

**HARVARD ZONING BOARD OF APPEALS  
MEETING MINUTES  
NOVEMBER 10, 2020  
APPROVED: APRIL 14, 2021**

Chair Chris Tracey called the meeting to order at 7:02pm, virtually in accordance with the Governor's Executive Order Suspending Certain Provisions of the Open Meeting Law, MGL Chapter 30A §20 under M.G.L. Chapter 40A and the Code of the Town of Harvard Chapter 125

**Members Present:** Chris Tracey, Steve Moeser, Theodore Maxant, Orville Dodson and Michael Lawton

**Others Present:** Liz Allard (Land Use Boards Administrator), Christopher Swiniarski (McLane Middleton, Attorney for Verizon Wireless), David Tivnan (SAI Group, LLC), Keith Vellante (Real Estate for Verizon Wireless), Barbara & Gregory Romero, Roseanne & Jim Saalfeld, Alice & Peter von Loesecke, Matthew Flokos (Harvard Press), David Maxson (Isotrope), Staci Donahue (Vice Chair Planning Board), Susan Kilroy-Ames, Pam Brown, Dan Wolfe (Ross Associates, Inc.), Peter Deng, Chris & Kerri Green, Bill Calderwood, Robin Carlaw, Jim Lee, Scott Murray, Young Boissy, Mark O' Hagan (Weston Development Group), Sotir Papalilo (Weston Development Group) and Steve Coldwell.

**Continuation of a Variance Hearing – Cellco Partnership d/b/a Verizon Wireless, 12 Woodchuck Hill Road.** Opened at 7:05pm. (See page 3 for complete details)

**Continuation of a Variance Hearing – Peitao Deng, Lot 6 (Map 13 Parcel 28.6) and a portion of 214 Littleton Road.** Open at 8:31pm (see page 5 for complete details)

**Request to Endorse Craftsman Village Harvard Accepted Revised Plan and Endorse Approval Not Required Plan**

Mark O' Hagan and Sotir Papalilo, of the Weston Development Group, were present to request approval of the revised site plan and endorsement of the Approval Not Required plan. Mr. O'Hagan stated the Board of Health is satisfied with the proposed plan for soil remediation. With soil remediation addressed the stop work order on the site has been lifted. Soil remediation created the need for a slight change in grade on the site. Mr. O'Hagan requested the Board accept the revised plans as an unsubstantial change. Steve Moeser made a motion to that effect. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Theodore Maxant, aye; and Chris Tracey, aye.

Steve Moser made a motion to endorse the "ANR Plan" for Craftsman Village Harvard, LLC, Project No: 15-5174, prepared by Places Associates, Inc., October 2, 2020. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Theodore Maxant, aye; and Chris Tracey, aye.

Mr. O'Hagan requested the Board entertain a waiver of the building permit fees for the five affordable units. Mr. O'Hagan stated the time and money spent for the soil remediation was much more than anticipated. Mr. O'Hagan stated each permit would range between \$3000 and \$3500. Steve Moeser was concerned with the remaining fee being sufficient to cover the expenses of monitoring this project by the Building Commissioner. Chris Tracey recommended input be sought from the Building Commission, Select Board and/or the Town Administrator, including whether or not the Board has the authority to waive the building permit fees.

**Approve Minutes**

Minutes were unavailable for approval this evening

**Approve Invoice – Isotrope, \$337.50 (peer review)**

Steve Moeser made a motion to approve the invoice for Isotrope in the amount of \$337.50. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Theodore Maxant, aye; and Chris Tracey, aye.

**Request to Extend Comprehensive Permit – Pine Hill Village, Stow Road (Map 36 Parcels 85 & 86.1)**

Steve Moeser made a motion to extend date listed within Conditions 3.35 of the Comprehensive Permit for Pine Hill Village, Stow Road (Map 36 Parcels 85 & 86.1) to December 31, 2021. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Theodore Maxant, aye; and Chris Tracey, aye.

**Adjournment**

At 8:16pm Steve Moeser made a motion to adjourn the meeting. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Theodore Maxant, aye; and Chris Tracey, aye.

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

**DOCUMENTS & OTHER EXHIBITS**

- Town of Harvard, Zoning Board of Appeals Agenda, dated November 10, 2020
- ANR Plan for Craftsman Village Harvard, LLC, Project No: 15-5174, prepared by Places Associates, Inc., October 2, 2020.
- Letter from Isotrope to Christopher Tracey RE: Bolton Road Water Tank November 17, 2020
- Conceptual Driveway Plan Peitao Deng Littleton Road Harvard, MA Lot 6-8 Map 13 Parcel 29.6 & portion of 22 prepared by David E. Ross Associates, Inc., September 2020
- Isotrope Invoice#19218 10/15/2020

**Harvard Zoning Board of Appeals  
Continuation of a Variance Hearing Minutes  
Cellco Partnership, d/b/a Verizon Wireless, 12 Woodchuck Hill Road  
November 10, 2020**

The hearing was opened at 7:05pm virtually in accordance with the Governor's Executive Order Suspending Certain Provisions of the Open Meeting Law, MGL Chapter 30A §20, by Chairman Chris Tracey under the Zoning Act, MGL Chapter 40A and the Code of the Town of Harvard, Protective Bylaw, Chapter 125.

**Members Present:** Chris Tracey, Steve Moeser, Theodore Maxant, Orville Dodson and Michael Lawton

**Others Present:** Liz Allard (Land Use Boards Administrator), Christopher Swiniarski (McLane Middleton, Attorney for Verizon Wireless), David Tivnan (SAI Group, LLC), Keith Vellante (Real Estate for Verizon Wireless), Barbara & Gregory Romero, Roseanne & Jim Saalfeld, Alice & Peter von Loesecke, Matthew Flokos (Harvard Press), David Maxson (Isotrope), Staci Donahue (Vice Chair Planning Board), Chris & Kerri Green, Bill Calderwood and Robin Carlaw

This hearing was continued from October 14, 2020 for a Variance filed on behalf of Cellco Partnership, d/b/a Verizon Wireless, to allow for a replacement wireless communications tower taller than 105 feet and up to 160 feet when a 120-foot wireless communication tower exists at 12 Woodchuck Hill Road, Harvard.

Christopher Swiniarski, the Attorney for Verizon Wireless, had provided an update to comments made at the previous meeting and the response from Town Counsel in a letter from dated November 9, 2020. In addition, Attorney Swiniarski had provided a copy and except from a case in 2013 that rules a gap is ill relevant when a local municipality is permitting a wireless communications tower. Federal law desires that every carry provides better service to the public; material submitted on November 9, 2020 details the Federal Communications Commission requirements on this matter. For example, a municipality could not have a bylaw that makes it impossible to locate a tower. Chris Tracey disagrees and will invite Town Counsel, Mark Lanza, to the next meeting to further discuss as the predominate detail in the application was a gap in coverage. Mr. Tracey wants the Board members who are going to vote on this application to have the ability to understand the laws.

Attorney Swiniarski stated attempts to provide additional coverage from the Carlson Orchard tower were unsuccessful; Westward Orchard is not a viable location as stated in an unsolicited letter to the Board; and Town-owned land was dismissed a number of years ago.

Attorney Swiniarski stated comments received from the Planning Board were in draft form; please provide official comments for proper response. A revised photo simulation has been submitted.

Mr. Tracey asked about extending the height of the fire tower on Pinnacle Road. Keith Vellante, Real Estate for Verizon Wireless, stated increasing surrounding sites will increase the service, but will not replace the need of filling the gap. Steve Moeser asked if Verizon was going to pursue the Hildreth House. Attorney Swiniarski stated this location was not viable per Town Administrator, Tim Bragan. Mr. Moeser believes that opinion has changed and has been discussed at recent Select Board meetings. Mr. Tracey stated there has been no evidence that a Request for Proposals (RFP) is forthcoming. Mr. Tracy requested the Land Use Administrator send a memo to Select Board requesting an update.

David Maxson, from Isotrope, the peer consultant for the Board, has not reviewed anything new from the last meeting, but has information he can provide from the previous hearing on October 14<sup>th</sup>. Mr. Maxson suggests detailing the matrix in which the gap in coverage is being measured

by and what the applicant is trying to accomplish. Mr. Maxson agrees using the existing tower by increasing height will provide stronger signals, but more is not always better when it comes to a few towers with more co-locators. Harvard's bylaw is a mandate to maintain short towers and not limit the number of towers within Town. Mr. Maxson stated the bylaw is clear that the Town wants towers at 105' or less; he does not see the reduction to 105' fatal to Verizon's coverage, although it may be reduced it is still providing coverage.

Mr. Maxson discussed the prohibition of service in regards to the requested variance. Is the applicant asking for a replacement of the existing tower? It seems clear from the attorney for Verizon it was a new tower in a new location. The new tower is closer to the property line than the existing tower. Increase in relief for the new tower as opposed to a replacement would reinforce maintaining the existing height. However, replacing the existing tower might not require as much relief of that being requested by the variance. Would the existing structure or a replacement structure provide the necessary coverage? Mr. Maxson believes it could. Having service at this tower is complimentary to others such as the Fire Tower and Carlson's.

In regards to the Hildreth House, the Select Board has the opportunity to issue an RFP at any time it wants, but Town Meeting vote would be needed to lease town-owned land. This would put three towers in the center of Town. That would create a high-capacity area in a heavily used area in Town and the best quality coverage for the most people in Town. Mr. Maxson can address facilities at the south and south east side of Town at another time.

Mr. Tracey stated having a variety of towers makes a lot of sense and thinks the assessment provided by Mr. Maxson of having an overlap of coverage in the center is spot on. Maps provided by Mr. Maxson were reviewed. These maps detailed the coverage/capacity provided with existing and proposed towers.

The attributes of the variance request were discussed when Mr. Tracey asked what if the setback variance was approved but not the height. Attorney Swiniarski explained the bylaw accommodates for as many co-locators without impeding the view shed. Verizon is seeking a tower at 160' because they do not want to build a tower and end up having antennas on the tower lower than the co-locators. Attorney Swiniarski stated Verizon would be happy with a tower at 125'. Mr. Tracey asked for further explanation in regards to co-locators being higher on the tower than Verizon. Attorney Swiniarski stated Verizon would not want competitors to have an advantage to coverage over them at a higher location. Mr. Tracey asked if the Variance could be conditioned requiring that the builder of the tower be located at its highest point? Attorney Swiniarski stated the Board can not make such a condition, but what they can do is have a condition that the tower height can not be extended by right by making the case that the height is part of the stealth/camouflage for the tower. Further discussions of the matter resulted in the understanding that under Section 6409 of the Spectrum Act of 2012 modifications to the tower would require Town approval.

Mr. Moeser asked if a tower was built at the Hildreth House would the Woodchuck Hill Road property be redundant. Mr. Vellante stated an applicant may look for another location to not have so much overlap. However, at 105' and two carriers on each you could have both for different provides. Attorney Swiniarski stated there is a big assumption here for Hildreth House; Verizon had asked for years with no approval and say now that it is viable may not be considered an alternative by the Courts.

After a brief discussion on the proceedings and moving forward, Steve Moeser made a motion to continue the hearing to November 18, 2020 at 7:00pm. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Theodore Maxant, aye; and Chris Tracey, aye.

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

**Harvard Zoning Board of Appeals**  
**Continuation of a Variance Hearing Meeting Minutes**  
**Peitao Deng, Lot 6 (Map 13 Parcel 28.6) and a portion of 214 Littleton Road**  
**November 10, 2020**

The hearing was opened at 8:31pm virtually in accordance with the Governor's Executive Order Suspending Certain Provisions of the Open Meeting Law, MGL Chapter 30A §20, by Chairman Chris Tracey under the Zoning Act, MGL Chapter 40A and the Code of the Town of Harvard, Protective Bylaw, Chapter 125.

**Members Present:** Chris Tracey, Steve Moeser, Theodore Maxant, Orville Dodson and Michael Lawton

**Others Present:** Liz Allard (Land Use Boards Administrator), Susan Kilroy-Ames, Pam Brown, Dan Wolfe (Ross Associates, Inc.), Peter Deng, Staci Donahue (Planning Board), Scott Murray, Young Boissy and Steve & Susan Coldwell

This hearing was continued from October 14, 2020 for a Variance filed on behalf of Peitao Deng to allow for a common driveway with slopes greater than eight-percent (8%) to serve up to four (4) new house lots at Lot 6 (Map 13 Parcel 28.6) and a portion of 214 Littleton Road

Dan Wolfe, President of Ross Associates, was present to represent the applicant. Mr. Wolfe explained the plans provided to the Board are not the not final plan as he is here to gain the variance before moving forward with the other aspects of the plan and application process. Mr. Wolfe stated the hardship has to rise out of the land itself. In Harvard property owners are faced with steep slopes, wetlands and soil conditions all the time, but in this case we are up against all three of those constraints, with wetlands right at the road, which will require a small segment to be crossed with the common driveway; then the steep slope, as proposed the driveway will climb this steep slope, side-stepping the hill side to remain on the existing property, all while trying to avoid shallow deeps to ground water. The uniqueness of this property in comparison to others in the district are the factors of dealing with those three aspects. Mr. Wolf concluded by stating other properties in the district are able to find solutions to building constraints, which is clear from the limited number of variances requested.

Steve Moeser asked when was the lot created. Mr. Wolfe stated 2-3 years ago when the over all property of the Poof Farm was divided. Mr. Moeser asked if Mr. Deng a part of the division of these lots. Mr. Wolfe stated he was. Mr. Moeser grappled with how the shape of the lot was conceived. Mr. Wolfe stated the overall lot of the original land at 166 Littleton Road was oddly shaped as well. Mr. Moser asked if ground water is a problem then why the slope can't be lowered. Mr. Wolfe stated because cutting into the slope will create more ground water issues. Mr. Moeser asked why ground water could not be solved with drainage. Mr. Wolfe stated the drainage would be better dealt with if less cutting of the slope.

Theodore Maxant asked questions about 214 Littleton Road. Mr. Maxant thinks this is more about profit as opposed to a hardship of paying taxes on a buildable lot for years as Board has seen in other variance requests. Mr. Maxant sees a self-created hardship in this case.

Susan Colwell, of 192 Littleton Road, stated the area currently has problems with water and drainage, which really needs to be considered and is being passed over. Chris Tracey explained what the Board's focus is with this application and concerns she has should be addressed by the Planning Board.

Mr. Tracey asked Mr. Wolfe and his client if they would like to withdraw the variance request without prejudice; Mr. Wolfe advised his client. Mr. Wolfe asked Mr. Maxant if he would be okay with a single-family house lot that may need a variance for the driveway. Mr. Maxant asked when

was the lot created. Mr. Wolfe stated the last 2-3 years. Mr. Maxant did not think he would entertain such a proposal as this was not a preexisting lot.

On behalf of his client, Peitao (Peter) Deng, Dan Wolfe requested the application for a variance be withdrawn without prejudice. Steve Moeser made a motion to accept the withdrawal of the variance application without prejudice. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Theodore Maxant, aye; and Chris Tracey, aye.

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