

ZONING BOARD OF APPEALS / TOWN OF PEMBROKE

MEETING MINUTES: OCTOBER 26, 2020

BOARD MEMBERS PRESENT: Frederick Casavant (Chairman), Arthur Boyle, Jr. (Alternate), and John Grenier (Alternate).

ALSO PRESENT: Matthew Heins (Planning Board Assistant), Russell Field, John Danehey, Brian Murphy, Kimberly Kroha, Warren Baker, Martin Lu, Joseph Casna, Cary Coveney, Christine Coveney, Jason Pithie, Warren Gardner, Deborah Gardner, William Kennedy, Sue Agresti, Philip Agresti, 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 October 26, 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@townofpembrokemass.org.

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 #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 reopened the public hearing (continued from September 21, 2020) 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. 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.

There was a short delay due to technical problems with board member John Grenier's connection, which were corrected.

Mr. Danehey summarized the history of the project and the legal proceedings, explaining that the special permit previously issued by the board had been remanded by land court back to the board. The problem that the land court found with the design relates to the amount of required landscaped or undisturbed space within the setbacks. He noted that the site plan approval had also been remanded to the Planning Board, which had already granted approval for it again. He described the alterations made to the engineering drawings, which are minor in nature, to fix the flaw found by land court.

Mr. Baker emphasized that the land court's remand order brings the entire project back for the board's consideration, and hence the board should consider it in full. He argued that the dumpster containers on the site have long been essentially scrap, junk and/or abandoned, in violation of the zoning bylaws.

Mr. Boyle noted the property is zoned industrial, and said he would like to do a site visit to look at the property in person. Mr. Baker and Mr. Danehey argued about whether some of the more deteriorated dumpster containers have been removed recently.

Mr. Casavant and Mr. Danehey discussed how many dumpsters would be on the property and where they would be located, and whether additional screening (such as arbor vitae) should be added. Mr. Baker recommended that visual screening was necessary. Mr. Danehey said that Corporate Park (i.e., Mr. Murphy's properties) has many dumpsters. Mr. Baker and Mr. Danehey argued briefly. Mr. Casavant, Mr. Baker and Mr. Danehey debated whether the dumpster containers constitute "junk" or not.

It was agreed that Mr. Boyle and Mr. Grenier would do separate site visits of the property, with Mr. Heins and Mr. Danehey communicating to arrange the dates.

Mr. Casavant made a motion to continue the public hearing to November 30 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 reopened the public hearing (continued from September 21, 2020) 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. The adjacent property owners Mr. Murphy and Mr. Field have been in litigation due to several disputes.

Mr. Danehey said that he was requesting the public hearing be continued, and Mr. Baker indicated that was acceptable to him.

Mr. Casavant made a motion to continue the public hearing to November 30 at 7:20 pm, Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

PUBLIC HEARING FOR CASE #14-20 SPECIAL PERMIT AND VARIANCES TO BUILD A POOL AT 32 MONROE STREET

Mr. Casavant opened the public hearing for Case #14-20 on the application of Martin Lu, 32 Monroe Street, Pembroke, MA 02359, requesting a special permit and variances in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. V.5. (Nonconforming Uses), Sec. IV.1.D.2 (Front Yard Setback) and Sec. IV.1.D.3. (Rear Yard Setback), to construct a pool on a property with an existing single-family house. The property is located at 32 Monroe Street, Pembroke, MA 02359, in Residence District A and the Water Resource and Groundwater Protection District, as shown on Assessors' Map C6 Lot 149.

The applicant Martin Lu was present, as was Joseph Casna of Crystal Clear Pools. Mr. Lu displayed a site plan of the property, which showed where the pool would be located. The pool would be within the setback, thus triggering the need for a variance.

Mr. Boyle noted, in the interests of full disclosure, that he has worked with Mr. Casna in the past, and that he recently retired from the Town of Kingston where Mr. Casna is the Chair of the Board of Health. Mr. Boyle indicated he did not feel this would preclude him from voting, and added that he supported the project.

Mr. Grenier asked about the pool's location, and also said he supported the project. Mr. Casavant asked if any member of the public had commented on the application, and Mr. Heins said nobody had.

Mr. Casavant 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 members agreed there were no objections to the project.

Mr. Casavant made a motion to allow, for application #14-20, the special permit in accordance with Section V.5. (Nonconforming Uses), and the variances in accordance with Sec. IV.1.D.2 (Front Yard Setback) and Section IV.1.D.3. (Rear Yard Setback), for the pool to be installed in the

location as presented on the plan submitted with the application. Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

PUBLIC HEARING FOR CASE #13-20 APPEAL WITH REGARD TO PROPERTY AT 458 CENTER STREET

Mr. Casavant opened the public hearing for Case #13-20 on the application of Cary Coveney and Christine Coveney, 450 Center Street, Pembroke, MA 02359, c/o Jason Pithie, Esq., 158 Pleasant Street, Weymouth, MA 02190, to appeal, in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. VI.A.3. (Enforcement) and Sec. VI.C. (Appeals to the Zoning Board of Appeals), the Zoning Enforcement Officer's decision dated August 19, 2020. The appeals are regarding the property located at 458 Center Street, Pembroke, MA 02359, in Residence District A and the Water Resource and Groundwater Protection District, as shown on Assessors' Map C6 Lot 17A.

Cary Coveney and Christine Coveney were present, as was their attorney Jason Pithie. The owners of the 458 Center Street property (through Skadingle Realty Trust), Warren Gardner and Deborah Gardner, were also present, along with their attorney William Kennedy.

Mr. Pithie summarized the reasons for the appeal, stating that he had previously submitted a formal zoning enforcement letter to the building inspector regarding 458 Center Street. He noted the property is in the Residence A District where businesses are only allowed on a single-family residential property by special permit, and there is no such special permit for the property. The essence of the complaint was that the activities on the property were offensive, noxious and/or injurious by reason of emission of odor, dust, smoke, etc., that asphalt-making and excavation equipment were being operated on the property, that employee vehicles were entering and exiting the property on a daily basis, that construction material and debris were being disposed of on the property, that constant noise and odors were emanating from the property, that an unauthorized travel trailer and storage container were on the property, and that a large business sign was displayed at the front of the property.

Mr. Pithie said the letter was delivered to the town's zoning enforcement officer, George Verry, on July 15, 2019, and that pursuant to the town bylaws he was obligated to reply in writing. Mr. Verry's written response, according to Mr. Pithie, was that the issues with the property no longer existed because the property owners were no longer operating their business out of the property. Mr. Pithie said he disagreed with Mr. Verry's position, and also believed it was issued past the deadline (i.e., not in a timely manner), and thus had filed the appeal.

Mr. Kennedy responded on behalf of the Gardners. He said that none of the alleged activities have taken place on the property for some time. He acknowledged that Mr. Gardner did run his asphalt business from the property for a period of time when he had lost his ordinary business location, and that the town did deal with this situation. But, Mr. Kennedy stated, even at that time these activities did not happen to the extent the appeal claims. Furthermore, he explained, Mr. Gardner eventually found a new location for his business, and so the alleged activities are not happening on the property currently. He added that several of the abutters have submitted statements in support of the Gardners. He said that much of what the Coveney's believe to be debris are actually construction material and fill for construction work the Gardners are doing on their property. He urged the board to make its decision in accordance with the findings of the building inspector (a.k.a. zoning enforcement officer).

Mr. Heins explained that the building inspector, Mr. Verry, was willing to accompany any board members who wish to visit the property, and would also be willing to attend the public hearing if it is continued to a future date.

It was decided that one or two board members would visit the property, with Mr. Heins and Mr. Kennedy communicating to arrange the dates. Mr. Boyle asked about the storage container on the property, and Mr. Pithie said there is a travel trailer and commercial-sized storage trailer. Mr. Boyle asked whether Mr. Gardner has a different location for his business, and Mr. Kennedy said the business is now based in Halifax.

Mr. Pithie said he had no objection to continuing the public hearing, and would welcome having Mr. Verry present at that time. It was agreed to continue it to December 14.

Mr. Casavant made a motion to continue the public hearing to December 14 at 7:00 pm, Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

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

Mr. Casavant reopened the public hearing (continued from September 21, 2020) 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 applicants Sue Agresti and Philip Agresti were present. Mr. Agresti explained that they wish to build a storage shed on the property, and that their revised proposal places the shed slightly further from the property boundary than what was previously proposed. In response to questions from the board, the Agrestis said the shed's height would be around 11 or 12 feet.

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

Mr. Casavant made a motion to approve the request for a special permit and variance for Case #9-20, the special permit in accordance with Section V.5. (Nonconforming Uses) and the variance in accordance with Section IV.1.D.3. (Side Yard Setback), based on the submission showing it a minimum of four feet off the property line, the structure being a 12 foot by 8 foot shed with a maximum height of 12 feet. Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

ADMINISTRATIVE ACTIONS

Mr. Casavant requested that town counsel be present on November 30 to assist the board with the public hearings (for 240 & 258 Oak Street and for 260-280 Oak Street) continued to that date. Mr. Grenier agreed. Mr. Heins said he would communicate with town counsel to arrange this.

The meeting was adjourned.