco (by Skype), Theodore Maxant, Orville Dodson and Mike Lawton

Others Present: Liz Allard (LUB Admin), Bill Hannigan (Hannigan Engineering), Dennis Ring (Northwest/Fairway Partners), Elaine Davis-Curl (Northwest/Fairway Partners), Mark Lanza, Barbara Saint André, Cal Goldsmith (GPR, Inc.), Valerie Hurley (Harvard Press), Keith Cheveralls, Chris Ashley, Diane Cordner, Bill Cordner, Caroline Ready, Tim Clark (BOS), Ken Swanton, Deb Skauen-Hinchliffe, Peter Durand, R. Drayton Fair (LLB Architects), Peter Jackson, M.H. Turner, Marie Sobalvarro, Sharon McCarthy, Stuart Sklar, John Martin, Bill & Carolyn Herbert

Continuation of a Modification of a Comprehensive Permit Hearing – PRM Capital, LLC, Trail Ridge Way. Opened at 7:07pm, see page 2 for detailed minutes.

Approval of Minutes

Robert Capobianco made a motion to approve the minutes of January 9, 2013 as amended. Orville Dodson seconded the motion. The vote was unanimously in favor of the motion.

Discuss Town Planner Warrant Article

Members discussed the warrant article recently submitted to the Board of Selectmen (BOS) by the Planning Board for a Town Planner. Members agreed they do not see the need for the Planner at this time. Chris Tracey inquired whether or not the members wanted to send a letter to the BOS expressing their opinion. Members agreed they did. A letter will be drafted and circulated for any comments and will be signed by the Chair on behalf of the Board.

Approve and Sign Carbonell Decision

Members have reviewed the decision drafted for Pablo Carbonell at 133 Old Mill Road for an accessory apartment. With no recommended changes to the decision as drafted Robert Capobianco made a motion to approve the decision. Orville Dodson seconded the motion. The vote was unanimously in favor of the motion.

Variance & Special Permit Hearing- Town Hall Building Committee, 13 Ayer Road. Opened at 8:02pm, see page 3 for detailed minutes.

Adjournment

Robert Capobianco made a motion to adjourn the meeting at 10:00pm. 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 Modification of a Comprehensive Permit Hearing Meeting Minutes

PRM Capital, LLC, Trail Ridge Way

February 13, 2013

The hearing was opened at 7:07pm by Chairman Chris Tracey in the Town Hall Meeting Room under Chapter 40A and the Code of the Town of Harvard Chapter 125

Members Present: Chris Tracey, Steve Moeser, Robert Capobianco (by Skype), Theodore Maxant, Orville Dodson and Mike Lawton

Others Present: Liz Allard (LUB Admin), Bill Hannigan (Hannigan Engineering), Mark Lanza, Dennis Ring, Elaine Davis-Curl and Valerie Hurley (Harvard Press)

This hearing was continued from January 9, 2013 on a request to modify a Comprehensive Permit filed on behalf of PRM Capital, LLC to allow the remaining thirty-two (32) units to be constructed as duplexes rather than quadplexes at the development known as Trail Ridge, Harvard.

Bill Hannigan, of Hannigan Engineering, gave a brief overview from the previous meeting. The review by the ZBA's consultant, Nitsch Engineering, has been completed and distributed to the applicant, its representative and the ZBA members. Mr. Hannigan stated the comments from Nitsch Engineering are basically recommendations and do not require any changes to the plans as previously submitted. Mr. Hannigan generated a response letter, which he distributed to the members and had delivered to Nitsch Engineering. At this point the applicant needs approvals to move forward with the requested modifications from the ZBA and the Conservation Commission. All outstanding issues with the Board of Health have been addressed.

Mr. Hannigan reviewed Nitsch's comments and his responses. Comments provided by Nitsch in regards to distances between buildings were explained by Mr. Hannigan to be constraints based on old building layout and the existing Conservation Restriction on the property. Nitsch is requesting twenty feet (20') between each building, which Mr. Hannigan stated is not a building code requirement.

Mr. Hannigan explained the proposed retaining walls as shown on the plans, will only be constructed if necessary. Robert Capobianco wanted to know what the mechanism will be to determine if the retaining walls will be required. Chris Tracey assumed it would fall under the Building Commissioner. It was suggested the retaining walls be included on the plans and confirm with Nitsch which process would be best.

Comment 8 of the Nitsch letter request a table indicating the differences in impervious areas between the approved plans and the modified plans. Mr. Hannigan stated he will create the requested table and submit it to Nitsch.

The final comment on the Nitsch letter was in regards to the wetland delineation, which will be covered under the new Notice of Intent the applicant will file with the Conservation Commission.

With response comments just received this evening, a response to those comments from Nitsch Engineering will be required in order for the ZBA to make a final decision, with that said Robert Capobianco made a motion to continue the hearing to March 13, 2013 at 7:30pm in the Town Hall Meeting Room. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____ Liz Allard, Clerk

Zoning Board of Appeals

Variance & Special Permit Hearing Meeting Minutes

Town Hall Building Committee, 13 Ayer Road

February 13, 2013

The hearing was opened at 8:02pm by Chairman Chris Tracey in the Town Hall Meeting Room under Chapter 40A and the Code of the Town of Harvard Chapter 125

Members Present: Chris Tracey, Steve Moeser, Robert Capobianco (by Skype), Theodore Maxant, Orville Dodson and Mike Lawton

Others Present: Liz Allard (LUB Admin), Mark Lanza, Barbara Saint André, Cal Goldsmith (GPR, Inc.), Valerie Hurley (Harvard Press), Keith Cheveralls, Chris Ashley, Diane Cordner, Bill Cordner, Caroline Ready, Tim Clark (BOS), Ken Swanton, Deb Skauen-Hinchliffe, Peter Durand, R. Drayton Fair (LLB Architects), Peter Jackson, M.H. Turner, Marie Sobalvarro, Sharon McCarthy, Stuart Sklar, John Martin, Bill & Carolyn Herbert

This hearing is for two Variances (§125-30C & E(4)) and a Special Permit (§125-3A) filed on behalf of the Town Hall Building Committee for proposed renovations to Town Hall at 13 Ayer Road, Harvard.

Cal Goldsmith, of GPR, Inc. and Drayton Fair, LLB Architects, were present to represent the applicant, the Town Hall Building Committee. Mr. Goldsmith stated the application was filed for a Special Permit under the Protective Bylaw, Chapter 125-3A for alterations to a lawful non-conforming structure, as well as two Variances. The Variances are being sought because as designed a new addition to the building (Town Hall) will exceed the height requirement (35') and will not meet the required setback from the center line of the right of way (ROW) (75'). The existing back portion of Town Hall, which was added to the original structure a few years after its construction, is currently twenty-eight feet (28') from the centerline of the ROW. This portion of the existing Town Hall will be razed and reconstructed. The new proposed structure will be thirty-two feet (32') from the centerline of the ROW.

Mr. Goldsmith explained there is no State layout for Ayer Road or Elm Street. The land area associated with Town Hall includes Town Common, making the parcel approximately 4.4 acres. Since a layout for Ayer Road or Elm Street does not exist of the parcel the engineers and architects used what is on the ground now. The proposed addition will increase the size of the existing area by thirteen feet (13'). Mr. Goldsmith stated based upon where the structure sits on the site, shape of site, the building itself and the roadway the situation is very unusual and places constraints on the project. Mr. Goldsmith stated there is no way to meet the seventy-five foot (75') setback, as the seventy-five feet (75') from the centerline of the ROW is on the far side (west) of the building. Chris Tracey asked if the addition being proposed is in fact larger than what is current there. Mr. Goldsmith stated it was. Mr. Tracey followed up with the question as to why the designed was not done to replace what already exists rather than increasing the non-conformity. Mr. Goldsmith stated Drayton Fair, of LLB Architects would cover that matter in more detailed once they discuss the overall design of the building. Mr. Goldsmith noted the previous addition to Town Hall did not include a proper foundation, so that portion of the building needs to be removed regardless of the design since the overall condition is not good and is deteriorating. Theodore Maxant asked if there was a zoning bylaw at time of the construction of Town Hall or its addition. Mr. Goldsmith stated there was not. Robert Capobianco asked if it is possible to plan this addition without adding to or increasing the non-conformity. Mr. Goldsmith stated his intent was to minimize the non-conformity; however the design plan called for more space then is existing and that is why the proposed addition is larger that the existing addition.

Mr. Tracey asked if an addition was designed on the west would it not require a variance. Mr. Fair stated the original plan, which was much more elaborate and expensive, consisted of an addition on the west side, which would not have conformed either as the south side of structure encroaches on the ROW as well. The proposal for an addition on the west side of Town Hall was determined to not meet the required program, because it would block the existing garage that houses the Town vault, the additional cost to demolish and rebuild, with more complicated construction, and would require additional site work and would clearly be non-traditional to a New England Town Hall.

Mr. Goldsmith stated one of the hardships is shape of lot and how the addition had to be designed. Steve Moeser asked if the additional costs between the proposed addition on the north side of the building and an addition to the west side of the building could be quantified. Mr. Goldsmith stated he did not have those numbers available, but was sure they had been. Mr. Goldsmith stated the structure as proposed would be no more non-conforming than the existing building; there will be no increase to the non-conformity. Mr. Goldsmith added he would be hard pressed to say extending the building thirteen feet (13') is more detrimental to the neighborhood, drainage, or traffic.

Mr. Capobianco asked how you could be enlarging the building, but not increasing the traffic. Mr. Goldsmith stated he did not mean to say there would not be any additional traffic, but rather its location along Route 110 could handle an increase in traffic. It is Mr. Goldsmith understanding that the Town Hall will get more use then it currently does with the availability of additional meeting space and performance area on the second floor. Currently, meetings relocate to somewhere else in areas that may or not be able to handle the additional traffic.

Mr. Tracey asked the ZBA's counsel, Barbara Saint André, if she had any words of wisdom on the substantial financial hardship. Attorney Saint André stated there is no definition in the Zoning Act, M.G.L. Chapter 40A or in the Town Protective Bylaw for substantial. Attorney Saint André stated it is really a matter of degree; hardship has to be tied into the topography, soils and shape of the lot.

Orville Dodson asked if the function and use of one design matter in the hardship test. Attorney Saint André stated usually the hardships are financial. Mr. Tracey asked Mr. Goldsmith or the applicant had any numbers been determined to support a financial hardship. It was stated there is a potential of a \$100,000.00 difference between the two additions and that documentation to that affect could be submitted. Mr. Goldsmith stated the project is limited on the shape due to the constraints of the existing buildings on the site. Mr. Goldsmith stated it was not just a financial hardship, but an addition to the west side of the structure would compromise the existing garage that houses the fire boat and Town vault, there by effecting the site by moving the addition to the west side rather than extending it the north.

There was a discussion on the financial hardship due to the cost differences of \$100,000 on a \$3,000,000 plus project and whether or not that is considered substantial. Mr. Capobianco asked if the numbers have been run for complete rebuilding of Town Hall versus renovating the existing building. Mr. Goldsmith could not answer that question. Mr. Capobianco asked if you rebuilt Town Hall would you still need the addition. Mr. Goldsmith stated yes.

Mr. Dodson asked if a rebuilt Town Hall would still require a variance. Mr. Goldsmith stated it would. Mr. Capobianco asked about saving one wall of the existing structure and rebuilding from there, would that still require a variance. Mr. Goldsmith stated he did not think the Building Commissioner would allow for that, nor would it eliminate the need for a variance. Mark Lanza, counsel for the Town Hall Building Committee, explained the standards within the Protective Bylaw is usually for single- and two-family dwellings which this is not. Mr. Capobianco asked if there is room on the lot for a building that will conform. Mr. Goldsmith stated there was if the structure was built on the existing Town Common; the structure where it is now will never being conforming as it sits to close to the ROW.

The discussion moved onto the variance required for the height of the proposed addition. Mr. Goldsmith stated both the new addition and the existing Town Hall will not exceed the three story requirement under, Chapter 125-30C of the protective Bylaw, however the thirty-five foot (35') limitation on the height of a structure will be exceeded by 5.65 feet. When taken from the average surrounding grades, the height of the addition will be forty-two feet (42'), seven feet (7') above the allowable thirty-five feet (35'). The proposed addition will house an entry way, stairs, an elevator, bathrooms and office space. The design of the two story building addition was required to comply with architectural standards and building codes for public meeting space with the requisite ceiling height, floor depth for utility duct work and chases, house an elevator and provide fully usable second floor space. The elevator was required to be contained within the building and not exceed the roof height of the addition. Given these constraints, the addition was then also designed to keep the proper massing and proportions of the existing Town Hall, so that the aesthetics of the building work properly. Given the limited space available for this addition due to the shape of the lot and the existing placement of Town Hall, the program plan for the building addition proposed will require a two story building rather than a more spread-out single story structure that could comply with the height requirement.

In addition, a single story building would not allow for the placement of the required elevator in the new addition, which would mean it would need to be retrofitted into the existing Town Hall building, which would require a hand-dug elevator pit beneath the basement. This would be more expensive than having an elevator pit dug under the new addition. The additional cost of retrofitting an elevator in the existing Town Hall would be prohibitively expensive and difficult to construct and would constitute a financial hardship for the Town.

Mr. Moeser asked if the proposed plans have been presented to the Historic Commission. Pete Jackson, the chair of the Town Hall Building Committee, stated they have informally presented the plans to the Commission.

Ken Swanton, an abutter on the south side of common, stated he has been carefully watching this for years. Mr. Swanton believes the proposed addition is the logical location rather than putting an addition on the west side of the existing structure. Mr. Swanton feels it as a pleasure to live in the center and admire such a wonderful building. In addition, Mr. Swanton stated that meetings that have been occurring in other locations around Town will now be able to be held in one location.

Mr. Capobianco stated he is having difficulty with the financial hardship as stated in Chapter 125-45B(1)(a). The Bylaw says the applicant has to prove financial hardship. Mr. Capobianco has heard how and why it will be done, but nothing to the financial hardship. Mr. Goldsmith stated the letter submitted with the application outlines the hardships. Mr. Capobianco was still not convinced there is a proven substantial financial hardship; it is nice to have more space, but he has not heard this addition is absolutely necessary.

Mr. Goldsmith agreed to provide the Board with some information in regards to the hardship and would like to continue the hearing. Mr. Goldsmith stated the common good of the overall project should be taken into consideration as well in this case. Mr. Tracey stated neither the Zoning Act, nor the Protective Bylaw provide for common sense as a reason for granting a variance. Attorney Lanza pointed out the public good of the project.

Mr. Moeser asked when in the design phase was it decided to ignore the zoning regulations. Mr. Fair stated they had not ignored the zoning regulations; it was about a year ago that it came to their attention; did not apply to ZBA sooner because they wanted the most accurate plans as possible.

Mr. Capobianco asked what the square footage of the proposed addition will be. Mr. Goldsmith stated approximately twenty-seven hundred square feet (2,700 sq ft.). Mr. Capobianco asked

what the existing footprint of Town Hall is. Mr. Goldsmith stated about eight thousand square feet (8,000 sq. ft.). Mr. Capobianco wanted to know if things could be re-designed to fit all that is needed in the existing space. Mr. Jackson stated that was a process that was gone through by the Municipal Building Committee (MBC). Marie Sobalvarro, a member of the Board of Selectmen, reminded the ZBA that the designed was approved at the 2012 Annual Town Meeting. In addition, any improvements made the building require the entire structure to comply with building codes.

Deb Skauen-Hinchliffe asked what the applicant will do if the variances are not granted and why are we trying to save the ambulance building. It was stated that the applicant could request an amendment to the Protective Bylaw to exempt the Town from all zoning requirements. Mr. Tracey stated the questions asked by Ms. Skauen-Hinchliffe are great questions, but are not germane to this application.

Members and representatives discussed constructing a new building on the parcel that would conform to the existing bylaws. Mr. Dodson thinks a similar feeling pertains here to someone who is emotionally invested in any other property and why would they want to build in some other location. Mr. Tracey stated no one is suggesting building somewhere else in Town, just somewhere else on the property.

Tim Clark, speaking as a former Planning Board member, stated a building assessment in 2007 indicated the rear addition was not sound and lacks a basement, most likely due to ledge; therefore the mechanicals for an elevator could not be in the basement of the existing addition. Another hardship is the significant man hours spent. The ZBA has issued variances in the past, for example the new library, for its height and the driveway. The addition is in harmony and good with the landscape of the Town Common.

Wade Holtzman stated he had previously worked with MBC and designed Request for Quotes (RFQ) for the architect. Mr. Holtzman had asked about the zoning several times during the process, so as a tax payer he is dumb founded we would spend this incredible amount of money without checking into these types of things.

Mr. Jackson stated Mr. Holtzman is correct, code issues were within the RFQ. The contract also states the Town would provide a survey adequate to use for planning purposes. Mr. Jackson stated the committee did not have enough information to seek advice from Town Counsel and held off on seeking that advice. Mr. Moeser pointed out the committee did not have enough info for Town Counsel, but did to have the architect to do the design. Mr. Tracey stated he did not think it was the ZBA's place to take into question as to how we got here.

Mr. Maxant questioned the use of the second floor; why do you need the elevator and stair case. Mr. Maxant sees the second floor as vast wasted space. Mr. Capobianco asked if anyone has considered an outside elevator or having an annex building on the property with additional offices, such as the Land Use office; it would not be the first time there was an additional office separate from the main building. This could eliminate the whole variance process. Mr. Goldsmith stated the second floor would be new meeting room for BOS and others. The stage would be restored and could be use on the weekends for large events as it had in the past.

Mary Turner stated she understands that the members of the ZBA may not have attend the numerous meeting held over the years on this subject matter, but the Town Hall is long over due for this renovation. With no difference in the non-conformity, she would see this as a no brainer for the ZBA. Ms. Turner is not sure what the problem is in granting this variance request, since the proposal is not much different to what is there now.

Carolyn Herbert stated as long as she could remember the building needed to be renovated; she would like to see it done in her life time.

Chris Ashley stated we are a community of laws; decisions are made based on the Towns Bylaws and State laws. Mr. Ashley added the ZBA should act on the laws in a manner that the laws are equally applied to all.

Bill Curtin stated he had heard earlier in the evening about the “public good” as criteria for a variance; he asked if this is correct does this project meet that criteria. Attorney Lanza explained there are four criteria that have to be met under State law and an additional criterion within the Towns Protective Bylaw to be able to issue a variance.

Mr. Capobianco stated he is still having an issue with the financial hardship; he asked Attorney Lanza could further explain the financial hardship. Attorney Lanza stated before the next hearing he will provide the Board with a written explanation how that is so.

Mr. Tracey explained as a Board, the ZBA struggles with this process, however the Town has given the ZBA the Protective Bylaw to work with; annual town meeting can change the zoning bylaws, but we all know how difficult that can be as well.

Mr. Tracey asked for timeframes on the information requested this evening. Attorney Lanza will have letter by March 7th for the Board.

Robert Capobianco made a motion to continue the hearing to March 13, 2013 at 8:30pm. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Liz Allard, Clerk

DOCUMENTS & OTHER EXHIBITS

Continuation of a Modification of a Comprehensive Permit Hearing – PRM Capital, LLC, Trail Ridge Way

- Letter from Nitsch Engineering, RE: Nitsch Project#4095, Minor Modification Review, 40B Trail Ridge, Littleton County Road, Harvard, MA, dated February 7, 2013
- Letter from Hannigan Engineering, RE: Minor Modification – Trail Ridge at Harvard, Initial Department Comments, Peer Review Comments, dated January 9, 2013, updated February 13, 2013

Variance & Special Permit Hearing- Town Hall Building Committee, 13 Ayer Road

- Municipal Development Plans, prepared by GPR, Inc., JOB 101068A, dated January 2013
- Addition and Renovation to Harvard Town Hall, 13 Ayer Road, Harvard, MA Plan, prepared by LLB Architects, dated 15 January 2013