

SHARON ZONING BOARD OF APPEALS

MINUTES OF WEDNESDAY, September 27, 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 on 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, September 27, 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, David Abbott, Building Inspector, Deputy Fire Chief Greenfield and Rob Maidman, Planning Board, and Tom Houston, PSC.

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 1919 – 262-290 Edge Hill Road- Continued from May 24, 2024

Present for the applicant, Attorney Mike Khoury, Bill Buckley of the Bay Colony Group and Matt McDonald, Applicant.

Mr. Garber read the Legal Ad into the record as well as a letter from Kevin Davis, Board of Health dated April 28, 2023, and a letter from Josh Philibert, Conservation Commission dated April 21, 2023.

Mr. Khoury read an email from September 21, 2023, with a letter attached, which noted that they corrected the error in the subject line referencing the addresses of the property. He explained that they had the tax lots correctly referenced but put in addresses beyond those that are implicated. The lots of the subject property are Assessor's Map 136, lot 2 & Assessor's Map 137 Lots 1-5, which are assigned (even though they are vacant land), 268, 272, 276, 280, 284 & 288 Edge Hill Road. The originally had 290 & 292 but that's not correct. Mr. Khoury stated that they attached confirmation from the EOHL, formerly the Department of Housing and Community Development, that if there are 5 units rented to person's having income below the average median income for the region, the full 20 proposed rental units' market or affordable will count towards the Town's affordable census count for 40B purposes. Mr. Khoury stated that they could have qualified all 20 with the original 4 units that they had proposed but the rental rates would have to be more deeply discounted, so they made the economic decision to include 5 units.

Laura Nelson, Edge Hill Road stated that there is another letter sent by the Planning Board that wasn't uploaded to the website and she would like it entered and read into the record.

Mr. Khoury stated that the applicant hadn't received the letter, and they weren't aware of it.

Mr. Garber asked Mr. Maidman to address this letter. Mr. Maidman stated that he didn't have a copy but will find it as the meeting progresses and forward it to Mr. Garber.

Mr. Khoury stated that the initial hearing was on May 24th and having received several comments and concerns from neighbors, abutters, and Mr. Houston, they took some time to address these concerns and comments to try and satisfy the neighbors. Mr. Garber asked if they could present the current revised plan. He also asked if there were internal layout plans for the units. Mr. Khoury stated that the architectural plans were submitted in the original plan set and said that they can present them next. Mr. Khoury went on to state that in the letter dated September 12th that was submitted to the board, they summarized the changes to the plan. He gave a detailed description of the changes and he stated that they also submitted a revised traffic study by Gillon Associates in which the comments made at the initial hearing were considered and the data was re-reviewed. They also included an updated Utility and Stormwater Management report from Bay Colony Group. Mr. Khoury also expressed that they received a comprehensive review of all of his original comments from his May 15th and May 24th reports from Tom Houston and today they have received Mr. Houston's comments on the updated traffic report.

Ms. Laura Nelson, Edge Hill Road, found the email from the Planning Board and Ms. Katapodis stated that she will have it posted to the website.

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Mr. Khoury presented the architectural plans showing the layouts of the 2- and 3-bedroom units. He explained that the 2-bedroom units are all identical. Mr. Khoury asked if there was anything specific that the board wanted him to go through on each individual floor plan. Deputy Fire Chief Greenfield had a question regarding the outside views, he can't see what the separation is between each building, they look pretty tight, and he wanted to know what the minimum separation distance is. He stated that the setbacks look fine but it's more about the unit spacing. Mr. Buckley addressed Chief Greenfield and told him that the minimum separation distance between each building is 15 feet. Chief Greenfield was satisfied with that distance and explained that once they get the permitting applications, they will go through the full details.

Mr. Garber asked Mr. Khoury if he had anything else to add, he turned it over to Matt MacDonald, applicant. Mr. MacDonald introduced himself and explained that the project is important to his family and they grew up on the Canton side and they are looking to build something that they can take pride in. He thanked the PSC team, the board and the neighbors for their time and explained that it is important that they get it right.

Mr. Garber read the responses to an email that was sent from the Planning Board by Pasqualine Pannone dated June 15, 2023. Mr. Garber forwarded the email to Mr. Khoury. Mr. Khoury was a little distressed that the letter has been sitting out there and they are just finding out about it but stated that they will be happy to address the comments.

Mr. Garber asked Mr. Maidman if there were any additional or new comments that the Planning Board may be considering. Mr. Maidman stated that they didn't because it was expressed pretty clearly but the concern was that there were an unusual number of waivers requested and it seemed that there was an intent to undo some of the Town's regulations that we have built in town to how we want to govern development. Mr. Maidman stated that there is a concern as to what distance is being proposed for the setback of the septic system. Mr. Buckley explained that the setback from the street is 20 feet off of the property line and the local bylaw 50 feet and the state code for a medium sized septic system is 10 feet. He agreed that they don't meet the 50 feet, but they double the state requirement. In addition, every comprehensive permit requires waivers, and the waivers have to do with two main things, one is the septic system and the other one has to do with building setbacks from the rear of the lot and the side setback which abuts a lot that will remain owned by the applicant.

Mr. Garber suggested that they move onto Mr. Houston's review of the traffic study.

Mr. Khoury wanted to mention that he had conversations with Attorney Geleman, Town Counsel and he provided him with a legal memorandum, essentially establishing under state law and referencing state law that the Zoning Board has the authority in consultation with other boards in granting the permits necessary under the 40B Comprehensive Permit statute.

Mr. Garber asked the board members if they wanted to comment now or wait until Mr. Houston presents the traffic study. Mr. Mehta stated that he will wait until after Mr. Houston's presentation and that he is happy with the progress but there are still issues that need to be resolved. Mr. Wallenstein stated that he has several questions and comments, but he can defer to Mr. Houston and come back to him after.

Ms. Laura Nelson, Edge Hill Road had some comments that she wanted to address before Mr. Houston's presentation. One is that in one of the documents sent by Mr. Khoury these units are being referred to as condominiums, but they are not, they are strictly rental units and will not be owned by anybody other than the applicant. Another comment was addressed to Mr. Buckley regarding the septic system. Mr. Buckley stated that this was a single-family zone but it's also a groundwater protection district and it is stricter in many ways. The groundwater protection district is a 3-bedroom per lot maximum and this property will have 42 bedrooms plus 20 lofts plus the storage rooms with doors and some of these go back to her questions the original hearing. How many people, how many children. She also inquired about the Scenic Road waiver and was wondering if there was an update on that. She also had some concerns regarding the minimum lot size in the groundwater protection district for building and also the building heights, since there are various differences. Ms. Nelson also inquired about the owners of these lot and the remaining land. The owner according to the assessor's map is Edge Hill Realty and the remaining land in that lot is approximately 60,141 square feet (.94 acres) and it looks as though they are conflating part of the 61B golf lot which is 290 Edge Hill Road which is owned by Frank Sim Company and Brook Meadow Country Club. She wanted to know how 290 is being conflated with 292 to all of a sudden make it buildable because separate people own them. Ms. Nelson stated that the owners' names and sizing of these two lots are quite different.

Mr. Khoury addressed Ms. Nelson's concerns. He explained that the confusion between 290 and 292 was his mistake. The lot designations that they included with the description of the property are correct. He stated that 290 is also owned by the applicant but it is not being developed. Mr. Khoury presented the plan, explained each lot, and stated that an address has been assigned to 290 even though its raw land and won't be developed. Ms. Nelson stated that it looks as if they are trying to merge the lots and

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inquired how they can do that when completely different people own them. Mr. Khoury explained that those lots have nothing to do with this project, they are adjacent and if he misrepresented the addresses, he has corrected it and apologized. They have nothing to do with the project other than the owners which is all family owned jointly. They are not trying to merge properties and he wasn't aware that the property was transferred from Cobb Corner Realty to another family-owned entity. Mr. Garber explained that the green area on the plan is owned by the applicant. Mr. Buckley stated that the total lot area for the project is about 238,000 square feet since they modified it, and this is explained on the cover sheet. Ms. Nelson stated that looking at the Comprehensive Permit Plan of Edge Hill Road, it talks about the assessor's map 136 block 2, 137 blocks 1,2,3,4,5 6 & 7, 6 & 7 are the two conflated lots to the right that they are including the cut through road that goes into the golf course. Ms. Nelson believes that the documentation in this Comprehensive Permit Plan is incorrect, and that the applicant should correct it and indicate who the correct owners, as well as which lots are specifically included, and the remaining land is included.

Ms. Nelson also asked for an update on the Scenic Road waiver and Mr. Garber explained that it would come from the Select Board. She also asked about the building heights, she noticed that the building heights are noted on the elevations and just wants to know what the building heights are.

Mr. Garber suggested that Mr. Khoury address Ms. Nelson's concerns regarding the legal entity on the 40B and then Mr. Buckley can address the building heights.

Mr. Khoury explained that when they filed the application, the entity was Cobb Corner, LLC and at the end of August was transferred to another MacDonald family entity, Edge Hill Road, LLC. Mr. MacDonald explained that this was done to avoid any conflating and will keep it separate. Mr. Khoury apologized that he should have updated the board.

Mr. Buckley addressed the building height and explained the formula used to calculate the heights. It can be no more than 35 feet under the Town's zoning. He stated that they are not asking for a waiver and the buildings will be complying with the zoning bylaws.

Mr. Matt MacDonald, Edge Hill Road thanked the board for their transparency, and everybody knows his objections. He expressed his concerns regarding the lot sizes and specifically lots 290 & 292, that when this project was originally presented to the Select Board and the DHCD, these lots were included in this development for density calculations, etc. One of his concerns is now that these lots have been removed, it changes the density and several other factors. It removes the ability for applicant to ask for less waivers and they haven't asked for the approval from the Select Board and DHCD, and this is a material change. Another concern was the affordable housing count and that the original proposal only asked for 4 units to be affordable at 80% rent levels, which was contrary to what was told to the different town boards. He has mentioned this issue in his previous letter and felt he was being dismissed. He believes that these are deliberate material changes to the original application, and it goes to the credibility of the applicant. Mr. MacDonald stated that they asking to put a business in a zoning area that does not allow a business, and this shouldn't be considered by any Town board. Mr. MacDonald expressed that these issues are misleading and that although the ZBA has authority to approve the project, they also have the authority to turn it down. He also expressed that each of these changes or "mistakes" are financially beneficial to applicant.

Mr. Garber asked that Mr. MacDonald put these concerns in writing and submit to Ms. Katapodis.

Mr. MacDonald, the applicant stated that they will do what needs to be done to make sure the unit count is what the town wants. He noted that they are not trying to undercut the unit count required by the town their goal is to give the Town 20 affordable units on its count. Mr. Khoury also explained that he and Mr. Buckley have decades of experience and the implications that they are a part of some scheme to pull a fast one are offensive, this is not true. He owned up to the one mistake he made and cleared the record. Mr. MacDonald, Edge Hill Road resident, pointed out that the Select Board's letter dated June 21, 2023, to the DHCD specifically states all of those lots, so they must have been under the impression that the entire parcel will be a part of the plan development, this is his opinion. Mr. Buckley shared the preliminary site plan that was filed with DHCD, and you can see that the lot on the right was never included. This is the plan that went before the state with the same table.

Matt MacDonald, Edge Hill Road, followed up by referring to an email dated May 7, 2023, that came out of the Select Board's Office that has a copy of the plot plan and it does not show those lot lines. He feels this was the plan that was shown to them, and it didn't have the lot lines or delineation which leads him to believe that the project now is not what was presented to the Select Board especially when they provided the LIP endorsement. He wanted to make sure everybody was aware of what he sees.

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Mr. Khoury asked to get copies of anything that has been submitted by other town boards or abutters.

Ms. Georgeann and Jennifer Lewis, 264 Edge Hill Road, expressed that as they have all said from the beginning that things don't feel right or sit right. She was disappointed to learn that as of August the property has switched hands, and they weren't notified and haven't been informed of anything. She doesn't believe that this project is good for the Town and the location of the project is on a business district. She expressed that she doesn't have a lot of faith in these mistakes and if Matt MacDonald didn't do the research, they would be sitting her with a development with only 4 affordable units. She is not happy.

Mr. Garber opened it up to the board. Mr. Mehta stated that he wanted to hear from Mr. Houston and Mr. Wallenstein agreed.

Mr. Houston wanted to follow up with a letter that he had sent to the board that he learned that a member of the Town of Canton's Conservation Commission has a financial interest in this project and the Conservation Commission is one of the boards that PSC works for in the Town of Canton. He just wanted to disclose that information and state that he didn't believe that it would affect his ability to review this project objectively. He proceeded to go over the traffic report and explained that at the last meeting there were comments by residents who felt that the traffic count data that was presented didn't accurately represent the daily traffic volume. Two ATR counts were conducted, one at Edge Hill Road at the project site and Dedham Street. The days were selected for mid-week conditions. Mr. Houston reviewed the results and the new ATRs showed an increase in traffic approximately 64% higher in the evening peak hour and 21% more in the morning peak hour than the original counts. Mr. Houston continued the report highlighting potential issues and what they imply for the overall project. Mr. Garber suggested that the applicant review the report and coordinate with their traffic consultant and produce a solution.

Mr. Garber asked the board if they had any comments to add. Mr. Mehta stated he didn't have anything to add but there are issues need to be addressed by Town Counsel but at the moment no outstanding engineering issues.

Mr. Wallenstein had a few concerns, the first one is regarding the density, there is 6 times increase in density in a rural area. Based on the use table for the zoning bylaw two-family residents are not permitted in the R1 District, only single residences are permitted in this area. Mr. Wallenstein referred to a comment made by one of the abutters that this is a rental business, and this type of use is not permitted in this area. Second, looking at comment number 68 on Mr. Houston's report of May 15th, regarding the impact on the groundwater. This is a groundwater protection district and Mr. Houston indicates that the proposed wastewater loading would be almost twice the 440 gallons per day MassDEP requirements, this is a big concern. Mr. Wallenstein also expressed his concern regarding the 50-foot setback waiver request for septic. Regarding comment 42 on this memo about Maximum Lot Coverage, the bylaw allows 15% lot coverage in this district, but this project is proposing 32% max lot coverage, this is a difficult one to overcome. The next comment is in regard to the Planning Board's letter, they have raised the same concerns regarding setbacks, density, lot coverage, etc. He also noted for the record that there has been a lot of opposition from neighbors and abutters, and they raise some interesting points. Mr. Wallenstein stated that he would like to see the development agreement between the Select Board and the applicant as well as what was submitted to the Select Board, this will help provide context to the board and provide important information.

Mr. Garber asked Mr. Wallenstein to write up his comments and forward for the public record.

Ms. Siobahn Donahue, 443 Walpole Street, Canton wanted to voice her opinion and justify Mr. MacDonald's comments by agreeing feel that the project does not belong in this area.

Mr. Matt MacDonald, Edge Hill Road thanked Mr. Houston for his analysis of the traffic study. He asked Mr. Houston if his firm does any work for the Town of Canton's ZBA. Mr. Houston stated that they have worked in Canton for 20 years, and maybe about 10 years ago did some work for the ZBA but it wasn't a common occurrence. Mr. MacDonald appreciated that Mr. Houston discussed the potential conflict of interest that he brought up at the start of his discussion and he wanted to caution the board that since there is an appearance of a potential conflict of interest regarding financial matters, that it should be addressed by the board. He also suggested that Mr. Houston should consider withdrawing from the review of this project. He also stated that Mr. Khoury is a member of the ZBA in Canton. Mr. Garber stated that this should be addressed with Town Counsel.

Laura Nelson, Edge Hill Road had a couple of comments regarding the traffic report. Mr. Houston suggested cutting down some trees to improve sight distance and she found that offensive since this is a scenic road. Because of the number of bedrooms and lofts and that there are 2 parking spaces per unit, potentially 80 cars, she feels that the report is underestimating the number of cars in terms of the additional traffic. Mr. Houston addressed these comments.

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Ms. Georgeann Lewis, 264 Edge Hill Road wanted to second Mr. MacDonald's request regarding Mr. Houston withdrawing from this project due to the conflict of interest.

Ms. Sarah Roth, 248 Edge Hill Road she is speaking for Elaine who had trouble with her microphone. Elaine's issue continues to be the incessant speeding and walking on Edge Hill Road isn't safe. Additionally, she feels that the traffic study is favoring the developer. This is a RR1 road and needs to be protected and a business entity is only for the benefit of the developer not the town.

Mr. Garber asked if any other abutters or residents had further comment and there weren't any. He asked Mr. Khoury if there was anything he wanted to add. Mr. Khoury stated that once they review the comments from Mr. Wallenstein, other abutters and information posted to the town website that they will respond in writing.

Mr. O'Caïn stated that if the residents have traffic mitigation measures, requests, or recommendations that they would like implemented, he would rather that the applicant cover the cost rather than the town. They can send the request to his attention, and he can forward to the applicant to see what can be worked out.

Mr. Garber asked Mr. Khoury if they had a time to reschedule the next meeting. Mr. Khoury stated that they will need time to respond to these comments. Mr. Garber suggested that they come back on October 25, 2023.

Mr. O'Caïn requested the applicant provide an updated list of the waivers and variances that pertain to zoning issues required for the project and the reasons they are requesting.

Motion:

The chair made a motion to continue Case 1919-262-290 Edge Hill Road to Wednesday, October 25th, 2023. Mr. Mehta seconded the motion. Approved by unanimous roll call vote 3-0-0 (Garber, Mehta, Wallenstein).

Meeting adjourned – 9:30 pm.

Respectfully Submitted