

SHARON ZONING BOARD OF APPEALS MINUTES OF WEDNESDAY, DECEMBER 9, 2020

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 meeting of the Sharon Zoning Board of Appeals was held on Wednesday, December 9, 2020, at 7:00 P.M. The following members were present as established by roll call: Abe Brahmachari, Joe Garber, Steve Weiss, David Young, and Sam Reef. Mr. Brahmachari opened meeting by reading Covid19 protocols per the Governor of MA and procedural ground rules. Kris White, Building Inspector, was also present at the meeting.

7:00 PM -- Paula Szulc, 15 Franklin Road, 1854 – Continued Hearing

Present for the applicant: Paula Szulc and Marc De Santiago, applicant

Documents previously submitted included an application filed on February 7, 2020, plot plan by Paul J. Berger, Inc., Stoughton, MA, but date is not reflected on document, and architectural plans by Design Plus, Rehoboth, MA, dated August 23, 2019. New submission of same plot plan by Paul J. Berger, Inc., Stoughton, MA now showing date of June 15, 2016, and email from Jeff Funk, Administrative Assessor, recognizing the premises as a three-bedroom house in the Assessors' database and document from 11/19/2020 showed the house as a three-bedroom home. The 12/23/2016 document is shown as a two-bedroom house in this document.

Mr. De Santiago, showed assessor information showing that the home is listed as a three-bedroom home at town assessor's office. Also, the plot plan drawing from application has been updated just to show the date which is from June 15, 2016.

Mr. Weiss responded that because Ms. Schustek spoke to town counsel and they are good with it, he is good.

No abutters present.

Applicant requested to close the case.

Mr. Brahmachari motioned to close 15 Franklin Road, Case 1854. Seconded by Mr. Garber. Unanimous roll call: 5-0-0 (Brahmachari, Garber, Weiss, Young, Reef).

Mr. Brahmachari motioned to approve 15 Franklin Road, Case 1854 including plot plan by Paul J. Berger, Inc., Stoughton, MA, dated June 15, 2016, architectural plans by Design Plus, Rehoboth, MA, dated August 23, 2019 and application filed on January 6, 2020. Seconded by Mr. Garber. Unanimous roll call: 3-0-0 (Brahmachari, Garber, Weiss).

7:14 PM – Robert Currie on behalf of Aurora and John Chichester, 31 Highland Street, Case 1867, -- New Hearing

Present for the applicant: Robert Currie, architect, Currie Design, Medfield, MA; Aurora and John Chichester, property owners

Documents included: application filed on November 2, 2020, plot plan by AGH Engineering, Stoughton, MA dated October 28, 2020; and architectural drawings by Currie Design, Medfield MA dated November 2, 2020.

Chair read the legal notice as it appeared in the Times Advocate on November 25, 2020, and December 2, 2020; a letter from Kevin Davis, Board of Health agent dated November 30, 2020; and a letter from John Thomas, Conservation Commissioner, dated November 16, 2020.

Applicant sought two findings and two special permits relative to a proposed accessory in-law addition to a non-conforming structure on a non-conforming lot.

Plans showed addition of a 24- by 30-foot separate in-law space with a handicap ramp to house aging parents. Review showed no setback issues. They are enlarging kitchen and pocket doors will provide privacy. A separate double door goes to the deck to provide accessibility via a ramp to the structure. Also shown are a bedroom, bathroom, and separate space. Second floor attic will combine two bedrooms into one bedroom. Currently there are five bedrooms with two bedrooms in the half storage space attic.

Board concerned about: 1) per Sharon Zoning Bylaws in-law space cannot have a separate entrance like double-door shown in plans. 2) And also they would like to see the attic drawings that were submitted to the Board of Health, but not included in the ZBA application packet.

Mr. Brahmachari said the door to deck being a window would cause no problem for him. They could put the ramp in the front yard.

Mr. Currie, architect, asked what issue is with doorways. He said he would be in violation of the building code if he doesn't have two exits. Architect could take out backdoor to the North by the range. If the double door was removed and existing front and rear door to home are left, they are in compliance.

Kris White, building inspector said the bylaw can be read two different ways. Language is that the additional unit shares a common entrance in the existing structure. What it doesn't say is you can have additional egress or entrances on that structure. So it must share at least one entrance with the existing structure is Mr. White's interpretation on this. He continued on to say that from a building code and fire safety standpoint it is always better to have more egresses and less travel distances within the structure. But on the other hand it creates an opportunity for an in-law apartment to become a separate accessory apartment. Mr. Garber confirmed that if the French doors were eliminated there would be existing front and rear doors and project would be in compliance on this aspect. Mr. White agreed.

Mr. Reef said speaking as a lawyer town writes bylaw and the board is supposed to adopt it exactly as it is written. Subsection c does not say at least a common entrance, and that is why he believes this Board has always interpreted that to mean just one because it says "shares a common entrance."

Mr. Weiss mentioned that this is different from recent Canoe River case because that project had a separate kitchen. Also, this home was built in 1892, so they can come back to zba and change it to a two family anyway since it was built before 1933, Canoe River couldn't.

Mr. Young said home he was referencing had a full blown, separate kitchen. Mr. Young wants to have the conversation so we are protected.

Chair wanted to see a second floor plan before Board can vote.

Mr. Currie asked if number of bedrooms is within jurisdiction of the zoning board. Mr. Young clarified that board of health had no problem because it was staying a five-bedroom home, but if they went back to board of health and said they were changing it to six bedrooms, then what would happen? Mr. Currie said he worked it through the board of health and asked what they should do. In other towns he has done a restricted deed or like what has been done here with pocket-door opening, and he will forward plan, but he just doesn't want it to hold up the decision if they can get approved tonight.

Mr. Currie suggested that if he took the pocket doors out and all became a common space, then every doorway would become a common entrance. Mr. Brahmachari said it would become a simple addition of a master bedroom on the first floor, but the current application is to approve an in-law suite.

Mr. Currie said he was designing within zoning, but he didn't expect a wheel-chair accessible entrance would be a problem. But, if it is, they will just get rid of the pocket doors and design something else based on seeking approval of the relief from the zoning setbacks of the existing nonconforming.

Chair said ZBA cannot redesign this in the meeting, so if they want something else board will need to see the drawings and also see the full existing floor plan and the proposed floor plan with the number of bedrooms identified, the spaces identified for both floors.

Ms. Chichester had the picture of the attic that she can share. Regarding interpretation of the zoning rules, her mom is in a wheel chair and father has Parkinson's and inclusion of double door and ramp by her parent's living space would provide rapid egress out of the home. She understands concern about it being a separate usable entrance, but it's a common kitchen. She would be okay with just making that a window and not a door, but the emergency egress for the elderly is her concern as rules are interpreted.

Ms. Chichester shared half-story attic elevated drawing dated August 7, 2020, by Currie Design, Medfield, MA so ZBA could see the two existing bedrooms proposed to be combined into one bedroom by removing an existing wall. Mr. Reef concerned that there are two closets shown. Mr. Chichester responded that one of the closets is the eaves, more of a crawl space. The other closed it more built out rather than built in. Mr. Reef said if one of the closets disappeared he would not have a problem on it. Mr. Currie said proposed new bedroom does not have a closet, but Chair said building code goes by a closet and/or armoire, but that is fine. Chair has no concern with attic, only with double inswing patio door to the deck. If that goes away he has no other concern.

Mr. Garber said to maintain handicap access and consider separate entrance requirement, could back door by cooktop be removed and it could still be considered an entrance? But that double in-swing door is going into the in-law suite, so it doesn't solve the problem.

If six months after window went in and they wanted to put a door in, what would stop it? Change in building would go to the building inspector per Chair. Mr. White said typically from building and fire, the more egresses the better, so they would not deny a permit for someone applying to add another egress in their home. Mr. Reef agreed that allowing the double doors wouldn't be in the spirit of the bylaw

Mr. Weiss questioned if it is even defined as an in-law suite, or a first-floor master suite? Because if it is a master suite, double doors to a deck are allowed. Chair agreed, but that isn't how application was submitted. There are other implications to approving as an in-law such as adding a second address for the property. A master bedroom suite is a different application.

Chair advised applicant that they can close or continue the case, and vote will be three-member vote that must be unanimous. Mr. Reef said even if revisions are made, it is still an application for an in-law. Architect said he would have to submit a new application per his understanding, solely for the nonconforming structure on a nonconforming lot. Chair agreed.

Ms. Schustek said Ms. Aurora needs to submit the floor plan she shared to sharonzba@townofsharon.org; confirmed John Chichester as owner of property because he previously commented, and finally, that there is a third option to withdraw the application that should be mentioned since voting and continuing were mentioned as options.

Architect clarified that if they close and are denied can they reapply just for a nonconforming lot and a nonconforming structure? Mr. Weiss pointed out that would put a denial on the record. Ms. Chichester asked if the door out to the deck is changed to a window they will need to be in compliance and could get approval today?

Chair said they would like to see plans with door revised to show as a window. If they take that route the procedure would be to continue the case to next available date and they come back with revision shown and zoning board can take a vote – unless the board members would consider a conditional approval. Board members discussed a condition that applicant can submit the revised set of drawings to the ZBA and the building inspector prior to receiving a permit from the building inspector, and a second condition that the window can never become a door.

Architect asked upcoming meeting date to see if they would want to consider doing a special permit to a nonconforming structure. First potential meeting date is January 13, 2020, in order to post the hearing 14 days out. Ms. Chichester is most interested in getting her parents in her home so she wants to work with what zoning is most likely to approve tonight.

If it is approved as an in-law suite the home can have two addresses. To approve it as a master suite is a different application. Chair said they can close case, or make the changes for an additional meeting.

Mr. Brahmachari explained that members would want to see drawing revised to show double doors as a window. If they take that route, the procedure would be to continue case to next available date, come back with revision shown (and documents for attic) unless board would take a conditional approval that the in-swing double doors come out and a window is put in, and a condition that the attic bedrooms combined into one and remove the smaller of the two closets. This would require a revised set of drawings showing that it has to be a window and the window can never become a door and showing the attic layout.

No abutters present.

Mr. Currie, applicant, requested to close the case 1867.

Mr. Brahmachari motioned to close Case 1867, 31 Highland Street. Seconded by Mr. Garber. Unanimous roll call: 5-0-0 (Brahmachari, Garber, Weiss, Young, Reef).

Mr. Brahmachari motioned to approve Case 1867, 31 Highland Street including new architectural plans to be submitted to the Sharon Building Department and ZBA showing revisions as discussed this evening including the three (3) special conditions: 1) replace the patio door with windows, 2) two bedrooms in the attic to be combined into one and one closet removed, 3) it is to remain a five (5) bedroom house. Applicant will be filing updated plans with the building department and digital files to ZBA as well. Mr. Garber seconded. Roll call vote approved unanimously, 3-0-0 (Brahmachari, Garber, Weiss).

8:14 PM – Kapnos, Inc., 2-4 Merchant Street, 1869 – New Hearing

8:14 PM – Kapnos, Inc., 2-4 Merchant Street, 1870 – New Hearing

Hearings for Case #1869 and Case #1870 opened concurrently since both applications related to the requested marijuana cultivation establishment at 2-4 Merchant Street. Mr. Fishman proceed with application #1869 first since this was the primary application. Application #1870 just modified a prior special permit on the property which originally was approved in 2005, modified in 2019, and a further modification was required to permit the proposed use on the property.

Present for the applicant: Joel Fishman, Esq., attorney for the applicant, Stoughton, MA; Brian Striar for Kapnos Inc.; Bill Buckley, Bay Colony Group, project engineer

Mr. Brahmachari read documents into the record including: a legal ad for 1869 (1870 Legal Ad and other related documents read later in the meeting) that appeared in the Times Advocate on November 25, 2020 and December 2, 2020; a letter from Kevin Davis, Agent of the Board of Health dated November 24, 2020; an addendum from Kevin Davis dated December 1, 2020; a letter from John Thomas, Conservation Administrator dated November 25, 2020.

Documents from the applicant included: an application filed on November 19, 2020; a letter from William R. Buckley, Jr., P. E., project manager, Bay Colony Group, Inc. dated November 17, 2020, reviewing lot coverage, parking, storm water, and septic system design; site plan by Bay Colony Group, Inc., dated November 11, 2020, floor plans dated November 1, 2020; letter to Peter O’Cain, Town Engineer from William R. Buckley, Jr., P.E., project manager, Bay Colony Group, Inc., Foxborough, MA, dated December 2, 2020, including: supplemental documentation regarding the proposed Industrial Wastewater Holding Tank (IWHT), turning radius report dated November 11, 2020, and Xerxes Corporation, three page outline on Section 33 16 00 Storage Tanks; also Kapnos Memorandum in Support of Grant of Variance from Sharon Zoning Bylaw Section 3620 (b); Kapnos Memorandum 2 in Support of Grand of Variance from Sharon Zoning Bylaw Section 3630; a letter from Peter O’Cain, P.E., Town Engineer, dated December 2, 2020; a letter from Fire Chief Wright dated December 3, 2020; an email between Police Chief Ford and applicant’s attorney dated December 1, 2020, that acknowledges that Chief Ford has received initial security plans for Kapnos Inc.’s cultivating facility and will reserve the conditional right to make final approval pending review.

Mr. Fishman reviewed the floor plans for 2-4 Merchant Street. Kapnos Inc. is a separate entity from Four Daughters Compassionate Care and Four Daughters will lease the area of the floor plan highlighted in yellow to Kapnos Inc.

including 4,000 sq. ft. on first floor and 4,800 sq. ft. on the second floor, otherwise everything is same as 2019 floor plans.

Drainage plan for first floor per Mr. Fishman is a self-circulating system, so water is reused and if for some reason it needed to be flushed it would go in a tight tank that will be installed in the back. The 2019 site plan doesn't include the tight tank because the reason it is being installed is for Kapnos Inc.'s particular use.

Mr. Buckley presented site plan for the project, changes are only modifications made to the 2019 plan as a result of the ZBA approval including a wall removed and a drive paved so public safety vehicles can get around building without needing to turn around, and the addition of three parking spaces.

Rear of building has addition of a 10,000-gallon industrial wastewater holding tank that will be underground. Facility will have two separate plumbing systems: one for domestic waste from bathrooms and sinks that will go to the septic system in the front of the building and one for anything that is used for production of marijuana that will go to the holding tank in the rear. The holding tank has been reviewed by the town engineer. A 20- x 40-foot equipment pad along the back will be an area the mechanical, electrical, and plumbing engineers will have to use for any above ground HVAC equipment for the site. On either side of pad there will be loading docks.

On an overview plan Mr. Buckley showed a Hindu place of worship that is 385 feet from the property line at its closest point. Mr. Fishman explained that this related to request for a variance. 3620, if siting a marijuana facility, it can't be within 400-feet (property line to property line) to any churches as one of the uses, so they are requesting a 15-foot variance. This abutter's lot is 8.31 acres and the portion within 385 feet is .03 acres. Buildings themselves are 695 feet apart and can't be seen from each other. Mr. Fishman noted judicial precedent of Lombard vs. Wellesley. Mr. Fishman suggested it is a de minimus variance. And can be granted without substantial detriment to the public good and without nullifying or substantial derogating from the intent and purpose of the zoning bylaw.

Mr. Brahmachari clarified today's variance request is for the new tenant. Mr. Fishman said the request has already been granted for the retail marijuana operation that is currently in the building. Mr. Fishman said it is an additional non-retail marijuana use while keeping the marijuana retail use previously approved. Mr. Fishman confirmed he sent a letter to this abutter prior to the 2019 hearing and he has a proof of mail on that date and he has that documentation available. They are not within 300 feet, so this is not required, but was done. No one from the Hindu establishment responded when Chair asked if any comment desired. Mr. Brahmachari does want to see the document from Mr. Fishman.

Mr. Buckley said the mechanical systems have not been designed yet, so they are requesting the maximum pad space for the mechanical engineer to work. Town engineer requested study which is on file. The size and weight of the equipment is too great for roof as constructed and pad will only contain compressors and chillers. Mr. Fishman indicated that use of the pad as such can be put in as a condition.

Mr. Fishman explained second request for variance, Section 3630 regarding parking. Kapnos anticipated no more than eight employees at any one time, so number of employees is marijuana cultivation more aligned with warehouse use than retail use. Current plan has 33 parking spaces and bylaw requires 35. The 33 spaces are four times the number of spaces Kapnos will need. He considered this a de minimus request as well. Applicant could construct two new spaces if board denied request, but it would increase pervious area, extending stone block retaining wall, is economically impractical, and an environmental hardship increasing the impervious area on a lot in Groundwater Resource Protection District. Mr. Buckley showed where the parking spaces could be added if the variance was denied. Sixty-six spaces are for the entire building, but the 35 spaces are for this use specifically.

Mr. Striar said there will be no delivery from this facility to individuals, but just a minivan type vehicle with wholesale sales. A third party transporter will handle product going out of facility, but not as a daily scheduled item.

CASE 1870 discussion follows

8: 58 PM Mr., Fishman requested board add a fourth category of permitted use to the site of non-retail marijuana establishment and associated office and storage. Current uses are warehouse, office, and retail.

Mr. Brahmachari read the legal ad from 1870 that each appeared in the Times Advocate on November 25, 2020 and December 2, 2020 into the record as well as a letter from Fire Chief Wright dated December 3, 2020 indicated staircase is emergency exit. Mr. Fishman said it has been updated on plan; an email between Police Chief Ford and

applicant's attorney dated December 1, 2020, that acknowledges that Chief Ford has received initial security plans for Kapnos Inc.'s cultivating facility and will reserve the conditional right to make final approval pending review. Mr. Fishman read the letter from Peter O'Cain, P.E., Town Engineer, dated December 2, 2020, into the record.

No abutters present.

Mr. Fishman will write the decision for 1869 and 1870, have the document approved by town counsel and then provided to board for signature. Board members agreed to this. Mr. Fishman asked to close the hearings for cases 1869 and 1870.

Mr. Brahmachari made a motion to close Case 1869 2-4 Merchant St., Mr. Garber seconded. Roll call approved unanimously 5-0-0 (Brahmachari, Garber, Weiss, Young, Reef).

Mr. Brahmachari made a motion to approve Case 1869 2-4 Merchant Street Kapnos Inc. requesting three reliefs as follows: a special permit to allow operations of a nonretail marijuana establishment and associated office and storage pursuant to Sharon Zoning Bylaw, Sec. 3600 and Sec. 3650; a variance from Sharon bylaw 3620 (b); and a variance from Sharon zoning bylaw 3630. Mr. Garber seconded. Board voted to approve 3-0-0 (Brahmachari, Garber, Weiss).

Mr. Brahmachari made a motion to close Case 1870 2-4 Merchant St. Kapnos, Inc. Mr. Reef seconded. Roll call approved unanimously 5-0-0 (Brahmachari, Garber, Weiss, Young, Reef)

Mr. Brahmachari made a motion to approve case 1870 2-4 Merchant Street for the further modification of the Decision on Application for Special Permits Case No. 1535 dated July 13, 2005, as modified by Modified Decision On Application For Special Permit, Case No. 1841 dated May 8, 2019 by modifying condition 7 in Case No. 1841 to permit the additional use of a non-retail Marijuana Establishment and associated office and storage and to make any additional modifications to said Decision in order to permit operation of a non-retail Marijuana Establishment and associated office and storage. Mr. Garber seconded. Board voted to approve 3-0-0 (Brahmachari, Garber, Weiss).

Minutes Approval:

Mr. Brahmachari motioned to approve the ZBA minutes from November 18, 2020. Mr. Garber seconded. This vote was by roll call and approved unanimously 5-0-0 (Brahmachari, Garber, Weiss, Young, Reef).

9:15 PM – Frank Meroney, 133 Old Post Road, 1868-- New Hearing

For technical reasons the application is incomplete and the hearing was terminated.

Next hearing January 13, 2020.

It was moved, seconded, and voted to adjourn.

The meeting adjourned at 9:16 P.M.

Respectfully submitted

Approved: January 13, 2021