

SHARON ZONING BOARD OF APPEALS MINUTES OF WEDNESDAY, APRIL 15, 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, April 15, 2020, at 7:00 P.M. The following members were present as established by roll call: Abe Brahmachari, David Young, Joe Garber, Sam Reef, and Steve Weis. Steve Cohen joined the meeting during the first vote. Mr. Brahmachari opened meeting noting reasoning for virtual meeting and procedural ground rules.

Also present were Tom Houston, AICP, PE, President, Professional Services Corporation, PC; Robert Shelmerdine, Esq., Sharon MA, attorney for the applicant; and David Spiegel, Ninety-Five LLC, Norwood MA, developer for the project.

7:00 P.M. Other Business

Mr. Brahmachari made a motion to continue 15 Franklin Road, Case No. 1854 to October 14, 2020, per the applicant's request. Mr. Garber seconded the motion. The board voted unanimously by roll call to approve the motion, 3-0-0 (Brahmachari, Garber, Weiss). Mr. Cohen logged on as the vote was happening, so he abstained from voting on this item.

Mr. Brahmachari made a motion to withdraw 112 Massapoag Avenue, Case No. 1856 per the applicant's request. Mr. Garber seconded the motion. The board voted unanimously by roll call to approve the motion, 3-0-0 (Brahmachari, Garber, Cohen).

7:07 P.M. Ninety-Five LLC, 144 Old Post Road, Case No. 1855, Sharon Gallery--Cont'd Hearing

This case was continued by applicant request from March 11, 2020, to April 8, 2020, and then at the ZBA's request to April 15, 2020.

Mr. Brahmachari noted that a Peer Review conducted by Mr. Houston of PSC and a DRC that was created per Business District D requirement had been completed. The Planning Board, Conservation Commission and Board of Health have all been asked to submit comments as well. The Planning Board's comments are on the Town site.

Mr. Shelmerdine acknowledged receiving comments from Peer Review and the Design Review Committee and noted they need to formulate a response once engineers have reviewed these documents.

Mr. Brahmachari thanked the Design Review Committee for their quick turnaround, and Mr. Houston, the Planning Board, Board of Health, and Conservation Commission for their assistance as well.

Mr. Houston explained that he has been involved since 2007 and has reviewed various prior alternatives for this site. Mr. Houston combined comments with Peter OCain, Town Engineer, to give one technical peer review, "*Peer Review Memorandum dated April 7, 2020*" by PSC, summarizing all the different concerns for the applicant to consider. Mr. OCain reviewed the project from a general design review in compliance with zoning and local regulations for utilities and infrastructure. Mr. Houston's review focused on stormwater and traffic. First 35 comments in the Peer Review are from Mr. OCain.

Mr. Houston offered highlights of Stormwater section of the report including:

- **Stormwater** (pg. 10): Site is subject to regulation under the MA Wetlands Protection Act, certain DEP Stormwater Standards, and the Stormwater Handbook, and a number of local regulations including Town of Sharon bylaws including Chapter 160 Groundwater Protection, Chapter 230 Stormwater Management, and Chapter 275 Zoning. In some instances, in particular the Groundwater Protection Standards, the local regulations pre-date the current DEP regulations, but are generally compatible with the DEP regulations.
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Chapter 160 of Sharon Code Groundwater Protection establishes requirements for a 15 percent maximum impervious material coverage unless there is a program of groundwater recharge, which there is at this site. Chapter 230 Groundwater Management covers controlling construction activity discharges. ZBA has a role here too because the stormwater manager currently is Mr. OCain, and when that application is complete, the Town Engineer will refer it to the ZBA for a public hearing. The ZBA will make a recommendation on the construction activity controls to minimize sedimentation and erosion on the site. There are several provisions in the Zoning bylaws which echo the various controls that are also stated under the MA Wetlands Protection Act and its implementing regulations.

- **Comment 36.** Mr. Houston noted impervious materials can't exceed 15% of the lot area without a special permit. Total impervious materials coverage on the entirety of the lot at full development (Phase 1 and Phase 2) completion looks to cover approximately 45% of the lot area. So system for recharge is required here, and a special permit to be issued by ZBA with primary criteria being the adequacy of the mechanism of groundwater recharge.
 - **Comment 37.** Town Engineer will consider comments provided by ZBA in terms of issuing permit under Chapter 230 Stormwater Management, Article II Construction Activity Discharges.
 - **Comment 42.** Zoning Bylaw encourages use of Low Impact Design (LID) measures. These are fairly minimal on site now but may be some opportunities on pedestrian areas and sidewalks. The principle mechanism of storm water on the site is an open vegetative basin and can be considered LID.
 - **Comment 46.** Within the groundwater protection district, BMPS are required to control peak rate of runoff for ten-year storm. Zoning bylaw and MA Wetlands Protection Act dovetail completely here.
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- **Comment 47.** The town standard for BMPs to control any increase in the total volume of runoff for a one-year frequency storm event are more rigorous than the standard under the MA Wetlands Protection Act with respect to recharge.
- **Comment 49.** Some of the retaining walls on the site and foundations may require underdrains; underdrains in the groundwater protection district do require a special permit. The idea is that when ground water is wicked away at one location, it needs to be recharged elsewhere on site so there is no total loss of recharge to the aquifers. One of the issues with the site here, the entirety of the project site is in the Groundwater Resource Protection District under the Zoning bylaw and it is also a DEP Zone 2 designation. So there are a number of controls related to these designations.
- **Comment 56.** Local standards require 80% TSS (total suspended solids) removal rate. DEP requires only 44% removal. Mr. Houston stated that this might be something ZBA considers allowing some relief to. After discharge to the infiltration facility the whole system does meet the 80% removal rate.
- **Comment 59-66 are interrelated.** The stormwater report that was submitted focused just on stormwater calculation (runoff and recharge) but there is a broader spectrum of data that needs to be in compliance with DEP standards. The ZBA should make sure the project is in compliance with that. The things that should be added to the report are: check list for stormwater report executed by engineer of record, expanded narrative in the report including discussions of environmentally sensitive design techniques; pre- and post-development catchment plans (They do have these, however in this instance the pre- and post-development were not done by the engineer of record. Mr. Houston has discussed this with engineer of record. Houston's view is it's not uncommon for engineers to subcontract a report but here is not that, but rather they are just using it. So, Mr. Houston told project engineer that if he elects to use plans developed by others he needs to take full responsibility for the accuracy of those plans).
- **Comment 61.** Pre- and post-development peak rates and volumes are typically compared. That is not what was done here. Mr. Houston indicated to the design engineer that he wants the analysis to be supplemented with a *conventional* predevelopment runoff analysis so that we are comparing pre-development runoff to post development runoff all done by the same firm. This needs to be added to report.
- **Comment 62.** Numerous test pits were done on site for the prior design and while they are applicable, there is no documentation in the submitted report that indicates the location or the specific soil textures or groundwater elevations based from the prior testing program. These need to be shown on the plans relating to surface and sub-surface facilities. Test pits need to be added to the plan and may or may not need to be supplemented. Further in Comment 62: required recharge calculations were not provided; calculations demonstrating that BMPs will drain within 72 hours were not provided; depending on what the elevation of seasonal high ground water is within the infiltration facilities there may be mounding analysis that need to be done and isn't in current report.
- **Comment 63.** Report needs a Long-Term Pollution Prevention Plan. The TSS removal rates with 44% removal were not provided. The water quality volume should be calculated with one inch of

runoff as opposed to 0.5 inch as used in the report; surface basin which is between development and I95 needs a sediment forebay to be accredited. There is a plunge pool that needs analysis to see if it will function as a sediment forebay; and TSS removal characteristics documentation needs to be provided.

- **Comment 64.** Parking area of over 1,000 vehicle trips per day (as this project has) requires checking BMP provided to make sure they are approved for land uses with high pollution controls. Also need discussion of source control, one recommendation regarding this is no salt use on the site.
 - **Comment 65.** Critical area here is DEP Zone 2, so Mr. Houston recommends landscape measures including: integrated pest management; limitations on fertilizers; prohibitions on the use of calcium chloride on the site.
 - **Comment 66.** For Standard 9, plan still needs an Operation and Maintenance plan.
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Mr. Houston offered highlights of Traffic Control section of the report (pg. 23) including:

- **Comment 103.** Project is subject to an access permit to be granted by MA DOT. The Business District D provision of the bylaw requires ZBA to consider all roadways within 3,000 feet of the project site accommodating more than 200 site-generated vehicle trips per hour. Mr. Houston said looking at the proposals, both Old Post Road and Wolomolopoag Street meet or exceed these requirements so that bylaw is satisfied.
 - **Comment 104.** Off-site signalized intersections within the 3,000 feet traffic study area must meet an acceptable level of service, typically D or better in suburban settings. In reviewing computations submitted by traffic engineer I95 interchange ramps; intersection of Old Post Road with South Main Street, intersection of Gavins Pond Road and South Main Street, when all improvements are done all the intersections will operate at a level of service of LOS D or better and will comply with the requirement of Chapter 275: Zoning.
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There are a few issues with the traffic analysis that was done. Mr. Houston noted that the traffic counts were done in 2018, rather than late 2019 or early 2020. Typically see current, 2027 no build and 2027 build analyses. The volumes that were analyzed for 2025 instead of 2027, will probably bring about a 3% increase. Mr. Houston thinks capacity is robust enough that 3% increase may not be critical. He explained that it is very unusual to get level of service A, B, or C in a suburban setting. Applicant currently uses all the space available. And, fanning out traffic any further gets safety and operational issues.

Regarding going from South Main Street into the complex per Mr. Houston, once across intersection it is a very common design practice to merge from two lanes to one. One lane has capacity of 1,900 vehicles per hour. Really don't need to carry two lanes except so vehicles can turn.

Mr. Brahmachari requests that Mr. Houston provide the board with a reference to a good practice of length of two lanes before they can merge.

Comment 114/115. Mr. Houston looked at ways to facilitate carpooling and van pooling. There are transportation management facilities that manage carpooling and vanpooling. There is the Neponset Valley Transportation Management Association that Mr. Houston asked developer to explore. Also there are some grants available, an example of this is a Workforce Transportation program for a shuttle that goes from University Ave. to Canton Center. Laura Smead worked on something similar to this for Canton. Also, Sharon as a town has the option of joining other regional transportation areas. If Sharon were to do it, some of the MBTA funds that the town contributes could be allocated for a shuttle so some kind of shuttle service is feasible for this location.

Mr. Brahmachari asked if document includes BOH comments. Mr. OCain clarified that it included BOH *agent's* comments--specifically reviewing septic systems design submitted. Mr. OCain continued, saying that BOH agent's feedback was significant because it pointed out that the developer basically used the same septic system that they had for the last filing which was a completely different project and the BOH agent and Town Engineer are looking for more specificity on that. The document does not contain any BOH Committee comments. Mr. OCain also expects that they will be able to hammer a lot of these issues out by meeting with the developer. His main concerns are: shuttle access to the train station; light design specifics as far as hardware and height; the septic; and signage. Mr. OCain noted that the Design Review Committee was even more specific about signage. He noted a bunch of items he wanted before they sign conditions of approval; these items can be found under Additional DPW Comments on page 10 of the Peer Review.

Mr. Brahmachari said that there are requirements and there are "best practice" items. Mr. Brahmachari asked Mr. Shelmerdine about a letter addressed to the Zoning Board in application seeking three variances. Mr. Brahmachari would like to hear more about those three variances and why Mr. Shelmerdine is asking for those variances.

Mr. Cohen asked how do we really know hydrology reports are correct? Mr. Houston replied that hydrology is accurate but it is not precise. He doesn't think there is anything on the site that would be critically even if calculations are off by 5 to 10 percent. Mr. OCain notes that the soils are really uniform as site was a sand pit during I95 construction.

Board members expressed appreciation for Mr. Houston's review.

Mr. Brahmachari asked how Mr. Shelmerdine would like to respond to this? Mr. Shelmerdine would like Norwood Engineering site civil engineer, Bayside Engineering from a traffic standpoint, along with Mr. Houston and Mr. OCain to have a work session. They will go back to the drawing board to address how to comply to best practice and requirements. After that occurs, they can put together an altered site plan and they can submit a brief to the board on any variance request they need to be successful. Mr. Shelmerdine thought April 29, 2020, will be appropriate for them to come back to the Board.

Mr. Brahmachari noted that the Planning Board and Design Review Committee reports are currently posted at link on Town website (on ZBA page under Upcoming Cases as Case 1854, 144 Old Post Road). Conservation Commission is meeting on April 16, and then Board expects Conservation Commission's comments. Mr. Shelmerdine interjected that developer will still need to go in front of Conservation Commission and so it may be premature for a report to come from them at this time.

Mr. Shelmerdine will be submitting a full application. It will be a notice of intent to the Conservation Commission.

Mr. Brahmachari opened meeting to public comments. Bill Depietri, Capital Group Properties, 700 South Main Street, requested that the public and large stakeholders be involved in any meeting by the engineers and the Town. He also wants to see Peer Review report answers from developer item by item. Mr. Shelmerdine said they can detail responses to Peer Review comments in a checklist fashion. Mr. OCain will post applicant's line-by-line response on the website. If Mr. Depietri provides his contact information, Mr. OCain will include him on the meeting. Mr. Brahmachari instructed anyone interested to email sharonzba@townofsharon.org.

Mr. Shelmerdine stated it's unusual to have abutters or anyone who wants sit in on workshop meetings. Mr. Brahmachari asked Mr. OCain, and he would have to check with town counsel, but Mr. Depietri's intention is understood. Mr. Depietri, in response to Mr. Shelmerdine, replied that this is all of our project; he doesn't want to feel that it is jammed down their throat in 90 days. Mr. Depietri wants a voice in this. It's 600,000 sq. ft. and 1,000 plus cars per day. Mr. OCain said the meeting will discuss specific line items, but the meeting will not be a debate about whether it is a good project.

Mr. OCain clarified that the meetings he is talking about are not for public comment. What they want to get down to are the big issues that need to be addressed that are community decisions. But, Mr. Depietri is welcome to sit in on the meeting.

Kelly Killeen, PE, CHA Companies, Norwell, MA, regarding comments made by Mr. Houston about additional test beds on the site wondered, related to the groundwater and the evidence of seasonal high, how is that going to be impacted since the site has been worked extensively? And, how is pad elevation going to be considered in this? We no longer have existing conditions there. Probably done under certain permits, although Mr. Killeen does not know which ones. Mr. Houston said he will want to look at filling that occurred and location of the test pits and see whether it is going to have an impact. Will look at where were test pits taken before, and where are they relative to proposed facilities and then take a look at alterations to the site.

Mr. Houston also mentioned how this process typically goes 1) we make comments; 2) applicant answers responses line by line; 3) Mr. Houston considers adequacy of each comment.

Scott Hickey, 145 Old Post Road, would also like to be considered in working meeting just to listen.

Mr. Brahmachari thanked everyone who has been in the background setting up all the documents, putting up documents on the website for Board members and townspeople to view, setting up committees, and meeting with committees.

Mr. Shelmerdine said he can't say they will be 100 percent ready, but it is helpful to meet consistently in case there are questions to be answered. He said their engineers feel that two weeks is enough time to have a workshop meeting early next week to hone down the comments, then can get something out by the end of next week or early the following. The engineers told Mr. Shelmerdine their preference is to have the meeting in two weeks.

Ms. Schustek asked when documents would be available for the Board and Mr. Shelmerdine said April 24 or April 27, 2020 at the latest materials would be available to upload. Mr. OCain pointed out that the DRC comments need to be addresses as well and there are a lot of comments there. Mr. OCain is concerned about rushing.

Richard Vazza, Development Manager, Sharon Residences, 133-137 Old Post Road, is a proponent of the Sharon Gallery. Design Review Committee memorandum section 18e noted concern about traffic and road. Mr. OCain said it's a two-lane road and necks down to one in each direction. There are approved plans that Mr. OCain can place on the Town website. And there is no conversation about changing the roadway, in fact the road is 80% complete.

Mr. Shelmerdine said they have anchor tenant and need to keep anchor tenant knowing the process is moving. He would like to at least address comments from OCain; BOH; and Peer Review document on April 29, 2020.

Mr. Brahmachari read one section of the Zoning code that talks about DRC, "The DRC shall serve in an advisory capacity and shall provide guidance and counsel to the ZBA with respect to architectural, site design, landscape, signage, aesthetic, and visual quality concerns," which, he noted, is a little different than a code requirement. Mr. Brahmachari wants to hear about good practice which may have conflict with corporate practice as a tenant. There are other things that are code minimum that we don't have a choice in. We want to understand that.

Mr. Shelmerdine requested to continue the matter until April 29, 2020, 7 PM. They will look to get all comments to the Board on the Friday before the meeting.

Mr. Brahmachari motioned to continue Case No. 1855, 144 Old Post Road to April 29, 2020. Mr. Garber seconded. Roll call and all members say aye. 6-0-0 (Brahmachari, Cohen, Garber, Reef, Weiss, Young).

Motion to approve the minutes for the Executive Session on February 26. Seconded by Mr. Garber. Voted to approve unanimously 6-0-0, (Brahmachari, Cohen, Garber, Reef, Weiss, Young).

Motion to approve the minutes for ZBA meeting on April 8, 2020. Seconded by Mr. Weiss. Voted to approve unanimously 3-0-0 (Brahmachari, Cohen, Weiss). Young, Reef, Garber were not in attendance on April 8, 2020.

It was moved, seconded, and voted to adjourn.

The meeting adjourned at 8:55 P.M.

Respectfully submitted

Approved April 29, 2020