

**HARVARD ZONING BOARD OF APPEALS
MEETING MINUTES
MARCH 13, 2013
APPROVED: May 8, 2013**

Chairman Chris Tracey opened the meeting at 7:34pm in Meeting Room of Town Hall under Chapter 40A and the Code of the Town of Harvard Chapter 125

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

Others Present: Liz Allard (LUB Admin), Bill Hannigan (Hannigan Engineering), Dennis Ring, Whit Sprague, Rhonda Sprague, Allen & Carol Hoffman, Marie Sobalvarro, Wade Holtzman, Robert Hughes, Paul Richards, Keith Cheveralls, Jim De Zutter, John Martin, Peter Jackson, Chris Cutler, Ron Ricci, Carol & William Herbert, Robert Hensen, Calvin Goldsmith (GPR, Inc.), Joe Hutchinson, R. Drayton Fair (LLB Architects), Tim Clark, Aimee Lombardo (LLB Architects), Ken Swanton, John Osborn (Harvard Press), S.L. Johnson, Mark Lanza, Bill Johnson and Peter Dorward

Continuation of a Modification of a Comprehensive Permit Hearing – PRM Capital, LLC, Trail Ridge Way. Opened at 7:34pm (for detailed minutes see page 2)

Special Permit Hearing – Ezra Dunton, 31 Peninsula Road. Opened at 8:02pm (for detailed minutes see page 4)

Approval of Minutes

Robert Capobianco made a motion to approve the minutes of February 13, 2013 as amended. Orville Dodson seconded the motion. The vote was unanimously in favor of the motion.

Continuation of a Variance & Special Permit Hearing- Town Hall Building Committee, 13 Ayer Road. Opened at 8:30pm (for detailed minutes see page 6)

Adjournment

Robert Capobianco made a motion to adjourn the meeting at 10:21pm. 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

March 13, 2013

The hearing was opened at 7:34pm 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), Orville Dodson and Mike Lawton

Others Present: Liz Allard (LUB Admin), Bill Hannigan (Hannigan Engineering), Mark Lanza and Dennis Ring

This hearing was continued from February 13, 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, was present to represent the applicant. Mr. Hannigan stated the review by Nitsch Engineering has been completed with additional questions regarding the drainage and infiltration system, in a letter dated March 7, 2013. Mr. Hannigan sent Nitsch stormwater calculations and a summary indicating that the project will increase runoff slightly with the modified design. Mr. Hannigan explained all components of the drainage system were approved under the original permit and have been installed; modifications to stormwater regulations in 2008 tightened up the requirements and required new reporting. Mr. Hannigan explained the comments made by Nitsch are under the 2008 requirements. Town Counsel Mark Lanza agreed with Mr. Hannigan in that Trail Ridge is not required to now comply with the 2008 regulations as the drainage was approved and installed prior to those regulations. If the drainage system was not complete at this point, Nitsch would have a valid point.

The review from Nitsch also indicates filing with the Conservation Commission for work within the 100' wetland buffer zone. Mr. Hannigan stated he is working with the Commission's agent to obtain a Certificate of Compliance for the work that has been completed and then file a new Notice of Intent for the work that remains. Mr. Hannigan stated the increases in impervious areas are outside of buffer zone. The Commission may ask for additional requirements for recharge, such as roof drains.

Chris Tracey read the letter from Fire Chief Rick Sicard, dated March 13, 2013, into the record. The Fire Chief is concerned with the offsets between the proposed buildings. Dennis Ring stated the request for 20' between buildings is not a building code requirement. In regards to the thickness of the material used on the exterior walls of abutting builds, Mr. Ring explained the building code has a table which indicates the thickness of fire rating depending on the separation of structures; again they are meeting that requirement. Mr. Ring further explained that the units would not have any bedrooms with windows on those exterior walls. Robert Capobianco asked how much the distance was between the previous buildings. Mr. Hannigan stated 20-22'. Mr. Capobianco asked what the maximum height of the structures would be. Mr. Hannigan stated 18-20'. Mr. Tracey stated it appears the Fire Department is not okay with this design. Attorney Lanza stated the ZBA can impose conditions which are strict then the building code if it so chooses. Mr. Tracey would think it would be appropriate for the applicant and its representative to work it out with Fire Department. Steve Moeser suggested the matter should also be

discussed with the Building Commissioner as well. Mr. Hannigan agreed to meet with both the Fire Chief and the Building Commissioner to come to a final agreement.

With that said, Robert Capobianco made a motion to continue the hearing to April 10, 2013 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

Special Permit Hearing Meeting Minutes

Ezra Dunton, 31 Peninsula Road

March 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), Orville Dodson and Mike Lawton

Others Present: Liz Allard (LUB Admin), Mark Lanza, Gary Shepard (Ross Assoc.), Ezra and Mardis Dunton

This hearing is for a Special Permit filed on behalf of Ezra Dunton for the re-construction of a pre-existing non-conforming structure on a pre-existing non-conforming lot at 31 Peninsula Road, Harvard

Gary Shepard, of Ross Associates, was present to represent the applicant, Ezra Dunton, who was also present. Mr. Shepard explained the parcel is a one acre pre-existing non-conforming lot with a pre-existing non-conforming structure. The family is looking to move into the dwelling permanently, however the existing structure is not in the best condition. Rather than go through the expense of rehabbing the existing structure the owners have opted to remove it and reconstruct a new dwelling. The new structure will be slightly larger than original on the north side and larger to the east due to a new garage. The offsets from the W-district will be maintained at 38' with the new structure; however a proposed deck will reduce that offset to 28'. The new structure will also be closer to the centerline of the right of way (ROW); existing is 36', proposed is 28'. The proposed structure will be 26% larger than the existing structure, which includes a partial second story. In total the proposed structure will be 2,200 square feet. Mr. Shepard stated there are still a few small houses on Peninsula Road, but for the most part houses along that road have been either reconstructed or added onto and are considerably bigger than the proposed structure here; thereby not making it more detrimental to the neighborhood. Mr. Shepard also added the house at 27 Peninsula Road is two feet closer to the ROW than the one being proposed this evening. The decision to locate the structure closer to ROW rather than to Bare Hill Pond was to satisfy the Conservation Commission (Concom).

Steve Moeser stated the application did not include any architectural plans of the proposed structure. Mr. Shepard provided them for the Board and the file.

The Board questioned what you have if you tear down a legal non-conforming structure and rebuild on a legal non-conforming lot. Mr. Shepard stated you have the complete right to build a new house with a Special Permit from the Zoning Board of Appeals (ZBA). Attorney Lanza stated Chapter 40A and the Harvard Protective Bylaw, Chapter 125-3B(1) allows the reconstruction of a single family dwelling of a pre-existing non-conforming structure. Attorney Lanza referred to a case from 2010, Gale v. Gloucester, and there was no doubt in his mind this is a reconstruction; thereby the structure could be rebuilt with the issuance of a Special Permit by the ZBA.

There were no comments from the general public.

Chris Tracey noted letters were received from the Building Commissioner and Concom, who both believed this would be considered new construction and would be required to meet the setbacks established by the Protective Bylaw, Chapter 125, and the Wetland Protection Bylaw Regulations,

Chapter 147. There were no comments received from the Bare Hill Pond Watershed Management Committee.

Mr. Shepard stated a Notice of Intent has been filed with Concom, which he realize they will have some issues and he will be working with them to warrant the waiver process of their regulations. Although the Concom may require some redesign of the plan Mr. Shepard asked the ZBA to proceed with their process and should they have to come back to ZBA it will be at the applicant's expense.

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

After a brief discussion, Robert Capobianco made a motion to grant the Special Permit for the reconstruction of a single family dwelling at 31 Peninsula Road as shown on the Site Plan in Harvard, Mass. prepared for Ezra Dunton, by David E. Ross Associates, dated February 2013 and Dunton, Harvard, MA, prepared by ProBuilt Homes, dated February 5, 2013. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Robert Capobianco requested Attorney Lanza draft a letter to Concom outlining the determination made this evening to aid in the waiver of the Wetland Protection Bylaw Regulations.

Signed: _____
Liz Allard, Clerk

Zoning Board of Appeals

Continuation of a Variance & Special Permit Hearing Meeting Minutes

Town Hall Building Committee, 13 Ayer Road

March 13, 2013

The hearing was opened at 8:30pm 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), Orville Dodson and Mike Lawton

Others Present: Liz Allard (LUB Admin), Barbara Saint André, Whit Sprague, Rhonda Sprague, Allen & Carol Hoffman, Marie Sobalvarro, Wade Holtzman, Robert Hughes, Paul Richards, Keith Cheveralls, Jim De Zutter, John Martin, Peter Jackson, Chris Cutler, Ron Ricci, Carol & William Herbert, Robert Hensen, Calvin Goldsmith (GPR, Inc.), Joe Hutchinson, R. Drayton Fair (LLB Architects), Tim Clark, Aimee Lombardo (LLB Architects), Ken Swanton, John Osborn (Harvard Press), S.L. Johnson, Mark Lanza, Bill Johnson and Peter Dorward

This hearing was continued from February 13, 2013 for two variances and a special permit filed on behalf of the Town Hall Building Committee (THBC) for renovations to Town Hall, 13 Ayer Road, Harvard.

Town Counsel Mark Lanza stated the Zoning Board of Appeals (ZBA) is represented by separate counsel, Attorney Barbara Saint André, on this matter; he has provided no counsel to the ZBA. Attorney Lanza stated at the previous meeting Robert Capobianco requested a letter that explained how the application meets the hardship and all other criteria for issuing a Variance and Special Permit. A letter was received from Attorney Lanza, dated March 6, 2013. In addition the ZBA requested information on the estimated cost for constructing an addition on the west side of the existing building; this too has been submitted. In addition Pete Jackson, chair of the Town Hall Building Committee (THBC), prepared a one page report for submission this evening.

Attorney Lanza explained the Town is seeking a Special Permit for alteration of a prior non-conforming structure. There are two criteria for issuing a Special Permit detailed in Chapter 125-3A of the Protective Bylaw. First, the alterations conform to the Bylaw as amended and second it will not be substantially more detrimental to the neighborhood than the existing non-conformity. In addition the requirements under Chapter 125-46 of the Protective Bylaw need to be complied with.

The first criteria under Chapter 125-3A can not be addressed until variances are dealt with. If a variance is granted conformance to the structure height limit and street centerline setback provisions of the Bylaw will be waived to the extent set forth in the variance. As for the second criteria, you need to consider what the neighborhood is in this case. Some would consider the town common area as a district neighborhood. Will the change be more detrimental than the existing non-conformity; when looking at surrounding structures on the common many, if not all are non-conforming. This suggests there is no evidence that the proposed addition will be more detrimental to the neighborhood.

When considering the variance for height, Attorney Lanza explained Town Hall is not the tallest building in the area of the Town Common. The Unitarian Universal church and the general store are taller than the proposed Town Hall addition. The proposed addition height will be lower than the existing main section of Town Hall, which will remain after construction. Attorney Lanza stated the ZBA should have no difficulty in granting a variance for height.

Attorney Lanza reviewed the criteria under Chapter 125-46 of the Protective Bylaw by noting the proposed renovations to Town Hall will create less stormwater runoff, no pollutants will be introduced to the ground water supply or watercourses on site.

As for no increase in traffic on adjacent residential streets, the only road adjacent to Town Hall is Ayer Road, which is a State roadway. There will be no impact on a residential street. The proposal will be in harmony with the purposes and intent of the Protective Bylaw.

The Town office or Town Hall is one of the uses which are enumerated in Chapter 125-16D of the Protective Bylaw. Such use is allowed as of right, subject to site plan standards in Chapter 125-39 of the Protective Bylaw. Therefore, the use of the site for the existing Town Hall with the planned addition is permitted as a matter of right under the Protective Bylaw.

There are four criteria that would need to be met under the Zoning Act, MGL Chapter 40A and the Protective Bylaw, Chapter 125-46B in order for the granting authority to grant a variance. The Protective Bylaw has an additional criterion in addition the four under the Zoning Act. The first criteria states literal enforcement of the Bylaw provisions would involve substantial hardship, financial or otherwise, to the petitioner. Attorney Lanza explained literal enforcement of the structures height and street centerline setback provisions of the Protective Bylaw would require the construction of a shorter addition on the west side of the building. Alternatively, the existing Town Hall could be demolished and constructed at another location near the center of the Town common lot. An addition to the east or south sides of the building would not be an option due to other constraints of the site. Both the addition to the west and the construction of a new Town Hall would involve a substantial financial hardship to the Town. Attorney Lanza stated the Town can not simply go out and find the money, nor is he sure a Town Meeting vote would allow for the spending of more money. Other hardships were detailed in the handout provided this evening by Pete Jackson.

Attorney Lanza stated as previously mentioned the proposed project will be in harmony with the general purpose and intent of the Protective Bylaw, Chapter 125-1. By applying the same analysis to the similar criteria for acting on a Variance as detailed previously for a Special Permit, the proposed project will not nullify or substantially derogate from the intent or purpose of the Protective Bylaw.

Analyzing the variance requirement "No substantial detriment to the public good" is most subjective. The issue whether this project should go forward or not has been vetted by numerous boards, an Annual Town Meeting (ATM) vote, the Board of Selectmen (BOS) have voted for the project, who are the chief financial officers for the Town; the Finance Committee has supported it as well. Chris Tracey asked if in any of those discussions to the public was it ever clear there were variance issues. Attorney Lanza stated not to the best of his knowledge until this past fall, however it could not be clearer that the Town has spoken on the need and desire for this project to take place.

The final criteria is not within State law, but part of Harvard's Protective Bylaw; "that the variance be the minimum giving reasonable relief". Attorney Lanza stated the Town is not seeking any more from the variance than what is needed for the variance. The proposed addition will have a lower roof height and is further from Ayer Road ROW than the existing building. The non-conformities will not be intensified and no new non-conformities are being created. The addition was designed to meet the Town Hall users' space needs.

Cal Goldsmith, of GPR, Inc., stated the reduction in impervious surface will be 2,700 square feet of pavement, but there will be an increase in roof runoff which is not considered to be contaminated water.

Mr. Tracey asked who created the document detailing a fifth option, an addition the west of the existing building. Mr. Goldsmith stated LLB Architects. Mr. Tracey asked why there is a huge

difference between the proposed addition and option 5 in square footage. Drayton Fair, of LLB Architects, stated in option five you lose circulation space by entering into the north-west corner of the building, therefore option 5 would have to be longer to accommodate that lost space. Members of the ZBA still did not understand the difference. Mr. Fair explained in order to place the connection of the existing building and the addition to the west a pre-set office space would become that connection and entry into Town Hall, requiring that space (400 square feet) to be added to the addition to make up for the lost office space.

Mr. Tracey asked why there is a price difference per square foot from the proposed addition to an addition to the west side of the existing structure. Mr. Fair stated the west building would be a four-sided building rather than a three sided building.

Steve Moeser asked what the cost per square foot to renovate the existing Town Hall included. Mr. Fair stated the proposed square footage expense includes the base construction and no soft costs associated with the renovation. The base construction includes the installation of the mechanicals in the existing structure. Mr. Moeser asked if that cost per square foot (\$195) include the preservation cost as well. Mr. Fair stated yes, the driving force of the renovation was to stop the deterioration of Town Hall. Mr. Moeser asked how they plan to stop the route of the problems. Mr. Fair stated such measures as properly insulating the building and installing energy efficient windows. Mr. Moeser would not want to see the Town back before the ZBA in ten years because the deterioration of the building was not properly resolved. Mr. Drayton stated no building is maintenance free.

Robert Capobianco asked if soil testing has been conducted in the area of the proposed addition. Mr. Fair stated not as of yet. Mr. Capobianco asked if option 5 had had any soil testing. Mr. Fair stated no. Mr. Goldsmith stated there are plans for test borings. Mr. Capobianco asked if it is correct that they do not know what the site cost are going to be. Mr. Goldsmith stated that was correct. Mr. Capobianco asked if the ZBA has seen a site plan that shows the setback. Mr. Goldsmith stated yes. Mr. Capobianco asked why there is a corridor between the west addition and the existing building. Mr. Fair stated the more south you go on the property, the more you encroach on the setback. Mr. Capobianco asked about ledge on the site. Mr. Goldsmith stated testing for ledge on the site has not been conducted. Mr. Capobianco asked how the ZBA got a request for a variance if there was not a denial from the Building Commissioner. Barbara Saint André, counsel for the ZBA, stated it is not a requirement of State law or the local Bylaw that the Building Commission must first issue a denial in order to apply for a Variance. If an applicant knows a Variance will be require for an activity they may apply directly to the ZBA for that Variance.

Mr. Tracey stated if option 5 would not require a Variance and would conform to the current Bylaws; then are there other constraints, besides cost, that would not allow you to build option 5. Attorney Lanza stated that is not the question before the ZBA, the shape of the lot is the issue. Mr. Moeser does not think the shape of the lot has anything to do with it, but the ROW has everything to do with it. Mr. Moeser stated every lot in the center of Town has issues similar to this; how is this unique? Attorney Lanza stated there is none other like it that is institutional use. It was also mentioned that by putting the addition on the west side of the building, parking and circulation would be compromised.

Mr. Capobianco stated he is still struggling with this request; just because the applicant is the Town does not mean it should be looked at any differently than any other application. The cost alone does not justify the granting of the Variance. Attorney Lanza stated the other criteria need to be examined as well. When you get to the public good factor this is different because a resident could never get the vote of ATM for an addition. By placing the addition to the west side of the existing building the entire building will lose its t is historical look. The Historic Commission still has to give approval. Mr. Capobianco asked if Attorney Lanza was saying the ZBA should look at as something the Town wants as part of the hardship. Attorney Lanza stated no, those are consideration in the public good, with no relationship to the hardship. Attorney Lanza pointed

out that a single family resident would not need the Variance, as they are granted relief under the Bylaw, Chapter 125-3.

Mr. Goldsmith illustrated his concerns with the west addition as it pertains to fire vehicles access to the building and parking.

James DeZutter thanked the service of ZBA on this issue. Mr. DeZutter as a former member of the ZBA knows variances are not typically overturned by the courts. The decision needs to be based on the testimony give at the public meetings and not discussions or decisions made in other public forums. Such decisions are made at the ZBA discretion and are not bound by previous decision. Mr. DeZutter would not grant a Variance if he was sitting on the ZBA today; he has not heard an emergency situation facing the Town on this matter.

Ken Swanton, a Fairbank Street resident and abutter, has followed the ZBA proceedings over the years and has heard the ZBA take into account the abutters concerns. Mr. Swanton recognizes that the proposed addition could not be built under today's zoning, but as an abutter to the Common it would be a shame to lose the historic characteristics of the Town center.

John Martin, of 5 Fairbank Street and part of the Historic Commission, stated the hardship is one of historical integrity; he wants buildings within the historic district to talk well with each other and behave with each other. The logical thing to do is to build off the back of the existing structure, not to the side. The designed as proposed is historically appropriate. Mr. Martin thinks it is unfortunate that the same zoning for the other parts of Town were put on the historic district.

Tim Clark, the BOS liaison to THBC, submitted physical evidence through a series of photos that supports his testimony from the February 13th hearing. These photos show the failure of the roof, the copula, various building code violations and safety issues. The Protective Bylaw allows exemptions to single- and two-family homes, which Town Hall is not, but what if the proposed addition would be allowed by Special Permit. The ZBA has granted Special Permits to the homes on the common. Institutional uses have very different requirements. Clark stated the ZBA granted the new library two Variances, as well as the additions to the high school could not comply with the Bylaw and required zoning changes.

Whit Sprague, of Prospect Hill Road, is trying to understand who trumps who between residential and institutional uses. Mr. Tracey stated every application should be considered on its bases.

Stu Sklar, of Scott Road, commented on the proposed zoning amendment for the up coming ATM.

Mr. Goldsmith made some follow up statements on the shape of the lot and lay out of the roadway, stating the parcel is unique in that it is probably the only one in Town that has an actual roadway running through it, which causes constraints on the use of the parcel.

Pete Jackson submitted his comments to the letter submitted by Wade Holtzman, dated March 12, 2013.

A motion was made to close the evidentiary portion of the hearing. A roll cal vote was taken; Chris Tracey, aye, Steve Moeser, aye and Robert Capobianco, aye.

A motion was made to continue the hearing to March 21, 2013 at 9:00am in the Town Hall Meeting Room. A roll call vote was taken; Chris Tracey, aye, Steve Moeser, aye and Robert Capobianco, aye.

Signed: _____
Liz Allard, Clerk

DOCUMENTS & OTHER EXHIBITS

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

- ❖ Nitsch Engineering letter, RE: Nitsch Project #4095, Minor Modification, Final Review, 40B Trail Ridge, Littleton County Road, Harvard, MA, dated March 7, 2013
- ❖ Harvard Fire Department Letter, RE: Modified Plans for remaining building at Trail Ridge, dated March 13, 2013

Special Permit Hearing – Ezra Dunton, 31 Peninsula Road

- ❖ Site Plan in Harvard, Mass., prepared for Ezra Dunton, prepared by David E. Ross Associates, Inc., dated February 2013
- ❖ Architectural Plans, Dunton, Harvard, MA. Prepared by ProBuilt Homes, dated February 2, 2013

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

- ❖ Cost break down of Proposed Plan, Addition to West Side and Build New, received March 13, 2013
- ❖ Responses, in red type, by Pete Jackson to Wade Holtzman letter of march 12, 2013, dated March 13, 2013
- ❖ Photos of Town Hall – Existing Conditions, dated March 13, 2013
- ❖ Memorandum of the Town of Harvard in Support of its Application for a Special Permit and Variances for the Town Hall Renovation Project, from Town Counsel Mark J. Lanza, dated march 6, 2013
- ❖ Cost of Option to Build New Town Hall, Pete Jackson, dated 22 February 2013
- ❖ Schematic of Option 5, received March 11, 2013