

**HARVARD ZONING BOARD OF APPEALS  
MEETING MINUTES  
AUGUST 12, 2015  
APPROVED: SEPTEMBER 9, 2015**

Vice Chairman Robert Capobianco opened the meeting at 7:30pm in the Hapgood Room at 7 Fairbank Street under the Zoning Act Chapter 40A and the Code of the Town of Harvard Chapter 125

**Members Present:** Robert Capobianco, Steve Moeser, Theodore Maxant, Orville Dodson and Mike Lawton

**Others Present:** Liz Allard (LUB Admin), Deborah Skauen-Hinchliffe, Joe Pettirossi, Dan Wolfe (Ross Assoc.), Bruce Leicher (BHPWMC), Mya Poe, Nancy Poe, Melissa Robbins (Deschenes & Farrell), Joe Peznola (Hancock Assoc.), Connie Donahue (CHOICE) and Maura Camosse (WIHED)

**Continuation of a Special Permit Hearing – Maureen Pettirossi, 64 Warren Avenue.** Opened at 7:30pm (for detailed minutes see page 3)

Theodore Maxant arrived at 7:37pm

**Approve Minutes**

Robert Capobianco made a motion to approve the minutes of July 8, 2015 as amended. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

**Continuation of a Special Permit Hearing – John Finn, 44 Peninsula Road.** Opened at 8:00pm (for detailed minutes see page 5)

**Modification to the Comprehensive Permit – Chelmsford Housing Opportunities for Intergenerational and Community Endeavors (CHOICE), 105 Stow Road**

Melissa Robbins, an attorney from Deschenes & Farrell, was present to represent the applicant. Attorney Robbins explained in order to not delay the process her client had decided to apply for a modification to the Comprehensive Permit, notified the abutters and run a legal notice, on the potential the ZBA found the requested modification to be substantial, therefore allowing for the opening of the hearing this evening.

Attorney Robbins stated her client has been unable to come to terms with the Board of Health (BOH) in regards to the water supply for the site at 105 Stow Road as it pertains to the number of bedrooms. The applicant had determined the easiest change is to reduce the number of bedrooms. The Town of Harvard will still be able to keep its nine units of affordable housing on its inventory. Unfortunately, however the reduction in the number of bedrooms limits the number of residence that can be serviced by CHOICE.

Attorney Robbins reviewed the changes to the units as it pertains to the number of bedrooms. The efficiency unit and the three-bedroom unit will be eliminated. The one-bedroom units will be increased from 1 to 6 and the two- bedroom units will be reduced from 6 to 3.

These reductions will reduce the impacts to the wetlands and the associated buffer zones, as well as reduce impervious area, and increase the open space on the property. The units will now have sprinkler system for fire protection.

Joe Peznola, an engineer from Hancock Associates, detailed original plan and reviewed new plan. The revised plan shows a reduction in the size of the parking area and the number of required spaces. The infiltration system will be in the same location as the previous plan, as will the septic system and drinking water wells. The plans have not been finalized and will need to re-

submit to the Conservation Commission (Concom). The applicant is in full agreement with the comments made by Concom in regards to the changes; the plans supplied to them did not include the revised stormwater facilities.

David Chamberlain, of Davis Square Architects, reviewed the new building designs and unit layouts. Mr. Chamberlain stated he only received the requested changes last week and has not had a lot of time to work on the appearance of the units and agrees additional work needs to be completed.

Steve Moeser asked how the change to the scope of the project affects the bottom line. Attorney Robbins stated the pro-forma has been revised to reflect the changes discussed this evening.

Attorney Robbins stated in regards to adding additional accessible units as suggested by the Planning Board, the units will be constructed in a manner that will comply with ADA requirements and if there is a need to add additional units CHOICE will add them.

Deborah Skauen-Hinchliffe asked if the generator required by the BOH would be used for the sprinkler system, and will it be large enough to include the septic system and water supply. Mr. Peznola stated the generator will be for the fire suppression and will work all of the water on site. The septic will be gravity feed septic and would not require a generator.

Robert Capobianco asked if the board members consider these changes as *De Minimus*. Theodore Maxant stated he did. Liz Allard noted that as part of the Comprehensive Permit the applicant is required to have a final plan approved by the ZBA prior to obtaining the building permit. Mr. Capobianco stated as a reduction in the plan as opposed to increase; he too sees the request as *De Minimus*.

Theodore Maxant made a motion to accept the proposed changes to reduce the number of bedrooms for the project known as The Elms, at 105 Stow Road, as *De Minimus*. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

### **Adjournment**

At 9:17pm Theodore Maxant 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**

### **Continuation of a Special Permit Hearing Meeting Minutes**

#### **Maureen Pettirossi, 64 Warren Avenue**

**August 12, 2015**

The hearing was opened at 7:30pm by Vice Chair Robert Capobianco in the Hapgood Room at 7 Fairbank Street under the Zoning Act, MGL Chapter 40A and the Code of the Town of Harvard, the Protective Bylaw, Chapter 125

**Members Present:** Steve Moeser, Robert Capobianco, Theodore Maxant, Mike Lawton and Orville Dodson

**Others Present:** Liz Allard (LUB Admin), Rob Oliva (Ross Assoc.), Joe Pettirossi, Maureen Pettirossi, Robert Hughes and Bruce Leicher

This hearing was continued from July 8, 2015 for a Special Permit filed on behalf of Maureen Pettirossi, for the demolition and reconstruction of a pre-existing non-conforming structure at 64 Warren Avenue, Harvard.

Dan Wolfe, President of Ross Associates, was present to represent the applicant. Mr. Wolfe explained the application before the Conservation Commission has been finalized with the Commission issuing an Order of Conditions (OOC) next week. The Commission is satisfied with the plan and the action taken to include measures to control stormwater on the site. The rain garden and infiltration trenches will require ongoing maintenance, which will be part of the OOC.

The Fire Chief has requested improvements at two locations along the driveway, which can be made in order to accommodate emergency vehicles.

Steve Moeser asked if the Bare Hill Pond Watershed Management Committee (BHPWMC) is satisfied with the plan. Bruce Leicher, chair of BHPWMC, could not speak on behalf of the BHPWMC as he is an abutter.

Robert Capobianco noted the comments received from the Fire Department, Conservation Commission, the Planning Board and Bare Hill Pond Watershed Management Committee.

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

Members discussed limiting the dwelling to two bedrooms, and conditioning the decision in such a way that the interior rooms shall not be constructed in such a manner as to not be considered a bedroom. The decision shall be contingent upon the Fire Department being okay with driveway. The decision shall reference the OOC issued by the Conservation Commission.

The members found during the hearing process the application and associated plan addressed concerns with stormwater runoff; will be in harmony with the provisions of the Protective Bylaw; and as confirmed by Town Counsel, that a pre-existing non-conforming structure can be removed and a new structure constructed as long as there is no increase in the pre-existing non-conformity.

Steve Moeser made a motion to issue a Special Permit to re-build a non-conforming structure as stated in the application and depicted on the plan dated July 8, 2015 and subject to the conditions

set out above. Orville Dodson 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**

#### **John Finn, 44 Peninsula Road**

**August 12, 2015**

The hearing was opened at 8:00pm by Vice Chair Robert Capobianco in the Hapgood Room at 7 Fairbank Street under the Zoning Act, MGL Chapter 40A and the Code of the Town of Harvard, the Protective Bylaw, Chapter 125

**Members Present:** Steve Moeser, Robert Capobianco, Orville Dodson and Mike Lawton

**Others Present:** Liz Allard (LUB Admin), Dan Wolfe (Ross Assoc)

This hearing was continued from July 8, 2015 for a Special Permit filed on behalf of John Finn for the reconstruction of a pre-existing non-conforming dwelling and conversion to year round use at 44 Peninsula Road, Harvard.

Dan Wolfe, President of Ross Associates, was present to represent the applicant. As requested drainage calculations have been submitted, which indicate there is a slight runoff of stormwater. As also requested, soil notes from previous perk test were submitted.

There had been a question of the amount of fill that would be required to be brought into the site to construct the house from the previous meeting. Mr. Wolfe stated 900 yards or approximately 50 truck loads, staggered over time, would be required.

Revised architectural plans have been submitted as well, detailing the construction of the dwelling, which was previously submitted in the reverse image.

Mr. Wolfe explained Chapter 125-4 allows for the reconstruction of an existing structure as long as the structure was conforming prior to deconstruction and remains conforming after construction. Mr. Wolfe stated it appears there is no need for a Special Permit for the reconstruction of this dwelling, other than for the conversion from a seasonal residence to year-round residency. The lot itself is non-conforming as it does not have the required frontage for a basic lot (180'). Theodore Maxant asked if Peninsula Road is a private way. Mr. Wolfe explained a way shown on a sub-division plan, is considered a roadway, whether it is maintained by the town or not. Mr. Wolfe also noted that there is no formal homeowners association for Peninsula Road. The ZBA members have issue with making a finding, as the lot does not have the minimum amount of frontage as detailed in Chapter 125-4B(1) of at least 50 feet. Chapter 125-3 shall apply as a continued use of the land.

Mr. Maxant has issue with the tight tank and the number of times the system will need to be pumped. Mr. Maxant wants it noted in the record that it could potentially cost \$12,000/year for the pumping of the tight tank. Mr. Wolfe explained the process he had gone through with the Town Sanitarian, Ira Grossman, in determining the number of bedrooms for this location. The existing dwelling has four bedrooms and the proposed dwelling will have four bedrooms. Mr. Maxant stated there may be no change in the number of bedrooms, but there will be a change from seasonal to year-round use. Mr. Wolfe stated the Department of Environmental Protection does not differentiate between seasonal and year-round use as it pertains to tight tanks. Mr. Maxant asked if there has been any thought given to having a reserve tank for emergency situations. Steve Moeser asked about historical documents indicating the number of bedrooms. Mr. Wolfe stated old Board of Health files showed a three bedroom house; however assessing information shows a four-bedroom house; this is why Mr. Wolfe took Mr. Grossman out to review the property. Mr. Wolfe noted the owner in the 90's thought it was three-bedroom dwelling but he

could have been using another room as an office or storage. Mr. Maxant asked if Title V states a 4,000 gallon tight tank is suitable for a four-bedroom house. Mr. Wolfe stated the reason for the 4,000 gallon size is that most pumping trucks only have the capacity of 4,000 gallons. Mr. Wolfe also noted that all most all of the houses on that section of Peninsula are on a tight tank.

Robert Capobianco questioned the architectural plans that still detail an additional kitchen within the guest area. Mr. Wolfe stated the applicant does not intend to construct the kitchen, it was a matter of purchasing plans from a clearing house and the non-ability to get the plan easily revised.

Bruce Leicher, chairman of the Bare Hill Pond Watershed Management Committee (BHPWMC), stated much of what the BHPWMC was concerned about has been addressed. Mr. Leicher has seen revised plan at the Conservation Commission (Concom) meeting, who had requested additional vegetation be added to the plan. However, Mr. Leicher is still concerned with the potential for an increase in pollution to Bare Hill Pond (BHP) as a result of this development. Mr. Leicher does not think the drainage calculation address the reduction of phosphorus into BHP. The BHPWMC suggested Horsley Whitten, the engineering company who designed the stormwater management facilities around BHP, be brought in to take a look at the site to determine if the development would be an increase in phosphorus in BHP.

Mr. Wolfe stated there is a well established buffer of understory and shrub growing around the site that buffers water flow to BHP. The Concom has also taken measures to increase the amount of vegetation in sparse areas around the edge of BHP to reduce contaminates from entering the pond. The standard order of conditions from the Concom limits the use of phosphorus on the site. Mr. Wolfe believes he has made things better. Mr. Leicher explained the major source of phosphorus is from car exhaust and the proposed infiltration trench at the edge of the driveway will not remove phosphorus. Mr. Leicher still would like to have a consult take a look at the application. After some discussion on the matter, Mr. Leicher felt the installation of a rain garden to aid in the reduction of phosphorus would resolve the issue.

With hearing with the Concom hearing still open the ZBA decide to keep this hearing open until the application before the Concom was complete. Theodore Maxant made a motion to continue the hearing to September 9<sup>th</sup> at 7:30pm in the Hapgood Room at 7 Fairbank Street. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

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

## **DOCUMENTS & OTHER EXHIBITS**

### **Modification to the Comprehensive Permit – Chelmsford Housing Opportunities for Intergenerational and Community Endeavors (CHOICE), 105 Stow Road**

- Letter from Deschenes & Farrell, P.C., prepared by Douglas Deschenes, dated July 20, 2015
- Renovations and New Construction of the Elms Plan, 105 Stow Road, Harvard, MA, Title Sheet and Layout and Material Set, prepared by Hancock Associates, Inc., dated 7/28/2015
- Architectural Plans prepared by Davis Square Architects, dated 08/12/2015

### **Continuation of a Special Permit Hearing – Maureen Pettirossi, 64 Warren Avenue**

- Letter from the Harvard Conservation Commission, dated June 8, 2015
- Letter from the Harvard Fire Department, dated May 29, 2015
- Letter from the Bare Hill Pond Watershed Management Committee, dated June 8, 2015
- Memo from the Harvard Planning Board, dated June 9, 2015

### **Continuation of a Special Permit Hearing – John Finn, 44 Peninsula Road**

- Site Plan, John Finn, 44 Peninsula Road, Harvard, MA, David E. Ross Associates, Inc., Job No. 30122, Plan No. L-12643, dated July 17, 2015
- Drainage Analysis, 44 Peninsula Road, prepared by David E. Ross Associates, Inc., dated 8-6-2015
- Architectural drawings prepared by Garrell Associates, Inc., dated 07/14/2015