

ZONING BOARD OF APPEALS / TOWN OF PEMBROKE

MEETING MINUTES: SEPTEMBER 21, 2020

BOARD MEMBERS PRESENT: Frederick Casavant (Chairman), James Gallagher (Clerk), and John Grenier (Alternate)

ALSO PRESENT: Matthew Heins (Planning Board Assistant), George Verry (Building Inspector), Sue Agresti, Krista Bongarzone, David Klenert, Matthew West, Gregory Ralph, Gregory Aceto, Stephen Leaman, Paul Seaberg, Hoang Vo-Phuong, An Vo, John Danehey, Russell Field, Brian Murphy, Kimberly Kroha, Warren Baker, and others

Due to the coronavirus pandemic, this meeting of the Zoning Board of Appeals was held by remote participation using the internet, through the Zoom software platform arranged by PACTV, with nobody in physical proximity.

OPENING THE MEETING

At 7:00 pm, Mr. Casavant opened the meeting. He read a modified version of the Chairman's statement, adjusted for the circumstances of the coronavirus pandemic and remote participation:

This meeting of the Pembroke Zoning Board of Appeals on September 21, 2020, is now open.

Please note that this meeting is being made available to the public through an audio and/or video recording which will be used to ensure an accurate record of proceedings produced in the minutes of the meeting. All comments made in open session will be recorded.

Pursuant to Governor Baker's March 12, 2020, Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor's March 15, 2020, Order imposing strict limitations on the number of people that may gather in one place, this public meeting of the Pembroke Zoning Board of Appeals is being conducted via remote participation.

No in-person attendance of members of the public will be permitted, but the public can view and listen to this meeting while in progress. PACTV is providing this service live on Comcast Government Access Channel 15, and for those without cable, on their PRIME streaming channel by visiting www.pactv.org/live.

Members of the public attending this meeting virtually will be allowed to make comments if they wish to do so, during the portion of any public hearing designated for public comment, by emailing mheins@townofpembroke.com.

All votes taken during this meeting will be roll call votes.

At the start of this meeting, and at any time when a member of the Zoning Board of Appeals enters or leaves the meeting, we will identify the board members participating and note the time.

PUBLIC HEARING FOR CASE #9-20 SPECIAL PERMIT AND VARIANCE TO CONSTRUCT A SHED AT 15 WEST FISH STREET

Mr. Casavant opened the public hearing for Case #9-20 on the application of Sue Agresti and Philip Agresti, 15 West Fish Street, Pembroke, MA 02359, requesting a special permit and variance in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. V.5. (Nonconforming Uses) and Sec. IV.1.D.3. (Side Yard Setback), to construct a small shed on a property with a single-family house. The property is located at 15 West Fish Street, Pembroke, MA 02359, in Residence District A, as shown on Assessors' Map B3 Lot 2984 and Lot 2985.

The applicant Sue Agresti was present. She explained that they want to put a shed near the edge of their property, to store equipment and other things. It would be two feet from the property line; since the property is so small, it is difficult to locate such a building without it being in a setback.

In reply to Mr. Gallagher's question, Ms. Agresti explained that the neighbor on that side of their property (who would be closest to the shed) had submitted a letter in support of the project.

Mr. Gallagher and Mr. Grenier said they supported the project. Mr. Casavant asked about how close the neighbor's house and shed are to the Agrestis' property, and discussion followed. Mr. Casavant said he was very reluctant to allow the proposed shed, given how close it would be to the neighboring property and its buildings.

Mr. Gallagher suggested making the shed slightly smaller, so it would not be so close to the property line, and conversation ensued. Mr. Casavant suggested redesigning the shed and getting the dimensions from it to the adjacent buildings. It was agreed to continue the public hearing to October 26.

Mr. Gallagher made a motion to continue the public hearing for application #9-20 to October 26. Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

PUBLIC HEARING FOR CASE #11-20 SPECIAL PERMIT FOR IN-LAW APARTMENT IN SINGLE-FAMILY HOUSE AT 272 WEST ELM STREET

Mr. Casavant opened the public hearing for Case #11-20 on the application of Krista Bongarzzone, 272 West Elm Street, Pembroke, MA 02359, requesting a special permit in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. IV.1.B.4. (Attached Dwelling Unit In-Law Apartment), to construct an attached dwelling unit in-law apartment within an existing single-family house. The property is located at 272 West Elm Street, Pembroke, MA 02359, in Residence District A, as shown on Assessors' Map B12 Lot 106.

The applicant Krista Bongarzzone was present. She explained that she wishes to build an in-law apartment within the basement of the existing house, and that the house would not be enlarged. Mr. Gallagher asked her about the exits from the proposed apartment, and about its square footage, and conversation followed.

Mr. Casavant and Mr. Heins discussed the requirement that the apartment and house remain in common ownership through a deed restriction or covenant.

Mr. Gallagher made a motion to close the public hearing, Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

Mr. Gallagher made a motion to allow the application for Case #11-20 at 272 West Elm Street, subject to the conditions contained in the zoning bylaws Subsection 4, page 13. Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

ADMINISTRATIVE ACTIONS

The board considered whether to grant a one-year extension of the deadline for the Special Permit (Case #28-17) granted to Roger Warren for his property at 0 Crescent Avenue. The applicant had officially requested an extension of this deadline.

David Klenert, the project engineer, was present and explained to the board why the project had been delayed over the years. The board members agreed to allow the extension.

Mr. Gallagher made a motion to allow a one-year extension of the deadline for the special permit for Case #28-17 at 0 Crescent Avenue. Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

PUBLIC HEARING FOR CASE #12-20 SPECIAL PERMIT TO OPERATE A RESTAURANT ("JERSEY MIKE'S") AT 124 CHURCH STREET (A.K.A. 117 OLD CHURCH STREET)

Mr. Casavant opened the public hearing for Case #12-20 on the application of Mass Subs 4 LLC, c/o Gregory J. Aceto, One Liberty Square, Suite 410, Boston, MA 02109, requesting a special permit in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. IV.4.B.4. (Restaurants Allowed by Special Permit), to operate a new "Jersey Mike's" restaurant within an existing building. The property is located at 124 Church Street (a.k.a. 117 Old Church Street), Pembroke, MA 02359, in Business District B, as shown on Assessors' Map F15 Lot 53.

Matthew West of Mass Subs 4 LLC, architect Gregory Ralph, and attorney Gregory Aceto were present to represent the project. Mr. Aceto introduced the project, and described the existing building within which the restaurant would be located. The space was formerly occupied by a cell phone store. Mr. West said the restaurant hours would be from 10 am to 9 pm every day, and Mr. Ralph said it would have 24 seats.

Mr. Gallagher made a motion to close the public hearing, Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

Mr. Gallagher made a motion to allow the application for Case #12-20 Special Permit to operate a Jersey Mike's at 124 Church Street by Mass Subs 4 LLC, to be open from 10 am to 9 pm every day. Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

PUBLIC HEARING FOR CASE #2-20 SPECIAL PERMIT TO CONSTRUCT A NEW SINGLE-FAMILY HOUSE AT 70 TOOLE TRAIL

Mr. Casavant re-opened the public hearing (continued from August 17, 2020) for Case #2-20 on the application of Stephen Leaman, 1082 Ferry Street, Marshfield, MA 02050, requesting a special permit in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. V.5. (Nonconforming Uses), to construct a new single-family house and demolish an existing single-family house. The property is located at 70 Toole Trail, Pembroke, MA 02359, in Residence District A and the Water Resource and Groundwater Protection District (Zone II), as shown on Assessors' Map B5 Lot 110.

The applicant Stephen Leaman was present, as was the project engineer Paul Seaberg of Grady Consulting. George Verry, the building inspector, was also present.

Mr. Seaberg described the project and explained that the height had been reduced slightly from the previous submission.

Mr. Gallagher said he was concerned about the building's height, and about how some rooms in the house could eventually become added bedrooms. Mr. Leaman said that the intended purpose of the extra rooms was not to be bedrooms, and stated that he could put something in

writing stating that the upstairs room would not be a living space. Conversation followed. Mr. Seaberg described the building height and how it was supposed to be calculated.

Mr. Gallagher noted that several abutters had submitted letters objecting to the project, in particular to the building height. Mr. Verry and Mr. Heins described certain aspects of the project. Mr. Leaman emphasized that the project was approved a few years ago by the board, though the deadline has expired. Mr. Seaberg described the height calculations again, and the issue of how the stories are calculated.

Mr. Grenier asked how the grade plane was established, and Mr. Seaberg and Mr. Verry discussed this. In reply to Mr. Grenier's questions, Mr. Seaberg said there would be three bedrooms and that the septic system would be adequate.

Mr. Leaman insisted that the project should be approved. Mr. Heins described the content of some of the emails he was receiving from certain abutters during the public hearing objecting to the project. Mr. Leaman again said he could put something in writing stating that the upstairs room would not be a living space.

Mr. Gallagher and Mr. Leaman debated the issue of the building height. Mr. Leaman again insisted that the project should be approved. Mr. Seaberg said the height was now lower than in the original submission, but did not clarify precisely how much lower it was. Mr. Casavant and Mr. Leaman discussed the visual screening and proximity of the adjacent houses.

Mr. Casavant suggested better visual screening on one side, and Mr. Seaberg said some plantings could be placed there. Mr. Seaberg and Mr. Leaman said the proposed house would not interfere with the adjacent right of way.

Mr. Gallagher made a motion to close the public hearing, Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

The board discussed the project again.

Mr. Casavant made a motion to approve the application for Case #2-20 Special Permit for 70 Toole Trail, based on the most recent drawings and plans submitted, conditioned that the applicant put a deed restriction that the top floor is storage only with no living space, and also conditioned on the applicant putting up six to eight-foot plantings appropriate for this area to provide screenage, along the immediate abutter's property line opposite of the right-of-way, to run roughly the length of the proposed house. Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

PUBLIC HEARING FOR CASE #7-20 SPECIAL PERMIT TO CONSTRUCT A NEW SINGLE-FAMILY HOUSE AT 47 WOODBINE AVENUE

Mr. Casavant re-opened the public hearing (continued from August 17, 2020) for Case #7-20 on the application of An Le, 31 Ocean Avenue, P.O. Box 684, Hanson, MA 02341, requesting a special permit in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. V.5. (Nonconforming Uses), to construct a new single-family house and demolish an existing single-family house. The property is located at 47 Woodbine Avenue, Pembroke, MA 02359, in Residence District A and the Water Resource and Groundwater Protection District (Zone II), as shown on Assessors' Map B5 Lot 62.

Hoang Vo-Phuong, the property owner, was present, as was his son An Vo. (The applicant An Le, who was not present, is actually the contractor for the project.) Also present was John Danehey, the attorney for the abutter Kimberly Mello who lives at 49 Woodbine Avenue. George Verry, the building inspector, was also present.

Mr. Vo explained that the house design had been modified to meet the abutter's concerns, with a slightly larger and more consistent setback from the property line and with the building overhangs eliminated.

Mr. Danehey said he appreciated the changes to the design. He suggested, as one last condition, that the applicant put up a ten-foot-high fence along the property line with 49 Woodbine Avenue, for the sake of privacy. Conversation followed, with Mr. Vo reluctant to accept this. Mr. Danehey showed the board an aerial photograph of the two properties.

Mr. Gallagher and Mr. Verry discussed the height of fences in Pembroke. Mr. Casavant suggested that small trees could be planted for visual screening instead of a high fence. The board and Mr. Vo talked about the idea, the board members recommending that arbor vitae would be the best choice. Mr. Vo was resistant to this, and conversation ensued.

Mr. Gallagher made a motion to close the public hearing, Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

The board discussed the project and agreed requiring arbor vitae made sense.

Mr. Casavant made a motion to approve the application for Case #7-20 at 47 Woodbine Avenue based on the new plan submitted for that day's hearing, on condition that Mr. Vo plant eight-foot arbor vitae approximately five feet apart, about three feet away from the fence, to run the length of the neighbor's house. Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

PUBLIC HEARING FOR CASE #6-20 SPECIAL PERMIT FOR OUTDOOR STORAGE, DISPLAY, AND SALE OF GOODS AT 240 AND 258 OAK STREET (PER REMAND ORDER ISSUED BY LAND COURT)

Mr. Casavant opened the public hearing for Case #6-20 on the application of Russell D. Field, 25 James Way, Scituate, MA 02066, requesting a special permit in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. IV.5.B.3. referring to Sec. IV.4.B.1. Outdoor Storage, Display, and Sale of Goods, to construct a new curb cut and gravel access drive to provide access to the site's two lots through the site's frontage on Oak Street, in order to serve the current business operations on the site, which is the storage of empty dumpster containers. This application is a modification of a previous special permit application, as per a remand order issued by Massachusetts Land Court. The property is located at 240 and 258 Oak Street, Pembroke, MA 02359, in Industrial District A and the Medical Marijuana Overlay District, as shown on Assessors' Map G14 Lot 25D and Map G14 Lot 25E.

The applicant Russell Field was present, as was his attorney John Danehey. The owner of an abutting property, Brian Murphy, was present, as were his attorneys Kimberly Kroha and Warren Baker. George Verry, the building inspector, was also present. Mr. Murphy and Mr. Field, neighboring property owners, have been in litigation due to various disputes. This case had previously been decided by the board but was now returning to the board per the remand order of land court.

Mr. Danehey introduced the details of the application, and described the nature of Mr. Field's business on the site. He emphasized that the dumpster containers are not used for trash, but for construction debris, and that none of this debris is stored in the containers at this location. He also described the history of how the special permit for Outdoor Storage, Display, and Sale of Goods was issued by the board, and the litigation relating to it in land court.

Mr. Danehey explained that the land court judge had advised that the site plan and special permit originally issued were not valid because the design did not meet the 40% landscaping requirement (per the zoning bylaws) for each setback. Therefore, the project had been remanded back to the Planning Board and the Zoning Board of Appeals to reconsider. The Planning Board had granted site plan approval again a few months ago.

Mr. Danehey showed the board images of the proposed design of the project, which is almost the same as the previously approved project except for a minor change to raise the landscaping percentage in the rear setback (rear yard) to 40%. He explained that his client was not seeking any other changes to the design.

Mr. Grenier and Mr. Danehey discussed the ownership of the adjacent property (260-280 Oak Street) and its relation to Unicorn Realty.

Mr. Baker presented his argument that the board should not grant the special permit. He explained that the remand order means that the special permit previously granted is no longer in effect, and that the board may grant or deny the new application. He contended that Mr. Field is not actually using the property for the Outdoor Storage, Display, and Sale of Goods, but rather to hold junked, abandoned dumpster containers.

Mr. Baker noted that the zoning bylaws strongly restrict the storing of junk, scrap or abandoned items. He said the dumpster containers are rusted through, worn out and generally not usable, and showed the board photographs of the containers. He urged the board to deny the application.

Mr. Casavant and Mr. Verry briefly discussed the condition of the dumpster containers and whether they are in current use.

Mr. Danehey said that the dumpster containers come and go. He acknowledged that dumpsters are generally not aesthetically attractive, and that some of these dumpster containers may have rust showing on them. He pointed out that the business has been at this location for a long time, that the containers are not scrap, and that there are no incompatible land uses nearby.

Mr. Baker said that aerial photographs show the dumpster containers have been on the site for many years, and that nearly all of them appear rusted and unusable. He stated that the site is thus essentially a junkyard or scrap yard, and hence has a negative impact on adjacent property values.

Discussion took place, and it was agreed that the board members would visit the site to look at the dumpster containers and the use in general.

Mr. Gallagher made a motion to continue the public hearing for application #6-20 to October 26 at 7:00 pm. Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

PUBLIC HEARING FOR CASE #4-20 TWO APPEALS WITH REGARD TO PROPERTY AT 260-280 OAK STREET

Mr. Casavant opened the public hearing for Case #4-20 on the application of Russell Field, Trustee of 290 Oak Street Realty Trust, c/o John Danehey, Esq., 5 Old Country Way, Scituate, MA 02066, to appeal, in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. VI.C. (Appeals to the Zoning Board of Appeals), the Zoning Enforcement Officer's / Building Commissioner's Failure to Act on the Request for Enforcement (Dated February 28, 2020) and the Zoning Enforcement Officer's / Building Commissioner's Issuance of a Temporary Occupancy Permit to Grissom Park Co., LLC. The appeals are regarding the property located at 260-280 Oak Street, Pembroke, MA 02359, in Industrial District A and the Medical Marijuana Overlay District, as shown on Assessors' Map G14 Lot 25F and Lot 25G.

The applicant Russell Field was present, along with his attorney John Danehey. The owner of the property at 260-280 Oak Street (through Grissom Park Co., LLP), Brian Murphy, was present, as were his attorneys Kimberly Kroha and Warren Baker. George Verry, the building inspector, was also present. The adjacent property owners Mr. Murphy and Mr. Field have been in litigation due to several disputes.

Mr. Casavant noted that the board had received a great deal of paperwork consisting of legal arguments, and that town counsel would probably ultimately be involved in this case.

Mr. Danehey said he would prefer that Mr. Verry first issue a written decision on a key point relevant to the appeals, and so he asked the board to continue the public hearing to give Mr. Verry time for this.

Mr. Baker said he believed the two issues being appealed would be rendered moot when the Planning Board meets next Monday (September 28). He argued that the Planning Board would resolve the issues in its public hearing on 260-280 Oak Street.

Mr. Danehey opined that the Planning Board's decision is likely to go against Mr. Murphy, or else its public hearing will be continued again. The two attorneys debated, and Mr. Danehey requested that Mr. Verry issue a decision. Mr. Verry said he is consulting with town counsel.

All parties agreed to continue the public hearing.

Mr. Gallagher made a motion to continue the public hearing for application #4-20 to October 26 at 7:20 pm. Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

ADMINISTRATIVE ACTIONS

Mr. Gallagher made a motion to approve the meeting minutes of August 17, 2020, Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

The meeting was adjourned.