

**HARVARD PLANNING BOARD
MEETING MINUTES
NOVEMBER 28, 2022
APPROVED: APRIL 3, 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), Brie Jones (Land Use Administrative Assistant), Franklin Carlson, Erin McBee (Select Board liaison), Nat Beale, Kerri Green, Five Sparks Harvard, Christiane Turnheim, Joan Eliyesil (Harvard Press), Scott Hayward, Matt Varrell, Valerie Hurley (Harvard Press), Mark Lanza (Town Counsel), Wade Holtzman, Kara McGuire Minar and Gwen Leonard

Protective (Zoning) Bylaw Amendments Hearing. Opened at 7:00pm (see page 2 for complete details)

Adjournment

Donahue made a motion to adjourn the meeting at 9:46pm. 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

EXHIBITS & OTHER DOCUMENTS

- Planning Board Agenda November 28, 2022
- Warrant Article, unnumbered §125-7 Agricultural uses
- Accessory entertainment activities, Adopted in part N.J.S.A. 54:4-23.1
- Warrant Article, unnumbered §125-59 Town Center Overlay District

Harvard Planning Board

Protective (Zoning) Bylaw Amendments Hearing

November 28, 2022

The public hearing was opened at 7:00pm 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)

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This hearing is for Amendments to the Code of the Town of Harvard, Chapter 125 Protective (Zoning) Bylaw as detailed below.

Amend Section 125-7 Agricultural uses

Erin McBee, Select Board liaison to the Planning Board, explained zoning bylaws state what is allowed within each community, with agricultural uses having specific allowances. Currently entertainment is not an allowed use under agriculture. The proposed provision to the Town's Protective (zoning) Bylaw will allow entertainment as an accessory use under agriculture. The Select Board has been issuing entertainment licenses for lands under agriculture that may have not been legal to do so. McBee indicated there has been a lot of confusion over pouring and liquor licenses and how it relates to entertainment use. Town Counsel Mark Lanza explained the differences between an activity and event; an event, such as a graduation party, at a private resident that is serving alcohol to invited guest and not the general public is considered an accessory use, that is not regulated by the Protective Bylaw. On a farm it is not typical to have entertainment, therefore it is considered an accessory use if allowed under the Protective Bylaw. Conducting events or providing entertainment for greater than 30-days/year could be considered a commercial use. Attorney Lanza suggested entertainment be defined within the Protective Bylaw. McCormack asked why 30-days? Attorney Lanza explained it is a general guide the State uses as a cutoff point as being a temporary use. McCormack asked if liquor licenses would be discussed this evening. Attorney Lanza stated the legal definition of entertainment may or may not include alcohol, therefore we may talk about tonight. Attorney Lanza stated it is possible that an event could occur that does not have entertainment and/or alcohol and therefore would not require a license; but that is not within the scope of this zoning bylaw amendment.

When asked Attorney Lanza explained the differences between commercial agriculture and a hobby farm as defined within Massachusetts General Laws, Chapter 40A §3, which contains specific thresholds for commercial agriculture. Minar stated those thresholds are low with the need to have a minimum of five-acres and receipts of \$500.00 in sales; what if someone wants to hold a class on making kombucha, how is this regulated and brought out in the daylight as a business. Attorney Lanza stated these types of activity are not currently regulated, as there are a number of activities that are under the guise of commercial agriculture that are not regulated and often leads to litigation.

McCormack asked again if liquor licenses would be discussed this evening, because it would change the flavor of the conversation. Attorney Lanza stated it's fair to say the meaning of entertainment includes alcoholic beverages. Attorney Lanza stated if you were to ask if this amendment passes could alcoholic beverages be one of the activities that could be allowed as part of an entertainment license, then the answer would be yes. McCormack asked if that would comply with §12 of MGL Chapter 138? Attorney Lanza stated if the license was obtained from the Select Board. McCormack stated §12 is specific to restaurants, hotels, taverns, and war veteran's clubs; it does not say for other venues; he is just trying to clarify that. Attorney Lanza stated there is a license for single events. McCormack stated which is under §14 limiting it to 30-days/year. Attorney Lanza asked if McCormack was wondering if on a farm you could have entertainment more than 30-days/year. McCormack stated yes. Attorney Lanza stated the answer to that question is no. Attorney Lanza continued by saying the State regulates liquor licenses; it is the State and not the Town that has the final word on the issuance of a liquor license; only the Select Board has the ability to issue an entertainment license that could or could not include alcohol. Cabelus asked in the process of obtaining a liquor license from the Select Board the proposed language with §3 of Chapter 125-7A would not assume that? Attorney Lanza stated that was correct; a separate license for alcohol would be required from the Select Board. Cabelus asked if the word entertainment should be stricken from the language to eliminate confusion between an activity and event. Attorney Lanza stated that depending on the number of times an activity occurs will define it as an event or activity. As it pertains to accessory uses, Cabelus wondered if there was any value in having definition within this provision. Attorney Lanza had no opinion, but confirmed there should be a definition for entertainment. McCormack stated §125-2 has a definition for accessory.

Donahue wanted to know the reasoning behind the amendment. McBee stated entertainment is not allowed currently within the Agricultural-Residential District, by including it within §125-7 Agricultural uses the Select Board can rightfully issue an entertainment license. Attorney Lanza explained the Select Board could issue 1-day entertainment licenses as an accessory use, but once you exceed 30 1-day licenses in a year it is no longer considered an accessory use because 95% of the time entertainment includes alcohol.

Cook stated the more he listens to this discussion the more confused he is by why this amendment is being done. Attorney Lanza stated rather than leave the ability to provide entertainment on properties under agricultural use vague this amendment would allow it as an accessory use to the agricultural use. Cook feels as written the amendment is weak and would fail at Town meeting without addressing the concerns, such as adding a definition for entertainment or the types of licenses, those that include alcohol and those that do not.

Donahue clarified that if entertainment is not added as an accessory use, then entertainment on farms would not be allowed at all moving forward. Attorney Lanza stated that was correct, unless it was a private event. When asked, Attorney Lanza clarified the 30-day threshold on liquor licenses; 30-days is the tipping point from special events to being a commercial endeavor.

Kerri Green, 102 Oak Hill Road, stated up until this point the Town of Harvard has issued 1-day entertainment licenses to all sorts of groups, like the Lions Club, which probably include pouring licenses. Green asked if what is being said is that even a 1-day entertainment license issued 30 times annually is not allowed under zoning? Attorney Lanza stated it is unclear, as a Zoning Enforcement Office could challenge the language as not being clear, so why leave it to be challenged, spell it out, say it is an accessory use. Green asked if issuing an annual entertainment license to a farm be considered accessory? Attorney Lanza stated no, by the definition of accessory it would not, as an accessory use is one that occurs less than the primary use. Green wanted to be clear that the Select Board could issue an annual entertainment license to farms, if this amendment passes. Attorney Lanza if the amendment passes Town meeting, yes. Green expressed great concern over the process of amending the bylaw; she understands the desire to assist farms in Harvard, and fully support opportunities for supplemental income, but does not

see the need to rush this amendment through. Green stated everyone here is confused, including the Select Board members that are here. Green stated we need to do this right by slowing this process down.

Christiane Turnheim, Good Spirit Farm, 106 East Bare Hill Road, was in support of what Green has to say. Turnheim too is more and more confused on how the amendment will impact Harvard. There should be more information on what the impacts will be on Harvard by allowing entertainment in a district that is mostly residential. In addition, there needs to more information on what type of entertainment would be allowed.

McBee asked Attorney Lanza if an annual license could be for every day of the year. Attorney Lanza responded yes. McBee followed up with asking if the 30-day threshold was on alcohol. Again, Attorney Lanza responded yes. McGuire asked for additional clarification to the length of entertainment licenses, to which Attorney Lanza stated entertainment licenses could be up to 365 days/year.

Gwen Leonard, 53 Woodchuck Hill Road, stated this is a tough issue that needs broader exploratory time, this is a great start, but needs more time to avoid unwanted circumstances. Leonard would love to see a noise ordinance.

Green provided an overview as to how this amendment came about; should this pass at Town meeting she would love to see an amendment to the language that would protect abutting farms. Green wondered at what point will activities and events become more important than abutting farm activities. Green noted Westward Orchards has over 120-acres under an Agricultural Preservation Restriction that will forever be farm land. A bylaw amendment should be for all of Harvard not just one farm in Town.

Wade Holtzman, 104 Bolton Road, mentioned the museum bylaw that was created for Fruitlands and wondered if something similar could be created for a specific entity. Attorney Lanza stated it could not.

Franklyn Carlson, Carlson Orchard, 115 Oak Hill Road, stated the reason we are here is because Carlson's Orchard was told we need an entertainment license for someone playing a guitar.; places in Town Center were allowed annual licenses and we were told this is how we could get an annual license; at least this is what he believes.

Rene Turnheim, 106 East Bare Hill Road, Good Spirit Farm, asked if it is known how many farms have received an entertainment license; it is his understanding the need is limited to a single farm. In response to the number of licenses, Allard stated the Select Board, as the issuers of those licenses, would have those numbers. McBee stated a handful of annual licenses have been issued. Ms. Turnheim stated information provided by the Select Board were not for farms, but business or organizations in Town.

Cook reiterated the amendment before the Planning Board was not developed by the Planning Board. Cook agrees with comments made about the need for more thought and fairness in creating this amendment. McCormack agreed Cook and added that if this was to be brought to Town meeting as-is it would fail and needs lots of clarification. Cabelus stated the intermingling of entertainment and pouring license is causing a lot of confusion. Thornton suggesting waiting for a response from the Select Board pertaining to the letter the Planning Board sent to them highlighting the concerns with the amendment.

McBee stated it sounds like the Board would be seeking not only a definition for entertainment, but require a special permit and/or a site plan review as well. Cabelus thinks guardrails within this provision would assist the Select Board when they are doing their separate process of issuing a license(s). Cook stated the amendment needs to define something that not only assist the farmer, but also to in harmony with the neighborhood. Cabelus stated the general consensus of the Board is to include some guardrails, such as the one he found from New Jersey, which he shared. We also must keep in mind the Right to Farm declaration of the Town and any conflicts that may arise from this provision. McBee noted other bylaws from other communities have been shared with the Planning Board.

Add New Section 125-59 Town Center Overlay District

McBee explained this overlay district will allow for entertainment to continue legally within the Town Center. Donahue stated the Planning Board has been discussing creating a Town Center Overlay district to address other issues within the district, which is general made up of pre-existing non-conforming lots and wondered how this would provision affect Planning Board efforts within the Town Center. Donahue suggested changing the name of this overlay district to the Town Center Entertainment Overlay District since it will only affect certain parcel within the center. Attorney Lanza had no legal issue with that request. McBee also saw no issue with that request. Minar agreed as well.

Cabelus questioned a potential for spot zoning. Attorney Lanza stated it is hard to prove spot zoning on an overlay district as the underlying district is still in effect. Cabelus also wanted to confirm this provision would codify an activity that is already taking place within the district. Both McBee and Attorney Lanza agreed. McCormack asked about noise, parking and the like when entertainment is being provided. McBee stated it is addressed within the entertainment licenses issued by the Select Board.

Minar wanted to clarify that the Select Board could only provide an entertainment license to those properties shown in blue on the map. That was correct. There was concern about events that occur on the Common, which is now under the management of the Select Board. After discussing all the locations in and around the Town Center that provide some type of entertainment it was agreed the map detailing the district would have to be expanded.

Holtzman wanted to clarify that areas that are within the district are currently doing something they cannot. That was correct. Does that mean the Lion's Club cannot conduct their events moving forward? That also would be correct and why the map detailing the district needs to be expanded. Holtzman further asked about new business in the district, at which it was explained the only business within the district is the former antique store at the corner of Fairbanks Street and Littleton Road.

Scott Hayward, owner of the General Store, expressed concern of this amendment not being on the warrant for Town meeting; if not the General Store and Five Sparks will not be able to provide entertainment.

Nate Beal, 89 Old Shirley Road, asked if the amendment is passed as proposed could the Select Board override the bylaw and issue a 1-day entertainment licenses to those parcels not shown on the map? Attorney Lanza stated technically entertainment is not currently allowed in the district, but traditionally it has been allowed for years, but really it is not allowed.

Thornton asked for clarification between entertainment and a fund-raising event. Attorney Lanza stated a fund-raising event that is not providing any activity that could be considered if entertainment occurs.

Donahue made a motion to continue the hearing to December 5, 2022 at 7:45pm. 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.

Signed: _____ Liz Allard, Clerk