

ZONING BOARD OF APPEALS / TOWN OF PEMBROKE

MEETING MINUTES: JANUARY 25, 2021

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

ALSO PRESENT: Matthew Heins (Planning Board Assistant), Alexander Weisheit (Town Counsel, KP Law), Russell Field, Kathy Field, John Danehey, Brian Murphy, Kimberly Kroha, Warren Baker, Susan Spratt, William Fleck, John Falcione, Michael Woods, David Meyerovitz, Robert Galvin, 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 6:45 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 January 25, 2021, 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 #48-18 COMPREHENSIVE PERMIT FOR PROPOSED "RIVER MARSH VILLAGE" 40B PROJECT AT 274 WATER STREET

Mr. Casavant reopened the public hearing (continued from January 12, 2021) for Case #48-18 on the application of River Marsh, LLC, for a comprehensive permit pursuant to G.L. Chapter 40B filed for fourteen (14) 1.5 story residential townhome buildings containing fifty-six (56) condominium units for sale, eleven (11) two bedroom and forty-five (45) three bedroom units, of which not less than 25% or fourteen (14) units shall be restricted as affordable for low or moderate income persons or families, to be constructed on the property located at 274 Water

Street, containing 48.9 acres +/- of land area. The project is located at 0 and 274 Water Street, Pembroke, MA 02359, as shown on Assessors' Map E15 Lots 17 and 17A.

Board members Mr. Casavant, Mr. McGrail and Mr. Boyle were present and participating at this time. Board member Mr. Grenier may have been present (i.e., remote connection shown) but was not participating in any way.

Brian Murphy of River Marsh, LLC, was present, as were his attorneys Kimberly Kroha and Warren Baker. The project's engineer Susan Spratt (of McKenzie Engineering Group) was also present.

Mr. Casavant noted that the board needed to decide and vote in order to select a peer review engineering firm for the River Marsh project. Contract estimates had been received from Merrill Engineers and Land Surveyors and Tetra Tech, and the board had reviewed them.

A discussion took place. Mr. McGrail had no preference between the two firms, and Mr. Boyle recommended using Merrill based on their familiarity with Pembroke. (Merrill is the regular peer reviewer for the Planning Board.) Mr. Casavant was in agreement.

Mr. Boyle made a motion to approve hiring Merrill to do the peer review for this application for 274 Water Street, and Mr. McGrail seconded the motion. Mr. Casavant, Mr. McGrail and Mr. Boyle voted in favor by roll call, and the motion passed.

ADMINISTRATIVE ACTIONS

Mr. Boyle made a motion to approve the minutes for January 4, 2021, and Mr. McGrail seconded the motion. Mr. Casavant, Mr. McGrail and Mr. Boyle voted in favor by roll call, and the motion passed.

The board members and others present waited about five minutes until the starting time of the next public hearing.

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

Mr. Casavant reopened the public hearing for Case #4-20 (continued from September 21, 2020, October 26, 2020, November 30, 2020, and December 14, 2020) 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.

Board members Mr. Casavant, Mr. McGrail and Mr. Boyle were present and participating at this time. Board member Mr. Grenier may have been present (i.e., remote connection shown) but was not participating in any way.

The applicant Russell Field was present along with his attorney John Danehey and also Kathy Field. 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. Susan Spratt, the engineer for the 260-280 Oak Street project, was present as well. Mr. Murphy and Mr. Field, adjacent property owners, have been in conflict and litigation due to several disputes. Town counsel Alexander Weisheit of KP Law was also present.

Mr. Danehey summarized the history of the project at 260-280 Oak Street, as it went through site plan review with the Planning Board, was approved, was built differently than the approved design, was denied by the Planning Board for a proposed major modification to the site plan, etc.

Mr. Danehey then made a lengthy presentation of various violations and problems, generally related to zoning bylaws or site plan rules & regulations, he identified with the project at 260-280 Oak Street: common driveways or cross-access; the 40% yard (setback) landscaping requirement; outside storage; and the height and nature of the fence. He displayed images of the property and the project.

Ms. Kroha replied to Mr. Danehey's arguments. She went over the history of this particular appeal and the building inspector's actions and letter. She said that Mr. Field has not suffered actual harm from any of the issues raised. She stated that the existing site plan approval is still valid because substantial use of the rights has been exercised (i.e., the buildings have been constructed). She then replied to each of Mr. Danehey's points regarding: common driveways or cross-access; the 40% yard (setback) landscaping requirement; outside storage; and the height and nature of the fence. She also argued that the board has no jurisdiction over this case.

Mr. Casavant asked Mr. Weisheit (town counsel) for his opinion. Mr. Weisheit said that the board did not have jurisdiction over the failure to undertake zoning enforcement because there was zoning enforcement undertaken, and also that the board did not have the authority [in this particular public hearing for this application] to make the specific determinations being requested [by Mr. Danehey].

Mr. Danehey disputed Mr. Weisheit's conclusions and referred to the circumstances of the land court case, and a brief debate ensued.

Mr. Casavant said he was inclined to defer to Mr. Weisheit on the legal issues, and to decide in accordance with Mr. Weisheit's advice. The other board members agreed after a brief conversation.

William Fleck, a neighboring property owner, expressed his concerns about excess stormwater runoff from the 260-280 Oak Street property onto his property.

Mr. Boyle made a motion to close the public hearing, and Mr. McGrail seconded the motion. Mr. Casavant, Mr. McGrail and Mr. Boyle voted in favor by roll call, and the motion passed.

The board members were in agreement to deny the application based on town counsel's advice.

Mr. McGrail made a motion to deny the application #4-20 of Russell Field, trustee of the 290 Oak Street Realty Trust. Mr. Boyle seconded the motion. Mr. Casavant, Mr. McGrail and Mr. Boyle voted in favor by roll call, and the motion passed.

PUBLIC HEARING FOR CASE #19-20 APPEAL OF PLANNING BOARD DECISION WITH REGARD TO PROPERTY AT 260-280 OAK STREET

Mr. Casavant opened the public hearing for Case #19-20 on the application of Grissom Park Co., LLP, c/o Baker, Braverman & Barbadoro, PC, 300 Crown Colony Drive, Suite 500, Quincy, MA 02169, to appeal, in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. V.7.H.1 (Site Plan Approval – Appeals), the Planning Board’s decision to deny approval of an application for a proposed amendment (major modification) to a Site Plan. The appeal is 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.

Board members Mr. Casavant, Mr. McGrail and Mr. Boyle were present and participating at this time. Board member Mr. Grenier may have been present (i.e., remote connection shown) but was not participating in any way.

Brian Murphy, the owner of the property at 260-280 Oak Street through Grissom Park Co., LLP (the applicant), was present, along with his attorneys Kimberly Kroha and Warren Baker. Susan Spratt, the engineer for the 260-280 Oak Street project, was also present. The owner of an adjacent property, Russell Field, was present with his attorney John Danehey and also Kathy Field. The two neighboring property owners, Mr. Murphy and Mr. Field, have been in conflict and litigation due to various disputes. Town counsel Alexander Weisheit of KP Law was present as well.

Ms. Kroha went over the history of the project at 260-280 Oak Street, and noted that the final set of amended plans submitted to the Planning Board were revised March 4, 2020. She explained that the appeal had been filed with both the Zoning Board of Appeals and land court. She argued that the revised plans (i.e., proposed major modification to the site plan) should have been approved by the Planning Board, and she disputed the Planning Board’s reasons (as given in that board’s decision document) for denying the proposed major modification to the site plan.

Ms. Spratt described the changes that were made to the site plan, i.e., the ways in which the built design differed from the originally approved design along with the proposed changes to the built design. She displayed engineering drawings.

The board members agreed to continue the hearing, since the board meeting was running late and other hearings were already delayed.

Mr. Boyle made a motion to continue the hearing to February 22, 2021, at 7:00 pm, and Mr. McGrail seconded the motion. Mr. Casavant, Mr. McGrail and Mr. Boyle voted in favor by roll call, and the motion passed.

PUBLIC HEARING FOR CASE #20-20 SPECIAL PERMIT TO ALTER EXISTING NONCONFORMING USE AT 8 MAIN STREET

Mr. Casavant opened the public hearing for Case #20-20 on the application of 8 Main Street LLC, c/o Select Strategy Inc., Riverside Center, 275 Grove Street, Suite 2-400, Newton, MA 02466, requesting a special permit in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. V.5 (Nonconforming Uses), to alter the composition of uses in a mixed-use building by converting existing first-floor commercial space into two new residential apartment units. The

property is located at 8 Main Street, Pembroke, MA 02359, in Residence District A, as shown on Assessors' Map A5 Lot 57.

Board members Mr. Casavant, Mr. McGrail, Mr. Grenier and Mr. Boyle were present and participating at this time.

The applicant (through 8 Main Street LLC), David Meyerovitz, was present, along with his attorney Robert Galvin.

Mr. Galvin introduced the project, and explained that it would convert some existing commercial space into two apartment units. He noted that the septic system was already sufficient for this change. He explained that the application was to alter a nonconforming structure or use, and opined that the proposed use would actually be less obtrusive to the neighborhood and less intensive. He added that the changes are only internal modifications to the building, and that the size of the building would not get any larger or smaller.

Mr. Galvin displayed images showing the property and the building. He discussed the issues raised by certain abutters to the project (such as the septic system, a dog who once lived in the building, the dumpster, the mailbox location, noise from tenants, etc.), and explained that they were not valid or not relevant to this application, or that Mr. Meyerovitz would be willing to resolve them.

The board members and Mr. Galvin discussed the project, and Mr. Boyle noted that a residential use was less intensive than a commercial use. The dumpster was discussed.

Mr. Boyle made a motion to close the public hearing to go into deliberation, and Mr. McGrail seconded the motion. Mr. Casavant, Mr. McGrail and Mr. Boyle voted in favor by roll call, and the motion passed.

The board members were in agreement that the project should be approved, and that the mailbox should be moved if it is on a neighboring property.

Mr. Boyle made a motion to approve the application for Case #20-20, the only condition being that if the mailbox is on the neighboring property it be moved to the applicant's property. Mr. McGrail seconded the motion. Mr. Casavant, Mr. McGrail and Mr. Boyle voted in favor by roll call, and the motion passed.

PUBLIC HEARING FOR CASE #15-20 SPECIAL PERMIT AND VARIANCES TO EXPAND HOUSE AT 10 ALVERN ROAD

Mr. Casavant reopened the public hearing (continued from December 14, 2020, and January 4, 2021) for Case #15-20 on the application of John Falcione, 10 Alvern Road, 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. (Side Yard Setback), with Front Yard Setback and Side Yard Setback as referenced by Sec. IV.3.D.1 (Dimensional Regulations), to construct an addition to an existing single-family house. The property is located at 10 Alvern Road, Pembroke, MA 02359, in Business District A and possibly the Water Resource and Groundwater Protection District, as shown on Assessors' Map A5 Lots 148, 149 and 264.

The applicant John Falcione was present.

Board members Mr. Casavant, Mr. McGrail, Mr. Grenier and Mr. Boyle were present and participating at this time.

The board discussed the revised drawings that were submitted, and agreed that the new design satisfied their previous concerns about the setback distance.

Mr. Boyle made a motion to close the public hearing to go into deliberation, and Mr. Grenier seconded the motion. Mr. Casavant, Mr. Grenier and Mr. Boyle voted in favor by roll call, and the motion passed.

The board members agreed the project should be approved. Mr. Boyle suggested that a restriction be imposed to prevent the creation of a loft living space above the garage, and Mr. Casavant agreed.

Mr. Boyle made a motion to approve the application for Case #15-20, based on the revised plans submitted for this day's hearing, a plot plan dated October 30, 2020, that has changed the setbacks to 12'-6" and 12'-1" of the garage. Mr. Grenier seconded the motion. Mr. Casavant, Mr. Grenier and Mr. Boyle voted in favor by roll call, and the motion passed.

PUBLIC HEARING FOR CASE #16-20 SPECIAL PERMIT TO BUILD IN-LAW APARTMENT AT 42 EDGEWATER DRIVE

Mr. Casavant reopened the public hearing (continued from December 14, 2020, and January 4, 2021) for Case #16-20 on the application of Michael Woods, 42 Edgewater Drive, 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 as an addition to an existing single-family house. The property is located at 42 Edgewater Drive, Pembroke, MA 02359, in Residence District A, as shown on Assessors' Map F10 Lot 86.

The applicant Michael Woods was present.

Board members Mr. Casavant, Mr. McGrail, Mr. Grenier and Mr. Boyle were present and participating at this time.

Mr. Woods explained that the new, revised floor plan drawing recently submitted showed the in-law apartment as being almost precisely 800 square feet, in accordance with the limit set by the zoning bylaw. Discussion followed, and Mr. Heins confirmed that the revised design had shifted some space to the main portion of the house to bring the size of the in-law apartment to 800 square feet.

The board was in agreement that the project should be approved.

Mr. Boyle made a motion to close the public hearing to go into deliberation, and Mr. Grenier seconded the motion. Mr. Casavant, Mr. Grenier and Mr. Boyle voted in favor by roll call, and the motion passed.

Mr. Boyle made a motion to approve the application for Case #16-20 of Michael Woods, subject to the requirements and conditions of Article IV.1.B.4. [of the zoning bylaws], specifically and

including but not limited to 4.e.: “A condition of approval and grant of a special permit shall require the submittal of a covenant or deed restriction satisfactory to the town and stating that the existing one-family house and the proposed attached dwelling unit shall forever, or until such time released by the town, remain in common ownership.” Mr. Grenier seconded the motion. Mr. Casavant, Mr. Grenier and Mr. Boyle voted in favor by roll call, and the motion passed.

The meeting was adjourned.