

**HARVARD PLANNING BOARD
MEETING MINUTES
SEPTEMBER 12, 2022
APPROVED: FEBRUARY 6, 2023**

Chair Richard Cabelus called the meeting to order at 7:01pm 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, Doug Thornton, and John McCormack (Associate Member)

Others Present: Frank O'Connor (Director of Planning), Liz Allard (Land Use Administrator), Franklyn Carlson (Carlson Orchards), Valerie Hurley (Harvard Press), Bruce Ringwall (GPR, Inc.), Dan Wolfe (Ross Associates, Inc.), Kerri Green, Steve Moeser, Matt Cote (Beals & Thomas), Yvonne Chern, and Adam Costa, Esq.

Public Comment

Franklyn Carlson, resides at 112 Littleton County Road, and his orchard at 115 Oak Hill Road. He asked the Planning Board to give consider bring the proposed Bylaw amendment to allow farms to have entertainment. He said his business is limited to 30-days annual while the tap room is open year-round. Currently his business cannot do anything with entertainment without a Special Permit.

Multi-Family District bylaw letter to property owners

Chair Cabelus referenced a letter from Planning Board sent to property owners of multi-family parcels. The letter is regarding the Department of Housing and Community Development's (DHCD) mandate about multi-family housing requirements in proximity to Massachusetts Bay Transit Authority (MBTA) rail stations. O'Connor has sent out letters to some owners and has had some feedback which included a single negative response to the letter out of all the letters sent to date. O'Connor would like permission to work with assessors to determine all of the known multi-family units within Town to get letters out to all of them. Cabelus agrees that all owners of multi-family be notified. John McCormack wonder what the next step would be once the residents are notified, adding the Town has until December of 2025 to meet the requirements. Donahue explained the existing bylaw for multi-family district, but Town has not mapped any multi-family parcels. Cook and Cabelus both said Harvard is mapping to get show where multi-family housing has already been created. Arielle Jennings asked if there were any negative impact for a person to zone their parcel multi-family. Jennings asked if Harvard did this first stage and met the goal 100% would we still want to map additional areas? Donahue said Assessors can tell us if the multi-family zoning would affect value or taxes. Donahue added Town has much work to do to meet the deadlines.

O'Connor said he exchanged eMails with DHCD to determine what would happen if there was a catastrophe – not really getting an answer in regards to a Chapter 40B development if the Comprehensive Permit is tied to the land or the developer? Cabelus asked members if there were No objection to getting the letter out to all of the prospective property owners.

Thornton asked is the next step about what does Harvard need to do to be in agreement as to what is being mandated. Cabelus stated O'Connor is the point of contact and any obstacles may need to be discussed with the Board. O'Connor will share the exchange with the director at the Chelmsford Housing Authority.

Continuation of a Special Permit, Ayer Road Village-Special Permit and Site Plan Review - Yvonne Chern & Wheeler Realty Trust, 203 Ayer Road. Opened at 7:35pm (see page 4 for complete details)

Special Permit & Driveway Site Plan Review – Francoise Crook, Lot 5 Prospect Hill Road (Map 11 Parcel 22.1 portion of). Opened at 8:35pm (see page 7 for complete details)

Proposed Protective Bylaw Amendment §125-7 Agricultural Uses

Cabelus introduced a prospective Protective Bylaw Amendment §125-7 Agricultural Uses drafted by town counsel for the Select Board. The genesis of this is the Select Board have been issuing licenses and cannot do so on an annual bases, but can do so on a daily basis for only X-amount of days. Select Board is hoping to streamline the process to allow anyone who applies under agricultural use. Cabelus stated the Ag Commission is meeting on the 27th September to discuss. McCormack asked what bylaw currently is this under. Allard said there is no bylaw at this time and this language would be for it to be an annual permit rather than a thirty-day permit. Cook not sure who supports what here and if Planning Board were able to wrap the Town Center overlay district. Allard explained they cannot be combined because it is two different uses. Allard said the Select Board does have the right to instruct Planning Board to hold hearings on an issue, but the Planning Board is not required to support that amendment. Thornton said it is not just to make it streamlined for the Select Board. Thornton said it's allowing for events each and everyday under this use and he is surprised more public are not here to make comments. Donahue asked how many events are being had be Carlson, Five Sparks and General are more than 30 per year. Thornton said Carlson does just 30 events a year but other businesses were doing more without knowing the law. Donahue asked if Ag zone issues were outside Planning Board's jurisdiction because of zoning. Allard clarified the AR district that residential use is allowed in the agriculture district. Kerri Green zoning exemptions only apply to primary Ag use, and that entertainment is not a primary Ag use. Donahue comment this is the 3rd PB meeting in a row with a dumpster fire that Select Board needed the PB to tackle right away. Donahue said multi-family needs our attention. Donahue commented how many more fires before Planning Board is allowed to work on the things that need to be addressed. Donahue said Town Center is important. Cabelus asked Allard to find out what the official status is on this item from Select Board. Donahue tack on a request for a vote from Select Board. Thornton suggested for someone from the Select Board to attend the meeting when discussing the topic.

ZBA Request for Comments

Cabelus asked the Planning Board if there were any comments to share with the Zoning Board. Allard explained that the Zoning Board of Appeals may ask for comments from Planning Board but that Planning Board is not mandated to respond. The Planning Board believes the variance for 31 Glenview Drive should not be approved. Donahue made a motion to provide comments to the Zoning Board of Appeals that the variance application should not be approved at 31 Glenview Dr. Thornton seconded the motion. The vote was unanimously in favor of the motion by roll call vote Donahue, aye; Cook, aye; Thornton, aye; and Cabelus, aye.

Approve Minutes

Cabelus asked if any member had questions or concerns with the minutes for May 2, 2022. Hearing none, Donahue made a motion to approve the minutes of May 2, 2022 as submitted. Thornton seconded the motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Cook, aye; Thornton, aye; and Cabelus, aye.

Board Member Reports

• Representatives & Liaisons Updates

- **MRPC** Thornton a lot of talk about items on the agenda, basically read from document Donahue had shared with us. \$8 Billion over 8 years for safe streets grants. Transportation Advisory Committee is trying to figure out how to apply for those grants without assistance. Donahue will look into it. Thornton said there was no discussion about the second round of ARPA funds.
- **CPC** – Thornton said Charles Oliver discussed an increase of the current surcharge from 1% to 3%. This would triple the town's funds that could be used toward the recreation facility.
- **Climate Initiative Committee** – public hearing on climate action plan on September 8th; three presentations were given but Thornton has not had an opportunity to do so nor Donahue, but they will circle back.
- **Park & Recreation** – Donahue let them know Jennings is going to be the new PB rep. There was discussion about converting baseball field being converted to a softball at Ryan fields. She added it was mentioned to use CPC funding.
- **Open Space Committee** – Cook said they looked at different town owned parcels. He said phase 1 is find location for a temporary field. He said phase 2 find a location for an additional field and that phase 3 is funding. Cook said wetlands would need to be delineated.

• Community Matters – none this evening

Adjournment

Donahue made a motion to adjourn the meeting at 9:12pm. Thornton seconded the motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Cook, aye; Thornton, aye; and Cabelus, aye.

Signed: _____ Frank O'Connor, Clerk

EXHIBITS & OTHER DOCUMENTS

- Planning Board Agenda SEPTEMBER 12, 2022

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

September 12, 2022

The public hearing was opened at 7:30pm 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 22 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 14, 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), Bruce Ringwall (GPR, Inc.), Yvonne Chern (applicant) Lou Russo (Wheeler Realty Trust), Attorney Adam Costa representing applicant.

This hearing was continued from July 18, 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.

Bruce Ringwall, of GPR, Inc., representing Yvonne Chern for the badminton facility and Lou Russo for Wheeler Realty Trust, along with Adam Costa, their legal representative. Cabelus mentioned advice from Town Counsel on the project. Ringwall introduced Attorney Costa to respond to that advice. Costa mentioned applicability and questions about the bylaw §125-52B basic qualification are not complicated. As you get further into the bylaw the incentives G(3) the findings of the purposes, will result in one or more of the incentives – not a guarantee – it is sole up the Planning Board. Costa read the section and, in this case, based on his review of the plans this is the project that meets 125-52G(3)(b) curb cuts, connectivity, shared parking. He also believes they are meeting 12t-52G(3)(a). Costa stated the question was not broad enough to allow Attorney Lanza to answer the question. Costa provided his take on the incentives allowed related to the three criteria to access a Special Permit in the Ayer Road Village. Costa felt criteria B and A were both met. He said B was met by single curb cut / shared parking / connectivity to outside uses was met in the proposal and that A was met with preservation of agriculture and natural resources. Costa felt the proposed cluster development would protect areas that would otherwise be developed.

Allard asked about preservation under A and what that preservation would be. Ringwall showed on a map the areas around the proposed development that were being preserved. Cook asked about connectivity and shared pedestrian accessways to multiple lots and adjacent lots. Cook said he was struggling to see how the proposal met Criteria B. Costa said it the shared access and parking for multiple buildings helped with walkable distances between buildings. Costa said the proposal has a single curb cut and share parking to serve three buildings, meeting Criteria B.

Donahue has problem with connectivity. She said she is uncomfortable with unknowns regarding other two buildings and that the whole plan is not developed, specifically details on septic system. She said she is uncomfortable that the whole plan is not developed. Costa appreciated the concern and has seen bylaws like this that are referred to a master plan bylaw, the idea there are other components to be operated by different entities where you get the master plan approved and then further worked through

when those areas are to be developed. Costa said the Planning Board can define what these buildings could be used for in the future by not granting a permit. He added that as the approving authority the Planning Board have ability to claw back the permits because you control what can occur on the site.

Cabelus read §125-52G (1) and asked Costa how you get to mix-use when we do not know what will be in the other 2 buildings. Costa said he does not read that section entirely the same way Cabelus does. Costa said it does not indicate that you need to qualify as a mixed use. Cabelus stated “and” to get you the incentives. Ringwall stated and means one or the other and both. Ringwall talked about G (2) explaining that Board had sought advice from Lanza which resulted in amending the application to include 125-37 major buildings to allow for a building over 10K square feet. Cabelus said if applicant were to get the incentives it would require mixed use. Cabelus mentioned the original filing for the Special Permit, then later amended to include 125-37. Cabelus said 125-52 specifically allows 125-13, but not 125-14. Cabelus said racket sports are under 125-14D. He read that under 125-13 states “outdoor recreation” limited to daylight hours only. Cabelus said ARV-SP was intended to work with medium scale commercial uses to maintain the intent of village like development. Ringwall discussed various uses listed under 125-13, and mentioned part Z mixed use village development as a medium scale use. He added the buildings do not qualify under G for major building, but do qualify for ARV-SP under G (2) connectivity. Ringwall said they are not asking for development under §125-13Z. Ringwall explained this bylaw was not available when the lot across the road were devolved. Ringwall said the developer could develop this area by making multiple lots. He is saying that the ARV-SP does not say it can only be medium scale uses under §125-13. Costa reads it the way Ringwall does. Costa said it is not unusual in a section like applicability that the Special Permit triggers another Special Permit.

Cook is really enjoying this conversation as an architect, and expressed his surprise that applicant cannot replace terms as she / he chooses to do so. Liz Allard gave input on the approval of this bylaw and addition §125-13Z at the same town meetings. Allard felt that they ARVSP were meant to be tied together. Cabelus serious concerns about Ayer Road Special Permit threshold not being met.

Ringwall in 2004 when adopted they were not looking to eliminate the uses under §125-12 and §125-14. He disagreed with Allard on the word village being left off. In other places it states mix used development. Russo agreed with Ringwall that all commercial uses are allowed and pick up off the developments across the road. Russo said a resolution to this project is needed and Cabelus agreed. Cabelus asked if the applicant were understanding the issues that have been raised this evening by the board this evening in section 13, not whether the applicant agreed or disagreed. Ringwall said yes on behalf of the applicant. Allard stated it would have been helpful to have Attorney Lanza present to advise the board as they are fairly new. Costa agreed that it would have been helpful to work through these issues with counsel present. Cabelus want to address the issues with applicability and were go from here. Post this meeting to reach out to Attorney Lanza to have a dialogue with Attorney Costa and Ringwall.

Staci Donahue said the planning board is not against the project, but must follow the rules. Thornton commented about the 125-37 and how the architecture fits. Cabelus said Design Review Board will be involved soon.

Liz Allard asked the Chair to hear Mr. Matt Cote, Beals + Thomas. Cote gave an overview as to where proposal is at since August 18th and Cote has a number of comments to be resolved by applicant. Cote asked the Chair in the interest of time is there anything specific the board wants addressed. Nothing specific requested from Planning Board members. Cote still has questions about how the buildings B & C with undefined uses. Cote has unanswered questions about traffic, turn arounds, photometric; water and sewer details expect to see them further along than there currently are; the joint septic system originally proposed, now separate systems are being proposed. Standard things fire department approval. For building C parking is in front the building and could be on the side of the building as opposed to along Ayer Road. Cote mentioned a residential unit included within the badminton facility and he not sure if special permitting were necessary. Cote added that for the most part storm water has been addressed.

Ringwall said his team is working on the issued raised by Cote. Steve Moeser encourages the design review get going as it may affect the site plan.

Donahue made a motion to continue the hearing to September 19, 2022 at 7:30pm. 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: _____ Frank O'Connor, Clerk

Harvard Planning Board

Special Permit & Driveway Site Plan Review

Francoise Crook, Lot 5 Prospect Hill Road (Map 11 Parcel 22.1 portion of)

September 12, 2022

The public hearing was opened at 8:35pm 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 22 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 14, 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), Dan Wolfe (Ross Associates)

This hearing for a Special Permit and Driveway Site Plan Review filed on behalf of Francoise Crook for the approval of a Type 2 hammerhead lot and associated driveway at Lot 5 Prospect Hill Road (Map 11 Parcel 22.1 portion of), Harvard.

Cabelus asked if Dan Wolfe of Ross Associates, Inc., representing the applicant wished to be heard. Wolfe said proposal was reviewed by Mark Piermarini. Wolfe said he received instructions to revise the plan as requested and submitted the revised plan with those updates on 30th August 2022. Wolfe said Piermarini reviewed the changes submitted and found them acceptable. Wolfe asked if the Planning Board had any questions. No comments from the Board. Cabelus said the Planning Board had received that correspondence from Piermarini and the revised proposal seems in order. No comments from the members or general public. O'Connor had no concerns.

Donahue made a motion to issue a special permit for the amended proposal and close the hearing also. Thornton seconded the motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Cook, aye; Thornton, aye; and Cabelus, aye.

Signed: _____ Frank O'Connor, Clerk