

## SHARON ZONING BOARD OF APPEALS MINUTES OF JANUARY 9, 2013

A regular meeting of the Sharon Zoning Board of Appeals was held on Wednesday, January 9, 2013 at 7:00 p.m. in the Selectmen's Meeting Room, Town Office Building. The following members were present: John Lee, Chairman; Seth Ruskin, Barry Barth and Abe Brahmachari.

**7:00 p.m. Jeffrey Goldshine, 44 Pole Plain Road, Case No. 1718:** Mr. Lee read the public hearing notice and correspondence from Jim Andrews and Greg Meister. The applicant was represented by Atty. Joel Fishman, Stoughton. Mr. Fishman stated Richie Gordon is here to represent Mr. Goldshine as he is out of state and also Scott Raposa, Project Architect. Atty. Fishman stated there are many ranch style houses in the neighborhood and some capes and colonials. This particular lot is 15,876 s.f. and they are not changing the footprint of the house. The only change will be the deck in the back on the right side and they are moving that to the other side. They will add a similar deck and also a similar porch. The property is very isolated with lots of trees and rocks. Also present was Greg Meister, Conservation Agent.

Scott Raposa, architect, stated they are adding 2-1/2 baths. The porch is to remain as is, just dressing it up. They are removing the existing fireplace and adding an insert fireplace and opening up the front first floor which will give them a nice kitchen with an eat-in area, a great room and three bedrooms upstairs. The house is in terrible condition right now. There will also be the same amount of people living here. He gave the board pictures of what is being proposed. He stated there will be some different roof lines and accents around the front door. Mr. Lee asked the current footage of the house and Atty. Fishman stated 990 s.f. and they are proposing 1003 on the second floor for a total of 199 sf. Mr. Barth asked if the basement is unfinished and Mr. Fishman stated yes it is unfinished. Mr. Lee asked if this is a complete tear down and Mr. Raposa stated no.

Lester Wax, 40 Pole Plain stated he has no objections as this will enhance the neighborhood. He is satisfied. Mr. Lee stated Greg Meister doesn't support this. He asked if there is any mitigation that can be done even though Mr. Meister doesn't think so. He asked if the septic system is in compliance and Mr. Fishman stated yes. Mr. Barth is concerned that number of bedrooms will change. Greg Meister stated there are different types of houses throughout the entire neighborhood. Some of them have habitable space in the garage. He feels this will have cumulative impact and he is depending on the ZBA to protect the public water supply. He feels this will set precedence if approved. Mr. Fishman understands Mr. Meister's concerns and asked how the board considers those concerns with regard to zoning and issuing a special permit. Will this addition make the property more detrimental to the neighborhood? He understands Mr. Meister's concerns and asked how does the board consider those concerns with regard to zoning and issuing a special permit. Will this addition make the property more detrimental to the neighborhood? He is not sure how Greg Meister's concerns can be incorporated into the board's decision. Mr. Lee stated the board isn't bound to issue a special permit. He has some concerns also. Mr. Meister questions the board's responsibility with regard to the overlay district. Mr. Lee stated this is what they are asking for. It is an undersized lot in the groundwater protection district. Mr. Brahmachari stated with regard to the existing bedroom #3, there is no existing entrance or closet. Mr. Raposa stated it is a very small room and showed him on the plan. Mr. Fishman stated that it is a three bedroom house according to the Assessors' records also. Mr. Lee stated there could be more people living here than previously. Mr. Fishman stated there is a potential for more people because of more children. There were no further public comments. Mr. Fishman stated that depending on what the board desires, he would like the board to check with town counsel as this decision will impact every future application in this district. Mr. Lee stated this is more than a 100% expansion although it is compliant with setbacks. Mr. Ruskin stated that Mr. Meister's opinion is important. Mr. Lee stated that is why we have 60,000 s.f. required in the GWP district and this is 15,000 s.f. Mr. Fishman stated the board did approve the house on May Street, which is a large home on a small lot. Mr. Lee stated that approval made the house more compliant. Mr. Meister stated he feels this is an opportunity for all of us to be more careful. We have some solid science now and there have been mistakes in the GWP district in the past. We are talking about the town's drinking water. Mr. Lee stated nitrates can be an issue. Mr. Barth asked if this is the first time Mr. Meister has raised this issue in this area and Mr. Meister stated he has concentrated on increased bedrooms. Usually he and the Building Inspector meet with the applicants. They need to do some serious science so they have something to base future decisions on. This proposal by itself will set a potential precedent. Mr. Lee feels we should keep this open and contact town counsel. He will contact town counsel and talk to her about evidence produced by Greg Meister and how we

should proceed. Mr. Lee continued this hearing to January 23, 2013 at 7:00 p.m.

**7:35 p.m. Matthew Reiling, 22 Lake Avenue, Case No. 1719:** Mr. Lee read the public hearing notice and correspondence from Jim Andrews and Greg Meister. The applicant was represented by Atty. Joel Fishman. Also present was his architect, Craig Mitchell. Mr. Fishman submitted pictures of the site and stated they are keeping the footprint the same and proposing a second story addition. The only change to the footprint is a small two addition in the corner to square off the kitchen which presently is an enclosed front porch and back porch and a foundation will be added for those. They are encroaching 5.1' into the setback in rear because of the deck. Mr. Lee stated this is within 10' of the side line and Mr. Fishman agreed. Mr. Lee stated can this be brought into compliance and Mr. Fishman stated they could demolish the house and move it over. Mr. Lee said what about the front porch? What are the neighbors getting out of this other than a larger house? Is there some give and take? Mr. Fishman asked if he is suggesting they cut back the front corner and Mr. Lee stated we are not in the design business.

Jeff Wolf, 17 Lake Avenue stated he is fine with what is proposed.

Wallace Waiters, 16 Lake Avenue stated he hasn't seen the plans yet and would like to before offering comment. Mr. Mitchell, the architect, showed the board the proposed plans and what is existing now such as the porches, no foundation and no heat. They will completely open the first floor and the entire second floor will be all open with a master suite with a master bathroom. The foundation is dirt. They want to add a full height ceiling. Mr. Lee asked if there is any build out in the basement and Mr. Mitchell said no. They are really only adding 7' on the second floor. The proposed study has double pocket doors and the house will remain two bedrooms. The existing stairs to the basement are 1-1/2' wide, so they are putting in new stairs. There will be a gym and a 10'x12' study. Mr. Lee asked if they can eliminate the potential of that becoming a bedroom. Mr. Mitchell stated there is no closet and two pocket doors. They are taking wall, the closet and door out. There will be nothing there are per Greg Meister's request. Mr. Mitchell stated there is 1305 s.f. on the first floor and they are proposing 1635 and 949' for a total of 2,500 s.f. Mr. Brahmachari feels the deck should be smaller. Mr. Fishman asked if he is concerned with encroachment as they can make the rear zoning compliant if that is what the board wants and Mr. Lee agreed. Mr. Ruskin stated it is questionable it will stay a two bedroom as he feels there are a lot of rooms. Mr. Lee stated the septic is designed for a minimum of three bedrooms. Mr. Lee stated a condition of approval will be the deck will not go into the setback and the plan of record will show that. Atty. Fishman stated that under Title V the system needs to be built for a three bedroom regardless of whether or not it is a two bedroom. Mr. Ruskin asked what is to the rear of the property and Mr. Reiling stated another neighborhood.

Mr. Wallace, 16 Lake Avenue asked if there are plans for any alterations to the lot like grading, etc. Mr. Reiling stated they will be moving the driveway to the other side to allow more open space. They have cleaned up the lot and would like to put in shrubs, etc. Mr. Wallace asked how big the driveway is and Mr. Reiling responded it will be two cars wide. Mr. Lee stated the standard is 12' and Mr. Fishman stated this one will be probably 20' wide. Mr. Wallace stated the grade drops off a couple of feet and he is concerned that will jeopardize the stockade fence and cause erosion. Mr. Reiling stated the driveway will not go beyond the mail box and it is still quite a distance from Mr. Wallace's land. Mr. Lee stated we don't address landscaping. Mr. Fishman asked to close the hearing. Mr. Ruskin moved to close the hearing. Motion seconded by Mr. Brahmachari and voted 3-0-0 (Ruskin, Brahmachari, Lee). Mr. Lee moved to approve this request with the board's standard conditions and two special conditions: 1) the deck will be in compliance with the rear setback only; and, 2) Atty. Fishman will provide an updated plan showing that. Motion seconded by Mr. Ruskin and voted 3-0-0 (Lee, Ruskin, Brahmachari).

**8:03 p.m. Sharon Commons Continued Hearing, Case No. 1609-B:** The applicant was represented by Atty. Robert Shelmerdine. Also present was Katie Rivard, Target; Kelley Killeen, Site Engineer and Richard Kershaw, CFII. Mr. Lee stated this is a continued hearing and they need to address the questions that were raised at the previous hearing. Atty. Shelmerdine stated they have a single page layout for the board and a full endorsement set of plans ready for tonight and a draft decision prepared by Tom Houston. They already have approval for BJ's and Target which is Phase I and they are seeking Phase II approval tonight. Mr. Lee stated the ZBA has worked on this for a number of years and have granted a number of approvals. We have approved Phase II work in 2008 and amended it in 2010 and

we are amending it again now. He asked if the plans being submitted tonight will be the plan of record and Atty. Shelmerdine stated yes. Mr. Killeen agreed. Mr. Houston feels Mr. Shelmerdine has summarized where we are in the approval process and he did prepare a draft decision with several conditions. Mr. Lee stated that Page 6 in the decision, Paragraph 5 questioned economic viability. Mr. Houston stated this would be the whole purpose of the zoning bylaw, but he will remove it if that is what the board wants. Mr. Lee would like it removed and Mr. Houston agreed. Mr. Lee asked for an explanation of Condition #6 and asked why are we allowing parking fields of over 240 spaces when the bylaw says not to have large parking fields. Mr. Houston stated this was previously addressed. This did not change and the board had previously said this was acceptable.

Ed McSweeney, 68 S. Walpole Street stated he would like to know when they will be tied into the water system and Mr. Houston stated that is in the Phase I decision including the tie in of his residence with respect to the water distribution system. The final plans have not been approved, but there is no reason not to believe that will happen. Mr. Lee asked if the service is coming off Old Post Road and Mr. Houston stated yes. Mr. Shelmerdine stated that is Condition #138 of the July 25, 2012 decision. Mr. Lee asked if the new decision references the previous decision and Mr. Houston stated yes. Mr. Lee asked him if he is comfortable with these plans and Mr. Houston stated yes. Mr. Lee asked Mr. Killeen if there is anything we should be looking for and Mr. Killeen stated no, just maybe the open space detail. Mr. Lee stated we will trust the expertise of Mr. Houston on this. Mr. Houston stated he will update the dates. Mr. Lee stated this is the plan and all other plans have been superseded by this plan. Mr. Houston stated that is correct.

Ed McSweeney, 68 S. Walpole Street stated his issue is they have not solved the problem of flooding in his backyard. Mr. Houston had assured him his house would not go under water, but the water will rise. He is asking where the water will go. The water is coming down hill from 284 and it is all going down still. This will flood his backyard, destroy his septic, destroy his large field, and destroy his barn. If the town approves this, he will sue the town or the developer. He asked if he can have a bond from the town that says if they do this, they own it. Also, what about the dust. If this is signed, they can build Target and BJ's. Will they protect us with screening? Mr. Lee stated they have a dust mitigation plan. Mr. Houston stated the original design for Old Post Road was almost the mirror image of this. Now the entire road drainage for the road goes into a system that is on the mall site. There is no more discharge of surface water into the pond in Ed McSweeney's yard. Mr. McSweeney asked if all the water will go into the catch basin. No, it is going to go down the road into the pond, not the catch basin. Also, where are you going to put the snow? Mr. Houston stated they included a new condition that before construction is started on the mall, Old Post Road need to be completed or they have to pave substantial segments. They did the same thing for Laurel Road. Mr. Lee stated that Condition #28 on Page 18 addresses this. Mr. McSweeney stated the dust problem has happened before. Atty. Shelmerdine stated they have put conditions in the decision that allow the town or the engineer, Peter O'Cain, to request or demand measures for them to take for Mr. McSweeney and Laurel Road. Mr. Lee agrees that the stormwater management has quite a bit of power. Mr. McSweeney asked why they can't pitch it and Kelley Killeen stated they did. The road is a reverse crown so everything flows to the center. Mr. McSweeney stated everything is coming his way. He has an appraisal that was sent by Michael Intoccia because he knew they would destroy his house. It is wrong what they are doing. Mr. Lee stated we have the applicant's engineer stating that the water will be diverted from the site and this will work. Also, Tom Houston who is representing the town is agreement. Mr. McSweeney asked if they are so confident, let them take a bond out on his home. He wants some legal insurance in case something happens. If not, good for them. Mr. Lee asked Mr. Houston if there is a mechanism that could be put into the decision to protect Mr. McSweeney and Mr. Houston stated no, he has never seen a town board decision put a bond on this. Mr. McSweeney wants the bond to protect him. He suggested a rock wall around the rotary. Mr. Lee stated that not everyone can set a bond. The ZBA can't, the Selectmen can. That being said, someone can't dump water onto someone else's property. He feels we have done a lot and so has the applicant. Mr. Killeen stated there is an underground overflow system. Atty. Shelmerdine feels they have done everything they can to make sure the water is kept on site. Mr. Killeen stated the sole purpose of this plan was for density. They carry liability insurance in case something goes wrong with a design. Mr. McSweeney questioned why the ZBA will approve a mall on a dirt road. Where is the real road? They have had eight years to do it. Mr. Lee stated they can't open the mall without the road. They can start construction, but can't get a certificate of occupancy. Mr. McSweeney asked if the taxpayers get stuck building this road and Mr. Lee stated he doesn't know that answer, but the Board of Selectmen are the road commissioners. The decision states the applicant shall construct the road. Mr. McSweeney stated Target is building

their own. Katie Rivard stated Target is building their building. Mr. McSweeney stated he is done and thanked the board. There were no further public comments.

Mr. Lee stated that one assurance is that Mr. Killeen works for a large engineering company and they stated the catch basins will work. If they don't there will be recourse against them. We have to look at what we can do to protect the neighbors and he feels we have done everything we can. Mr. McSweeney stated Michael Intoccia knows he couldn't protect him. Atty. Shelmerdinie takes exception to that. Mr. Lee stated that is not what is before us. There are two engineers that are saying they are moving the water away. He doesn't know what more they can do to remedy this. Mr. McSweeney stated time will tell. Mr. Lee stated he asked for plans to move forward with and he received them. These are now the plans of record for Phase II and Phase I still exist. Mr. Houston agreed. Mr. Lee stated the draft decision will be changed to reflect that this is the plan of record. We have addressed the paving of Old Post Road and he feels the ZBA is trying to protect Mr. Samuels, Mr. McSweeney and Laurel Road. Mr. Houston stated that Peter O'Cain and he are the designated site managers. Mr. Lee stated last time we had a letter from Mr. Gobi's attorney as he was concerned about the pipes. Rich Kershaw, CFII stated they met with Mr. Gobi on site and installed a fence to protect the tenants. He is all set now. Mr. Lee stated the gates at both ends of the property are opened at this point. Mr. Kershaw stated they will be getting a heavier barricade gate which should be ready by the end of January. He will send the board pictures if they want. Mr. Lee stated no, it is your property and you can do what you want.

There were no further questions. Mr. Lee moved to approve the Phase II revised site plans for Sharon Commons as per a decision dated January 9, 2013. Mr. Houston will make edits to the plan. We also accept the endorsed set of plans dated January 8, 2013 from Coler & Colantonio. All other plans are now obsolete as this is the plan of record. The board will sign the plan after the expiration of the appeal period. Motion seconded by Mr. Barth and voted 3-0-0 (Lee, Barth, Brahmachari). Mr. Houston stated he will change the signature page to show who was voting tonight.

It was moved, seconded and voted to adjourn. The meeting adjourned at 9:40 p.m.

Respectfully submitted,

Approved 9/25/13