

**HARVARD ZONING BOARD OF APPEALS  
MEETING MINUTES  
SEPTEMBER 14, 2022  
APPROVED: DECEMBER 28, 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, Orville Dodson (Associate Member) and Barbara Romero (Associate Member)

**Others Present:** Liz Allard (Land Use Boards Administrator), Bruce Ringwall (GPR, Inc.), George Triantis (Historic Commission), Robert Kody (Envision Homes), Debbie Kaegbein, John McCormack, Pradeep Khurana, Vamsee Krishina, Patricia Allen, Dan Wolfe (Ross Associates), Murali Mallem, John Farnsworth, Linnea Grealish, Michael Symula, Christopher & Jennifer Holmes, Beth Daigle, Tim Carey, Bill Mederios, Robert Allen, Wayne Cornell, Edna Mello, Pam Marston, Robyn & Lee Schamberg, Swati Sangwan and Chengwu Yang

**Special Permit Hearing – Pradeep & Marisa Khurana, 110 Warren Avenue.** Open at 7:01pm (see page 3 for complete details)

**Variance Hearing – Christopher & Jennifer Holmes, 31 Glenview Drive.** Opened at 7:35pm (see page 5 for complete details)

**Continuation of a Variance Hearing –Luciano Mangarella, 175 Littleton County Road.** Opened at 7:54pm (see page 7 for complete details)

**Harvard Historical Commission Request for Support to Expand Historical District to include 39 Massachusetts Avenue**

George Triantis, chair of the Historical Commission, was present to gain support of the Board pertaining to the article on the warrant for the Fall Town Meeting on October 1<sup>st</sup>. The article requests the expansion of the historical district to include the Bromfield House property. Mr. Triantis provide the details on how this property came to be owned by the Town of Harvard. Mr. Triantis stated the property should be included on the historical district for three reasons: historical significance, architectural significance and significance of location. Mr. Triantis stated the Mass Historical Commission has reviewed and endorsed the proposal. Mr. Triantis urged members of the public to attend the Historic Commission's public hearing scheduled for tomorrow at 7pm. Steve Moeser made a motion to support Historical Commission's endeavor to include Bromfield property as part of the historical district. Orville 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.

**Trail Ridge Update**

Town Counsel Mark Lanza stated the judge has determined the funds being held by the court from the sale of the final unit shall be returned to Normandian Group and the Trail Ridge Home Owners Association (HOA) is to be a party to the lawsuit. Attorney Lanza advised the Board to vote to rescind the reduction of the bond that was voted on in October of 2020, but never requested. Attorney Lanza further advised the bonding company be notified that a claim may be necessary in order to complete project.

Chris Tracey requested Attorney Lanza prepare the appropriate language to rescind the vote and notifying the bonding company that the applicant is in default.

John McCormack, a resident at Trail Ridge, asked what the scope of this conversation is, what is the role of the Board and is there a pending suit. Mr. Tracey explained there is ongoing litigation; previously the Board had heard from the HOA at Trail Ridge that there is still outstanding infrastructure to be completed on the property as the units were coming to completion, therefore it was decided to withhold the Certificates of Occupancy. Mr. Tracey explained differences between the contractor and the developer. Nothing has happened to resolve outstanding issues and Fairways Partners have been completely silent this entire time. Fairways Partners is obligated to deliver a final set of plans as required by the Comprehensive Permit. Mr. Tracey stated this is a complicated situation that may result in final work being completed by either by the Town, Fairway Partners or the HOA.

#### **Approve Minutes**

Steve Moeser made a motion to approve the minutes of August 10, 2022 as drafted. 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.

#### **Pine Hill Village Update**

Liz Allard explained she had been on site recently to review compliance with the status report sent to the developer, Peter Cricones, in July. Ms. Allard estimates about 50% of the work has been completed. An updated status report is being developed based on the most recent site visit.

#### **Adjournment**

At 8:53pm Steve Moeser made a motion to adjourn the meeting. 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; and Chris Tracey, aye.

Signed: \_\_\_\_\_ Liz Allard, Clerk

#### **DOCUMENTS & OTHER EXHIBITS**

- Town of Harvard, Zoning Board of Appeals Agenda, dated September 14, 2022
- Site Plan Pradeep & Marisa Khurana, 110 Warren Avenue Harvard, MA Job No.: 33383, Plan No.: L-14572, prepared by David E. Ross Associates, Inc., 9/14/2022
- Structure Location Plan in Harvard, MA, Plan Prepared for Christopher Holmes & Jennifer E. Holmes, 31 Glenview Drive, Harvard, MA 01451, Plan No. 22-17-CPP, prepared by Farnsworth Engineering Associates, 2022-07-06

## **Harvard Zoning Board of Appeals**

### **Special Permit Minutes**

#### **Pradeep & Marisa Khurana, 110 Warren Avenue**

**September 14, 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 and under M.G.L. Chapter 40A and Code of the Town of Harvard Chapter 125

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

**Others Present:** Liz Allard (Land Use Boards Administrator), Robert Kody (Envision Homes), Pradeep Khurana, and Dan Wolfe (Ross Associates)

This hearing is for a Special Permit filed on behalf of Pradeep & Marisa Khurana for an addition to a pre-existing non-conforming structure at 110 Warren Avenue, Harvard.

Dan Wolfe, of Ross Associates, stated the property and the structure at 110 Warren Ave are pre-existing non-conforming. The lot itself is has 131.12 feet of frontage, with 1.4 acres of land. The structure itself is non-conforming to setbacks under 125-30E(7) to the W-district, which predates the adoption of the Protective Bylaw. The proposal includes the conversion of the existing garage into a family room, the addition of a new garage, expansion of the rear deck and the addition of a front porch structure. The existing garage is 29.1 feet from the property line, with the new garage being 27.6 feet, but is conforming to the side yard setback, which is 20% of the lot width (26.6 feet). The expansion to the rear deck does not bring a structure closer to the W-District boundary at 46 feet. Mr. Wolfe feels this request would have been allowed prior to the lot and structure becoming non-conforming. Mr. Wolfe met with the Board of Health (BOH) last night, who have approved the poly-barrier and retaining wall to protect the existing septic system. A four-bedroom deed restriction is required by the BOH. The Conservation Commission (ConCom) is meeting tomorrow night to discuss this location. Mr. Wolfe stated the 2007 Zoning Board of Appeals decision included a condition of a 15 foot wide no disturb area, which has been added to the plan.

Mr. Wolfe addressed comments received from the Bare Hill Pond Watershed Management Committee stating increase in stormwater will be addressed by the two-foot-wide recharge trenches on either side of the proposed garage, as well as in front of the proposed porch. The expansion of the deck will remain pervious. Any future change to the driveway from its current condition of gravel will require approval from the ConCom. In regard to the use of fertilizers and chemicals, a condition pertaining to the State regulations will be added to the decision.

Steve Moeser questioned the proposed setback of the new garage, as it is now closer to the property line than the existing garage. Mr. Wolfe stated that was correct, however the proposed garage still conforms to the side yard offset (26.6 feet), which is 20% of the lot width. Mr. Moeser asked about the height of the proposed garage and having to set it back from the property line by that height. Mr. Wolfe explained, as previously confirmed by Town Counsel, a new nonconformity can be created without a variance. An existing nonconformity (grandfathered) can be intensified with a finding and special permit from the Board.

Michael Lawton asked if the driveway was being widened. Mr. Wolfe stated it was to allow for the approach into the bay closest to the house. Mr. Lawton asked what was the reasoning for the 15 foot no

disturb area. Mr. Wolfe could only speculate that the ConCom did not want the trees disturbed in that area to maintain a vegetated barrier between this property and the abutting conservation land.

Michael Lawton made a motion to close the evidentiary portion of the meeting. 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.

The Board discussed the necessary conditions for the issue of the Special Permit which include:

- Any modification to the driveway, existing and/proposed, shall require a filing with the Harvard Conservation Commission;
- The Four-Bedroom Bedroom Deed Restriction issued by the Harvard Board of Health shall be recorded at the registry of deeds in association with this decision;
- Within the 100-foot buffer zone, no person shall use a registered pesticide in a manner that is inconsistent with its labeling or other restrictions imposed by M.G.L. Chapter 132B and its regulations promulgated at 333 CMR;
- The Order of Conditions issued by the Harvard Conservation Commission shall be recorded at the registry of deeds in association with this decision; and
- The fifteen (15) foot no disturb zone on the Northwest side of the house shall be maintained in perpetuity.

Steve Moeser made a motion to issue a Special Permit to Pradeep & Marisa Khurana for an addition to a pre-existing non-conforming structure at 110 Warren Avenue to include the above conditions, as well as standard conditions under §125-46 of the Protective Bylaw. 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; and Chris Tracey, aye.

Signed: \_\_\_\_\_ Liz Allard, Clerk

## **Harvard Zoning Board of Appeals**

### **Variance Hearing Minutes**

#### **Christopher & Jennifer Holmes, 31 Glenview Drive**

**September 14, 2022**

The hearing was opened by Chair Christopher Tracey at 7:35pm 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, Steve Moeser, Orville Dodson (Associate Member) and Barbara Romero (Associate Member)

**Others Present:** Liz Allard (Land Use Boards Administrator), John Farnsworth, Christopher & Jennifer Holmes and Michael Symula

This hearing is for a Variance filed on behalf Christopher & Jennifer to allow for a reduced setback as required by the Protective Bylaw Chapter 125-30E(3) for an addition to a pre-existing non-conforming structure thereby increasing the non-conformity 31 Glenview Drive, Harvard.

John Farnsworth stated the request for a variance is being sought in order to allow for a proposed deck with associated stairs that increases the existing non-conformity of the existing structure. Mr. Farnsworth stated the topography of the land required the house to be constructed below street level on a slab, with a foundation above grade and walkout basement to the rear. The existing deck is in rough shape and does not have stairs.

Christopher Holmes, the owner, read a prepared statement into the record. Mr. Holmes stated when he purchased the home there was an enclosed porch that he had safety concerns with, including the stairs associated with it. After purchasing the home Mr. Holmes attempted to repair the stairs however the fell apart causing him to remove them. Shortly thereafter a tree fell and caused damage the existing door, which was unreplaceable due to the size and conditions of the existing doorframe. The application before the Board this evening is to rebuild the deck and provide an additional safe egress from the home. Currently Mr. Holmes only has one exit out of the home. Mr. Holmes stated the only feasible solution is to replace the deck and create an additional safe egress from the home. Mr. Holmes does not view this as a self-created hardship as the house was compliant when built. Due to the topography of the lot a compliant deck could not be done without significant planning or cost. The proposal is a minor increase in the same location. Neighbors have been contacted and have no issues with the proposal. As proposed this is the only location to construct a safe additional egress from the structure, as using the garage door in an emergency is not a safe egress. Without the egress access to the deck would be limited by having to go around the house or provide a steep set of stairs. Mr. Holmes stated as proposed this would not negatively impact the neighborhood and no neighbors would be able to view it from their properties.

Chris Tracey asked about evidence pertaining to the requirements under 125-45B(1)(b). Mr. Farnsworth did not realize a topography map would be necessary, but added that the hardship is not having a second egress. Mr. Tracey asked why the proposed deck and stairs could not be done in a manner that is compliant. Mr. Farnsworth stated they could with a lot of effort, as there is a significant elevation change between the stairs and the area in which they land. Mr. Tracey asked why the stairs cannot be placed at the corner of the garage and sunroom. Michael Symula, the architect, stated he could have designed a door out of the sunroom to the deck, but that still would have created a non-conformity. When asked where the previous stairs were located, Mr. Holmes stated they were parallel to the garage; he could not

demonstrate where exactly they were previously, but knows the landing was past where the proposed stairs would land.

With another hearing to open Michael Lawton made a motion to continue this hearing to 7:55pm this evening. 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; Orville Dodson, aye, and Chris Tracey, aye.

At 7:55pm Mr. Tracey re-opened this hearing.

Steve Moeser does not understand why this cannot be designed to not encroach on the setback, by simply adding 5-6 more risers. Mr. Farnsworth stated it would most likely be ten more risers, whereas the stairs as proposed are only 4-5 stairs. Mr. Holmes reiterated the topography of the land and how the back of the house drops off dramatically. Mr. Farnsworth stated he would provide a plan detailing the topography of the land.

When asked Mr. Symula stated extending the deck across the back of the house would create a staircase and landing that would interfere with the basement egress. Michael Lawton stated he was struggling with knowing this application cannot be done any other way. Both Orville Dodson and Barbara Romero agreed with Mr. Lawton.

After discussing the need for a unanimous vote for a variance and the inclination that voting members would be inclined to deny the application without further evidence, Mr. Farnsworth requested the hearing be continued. The applicant and his representatives where reminded that all of the requirements under 125-45B(1) will need to be met in order for the Board to vote in a positive manner for a variance.

Steve Moeser made a motion to continue the hearing to October 12, 2022 at 7:00pm. 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.

Signed: \_\_\_\_\_ Liz Allard, Clerk

## **Harvard Zoning Board of Appeals**

### **Variance Hearing Minutes**

#### **Luciano Manganella, 175 Littleton County Road**

**September 14, 2022**

The hearing was opened by Chair Christopher Tracey at 7:54pm 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, Steve Moeser, Orville Dodson (Associate Member) and Barbara Romero (Associate Member)

**Others Present:** Liz Allard (Land Use Boards Administrator) and Bruce Ringwall (GPR, Inc.)

This hearing was continue from August 10, 2022 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.

Bruce Ringwall, of GPR, Inc., requested the application before the Board be withdrawn without prejudice.

Steve Moeser made a motion to accept the request to withdraw the application without prejudice. 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; and Chris Tracey, aye.

Signed: \_\_\_\_\_ Liz Allard, Clerk