

**SHARON ZONING BOARD OF APPEALS  
MINUTES OF WEDNESDAY, APRIL 28, 2021**

**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 28, 2021, at 7:00 P.M. The following members were present as established by roll call: Abe Brahmachari, David Young, Sam Reef, Joe Garber, and Steve Weiss were present. Kris White, Town of Sharon Building Inspector was present also. Mr. Brahmachari, Chair, reading Covid19 protocols per the Governor of MA and procedural ground rules.

**7:02 PM – 1874 – 2-4 Merchant Street, Four Daughters Compassionate Care, Inc. – New hearing**

Present for the applicant: Joel Fishman, attorney, Alex Portillo, Director for Comm. of MA, Four Daughters Compassionate Care, Inc.

Documents included: application filed on March 25, 2021, including Existing Conditions Plan Sheet 2 dated November 11, 2020 and a Layout Grading & Materials Plan Sheet 3 dated March 5, 2019, both by Bay Colony Group, Foxborough, MA; "A New Dispensary" plans sheet A-1 dated February 27, 2019 and sheet A-2 dated January 29, 2019, and "A New Dispensary Buildout" sheet A-1 dated April 10, 2019, all by Psenka Architects Inc. Hawthorn Woods, IL. Legal notice as it appeared in Times Advocate April 7 and April 14, 2021; a letter from Kevin Davis, Board of Health agent dated April 06, 2021; and a letter from John Thomas, Conservation Commissioner, dated April 20, 2021.

Joel Fishman and Alex Cortillo, state director for Four Daughters Compassionate Care, Inc. in front of ZBA to consider the petition for renewal for an additional two (2) year period of the Special Permit issued regarding the property located at 2-4 Merchant Street relative to the retail operations of a Registered Marijuana Dispensary and the retail operations of the Marijuana Establishment at the property. Two-year renewal requirement is according to bylaw to sell recreational and medical marijuana. To date recreational has been sold, but not medical license. Applicant has been granted a final license to sell recreational marijuana from 2-4 Merchant Street. Medical and cultivation facility are not up and running. Four Daughters Compassionate Care, Inc., is working with local officials to obtain local approvals and then receive final MTC license sometime this summer.

Alex Portillo, Director for Comm. of MA for Four Daughters Compassionate Care, Inc., and Mr. Fishman reviewed the layout with the ZBA members. They report no issues with traffic or parking. Business is picking up as Covid slowly subsides and the weather starts to change. Mr. Portillo has been in communication with the police as well.

Chair asked if there were any changes to the plans since May 2019 approval? Mr. Portillo said no.

Board members had no concerns. Mr. White, Town Building Inspector, had no concerns.

No abutters were present.

Host community agreement with the town of Sharon is 6% of the gross sales of the recreational marijuana. For first six months of operation the town has received \$266,339.08. Once cultivation facility opens up, 3% of those gross revenues will also be added. And once the medical marijuana is sold, 3% of the retail and wholesale will also be added to that amount.

Applicant's representative, Mr. Fishman, requested to close the hearing.

Mr. Brahmachari motioned to close Case 1874, 2-4 Merchant Street, Four Daughters Compassionate Care Inc. Seconded by Mr. Garber. Unanimous roll call: 5-0-0 (Brahmachari, Garber, Weiss, Young, Reef).

Mr. Brahmachari motioned to approve Case 1874, 2-4 Merchant Street, Four Daughters Compassionate Care Inc. expanding the special permit for two more years with standard conditions and Existing Conditions Plan Sheet 2 dated November 11, 2020 and a Layout Grading & Materials Plan Sheet 3 dated March 5, 2019, both by Bay Colony Group, Foxborough, MA; "A New Dispensary" plans sheet A-1 dated February 27, 2019 and sheet A-2 dated January 29, 2019, and "A New Dispensary Buildout" sheet A-1 dated April 10, 2019, all by Psenka Architects Inc. Hawthorn Woods, IL. Mr. Garber seconded. Roll call vote approved unanimously, 3-0-0 (Brahmachari, Garber, Weiss).

Mr. Fishman will draft the decision and have it reviewed by Town Counsel, as has been done in the past.

#### **7:33 PM -- 1875 – 12 Lyndon Road, Wilder L. Diaz and Natacha Diaz -- New hearing**

Present for the applicant: Joel Fishman, attorney, Stoughton MA; Wilder L. Diaz and Natacha Diaz, home owners; Thomas McGrath, architect, Milton, MA

Documents included: application filed on April 1, 2021, plot plan showing proposed addition by D. O'Brien Land Surveying, Franklin, MA dated March 22, 2021; architectural plans by Thomas McGrath Architects, Milton, MA dated January 8, 2021; revised site plans by D. O'Brien Land Surveying, Franklin, MA dated April 1, 2021. Mr. Brahmachari also read a legal notice as it appeared in Times Advocate on April 7, 2021, and April 14, 2021; a letter from Kevin Davis, Board of Health agent dated April 6, 2021; and a letter from John Thomas, Conservation Commissioner, dated April 5, 2021.

Applicant required to obtain an Order of Conditions through the Conservation Commission (CC) prior to initiating any work on the property per CC agent's letter. Mr. Fishman said CC hearing did take place on April 15, 2021, proposed work was approved, and they will be issuing an order of conditions, but the applicant has not received it yet.

Two-thirds of the current dwelling is within 100 feet of the wetlands. Current house is 74.9 feet from the wetlands at its closest point. The proposed addition's closest point to the wetlands would be 59 feet from the stairs and 58.8 feet from the closest footing. Entire addition will be elevated off the ground on concrete footings and piers at the suggestion of former town building inspector, Joseph Kent.

Thomas McGrath, project engineer, and Mr. Fishman reviewed proposed plans including piers to keep the addition off the ground. The structure will be  $\pm 9$  feet or so off the ground, so full headroom exists to walk under it. Seven footings are placed with fairly modest spacing at about six feet per Mr. McGrath. Spreading the floor load and the roof load divided by seven footings is really pretty minimal he stated. Addition is 16-feet so the footings are only carrying eight (8)-feet worth of load. Mr. Diaz added that soil testing was done and submitted to the town, but he is not sure who has those files right now.

Mr. McGrath explained that an existing one-story addition of a den needed to be demolished because there really wasn't a foundation under the existing den. Plans included an expanded dining room across from new den, and, in between the den and dining room, an outdoor deck. On second floor across the whole back of the house an expanded master bedroom and bath is shown. Mr. Fishman added that it is currently a three-bedroom house and will remain a three-bedroom house.

Some members concerned that it is a substantial two-story addition being supported by seven piers, but this is outside the realm of the ZBA. Roofline may have ice damage issue, but that again is not ZBA. Major concern Mr. Brahmachari had is that addition is moving approximately 15 feet closer to the brook. Septic being so close to one footing is okay per Kevin Davis according to a conversation Joel Fishman had with Board of Health agent. Jim Andrews, former health agent, said pier and a footing is technically considered foundation and still supposed to be considered ten feet per Mr. Garbér.

Mr. White can't give a professional opinion on it, but as BOH regulations are such that as long as the holding tank is accessible and covers are accessible, that is acceptable. As far as leeching field he believes it has always been 10 foot from the leaching field in his own experience.

Mr. Brahmachari wants to see CC decision before making a decision as ZBA is the last stop. Mr. Fishman said CC is aware of the 15-foot closer for one footing and the stairway. The rest of the addition is up off the ground to mitigate any environmental concerns. Mr. Fishman noted Zoning Bylaw 3320 Wetland Setback; 3321 Purposes; and 3340 Special Permits. Section 3340 stated that applicant obtain the advice of the CC, BOH, and Planning Board (PB).

Board members added: agreement on need to wait for CC decision; noted that addition was elevated so unlikely to create any undue runoff; expressed concern about space needed when septic tank needs to be replaced; and a concern that project increased the non-conformity of the property. Attorney agreed it was more non-conforming to the wetland setback. Mr. Fishman said standard for ZBA's consideration was whether increased non-conformity made it substantially more detrimental to the neighborhood? Board reviewed photos of homes in the neighborhood.

Mr. Fishman will reach out to Peter OCain for some sort of response from the planning board since it says it in the bylaw.

Mr. Garber said there are substantial houses on either side of property. If BOH and CC are fine, why would ZBA fight it? Board should just wait for PB letter and CC decision to come in. Mr. Reef said you need to consider any time you increase a nonconformity. This case is similar to Harold Street (Case 1844) where Conservation Decision came after the ZBA. Also 461 South Main with portico over stairs was moving into setback in recent hearing.

No abutters present.

Mr. Fishman requested to continue the case.

Mr. Brahmachari motioned to continue hearing for Case 1875, 12 Lyndon Road, until May 12, 2021. Mr. Garber seconded. Unanimously approved by roll call 5-0-0 (Brahmachari, Garber, Weiss, Young, Reef).

**8:17 PM – 1867-A – 31 Highland Street, Aurora and John Chichester -- Hearing for a Modification of Decision – Other Business**

Background: Case 1867 was heard and approved by ZBA on December 9, 2020, with a condition of updated plans being submitted for decision to be filed. After the vote to approve, the applicant requested the decision not be filed, revamped their plans, and is returning with a request for a modification. The applicant provided a letter asking for this April 28, 2021, hearing and an extension via a letter dated February 10, 2021, that is filed with the Town Clerks office. Tonight's hearing was posted, abutters were notified via mail, and the legal ad appeared in the Times advocate.

Present for the applicant: Aurora and John Chichester, applicant; Christian Cote, CBRS Design/Build Inc., Brighton, MA

1867-A New documents included: undated application form outlining modification request (but not filed with Town Clerk because it is a modification of a current case for which a decision was not yet filed); Request for hearing letter dated February 10, 2021 from Aurora Chichester; requesting modifications to proposed in-law addition drawings; Site Plans dated January 22, 2021 by CBRS Design/Build Inc., Brighton, MA. Legal notice as it appeared in Times Advocate April 7 and April 14, 2021; a letter from Kevin Davis, Board of Health agent, dated April 5, 2021; and a letter from John Thomas, Conservation Commissioner, dated March 22 2021. Note: December 9, 2020, ZBA Minutes list previously submitted documents.

Applicant's architect, Christina Cotes explained that the case was begun with design build group that they have since severed ties with. Mr. Cotes suggested applicant move in-law addition forward to preserve two windows that were eliminated in original filing plans; change is not more nonconforming than the existing structure. The existing structure is 24' 7" from the front lot line, new addition will be 33' 4" back. They also turned the roof 90 degrees from the original proposal, partially motivated because the architect didn't have explicit permission to use the earlier drawings. Scope of the project is substantially the same.

Other issues that needed follow up from previous meeting on Dec. 9, 2020 have been addressed. These included removing the door in the back per ZBA request and space removing a wall and closet in the attic space. Mr. Cotes said the changes are not so substantial, hence a meeting to modify the decision.

Board members like the recent redesign work and street view much better. Mr. Weiss pointed out that if applicant wanted slider back for deck, ZBA should approve it considering recent approval for a similar design. Chair explained that a conflict between zoning and life safety issue was brought up in a hearing subsequent to 12/9/2020 hearing. On that subsequent case, the ZBA approved a slider to the deck, and so therefore if applicant is interested, the rear window could be changed to a slider. Chair said applicant would not need to submit new drawings, but rather change can be noted in the decision. Mr. Garber added that applicant can make an addendum sheet, not new drawings, when they go to the building inspector.

No abutters present.

Applicant, Ms. Chichester, would like to close the hearing.

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 1867/1867A, 31 Highland Street, including requested modifications to proposed in-law addition drawings as shown in Site Plans dated January 22, 2021 by CBRS Destin/Build Inc., Brighton, MA, and a plot plan by AGH Engineering, Stoughton, MA dated October 28, 2020; with standard conditions and special conditions 1) that it is to remain a five (5) bedroom house, 2) two bedroom sin the attic to be combined into one and one closet removed, 3) an addendum to the building plans may be submitted to the building inspector allowing for the rear windows to revert to a slider as previously reviewed by ZBA at the December 9, 2020 meeting. Mr. Garber Seconded. Unanimous vote to approve 3-0-0 (Brahmachari, Garber, Weiss).

**8:31 PM Vote on Minutes:**

Mr. Brahmachari made a motion to approve the April 14, 2021 minutes. Mr. Garber seconded.  
Unanimous approval, 5-0-0 (Brahmachari, Garber, Weiss, Young, Reef).

**8:34 PM Vote to move to Executive Session:**

Chair made a motion for board to go into executive session to discuss pending legislation for Case 1858 - 1 School Street, Sharon Public Library project. Seconded by Mr. Garber. Unanimous approval, 5-0-0 (Brahmachari, Garber, Weiss, Young, Reef).

Chair announced board will not return to open session this evening.

The meeting moved to Executive Session at 8:37 PM.

Respectfully submitted.

Minutes Approved: May 26, 2021