

**HARVARD ZONING BOARD OF APPEALS
MEETING MINUTES
MARCH 11, 2015
APPROVED: MAY 13, 2015**

Chairman Chris Tracey opened the meeting at 7:32pm at the Hildreth House under MGL Chapter 40A and the Code of the Town of Harvard Chapter 125

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

Others Present: Liz Allard (LUB Admin), Gary Shepard (Ross Associates), Debbie & Andrew Johnson, Jaylyn Joss, Debbie Patuto, Melissa Robbins (Deschenes & Farrell. P.C.), Maura Camosse Tsongas (CHOICE), and Connie Donahue (CHOICE)

Variance Hearing – The Homescout, LLC, Cleave Hill Road (Map 18 Parcel 45). Opened at 7:32pm (for detailed minutes see page 3)

Orville Dodson arrived at 7:38pm

Continuation of a Special Permit Hearing – Clifford Tomassian, 50 Turner Lane. Opened at 8:22pm (for detailed minutes see page 5)

Continuation of a Special Permit Hearing – The Homescout, LLC, 90 Warren Avenue. Opened at 8:25pm (for detailed minutes see page 6)

Request for a *De Minimus* Change to the Comprehensive Permit – CHOICE 105 Stow Road
Melissa Robbins, legal representation for Chelmsford Housing Opportunities for Intergenerational and Community Endeavors (CHOICE), was present to discuss the request of a *De Minimus* finding from the ZBA in regards to requirements for obtaining the required permits from the Board of Health (BOH). Attorney Robbins explained the BOH is requiring CHOICE establish a MGL Chapter 44 Section 53G Employment of outside consultants account for the review of the septic system plans by Nashoba Associated Boards of Health (NABOH). Attorney Robbins stated NABOH is an existing contractor for the Town of Harvard and CHOICE has paid all review fees each time the plans have been revised and resubmitted to them thus far. Attorney Robbins requested the ZBA waive this requirement.

Attorney Robbins further discussed with the ZBA the BOH requirement to install a back up generator for the wells on the property. The applicant has previously agreed to install a small generator that will provide power to the pump chamber of the septic system during time of failure, but feel the addition of a generator for the wells is a financial hardship on the project. Robert Capobianco questioned why not having a generator that would run the well and the septic. Attorney Robbins argued that CHOICE is seeking to be treated just like any other home owner in Harvard. Mr. Capobianco argued that it would be unjust to not provide water to individuals who are leasing the premises during a power outage.

After a discuss on the matter of the generator, Steve Moeser made a motion to grant the wavier requiring the establishment of an escrow account for employment of outside consultants. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

Mr. Capobianco stated he would not vote in support of waiving the requirement for a generator to power the wells during a power failure. Steve Moser agreed with Mr. Capobianco. Chris Tracey did not agree with Mr. Capobianco and Mr. Moeser on the basis that the BOH is applying unwritten policies to this project.

Adjournment

At 8:59pm Robert Capobianco made a motion to adjourn the meeting. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Liz Allard, Clerk

Zoning Board of Appeals

Variance Hearing Meeting Minutes

The Homescout, LLC, Cleaves Hill Road (Map 18 Parcel 45)

March 11, 2015

The hearing was opened at 7:32pm by Chairman Chris Tracey at the Hildreth House 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 (by Skype) and Orville Dodson

Others Present: Liz Allard (LUB Admin), Gary Shepard (Ross Associates), Debbie & Andrew Johnson, Jaylyn Joss and Debbie Patuto

This hearing is for a Variance for the construction of a single family dwelling within the 75' setback from the center line of the right of way on Cleaves Hill Road (Map 18 Parcel 45), Harvard.

Gary Shepard, from Ross Associates, was present to represent the applicant. Mr. Shepard explained the site, which consists of a plateau with a steep drop off to an additional plateau. As proposed the house would be 57' from the center line of Cleaves Hill Road, rather than the required 75'. This location was chosen because in order to locate the dwelling facing Littleton County Road it would require a large amount of blasting, the installation of retaining walls, and a large concrete foundation. Mr. Shepard stated this would be much more intrusive to the neighborhood as apposed to locating the house off of Cleaves Hill Road. As stated in the Zoning Act, the granting authority can issue a variance if there are circumstances relating to the soil, conditions, shape or topography of such land; Mr. Shepard stated this lot is a pure example of topography having an influence on the site. Chris Tracey noted the plan submitted does not show the topography of the entire site, making it difficult for the members to make a clear decision as to whether or not this is the best location for the dwelling. Mr. Shepard stated the remaining area not depicted on the plan is similar to that shown on the plan. The desire was to have a level location for the house. Steve Moeser asked why you need a level location to construct the house. Mr. Shepard stated with enough money you could build a house anywhere, but from a desirability point of view and the expense of the construction and the intrusiveness of the neighborhood, building a conventional house a little bit closer to the road would have less of an impact on the neighborhood than a massive construction project. Mr. Moeser pointed out that Harvard's Protective Bylaw states structures shall not affect the district. Mr. Shepard provided assessor's map that detailed all of the houses in the area that are closer to the road than what is being proposed on this site. Mr. Moeser asked how those relate to when the zoning regulations came into effect. Mr. Shepard would argue that the dwelling they are proposing is consistent with others in the neighborhood.

Mr. Tracey asked Mr. Shepard to explain how this site is different then the other sites in the district. Mr. Shepard stated not many lots in the district are similar to this site in regards to topography; those in the direct that are similar also have larger level areas that can or have been used for houses. Mr. Tracey noted again that is difficult for the Board to make that determination without a plan showing the topography of the entire lot.

Robert Capobianco asked if there was any way to put the house facing Littleton County Road rather than Cleaves Hill Road. Mr. Shepard stated that would be a massive building project with retaining walls and perching the house on the slope; Mr. Shepard is not stating it could not be

done, but rather it would be much easier and much less intrusive if the house is constructed off of Cleaves Hill Road.

Mr. Moeser asked why such an expansive area around the entire house, including at the rear with 18'. Mr. Shepard stated it would allow for access around the house before the steep drop off. Mr. Tracey asked how wide the proposed house is. Mr. Shepard stated the house is proposed to be from 25' wide at the garage and 34' wide at the center. Mr. Capobianco asked if there were any ledge outcroppings near the 100' wetland buffer zone. Mr. Shepard stated he could not say for certain.

Mr. Tracey again reiterated that he does not know how he could make a finding that there is not another suitable location on the site without seeing the entire site on the plan.

Mr. Shepard stated the applicant is not seeking a variance based on financial hardship, but that the zoning requirements leave only the most undesirable location on the lot. Mr. Capobianco is not totally satisfied that there is not another location on the site that this house can be built without the ability to view the site and complete a site walk.

Those in attendance were allowed to comment in regards to the project.

Andrew Johnson, of 37 Cleaves Hill Road, feels the construction of a house in this location will change the character of the neighborhood. Mr. Johnson suggested an alternative is a smaller house on the site.

Debbie Patuto, of 21 Cleaves Hill Road, likes the location of the proposed house as it would not affect her view. She is however concerned about the blasting take place to construct the house.

Debbie Johnson, of 37 Cleaves Hill Road, feels this project will have a significant destruction of wildlife habitat as the site contains a vernal pool.

Jaylyn Joss, owner of the property in question and who lives next door at 10 Cleaves Hill Road, stated she purchased the land to preserve it; however it has become a hardship to pay the taxes on a buildable lot. She feels even with the proposed development the lot will remain a beautiful piece of land.

Mr. Moeser stated he does not feel the substantial hardship has been proven as presented this evening. Mr. Capobianco has a hard time making a decision without all of the information. Mr. Shepard asked what additional information the Board is seeking; proof that this is only location for placement of the house, costs for locating the house off Littleton County Road, topography of the entire lot, and outcroppings on the site.

With that said, Mr. Shepard requested the hearing be continued to April 8th at 7:30pm. Robert Capobianco made a motion to continue the hearing to April 8, 2015 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

Continuation of a Special Permit Hearing Meeting Minutes

Clifford Tomassian, 50 Turner Lane

March 11, 2015

The hearing was opened at 8:22pm by Chairman Chris Tracey at the Hildreth House 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 (by Skype) and Orville Dodson

Others Present: Liz Allard (LUB Admin)

This hearing was continued from February 11, 2015 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.

With no one present to represent the application before the Board, and no formal request to continue the hearing, Chris Tracey made a motion to continue the hearing to April 8, 2015 at 8:00pm in the Town Hall Meeting Room. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

The members requested a letter be sent to Mr. Tomassian explaining that if there is no one present to the application at the April 8th meeting, or no request to continue, the Board will be forced to make a decision based on the information before them.

Signed: _____
Liz Allard, Clerk

Zoning Board of Appeals

Continuation of a Special Permit Hearing Meeting Minutes

The Homescout, LLC, 90 Warren Avenue

March 11, 2015

The hearing was opened at 8:25pm by Chairman Chris Tracey at the Hildreth House 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 (by Skype) and Orville Dodson

Others Present: Liz Allard (LUB Admin)

This hearing was continued from February 11, 2015 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.

Liz Allard informed the members that the applicant's representative has requested the hearing be continued to April 8, 2015 to allow for additional time to determine what steps to take next in the process now that Town Counsel has determined the need for a variance for the side rails of the bridge along the proposed driveway.

Chris Tracey made a motion to continue the hearing to April 8, 2015 at 8:15pm. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Liz Allard, Clerk

DOCUMENTS & OTHER EXHIBITS

Variance Hearing – The Homescout, LLC, Cleave Hill Road (Map 18 Parcel 45)

- Site Plan – Cleaves Hill Road, Assessor's Map 18 Parcel 45, Harvard, Massachusetts, designed for The Homescout, LLC. Prepared by David E. Ross Associates, Inc., Job No. 29808, Plan No. L-12509, dated January 2015