

## SHARON ZONING BOARD OF APPEALS MINUTES OF SEPTEMBER 11, 2019

A regular meeting of the Sharon Zoning Board of Appeals was held on Wednesday, September 11, 2019 at 7:00 P.M. in the Second Floor conference room at the Sharon Community Center, 219 Massapoag Avenue. The following members were present: Abe Brahmachari, Joe Garber, Steve Weiss, and Steve Cohen.

### **7:03 P.M. – Rajiah Denny, 40 Harold Street, Case # 1844 – Continued Hearing from August 28, 2019**

Mr. Brahmachari re-read the legal notice, communications from Board of Health and Conservation Commission. Then he asked Mr. Matthew Costa, Gay & Gay, P.C., Taunton, MA, attorney for applicant, for update. Mr. Denny was also in attendance.

Attorney explained that he and Mr. Denny met with Mr. Meister and Mr. Kent. They hoped meeting would show how specifically this project impacts wetlands. Mr. Costa stated that Mr. Meister is concerned with this being a precedent for other properties in town. Attorney wants to be clear that they are focused on 40 Harold Street and they aren't in a position to argue other decks, other projects, other wetlands. Counsel for applicant also noted that the Decision from previous time did not show a condition for enclosing the deck; he doesn't know what conversations may have gone on, but nothing in Decision.

Attorney reminded Board that Oxbow Associates report discussed at last ZBA meeting showed experts on wetlands stating project shows no concern to wetlands. Mr. Costa suggested that the Zoning Bylaw provisions for protection of wetlands are not affected by this proposal with an existing deck because there is no need to disturb the ground for this, it's an existing structure, there are 35 feet of yard to the wetlands to absorb water flow from existing area of deck.

In the past, Mr. Denny did improvements to septic, retaining wall, etc. and current proposed project, which is in their opinion is minor, has a structure that won't impact the wetlands. They agree work was done without permit, but Mr. Costa wants to point out that Mr. Denny stopped immediately, hired Oxbow, hired an attorney and agreed with the Building Inspector's concerns regarding lack of permits.

Mr. Costa said that in environmental control Section of Zoning Bylaw, Section 3320, the intent of the bylaw is to protect a buffer zone that is a buffer. None of the prohibited activities in Section 3324 are being done here. It is a backyard and existing deck. No indication that this would have water flow into the wetlands. This project is not impacting the intents of the buffer zone. Mr. Costa stated that this is the Zoning Board so it's jurisdiction isn't really within the town's conservation bylaw, but that the town's conservation bylaw is about protecting against adverse impacts on wetlands. He submitted that it would be very fair if ZBA finds that it is not substantially more detrimental to the neighborhood even if it involves an order of conditions. Project is putting walls and a roof over existing deck. Attorney contends distinction on inside

doesn't change impact on outside and on wetlands. It could be a four-season dwelling, unless the Board doesn't think that's appropriate.

Mr. Brahmachari commented Section 3223 permitted uses within the wetland setback area zone approved an observation deck last time around. Current plan shows habitable space. Attorney responds that the deck existed at the time, there was a small addition to it, but still a deck. We have a preexisting, nonconforming property and the whole thing is within the 100-foot buffer to the street. So under that, no changes would be allowed, but ZBA exists for allowing changes to preexisting nonconforming structures. Mr. Brahmachari explained that Mr. Meister and Mr. Kent need to look at the code where as ZBA looks at one case at a time and makes a determination.

Board discussed whether they consider a deck "not a structure" so when you build on top of deck, deck becomes another thing. Applicant stated that the plans they are showing have not been approved by building inspector so the applicant really can't know if there will not be any digging until weight of structure, etc. considered and Mr. Denny's attorney agreed.

Board sought clarification about using last sentence from Oxbow to prove Oxbow finds no impact to wetlands from building because Oxbow doesn't read as it's a structure, it says it's a deck with a roof. Attorney said whatever you call it Oxbow was looking at proposed improvements.

Board members expressed concern it is becoming a living space. Mr. Brahmachari stated that the board is not going to make design recommendations.

Attorney asked if he and his client can talk in hall and come back with a suggestion for tonight. Mr. Weiss point out that they still need drawing because otherwise they are not submitting what they are voting on. Attorney wondered if Board can set some conditions. Mr. Cohen is not aware of a requirement to submit building plans.

Chair asks if they'd like to close the case or not. If they want to close it without prejudice they can withdraw the application. Or they can continue the case. Board is not willing to make a decision with conditions but rather applicant would need to resubmit. Applicant requested a continuance.

Continuing to Sept. 25, 2019, and attorney filled out continuance paper work.

**7:36 P.M. Optima Hospitality Group Inc., 2R and 4R General Edwards, (990 Boston Providence Hwy.), Case No. 1845 – Continued Hearing from August 28, 2019**

Continued case so Mr. Brahmachari re-read the legal notice, communications from Board of Health and Conservation Commission.

Present for the applicant were Phil Macchi, Esquire, Macchi & Macchi, LLC, Norwood, MA; David Wluka, principle from Optima Hospitality Group, LLC, Sharon, MA, and Dave Johnson, Norwood Engineering, Norwood, MA.

Since last meeting, applicant reviewed plan with Peter OCain, town engineer, drafted a decision, and had it reviewed by town counsel. Mr. Macchi explained Storm Water Prevention Protection Plan (SWPPP) is with town engineer, but not yet reviewed or approved, but Mr. OCain engineer and Ms. Whelan, town counsel, are happy with decision being written with provision that no building permits be provided until SWPPP approved. (Note: OCain and Whelan were not in attendance).

For record attorney submits actual voted on Order of Conditions from Sharon Conservation Commission.

Town Counsel made a few changes mainly to ensure that the intermunicipal agreements and the development agreement that Sharon and Walpole entered into and the developer and Sharon entered into are part of the Decision.

There are two votes. One to approve special permits and one to approve site plans with 7 conditions. But it is all one case. Mr. Brahmachari read seven conditions as outlined on draft of Decision for the record:

**CONDITIONS OF APPROVAL** Site Plan Approval is subject to the following conditions:

1. Within sixty (60) days following the date that this Decision becomes final and unappealable and is certified as such by the Town Clerk for the Town, the Applicant shall record this Decision in the Norfolk County Registry of Deeds and provide proof of recording to the Board.
2. Should a conflict arise between the express terms of this Decision and the findings and waivers herein and/or The Final Site Plans and the "Town of Sharon Zoning Bylaws," the terms of this Decision and the Final Site Plans shall govern. In the event that the terms of this Decision and the Final Site Plans are silent as to any matter addressed by the Bylaws, the terms of the Bylaws shall govern.
3. All on-site work and off-site work shall fully comply with federal, state, and Town laws, by-laws, regulations, and licensing and the terms, conditions, findings and waivers set forth in this Decision.
4. The Applicant shall grant the Town of Sharon, its agents, and third parties engaged by the Town of Sharon, right of entry onto the lot for the purpose of inspecting construction and determining compliance with this Decision.

5. The site shall be constructed in substantial conformance with the approved site plan entitled "Site Plan, #990 Boston Providence Highway, Walpole/Sharon, Massachusetts" consisting of 10 Sheets dated July 1, 2019 (the "site plan").
6. The Project shall comply fully with all provisions of the Inter-Municipal Agreement (the "IMA") dated May 23, 2019, between the Applicant and the Town of Sharon and the Town of Walpole and the Development Agreement between the Applicant and the Town of Sharon, copies of which are attached hereto and incorporated herein.
7. The Applicant shall obtain approval of the Stormwater Pollution Protection Plan from the Sharon Town Engineer prior to the issuance of a building permit.

Attorney asks to close hearing. Motion to close hearing by Mr. Brahmachari for case #1845. Seconded by Mr. Garber. The Board voted to close hearing (4-0-0).

Mr. Brahmachari motioned to approve two special permits related to Case 1845. A Special Permit under Section 2334.k. To allow a hotel provided that the following are complied with:

- (1) Minimum floor area per unit, not including corridors and public floor areas shall be 240 square feet;
- (2) No unit floor elevation shall be located below the mean grade level of the land;
- (3) No more than 10% of the public floor area (lobby, function rooms, restaurants) shall be used for accessory commercial uses such as newsstands, barber or beauty shops, vending machines, gift shops, or offices other than those offices necessary for the management of the hotel.

And

A Special Permit under Section 4535 pursuant to Section 4540. To allow impervious coverage in excess of 15% (approximately 43.9% +/-) as shown on a plan entitled: "Site Plan, #990 Boston Providence Highway, Walpole/Sharon, Massachusetts" consisting of 10 Sheets dated July 1, 2019 drawn by Norwood Engineering Company, Inc., 1410 Route One, Norwood, MA 02062, as may be amended.

Mr. Garber seconded the motion. Board voted in favor 3-0-0 (Cohen, Brahmachari, Garber). by Mr. Garber.

Mr. Brahmachari motioned to close site plan review in regard to Case 1845 with seven conditions outlined in draft of Decision reviewed by Town Counsel and Attorney for applicant and read into the record earlier. Site Plan Approval under Section 6323.a. In the Light Industrial District for any hotel regardless of floor area or land disturbance. Mr. Garber seconded.

The Board voted 3-0-0 in favor (Brahmachari, Garber, Cohen).

**Minutes:**

Mr. Brahmachari moved to approve the minutes of August 28, 2019. Mr. Garber seconded. The Board voted 4-0-0 to approve it.

It was moved, seconded, and voted to adjourn.

The meeting adjourned at 7:55 P.M.

Respectfully submitted