

**HARVARD ZONING BOARD OF APPEALS  
MEETING MINUTES  
JULY 18, 2017  
APPROVED: SEPTEMBER 20, 2017**

Chairman Chris Tracey called the meeting to order at 7:31pm in the Town Hall Meeting Room, 13 Ayer Road, under the Zoning Act Chapter 40A and the Code of the Town of Harvard Chapter 125

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

**Others Present:** Liz Allard (LUB Admin), Bruce Ringwall (GPR, Inc.), Kerry Kunst, Pete Normandin, Dana Fairbanks, Ray Lyons and Tony Lopez

**Continuation of a Special Permit Hearing – Kerry Kunst, 34 Peninsula Road.** Opened at 7:31pm

**Special Permit Hearing – Sweeny Properties Harvard, LLC, 202 Ayer Road.** Opened at 7:45pm

**Variance Hearing – Dana Fairbanks, Brown Road (Map 36 Parcel 95).** Opened at 8:55pm

Theodore Maxant left the meeting at 9:18pm

**Request for De Minimus change to the Site Plan - Trail Ridge, Trial Ridge Way**

Pete Normandin was present to discuss the request to revise the layout of the units at Trail Ridge. Mr. Normandin explained there has been a demand for units that have a first-floor master bedroom, but are not aged-restricted as required by the Comprehensive Permit. A previous approval from the Zoning Board of Appeals (ZBA) allowed for a 12' extension of the units for the addition of a sunroom. In order to accommodate this demand Mr. Normandin is proposing to extend the units to 14' as opposed to the 12' previously allowed, which would allow for the addition of a master bedroom on the first floor. Mr. Normandin stated the second floor will remain the same with a loft area and another master bedroom.

After a brief discussion the members of the ZBA requested architectural designs for these proposed units. This discussion will continue on July 26, 2017 in the Town Hall.

**Approve Minutes**

Steve Moeser made a motion to approve the minutes of June 14, 2017 as drafted. Orville Dodson seconded the motion. The vote was unanimously in favor of the motion.

**Election of Officers**

Members agreed to wait until the next meeting to elect officers for fiscal year 2018.

**Adjournment**

At 9:59pm Steve Moeser made a motion to adjourn the meeting. Orville Dodson seconded the motion. The vote was unanimously in favor of the motion.

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

## **Zoning Board of Appeals**

### **Continuation of a Special Permit Hearing Meeting Minutes**

#### **Kerry Kunst, 34 Peninsula Road**

**July 18, 2017**

The hearing was opened at 7:31pm by Chairman Chris Tracey in the Town Hall Meeting Room, 13 Ayer Road, under the Zoning Act, MGL Chapter 40A and the Code of the Town of Harvard, Protective Bylaw, Chapter 125-3 and 125-11

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

**Others Present:** Liz Allard (LUB Admin), Bruce Ringwall (GPR, Inc.) and Kerry Kunst

This hearing was continued from June 14, 2017 for a Special Permit filed on behalf of Kerry Kunst for the demolition and reconstruction and conversion of the dwelling from seasonal to year-round use at 34 Peninsula Road, Harvard.

Bruce Ringwall, President of GPR, Inc., was present to represent the applicant, Kerry Kunst, who was also present. New comments were received from Fire Chief, which request the dwelling have a sprinkler system installed. The driveway to the storage area has been changed from impervious to grass pavers and will maintain the infiltration trench as base of the driveway. Trees along the north property line are still proposed to be removed. Mr. Ringwall provided photos of the site, which details the trees to be removed. The Conservation Commission (ConCom) had no issue with the removal of the trees. Steve Moeser stated he would defer to ConCom on the matter of vegetation removal.

Mr. Ringwall stated in regards to the requirements of the septic system, the previous owner never completed the filings with the Board of Health (BOH), which was unknown to the current owner. A new septic system permit is required per BOH. Well testing has been completed, including a draw down test. All of those reports have been submitted to BOH. A Title 5 inspection has been scheduled with a BOH approved vendor. Chris Tracey asked about the maintenance of an Innovative and Alternative septic system. Mr. Ringwall stated the BOH requires a maintenance agreement and a deed restriction.

Mr. Kunst requested to know what other homes of this size have sprinkler systems. The Zoning Board of Appeals (ZBA) members were unable to answer that question and suggested Mr. Kunst speak with the Fire Chief.

Mr. Kunst agreed to condition the structure to be a color of local regional earth-toned, with a slate colored roof.

With no further questions or comments, Steve Moeser made a motion to close the evidentiary portion of the hearing. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion.

After a brief discussion, Chris Tracey made a motion to issue a Special Permit to Kerry Kunst for the demolition and reconstruction and conversion of the dwelling from seasonal to year-round use at 34 Peninsula Road, Harvard, which shall include the following conditions:

1. The applicant has agreed to an earth-toned color for the structure, with a slate colored roof to minimize its appearance from Bare Hill Pond;
2. The Site shall be fully compliant with Title 5 per the Harvard Board of Health requirements;

3. The Site shall be fully compliant with the Order of Conditions, DEP#177-655, Harvard#0517-03, issued by the Harvard Conservation Commission; and
4. The use of phosphate fertilizers (liquid or solid) shall be prohibited on the Site.

The members of the ZBA also agree to allow the Chairman to sign the final decision on their behalf. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

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

## **Zoning Board of Appeals**

### **Special Permit Hearing Meeting Minutes**

#### **Sweeny Properties Harvard, LLC, 202 Ayer Road**

**July 18, 2017**

The hearing was opened at 7:45pm by Chairman Chris Tracey in the Town Hall Meeting Room, 13 Ayer Road, under the Zoning Act, MGL Chapter 40A and the Code of the Town of Harvard, Protective Bylaw, Chapter 125-3 and 125-11

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

**Others Present:** Liz Allard (LUB Admin), Bruce Ringwall (GPR, Inc.), Tony Lopez and Ray Lyons

This hearing is for a Special Permit filed on behalf of Sweeny Properties Harvard, LLC for the expansion of a non-conforming use to include storage within a second proposed building at 202 Ayer Road, Harvard.

Theodore Maxant made a motion to waive the reading of the legal notice into the record. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Chris Tracey noted Steve Moeser has filed a Disclosure of Appearance of Conflict of Interest as required by MGL Chapter 268A §23(b)(3) with Town Clerk as he is an abutter to 202 Ayer Road. Those in attendance had no issue with Mr. Moeser participating in this hearing.

Bruce Ringwall, President of GPR, Inc, was present to represent the applicant, Tony Lopez, who was also present. Mr. Ringwall explained a Special Permit was issued in 2001 to allow the property to function as a storage facility with no requirement to renew the Special Permit. Site Plan approval was obtained through the Board of Selectmen at that time for the storage of equipment. Therefore the use is grandfathered under zoning. The Building Commissioner and Town Planner agreed the use permitted in 2001 is similar to that of the current owner.

Mr. Lopez plans to build a similar building to the one existing on the property, which will require Site Plan approval from the Planning Board. A floor plan of the proposed structure was provided. The original Special Permit limits the maintenance of vehicles to the application of grease to grease fittings and routine maintenance not involving fuel oil, motor oil or hydraulic fluid. Under the 2001 Special Permit the site is limited to 33,500 square feet of development. The new structure will remain under that limit.

Steve Moeser asked about the storage of vehicles. Mr. Lopez stated vehicles on site are limited to a box truck, a pick-up truck and an excavator. There is also a small fork lift to move material in the warehouse, along with hydraulic lifts used in the installation of drywall. Mr. Moeser feels there is currently a spreading that is happening on the site into the areas that are not allowed to be used. Mr. Ringwall, by way of photos, detailed the areas allowed to be used under the 2001 Special Permit.

The site contains no septic system, but there is a well for the purpose of maintaining the plantings required by the 2001 Special Permit. Mr. Moeser is perplexed by the use of just an outhouse on the property, but agreed that it is not an issue of the Zoning Board of Appeals.

Chris Tracey read the comments received from other boards and committees into the record.

Ray Lyons, an abutter at 206 Ayer Road, suggested including a condition that the applicant receives approval from Board of Health that determines whether the property is exempt from or in compliance with Title 5, or any other appropriately disposing sanitary waste requirements.

With no further questions or comments, Steve Moeser made a motion to close the evidentiary portion of the hearing. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion.

After a brief discussion, Steve Moeser made a motion to amend the 2001 Special Permit, Case #6-SP-2011, subject to the following conditions:

5. Screening shall meet all the requirements as specified in Section 125-39 and in addition, the existing evergreens located on the westerly end of the gravel parking and construction storage area and to the south of the detention basin shall be retained;
6. There shall be no servicing or maintenance of the equipment on the Site, except for the application of grease to grease fittings and routine maintenance not involving fuel oil, motor oil or hydraulic fluid. Precautions shall be taken at all times to insure that no leaking fuel oil, motor oil, hydraulic fluid, etc., shall contaminate the land subject to this Special Permit, or any adjacent land or wetlands;
7. Site Plan Approval shall be obtained from the Harvard Planning Board under Section 125-39 of the Protective Bylaw; and
8. The Applicant shall obtain approval from the Harvard Board of Health as to whether or not the Site is exempt from or shall be in compliance with Title 5, or any other appropriately disposing sanitary waste requirements.

The members of the ZBA also agree to allow the Chairman to sign the final decision on their behalf. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion.

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

## **Zoning Board of Appeals**

### **Variance Hearing Meeting Minutes**

#### **Dana Fairbank, Brown Road (Map 36 Parcel 95)**

**July 18, 2017**

The hearing was opened at 8:55pm by Chairman Chris Tracey in the Town Hall Meeting Room, 13 Ayer Road, under the Zoning Act, MGL Chapter 40A and the Code of the Town of Harvard, Protective Bylaw, Chapter 125-3 and 125-11

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

**Others Present:** Liz Allard (LUB Admin), Bruce Ringwall (GPR, Inc.) and Dana Fairbanks

This hearing is for a Variance filed on behalf of Dana Fairbanks for the reduction in the required frontage from 180' to 0' along Brown Road (map 36 Parcel 95), Harvard.

Theodore Maxant recused himself from this hearing as he has business dealings with the applicant, Dana Fairbanks.

Steve Moeser made a motion to waive the reading of the legal notice into the record. Orville Dodson seconded the motion. The vote was unanimously in favor of the motion.

Bruce Ringwall, President of GPR, Inc, was present to represent the applicant, Dana Fairbanks, who was also present. Mr. Ringwall explained the construction of Interstate 495 (I-495) cut off access to the property owned by Mr. Fairbanks. The Commonwealth of Massachusetts granted easements across abutting properties for those properties affected by the construction I-495.

It is Mr. Ringwall's opinion that the Harvard Protective Bylaw (Zoning) states as long there was adequate access prior to a land taking a property owner has the right to use the land as a building lot. This matter was first brought to the Planning Board, where Town Counsel advice was sought. Attorney Mark Lanza's advice was a variance would be required from the Zoning Board of Appeals (ZBA) deeming the lot a building lot.

Mr. Ringwall stated the hardship for his client is a parcel that had the capability to be a buildable lot prior to the land taking by the State, giving the land value. If the ZBA determines the land is unbuildable then the land has no value, creating a financial hardship for Mr. Fairbanks. Mr. Ringwall stated the parcel as it is today is able to meet all the requirements of a basic lot, minus the frontage. Mr. Ringwall detailed the frontage before the land taking in 1962.

With no further questions or comments, Steve Moeser made a motion to close the evidentiary portion of the hearing. Orville Dodson seconded the motion. The vote was unanimously in favor of the motion.

After a brief discussion, Steve Moeser made a motion to grant a Variance to Dana Fairbanks to allow for a zero frontage lot along Brown Road for the land known as Map 36 Parcel 95 in Harvard and to allow the Chairman to sign the final decision on their behalf. Orville Dodson seconded the motion. The motion was unanimously in favor of the motion.

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

## **DOCUMENTS & OTHER EXHIBITS**

### **Town of Harvard, Zoning Board of Appeals Agenda, dated July 17, 2017**

#### **Special Permit Hearing – Kerry Kunst, 34 Peninsula Road**

- Residential Redevelopment, Special Permit, Site Plan, 34 Peninsula Road, Harvard, MA 01451, prepared for 34 Peninsula Road Trust c/o Kerry Kunst, prepared by GPR, Inc., Job 151006, dated 3/10/2017

#### **Special Permit Haring – Sweeny Properties Harvard, LLC, 202 Ayer Road**

- Disclosure of Appearance of Conflict of Interest as Required by G.L.C. 268A Section 23(b)(3) from Steve Moeser, dated 6/27/2017
- Zoning Board of Appeals Special Permit Case#6-SP-2001, dated September 11, 2001
- Plot Plan to accompany Special Permit Application, prepared for Sweeny Drywall, 330 Codman Hill Road, Boxborough, MA 01719, prepared by GPR, Inc., Project: 171046, dated June 19, 2017
- Letter from Harvard Board of Health, Re: Special Permit – Sweeny Properties Harvard, LLC, 202 Ayer Road, dated June 22, 2017
- Letter from Harvard Conservation Commission, Re: Special Permit – Sweeny Properties Harvard, LLC, 202 Ayer Road, dated July 12, 2017
- Comments from the Building Commissioner, dated 26 Jun '17

#### **Variance Hearing – Dana Fairbanks, Brown Road (Map 36 Parcel 95)**

- Exhibit 1 – The Commonwealth of Massachusetts, Department of Public Works, Layout No. 5282 and Order of Taking, dated February 3, 1960
- Exhibit 2 – Plans, Massachusetts Comm of Dept Public Works, Brown Road, Harvard, Route 495 Harvard, Stow Road, Harvard, Zink Road,, Harvard, Book 00268, Page 56, dated 11/30/1962
- Exhibit 3 – Deed, Book 23037 page 366, dated September 25, 2000
- Exhibit 4 – Deed, Book 13188, page 164, dated Jan 9, 91
- A copy of a partial untitled plan detailing parcels 1-R1 and i-R-2 with 40' Right of Way off of Brown Road, undated
- A copy of a partial Plan of Land in Harvard, MA for Stephen J./Deborah J. Damon, owners of Harvard Assessor's Map Reference: Sheet 36 Lot 93.1, prepared by County Land Surveys, Inc., dated November 14, 1997, revised 3/4/98
- A copy of a partial Approval Not Required Under the Subdivision Control Law, Harvard Planning Board, dated 3/7/05
- Raymond C. Bateman & others vs. Board of Appeals of Georgetown, 56 Mass. App. Ct. 236, June 13, 2002 – October 9, 2002, Essex County
- Comments from the Building Commissioner, dated 26 Jun '17
- Letter from the Harvard Conservation Commission, Re: Fairbanks – Brown Road (Map 36 Parcel 95), dated July 12, 2017

#### **Request for De Minimus change to the Site Plan - Trail Ridge, Trial Ridge Way**

- Grading & Utility Plan, Site Development Plan 2 in Harvard, Massachusetts, prepared for Fairways Partners, LLC, Plan No: B-3\*3, prepared by Hannigan Engineering, Inc., final revision date 11/01/12

#### **Approve Minutes**

- Draft minutes of June 14, 2017 prepared by Liz Allard