

**HARVARD ZONING BOARD OF APPEALS  
MEETING MINUTES  
JANUARY 14, 2015  
APPROVED: APRIL 8, 2015**

Chairman Chris Tracey opened the meeting at 7:32pm in the Town Hall Meeting Room under MGL Chapter 40A and the Code of the Town of Harvard Chapter 125

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

**Others Present:** Liz Allard (LUB Admin), Dan Wolfe (Ross Associates), Paul Newman, Ralph Fuccillo, Cliff Tomassian, Bruce Leicher (BHPWMC), Neil Gorman (Ross Associates), Dan Wolfe (Ross Assoc.), Justin Smith (Homescout), Alice von Loesecke, Peter von Loesecke and Bob Steininger

**Special Permit Hearing – Clifford Tomassian, 50 Turner Lane.** Opened at 7:30pm (for detailed minutes see page 2)

**Special Permit Hearing – The Homescout, LLC, 90 Warren Avenue.** Opened at 8:12pm (for detailed minutes see page 4)

**Request for a *De Minimus* Change to the Comprehensive Permit – CHOICE 105 Stow Road**  
Liz Allard stated the applicant's representative has requested this item be continued to the next available meeting, as they may have additional requests for waivers after the meeting last night with Board of Health, in which they need to confirm with Counsel on.

**Approve Minutes**

Robert Capobianco made a motion to approve the minutes of May 7 and 28, June 25 and December 10, 2014 as amended. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

**Annual Report**

Liz Allard had previously distributed a draft of the annual report for the members to review. Robert Capobianco has requested a few minor edits, which have been incorporated into the document. With that said, Robert Capobianco made a motion to approve the 2014 Annual Report for the Zoning Board of Appeals. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

**Escrow Account Refund – Harvard Common Condominiums, 15 Littleton Road**

Liz Allard explained to the members that the project under a Comprehensive Permit, known as Harvard Common Condominiums, has been completed. Ms. Allard is recommending the escrow account be released to the developer. The members agreed they would like written confirmation from the Zoning Enforcement Officer that all conditions of the Comprehensive Permit have been completed before releasing these funds.

**Adjournment**

At 9:45pm Steve Moeser made a motion to adjourn the meeting. Robert Capobianco 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**

#### **Clifford Tomassian, 50 Turner Lane**

**January 14, 2015**

The hearing was opened at 7:30pm by Chairman Chris Tracey in the Town Hall Meeting Room under the Zoning Act, MGL Chapter 40A and the Code of the Town of Harvard, the Protective Bylaw, Chapter 125

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

**Others Present:** Liz Allard (LUB Admin), Paul Newman, Ralph Fuccillo, Cliff Tomassian and Bruce Leicher (BHPWMC)

This hearing is for a Special Permit filed on behalf of Clifford Tomassian for the conversion of a seasonal residence to year-round residence at 50 Turner Lane, Harvard.

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

Chris Tracey read the input from Town Boards and Committees into the record. In the letter from the Board of Health (BOH) dated December 15, 2014, it states the applicant has previously represented the dwelling as a three bedroom house, however supporting documents submitted with the ZBA application indicate is as a two bedroom dwelling. Mr. Tomassian stated he thought the house was three bedrooms, which has now been restricted to two bedrooms. In regards to the heating system, Mr. Tomassian stated a wood stove provides heat and has been approved by Building Commissioner. In addition, there is electric heat to prevent the pipes the house from freezing.

Steve Moeser asked if the deed restriction from the BOH only deals with the allowed number of bedrooms. Mr. Tomassian stated it did. Mr. Moeser noted the approval of tight tank from the Department of Environmental Protection (DEP) states the dwelling is to only be used as a seasonal home only. Mr. Tomassian stated he had gone before BOH last year to change from seasonal to year round. Liz Allard located on the Town's website the minutes of February 25, 2014 from the BOH meeting and recited what they stated, which was what Mr. Tomassian had just stated. Mr. Moeser asked if there had been any documentation filed with the Registry of Deeds to clear that requirement from the property. Mr. Tomassian did not know of any. Mr. Tomassian provided a copy of the water testing and the septic system records as requested by the BOH.

Mr. Moeser asked about any input from Bare Hill Pond Watershed Management Committee. Bruce Leicher, the chair of the Committee, was present and stated the Committee has no real comments since there will be no change to the property or runoff into the pond. Mr. Leicher did request that the ZBA restrict the use of fertilizers on the property due to its proximity to the pond.

Mr. Tracey stated the ZBA can rely on the minutes and the letter from BOH, which does not indicate a concern about the tight tank originally being approved as seasonal.

Ralph Fuccillo, of 49 Turner Lane, stated he and his partner, Paul Newman, are opposed to the relief being sought this evening as they are concerned for the status of Bare Hill Pond. Mr. Fuccillo stated Mr. Tomassian has a disregard of the environment by under taking such activities as bathing in the pond and the constant burning of material year round. Mr. Fuccillo has

concerns with what it is Mr. Tomassian is burning and the potential for a health hazard. Mr. Fuccillo is seeking fair treatment of residents, as it pertains to the installation of a septic system, which he complied with without asking for any waivers from BOH at a large cost. Robert Capobianco asked if there was a specific health law that the applicant is breaking. Mr. Fuccillo stated the burning of materials that should not be burned, the burning in summer, not during the burning season and bathing in the pond. Mr. Tracey asked Mr. Leicher to address the bathing in a pond concern. Mr. Leicher stated by doing so Mr. Tomassian is introduction a non-natural substances into the pond.

Mr. Tomassian stated he does use the pond for bathing once in a while and uses ivory soap but he agreed to stop doing so. He has had fires in the past for the purpose of cooking. He will also adhere to the request not have outdoor fires. Mr. Capobianco stated Mr. Tomassian should only be burning during the burn season and with a permit. Orville Dodson stated both of those issues are probably not pertain to this board but may be concern of others.

Mr. Moeser would like something from BOH in regards to the waives or acknowledge the change from seasonal to year round for the tight tank before approving the Special Permit.

Mr. Tomassian was asked to provide the ZBA with further info from BOH in regards to the tight tank only being allowed as long the property was seasonal as noted in item 3 of the letter from the DEP dated October 10, 2010.

With the request of additional information, Robert Capobianco made a motion to continue the hearing to February 11, 2015 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**

#### **The Homescout, LLC, 90 Warren Avenue**

**January 14, 2015**

The hearing was opened at 8:12pm by Chairman Chris Tracey in the Town Hall Meeting Room under the Zoning Act, MGL Chapter 40A and the Code of the Town of Harvard, the Protective Bylaw, Chapter 125

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

**Others Present:** Liz Allard (LUB Admin), Dan Wolfe (Ross Associates), Bruce Leicher (BHPWMC), Neil Gorman (Ross Associates), Justin Smith (Home Scout), Alice von Loesecke, Peter von Loesecke and Bob Steininger

This hearing is for a Special Permit filed on behalf of The Homescout, LLC for the reconstruction of an existing single family dwelling with the alteration/enlargement of the existing safety rail crossing, a finding that the lot may be used as if conforming to the bylaw and is in compliance with land-structure relations, and the conversion of a seasonal residence to year-round residence at 90 Warren Avenue, Harvard.

Robert Capobianco stated as a disclaimer to this application he has recently hired Ross Associates to complete survey work at his home. Those in attendance did not feel there was a conflict as Mr. Capobianco has nothing to gain from this application.

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

Dan Wolfe, of Ross Associates, explained to the members that the site is a pre-existing non-conforming lot at 1.4 acres with a lot width of 198' (zoning requires 1.5 acres and 200' lot width and the lot was created in 1947). Mr. Wolfe stated the lot can be used as if conforming to the bylaw as long as it complies with the three criteria in 125-4, which it does. The lot has never been held in common ownership with any adjoining lot. The existing structure does conform to the off sets under today's bylaw. In addition, what is being proposed for the site also conforms to today's bylaw.

The members discussed whether or not this would be considered new construction or reconstruction. Mr. Wolfe explained the new septic system is not a structure, nor is the retaining wall, as it is not a poured concrete wall. In this case it is deemed a landscape feature. Mr. Wolfe contends that 125-32 does not apply as it was in existence prior to March 31, 1984. Mr. Wolfe stated the applicant has the resources to upgrade a pretty bad situation, which is a cess pool within the buffer zone of a resource area; as well as the applicant has the resources to upgrade the house.

Mr. Wolfe stated what has brought the application before the ZBA this evening is the construction of a vehicular bridge. Under the definition of structure a driveway not considered structure. Since the bridge is a component of the driveway Mr. Wolfe felt there was no need to seek a special permit from the ZBA. To confirm this Mr. Wolfe went to the Zoning Enforcement Officer, Gabe Vellante, who sought advice from Town Counsel. Town Counsel agreed that the bridge is part of the driveway and therefore is not required to meet the setbacks under zoning; however should there be any above grade super structures associated with the bridge the applicant would be required to obtain approval from the ZBA. Mr. Wolfe stated since the bridge has guardrails it is

considered a structure. The bridge is designed to replace the existing footbridge, which is 10' from the property line. Although the setback for a structure is 40', Mr. Wolfe stated this is just the replacement of an existing structure (the foot bridge).

Comments received from the Fire Chief state under new regulations as of January 1<sup>st</sup> of this year bridges need to be 20' in width. Mr. Wolfe stated the bridge now designed at 12.2' wide. Mr. Wolfe noted the standards apply to access roads and he has found an exemption for single family residents with approved by local Fire Chief. Mr. Capobianco asked if an access road is a driveway. Mr. Wolfe stated he was not certain of that. Mr. Capobianco asked if the driveway is wide enough to allow for a fire truck. Steve Moeser stated as designed the bridge can not take the weight of a fire truck. Mr. Wolfe noted the existing foot bridge does not provide access to the dwelling, whereas the bridge would allow for access of emergency vehicles right up to the proposed dwelling. Mr. Capobianco asked what the distance is from start of bridge to house. Mr. Wolfe stated 120'. Mr. Tracey asked why not install a culvert rather than a bridge. Mr. Wolfe stated the State's Stormwater Management regulations seek minimal alteration to the bed of a stream, which would be achieved by spanning the area with a bridge. Mr. Wolfe will discuss the matter of the width of the bridge and adequate access for emergency vehicles with the Fire Chief.

Mr. Moeser asked why the application did not include architectural drawings of the dwelling. Mr. Wolfe stated the application is not for a Special Permit under 125-3 as the existing structure and the proposed structure conform to the bylaw. Mr. Tracey asked why the application is not for a variance rather than a special permit for the bridge. Mr. Wolfe stated because the proposal is to upgrade the existing structure (the foot bridge). Mr. Capobianco asked if the existing foot bridge has rails on it. Mr. Wolfe stated it does not. Mr. Tracey asked if Mr. Wolfe thought he would be able to meet the requirements of a variance. Mr. Wolfe stated it could be possible due to the topography and financial hardship of alternative locations for the bridge. Mr. Tracey asked if the bridge could be moved in 30'. Mr. Wolfe stated that would be at a greater expense as the bridge would need to be longer. Mr. Wolfe added that he was trying to follow the existing use to minimize wetland impacts. Mr. Capobianco asked how high the guardrails are on the proposed bridge. Mr. Wolfe was not certain. Mr. Capobianco thinks it sounds like there may be grounds for variance.

Members discussed the conversion from seasonal to year round. Mr. Wolfe stated the proposal is compliant with Title 5 and make the proposed structure that is compatible to human habitation; therefore it meets both requirements under 125-11. Mr. Wolfe stated he had meet with the Board of Health last night and they have asked that the proposed west retaining wall be moved further west, but that request would fly in the face of the request of the Conservation Commission (Concom) who would like to keep as many trees as possible on the site. Mr. Moeser asked if reserve system has been located. Mr. Wolfe stated when upgrading an existing system you need not have a reserve area. Mr. Moeser wondered if this met the requirement under 125-11A(2). Mr. Wolfe explained there is no proposal to clear the existing canopy or existing ground cover.

Mr. Tracey asked what the plan is for stormwater from the roof and driveway. Mr. Wolfe stated the stormwater from the roof will go into recharge trenches along the edge of the house. As for driveway drainage, the Concom has not asked about any additional infiltration. Mr. Tracey stated the site contains a lot of steep slopes and contours that should be addressed. When asked about a final surface for the driveway, Justin Smith, the applicant, stated it is currently gravel and is willing to complete as requested by the boards and commission.

Mr. Capobianco suggested redesigning the bridge to of less of guardrail and perhaps a curbing could be used instead.

Alice von Loesecke, the direct abutter, stated the houses on Warren Avenue are far a part, and the existing structure is in the woods and non-descript. What is proposed will be very well seen in comparison to what is there now. Ms. von Loesecke has issues with the proposed septic system. As designed it is unacceptable to her and her husband. Ms. von Loesecke stated it is her understanding that the Town Sanitarian, Ira Grossman, has stated the proposed swale for the

septic system is not acceptable. This swale will change the drainage on to her property. The proposal also calls for a four foot retaining wall which will be directly on the property line and be unsightly and potentially devalue her home. Mr. Tracey explained that some the challenges Ms. von Loesecke has may need to be worked out with the BOH. Mr. Wolfe stated he has offered to meet with the abutters and work out a plan that agreeable to all. Mr. Smith stated he is not looking to devalue anyone's property, but is looking to develop a property that is agreeable to all.

Ms. von Loesecke questioned why the bridge is not a structure. She expressed concern with the impediment of water to the flow as it does now if such a structure built. Ms. von Loesecke stated when she purchased her property it contained a seasonal dwelling and when they wanted to build a new house they were required to install a new septic system and not upgrade the existing system. Why does this applicant not have to follow that process as well? Mr. Moeser has issues with this as well and will be looking for more clarification from the BOH.

Peter von Loesecke is confused by why the retaining wall for the septic system is not being considered as new or a structure. Mr. Wolfe explained that a retaining wall is not considered the assemblage of materials in a fixed location, but rather that of a landscape feature because unlike a poured concrete wall a retaining wall can be taken down and removed. Mr. Tracey stated the ZBA will be seeking more clarification from the BOH on these issues.

Bob Steininger, the other direct abutter, stated he uses his property as a summer residence; he is concerned that the property he bought as his retreat will no longer feel that way with the proposed three bedroom house. Mr. Steininger is disappointed there has been no contact with him in this process. Mr. Steininger gave a history of the site and how it was historically used. Mr. Steininger is concerned for the vernal pool and the water that flows through his property and into Bare Hill Pond and how this project will affect that.

Bruce Leicher, chairman of the Bare Hill Pond Watershed Management Committee, stated the Committee's principal concern is how much vegetation is going to be removed to accomplish this project. The proposal is taking a site that once had a minimal use and increasing the use greatly. Mr. Wolfe stated as have many properties in the area. Mr. Moeser stated the ZBA looks at each application on a site by site basis. Mr. Wolfe stated rather than address one item at a time through several different applications, he chose to be up front about all of the activity on the site under one application. Mr. Leicher stated he not sure the board should look at it that way. Liz Allard stated the Concom spent a great deal of time on the site hand picking which trees could be removed and which could not. Ms. Allard further explained the site contains a large number of Hemlocks that most likely will be lost over the next several years to the Woolly Adelgid; it is important to maintain as many hard wood species on the site as possible.

The ZBA is seeking for the representatives to get clarification from the BOH in regards to their letter dated 12/15/2014, take a look at the bridge design, talk with the Fire Chief about the width of the bridge and emergency vehicle access, impact to the pond by driveway and bridge. The ZBA will seek advice from Town Counsel in regards to the need for a variance as opposed to a special permit for the bridge.

Robert Capobianco made a motion to continue the hearing to February 11, 2015 at 7:45pm. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Signed: \_\_\_\_\_  
Liz Allard, Clerk

## **DOCUMENTS & EXHIBITS**

### **Special Permit Hearing – The Homescout, LLC, 90 Warren Avenue**

- Site Plan, 90 Warren Avenue, Harvard Massachusetts, designed for The Homescout, LLC, prepared by David E. Ross Associates, Job No. 2980, Plan No. L-12478, dated November 2014
- Email from Richard Sicard, Fire Chief, dated Jan 13, 2015
- Photo submitted by Alice von Loesecke showing property line at 84 Warren Ave