

**HARVARD ZONING BOARD OF APPEALS
MEETING MINUTES
JANUARY 13, 2016
APPROVED: FEBRUARY 24, 2016**

Chairman Chris Tracey opened the meeting at 7:31pm in the Hapgood Room at 7 Fairbank Street under the Zoning Act Chapter 40A and the Code of the Town of Harvard Chapter 125

Members Present: Chris Tracey, Robert Capobianco (by Skype), Orville Dodson and Mike Lawton

Others Present: Liz Allard (LUB Admin), David & Lucy Alexander, Norman Hill (Land Planning, Inc), Brian Sundeen, Greg Roy (Ducharme & Dillis) and Joe Peznola (Hancock Assoc.)

Special Permit Hearing – Davis Alexander, 284 Ayer Road. Opened at 7:33pm (for detailed minutes see page 3)

Approve Minutes

Orville Dodson made a motion to approve the minutes of October 14 and November 10, 2015 as amended. Mike Lawton seconded the motion. A roll call vote was taken, Chris Tracy, aye, Robert Capobianco, aye; Orville Dodson, aye, Mike Lawton, aye.

Approve Invoice

Liz Allard stated the Board has received the following invoice for inclusion on the next bill warrant.

- Harvard Press - \$80.00

Chris Tracey made a motion to approve the above mentioned invoices. Orville Dodson seconded the motion. A roll call vote was taken, Chris Tracy, aye, Robert Capobianco, aye; Orville Dodson, aye, Mike Lawton, aye

Approve 2015 Annual Report

Liz Allard had previously distributed the draft annual report for the members review and comments. Chris Tracey suggested a minor amendment to the language. Robert Capobianco made a motion to approve the Zoning Board of Appeal's 2015 annual report as amended. Mike Lawton seconded the motion. A roll call vote was taken, Chris Tracy, aye, Robert Capobianco, aye; Orville Dodson, aye, Mike Lawton, aye.

Review & Approve Town Planner Job Description

Members had previously received the proposed job description for the Town Planner. Minor amendments were suggested by the Board. Chris Tracey stated he would like see language in regards to the Town sustainability in the future as pertains to natural resources. A letter will be sent to the Planning Board indicating this suggestion and the minor amendments to the description.

Review Chapter 125-32 Bylaw Amendment

Liz Allard had previously distributed revised language for the amendment to Chapter 125-32 in regards to the setbacks for septic systems. The previous amendment was unclear once deleted language was removed. The members present were in support of the revised text as shown on the document provided with the agenda for this evening.

Variance Hearing – Brian Sundeen, 35 Scott Road. Opened at 8:00pm (for detailed minutes see page 4)

Comprehensive Permit Final Plan Review CHOICE, 105 Stow Road

Joe Peznola, Director of Engineering for Hancock Associates, was present to represent the applicant. Greg Roy, Principal for Ducharme & Dillis, was present as the consultant for the

Zoning Board of Appeals. Mr. Peznola stated there are three issues that are outstanding from the Ducharme & Dillis letter of January 6, 2016. First, the applicant has agreed to change the proposed sidewalks for four feet (4') to five feet (5') in width. Second, Ducharme & Dillis had concerns with the drainage design, as there is a potential for drainage to become blocked by snow; Ducharme & Dillis suggested language be included in the Operation & Maintenance (O&M) Plan regarding snow removal around the sediment forebay to maintain positive drainage. Mr. Peznola stated the language of the O&M plan will be updated to include the language as suggested. Finally, the sediment forebay location has been shifted with vague grading; Ducharme & Dillis suggest the plan be revised to include grading, weir/overflow elevations, etc. Mr. Peznola stated the additional details will be provided and revised prior to construction.

Robert Capobianco asked about the comments made by the Fire Chief in an email dated November 10, 2016. Mr. Peznola stated a cistern has been added to the plans; as a result of reducing the sizes of the buildings the buildings are now going to have sprinklers. Details for the sprinkler system will be included with the building permit.

Mr. Peznola was unable to speak to the matter of a second means of egress, but would provide additional information from the architects. As for the height of the buildings, thirty-eight feet (38'), this had previously been discussed; the plan does not show the elevation at grade, so it is difficult to determine the proper height of the buildings. Ducharme & Dillis had not been provided any architectural plans, so they were unable to provide any comments.

Chris Tracey read the comments received from the Building Commissioner, dated 10/26/2015, and the Conservation Commission, dated November 16, 2015, into the record. Mr. Peznola stated he had not previously seen those comments.

Greg Roy stated since there was a reduction of impervious area and the stormwater management facilities remain unchanged, that there is no need to update stormwater report. Mr. Roy stated in general the plans meets the intent of the approve Comprehensive Permit. Mr. Roy stated he was not provided with the landscape plan, so he can only comment on the civil plan he reviewed. Mr. Tracey asked if the landscape plans are to be submitted for final review. Mr. Peznola stated they would be.

Mr. Capobianco asked to be provided with architectural plans that detail the elevations in comparison to the height of the buildings.

It was suggested a guardrail be added at end of drive to prevent snow being stored in the sediment forebay. Mr. Capobianco noted that available parking on the plan was insufficient in his opinion. Mr. Peznola noted the number of spaces was reduced when the number of bedrooms was reduced; as shown there are 1.8 spaces/unit, where as 1.5 spaces/unit is an acceptable number by building code standards. It was suggested that any additional parking that could be located on the site be added to the plan to account for times when parking is heavy, such as holidays. Additional spaces will not require the amending of the stormwater report; as previously mentioned, pavement had been reduced, but stormwater facilities remained the same.

With additional items to still be addressed Mr. Peznola agreed to continue the discussion to the February 10, 2016 meeting at 8:00pm.

Adjournment

At 9:07pm Mike Lawton made a motion to adjourn the meeting. Orville Dodson seconded the motion. A roll call vote was taken, Chris Tracy, aye, Robert Capobianco, aye; Orville Dodson, aye, Mike Lawton, aye.

Signed: _____
Liz Allard, Clerk

Zoning Board of Appeals

Special Permit Hearing Meeting Minutes

David Alexander, 284 Ayer Road

January 13, 2016

The hearing was opened at 7:33pm by Chairman Chris Tracey in the Hapgood Room at 7 Fairbank Street under the Zoning Act, MGL Chapter 40A and the Code of the Town of Harvard, the Protective Bylaw, Chapter 125

Members Present: Christopher Tracey, Robert Capobianco (by Skype), Orville Dodson and Mike Lawton

Others Present: Liz Allard (LUB Admin), David & Lucy Alexander

This hearing for a Special Permit filed on behalf of David Alexander for the addition to a pre-existing non-conforming structure at 284 Ayer Road, Harvard.

Robert Capobianco made a motion to waive the reading of the legal notice. Mike Lawton seconded the motion. A roll call vote was taken, Chris Tracy, aye, Robert Capobianco, aye; Orville Dodson, aye, Mike Lawton, aye.

David Alexander was present to request a continuance of the hearing as he is working on a revised plan, which will scale back the addition from its original proposal.

Mike Lawton made a motion to continue the hearing to February 10, 2016 at 7:30pm in the temporary town hall at 7 Fairbank Street. Orville Dodson seconded the motion. A roll call vote was taken, Chris Tracy, aye, Robert Capobianco, aye; Orville Dodson, aye, Mike Lawton, aye.

Signed: _____
Liz Allard, Clerk

Zoning Board of Appeals

Variance Hearing Meeting Minutes

Brian Sundeen, 35 Scott Road

January 13, 2016

The hearing was opened at 8:00pm by Chairman Chris Tracey in the Hapgood Room at 7 Fairbank Street under the Zoning Act, MGL Chapter 40A and the Code of the Town of Harvard, the Protective Bylaw, Chapter 125

Members Present: Christopher Tracey, Robert Capobianco (by Skype), Orville Dodson and Mike Lawton

Others Present: Liz Allard (LUB Admin), Norman Hill (Land Planning, Inc) and Brian Sundeen

This hearing for a variance filed on behalf of Brian Sundeen to allow for a reduced side setback for a newly installed swimming pool at 35 Scott Road, Harvard.

Orville Dodson made a motion to waive the reading of the legal notice. Mike Lawton seconded the motion. A roll call vote was taken, Chris Tracy, aye, Robert Capobianco, aye; Orville Dodson, aye, Mike Lawton, aye.

Norman Hill, Professional Engineer and Professional Land Surveyor from Land Planning, Inc., was present to represent the applicant, Brian Sundeen, who was also present. Mr. Hill stated the Town of Harvard's zoning requires a forty-foot (40') setback from the side lines on a basic lot. The contractor, Ferrari Pools, was unaware of the forty-foot (40') setback; according to Mr. Hill most Towns are much less. Mr. Hill stated he was hired after the pool was installed. The pool was installed thirty-feet (30') from the side property line. Mr. Hill stated the grounds for the variance is the topography of the land; explaining there is a ten foot (10') drop in elevation from the back of the house; if the pool was built in the location approved by the building permit it would have been on a slope and would have required a large amount of fill. Mr. Hill provided a photo of the existing site.

Mr. Hill stated the location of the pool will not affect abutting property values. Abutting property owners are in favor of the issuance of variance, as stated in letters received from them. The abutter to the south is unwilling to trade land in order to make the pool conform to zoning because his lot would no longer be conforming to zoning.

Robert Capobianco asked if the pool has a fence surrounding it. Mr. Hill stated it does. Mr. Capobianco asked if the distance to the side property line was measured from the edge of the fence, because he thinks that is a structure under the Town's zoning bylaw. Chris Tracey stated he spoke with the Zoning Enforcement Officer who has stated the fence is not a structure; the distance is measured from the edge of the water.

Mr. Capobianco asked if it was the contractor who applied for the building permit. Mr. Hill stated yes, however when the contractor went to the site and saw the topography he moved the location of the pool. Mr. Capobianco asked if the pool could have been moved over to comply with zoning. Mr. Hill stated it could, but it would have been at a cost of \$30,000-40,000.

Mr. Tracey asked if Ferrari Pools prepared the plan submitted by them for the building permit. Mr. Hill stated yes. Mr. Tracey concluded that Ferrari Pools must have known what the topography was like on the site because they prepared a plan for the building permit, yet when they went to the site to construct the pool they determined the topography was not suitable.

Mr. Tracey asked how far the pool is from front property line. Mr. Hill stated one-hundred and twenty feet (120'). Mr. Tracey asked if the gazebo is at the same elevation as the pool. Mr. Hill stated it is. Mr. Tracey asked if the gazebo was built at the same time as the pool. Mr. Hill confirmed with Brian Sundeen that it had been constructed at the same time as the pool. Mr. Tracey questioned as to why the pool could not have been located in the area of gazebo. Mr. Hill stated the pool could have been in the location of the gazebo, but it would have required more fill than for the gazebo.

Mr. Tracey read the Building Commissioners, Gabe Vellante, comments into the record. Mr. Tracey stated it is clear from Mr. Vellante's perspective that contractor failed miserably.

Mr. Capobianco asked if there was a written contract with the pool company. Mr. Sundeen stated yes, but not a detailed contract. Mr. Capobianco would like to see the contract. Mr. Capobianco would like to see topography be added to the plan submitted with the ZBA application, in order to get a better idea of how the land slopes off.

Mr. Tracey read Building Permit Requirements number 4 and 5 on the back of the Building Permit. These requirements detail the need to have the project laid-out by a licensed land surveyor or a registered professional engineer to establish zoning compliance.

Mr. Tracey believes at this point it would be difficult for the ZBA to know what the topography was prior to construction of the pool.

Mr. Hill noted that the wetlands on the property limited the location of the pool; had it been constructed in the location shown on the building permit plan it would have been on the one-hundred foot (100') wetland buffer zone line. Mr. Hill tried to make a case that a permit from Conservation Commission (Concom) may not have been issued. Liz Allard, who also serves as the Conservation Agent, stated the Commission would have issued a permit for this activity.

Mr. Capobianco would like to hear from the pool company and he would also like to see the wetland line on the plan. Mr. Tracey read the Concom letter in to the record. Mr. Tracey asked that information be provided for a variance pre-construction of the pool.

Mr. Hill added wetlands can also be a site specific variance.

With additional information required for the ZBA to make a decision, Chris Tracey made a motion to continue the hearing to February 24, 2016 at 7:30pm in the temporary Town Hall at 7 Fairbank Street. Orville Dodson seconded the motion. A roll call vote was taken, Chris Tracy, aye, Robert Capobianco, aye; Orville Dodson, aye, Mike Lawton, aye.

Signed: _____
Liz Allard, Clerk

DOCUMENTS & OTHER EXHIBITS

Comprehensive Permit Final Plan Review CHOICE, 105 Stow Road

- Letter from Ducharme & Dillis, RE: Peer Review Report #3, "The Elms" 40b Application, 105 Stow Road, Harvard MA, dated January 6, 2016
- Letter from Hancock Associates RE: Peer Review Report #3, "The Elms" 40b Application, 105 Stow Road, Harvard MA, dated January 13, 2016

Variance Hearing – Brian Sundeen, 35 Scott Road

- Building Permit Input Form, dated June 30, 2014
- Letter from Joerg Hermans, 36 Scott Road, dated 1/6/2016
- Letter from Peter Alfano, 31 Scott Road, dated 1/8/2016
- Letter from Stu & Amy Sklar, 39 Scott Road, dated 1/11/2016
- Undated photo of pool area at 35 Scott Road
- Comments from the Building Commissioner, Gabe Vellante, received December 28, 2015
- Letter from the Conservation Commission, dated January 11, 2016