

**HARVARD ZONING BOARD OF APPEALS
MEETING MINUTES
JANUARY 26, 2022
APPROVED: APRIL 13, 2022**

Chair Christopher Tracey called the meeting to order at 7:01pm, virtually pursuant to Chapter 20 of the Acts of 2021, An Act Relative to Extending Certain COVID-19 Measures adopted during the State of Emergency and signed into law on June 16, 2021, and under M.G.L. Chapter 40A and Code of the Town of Harvard Chapter 125

Members Present: Chris Tracey, Michael Lawton and Steve Moeser

Others Present: Liz Allard (Land Use Boards Administrator), Dan Wolfe (Ross Associates), Barbara Romero, Patrick Wind, Kathy Farrell and Mark O’Hagan (Craftsman Village Harvard)

Continuation of a Special Permit Hearing – Patrick & Helen Wind, 37 Peninsula Road. Opened at 7:02pm (for complete details see page 2)

Approve Minutes

Steve Moeser made a motion to approve the minutes of January 12, 2022 as drafted. Michael Lawton seconded the motion. The vote was unanimously in favor of the motion by a roll call vote, Michael Lawton, aye; Steve Moeser, aye; and Chris Tracey, aye.

Craftsman Village Harvard – Request for De Minimus Change to Approved Site Plan to Relocate Mailboxes

After a brief discussion Steve Moeser made a motion to approve the revised location of the mailboxes at Craftsman Village Harvard, as shown on the plan attached to the letter dated January 24, 2022. Michael Lawton seconded the motion. The vote was unanimously in favor of the motion by a roll call vote, Michael Lawton, aye; Steve Moeser, aye and Chris Tracey, aye.

Adjournment

At 8:09pm Steve Moeser made a motion to adjourn the meeting. Michael Lawton seconded the motion. The vote was unanimously in favor of the motion by a roll call vote, Michael Lawton, aye; Steve Moeser, aye and Chris Tracey, aye.

Signed: _____ Liz Allard, Clerk

DOCUMENTS & OTHER EXHIBITS

- Town of Harvard, Zoning Board of Appeals Agenda, dated January 26, 2022

Harvard Zoning Board of Appeals

Continuation of a Special Permit Hearing Minutes

Patrick & Helen Wind, 37 Peninsula Road

January 26, 2022

The hearing was opened by Chair Christopher Tracey at 7:02pm virtually, pursuant to Chapter 20 of the Acts of 2021, An Act Relative to Extending Certain COVID-19 Measures adopted during the State of Emergency and signed into law on June 16, 2021, and under M.G.L. Chapter 40A and Code of the Town of Harvard Chapter 125

Members Present: Christopher Tracey, Michael Lawton and Steve Moeser

Others Present: Liz Allard (Land Use Boards Administrator), Dan Wolfe (Ross Associates), Kathy Farrell, Patrick Wind and Barbara Romero

This hearing was continued from January 12, 2022 for a Special Permit filed on behalf of Patrick & Helen Wind for the conversion of a seasonal residence to year-round residence at 37 Peninsula Road, Harvard.

Dan Wolfe, of Ross Associates, explained the outcome of the Board of Health (BOH) meeting held on Monday evening. The BOH took the stance that if this home were to be converted to year-round residence it would have a negative impact on the environment, specifically Bare Hill Pond. Mr. Wolfe does not know how that relates to the tight tank at this location, as it does not have a leaching component to it. Mr. Wolfe is also unsure how adding one year-round residents would make an impact on the environment. Mr. Wolfe detailed the previous agreements the Winds have with both the Zoning Board of Appeals (ZBA) and the Conservation Commission (ConCom), of no lawn increased areas and all other open space areas to be left to revegetate natural; the property has been well cared for in this regard. Additionally, the decisions made by the ZBA and ConCom include conditions to maintain stormwater runoff; which includes a more recent driveway modified that has had approval from ConCom; the driveway is of cobblestone making it more pervious than pavement.

BOH denied the request for what they called a "Change in Use" from seasonal to year-round use. Mr. Wolfe stated they are at an impasse with BOH, but have decided to continue with the ZBA as he feels the requirements are being met. Chapter 2 of the State Sanitary Code does not apply here, as this is a new home that was built to Mass Building Code. The existing sewage disposal system is compliant with Title V as a tight tank, which is the option of last resort when a conventional system cannot be sited; the site had been perked with failing perk rates. The Winds have been good stewards of the land starting in 2013 with the permits issued by both ZBA and ConCom to reconstruct the dilapidating house. ConCom has issued the Certificate of Compliance. With permission of the ConCom they created a terrace on the pond side of the house, which in terms of stormwater runoff is an improvement, as it slows stormwater. BOH previously approved the conversion of the rooms in the basement as it did not violate the recorded deed restriction. This property has been through the Boards numerous times. Mr. Wolfe has reviewed the properties along Peninsula Road that have converted from seasonal to year-round and concluded five of the six properties are on tight tanks and have been successful in this process.

Chris Tracey is a bit confused as to why the BOH is acting the way that it is and would like to take the time to go through some of those points. Since a unanimous vote is necessary for approval from the ZBA, Mr. Tracey may ask for a straw vote of the members, allowing for the applicant to be able to withdraw the application.

Steve Moeser stated the visit to the site and information provided by Mr. Wolfe has him satisfied in regards to stormwater; as one of the conditions of the special permit there is no issue with it on the site. Mr. Moeser has spent a considerable amount of time on this application and was unable to find a definition for a "change in use" from the Department of Environmental Protection (DEP), although it is mentioned throughout Title V (310 CMR 15.00). In his business the change of use within building codes and zoning codes is considered a change from residential to commercial or industrial, where as here the use is remaining residential. Changing from seasonal to year-round does not change the flow into that tight tank and not the required pumping, other than perhaps the frequency. In his summation, the use is a residential one, which is the same whether seasonal or year-round. The only change is the frequency in which a tight tank would need pumping. Within the Protective (zoning) Bylaw §125-11A(1) states minimum standards of Title 5, which were met and approved years ago; he sees nothing that negates that; no additional conditions attached to the use of the tight tank in the recent BOH letter. The site, stormwater, runoff and the sewage has already been approved through past processes. Mr. Moeser does not have any questions or any answers that he is looking for as far as §125-11 is considered in his ability to make a decision; he has no issues with §125-46 either. Mr. Moeser stated every application should stand on its own, but this application is very similar to what has been presented and approved in the past. Mr. Moeser will go into detail when a vote is taken on how §§125-11 and 125-46 are applicable to this application. Mr. Moeser does not want to comment on BOH letter, although he did not understand the permit statement in that letter, as there is no required permit from the BOH.

Mr. Wolfe explained as a result of reviewing the ZBA application the BOH requested a list of items – recorded deed restriction, pumping letter, renewed pumping contract, floor plans, water test, and to submit an application and filing fee for what they were calling a change in use. BOH are viewing the words within Title V to imply the use is changing from seasonal to year-round. However, there has been no change in the design aspects of the tight tank. As previously stated the BOH denied the application. Mr. Wolfe never recalls having to put in a new application for the other properties along Peninsula Road to convert from seasonal to year-round residence.

Mr. Tracey agreed with everything Mr. Moeser stated. Mr. Tracey stated it is always challenging for the ZBA to get input from other Boards and Commissions. In this case, something does not sit right, and often the ZBA does not take the advice of the BOH. Mr. Tracey is not inclined to deny this application based on the BOH input. Mr. Tracey too went through the references provided by BOH, which does not indicate the use as seasonal only. The language under 310 CMR 15.260 does not state tight tanks can't be used for year-round use. Mr. Tracey did see language stating a tight tank shall provide year-round access for pumping; as well BOH can require pumping monthly. Mr. Tracey asked Mr. Wolfe why the septic system was designed for 3100 gallons, but proposed 4000-gallon tank. Mr. Wolfe stated a smaller the tank would require more pumping. Mr. Tracey then asked, why not make it bigger? Mr. Wolfe stated septic tank trucks are 4000 gallons, which would cause an inconvenience for pumping purposes. Mr. Tracey asked if there is a difference in the design when designing for a seasonal residence? Mr. Wolfe stated everything is designed as year-round use. Mr. Tracey detailed §125-11 and concluded a tight tank of 4000 gallons meets §125-11A(2). Mr. Tracey does not want to be at odds with BOH, however there was a lot of "noise" out there about the staging of the property which appeared to indicate 4 bedrooms; may have put some concerns in BOH minds, but if that is the case that is between the BOH & the Winds and has nothing to do with the ZBA and what ZBA is permitting; he does not care as it is deed restricted as a two-bedroom home. Mr. Tracey detailed the six houses along the peninsula in which five have tight tank and four of those five have been approved for year use. Mr. Wolfe has been involved with all of them and BOH has never asked him to come back with another application. Mr. Wolfe did note that the conversion to year-round on the other four were done at the same time as the Special Permit to re-construct those residences. One house remaining at 34 Peninsula Road that has not converted and is on a conventional septic system, Mr. Wolfe is unfamiliar with the details of that location. In the end, Mr. Tracey would be in favor of supporting this application.

Michael Lawton stated the obvious thing here under the terms of the application before the ZBA would not be anything concerning and it would be a simple approve, but the BOH letter does not approve the conversion, so how does ZBA approve. Mr. Tracey feels the issue is between the BOH and the applicant if there is something to resolve and he does not think that issue is before the ZBA. The basis for the BOH denial is unclear to Mr. Tracey and Mr. Moeser. Mr. Lawton agreed it does not make sense and the letter from the BOH seems to be inconsistent, but the letter still exists. Mr. Lawton stated even considering this application on its merits and not on the BOH letter he is still unsure how to respond. Mr. Moeser explained how the ZBA solicits advice from others as required by Mass General Law, and simply that is what the ZBA received from BOH. Mr. Lawton sees it more than advice from BOH; it's a denial and should it matter to the ZBA. Mr. Moeser suggested the application meets all of the requirements under §§125-11 & 46, as defined. Mr. Tracey noted 310 CMR 15.002 does not include a definition for "change in use" or "use". In addition, the Town of Harvard also has no "change in use" definition, nor "use" definition. Mr. Tracey stated if the residences of Harvard did not want to see conversions from season to year-round residence then there would not be a bylaw allowing for it, but we do, therefore the ZBA has the ability to so.

There were no comments from the public. Mr. Tracey confirmed the members were in favor of approving this application. When asked Mr. Wolfe did not want to withdraw the application.

Steve Moeser made a motion to close the evidentiary portion of the hearing. Michael Lawton seconded the motion. The vote was unanimously in favor of the motion by a roll call vote, Michael Lawton, aye; Steve Moeser, aye and Chris Tracey, aye.

Mr. Moeser detailed the requirements under §125-46C(1)(a):

- (a) The tight tank, nor stormwater on the site will not result in substantial increase of volume or rate of surface water runoff to neighboring properties and streets, and will not result in substantial danger of pollution or contamination of the groundwater supply, a groundwater absorption area, a well, pond, stream, watercourse, W District, or inland wetland. Any and all surface water runoff resulting from development shall be retained within the lot in which it originates or shall be discharged into existing identifiable watercourses without material impact on abutting properties. Existing landscaping and rain garden on the site assists in complying with these requirements.

Mr. Moeser stated the above is the same finding for the Special Permit in 2013. As for 125-11A(2), the tight tank was already approved by the BOH.

Steve Moeser made a motion to approve the application for a special permit for the year-round use at 37 Peninsula Road. Michael Lawton seconded the motion. The vote was unanimously in favor of the motion by roll call vote, Michael Lawton, aye; Steve Moeser, aye; and Chris Tracey, aye.

Signed: _____ Liz Allard, Clerk