

# TOWN OF SHIRLEY ZONING BOARD OF APPEALS



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## MEETING MINUTES

**Town Offices Conference Room, First Floor**

**Monday, June 14, 2021**

**Meeting held in person, virtually and shown live on SPACO television**

Members present in person: Chairman Guercio, Members Lee Mirkovic, Associate Member Dave Swain. Members attending virtually: Member James Yocum, Kevin Kelly and Brian Hildebrant. Attending virtually to contribute Attorney Amy Kwesell, Attorney Melissa Robbins, Civil Engineer from TEC Peter Ellison and Traffic Engineer Liz Oltman, Owner / Applicant Dennis Page and Dave Trahan. Applicants Engineer Doug Lees. Town of Shirley's peer review advisor Joe Peznola of Hancock & Associates, Adam Johnson, Cynthia Gillham, Dr. Susan Gillham, George Minott, Town of Shirley Director of Public Works Brandon Kelly and two callers who did not make their names known.

Chairman Guercio called the public hearing of the Zoning Board of Appeals to order at 6:00 PM. Chairman Guercio made an announcement as follows:

This meeting is being recorded and shown on live television, if you wish not to be seen, please turn your screen off. If you wish to make a recording of meeting please make your request known. Please mute until called upon.

You can watch on Comcast Channel 99 on [www.shirleytv.org](http://www.shirleytv.org) by clicking on the LIVE tab. The broadcast can also be viewed on a later date. You may participate virtually on go to meeting with the access code: 369-544-781. You may telephone in to listen and participate by calling 1-571-317-3122.

Chairman Guercio introduced the Zoning Board of Appeals members attending as well as those attending virtually to represent the applicant and the Town of Shirley by name and their relevance to the project.

The Chairman noted this was a continuance of the following meeting:

- 1. The applications submitted by Middlesex Holding, LLC concerning the land located at 42 Benjamin Road, Shirley, MA Parcel ID: 33 B 4, in the R-2 District. The applicants have submitted a Comprehensive Permit Application as well as an application for two variances for relief from Section 3.3.2 (b) and 3.3.2 (d) of the Town of Shirley Protective Zoning Bylaw.**

Chairman Guercio began by announcing there was correspondence from Doug Lees of LEES Engineering dated June 7, 2021 as well as Joe Peznola of Hancock Associates dated June 10, 2021 in response to the latest TEC review letter. Chairman Guercio asked Joe to give a brief update the board and applicant on his findings on how the process should move forward.

Joe stated his letter goes through points of the process and indicates items still needing to be resolved and others have been discussed. He noted some of the open issues revolve around the existing house and variance concerning the same. He has indicated a response should be made by Attorney Amy Kwesell in legal form to push the matter along. He and Attorney Kwesell have spoken on this matter.

Joe noted on the Comprehensive Permit side, on-going work by the applicant's team working in response to concerns about water, sewer and traffic in the form of a letter and revised plans. He suggested finalization of these technical issues so the board can begin to draw up conditions and move ahead. He cited an example as the road striping – the applicant offered to stripe from the development down to the end of Benjamin Road at the intersection of Ayer Road. The traffic engineer representing the Town of Shirley has recommended striping from a point past the development in the area of Benjamin Hill Pool down to Ayer Road. Finalizing a point such as this and others which are similar, will be the beginning of the framework of the Comprehensive Permit Decision. The board will have to consult with the Department of Public Works and the traffic engineer to draft conditions as their input has been crucial. Other items can be finalized in this manner while others require further discussion. He also mentioned a payment should be made to the 53G account to replenish funds to pay the independent engineers of the water district and sewer commission.

Joe and Attorney Kwesell along with the administrative assistant will work together to draft decisions and conditions. Joe suggested moving ahead on other points mentioned in his correspondence to further progress. He suggested the Chairman direct the conversation to the applicant's side to discuss some of the outstanding issues as well.

Chairman Guercio asked Doug Lees to go over his highlights in his responses to the TEC comments. He took the screen to display a plan. He showed how they adjusted the plans and design of the water and sewer infrastructure to meet or exceed the recommendations of the town's independent engineers. Doug will attend the July meeting of the sewer commission to present these and hopefully receive approval.

Doug indicated some changes to parking in the development, addressing concerns on snow removal and placement. He told the board he spoke to the Fire Chief and the Chief approved the plan stating ample turning radius and parking existed. He addressed the point member Lee Mirkovic brought forth regarding a large fire requiring multiple engines.

Doug moved on to stormwater showing on the plan the waterline and wetland areas and indicating the path it would take. He told the board the plans were brought before the Conservation Commission at the last meeting and will continue to be discussed at their next meeting. The same plans were submitted to National Heritage as well and they have no objections.

Doug showed other changes per suggestions in prior meetings such as refuse placement, plantings, etc. He showed the site on a GIS photograph while overlaying the site onto it to indicate where clearing would take place. The total area of site work is 6.2 acres and the entire site is 9.1 acres. Half of the work is in the front and the other is in the back for the waterline placement out onto Center Road.

They are asking for a variance to the requirement all trees which are 8" or larger and to be removed are indicated on the plan. They will be removing 3.1 acres of trees. The board had suggested showing the tree removal in this manner with the GIS and site overlay. Doug concluded his presentation regarding the responses to the TEC review letter.

Attorney Melissa Robbins asked the board for their feelings on the updated plan and the GIS overlay. The other option she suggested was a secondary site walk.



Dr. Susan Gillham stated the GIS map used is out of date. She stated not all of the trees in the areas shown need to be removed. She specifically referred to a tree on the property of 42 Benjamin Road which is not indicated on the GIS photograph. She would like this and another mentioned to stay. She stated not all the trees they are proposing to remove HAVE to be removed and perhaps they could scale back. Chairman Guercio stated this could be done. He would like to take a site walk to see the tree area to be cleared. He went to the members for their input.

Lee Mirkovic stated their survey was already supposed to be done as part of the application, and they have yet to apply for the waiver. He thinks the survey is necessary for residents of the town as well as other town boards to see. Dave Swain agreed with him and Dr. Susan Gillham, since the plan is out of date a site walk is needed. Jim Yocum agreed as well and commented there would be a lot of disruption of abutting properties if much of the foliage is removed. Brian Hildebrant stated he took the first site walk and understands the area to be clear cut and didn't see the need for a survey plan.

Dave Swain asked Attorney Robbins if indicating the areas where trees *will not* be cut would be a good alternative. This would clearly show where the trees will be taken and remain. *A technical issue with the virtual connection occurred at this point. At the direction of the Town's attorney, Attorney Amy Kwessel, no conversation of substance took place while the connection was lost. However, no conversation of substance occurred while the connection was lost and the meeting continued.*

Brandon Kelly, Director of Public Works noted Center Road is a scenic road and any trees removed along this area would have to be approved by his department as well as the tree warden. Doug Lees said there were no trees to be removed along Center Road. Attorney Robbins asked if this discussion could be continued to the next meeting after the site walk. It was agreed by the Chairman.

Chairman Guercio asked Mr. Peznola what date an extension should have. He suggested August 30, 2021. Attorney Robbins agreed and will write one up and forward to the administrative assistant. She stated verbally for the record, the applicant is granting an extension to August 30, 2021 for a decision from the board in the event the next meeting date is past the original date. The original time frame of 180 days expires on July 18<sup>th</sup> and the next meeting is July 19<sup>th</sup>.

Chairman Guercio moved the meeting ahead to correspondence from Dennis Page regarding the dumpster location. George Minott and Dr. Susan Gillham responded to this narrative in a separate correspondence. Chairman Guercio voiced both his concern and support of this issue. He stated he was empathetic to the abutters but ultimately feels the dumpsters are the best option for the development. He did suggest for the applicant to try to find another area for it to be placed to appease the residents who have been in their homes for years. All members agreed.

Chairman Guercio mentioned correspondence from the Shirley Water District stating they agreed to the applicant's responses to the Wright-Price infrastructure review. The Sewer Commission was also satisfied by the applicant's new proposal and the sewer pump will be presented to the commission at the next meeting. Lee Mirkovic stated there was a lot of flooding on Center Road where their line will come out as there is also an odor. Chairman Guercio, chairing on the sewer commission, stated the odor has nothing to do with this project. Fans have been replaced in those affected areas and the system to the development is gravity fed and would not pose this type of issue.

Chairman Guercio mentioned another piece of correspondence from the applicant addressing insect borne diseases and the like.



Chairman Guercio asked the applicant to begin presenting their landscape and architectural plans. Attorney Robbins stated the landscape plans had been shown earlier in the meeting but she asked Doug if he would go over them again. She told the board the architectural drawings were not ready at this time. They will have them in time for the next meeting.

Doug brought the site plan back up on the screen and proceeded to show the board and audience various plantings on the site and what purpose they served. Chairman Guercio asked if there would be any plantings to keep vehicle lights from going into the abutting houses, specifically the one directly across the street. Doug replied the mailbox/bus stop area would shield abutters on the same side. Jim Yocum didn't agree the mailbox building would be adequate light screening. Adam Johnson lives directly across the street at 43 Benjamin Road and is concerned about the vehicles leaving the development and their headlights shining directly into his home. Doug stated the road angles slightly to the right and lights will not be shining directly into his home. He did state there would be light, as some vehicles will be turning in the opposite direction. He agreed to look into ways to alleviate this problem. Mr. Johnson is willing to work with the applicant.

DPW Director Brandon Kelly brought up the idea of the applicant setting up a fund for traffic mitigation. The DPW has applied for and hopes to receive a grant for road improvements along Benjamin Road. His idea for the fund relates directly to the grant. If the grant were to be awarded, he would use those monies to improve Benjamin Road - including what is agreed upon between the board and the developer. He went over some specifics. Remaining monies would be used in other areas of the town since much of what they would be offered as traffic mitigation is part of the DPW scope of work with the Grant money.

Attorney Amy Kwesell was asked for her opinion. She said legally there has to be a way to make the developer accountable to follow through and maintain the work. Done this way, they would not be accountable. Simply setting up an account and letting them walk away from any responsibilities is not advisable. The mitigation should be in writing then followed up on.

Dr. Susan Gillham asked the developer to add some vegetation screening to hide some of the parked vehicles by the mailboxes. Doug will see what he can do.

Chairman Guercio asked for questions. There were no questions.

Chairman Guercio stated the next meeting date was July 19, 2021 at 6PM. He also stated before such time, the members who could attend should go on another site walk.

Kevin Kelly made a motion to continue the public hearing for 42 Benjamin Road until July 19, 2021. Brian Hildebrant seconded, roll call vote, the motion passed unanimously.

#### **PUBLIC HEARING:**

- 1. 98 Benjamin Road, Parcel ID: 69 A 6 in the R-1 District. Applicant John A. Farnsworth of Farnsworth Engineering Associates is seeking a variance for his client from Section 3.2.2(b) of the Town of Shirley's Protective Zoning Bylaws which relates to minimum frontage.**

Kevin Kelly made a motion to continue the public hearing on 98 Benjamin Road request for a variance until the meeting of July 19, 2021. Brian Hildebrant seconded, roll call vote, all members in favor. Motion passed unanimously.

**ADMINISTRATIVE MATTERS:**

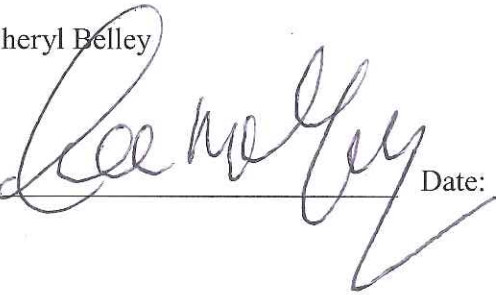
There were not administrative matters.

**CLOSE OF MEETING**

Kevin Kelly made a motion to adjourn the meeting at 8:00 PM, Brian Hildebrant seconded, all in favor, motion passed unanimously.

Prepared by: Sheryl Belley

Approved By:

 Date: 7/19/21