

# **SHARON ZONING BOARD OF APPEALS**

## **MINUTES OF WEDNESDAY, April 12, 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 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, April 12, 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, Fire Chief Michael Madden, Dana Hinthorne, Building Inspector and Michelle Katapodis, ZBA Administrative Assistant.

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 – Continued from February 22, 2023**

Attorney Shelmerdine requested a continuance until June 21, 2023, on behalf of the applicant.

#### **Motion:**

Chair made motion to continue Case 1911– 144 Old Post Road, Sharon Gallery - Phase 2 until June 21, 2023. Mr. Mehta seconded the motion. Approved by unanimous roll call vote 3-0-0 (Garber, Mehta, Wallenstein).

### **Case 1888– 144 Old Post Road, Sharon Gallery, 715 & 715R Sharon Gallery – Costco Minor Modification**

Present for the applicant; Owner David Shapiro, Attorney Robert Shelmerdine, Michelle Carlson of BL Companies, Mark Marchiano of Costco.

Attorney Shelmerdine introduced himself and stated that he represents the applicant/owner of Sharon Gallery. He explained that this case goes back to Phase 1 of the project and that they have received approval from the ZBA for this phase. Mr. Shelmerdine stated that they are still in appeal and are hoping to settle that soon. Meanwhile, the engineers for Costco have been reviewing their submittal and requested to make some minor revisions to the previously approved development. Mr. Shelmerdine consulted with Mr. Houston, and they agreed that these are minor changes and that the ZBA should be aware of and review but could be done as a minor modification. Mr. Shelmerdine noted that they submitted a letter from BL Companies on March 21, 2023, with revised plans.

Michelle Carlson of BL Companies presented the plans which show the minor modifications that Costco had requested. The first change is that they want to expand the building by 2' on the left which will increase the building size by approximately 520 square feet. The next modification is to move the compactors and as a result of this relocation they will have to increase the paved area to facilitate that and they also modified the plan to add two additional parking spaces, so that there will be a total of 809 parking spaces. Ms. Carlson explained that when they first presented the plan there were 3 grayed out gas dispensers on the plan for future expansion for Costco and they want to add the three additional dispensers so that the customers won't have to wait so long. With the addition of these dispensers, they will have to expand the canopy over the dispensers. She explained that everything will meet building code, etc. and she has coordinated with the Fire Chief regarding emergency access.

Mr. Garber asked Chief Madden if he had any additional questions. Mr. Madden explained that BL Companies had answered all questions and he didn't have any objections and submitted a letter to the ZBA. Mr. Garber read the letter dated March 24, 2023, into the record.

Mr. Garber asked Mr. O'Cain if he had any comments that he wanted to add. Mr. O'Cain explained that he wrote a letter expressing that he accepted the changes but wanted revised plans showing the extension of the canopy. Mr. O'Cain also stated that Mr. Houston wrote a letter and has accepted all of the changes as well.

Laura Nelson of Edge Hill Road had a question regarding the ADA parking. She expressed that her understanding based on 521CMR and ADA, is that when the total spaces are between 501 and 1000, the number of required accessible spaces is 2% of the total. Which based on the 807 or 809 spaces, comes out to 16 accessible spaces but from what she can see on the plans, there

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are only 12 handicapped accessible spaces. Therefore, there aren't enough handicap accessible spaces. Ms. Carlson explained that there are 18 handicap accessible spaces and pointed them out on the plan.

Mr. Garber opened the public or direct abutters, there weren't any comments. He opened the meeting to the board members.

Mr. Mehta stated that Ms. Carlson did a nice job presenting the changes. He agreed that all of the changes are minor and have no impact on the previously approved drawings or design and he doesn't have any objections.

Mr. Wallenstein agreed that the modifications were minor, and he doesn't have any objections.

Mr. Garber asked Mr. Shelmerdine if he had anything else that needed to be addressed and Mr. Shelmerdine stated that he did not.

### **Motion:**

Chair made motion to accept the Costco minor modifications for Case 1888 – 144 Old Post Road, Sharon Gallery, 715 & 715R Sharon Gallery. Mr. Mehta seconded the motion. Approved by unanimous roll call vote 3-0-0 (Garber, Mehta, Wallenstein).

### **Case 1917 – 2R-4R General Edwards Highway – Optima Hospitality Group, LLC**

Present for the applicant David Wluka, Manager of Optima Hospitality Group, LLC; Attorney Phil Macchi; Dave Johnson, Norwood Engineering; Ed Lyons, Falcon Associates Architects and George Lang, future owner.

Mr. Garber read the legal ad into the record. He also read a letter from the Jeff Philibert, Conservation Administrator dated March 14, 2023, a letter from Peter O'Cain, Town Engineer dated April 11, 2023, and a letter from Kevin Davis, Board of Health dated March 29, 2023.

Mr. Wluka introduced himself and stated that they met with Mr. O'Cain are fully aware of his questions and concerns and Norwood Engineering is fully prepared respond to them accordingly, but they wanted to get through this process in case something moved. He also stated that they have a signed Host Community Agreement with the Select Board that they are holding in escrow pending this Special Permit Site Plan approval. George Lang will be the owner of the property in Sharon, after it is permitted. Anything that goes beyond what Mr. Wluka has for HCA will require a second HCA. Mr. Wluka stated that the ZBA had approved a hotel on this property that cut across both the Sharon and Walpole lines. There were some issues on the Walpole ZBA regarding a height variance that the water department required, by the time that got resolved and they were fully permitted, COVID it and things got hung up. George Lang is a contractor developer that does a lot of large projects with a great deal in cannabis and since piece of property is zoned for cannabis, he took an interest and is moving his corporate offices from Braintree to Sharon. Mr. Wluka also presented an overview of the property, as well as a rendering. He turned the presentation over to Phil Macchi.

Mr. Macchi introduced himself as counsel on behalf of the applicant. Mr. Macchi went over the legal requirements, he explained that the original plan included a building that was attached to Applebee's but that no longer exists and the entire building with exception of a few half -parking spots, is entirely in Sharon. This is a Sharon project and is under the jurisdiction of the Town of Sharon once it gets built. There are no more municipal agreements with Walpole, but we are still in discussions with Walpole for water service for public safety. We believe this fully complies with zoning and nothing has changed in the zoning since the first approval. There is 100' rear setback requirement to the residential district except where the light industrial abuts I-95, and it goes down to 30' and we fully comply. Mr. Macchi stated that they don't believe that anything has changed from a legal perspective. He explained that they need a Special Permit under Zoning Bylaw Section 7.3 for a marijuana establishment and the warehouse and retail establishment will be linked to marijuana. The office for Mr. Lang's office does not require a Special Permit.

Mr. Garber asked they would be growing marijuana onsite and Mr. Macchi stated that no there wouldn't be any manufacturing or growing on site. Under Section 7.3 there are a few specific requirements, first being it has to be located in the Light Industrial District, which they are. Second, it talks about a 400' setback from any residential districts except where it abuts the Light Industrial District, and they comply with that. The parking and lot meet all requirements as well.

Mr. Macchi went on to explain the criteria for Zoning Bylaw Section 9.2.8 addresses the location of natural vegetation. They believe that they comply with this requirement. Section 9.2.10 & 9.2.11 these sections state that the Town Engineer should

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review all submittals. Mr. Macchi stated that this is a less intensive use than what was previously approved and there is less impact overall.

Mr. Garber asked if they have submitted anything to the Fire Department and Police Department for review. Mr. Wluka stated he met with the Fire Chief and explained that the building was reshaped so that the fire equipment can have access. Mr. Garber stated he would like a letter from Chief Madden and Chief Coffey that they are satisfied with the safety requirements.

Mr. Macchi explained that Section 10.5 which applies to Special Permits and there are several criteria. First of which you have to determine that the adverse effects of the project don't outweigh the benefits of the project and that is the case here. Regarding social and economic needs, we would note that the Town amended its zoning to allow this project to happen and the rest of the uses, if they were not coupled with marijuana, are allowed by right. We also note that there aren't any neighbors in Sharon. We believe that this blends in with the neighborhood and there aren't any community downsides to this, and it will be an economic benefit. The utilities and lighting plans show that they are adequate, and the traffic flow has been reviewed and complies. As far as traffic safety, everything is self-contained, and nothing is going to back out onto Route 1 or Route 27 and that the Applebee's parking won't be affected. The proposal is less intensive than the original plan and it worked then, and it works now, actually better. Also, they have added the gravel road to give 360 -degree access to the public safety vehicles. The utility and lighting plan show that they are both adequate, with the exception of the sprinkler system. They are in the process of coordinating with the Town of Walpole and understand that this could be a condition of approval to issue a building permit. As far as the impacts on the natural environment the applicant has already contacted the Conservation Commission and they have modified the order of conditions and we will comply.

As far as fiscal impacts, there will be minimal requirements for public services. We don't anticipate anything unusual. There aren't any school children associated with this. The potential impact to the finance of the town will be positive since it was a vacant lot. The last piece is the Major Site Plan review criteria and based on the size of the construction this is Major Site Plan review. The criteria first refer to the protection of adjoining premises and onsite residential uses. There aren't any onsite residential uses so that part becomes not applicable. As far as protection of the adjoining premises, the entire site is being designed together with Walpole and Sharon although independent. The wetlands will be protected. The second criteria discuss convenient and safe vehicular and pedestrian movement. We have asked MassDOT for a no left turn out on Route 27, just like before and we believe that will improve the traffic flow, it is important to note that we are trying to clean up the access and egress of the site as a whole. McMann associates has provided a traffic memorandum which summarizes this. The third criteria talk about adequate methods for sewer and other wastes and drainage. All have been discussed a few times, but Dave Johnson will go into great detail. There is ample on-site parking, and we meet the zoning code and requirements. Dave Johnson will detail the stormwater management system, and we capture and infiltrate the water where it belongs.

Mr. Macchi asked if the board had any questions before he turned it over to Dave Johnson for the technical presentation. Mr. Wallenstein asked if this was Minor Site Plan review and Mr. Macchi stated that he believes it is Major. Mr. Mehta didn't have specific questions and there aren't any major concerns, however the engineering department has outlined several issues to be addressed. He also stated that a peer review would be appropriate for this so that all of the issues can be addressed in a timely manner. Mr. Garber stated that he was leaning toward a peer review as well.

Ms. Nelson of Edgell Road had a couple of points and questions. The first issue is that if anybody would like to enter the facility heading south on Route 1 would need to make a left turn off of Route 1 onto High Plain Street and then a right turn into Applebee's because Route 1 is a divide highway heading south. So, there would be potentially some type of traffic flow and it was being glossed over and she wanted to make it clear. She doubts people would want to continue south on Route 1 make a u turn and head north and then enter the facility parking lot. Also, she noted that to get to Applebee's from High Plain Street, High Plain Street currently has a dedicated left turn lane to head south on Route 1 that allows approximately 4 cars go on the green arrow and if there will be additional traffic heading down High Plain Street to take a right into Applebee's will cause some back up. Especially if trucks will be heading that way to the warehouse and it won't be a pleasant situation for anybody that drives both of these streets.

Ms. Nelson had a question regarding the distance between the two residential buildings that are in Walpole on High Plain Street to this facility. She had mentioned that Mr. O'Cain had measured the distance but was wondering if it could be remeasured based on the new layout. These properties are the right of the car wash before Johnson Drive and she wants to make sure that they are outside the 400' setback to residential. She also asked if there would be condominiums going into this development and if there are would they be within the setback and be within a legal distance from the condominiums and the facility. Mr. Macchi explained that there will be condominiums, but they will be business condominiums. There will be no residential housing on this property.

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Mr. Garber asked Mr. O'Cain if he wanted to address the residential setback question. Mr. O'Cain stated that his recollection was that the distance was double the requirements.

Mr. Hinthorne asked how the material being delivered to this storage facility. Is it by box trucks, tractor trailers or both? Mr. Wluka explained that there are two different types of loading docks, one for box trucks which will be 90% of the deliveries but they put a tractor trailer loading dock in the event that they needed one. Mr. Hinthorne also asked if there was an estimate of how many pounds will be stored at the facility. Mr. Garber stated that this question may be answered in the next part of the presentation.

Mr. Johnson of Norwood Engineering started his presentation by explaining the location of the entrance at Route 1 is the same that was approved by both towns for the hotel. The site access drive came in and at the first intersection the hotel peeled off to the South and the parking lot ran along what is now the back side of the new building up along a retaining wall that protected the wetland area. That area has now been changed from pavement to gravel with landscaping on either side, to reduce the impervious area within the buffer zone. They have moved all of the parking on the north easterly side of the site which allows all of the paved area and all of all of the buildings to be outside the 100' buffer for the wetlands. There is little pavement in that 75–100-foot buffer, it's really only near the employee parking. In terms of the stormwater, under the previously approved plan, the first section of driveway coming in to about the second set of left and right arrows in Walpole, the stormwater from there out to Route 1 is proposed to be collected and discharged into an existing and proposed stormwater system. This will be used to accommodate the stormwater in that location. In terms of other locations, there is a stormwater system that is being designed underneath the parking lot in the front of the building to take run off from the driveway and they are also looking at an additional system on the right side of the building to take roof run off from the retail and the office space. Also, in the rear of the warehouse there will be another system to accommodate roof run off only, so that all of the infiltration areas are outside the buffer zone. The design slightly increases the increase in the impervious area, but it is due to the size of the warehouse, but they have decreased the pavement by about 13,000 square feet. It's related to roof run off and we feel that is a positive impact to the project.

Mr. Johnson also explained that because they no longer have a municipal agreement with Walpole for sewer, an onsite septic system is accommodating this site. It's small, about the size of a 5-bedroom house and it is located in a grassed area up against the Commonwealth of Mass. storage yard. Both buildings will be collected into a common septic system and in that location which will come across into a pump chamber. They have done soil testing that was acceptable and was observed by Kevin Davis of the Board of Health and the assistant Town Engineer. They have also prepared the plan that was presented, and it was submitted to Kevin Davis asking him to review in a draft conceptual manner to flush out any issues going forward. Mr. Johnson explained that they are trying to balance what they are doing between the Board of Health, Conservation Commission, Engineering Department and the ZBA, trying to get the moving target set before some of the hard engineering such as the stormwater calculations and the grading. Mr. Davis has advised them to move forward with the detailed design of the septic system and they don't anticipate any issues getting it approved. Conservation Commission has approved the modification and one of their conditions was that they proceed with the detail engineering design and provide that to them for the administrative record, which will be reviewed by Mr. O'Cain.

Mr. Garber opened the meeting to Mr. Hinthorne for question. Mr. Hinthorne asked how much of the material will be stored in this building and from an odor standpoint how is that not going to become an issue with ventilation. Mr. Hinthorne explained that there is an odor issue concern at another facility, and he would assume that they will have an HVAC company will be coming in with a detailed plan. Mr. Wluka explained that are aware of the potential odor control issues and will be dealing with it in great detail. He also explained that the cannabis will be delivered to the site packaged and distributed that it shouldn't produce too much odor but if it becomes an issue, they are prepared to deal with it. They have an engineering firm that deals only with odor, and they will engage them if necessary.

Mr. O'Cain expressed his concern regarding connection to water to Walpole and that timeline. He doesn't want the lot cleared completely and then have a two year wait which will lead to dust blowing around and run off issues. He asked if the applicant has any issues with not clearing the site until they have approvals. Mr. O'Cain stated that he is also concerned with the odor issue and that they will need charcoal filtration, so they will need to involve their expert. This could be a condition of approval, stating that odor control would have to be submitted approved by the Building Inspector and the Cannabis Control Commission.

Mr. Garber asked Mr. Johnson if he had any additional comments. He wanted to address the comment regarding a peer review. Mr. Garber explained the reasoning behind the need for a peer review. Mr. Wluka stated that he is not against having anybody looking at it but since Peter is doing the review for the Conservation Commission is it may be redundant to have a peer review.

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In this particular case, the two towns have already been through it and approved it when they were proposing a hotel. Mr. Garber explained that they would still need an approved septic plan and they would need letters signing off from the Fire Department and the Police Department before they can make any decisions. Mr. Garber suggested that Mr. Wluka submit the prior studies that were done for the hotel project to the board for review. This way we can avoid the peer review.

Mr. Garber opened the meeting up to the board members.

Mr. Mehta explained that he understands that this is less intensive than the previous project, but the issues associated with the site plan need to be fully addressed before we can move further. He also stated that the peer review could be a minor high level review and he isn't aware of the previous work done but if they could take the work done and summarize it into a shorter concise report applicable to this project. Mr. Wluka stated that it wouldn't be a problem and they will prepare a summary report outlining all of the prior work and studies that have been done for the site.

Mr. Wallenstein stated it was a good presentation and appreciated walking through the bylaws that the board would eventually be voting on. Mr. Wallenstein asked if the proposed retail space was specifically for cannabis or other retail as well. Mr. Wluka explained that it is strictly for cannabis for which they have already signed an agreement with the Town. Mr. Wallenstein also asked if they got an order of approval from the State Cannabis Control Commission and Mr. Wluka stated that they can't get the order until this process is completed, and they will submit copies of everything submitted to the Cannabis Control Commission. Mr. Wallenstein also asked about the water from Walpole and what happens if they don't get it. Mr. Wluka explained that there are two different issues, one is domestic water which is equivalent to a 5-bedroom house and if they have to deliver water for that, they can drill a well for that. There is also a hydrant on the property in Walpole and there is a proposed second hydrant at the town line, so they are preparing to bring water in. There is an 8" main that runs from the first hydrant to the back of Applebee's. They aren't looking to purchase water from Walpole they are only looking for it in case of an emergency. This has to be resolved before they start clearing ground. Mr. Wluka stated that he didn't want to go to the Town of Walpole water department until he figured out what the ZBA wanted.

Mr. Wallenstein also asked about the odor. Mr. Wluka stated that they will have to do an odor study to satisfy the board and that odor issues are supposed to be mitigated. He explained that their consultant will give them guidance. Mr. Wallenstein briefly discussed the peer review and feels that since they have already done a lot of work and studies, it's not needed.

Mr. Garber stated that he is still undecided about the peer review, and he thinks it may be better for all involved to have an expert like Tom Houston onboard to do the traffic studies, etc. and we would want to make sure the stormwater and all of the details are covered. He doesn't think it will take a lot of time and it would be a small report. Mr. Garber took a vote with the board regarding the peer review. Mr. Wluka stated that he is uncomfortable since Mr. O'Cain is already doing the review for the Conservation Commission. He stated that they have a detailed traffic study, and everything is there. He asked Mr. Garber to hold off until the board receives all of the prior studies. Mr. Garber asked the board members if they would mind waiting until they see the prior studies and reports before deciding if a peer review is necessary. Both Mr. Wallenstein and Mr. Mehta agreed that a summary of the prior work would be helpful.

Mr. Garber opened the meeting to the public for comment. Mr. Hinthorne had a question regarding the material being trucked in. He asked if it was going to be already packaged at another location and asked about the retail space that will be selling the cannabis. Mr. Wluka stated that they are two different businesses not related to each other. Mr. Hinthorne asked if the product being sold at the retail location would be coming from the warehouse. Mr. Wluka stated not necessarily.

Mr. Garber asked Mr. Wluka when he would like to come back to the board. Mr. Wluka stated that he would like to continue his case to a future date to be determined.

#### **Motion:**

Chair made a motion continue Cases 1917– 2R-4R General Edwards Highway – Optima Hospitality Group, LLC to a future date to be determined. Mehta seconded the motion. Approved by unanimous roll call vote 3-0-0 (Garber, Mehta, Wallenstein).

#### **Minutes:**

#### **Motion:**

Chair made a motion approve meeting minutes from February 8, 2023. Mehta seconded the motion. Approved by unanimous roll call vote 3-0-0 (Garber, Mehta, Wallenstein).

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**Motion:**

Chair made a motion approve meeting minutes from February 15, 2023. Mehta seconded the motion. Approved by unanimous roll call vote 3-0-0 (Garber, Mehta, Wallenstein).

Meeting adjourned.

Respectfully submitted