

**HARVARD PLANNING BOARD
MEETING MINUTES
DECEMBER 19, 2022
APPROVED: JANUARY 9, 2023**

Chair Richard Cabelus called the meeting to order at 7:01pm virtually, pursuant to Chapter 107 of the Acts of 2022, an Act Relative to Extending Certain COVID-19 Measures adopted during the State of Emergency, and signed into law on July 16, 2022, and under M.G.L. Chapter 40A and Code of the Town of Harvard Chapter 125

Members Present: Richard Cabelus, Stacia Donahue, Brian Cook, Doug Thornton and John McCormack (Associate Member)

Others Present: Frank O'Connor (Director of Planning), Liz Allard (Land Use Administrator), Erin McBee (Select Board liaison), Kerri Green, Joan Eliyesil (Harvard Press), Bruce Ringwall (GPR, Inc.), Greg Roy (Dillis & Roy Civil Design Group), Michael Lawton, Jeff Barbadora, Ian Mazmanian, Brian Burke, Emily Goswick, Stephanie O'Keefe, Lamar Freeman and Mark Lanza (Town Counsel)

Public Comment

O'Connor stated the Land Use/Building Department Administrative Assistant, Brie Jones, has left her employment with the Town of Harvard. Based on information provided by Jones pertaining to her decision Human Resources has reconfigured the job description to remove the requirements of attending board meetings, preparing the minutes of those meetings and reduced the hours to 36/week. An additional position of Record Secretary, along with the revised job description has been posted to the website and will be shared with local colleges.

Site Plan Review – Chris & Emily Goswick, 184 Ayer Road

Greg Roy, of Dillis & Roy Civil Design Group, was present to represent the applicants. Roy explained the site at 184 Ayer Road contains an existing building, to be renovated as an optometrist office and upper floor for a residential use as a 3-bedroom unit. There are no plans to change exterior elevations. The age and capacity of the existing septic system are in question by the Board of Health (BOH) as records are not conclusive. The Applicant has submitted a new septic plan that is compliant with Title 5 and local regulations, and is pending with the BOH. A permit from BOH is expected fairly soon. The septic system has been sized for the uses indicated this evening. The plan details the use of the existing curb cut, parking area and no structural changes to the existing building. Parking will be memorialized with striping, paving and re-grading. A compliant ADA access will be added. The plan calls for the removal of pavement on the property as it is not necessary for the proposed uses. The uses fall below the Public Water Supply requirements, therefore the existing well will be maintained. With the change in use Site Plan Review is required.

Donahue questioned the existing use; is it all commercial. Roy thinks it has been used residentially, but not sure of the last time the building was fully occupied. Ian Mazmanian stated the second floor was occupied as residential and the first floor an accountant. Cabelus asked if a landscape plan is required under §125-38G. O'Connor stated it is not. Roy stated he believes that requirement is for new construction, as this is not new construction and the site is vegetated, he has not provided a landscape plan. Roy added there is no plan to remove vegetation except as for the installation of the septic system, and the removed pavement area will be revegetated.

McBee, former chair of the Planning Board, suggested reducing the curb cuts in this area by connecting to the adjacent property or a small trail down to Dunkin' might be nice to be able to get a coffee while waiting for your eye appointment. Cabelus noted a request to waive the sidewalk requirement. Roy stated others properties in the area do not have sidewalks. Cook stated other projects reviewed along this corridor have provided funds to install sidewalks in anticipation of the Transportation Improvement

Plan (TIP) project. Donahue stated the proposed sidewalk associated with the TIP project would be on the opposite of Ayer Road. McBee explained the addition of sidewalks to the Protective Bylaw was intended to provide sidewalks and connectivity to properties within the commercial (c) district. McCormack stated §125-39G(4) indicates the Board may waive the above requirements if the configuration of the site is such that public safety concerns and pedestrian circulation needs are better met in a proposed alternative manner; what is the proposed alternative manner? Cook thinks the Board needs to be consistent with how they handle this matter as has been done with other applications within the corridor. Allard explained previous approvals within the c-district have provided funding that was held in escrow with a specific timeframe associated with progress toward the TIP project; to date all of those funds have been returned to the applicants. Roy will reach out to the property owners at Dunkin' to try and create a path as the alternative manner, but that would be at the discretion of the abutting property owner. Cabelus struggled with the PB ability to waive the sidewalk requirement, as there is no language within the Bylaw that allows for such a waiver. Cook stated the best approach would be connect the parking areas between this property and Dunkin'. For public safety the sidewalks should not be installed until the TIP project is completed to avoid having a sidewalk to nowhere. The Site Plan Approval can contain a condition requiring a sidewalk be connected when appropriate. Thornton agrees that 10-feet of sidewalk could put someone in more danger on the Route 2 offramp. Thornton is amenable to Roy reaching out to Dunkin' to provide an alternative connection. McCormack was worried there could be an issue in future. Donahue suggest moving this to the next meeting allowing for time for the applicant to reach out to Dunkin' to create a path between the two sites. Roy stated it becomes cheaper to comply with the Bylaw; not suggesting we go that route. In the Zoom chat function, Emily Goswick, the applicant stated they would reach out to Dunkin'. McCormack reiterated the ability to put funds in escrow. Thornton stated the alternative is to do nothing as there is no abutter to the south, so there is no alternative.

Donahue still does not understand why a landscaping plan is not being provided, as the PB has required one in the past. Roy stated in this case there is no proposal for exterior improvements other than to remove unnecessary impervious surface and install the septic system. Allard asked what is being replanted within the removed pavement area and on other areas that are being re-habilitated. Roy will provide that information. Donahue stated that while looking to provide a landscaping plan, please include information on signage and lighting. Roy stated they are not proposing any new lighting. Donahue wants confirmation that existing lighting is compliant with the §125-40. The Board agreed the landscape plan could be completed by Dillis & Roy as opposed to a Landscape Architect. The Planning Board will discuss further at the January 9, 2023 meeting.

Special Permit Hearing – DISH WIRELESS L.L.C., 47 Poor Farm Road. Open at 8:08pm (see page 4 for complete details)

Special Permit Hearing – DISH WIRELESS L.L.C., 131 Brown Road. Opened at 8:14pm (see page 5 for complete details)

Continuation of Special Permit, Ayer Road Village-Special Permit and Site Plan Review Hearing - Yvonne Chern & Wheeler Realty Trust, 203 Ayer Road. Opened at 8:36pm (see page 7 for complete details)

Protective (Zoning) Bylaw Amendments Hearing. Opened at 8:40pm (see page 8 for complete details)

Review Multi-Family Map

O'Connor shared the final version of the map that details existing multi-family locations and now includes the area train stations. The Assessing Department is unsure if the map will be able to display the stations as they are outside the boundaries of the Town of Harvard, but all other information on the map will be available on the Town website. O'Connor stated requirements for the January 31st deadline are looking good. Donahue attended a meeting earlier today at which she learned the deadline for adjacent small towns has been extended to December 31, 2025.

Open Space Residential Development Bylaw Amendment (§125-35 C, H & I)

This item was passed over this evening

Board Member Reports

- Representatives & Liaisons Update
- *Montachusett Regional Planning Commission* – Donahue stated District Local Technical Assistance grant funds have opened again for applications. There will be two rounds of funding the Planning Board should consider assistance with the MBTA requirements. Allard noted she will be applying to create a Town Welcome packet similar to [Concord's](#) as a Land Use Boards initiative.
- *Community Preservation Committee (CPC)* – Thornton stated the application submitted this year creates a short half a million dollars of the available funding. Thornton would like to focus on the recreation side of things as opposed to conservation as it has been over the past 20 years. Thornton displayed a spreadsheet detailing the fundings allocations over the past 20 years. Cook and Donahue agreed. CPC will start discussing applications in more detail at the January meeting. Thornton requested the Planning Board support the applications for recreation. Cook made a motion to support the recreation application. Donahue seconded the motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Cook, aye; Thornton, aye; and Cabelus, aye.
- *Open Space Committee (OSC)* – Cook stated the OSC has identified the top 25 lands that could support a recreation facility; letters have gone out to the land owners; hoping to have conversation started soon. Cook asked about the status of the site walks conducted at existing sites. Allard declined to comment and suggested contacting the Town Administrator for an update.
- *Design Review Board (DRB)*– Cabelus looking for assistance from the members on what the DRB should provide as it pertains to recommendations to the Planning Board. Cabelus indicated §125-38F details Design Review; applicability, procedure and purpose, whereas the Commercial Design Guidelines expand beyond that in the Protective Bylaw. Cabelus sees the guidelines as that, guidelines, and not requirements, where as the Bylaw is required. What Cook would be looking for is what complies and what does not under §125-38A-F. Cook added if it does not comply then why not. The Board agreed the DRB should focus on the compliance under §125-38A-F.
- Community Matters - None this evening

Approve Minutes

Donahue made a motion to approve the minutes of August 15, 2022 as amended. Cook seconded the motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Cook, aye; Thornton, aye; and Cabelus, aye.

Adjournment

Donahue made a motion to adjourn the meeting at 9:59pm. Cook seconded the motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Cook, aye; Thornton, aye; and Cabelus, aye.

Signed: _____ Liz Allard, Clerk

EXHIBITS & OTHER DOCUMENTS

- Planning Board Agenda December 19, 2022
- Site Plan 184 Ayer Road Harvard, Massachusetts prepared for Chris & Emily Goswick, Job No. 6932, prepared by Dillis & Roy Civil Design Group, 10/19/2022
- Letter from Rene and Christiane Turnheim, Good Spirits Farm, 106 East Bare Hill, Re: Continuation of the Protective (Zoning) Bylaw Amendments Hearing: Amend Section 125-7 Agricultural uses: (3) Accessory entertainment activities and events, provided that a license for such entertainment is obtained from the Select Board, dated 12/5/22
- Harvard, MA: Multi-Family Housing Map, prepared by Montachusett Regional Planning Commission, December 2022

- CPC-History FY2003 - 2023

Harvard Planning Board

Special Permit Hearing

Dish Wireless, LLC, 47 Poor Farm Road

December 19, 2022

The public hearing was opened at 8:08pm by Chair Richard Cabelus under MGL Chapter 40A the Zoning Act and the Code of the Town of Harvard Chapter 125 the Protective Bylaw virtually pursuant to Chapter 107 of the Acts of 2022, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on July 16, 2022

Members Present: Richard Cabelus, Stacia Donahue, Brian Cook, Doug Thornton and John McCormack (Associate Member)

Others Present: Frank O'Connor (Director of Planning), Liz Allard (Land Use Administrator), Lamar Freeman and Brian Burke

This hearing is for a Special Permit filed on behalf of Dish Wireless, LLC, for the addition of a co-locator to an existing Wireless Communications Tower at 47 Poor Farm Road, Harvard.

Lamar Freeman, representing Dish Wireless, stated the application has hit a snag as there are concerns with lease agreement that need to be address before this application should move forward. The options on continuing the hearing were explained by Allard. After briefly discussing, Thornton made a motion to continue the hearing to indefinite date as requested by the applicant's representative. Donahue seconded the motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Cook, aye; Thornton, aye; and Cabelus, aye.

Signed: _____ Liz Allard, Clerk

Harvard Planning Board

Special Permit Hearing

Dish Wireless, LLC, 131 Brown Road

December 19, 2022

The public hearing was opened at 8:14pm by Chair Richard Cabelus under MGL Chapter 40A the Zoning Act and the Code of the Town of Harvard Chapter 125 the Protective Bylaw virtually pursuant to Chapter 107 of the Acts of 2022, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on July 16, 2022

Members Present: Richard Cabelus, Stacia Donahue, Brian Cook, Doug Thornton and John McCormack (Associate Member)

Others Present: Frank O'Connor (Director of Planning), Liz Allard (Land Use Administrator) and Lamar Freeman

This hearing is for a Special Permit filed on behalf of Dish Wireless, LLC, for the addition of a co-locator to an existing Wireless Communications Tower at 131 Brown Road, Harvard.

Lamar Freeman, representing Dish Wireless, stated the application is for the addition of three antenna to the existing wireless communication tower in a location previously occupied; not extending the tower or compound at all. This request is under the guise of Federal Communications Commission code 60409. Cabelus asked about the need of a Special Permit; it is needed as a new co-locator on the existing tower; therefore, it is not a modification or extension of the previous co-locator. Cabelus asked for any questions or comments from others in attendance. Donahue asked if anyone has been to the site and do we have the same issue with camouflage issue as we had with another tower recently? O'Connor stated he had visited the site recently and it is substantially better than the previous tower. O'Connor suggested the company keep up with the maintenance to be certain the tower remains camouflaged. Freeman stated that would be the responsibility of Crown Castle, as the owner of the tower, and not Dish Wireless; he can relay that request to Crown Castle. Donahue suggested a condition pertaining to the exercising of the generator and that it is conducted between 10am – 2pm. Donahue followed up with asking Freeman if the generator is Crown Castle's or Dish Wireless? Freeman the generator would be under Dish Wireless maintenance. Donahue proposed that condition be included in the decision. Freeman corrected his response stating the generator is property of Crown Castle and not Dish Wireless. Donahue asked if previous conditions were shared with the Board; she sees the approval for the tower but not the previous co-locator; it was not. Donahue asked about the removal bond; one was provided. Donahue struggled with additional conditions. Allard provided the following conditions from a similar Special Permit for a co-locator:

- The Grantee shall maintain the bond submitted with the application as required by §125-27H(2) to assure the Special Permit holder's compliance with its obligations in the event that the holder ceases to use the tower and to remove parts owned by the Permit holder and all accessory equipment/structures so owned;
- The Grantee shall file with the Building Commissioner and the Board an annual certification demonstrating continuing compliance with the standards of the Federal Communications Commission and the American National Standards Institute;
- The Grantee shall provide prior written notice to the Building Commissioner and the Board in the event of a change or increase of use of the tower or the Grantee's facilities on and at the tower,

change of Grantee, or cessation of use on and at the tower. Any change in use or increase in the intensity of use of the tower shall require a new Special Permit;

- The term of the Permit is for five (5) years from the expiration of the twenty-day appeal period after the filing of the decision with the Town Clerk pursuant MGL Chapter 40A, Section 17. All provisions of the Permit shall be binding on the Grantee, its successors, or assigns.
- The Grantee shall remove all its installation(s) on the tower and all related accessory equipment/structures when there is a cessation of use for a period of at least one year, and/or one year following expiration of the Permit, unless renewed; and
- The Grantee shall furnish current actual cost information for its installation and ground equipment in a form satisfactory to the Board and Board of Assessors, for the purposes of tax assessment. The value of site improvements and structures, including the antennas and equipment, shall be included.

Donahue make motion to issue a Special Permit with conditions previously stated this evening to match other co-locators in Town. Cook seconded. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Cook, aye; Thornton, aye; and Cabelus, aye.

Signed: _____ Liz Allard, Clerk

Harvard Planning Board

Continuation of a Special Permit, Ayer Road Village-Special Permit and Site Plan Review

Yvonne Chern & Wheeler Realty Trust, 203 Ayer Road

December 19, 2022

The public hearing was opened at 8:36pm by Chair Richard Cabelus under MGL Chapter 40A the Zoning Act and the Code of the Town of Harvard Chapter 125 the Protective Bylaw virtually pursuant to Chapter 107 of the Acts of 2022, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on July 16, 2022

Members Present: Richard Cabelus, Stacia Donahue, Brian Cook, Doug Thornton and John McCormack (Associate Member)

Others Present: Frank O'Connor (Director of Planning), Liz Allard (Land Use Administrator) and Bruce Ringwall (GPR, Inc.)

This hearing was continued from December 5, 2022 for a Special Permit, an Ayer Road Village-Special Permit and Major Building Special Permit and Site Plan Review filed on behalf of Yvonne Chern & Wheeler Realty Trust for the development of three commercial use buildings, including a Commercial Entertainment and Recreation use at 203 Ayer Road, Harvard.

With the Design Review Board still in process of reviewing the project design Bruce Ringwall requested a continuance to the January 9, 2023 meeting of the Planning Board. Donahue made a motion to continue the hearing to January 9, 2023 at 7:30pm. Thornton seconded the motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Cook, aye; Thornton, aye; and Cabelus, aye.

Signed: _____ Liz Allard, Clerk

Harvard Planning Board

Continuation of the Protective (Zoning) Bylaw Amendments Hearing

December 19, 2022

The public hearing was opened at 8:40pm by Chair Richard Cabelus under MGL Chapter 40A the Zoning Act and the Code of the Town of Harvard Chapter 125 the Protective Bylaw virtually pursuant to Chapter 22 of the Acts of 2022, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on July 14, 2022

Members Present: Richard Cabelus, Stacia Donahue, Brian Cook, Doug Thornton and John McCormack (Associate Member)

Others Present: Frank O'Connor (Director of Planning), Liz Allard (Land Use Administrator), Erin McBee (Select Board liaison), Kerri Green, Joan Eliyesil (Harvard Press), Stephanie O'Keefe and Mark Lanza (Town Counsel)

This hearing was continued from December 5, 2022 on the Amendments to the Code of the Town of Harvard, Chapter 125 Protective (Zoning) Bylaw as detailed below.

McBee has not received any comments from the Select Board (SB); will be discussing this at their meeting tomorrow, including the scheduling of the special town meeting. McBee had forwarded other licenses issued by the Select Board as requested. Mc Bee stated the Agricultural Advisory Commission (AAC) discussed the amendment at their last meeting, and may have some more comments. Cabelus stated the AAC did forward comments and he hopes all of the members have had an opportunity to read as he did with great care.

1) Amend Section 125-7 Agricultural uses

Cabelus asked if there were any thoughts from the members on the language, potential amendments to the proposed language or to the comments made by AAC. McBee asked Attorney Lanza if the amendment fails at Town Meeting is it correct that it cannot be brought back to Town Meeting for two years. Attorney Lanza stated that was correct, unless the Planning Board (PB) recommends it with substantial changes. McBee asked Kerri Green, chair of the AAC, to share the comments prepared by the AAC with the SB as well. McCormack suggested the Board wordsmith the language this evening. Cook was not in favor of that suggestion; the PB has provided information to the SB and have not seen any movement from the SB; he sees no need to do anything until the PB hears further from SB. McBee stated a response from Attorney Lanza was provided to the PB; she is not sure it was distributed to the entire Board. O'Connor confirmed it was received and distributed. McBee wanted to know if Cook was looking toward requiring a Special Permit for entertainment. Cook stated yes, adding he thinks conditions need to be enumerated and not transferred from permit to permit. McCormack still thinks things need to be drafted in order to move forward. Cook stated this is a SB initiative and he is not looking to take on that responsibility since this is not a PB initiative. Donahue agreed as the PB needs to focus on the Open Space Residential Development bylaw and the MBTA requirements and not this. Thornton agrees that the SB should provide more than one sentence before PB dives into it. Cabelus stated this provision needs a lot of work and hopes the final outcome will be in the best interest of the Town. Cabelus is not in favor of a Special Permit because the SB are tasked with issuing a permit that provides limitations. Cabelus feels it is impossible to have a bylaw provision that includes all of the conditions that could occur. McBee explained the amendment as drafted is intended to allow the use that is not allowed now. A joint meeting between the PB and the SB was proposed. McBee stated she is not sure on the availability of scheduling such a meeting, but will look into that.

Cabelus read into the record an email from Christian Turnheim, 106 East Bare Hill Rd. Kerri Green, Oak Hill Road, stated the AAC discussed the proposed amendments at a recent meeting feels the agricultural community needs more clarification in the language; it may be worth while to let the agricultural community weigh in on whether or not a Special Permit is necessary. Green feels there need to be clear guidelines as to what types of uses can be allowed under entertainment. It needs to be done right so that we can all stand together at Town Meeting to support this; not sure how well this will come across at Town Meeting if the AAC is not in support of the amendment. Green suggested putting the amendment on hold to team up with AAC to move this forward together. McBee will discuss with SB and thanked PB for taking this into consideration.

2)Add new section, 125-59 Town Center Overlay District

A revised map of the proposed overlay district was shared and detailed by Donahue. Revised language was shared previously with the Board to include the additional parcels as shown on the revised map. With no further comments or questions, Donahue made motion to recommend the addition of §125-59 Town Center Entertainment Overlay District to Chapter 125 Protective Bylaw of the Code of the Town of Harvard as amended. Cabelus seconded the motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Cook, aye; Thornton, aye; and Cabelus, aye.

Cook made a motion to continue the hearing to January 9, 2023 at 8:00pm. Donahue seconded the motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Cook, aye; Thornton, aye; and Cabelus, aye.

Signed: _____ Liz Allard, Clerk