

**HARVARD PLANNING BOARD
MEETING MINUTES
DECEMBER 5, 2022
APPROVED: APRIL 3, 2023**

Chair Richard Cabelus called the meeting to order at 7:00pm 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, Arielle Jennings and John McCormack (Associate Member)

Others Present: Frank O'Connor (Director of Planning), Liz Allard (Land Use Administrator), Brie Jones (Land Use Board Administrative Assistant), Erin McBee, Kerri Green, Joan Eliyesil (Harvard Press), Stephanie O'Keefe, Kara McGuire Minar (Select Board member), Mark Mikitarian and Mark Lanza (Town Counsel)

Public Comment

No public comment this evening

Introduction of Brie Jones, Land Use & Building Department Administrative Assistant

Cabelus introduced Brie Jones, the new Land Use & Building Department Administrative Assistant. Jones stated she is in the process in taking in as much information she can and hopes to do so as quickly so she can be a benefit to others.

Board Member Reports

• **Representatives & Liaisons Update**

- **Devens-Harvard Jurisdiction Committee (DHJC)** – McCormack stated the governance of Devens has become frustrating for some of the residents. The DHJC will share the action plan with other stakeholders and ask the Select Board to contact State representatives to better engage MassDevelopment, along with helping the citizens of Devens to have more of a voice. The annual report for Devens is available on the Devens Enterprise Commission website, which includes financials and background on Devens
- **Transportation Advisory Committee (TAC)** – Donahue stated the TAC is updating their charter which will come back to the Planning Board for feedback. TAC was going to apply for a Mass Trails grant to connect into Devens at the end of Old Mill Road, however the Devens Enterprise Commission has seemed to walk away from the proposal, therefore TAC is not applying.
- **Climate Initiative Committee (CIC)** – Donahue stated CIC will be back before the Select Board tomorrow night for the endorsement of the Climate Action Plan; once approved CIC will be able to apply for grants.
- **Historical Commission** – Cabelus stated the Commission is meeting this week on the wall and fencing being installed at the Harvard Elementary School

• **Community Matters** – None this evening

Approve Minutes

Donahue made a motion to approve the minutes of August 1, 2022 as drafted and November 21, 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; Jennings, aye; and Cabelus, aye.

Review Multi-Family Map

O'Connor shared the map prepared by Montachusett Regional Planning Commission (MRPC) that details the existing multi-family units within Harvard. O'Connor is working to have the Devens area of Harvard be shaded, as that area is not included with the context of this map. This map will assist in finding a suitable location for the required Multi-family under the MBTA guidelines. Those guidelines require an additional 113 units in an area with higher density (15 units/acre), which may not be possible due to the constraints on water and sewer in Harvard. Donahue stated none of the existing multi-family parcels comply with the MBTA regulations. Donahue wonder if the Planning Board (PB) was going to use the MRPC map to codify these parcels as multi-family. McCormack suggested using it as a starting point for building a multi-family zone by identifying parcels that are available for development and determine if any of those parcels are abutting any existing multi-family parcels. Land zoned as multi-family needs to support the highest density within the current bylaw; even if it is currently developed but could have additional units. Jennings agreed with McCormack and wondered if in choosing a site perhaps the PB should consider those that would be able to meet water and sewer requirements. Jennings asked if the PB needed to assess the land for other constraints such as ledge and wetlands. Donahue stated she does not believe that the PB is required to do so, nor would does the PB have the resources or funding to do so. Thornton asked if those who have provided the feedback of not wanting to be part of the program have, they been removed from the map? O'Connor stated no, all parcels have been included on the map. Donahue stated at this point the PB is not looking to put all these parcels within the district, but find a zone that has enough area to accommodate a multi-family parcel. Members of the PB requested the MBTA locations in Ayer, Shirley and Littleton be added to the map.

Continuation of Special Permit, Ayer Road Village-Special Permit and Site Plan Review Hearing - Yvonne Chern & Wheeler Realty Trust, 203 Ayer Road. Opened at 7:38pm (see page 3 for complete details)

Protective (Zoning) Bylaw Amendments Hearing. Opened at 7:45pm (see page 4 for complete details)

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

This item was passed over this evening.

Adjournment

Donahue made a motion to adjourn the meeting at 9:22pm. Cook seconded the motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Cook, aye; Thornton, aye; Jennings, aye; and Cabelus, aye.

Signed: _____ Liz Allard, Clerk

EXHIBITS & OTHER DOCUMENTS

- Planning Board Agenda December 5, 2022
- Warrant Article, unnumbered §125-7 Agricultural uses
- Accessory entertainment activities, Adopted in part N.J.S.A. 54:4-23.1
- Letter from Rene and Christiane Turnheim Good Spirits Farm 106 East Bare Hill, Harvard, 01451 Harvard, 12/5/22, 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.
- Letter from Chris Green 102 Oak Hill Rd Westward Orchards, Manager
- Warrant Article, unnumbered §125-59 Town Center Overlay District

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 5, 2022

The public hearing was opened at 7:38pm 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, Arielle Jennings and John McCormack (Associate Member)

Others Present: Frank O'Connor (Director of Planning), Liz Allard (Land Use Administrator) and Brie Jones (Land Use Boards Administrative Assistant)

This hearing was continued from November 7, 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 is in the process of reviewing this application the applicant's representative has requested a continuance of the hearing to December 19, 2022.

Donahue made a motion to continue the hearing to December 19, 2022 at 8:30pm. Thornton seconded the motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Cook, aye; Thornton, aye; Jennings, aye; and Cabelus, aye.

Signed: _____ Liz Allard, Clerk

Harvard Planning Board

Protective (Zoning) Bylaw Amendments Hearing

December 5, 2022

The public hearing was opened at 7:45pm 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

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Others Present: Frank O'Connor (Director of Planning), Liz Allard (Land Use Administrator), Brie Jones (Land Use Administrative Assistant), Erin McBee (Select Board liaison to the Planning Board), Kerri Green, Joan Eliyesil (Harvard Press), Stephanie O'Keefe, Kara McGuire Minar (Select Board member), Mark Mikitarian and Mark Lanza (Town Counsel)

This hearing was continued from November 28, 2022 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, the Select Board liaison to the Planning Board, stated the information provided by Cabelus at the last public hearing pertaining to a definition for entertainment accessory use, has been shared with the Select Board. McBee requested the public hearing remain open for the Select Board (SB) to discuss comments and concerns raised at the November 28th public hearing at their meeting tomorrow night. McBee reminded everyone the amendment is for entertainment only and not for liquor license. McBee would also like additional time to provide a written responses to the Planning Board letter previously sent to the Select Board.

McCormack stated §§125-7A exempts agricultural uses and its accessory uses from the provisions within §125-20. §125-20 includes restrictions of lighting, noise, and the like for protecting abutters and other neighbors. McCormack feels residents will have a serious concern about noise and parking for events on agricultural properties. McBee stated that is one of the questions that needs more clarification from Town Counsel. Cabelus stated he had a concern similar to McCormack's in respect to §§123-3, the Right to Farm declaration, which states no license issued here under shall be entitled to the protections afforded pursuant to §§123-3. This echoes some the concerns McCormack has to §§125-20. The Board could consider that §§125-20 could also be exempted from any sort of protection that a license would issue under §§125-7A(3). Cabelus is concerned if an accessory entertainment license was issued someone could say they have all the protection under the Right to Farm where you would be doing things that are accessory of the things that come under the Right to Farm declaration, which would allow you, if you come under that declaration to operate under §§123-3 on holidays, weekdays, and weekends by day or night and shall include attendant incidental noise, odors, dust, and fumes associated with normally accepted agricultural practices. The language Cabelus drafted was to ensure the any accessory entertainment license that would be issued under §§125-7A(3) would not come under those protections that would generally be afforded normal agricultural activities under §§123-3. Cabelus thinks McCormack has brought up similar issues that may come up under §§125-20. Cabelus asked McBee to work §§125-20 into the framework as well.

With Town Counsel Mark Lanza now in attendance at the meeting, Cabelus asked if this hearing was not continued, hypothetical, could the Planning Board within 21-days make a finding based on subsequent conversations with the Select Board or does all information to base that recommendation have to be heard at the public hearing. Attorney Lanza stated the bases to make a recommendation, should the Board choose to make one, is only on what the Board hears and sees during the public hearing. Cabelus asked and Attorney Lanza agreed that the public hearing would need to be continued for the Board to receive any subsequent information.

Jennings stated she has reviewed the previous hearing and was asking for clarification that if this amendment were to pass that entertainment licenses with an alcohol license would be limited 30-days/year. Attorney Lanza clarified that the 30-day limitation is a State limitation on liquor licenses that if you are exceeding 30-days you need a seasonal or year-round license. How it relates to this amendment is entertainment typical involves alcohol, sometime it does not; the 30-day limitation is not a dividing line between what is or what is not accessory entertainment. Accessory entertainment could go on 365-days/year. Accessory in zoning context is that it is not the main use, it is incidentally to the main use, or associated with the main use and it on the same property as the main use.

Cook asked what framework is there to define when accessory use is no longer an accessory use? Cabelus read his suggested definition. Cook wonder how that is evaluated when a third-party entity is running an event on a farm compared to a small farm. McBee does have all the data in front of her so she cannot answer when activities at Carlson's would no longer be considered accessory. Cabelus asked hypothetically if this amendment passes what criteria will the Select Board impose when issuing a license. McBee stated the question would be are they still functioning as a farm by producing a product then the activity would be accessory, should those function cease, it would definitely not be accessory. Previous Agricultural Advisory Committee meetings proposed a formula for determining the primary use as a farm that could be incorporated into the Select Board findings for a license.

Jennings asked about the protection of abutters around farms; when applying with the Select Board does the Select Board consider the affects it may have on the neighborhood and allow the public the ability to voice their concerns during the process? McBee stated that those things are discussed and she wants everyone to be heard. McBee explained this bylaw is for a use and not to provide the safeguards that the Select Board would use during their license process. If the Planning Board want those same safeguards within the bylaw, then a Special Permit would be required, which would make this process extremely confusing. The goal of this amendment is to allow entertainment; if it is not allowed then those in Town that have yoga classes or other things on farms would not be allowed to do so.

Cabelus stated the Planning Board could put in safeguards and the Select Board would still have the ability to include them in the entertainment license as well, true? McBee stated yes and even if there was a Special Permit a license would still be necessary from the Select Board. McBee will share conditions the Select Board have used in past licenses. Cabelus asked about being able to revoke a license; does that language need to be included? Attorney Lanza stated no as it specifically provided for in State law.

Cabelus read into the record a letter from Christian & Renee Turnheim.

Kerri Green read a statement from Chris Green.

Joan Eliyesil, from the Harvard Press, stated she knows this is not about alcohol, but Attorney Lanza stated an annual license would be necessary for events over the 30-day if it is allowed in the AR district; do we know if it is allowed? Attorney Lanza stated it is allowed when entertainment is involved. Attorney Lanza further clarified that an entertainment license and liquor license are two separate licenses, with the liquor license requiring State approval.

Stephanie O'Keefe, 90 Oak Hill Road, agrees with letters read into the record. O'Keefe stated simply this amendment is being done for one person who already has a liquor license. As an abutter, O'Keefe could be listening to who knows what 365-days a year. Scary to think that the safe bubble her family has created would need to be abandon to find that place somewhere else, which is sad and would not be a simple decision. O'Keefe wondered if licenses were transferable? No according to Attorney Lanza; laws transferring liquor license from one to another would require hearing with the Select Board and State. Attorney Lanza further stated licenses are renewed each year.

Kara Minar asked if accessory farm stands have been defined? Attorney Lanza stated it has under §§125-7A(2); also under State law farm stands are exempt from certain regulations within zoning. Minar asked what defines a proper use for a farm stand; we are discussing whether or not the apples products purchased from another entity and labeled as a local farm stand, but wouldn't that apply to other products like dish towels and other things, is that accessory farm stand use? Attorney Lanza states yes and read from §§125-7A(2). The question would have to be asked if they are incidental to the primary use or is it a separate product sale going on.

Cabelus stated §§125-1 Purpose states "To promote the health, safety, convenience, morals and welfare of its inhabitants..."; he gets concerned personally when there is a lot of conversation about particular entities and particular individuals as this amendment is for the entire Town. Cabelus hopes the Planning Board members remembers this is to promote health, safety, convenience, morals and welfare of its inhabitants and not any particular individual or entity within the Town.

Add new section, 125-59 Town Center Overlay District

Donahue had revised the map to include other parcels within Town Center where other public events that include entertainment take place. Additional amendments to the map were made. Donahue will provide a revised map to both the Select Board and School's Superintendent tomorrow morning.

Jennings wondered if this proposed overlay district has the same concerns pertaining to noise, parking, and hours of operation as that for an agricultural entertainment license. Cabelus thinks the language has built in to it here as opposed to the agricultural uses above.

Cook made a motion to continue the hearing to December 5, 2022 at 8:31pm. Donahue seconded the motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Cook, aye; Thornton, aye; Jennings, aye; and Cabelus, aye.

Signed: _____ Liz Allard, Clerk