

SHARON ZONING BOARD OF APPEALS

MINUTES OF WEDNESDAY, October 11, 2023

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 on 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 meeting of the Sharon Zoning Board of Appeals was held on Wednesday, October 11, 2023, at 7:00 P.M. The following members were present as established by roll call: Joe Garber, Chair, Hemant Mehta, and Arnold Wallenstein. Also present for the town, Peter O'Cain, Town Engineer, David Abbott, Building Inspector, Fire Chief Michael Madden, Tom Houston, PSC.

Mr. Garber, Chair called the meeting to order at 7:00 PM. Mr. Garber, Chair, read Covid19 protocols per the Governor of MA and procedural ground rules.

Case 1911 - 144 Old Post Road (Sharon Gallery Phase 2)

Case 1911A – 144 Old Post Road (Supplemental Application, Sharon Gallery Phase 2, Residential Condominiums)

Case 1911B – 144 Old Post Road (715&715R South Main Street)

Mr. Garber read the legal ad into the record.

Present for the applicant Ninety-Five, LLC, Attorney Robert Shelmerdine, Matt Smith, Rich Hughes, and Alex Grapland of Norwood Engineering

Mr. Shelmerdine introduced himself and gave a brief history of what himself and Mr. Houston have accomplished since the last meeting, 9/20/23.

Mr. Houston presented the latest Draft Decision Sharon Gallery Phase 2. Chief Madden noted the edits that needed to be made on section "Prior to Recording" section 19a, now stating:

19. Provide funds to pay the reasonable fees and expenses of professional consultants engaged by the Town agencies as follows:

a. "Consultants engaged by the Fire Department at the Applicant's expense to review and inspect all aspects of fire protection and life safety for the site from submittal of plans to commissioning."

Tom Houston will review and add to the document.

Mr. Houston continued the review of the draft and noted what the applicant is petitioning for approval from the Board from the original application of September 26, 2022, along with additional applications submitted on January 26, 2023 and August 30, 2023. He explained in detail each item of relief requests.

Mr. Garber asked Mr. Houston to explain the Specific Conditions of Approval beginning on page 48. Each condition was explained in great detail.

Mr. Garber questioned under Item 18 under "Prior to Construction", whether or not the material currently present on the loom and gravel, not be removed be written into conditions.

Mr. O'Cain questioned line 13, stating that he doesn't believe he can control the Certificates of Occupancy because it's delegated to the Building Inspector by State Law. David Abbott, Building Inspector would have to issue Certificates of Occupancy.

Mr. O'Cain also requested that a time-frame be added to the Conditions, in order for him to be able to enforce them, He also apologized for not commenting earlier, but had only received the document today and didn't want to feel rushed. Mr. Garber agreed. Mr. Houston felt it was a great point and would work on setting thresholds.

Mr. Garber asked Mr. Abbott to take a look at the items as well and correspond with Mr. O'Cain.

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Mr. Houston continued the explanation of the Conditions.

Mr. O'Ca in questioned if a new item can be listed under "Construction" section that comprehends the list of contacts for different trades people and contractors be provided to the town, in order to know who we would need to speak to regarding different items. Mr. Houston agreed and will add to the Conditions.

There was some discussion on item 36. Mr. Garber stated that the Building Inspector usually issues cease-and-desist orders. Mr. Houston agreed and will add an additional sentence stating that cease-and-desist orders relating to buildings issued by the Building Inspector shall be complied with.

Mr. O'Ca in commented on Item 40 and stated that on-site toilet facilities require a permit from the Board of Health, which can be applied for on-line. Mr. Houston agreed and will add that language.

Chief Madden commented on Item 42, stating that construction access would also fall under NFP 241 which has Fire Department authority as well. Mr. Houston will modify the language.

Mr. Garber questioned Item 46 pertaining to clean fill being used and imported earth material being documented and how that can be enforced by the town. Mr. Houston replied stating that the contractor would have to provide a list of where the material comes from, with the key item being the earth materials being granular in nature as they have less chance of containing contamination. The town would require testing of these materials. That would be at the discretion of the Agent. Mr. Garber also questioned who would be testing the material.

Matt Smith, Norwood Engineering commented that they don't anticipate bringing soil to the site but doesn't agree with the requirement that all imported material shall be tested for hazardous materials and that he doesn't feel its common in the industry.

Mr. O'Ca in referenced a Board of Health Regulation pertaining to the testing of soil.

Mr. Mehta stated that the specifications written by the design engineers for all types of fills, or materials that can be used and that there is a testing agency that is required to be hired by the general contractor for the testing of materials coming in for use.

There was some discussion, and it was agreed upon that on Item 46, "shall be tested" should be replaced with "may be required to be tested".

Chief Madden commented on Item 48 pertaining to on-site refueling location, adding that this also requires a permit issued by the Fire Department. Mr. Houston agreed and will add language to the condition.

Mr. O'Ca in stated that on Item 47 pertaining to fugitive dust and application of clean water, that no hydrant can be touched by any outside party, unless approved by the Water Department. Mr. Houston noted the comment and will add to the Condition.

There was discussion between Mr. Garber and Mr. O'Ca in regarding the current re-fueling situation and the huge uptick in equipment at the site. Mr. O'Ca in stated that it must be overseen. Chief Madden stated that the Fire Department is currently tracking down the companies to apply for permits for refueling.

Mr. Smith questioned Item 50 and the As-Built Plan be provided by a Professional Engineer as the land surveying regulations state that it is to be done by a land surveyor. Mr. Houston agreed and will change the language to PLS only.

Attorney Shelmerdine stated on Item 50, that there is no nothing of when the As-Built Plan needs to be completed and that it's usually done at the very end. He questioned if there was a timing on this. Mr. Houston responded that they would want to see the plan prior to issuance of a Certificate of Occupancy. There was more discussion regarding phased As-Built plans.

Mr. Abbott stated that he would want to see foundation As-Built plans right after foundations have been poured and stripped, in order to identify any possible mistakes in foundation locations. Everyone agreed and Mr. Houston will work on this item language a little more.

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Attorney Shelmerdine explained Item 54 and sections a-e and the addition of e, being a clause from 11/17/21 COSTO plan. There was discussion amongst Mr. O'Cain and Attorney Shelmerdine. Mr. Garber suggested referencing Item 13 condition in Item 54. It was agreed by all.

Mr. Mehta feels that all concerns raised have been reviewed and addressed thoroughly with no change in the project. The Building Dept. has the opportunity to review the detail design when it develops for any other additional concerns/questions. He has no comments or concerns regarding approval of this project.

Mr. Wallenstein questioned how Mr. Houston designated between variances vs. waivers. Mr. Houston responded that they both deal with non-conformance with the language of the by-law and that there are certain sections of the Zoning Bylaw, which specifically state that the board can waive in certain circumstances.

There was discussion regarding changes to old by-laws and the fact that some changes were made creating the need for so many variances.

Mr. Wallenstein noted Condition 60 and the Development Agreement dated October 3, 2017, amended October 30, 2017, and further amended on September 30, 2021, and would like to see it. Attorney Shelmerdine has a copy and will send via email.

Mr. Garber opened the floor to any abutters that may have questions or concerns.

Don Williams, Sharon resident, representing the American Legion, wanted to first off thank the chair, Mr. Garber, for running such great meetings and also thanked the Board members for all of their dedication and diligence. He also thanked all town officials and property owners. He is there on behalf of the American Legion as they are a very active group with lots going on next to where the project is and want to be informed on what to expect. He will be meeting with site super and site manager this Friday. He is aware that their driveway is going to be modified and he feels this option will be better for the Legion. There is a little concern that there will be more public traffic flow because of the light configuration. He will voice concerns with site manager at meeting this week. He also questioned if there is any possibility of additional lighting as it is a very dark parking lot.

Mr. O'Cain stated that either himself or his assistant will be sure to attend the meeting on Friday.

Rob Maidman, Sharon Planning Board, commented pertaining to heights of buildings need approval by Chief Madden, so that equipment is sure to be able to reach. Mr. Garber stated that it was a good catch and will be noted.

Mr. Maidman also explained that re-codification was done for several reasons, not just because language was antiquated but it was also conflicting with laws. He also commented that variances needed for special projects, hardship, climate, etc., make adjustments in rigidity and that waivers are a way of ignoring the intent and spirit. Mr. Garber thanked him for his input.

Attorney Shelmerdine requested a special meeting to be held next week, as he will be away for a period of time. After discussion, it was agreed upon to hold the special meeting on Thursday, October 19, 2023, at 6 p.m.

Motion:

The chair made a motion to continue Case 1911 & 1911A – 1911B- 144 Old Post Road to Thursday October 19, 2023. Mr. Mehta seconded the motion. Approved by unanimous roll call vote 3-0-0 (Garber, Mehta, Wallenstein).

Respectfully Submitted