

**HARVARD ZONING BOARD OF APPEALS  
MEETING MINUTES  
OCTOBER 12, 2022  
APPROVED: DECEMBER 28, 2022**

Chair Christopher Tracey called the meeting to order at 7:00pm, virtually in accordance with legislation S. 2475, an act relative to extending certain COVID-19 measures adopted during the Covid Pandemic state of emergency and under M.G.L. Chapter 40A and Code of the Town of Harvard Chapter 125

**Members Present:** Chris Tracey, Michael Lawton, Steve Moeser and Barbara Romero (Associate Member)

**Others Present:** Liz Allard (Land Use Boards Administrator), Bill Medeiros, Christopher Holmes, Michael Symula, Rebecca Cheney, Wayne Cornell, Mark Lanza (Town Counsel), Mike Carroll and Tim Carey

**Continuation of a Variance Hearing – Christopher & Jennifer Holmes, 31 Glenview Drive.** Opened at 7:05pm (see page 4 for complete details)

**Updates from the Chair**

An application for a Comprehensive Permit is tentative for the corner of Ayer and Old Mill Road.

The voting requirement of associate members are only in lieu of the lack of three voting members on applications only. Administrative matters such as minutes and/or invoices can only be voted on by the members of the Board and not associate members. The Board could change the bylaw to allow the associate members the ability to vote on administrative matters.

Harvard-Devens Jurisdiction Committee holding a public hearing on October 19<sup>th</sup> and have asked participation from all of the Boards and Committees. Mr. Tracey will do his best to participate. If other have time and can participate Mr. Tracey encouraged the members to do so. Barbara Romero plans to attend.

**Trail Ridge Home Owners Request for Information**

Chris Tracey explained the Board received a set of questions submitted by Rebecca Cheney, a resident of Trail Ridge, who asked for time on the agenda this evening. Ms. Cheney stated there is a lot of confusion at Trail Ridge about the completion of the permit, timing, the bond and who is responsible for what. A few residents have gotten together to try to determine where the Trail Ridge Trust stands in this matter. Ms. Cheney, along with Bill Medeiros has done research both at Town Hall and the Registry of Deeds. Ms. Cheney stated these questions submitted are just a jumping off point for them as there are things they are unable to find the answers to. Ms. Cheney stated the homeowners understand it is easy to lose the thread and we as residents do not have all of the background that the Town may have. As residents of Trail Ridge, we want this matter to be front of mind and get the ball rolling to get this project completed to the satisfaction of the Town and the residents.

When asked by Mr. Tracey about answering the questions Board received from Ms. Cheney, Attorney Lanza stated if you would not say it with Fairways Partners attorney in the room then do not say it at all. Mr. Tracey stated he is not prepared tonight, given the timing of the receipt of the questions, and not in anyway not to get this resolved, but doesn't think it is reasonable to be able to provide answers this evening. Mr. Tracey does not think it would require the whole Board to answer these questions and perhaps he and Liz Allard can answer them.

Mr. Tracey asked about the addition of the Trust being a part of the lawsuit against Fairway Partners. Attorney Lanza stated the two parties originally as part of the litigation - Fairway Partners and some related entities that were financing the development and are controlled by Fairway Partners and the

Town side of this litigation, being the Zoning Board of Appeals and the Zoning Enforcement Officer. The judge has ordered the Trust be brought in because Fairway Partners has continuously stated the outstanding items have been cause due to neglect of the Trust and not the responsibility of the developer. Attorney Lanza has had a hard time determining which is the responsibility of the developer and that of the Trust. Fairway Partners attorney has indicated to Attorney Lanza they would like the Town to drop the lawsuit. Attorney Lanza stated he has no intention to do so. Attorney Lanza has continued to urge Fairway Partners attorney to bring the Trust in as a party. What Attorney Lanza will or will not recommend to the Board will be discussed in executive session. Mr. Tracey stated the one primary goal is how to get the infrastructure completed. Attorney Lanza stated there are some inconsistencies between the Trust and Town and that there may be a need to discuss a common strategy. Mr. Tracey stated it is the Board's position to do everything we can within our rights to get the developer to complete the development as approved by the Comprehensive Permit.

Steve Moeser stated most of the questions deal with records going back 10 – 12 years ago and some are simple as “Does the Board consider the project complete”; no, the Board does not consider the project complete. Mr. Moeser had and continues to have questions about the notification of the bonding company and who is responsible for doing so. Attorney Lanza stated the Board should be the one to notify the bonding company, which he will discuss privately with the Board in executive session. Mr. Moeser would like Attorney Lanza to see the questions before responding to be certain the Board does not get itself into any additional legal issues. Mr. Moeser asked what type of response are the residents looking for, written? Michael Lawton has no comments as he was not involved early on in this matter. Barbara Romero was concerned that the Board is opening themselves up to sending the homeowners down the wrong path.

Mike Carroll, a resident at Trail Ridge, wants to make a clarification that they are not representing the Trust, just individual homeowners seeking information. Mr. Carroll asked why the default letter has not been sent to the bonding company. Mr. Tracey did not have a good answer as to why the notification of the bonding company was never sent. Mr. Carroll was trying to understand that if the Board does not want to answer the questions tonight then can we get together at some other time to discuss them. Mr. Tracey stated as you heard from Attorney Lanza there are some things not to be discussed publicly. Mr. Tracey reiterated the Board wants a resolution, and hopefully after the executive session they will have a better understanding of how to proceed here. Mr. Tracey feels the Board and the residents of Trail Ridge are working in harmony; he knows it has been years at getting at to these resolutions, but confident it can be achieved.

Mr. Tracey asked if anyone that represents the Trust was present this evening. Ms. Cheney stated there are members of Trust here this evening but not sure if they want to identify themselves as Trust members. Ms. Cheney asked that any conversations pertaining to this matter be done in a public meeting rather than privately. Mr. Tracey had no issue with this request. Ms. Cheney and others are willing to help gather information if necessary.

Wayne Cornell stated the Board of Trustees has authorized Bill Medeiros and Rebecca Cheney to gather the historical data. In addition, the Attorney for the Trust has been keeping a close eye on the litigation and is willing to step in when necessary.

#### **Approve Minutes**

Minutes were not available this evening

#### **Pine Hill Village Update**

There was no update this evening.

#### **Executive Session – Pending Potential Litigation with Fairway Partners, LLC and others re: Trail Ridge Comprehensive Permit Project Infrastructure Security**

At 7:59pm Chris Tracey made a motion that the Zoning Board of Appeals go into executive session pursuant to Massachusetts General Laws Chapter 30A, Section 21 (a)(3) to discuss strategies with respect to pending litigation between Fairway Partners, LLC and others and the Zoning Board of Appeals and permit Land Use Administrator/Conservation Agent Liz Allard and Town Counsel Mark Lanza to participate in the executive session at their respective remote locations. The Chairman declares that an open meeting may have a detrimental effect on the litigating position of the Board. Steve Moeser seconded the motion The vote was unanimously in favor of the motion by a roll call vote, Michael Lawton, aye; Steve Moeser, aye; Barbara Romero, aye and Chris Tracey, aye.

Mr. Tracey stated the Board will come out executive session only to adjourn the meeting in approximately thirty minutes.

**Adjournment**

At 8:42pm 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 October 12, 2022

**Harvard Zoning Board of Appeals**

**Continuation of a Variance Hearing Minutes**

**Christopher & Jennifer Holmes, 31 Glenview Drive**

**October 12, 2022**

The hearing was opened by Chair Christopher Tracey at 7:05pm virtually in accordance with legislation S. 2475, an act relative to extending certain COVID-19 measures adopted during the Covid Pandemic state of emergency a, and under M.G.L. Chapter 40A and Code of the Town of Harvard Chapter 125

**Members Present:** Chris Tracey, Michael Lawton, Theodore Maxant, Steve Moeser and Barbara Romero (Associate Member)

**Others Present:** Liz Allard (Land Use Boards Administrator) Christopher Holmes and Michael Symula

This hearing is for a Variance filed on behalf Christopher & Jennifer to allow for a reduced setback as required by the Protective Bylaw Chapter 125-30E(3) for an addition to a pre-existing non-conforming structure thereby increasing the non-conformity 31 Glenview Drive, Harvard.

Christopher Holmes, along with Michael Symula, were present and stated they are waiting for more information from the Police and Fire Departments on this application and request the hearing be continued.

Steve Moeser made a motion to continue the hearing to November 30, 2022 at 7:00pm. 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