

SHARON ZONING BOARD OF APPEALS & PLANNING BOARD
JOINT MEETING
MINUTES OF WEDNESDAY, February 16, 2022

LOCATION OF MEETING: In compliance with the Governor's emergency declaration relative to the conduct of public meetings, the Town arranged to conduct board and committee meetings using Zoom video/audio conferencing in an effort to minimize the spread of COVID-19. Interested citizens received directions on how to attend the meeting remotely in the agenda as posted on the ZBA website and the Town. This meeting was presented with the video and/or audio available for later broadcast. The Zoning Board of Appeals is focused on observing the spirit of the Open Meeting Law during this temporary emergency situation to assure accountability for the deliberations and actions of elected and appointed officials conducting the public's business.

A virtual joint meeting of the Sharon Zoning Board of Appeals & Planning Board was held on Wednesday, February 16, 2022, at 6:00 P.M. The following ZBA members were present: Joseph Garber, Chair, Abhijit Brahmachari, David Young, Hemant Mehta, Arnold Wallenstein, and the following Planning Board members were present: David Blaszkowsky, Chair, Robert Maidman, Vice Chair, Shannon McLaughlin, Pasqualino Pannone & Maria De La Fuente. Also present from the town: Liz Ellis.

Mr. Blaszkowsky, Chair called the meeting to order at 6:04 PM. The topic to be discussed are the roles and responsibilities for Special Permitting and Site Plan review for the Zoning Bylaw redraft.

Mr. Blaszkowsky stated that the purpose of the meeting was to advance the Zoning Bylaw recodification process that is underway. He noted that eight (8) meetings with the consultant have been held to review, update and clean up aspects of current Zoning Bylaws terminology, etc. It provides an opportunity for the Town to revisit aspects that may or may not make sense or might have a different logic that applies from when this was last done approximately 20-30 years ago.

Mr. Blaszkowsky explained that this evening is to focus on the set of issues around Special Permit Granting Authority (SPGA) and Site Plan Review Authority (SPR). These authorities have been allocated between the two boards in various ways and there is reason to formally revisit. Some of it is because of how statutes about planning boards are written other is by looking at what other towns across the commonwealth are doing. And certain recent events within the past 5- 10 years that give us an opportunity to ask some questions on how responsibilities could or should be allocated as long as we have this re-do opportunity. Some of these have been prompted by Attorney Bobrowski, noting how it is done in different towns. Upon the town and our committees and Planning Board is responsible for shepherding this into Town Meeting. We need to make sure that in all of these areas that one or another board can have authority, that has to be an actual authority.

Therefore, the purpose of the meeting this evening, is to discuss among both boards issues to lay the way for a consensus on how we should be treating each of the items. It's a conversation about how this should work.

Mr. Blaszkowsky turned meeting over to Joe Garber, Chair, ZBA for comments or omitted facts. Mr. Garber noted that he read the Discussion Purpose and that we have been discussing the deciding factor for Special Permits. The Zoning Board has been doing it all of this time and has stated at the Planning Board meeting that we've been handling it very well. Mr. Garber stated that he took a look at the Chapter 40a law, and it says that you can have a combined Special Permitting Board. It can be Planning and Zoning almost to the point that Ms. Ellis brought up last week. It also said that the Zoning Board was the Special Permitting Authority on certain types of cases. Should this be done on a case- by -case basis? Trying to figure out who going forward is going to be doing Special Permits.

Mr. Blaszkowsky said we want to discuss "Roles and Responsibilities"— can it be both? We need to clarify who is responsible. Ms. Ellis has done some research and he suggested that we start the meeting with this.

Mr. Blaszkowsky turned the meeting over to Mr. Maidman, Vice Chair. Mr. Maidman stated that the reason we are meeting is to layout the issues and the number one issue is that Attorney Mark Bobrowski, is going through our zoning, item by item in sequential order, looking at what's complaint, what's out of date, what's confusing, what's contradictory etc. He is trying to clean it up and come up with a document that is understandable and complaint and also fits into what we believe the direction of the Town for the long-term future. A lot of this is guided by the Master Plan which helps define what our future paths may be. We don't want to go through item by item tonight.

Mr. Maidman suggested that the important thing that we all should understand is to have Ms. Ellis explain the delineation between Special Permit Granting and Site Review. It seems very clear but what is the legal substance to it? When should one board clearly have the jurisdiction and when should another or when its not so clear who should have jurisdiction? He asked Miss Ellis to summarize the 4- page memo that she prepared explaining the delineation.

Ms. Ellis presented her memo and explained that in terms of the background the bylaws state that the Zoning Board is both the SPGA and the board that handles SPR. Mark has brought up the fact that more often than not the Planning Board is usually does the SPR. Ms. Ellis wanted to point out that the language for Chapter 40a, Section 9 which reads as follows: *“zoning ordinances or by-laws may provide that certain classes of special permits shall be issued by one special permit granting authority and others by another special permit granting authority as provided in the ordinance or by-law;”* <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40A/Section9> means that both the ZBA and the Planning Board can be SPGA but it doesn't mean that they act together. It means that certain classes of projects go to one board, etc. And this is what she has seen in keeping in other Towns. It doesn't mean you have to do it that way. But it does break up some of the work. She also noted that the Planning Board is an elected board and read what the responsibilities of the Planning Board are in the current town bylaws. There is a gap between what the Planning Board was established to do and what they are actually doing. And this is where the crux of this discussion lies because the Planning Board is entitled to be more involved.

Mr. Garber asked Ms. Ellis if she also had Section 11 in her memo. Mr. Garber noted that the second paragraph of Chapter 40a, Section 11 clarifies a few more issues. It deals with zoning.

Mr. Garber read Section 11, as follows: *“Zoning ordinances or by-laws may provide that petition for special permits shall be submitted to and reviewed by one or more of the following and may further provide that such reviews may be held jointly: — the board of health, the planning board or department, the city or town engineer, the conservation commission or any other town agency or board. Any such board or agency to which petitions are referred for review shall make such recommendations as they deem appropriate and shall send copies thereof to the special permit granting authority and to the applicant; provided, however, that failure of any such board or agency to make recommendations within thirty-five days of receipt by such board or agency of the petition shall be deemed lack of opposition thereto.*

When a planning board or department is also the special permit granting authority for a special permit applicable to a subdivision plan, the planning board or department may hold the special permit public hearing together with a public hearing required by sections 81K to 81GG inclusive of chapter 41 and allow for the publication of a single advertisement giving notice of the consolidated hearing.”

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40A/Section11>

Ms. Ellis noted that this is up to interpretation. She did some research on other towns to see if they have done it jointly as a SPGA but couldn't find anything. But normally what she would advocate for is this scenario is that the Planning Board become the Site Plan Review Authority. Site Plan Review is very different from a Special Permit, but it is a little confusing.

Mr. Garber stated for clarification that the Site Plan Review has always been subbed out to a private consultant. But he wouldn't be opposed to having it go the Planning Board. Ms. Ellis said she doesn't see any reason why the Town shouldn't continue to out-source the Site Plan Review. She stated its her first time seeing it done that way, but it seems like a good idea to have experts. And that is why she is thinking this discussion should be more about SPGA.

Mr. Maidmen noted that when these specialized requirements are outsourced, a proponent of project pays for it. We have been very fortunate to have PSC to do this work. Mr. Blaszkowsky stated its not whether or not to outsource the SPR it's about what the governing board should be for it.

Ms. Ellis noted that a SPR is triggered in very certain circumstances and only for industrial and commercial uses and usually depends on the square feet. But SPR by itself can't permit a project. If you get Site Plan Approval, it still has to go to a Special Permit and the board gets the opportunity to review everything and you have more discretion. PSC can't make decisions, that why you can outsource. PSC can make recommendations. You can't deny a Site Plan Review. It's an extra step to request for extra information. SPR can be used for As of Right uses, allows for extra level of review. Ms. Ellis says that she doesn't see any reason to change outsourcing. The real question is regarding the changes that the Governor made, effective in 2021.

Changes to Ch. 40A, § 9 that might make it prudent for the Planning Board to be an SPGA

As of January 2021, Governor Baker's Amendment now requires only a simple majority from anSPGA to issue special permits in the following areas:

- *Multifamily housing that is located within 1/2 mile of a commuter rail station, subwaystation, ferry terminal or bus station*
- *Mixed-use development in centers of commercial activity within a municipality, including town and city centers, other commercial districts in cities and towns and ruralvillage districts; or*

- *A reduced parking space to residential unit ratio requirement, pursuant to this section; provided, that a reduction in the parking requirement will result in the production of additional housing units.*

We are all familiar with these types of situations and these can all be done by Special Permit and when you read the purpose of the Planning Board in the Town of Sharon. It notes to Chapter 41 this is the Planning Board establishing language in the state. This is what the state envisions to role of the Planning Board to be. Based on this language and the Town's language there is more of an opportunity for the Planning Board to have more of a role with Special Permit Granting Authority (SPGA).

The duties... shall be such as are stated in MGL c. 41, §§ 70 through 72, and further to consider and advise upon municipal improvements either at the request of other officials of the Town or upon its own initiative. It shall consider and develop a Town plan, with special attention to main ways, land developments, zoning, playgrounds, parks, and sites for permanent school plants. The Board shall meet at regular intervals. It may hold public meetings. It shall at all reasonable times have access to public documents or information in the possession of any Town official or department. It shall examine the plans for the exterior of any public building, monument, or similar feature, and for the development and treatment of the grounds about the same before the adoption thereof and may make such recommendation thereon as it may deem needful. It may provide for public lectures and other educational work in connection with its recommendations. It may incur expenses necessary to the carrying on of its work within the amount of its annual appropriations. (Emphasis added). <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter41/Section70>

Ch. 41, §70 (abridged to include only relevant sections): Every city and every town having a population of more than ten thousand at the last preceding national census shall, and towns having a population of less than ten thousand may, create a planning board, which shall make careful studies of the resources, possibilities and needs of the town, particularly with respect to conditions injurious to the public health or otherwise in and about rented dwellings, and make plans for the development of the municipality, with special reference to proper housing of its inhabitants. In cities the said board shall be appointed by the mayor, subject to confirmation by the council, and in towns shall be elected at the annual town meeting or be appointed in such manner as an annual town meeting may determine.

Miss Ellis explained how other Towns use a chart which looks like a grid, which shows what district you are in and what relief you are requesting, and which board handles that situation. Attorney Mark Bobrowski is working on this for the Town. The chart is straightforward and easy to read.

Mr. Maidman asked Miss Ellis to provide some illumination on the Site Plan Review process. He noted that whenever there has been a project with any magnitude specifically Sharon Gallery, there was a Design Review Committee. What concerns the Planning Board is that it is appointed by the Select Board, and we understand why. But that's the Planning Board not an elected board. Mr. Brahmachari clarified that when there is a Major Site Plan review there is a section in the Town of Sharon Zoning Bylaws state that the Zoning Board is supposed to create a Design Review Committee. Mr. Maidman stated that what is coming out during the recodification is clearly where that responsibility should be and clearly, it's not an independent board, the Select Board appoints people and there isn't any input from the Planning Board, particularly on the library. The gist of tonight's meeting is to get some clarity on who is responsibility for what.

Mr. Pannone added that he thought that for the Gallery, he thought that the Planning Board could have had a stronger hand in the review of that process instead of having to create yet another group to review something that we are capable of handling. For the Library, since they were asking for certain zoning relief, it makes sense that it went before the Zoning Board. These are two different examples which are very clear. The Gallery should have been all Planning Board, it was under our purview to understand the impact of the town, etc.

Mr. Blaszkowsky opened the meeting to Mr. Brahmachari. Mr. Brahmachari stated that he was confused about the process in general but when he looks at the states zoning act Chapter 40A, Section 5. It clearly prescribes how to make any change to an existing zoning bylaw and what the process should be. He said that to him the responsibility should go to the Planning Board and that the Planning Board is the leader in any edit to an existing zoning bylaw. He stated he was hesitant to talk about this because the Planning Board along with an established committee, as prescribed in 40A, Chapter 5, should talk about any change to an existing zoning bylaw. He recommends that the team taking a look at Section 5 because it prescribes a process. Secondly, he noted that he agrees with Miss Ellis that in many towns SPR are routinely done by the Planning Board. It would be ideal if the Planning Board can create a committee specifically to discuss any changes and involve the private citizens. <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40A/Section5>

Mr. Maidman emphasized that this is complicated. Some things need to stay in one realm and some in others and we want to be able to say to Attorney Bobrowski this is how we would like it done. Attorney Bobrowski proposes that we collectively make the decision but it's on the Planning Board to figure out how to present this at Town Meeting and get a positive vote.

Mr. Garber asked if Ms. De La Fuente could present the breakdown chart that she has put together. These are the articles that Attorney has edited and presented, it's not complete but it's a good thing to focus on.

Ms. De La Fuente confirmed that these are the current authorities in the bylaws as they exist today with the exception of the highlighted sections. This is just the first draft. The main purpose of this is a clean up and we can make changes and recommendations. Ms. De La Fuente explained each item and who is the authority. Item 6.5 was unclear who the authority should be, the bylaw stated that it was the SPGA or the Planning Board. She believes ZBA should be the default. Item 8.3 is for Flexible Development under a different name, which offers a density bonus. Incentive if developer sets aside extra open space they can develop one extra house, for example. This should be Planning Board because it's a new subdivision. Item 8.6 didn't specify who has authority, but ZBA is the default.

Mr. Maidman noted that the Planning Board is responsible for compiling the inventory in town regarding the 40B requirement. But when it's getting close to the limit, we really work hard to see what component of that could be affordable housing. Affordable Housing is typically Planning Board.

Miss De La Fuente also went through the Site Plan Review chart and noted that we need to be careful with Item 6.2.3 and would advise not to make changes because we have live projects specifically the Sharon Gallery and it could have consequences if changes are made.

Special Permit Granting Authority (SPGA)	
Purview	Authority
3.4 Home Occupation	PB
4.0 Dimensional Regulations	ZBA
4.2 Use of Front Setback in BA	ZBA
5.0 Nonconforming Uses and Structures	ZBA
6.5 Performance Standards for Multi-Family and Non-Residential Uses	SPGA or PB
7.0 Adult Uses	ZBA
7.5 Natural Gas Custody Transfer Facilities	ZBA
8.0 ADUs	ZBA
8.2 Senior Housing Facilities	PB
8.3 Open Space Residential District	PB
8.4 Dwelling Conversion	ZBA
8.6 Affordable Housing in BA	PB
9.6 Planned Development District	PB

Site Plan Review	
Purview	Authority
4.2.4 Use of Front Setback in BA	PB
6.2.3 Business D Building Performance Standards; Waiver	ZBA
6.3 Performance Standards in LI	ZBA
6.4 Performance Standards in Professional B	ZBA
6.5 Performance Standards for Multi-Family and Non-Residential Uses	ZBA
9.6 Planned Development District	PB
10.7 Site Plan Review for Dover Amendment Uses	PB

Ms. De La Fuente also has the charts sorted by Board so that you can compare who has what responsibility. Anything performance standards or technical tends to be Zoning Board and anything about the way we want the town of look for planning for the future tends to be Planning Board.

Mr. Blaszkowsky asked if anybody had any questions, specifically on how we proceed. Ms. Ellis asked to share a what a principal use chart looks like in other towns.

Mr. Hemant commented that he admired Ms. Ellis and Ms. De La Fuente's presentations and he gave a brief history of his working career and that his objective and focus is simplicity. Eliminate the red tape to make it easier for new businesses, etc. He also stated his understanding of tonight's discussion. His focus is as long as it is on paper there is no need to dwell on who does what. He stated he would like to see the ZBA, and Planning Board combined in the years to come. Any guideline we have to who does what is helpful. Both boards should work hand in hand. If ZBA has too much on their plate, then Planning Board can take over, etc. Our goals and objectives should be to keep it simple.

Ms. Ellis presented a chart from the Town of Ashland. It is very specific. You can look up your project by district and it gives clear direction on what is allowed and where you go for what use and who is the authority. She envisions this type of chart for the Town of Sharon so that it can make it very easy for the applicant and that would solve a lot of the red tape and streamline the process. A lot of towns have these use tables. This chart would be helpful for a business owner.

Mr. Pannone agreed that there is a consensus chart like this would be very helpful and very user friendly and we should be using this regardless. But he commented that when he looks at the draft chart that Ms. De La Fuente presented, he noted that some of the responsibility that are outlined, all of the SPR meeting Performance criteria, he has a hard time as to why the Planning Board is not the lead on that. The Planning Board is there to verify and confirm that the applicant is meeting our requirements. If any are asking for a relief or an appeal from that then it should go to Zoning Board. We really need to drill down on who should be having these responsibilities because the majority are the ZBA.

Mr. Blaszkowsky noted that we have discussed a number of important issues during this meeting, and we all agreed that we wouldn't resolve anything tonight. He suggested a follow up meeting to discuss further. Asked for a motion to adjourn.

In response to a question by Mr. Brahmachari, Mr. Blaszkowsky explained that Mr. Mark Borowski is an expert attorney in Land Use and has been retained by the Planning Board as the relevant authority to take on the re-write of the recodification. Mr. Blaszkowsky agreed that we should spend more time collaborating as boards in the future. We need to come to agreement in a calm and deliberate manner.

Mr. Garber suggested that we schedule the next joint meeting. Everybody agreed that the next meeting will be held on Tuesday, March 1, 2022 at 7:00 pm.

Motion:

Chair made a motion to adjourn the meeting. Mr. Garber seconded the motion. Approved by unanimous roll call vote.

The meeting adjourned 7:14PM

Respectfully submitted