

**HARVARD ZONING BOARD OF APPEALS
MEETING MINUTES
OCTOBER 14, 2020
APPROVED: APRIL 14, 2021**

Chair Chris Tracey called the meeting to order at 7:01pm, 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, Steve Moeser, Theodore Maxant, Orville Dodson and Michael Lawton

Others Present: Liz Allard (Land Use Boards Administrator), Christopher Swiniarski (McLane Middleton, Attorney for Verizon Wireless), David Tivnan (SAI Group, LLC), Keith Vellante (Real Estate for Verizon Wireless), Roseanne Saalfeld, Barbara & Gregory Romero, Peter Deng, Matt Flokos (Harvard Press), Brian Nobel, Robin Carlaw, David Maxson (Isotrope, Inc.), Pablo Carbonell, Bruce Ringwall (GPR, Inc.), Neil Gorman (Ross Associates), Bill Calderwood, Pam Brown, Joanna Aloise, Alison Thornton, Steve & Susan Coldwell and Suzanne Allen

Continuation of a Variance Hearing – Cellco Partnership d/b/a Verizon Wireless, 12 Woodchuck Hill Road. Opened at 7:01pm. (See page 3 for complete details)

Special Permit Hearing – Pablo Carbonell, 45 Pine Ridge Drive. Opened at 8:00pm (See page 5 for complete details)

Variance Hearing – Peitao Deng, Lot 6 (Map 13 Parcel 28.6) and a portion of 214 Littleton Road. Opened 8:15pm (See page 6 for complete details)

Review Trail Ridge Bond Reduction

After a brief discussion, Orville Dodson made a motion to approve the reduction of the bond for Trail Ridge as recommended by Nitsch Engineering to \$9500.00. Steve Moeser seconded the motion. The vote was 2-1 by roll call Steve Moeser, aye; Theodore Maxant, nay; and Chris Tracey, aye.

Approve Minutes – August 12 & September 16, 2020

This item was passed over

Approve Invoice – Isotrope, \$5457.50

Theodore Maxant made a motion to approve the invoice of Isotrope in the amount of \$5,547.50. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Theodore Maxant, aye; and Chris Tracey, aye.

Election of Officers for FY2021

Michael Lawton has expressed an interest in being the Vice Chair of the Board. Steve Moeser stated he would have no issue with becoming an associate member, which would allow for Mr. Lawton to be appointed a member and ultimately elected vice chair. Liz Allard will confirm with the Town Administrator if the suggested change of membership would be allowed.

Request to Endorse Craftsman Village Harvard Regulatory Agreement

With all necessary documents reviewed and approved by Town Counsel, Steve Moeser made a motion to endorse the Regulatory Agreement of Craftsman Village and to allow the Chair, Chris Tracey sign on behalf of the Board. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Theodore Maxant, aye; and Chris Tracey, aye.

Adjournment

At 9:42pm Steve Moeser made a motion to adjourn the meeting. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Theodore Maxant, aye; and Chris Tracey, aye.

Signed: _____ Liz Allard, Clerk

DOCUMENTS & OTHER EXHIBITS

- Town of Harvard, Zoning Board of Appeals Agenda, dated October 14, 2020
- Letter from McLane Middleton, Christopher Swiniarski to Town of Harvard Zoning Board of Appeals and Planning Board (the "Boards") RE: Responses to requests at September 14, 2020 ZBA meeting – Proposed Wireless Communications Facility by Verizon Wireless ("Applicant") 12 Woodchuck Hill Road, Harvard, MA ("Property"), October 4, 2020
- Email from Mark Lanza to Chris Tracey Subject: 12 Woodchuck Hill Road – Consultant Report, September 24, 2020
- Attachment C: Harvard 3 – Existing/Approved 700MHz Sector Footprints, undated
- Notice of Intent & Special Permit Site Plan 45 Pine Ridge Drive Harvard, MA prepared for Pablo Carbonell 133 Old Mill Road Harvard, MA 01451 JOB 161031 prepared by GPR, Inc. dated 9/10/2020
- Conceptual Driveway Plan Peitao Deng Littleton Road Harvard, MA Lot 6-8 Map 13 Parcel 29.6 & portion of 22 prepared by David E. Ross Associates, Inc., September 2020

Harvard Zoning Board of Appeals

Continuation of a Variance Hearing Minutes

Cellco Partnership, d/b/a Verizon Wireless, 12 Woodchuck Hill Road

October 14, 2020

The Zoning Board of Appeals hearing was opened at 7:01pm virtually in accordance with the Governor's Executive Order Suspending Certain Provisions of the Open Meeting Law, MGL Chapter 30A §20, by Chair 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, Steve Moeser, Theodore Maxant, Orville Dodson and Michael Lawton

Others Present: Liz Allard (Land Use Boards Administrator), Christopher Swiniarski (McLane Middleton, Attorney for Verizon Wireless), David Tivnan (SAI Group, LLC), Keith Vellante (Real Estate for Verizon Wireless), Roseanne Saalfeld, Barbara & Gregory Romero, Brian Nobel, Rich Maiore, Robin Carlaw, Bill Calderwood, David Maxson (Isotrope, Inc.) Dave

This hearing was continued from September 14, 2020 for a Variance filed on behalf of Cellco Partnership, d/b/a Verizon Wireless, to allow for a replacement wireless communications tower taller than 105 feet and up to 160 feet when a 120-foot wireless communication tower exists at 12 Woodchuck Hill Road, Harvard.

Attorney Chris Swiniarski provided an update from the previous meeting, which are detailed with the letter from him dated October 4, 2020 and include:

- A revision to the provided coverage gained map with contrasting color
- What alternative sites were considered by the applicant to potentially achieve similar coverage objectives with or without variances
- Whether service complaints in the area have been from Harvard residents or not
- General responses to the report by Isotrope Wireless dated September 10, 2020

In regards to improved coverage with alternative sites, the material submitted in the above-mentioned letter details how Verizon chose the existing location. Attorney Swiniarski stated he was unable to easily obtain info on coverage complaints. Attorney Swiniarski stated the application provides significant coverage. Attorney Swiniarski did not find any discrepancies between how he views the requirements from that of the Isotrope report.

Attorney Swiniarski had not yet received the advice provide by Town Counsel, Mark Lanza. Chris Tracey read the September 24, 2020 email from Attorney Lanza into the record. Mr. Tracey stated he was hopeful there would be more supportive information to detail the reason why this tower should be allowed at this height. Mr. Tracey personally contacted the property owners mentioned in David Tivnan letter to determine if they have any interest in locating a wireless communication tower on their property. The current owners of 72 Mass Ave had never heard from Verizon, however the previous owner was contacted and had no interest. The owners at 47 Bolton Road have no interest. The owners 71 Bolton Road, stated he received a letter about a year ago, but never had any conversations with anyone from Verizon and has no interest. Mr. Tracey does not see any reason for Verizon to have to follow back up with these property owners at this point.

Mr. Tracey asked David Tivnan how the process of locating a potential location works. Mr. Tivnan stated the first focused was on the water tank on Bolton Road through the Town

Administrator, Tim Bragan. This was a multiple year process that did not yield a positive outcome. Mr. Tivnan then started contacting parcels within that area with correct elevation and setbacks through a formal letter. If there is no response to those letters there was no additional follow up. Mr. Tracey asked if wireless companies ever purchase land. Attorney Swiniarski stated it is rare.

Harvard 3 Map existing footprints (attachment C) was displayed for discussion – map shows volume and not coverage as shown on attachment A & B of the application. The areas in white on the map does not mean you can't make a phone call – that can depend on time of day, the device being used, etc.

Attorney Swiniarski thinks Attorney Lanza's reading of the law is outdated by about 10 years. Attorney Swiniarski will provide a response to the advice provided by Attorney Lanza. Attorney Swiniarski stated there is no threshold for good coverage. The question "what is coverage", is not based on the ability of a customer to be able to make a phone call. The question of "Where can we go to find better coverage" can't be found, therefore the proposal that is given is the best location for the best available coverage. The height is key because the community can see the tower from various locations. Attorney Swiniarski stated they attempt to determine what the sweet spot; is for a tower; do not necessarily need to go to a height of 160' and could go down to 140', but a co-locator could come in and by-right and add to the height of the tower.

Steve Moser asked if the application is only for the coverage Verizon will be providing. Attorney Swiniarski stated yes. Mr. Moser followed-up with a question in regards to other towers that have other carriers that provide additional coverage in Town. Attorney Swiniarski stated other carriers have, for the most part, the same coverage. Mr. Moser asked if all of the towers in Town have co-locators. Attorney Swiniarski stated he believed this to be so, but can't be certain.

David Maxson, peer consultant from Isotrope, stated many questions asked this evening are answered in his report and he can explain better some of the things Attorney Swiniarski has had to say this evening. Mr. Maxson stated the letter from Town Counsel is the narrow original case law. Capacity of a tower is addressed as well within his report. Mr. Maxson stated in regards to material impairment, there is not much case law at this point; he could show coverage and capacity, but would need metrics to answer the material impairment question. Material impairment would be up to the Board or Town Counsel, he could provide information that would assist in making a decision.

The balloon trial conducted recently was discussed. It was recommended it be conducted again this Saturday as the previous second day was cut short due to complications with the balloon and wind.

Mr. Lawton requested the tower at Carlson's Orchard be shown as an alternative to the proposed tower as it may provide relevant coverage.

Greg & Barbara Romero had questions about the location of the tower as it pertains to their abutting property. Jim Saalfeld would like time to pursue the Hildreth House as an alternative location for a tower.

Steve Moser made a motion to continue the hearing to November 10, 2020 at 7:00pm. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moser, aye; Theodore Maxant, aye; and Chris Tracey, aye.

Signed: _____ Liz Allard, Clerk

Harvard Zoning Board of Appeals

Special Permit Hearing Minutes

Pablo Carbonell, 45 Pine Ridge Drive

October 14, 2020

The hearing was opened at 8:00pm 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, Steve Moeser, Theodore Maxant, Michael Lawton and Orville Dodson

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

This hearing is for a Special Permit filed on behalf of Pablo Carbonell for the demolition and reconstruction of a pre-existing non-conforming structure, as well as the conversion of the dwelling from seasonal to year-round use at 45 Pine Ridge Drive, Harvard.

As an abutter, Theodore Maxant was unable to participate as a voting member for this hearing. Chris Tracey, Chair, assigned Orville Dodson as the third voting member for this hearing.

Bruce Ringwall, from GPR, Inc., detailed the plan to remove and rebuild the existing cottage, which are the same plans approved three years ago by the Board. The Conservation Commission has extended the Order of Conditions. Mr. Ringwall has not heard back from Board of Health (BOH) as of yet. The plan proposes removing the non-title five septic system. Mr. Ringwall asked the decision of the Board be conditioned on receiving approval from the BOH.

Theodore suggested any conversion from seasonal to year-round use along Willard Lane should require a \$5000 contribution to the road maintenance. The applicant, Pablo Carbonell, stated as a member of the Still River Realty Trust Association he pays for road maintenance and plowing annually.

With no further questions, Steve Moeser made a motion to close the evidentiary portion of the hearing. Orville Dodson seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Orville Dodson, aye; and Chris Tracey, aye

After briefly reviewing the previous findings, Steve Moeser made a motion to issue a Special Permit to Pablo Carbonell for the demolition and reconstruction of a pre-existing non-conforming structure, as well as the conversion of the dwelling from seasonal to year-round use at 45 Pine Ridge Drive with the condition that any and all approvals necessary from the Board of Health will be obtained before a building permit is issued. Orville Dodson seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Orville Dodson, aye; and Chris Tracey, aye.

Signed: _____ Liz Allard, Clerk

Harvard Zoning Board of Appeals

Variance Hearing Minutes

Peitao Deng, Lot 6 (Map 13 Parcel 28.6) and a portion of 214 Littleton Road

October 14, 2020

The hearing was opened at 8:15pm 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, Steve Moeser, Theodore Maxant, Michael Lawton and Orville Dodson

Others Present: Liz Allard (Land Use Boards Administrator), Peter Deng, Neil Gorman (Ross Associates), Pam Brown, Joanna Aloise, Alison Thornton, Steve & Susan Coldwell and Suzanne Allen

This hearing is for a Variance filed on behalf of Peitao Deng to allow for a common driveway with slopes greater than eight-percent (8%) to serve up to four (4) new house lots on Lot 6 (Map 13 Parcel 28.6) and a portion of 214 Littleton Road, Harvard.

Neil Gorman, from Ross Associates, Inc., stated site restrictions on Lot 6 make the development of this lot difficult as frontage along Littleton Road include a bordering vegetated wetland (BVW) and the pond on Lot 5 extends wetland buffer zones onto the lot. With the frontage bisecting a wetland, the proposed plan details accessing the site with a common driveway that would have minimal disturbance to the BVW. The plan proposed three dwellings currently, with the potential for a fourth lot depending on wetland resource areas on the remaining 17 acres, which includes a portion of 214 Littleton Road.

Mr. Gorman explained the slope of the driveway changes a few times because of the lay of the land. The 1,468 foot long driveway is at a 3.5% slope along the first 83 feet as you enter the property; the next 241 feet of driveway has a proposed slope of 8.0%; with the following 472 feet at a proposed slope of 9.59%; the next 29 feet of the driveway flattens at the single driveway serving Lot 2; the driveway then requires a proposed slope of 11.79% to traverse 123 feet more to the buildable portion of the properties; the final portion of the driveway, equaling over 520 feet, would not exceed a slope of 4%. The proposed driveway has been routed in this manner to minimize unnecessary expenses for the applicant. Maintaining the 8% slope would require cutting a deep gorge into the slope.

The Department of Public Works is not worried as the first 83' are flat, but the applicant would not be permitted to allow water to enter the street from the site. The Conservation Commission would need to address stormwater runoff issues during the Notice of Intent process. The Fire Department stated they had reviewed similar locations in Town and are supportive of the variance request if the applicant agrees to install residential sprinkler systems in any of the dwellings. The Fire Department is concerned with inclement weather, as it would impede and delay their ability to access the area, therefore the installations of the sprinkler systems would provide additional time for occupants to safely exit the building in an emergency.

Mr. Gorman stated the topography of the property and wetland resource areas are the reasons for seeking this variance, noting the steepest portions of the driveway are the longest runs of the proposed driveway.

Steve Moeser stated the original Poor Farm at 166 Littleton Road has so many convoluted lots. Mr. Moser wanted to understand the ownership of the parcels in questions. Mr. Gorman explained Peitao Deng owns Lot 6, a 6.77-acre parcel, and Matthew Corbett owns 214 Littleton Road, a 24.72-acre parcel. Mr. Gorman stated the lot configuration is due the wetlands and the site is very hilly site. If the driveway maintains an 8% grade by the time you get to the corner of Lot 6 you would have an 8 to 10 foot cut into the hill, causing ground water to be coming out in great amounts in the spring and other wet times of year. Mr. Moeser stated not all lots in Harvard are developable. Mr. Moeser asked how this parcel is different than others in the district. Mr. Gorman stated the Corbett land would not have the ability to be subdivided due to even steeper slopes. Mr. Gorman stated he believes the lots are unique due to the steep slopes and high groundwater. Mr. Moeser asked if there had been any soil testing as of yet. Mr. Gorman stated to conduct soil testing without knowing if the Town will grant the variance is spending the client's money unnecessarily. Mr. Gorman added to comply with the zoning bylaw the driveway would have to go on to land that is not owned by Mr. Deng or Mr. Corbett.

Chris Tracey stated he needs comments from the Planning Board before being comfortable with moving forward with this project. Liz Allard asked if Mr. Gorman has been in touch with the abutting property owner, Byers, to determine if a portion of that land could be purchased; he had not.

Phil Robinson asked about the silted culvert along Littleton Road. Ms. Allard explained the Protective Bylaw does not allow for an increase in stormwater runoff from a developed site. In addition, the site will improve stormwater runoff overall with the addition of best management practices (aka BMP's) facility to control stormwater that is non-existent now.

Alison Thornton wants to know how things will be mitigated. Mr. Gorman explained again State standards also do not allow for water to enter the roadway. Mr. Gorman further explained the process for determining the stormwater mitigation.

Pam Brown stated work completed on the Corbett land created additional water runoff for the houses in the area. Ms. Brown wondered what had become of the offer to donate Parcel B for open space to the Town. Ms. Allard explained that donation is with a different property owner of some of the Poor Farm lost and is still being worked out.

With the Board seeking additional information in regards to the criteria necessary to issue a variance, Steve Moeser made a motion to continue the hearing to November 10, 2020 at 8:30pm. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Theodore Maxant, aye; and Chris Tracey, aye.

Signed: _____ Liz Allard, Clerk