

# HARVARD HISTORICAL COMMISSION

13 AYER ROAD • HARVARD, MASSACHUSETTS 01451



*The Harvard Historical Commission is chartered "...to preserve and protect the historic assets of Harvard, its buildings, structures, places, sites, and surrounding settings of historical or architectural significance."*

Those wishing to record any or all of the meeting must, prior to the meeting's start, alert the chair to such and the chair will announce the fact, in accordance with The Massachusetts Open Meeting Law.

Following are the **minutes** of a special meeting of the Harvard Historical Commission, at Hildreth House, on **Wednesday, October 30, 2019 at 7 pm**. Submitted by George Triantaris, Secretary.

## MEMBERS IN ATTENDANCE:

Pam Marston (Chair)  
David Vannicola (Vice Chair)  
George Triantaris (Secretary)  
Emanuel Lindo  
Steve Nigzus  
Richard Cabelus

## MEMBERS IN ABSENTIA:

None

**AUDIENCE:** Tim Kilhart on behalf of the Town of Harvard and numerous members of the public.

## TOPICS:

## CALL TO ORDER:

7:00 pm

## ON-GOING APPLICATIONS:

### 1 Still River Road, Tim Kilhart: Sidewalk project in town center: Commissioners' Deliberation

#### Pam Marston

Pam explained the need for a special meeting as the application filed on September 4 and the subject of a public hearing on October 9 must be voted on before 60 days expired on November 4 or it would be approved because of failure to act. The regular meeting schedule for November 6 would be too late. Pam disclosed that HHC has received written letters and email communications from members of the public urging it to not approve the application or suggesting alternate designs. She also said that members of the public had approached some of the commissioners expressing similar sentiments. She explained that the purpose of the meeting was for the commissioners to deliberate and come to a decision and that the public participation portion of the public hearing had occurred on October 9 and was closed. The only non-commissioners who would be allowed to speak were those the commissioners called upon to answer questions relevant to their decision. She also explained that she and Manny would not be able to vote as they had missed the first part of the public hearing held on October 9.

#### George Triantaris

George also made an opening statement acknowledging the public's frustration at the process for designing and planning this project. He explained that the Harvard Historic Commission is tasked with "preserving and protecting the historic assets of Harvard". While this might sound like the Commission has broad powers and authority, its ability to protect historic assets is restricted to reviewing applications for appropriateness submitted to it with regard to projects in the two historic districts. Those applications must be considered in accordance with the Bylaw which established the Commission, as well as the Guidelines and Policies and Procedures that the Commission has written and adopted over the years. That is the

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extent of its authority. He also stated that the HHC did not initiate or participate in the design of the project being reviewed.

George walked the commissioners through an analysis of certain sections of the bylaw and policies and procedures as follows:

- a. The Harvard Historical Commission has jurisdiction over town projects
  - i. Chapter 48 Section 10 A of Town of Harvard Bylaws
    1. "The Town of Harvard shall be subject to the provisions of this bylaw"
- b. It would seem that the Commission has jurisdiction over this project
  - i. Chapter 48 Section 5 C ~ grants authority to "review and render a decision of appropriateness on all proposed new construction" of "all exterior architectural features of buildings and structures" "within the Historic District which are visible from any public street"
- c. Harvard Bylaw Chapter 48 Section 5 C provides that the term "structure" includes "walks" and "driveways".
- d. Section 5 A provides that the Commission may adopt rules and regulations of its affairs and conduct of its business. Further Section E provides that the Commission may determine that certain categories of structures may be constructed or altered *without* review.
- e. Harvard Historical Commission Policies and Procedures dated January 6, 2015 (version 3) filed with the town clerk define "Exemptions" on page 35: "The following structures, activities or features are *excluded* from review by the commission....Terraces, walks, *driveways*, *sidewalks*, and *similar structures*, provided that any such structure is substantially at grade level and not within the outside faces of exterior walls."
- f. This is compatible with (and contemplated by) Mass Gen Laws Chapter 40C Section 8 (under which the Harvard Bylaw is established) which uses almost identical language to define possible exemptions.
- g. Therefore most of application by the Town of Harvard to upgrade existing and construct new sidewalks in the town center is not subject to review by the Historical Commission. There may be certain features of the application that are subject to review.

There was some discussion among the commissioners and then agreement that the conclusion was accurate.

## Richard Cabelus

Richard led a discussion about the elements of the application that could be considered by the commissioners. Namely the truck apron, chevron markings, bump out radius, and bollards. It was determined that the bollards are going to be relocated rather than removed so that topic was resolved. Tim Kilhart maintained that the size of the common would be not altered by the bump out radius. He was not sure of the materials or exact design for the truck apron nor the color or design for the chevron markings. He stated that the designs were not final. There was discussion among the commissioners about the design of these features

## Communication from town counsel.

At this point Tim Kilhart handed the commissioners a print out of an email sent at 3:54 pm to Pam Marston which had not been seen by Pam or any of the commissioners prior to the meeting. The email cited M.G.L. c. 40C, Sec 9 which states that the HHC cannot prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition" and concluded that the HCC might regulate the appearance of the physical attributes of the sidewalks but could not prohibit their construction. Tim also produced a letter dated October 21, also not seen before this meeting, from Edward Denmark, Chief of Police, stating that he "highly recommended" that the project be undertaken to mitigate safety concerns. Commissioners commented that this letter was not a "Certification"

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as required by the statute. Tim responded that he could easily obtain one. Commissioners commented that even if there were safety concerns it was not certain that this was the only solution to those concerns and that other designs were possible. George asked Tim whether the town had filed forms with the Massachusetts Historical Commission that are required for such projects when state funding is involved. Tim had not heard of this requirement.

## **Options Discussed**

Commissioners then tried to determine their options with regard to the application and decided there were three choices. 1. Take no action on the application and let it pass by failure to act. 2. Vote to approve or not approve certain aspects of the application. And 3. Continue the hearing to give commissioners a chance to do more research and consider these developments. Several of the commissioners expressed the view that the combination of the limitations imposed by HHC policies and guidelines combined with the town counsel's position that the project was a "safety" issue that the HHC could not alter meant that there was little choice. Several commissioners had done research on Safe Streets projects in surrounding towns and learned that the process followed typically included public meetings with representatives of many commissions and groups during the planning stages to determine a best way forward. Frustration was expressed by commissioners that this process was not followed by Harvard and that a final "take it or leave it" plan was submitted to the HCC. Stu Skar, on behalf of the Select Board stated that the HHC's input on the color of the sidewalks was desired. It was expressed that input as to the color of the sidewalks was not helpful to the HHC's mission to protect the historic aspects of the town when all other input had been prohibited.

## **Vote**

By unanimous vote of those eligible to vote (David, Richard, George and Steve) it was decided to take no action on the application for lack of jurisdiction.

**MEETING ADJOURNED:**

**7:46 pm**