

Posted September 1, 2021 @ 4:45pm-MK

**TOWN OF HARVARD
ZONING BOARD OF APPEALS AGENDA
WEDNESDAY SEPTEMBER 8, 2021 @ 7:00pm**

Pursuant to Chapter 20 of the Acts of 2021, An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency and signed into law on June 16, 2021, this meeting will be conducted via remote participation. Interested individuals can listen in and participate by phone and/or online by following the link and phone number below.

Topic: UpperTH ProWebinar's Zoning Board of Appeals Zoom Meeting
Time: Sep 8, 2021 07:00 PM Eastern Time (US and Canada)

Join Zoom Meeting
<https://us02web.zoom.us/j/83425197984?pwd=VVBBT1VaNUdMdmxtcEZrekhuTmZ4UT09>

Meeting ID: 834 2519 7984

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7:00pm Special Permit Hearing – Ashley Owens with [RE]Architect, 13 Old Littleton Road, for addition of a deck to a pre-existing non-conforming structure

New Business: a) Elect Officers for Fiscal Year 2022

b) Approve Minutes

c) Approve Demand Letter to Fairway Partners & Default Notice Letter to Bond Safeguard Insurance Company

Old Business: a) Codify Letters sent to Pine Hill Village & Craftsman Village re: Requirements for Certificates of Occupancy

**NEXT SCHEDULED MEETING:
October 13, 2021**

The listing of matters are those reasonably anticipated by the chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

**HARVARD ZONING BOARD OF APPEALS
MEETING MINUTES
MAY 12, 2021**

Chair Chris Tracey called the meeting to order at 7:05pm, virtually in accordance with the Governor's Executive Order Suspending Certain Provisions of the Open Meeting Law, MGL Chapter 30A §20 under M.G.L. Chapter 40A and the Code of the Town of Harvard Chapter 125

Members Present: Chris Tracey, Theodore Maxant (departed @ 8:25pm), Steve Moeser, and Orville Dodson (departed @ 8:32pm)

Others Present: Liz Allard (Land Use Boards Administrator), Laura Moss, Dan Wolfe (Ross Associates, Inc.), Adam Meir, Charles Vander Linden, William Medeiros, Mike Carroll and Wayne Cornell

Variance Hearing – Adam Meier & Collen Yout, 24 Mill Road. Opened at 7:05pm. (See page 3 for complete details)

Discuss Revised Bond for Trail Ridge

Following-up on the discussion from the April 14, 2021 meeting, Chris Tracey stated the ZBA is unsure as to who is responsible for what at Trail Ridge. The site still has a number of items to be addressed before the project would be considered complete. There has been no word from Doug Pochini, representative for Fairway Partners, since the April meeting. Mr. Tracey suggested the Certificates of Occupancy for the remaining units be withheld until all outstanding items are verified complete. Steve Moeser asked if the bonding company has been put on notice that acclaim may be forthcoming. Liz Allard stated they had not. Charles Vander Linden, representing the Home Owners Association, stated there has been a transfer of the common facilities to the Trust.

After further discussing the ZBA options, Steve Moeser made a motion request the Certificates of Occupancy be withheld from the last three units until confirmation of compliance with the Comprehensive Permit is obtained and to notify the bonding company of a pending claim. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by a roll call, Theodore Maxant, aye; Steve Moeser, aye; Orville Dodson, aye; and Chris Tracey, aye.

Approve Minutes

Steve Moeser made a motion to approve the minutes of April 12, 2021 as amended. Orville Dodson seconded the motion. The vote was unanimously in favor of the motion by a roll call, Theodore Maxant, aye; Steve Moeser, aye; Orville Dodson, aye; and Chris Tracey, aye.

Discuss the definition of "Structure" within Chapter 125

Steve Moeser was hoping to have a better understand from a Zoning Board of Appeals point of view how a structure, such as a shed, relates to the setbacks within Chapter 125 Protective Bylaw. A building permit is not required for a structure less than 200 square feet according to the State's Building Code; however, that does address the Town's Protective Bylaw setbacks. According the Building Commission a structure, such as a shed, shall be setback the height of the structure; with unlimited number of these unpermitted types of structures allowed.

Chris Tracey detailed the definition of structure, which states "any construction or assemblage of materials in a fixed location..."; there is no definition for a "fixed location". Mr. Tracey suggested an amendment of the bylaw or interpretation by the Building Commission since Harvard does not have a section that details allowable structures in residential yards like other communities zoning bylaws do. The options available are to either amend the current language with §125-30E(2) to allow only one such structure or strike it in its entirety and require all structures, including sheds, obtain a building permit.

What about pre-existing non-conforming lot? Would a variance be required, because you would not be able to conform to §125-30E(2)? Mr. Tracey thinks that may be true. Dan Wolfe believes the definition needs amending in regard to “in a fixed location”. Mr. Tracy believes the Building Commission is looking at a fixed location to have a foundation. After discussing a number of examples and advice provided previously by Town Counsel on non-conforming lots and structures, Mr. Tracey and Mr. Moeser agreed to meet with the Building Commissioner to further discuss.

Adjournment

At 8:39pm Steve Moeser made a motion to adjourn the meeting. Chris Tracey seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye and Chris Tracey, aye.

Signed: _____ **Liz Allard, Clerk**

DOCUMENTS & OTHER EXHIBITS

- Town of Harvard, Zoning Board of Appeals Agenda, dated May 12, 2021
- Site Plan Colleen Yout 24 Mill Road, Harvard, MA, Jon No.: 33244, Plan No.: L-14313, prepared by David E. Ross Associates, Inc., March 2021
- Functional Aesthetic Design + Build – First Floor, Loft and Exterior Elevation Plans, 3.14.21
- 24 Mill Road – Back of House Photo, 2021-01-29
- DRAFT Zoning Board of Appeals Meeting Minutes, April 14, 2021 prepared by Liz Allard

Harvard Zoning Board of Appeals

Variance Hearing Minutes

Adam Meier & Collen Yout, 24 Mill Road

May 12, 2021

The hearing was opened at 7:05pm virtually in accordance with the Governor's Executive Order Suspending Certain Provisions of the Open Meeting Law, MGL Chapter 30A §20, by Chairman Chris Tracey under the Zoning Act, MGL Chapter 40A and the Code of the Town of Harvard, Protective Bylaw, Chapter 125.

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

Others Present: Liz Allard (Land Use Boards Administrator), Dan Wolfe (Ross Associates, Inc.), Laura Moss and Adam Meier

This hearing is for a Variance filed on behalf of Adam Meier & Collen Yout to allow for a reduced setback from the centerline of the roadway for an addition to an existing single-family home at 24 Mill Road, Harvard.

Dan Wolfe, President of Ross Associates, Inc., was present, along with the applicant Adam Meier. Mr. Wolfe explained the proposed addition would encroach on the 75' from the centerline of the right-of-way for the frontage along Mill Road. The existing structure is 86.1' from the centerline, whereas the proposed addition would place the structure at 62.1' from the centerline. Mr. Wolfe explained the hardship arises out of the land; an addition to the existing dwelling elsewhere would be difficult due to the topography of the lot, which in the rear dwelling is a steep slope down to Bower's Brook. The existing septic system is located on the left side of the dwelling and the well is located on the right. Mr. Wolfe stated there are many examples of homes along Mill Road that are closer to the roadway than this proposal. The total proposed floor area is less than 2,000 square feet.

Chris Tracey stated it is clear that an addition at the rear of the house is not suitable due to the slope, which descends 5' every 10'. Mr. Tracey questioned why an addition could not be located on the right side of the dwelling. Mr. Wolfe stated that is a well and steep slope in that area.

Theodore Maxant was amenable to the request for a variance as the application and site plan meets the intent of the Protective Bylaw.

In order to meet the 75' setback the rooms within the addition would need to be smaller. Steve Moeser stated the relief being sought is 13'; why not direct connect the existing roof line with the proposed roof line? Required height within the rooms of the addition would not be achieved if the roofs were connected due to the topography (existing eve is only 7.6' above grade). Mr. Moeser suggested the roof lines be reviewed again as there may be issues with ice dams, drainage and snow build-up in the future.

Wetland restrictions on the site were discussed. Liz Allard, Conservation Agent, stated the Commission approved a waiver last week to allow the addition with 50' of a wetland resource area. In regards to §125-45B(a), Adam Meier stated he explored a second-floor addition or tearing-down and rebuilding; either of these options would come at a significant cost, creating a financial hardship.

Steve Moeser made a motion to close the evidentiary portion hearing. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by roll call vote, Theodore Maxant, aye; Steve Moeser, aye and Chris Tracey, aye.

Steve Moeser made a motion to issue a Variance to §125-30E(4) of the Protective Bylaw to Adam Meier & Collen Yout at 24 Mill Road to allow for a structure at 62.1' from the centerline of the right-of-way as opposed to the required 75'. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by roll call vote, Theodore Maxant, aye; Steve Moeser, aye; and Chris Tracey, aye.

Signed: _____ Liz Allard, Clerk

DRAFT

**HARVARD ZONING BOARD OF APPEALS
MEETING MINUTES
JUNE 10, 2021**

Chair Chris Tracey called the meeting to order at 3:03pm, virtually in accordance with the Governor's Executive Order Suspending Certain Provisions of the Open Meeting Law, MGL Chapter 30A §20 under M.G.L. Chapter 40A and the Code of the Town of Harvard Chapter 125

Members Present: Chris Tracey, Theodore Maxant (departed at 3:58pm), Michael Lawton, Steve Moeser and Orville Dodson

Others Present: Liz Allard (Land Use Boards Administrator), Mark Lanza (Town Counsel), Jeff Hayes (Harvard Building Commissioner/Zoning Enforcement Officer), Denise Chiasson, Karen Wallace, Timothy Carey, William Mederios, Wayne Cornell, Mike O'Toole and Luisa O'Toole

Executive Session - Potential Litigation with Fairway Partners, LLC and others re: Trail Ridge Comprehensive Permit Project Infrastructure Security"

Chris Tracy made a motion to into executive session pursuant to Massachusetts General Law Chapter 30A, Section 21(a)(3) to discuss strategies with respects to potential litigation between Fairway Partners, LLC and other and the Zoning Board of Appeals and permit Land Use Administrator/Conservation Agent, Liz Allard, Town Counsel, Mark Lanza and Building Commissioner, Jeff Hayes to participate in the executive session and to reconvene the open session of this meeting in approximately 30 minutes. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by roll call vote, Theodore Maxant, aye, Michael Lawton, aye, Steve Moeser, aye; Orville Dodson, aye; and Chris Tracey, aye.

Once the executive session was ended Steve Moeser made amotion to return to the open session. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by roll call vote, Theodore Maxant, aye, Michael Lawton, aye, Steve Moeser, aye; Orville Dodson, aye; and Chris Tracey, aye.

After providing those in attendance with an overview of the process before the Zoning Board of Appeals, Chris Tracey answered questions as best he could under the circumstances.

Adjournment

At 4:06pm Steve Moeser made a motion to adjourn the meeting. Orville Dodson seconded the motion. The vote was unanimously in favor of the motion by roll call vote, Michael Lawton, aye, Steve Moeser, Aye; Orville Dodson, aye; and Chris Tracey, aye.

Signed: _____ Liz Allard, Clerk

DOCUMENTS & OTHER EXHIBITS

- Town of Harvard, Zoning Board of Appeals Agenda, dated June 10, 2021

OFFICE OF THE HARVARD ZONING BOARD OF APPEALS

13 AYER ROAD HARVARD, MA 01451 978-456-4100 EXT.321 www.harvard-ma.gov



September 8, 2021

VIA CERTIFIED MAIL AND FIRST-CLASS MAIL

Ronald B. Peabody, Manager
Fairway Partners, LLC
32 Sandy Pine Road
Templeton, MA 01468

RE: Trail Ridge Affordable Housing Development, Harvard, MA

Dear Mr. Peabody:

As you are aware, under the terms and conditions of the Comprehensive Permit for the above referenced project dated July 13, 2016, the project infrastructure was to be completed by July 13, 2019. Over two years have passed since then and the infrastructure is not completed.

A recent site inspection revealed that the following work remains to be completed:

1. Replacement of the broken frames to drain and sewer manhole structures including five (5) casting.
2. All castings shall be raised to finished grade prior to top course pavement installation and any concrete around the castings should be removed and disposed of properly.
3. Any concrete in the roadway shall be removed and patched with asphalt base or leveling course.
4. Sweeping of the entire street prior to the leveling course installation.
5. Installation of a tack coat and a leveling base course.
6. Installation of the roadway top course and asphalt berm as an integrated section and install new driveway aprons to meet smoothly with the new roadway top course of 1.5-inches, so that storm water does not flow toward the housing units or pond at the driveways. A tack coat shall be distributed evenly using a tack truck on the asphalt base course prior to installation of the top course. Create a clean saw cut at the locations where the driveway meets the street at the gutter line.
7. Installation of two (2) pedestrian ramps.

8. Installation of concrete bounds at the intersection of the street layout with Littleton County Road and at all site abutter lot lines that intersect with the property line and at areas directed by the Town's Conservation Agent for the open space easement lines.
9. Installation of two (2) street signs.
10. Removal of the existing wood guard rail and replace with a new wooden guardrail.
11. Re-establish the swale/ sub-drain at the edge of the roadway by removing debris and sediment.
12. Repair the two (2) double catch basins at the end of the stone swales so that frames are secured to the concrete structures without gaps.
13. Provide new sub-surface drains between the segmental retaining walls and housing units to prevent stormwater from accumulating against the housing units.
14. Remove any sediment and erosion control measures (silt fence, wattles, etc.) at the limit of work for the site.
15. Clean all catch basins, drainage manholes, and drainpipes of sediment.
16. Provide as-built plans of the project site to the Town of Harvard (PDF and CAD files) showing at a minimum edge of pavement, all utilities, inverts, pipe diameters, pipe material, all building unit locations, signs, swales final grades and as-built roadway and utility profile.
17. Installation of 5-foot wide sidewalk (5-foot wide).

If the above described work is not complete within thirty (30) days of your receipt of this letter, the Zoning Board of Appeals will take legal action to compel your company to complete the work and/or will seek access to the financial security that has been provided to complete the work.

The Board looks forward to your prompt response to this matter.

Thank you for your attention to this matter.

Sincerely,

Christopher Tracey,
Chair

Cc: Town Counsel
Town Administrator
File

OFFICE OF THE HARVARD ZONING BOARD OF APPEALS

13 AYER ROAD HARVARD, MA 01451 978-456-4100 EXT.321 www.harvard-ma.gov



September 8, 2021

VIA CERTIFIED MAIL AND
FIRST CLASS MAIL

Bond Safeguard Insurance Company
10002 Shelbyville Road – Suite 100
Louisville, Kentucky 40223

RE: Trail Ridge Affordable Housing Project, Harvard, MA; Bond No. 5019510

To whom it may concern:

The letter constitutes notice to your company by the Town of Harvard Zoning Board of Appeals (the "ZBA") that the Principal on the above-referenced bond, Fairway Partners, LLC has defaulted on its obligation under the Comprehensive Permit for the above-referenced development to complete the project infrastructure in a timely manner as required by the permit. A copy of the original Comprehensive Permit and the reissued Comprehensive Permit for the project are enclosed.

Therefore, the ZBA hereby asserts a claim under said bond and requests that your company take all necessary and appropriate action to cure said default.

For information about the details of this matter, please contact the Town's Land Use Administrator, Liz Allard at [insert contact information]

Thank you for your attention to this matter.

Cc: Fairway Partners, LLC

OFFICE OF THE HARVARD ZONING BOARD OF APPEALS

13 AYER ROAD HARVARD, MA 01451 978-456-4100 EXT.321 www.harvard-ma.gov



August 16, 2021

Pine Hill Village LLC
c/o Peter Cricones
P.O. Box 468
Tyngsboro, MA 01879

RE: Pine Hill Village Certificates of Occupancy

Dear Mr. Cricones,

Please allow this letter to serve as notification in regards to any requests for Certificates of Occupancy from the Town of Harvard's Building Commissioner.

The Harvard Zoning Board of Appeals (ZBA) is requiring that before any Certificate of Occupancy is issued that all pertinent aspects related to the dwelling(s) shall have been reviewed by Nitsch Engineering for compliance with the Comprehensive Permit. This includes, but is not limited to, location of dwelling(s), garages, driveway(s), signage, grading and utilities, as shown on the final approved plans.

In addition, you shall obtain sign-offs from relevant Departments, Boards, and Commissions stating you are in compliance with their individual permits or requirements in order to receive a Certificate of Occupancy. Those Departments, Boards and Commissions include Board of Health, Conservation Commission, Fire Department and the Treasure/Collector, who shall identify all taxes have been paid up as of the date of the request(s). The ZBA reserves the right to include additional Departments, Boards, and/or Commissions as necessary.

Should you have any questions or concerns please feel free to reach out to the Land Use Administrator, Liz Allard at the above number or by email at lallard@harvard.ma.us.

For the Board


Christopher Tracey,
Chair

Cc: Building Commissioner/Zoning Enforcement Officer
Board of Health
Conservation Commission
Fire Department
Treasure/Collector
Town Counsel
Town Administrator

Certified mail # 7020 1290 0000 25108201

OFFICE OF THE
HARVARD ZONING BOARD OF APPEALS

13 AYER ROAD HARVARD, MA 01451 978-456-4100 EXT.321 www.harvard-ma.gov



August 16, 2021

Craftsman Village Harvard
c/o Mark O'Hagan
5 Coachman Ridge
Shrewsbury, MA 01545

RE: Craftsman Village Harvard Certificates of Occupancy

Dear Mr. O'Hagan,

Please allow this letter to serve as notification in regards to any requests for Certificates of Occupancy from the Town of Harvard's Building Commissioner.

The Harvard Zoning Board of Appeals (ZBA) is requiring that before any Certificate of Occupancy is issued that all-pertinent aspects related to the dwelling(s) shall have been reviewed by Places Associates, Inc., for compliance with the Comprehensive Permit. This includes, but is not limited to, location of dwelling(s), garages, driveway(s), signage, grading and utilities, as shown on the final approved plans. A report of this review shall be submitted to the ZBA.

In addition, you shall obtain sign-offs from relevant Departments, Boards, and Commissions stating you are in compliance with their individual permits or requirements in order to receive a Certificate of Occupancy. Those Departments, Boards and Commissions include Board of Health, Conservation Commission, Fire Department and the Treasure/Collector, who shall identify all taxes have been paid up as of the date of the request(s). The ZBA reserves the right to include additional Departments, Boards, and/or Commissions as necessary.

Should you have any questions or concerns please feel free to reach out to the Land Use Administrator, Liz Allard at the above number or by email at lallard@harvard.ma.us.

For the Board,


Christopher Tracey,
Chair

Cc: Building Commissioner/Zoning Enforcement Officer
Board of Health
Conservation Commission
Fire Department
Treasure/Collector
Town Counsel
Town Administrator

Certified mail # 7020 1290 0000 2510 8195