

**HARVARD ZONING BOARD OF APPEALS
MEETING MINUTES
MARCH 21, 2013
APPROVED: May 8, 2013**

Chairman Chris Tracey opened the meeting at 9:02am 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) and Mike Lawton

Others Present: Liz Allard (LUB Admin), Attorney Barbara Saint André, Tim Clark, Stu Sklar, Mary Ellen Jones (Harvard Post), John Osborne (Harvard Press), Deb S, Pete Jackson, Ron Ricci, Rhonda Sprague, Mary Turner, Valerie Hurley and Marie Sobalvarro

Continuation of a Variance & Special Permit Hearing- Town Hall Building Committee, 13 Ayer Road. Opened at 9:00am (for detailed minutes see page 2)

Adjournment

Steve Moeser made a motion to adjourn the meeting at 9:53am. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

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 21, 2013

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This hearing was continued from March 13, 2013 for two Variances and a Special Permit filed on behalf of the Town Hall Building Committee for renovations to Town Hall, 13 Ayer Road, Harvard.

Robert Capobianco stated he had questions for the ZBA counsel, Barbara Saint André and made a motion to go into Executive Session. Attorney St. André stated a Board can only go into executive session for specific reasons; one being litigation if potential litigation is being threatened, however this not the case. Attorney Saint André recommended not going into executive session. Mr. Capobianco understood and withdrew his motion to into executive session.

Mr. Capobianco questioned Attorney Saint André on the merits of application being before the Zoning Board of Appeals (ZBA). Attorney Saint André explained that the ZBA has authority over three areas under MGL Chapter 40A; Variances, Special Permits and Appeals. As discussed previously there is no requirement under MGL Chapter 40A or the Town's Protective Bylaw, Chapter 125 for an applicant to seek a denial from the Building Commission in order to file for a Variance. In Attorney Saint André opinion the application is properly before the ZBA.

Mr. Capobianco stated there has been a lot of evidence put forth; under the Protective Bylaw four criteria need to be met in order to issue a Variance. Attorney Saint André agreed. Mr. Capobianco asked if in her opinion, as counsel, do you believe the applicant has proven through evidence that there is a hardship. Attorney Saint André agrees the applicant has submitted a lot of evidence in support of the criteria; however those are high standard to reach, especially since there is a building on the site already.

Chris Tracey stated unfortunately because of the role the ZBA has and the Bylaws we enforce, we have to make a tough decisions based on the evidence provided. The Town has obviously spoken on how the feel about this project moving forward, but he is not finding the evidence for granting a Variance. Mr. Tracey thinks between existing case law and the high threshold he does not think what was presented meets those thresholds. Mr. Tracey understands the time and energy that has gone into this project, however it seems as though the applicant is looking for forgiveness rather than asking for permission. This is a very emotional decision for all involved.

Steve Moeser stated he looks at it more black and white them emotional. Did the applicant provide clear and convincing evidence; Mr. Moeser does not think so for all four criteria. Mr. Moeser does not think the issuance of a Variance would be the minimal relief given. Mr. Moeser can not find the hardship owing to the unique circumstances of the lot. Mr. Moeser does not see the lot being the problem; the building is the problem due to its shape. What role did the Town play in creating the roads, setting the Bylaw and its associated setbacks? The hardships were

created and caused by applicant. Could the applicant have done some things that would reduce the violations? In regards to public good, this criterion looks fuzzy by spending large sums of money to improve Town Hall; is it for the general public good?

Mr. Capobianco agreed with the statements of Mr. Tracey and Mr. Moeser. Mr. Capobianco added the ZBA needs to look at the application as if it was any applicant and not take into consideration the applicant is the Town of Harvard. Mr. Capobianco has had a hard time with the argument of financial hardship. The alternative plan may not look as nice, but there is an alternative. Therefore there is no financial hardship. Mr. Capobianco has problem with the substantial cost being the hand digging of the elevator shaft. No soil borings have been done so it is hard to believe there would not be any issues with any addition in any location, whether on the back of the existing building or on the west side.

Mr. Tracey stated it seems to be a unanimous opinion that the ZBA is not in support of the Variance. The members discussed the criteria under Chapter 125-45-B(b) and determined the circumstances relating to soil conditions, shape or topography of the land do affect the entire district, thereby the applicant can not meet this criteria. The members agreed there was no need for further discussion of the criteria since you need to meet all four in order to issue a Variance. Without a Variance the ZBA can not issue a Special Permit under Chapter 125-3.

Steve Moeser made a motion to deny the request for the Variances for reasons above. Robert Capobianco seconded the motion. A roll call vote was taken; Chris Tracey, aye, Steve Moeser, aye, and Robert Capobianco, aye.

Robert Capobianco made a motion to deny the request for a Special Permit, since the Variances were not granted, the ZBA is unable to grant a Special Permit. Steve Moeser seconded the motion. A roll call vote was taken; Chris Tracey, aye, Steve Moeser, aye, and Robert Capobianco, aye.

Robert Capobianco made a motion to allow the Chairman to sign the final decision on behalf of the ZBA. Steve Moeser seconded the motion. A roll call vote was taken; Chris Tracey, aye, Steve Moeser, aye, and Robert Capobianco, aye.

Signed: _____
Liz Allard, Clerk