

**HARVARD ZONING BOARD OF APPEALS
MEETING MINUTES
AUGUST 10, 2022
APPROVED: SEPTEMBER 15, 2022**

Chair Christopher Tracey called the meeting to order at 7:00pm, virtually in accordance with legislation S. 2475, an act relative to extending certain COVID-19 measures adopted during the Covid Pandemic state of emergency and under M.G.L. Chapter 40A and Code of the Town of Harvard Chapter 125

Members Present: Chris Tracey, Michael Lawton, Steve Moeser and Orville Dodson (Associate Member)

Others Present: Liz Allard (Land Use Boards Administrator) and Bruce Ringwall (GPR, Inc.) and Frank O'Connor (Director of Planning)

Variance Hearing –Luciano Manganello, 175 Littleton County Road. Opened at 7:03pm (see page 3 for complete details)

Pine Hill Village Update

Christopher Tracey had sought advice from Town Counsel pertaining to the release of Certificate of Occupancy at Pine Hill Village. Any action or inaction of the Town through the Zoning Board of Appeals (ZBA) and/or Building Commissioner could be appealed by the developer to the Department of Housing & Community Development's Housing Appeals Committee. If another Town entity, such as the Conservation Commission (ConCom), denies the release of the units the appeal would defer to the Department of Environmental Protection under the Order of Conditions issued by the ConCom. When asked how long these appeals could take for a result, Town Counsel stated about a year at a cost to the Town of approximately \$10,000. It appears to the ZBA the best option for the developer to keep this project going is to comply with all of the requirements of the permits that have been issued for the development.

Election of Officers

Steve Moeser made a motion to elect Chris Tracey as the chair of the Zoning Board of Appeals for the 2023 fiscal year. Michael Lawton seconded the motion. The vote was unanimously in favor of the motion by a roll call vote, Michael Lawton, aye; Steve Moeser, aye; Orville Dodson, aye; and Chris Tracey, aye.

Steve Moeser made a motion to elect Michael Lawton as the vice chair of the Zoning Board of Appeals for the 2023 fiscal year. Michael Lawton seconded the motion. The vote was unanimously in favor of the motion by a roll call vote, Michael Lawton, aye; Steve Moeser, aye; Orville Dodson, aye; and Chris Tracey, aye.

Steve Moeser made a motion to elect Liz Allard as the clerk for the Zoning Board of Appeals for the 2023 fiscal year. Michael Lawton seconded the motion. The vote was unanimously in favor of the motion by a roll call vote, Michael Lawton, aye; Steve Moeser, aye; Orville Dodson, aye; and Chris Tracey, aye.

Approve Minutes

Moeser made a motion to approve the minutes of April 13, June 29 and July 27, 2022 as drafted. Orville Dodson seconded the motion. The vote was unanimously in favor of the motion by a roll call vote, Michael Lawton, aye; Steve Moeser, aye; Orville Dodson, aye; and Chris Tracey, aye.

Adjournment

At 8:05pm Steve Moeser made a motion to adjourn the meeting. Orville Dodson seconded the motion. The vote was unanimously in favor of the motion by a roll call vote, Michael Lawton, aye; Steve Moeser, aye; and Chris Tracey, aye.

Signed: _____ Liz Allard, Clerk

DOCUMENTS & OTHER EXHIBITS

- Town of Harvard, Zoning Board of Appeals Agenda, dated August 10, 2022
- Residential Development Field Adjustments Driveway Slope & Alignment, 175 Littleton County Road, Harvard, MA owner: Luciano Manganella, JOB 181080 July 2020

Harvard Zoning Board of Appeals

Variance Hearing Minutes

Luciano Manganella, 175 Littleton County Road

August 10, 2022

The hearing was opened by Chair Christopher Tracey at 7:01pm virtually in accordance with legislation S. 2475, an act relative to extending certain COVID-19 measures adopted during the Covid Pandemic state of emergency a, and under M.G.L. Chapter 40A and Code of the Town of Harvard Chapter 125

Members Present: Chris Tracey, Michael Lawton, Theodore Maxant, Steve Moeser and Orville Dodson (Associate Member)

Others Present: Liz Allard (Land Use Boards Administrator), Bruce Ringwall (GPR, Inc.) and Frank O'Connor (Director of Planning)

This hearing is for a Variance filed on behalf Luciano Manganella to allow for the construction of a shared residential driveway to be greater than 8% as required by the Protective Bylaw Chapter 125-31B(5) and 125-39B Table 2 at 175 Littleton County Road , Harvard.

Chris Tracey disclosed the appearance of a conflict, which has been filed with the Town Clerk. The applicant's representative and the members of the Board agreed Mr. Tracey could participate in this hearing.

Bruce Ringwall, of GPR, Inc., stated a Special Permit from the Planning Board (PB) for a common driveway was obtained in 1999 and then modification in 2000 for four house lots including the one under this application. At the time of that approval the allowed grade of a driveway was a 10% grade. In 2020, the applicant filed to modify the Special Permit with the PB to relocate the house from the original design. As part of the request to modify the Special Permit the driveway was designed at an 8% grade to be compliant with the current bylaw, §125-31B(5). Mr. Ringwall explained in 2014 the PB changed the grade of common driveways from 10% to 8% and noted a 10% grading is similar to the grade of a wheelchair ramp. Mr. Ringwall stated in order to construct the driveway to the new house location a crossing of intermittent stream is required, along with the removal of twelve-feet of ledge to construct the house. Site grades were completed after the foundation of the dwelling was installed and revealed the garage was a foot higher than proposed. Mr. Ringwall detailed the driveway on the site plan along with the existing and proposed grade. Mr. Ringwall detailed the stormwater facilities on the site. Because the rise in the grade there would need to be four and a half to five feet of fill to achieve the 8% grade. The current grade is 9.86%. The Fire Department felt there was no issue with a nice gentle grade that exist on the site. Mr. Ringwall noted that areas along the common driveway are at a 10% grade, as designed back in 2000. As previously stated the Fire Department, along with the Planning Board, Conservation Commission and Theodore Maxant have all provide support of the requested variance. Chris Tracey confirmed the support provided by others as indicated by Mr. Ringwall.

Michael Lawton asked for confirmation that the existing driveway has a 10% grade. Mr. Ringwall stated it did along the common areas of the driveway for about 200 feet; the proposed area is a bit longer than that. Mr. Lawton stated there are two options for the development of this property, a variance is granted or an outrageous amount of fill will be necessary to achieve the required grade, which would create steeper slopes along the sides of the driveway.

Steve Moeser stated he viewed the site at which there has been a tremendous amount of site work, with lots of machinery and stock piles of material, hundreds of thousands of dollars have been spent on this site, with a lot of engineering into designing the site. Now the Board is being asked to grant a variance for a mistaken that occurred during construction. Mr. Moeser thinks the requirements for a variance are not being met; it's not the soils, it's because someone made a mistake on the ground. In addition, there is no evidence of a financial hardship. The applicant chose this area to develop the house. Mr. Moeser stated the Board can consider the support provided by others, but not it has no tie to the findings that the Board has to make a determination. Mr. Moeser asked for more detail about the site and the hardship.

Mr. Ringwall stated the site is at the toe of the Oak Hill and is an area that goes from a steep slope to a plateau and then down to the existing fire pond and intermittent stream. There is the ability to make the development work, but are constrained by the slope and soil conditions of ledge and ledge outcroppings that exist. Mr. Ringwall stated yes, a mistake by developer was made; they thought they had cleared enough ledge to meet the grades on the approved plans. The development is constrained by the slope and topography of the site. Mr. Ringwall disagrees that the conditions that have to be met under the variance are not there. This is a very unique space not like others in Town. Mr. Moeser stated the slope and the ledge have been overcome already by blasting and flattening out the area; not sure how that comes into play pertaining to the hardship, as that work has all been done and was planned to be done. Mr. Ringwall stated with the house already done to meet the requirements there would have to have a lot of fill and more impact on the natural environment. Mr. Tracey noted ledge effects the district generally, so it is not unique to this site, however the rare species habitat is not generally affected within the district. Mr. Tracey feels this is a bit different than others variance the Board has seen in similar situation.

Mr. Lawton stated he is not leaning one way or the other on the granting of a variance; there needs to be no other way the development can be done, however the ask here is significantly minimal that common sense may overrule the decision to not support the variance. Mr. Moeser does not think the applicant has proved the need for a variance. After briefly discussing the options available, Mr. Ringwall requested the hearing be continued in order to provide more information to support the variance.

Michael Lawton made a motion to continuation to September 14, 2022 at 7:45pm. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion by a roll call vote, Michael Lawton, aye; Steve Moeser, aye; and Chris Tracey, aye.

Signed: _____ Liz Allard, Clerk