

ZONING BOARD OF APPEALS / TOWN OF PEMBROKE

MEETING MINUTES: MARCH 29, 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), Rebecca Coletta (Selectboard), Daniel Trabucco (Selectboard), Andrew Wandell (Planning Board), Kenneth McCormick (Fire Chief), Michael Bonner, Rick Souza, Brian Murphy, Kimberly Kroha, Warren Baker, Russell Field, John Danehey, Jessica Falcone, Jeffrey De Lisi, Kevin Grady, Jeffrey Perette, Robert DeMarzo, 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 March 29, 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, via livestream at <https://www.pactv.org/pactv/towns/pembroke> or www.pactv.org/pactv/watch/meetings-streamed-live-youtube.

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 #2-21 SPECIAL PERMIT AND VARIANCE TO OPERATE AUTOMOTIVE REPAIR BUSINESS AT 280 OAK STREET

Mr. Casavant reopened the public hearing for Case #2-21 (continued from February 22, 2021) on the application of Souza Automotive, Inc., 280 Oak Street, Unit 100, Pembroke, MA 02359, requesting a special permit and variance in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. IV.5. (Industrial District A), to operate an automotive repair business that is already in existence. The

property is located at 280 Oak Street, Pembroke, MA 02359, in Industrial District A and the Medical Marijuana Overlay District, as shown on Assessors' Map G14, Lot 25G.

Board members Frederick Casavant, Christopher McGrail, and Arthur Boyle, Jr., were present at the start of the hearing, and board member John Grenier joined about 10 minutes later. Mr. Grenier did not participate in this hearing, as he is recusing himself from all matters relating to 260-280 Oak Street (due to a conflict of interest in connection with the owner of the property, Brian Murphy).

Michael Bonner, the attorney for Souza Automotive, was present, as was Rick Souza, its owner. The owner of an adjacent property, Russell Field, was also present, along with his attorney John Danehey. Alexander Weisheit, town counsel (KP Law), was present to advise the board.

Mr. Bonner raised the issue of who is allowed to participate directly in the meeting through the Zoom software, and who is not, and a discussion took place about this.

Mr. Bonner described the application, and explained that they are applying for the special permit under the provision for "gasoline sales and incidental services," which is allowed in Industrial District A by reference to Business District B. He said that Souza Automotive does "light repairs" (rather than "major repairs") such as brakes, oil changes, tire alignments, etc. He noted that B&B Auto Specialists on Oak Street (also in Industrial District A) and K.J. Auto Services on Washington Street (in Business District B) provide similar services and were granted this special permit in past years.

Mr. Souza described the history of his business and talked about the services they provide. Mr. Bonner emphasized that the letters submitted to the board show that Souza Automotive has support from its customers and is an asset to the town. In summary, he argued that Souza Automotive meets all the requirements of the zoning bylaw and thus should be granted the special permit.

Mr. Weisheit explained that the zoning bylaw only appears to allow automotive repair in Business District A, where it is allowed by special permit. Mr. Bonner acknowledged that no gasoline sales take place at Souza Automotive, but said that auto repair falls under the category of "incidental services." Moreover, he pointed out that since B&B Auto Specialists and K.J. Auto Services have received the special permit, a precedent has been set. Mr. Weisheit expressed strong doubts about these arguments.

Mr. Casavant asked about the issues of the site plan modification being denied and the cease-and-desist letter from the building inspector for 260-280 Oak Street. A discussion about the legal nuances and bureaucratic procedures took place.

Mr. Weisheit referred to verbiage in the zoning bylaw (Sec. V.7.G.1.) stating that no special permit shall be issued until site plan approval has been granted, and said this language indicates the board should not grant the special permit. Mr. Bonner said that the site plan was previously approved, though the proposed major modification was denied, and this led to further conversation.

Mr. Casavant asked about parking. Mr. Danehey described the provision of parking at the site, and argued that this use has different parking requirements from what was approved in the site plan. He also said a special permit should be contingent on site plan approval.

Mr. Bonner objected that Mr. Danehey should not be able to speak given that Souza Automotive's supporters were not allowed to join the Zoom meeting. He said the parking is sufficient, and that there is an approved site plan.

Mr. McGrail expressed sympathy with Mr. Souza's situation, but noted the legal issues. Mr. Boyle agreed.

Mr. Heins notified all present that the broadcast (through web livestream and cable TV) of the meeting was being transmitted without any sound, due to technical difficulties. Mr. Bonner protested that this put his client's supporters at a further disadvantage. Mr. Weisheit suggested that the hearing be continued to a future date, if the applicant was willing to extend the deadline for the board to issue its decision.

Mr. Bonner consulted with Mr. Souza (outside of the board meeting), and the board meeting paused while this was happening. They both returned, and Mr. Bonner announced that their preference was to continue the hearing until the issues with the property owner (regarding the site plan modification being denied, the cease-and-desist letter from the building inspector, etc.) have been resolved. Mr. Weisheit was opposed to this. It was agreed to continue the hearing to May 17.

Mr. Weisheit recommended that Mr. Bonner state on the record that the applicant agreed to the board continuing the public hearing on this matter to May 17, and that the board would have 14 days thereafter to issue its written decision, assuming the hearing closes on that date. (This was necessary as the 100-day deadline for the decision was approaching soon.) Mr. Bonner stated that he agreed to this.

Mr. Casavant made a motion to continue the hearing to May 17 at 7:00 pm, with an additional 14 days to issue a decision. Mr. McGrail seconded the motion. Mr. Casavant, Mr. Boyle and Mr. McGrail voted in favor by roll call, and the motion passed.

PUBLIC HEARING FOR CASE #3-21 APPEAL OF BUILDING INSPECTOR'S LETTER WITH REGARD TO PROPERTY AT 260-280 OAK STREET

Mr. Casavant reopened the public hearing for Case #3-21 (continued from February 22, 2021, and March 15, 2021) 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 building inspector's letter dated December 14, 2020, for the property at 260-280 Oak Street which revoked the temporary certificate of occupancy and issued a cease and desist order for the automotive repair use. 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 member Mr. Grenier did not participate in this hearing, as he is recusing himself from all matters relating to 260-280 Oak Street (due to a conflict of interest in connection with the owner of the property, Brian Murphy).

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. The owner of an adjacent property, Russell Field, was present with his attorney John Danehey. (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 also present.

Mr. Heins stated that the audio in the broadcast (through web livestream and cable TV) of the meeting was now functioning.

Ms. Kroha summarized the situation and said it was appropriate for the temporary certificate of occupancy to be reissued. She noted that while other aspects of the project are in contention (given that the site plan modification was denied), the two buildings of the site plan were constructed in conformance with the site plan and are not in dispute. Even if there is a zoning issue, she argued, the remedy is not to end the occupancy but for the applicant to fix the problem. She cited case law in support of this. Thus, she said, the board should reverse the decision in the building inspector's letter and issue an opinion that the certificate of occupancy should continue.

Mr. Boyle noted that the applicant, in a sense, is looking for forgiveness rather than permission.

Mr. Danehey asked whether Souza Automotive is now using a third bay of the building, i.e., has added another bay of use since the cease-and-desist letter was issued. Ms. Kroha acknowledged this and said the third bay is for storage only, which she argued is allowed.

Mr. Danehey argued that the site's parking is insufficient, because the parking provided there was intended for the use given in the site plan application, and the current use differs from that.

The board and Mr. Weisheit agreed it would be logical to continue the hearing, given that the hearing for Souza Automotive's 280 Oak Street special permit application had been continued and the two cases were interrelated.

Ms. Kroha agreed to the board continuing the public hearing to May 17, and that the board would have 14 days thereafter to issue its written decision. (This was necessary as the 100-day deadline for the decision was approaching soon.)

Mr. Danehey said he would submit documents to support his arguments regarding parking on the site.

Mr. Casavant made a motion to continue the public hearing to May 17 at 7:30 pm, with an additional 14 days from that date to issue a decision. Mr. McGrail seconded the motion. Mr. Casavant, Mr. Boyle and Mr. McGrail voted in favor by roll call, and the motion passed.

PUBLIC HEARING FOR CASE #6-21 SPECIAL PERMIT TO BUILD IN-LAW APARTMENT AT 359 CENTER STREET

Mr. Casavant opened the public hearing for Case #6-21 on the application of Fred and Jessica Falcone, 359 Center 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 as part of an addition to an existing single-family house. The property is located at 359 Center Street, Pembroke, MA 02359, in Residence District A and the Water Resource and Groundwater Protection District, as shown on Assessors' Map C7, Lot 41.

Jessica Falcone, one of the applicants, was present. She explained that they wish to construct an addition to the house, consisting of an in-law apartment (about 500 square feet in size) for a family member on the ground floor and an enlargement of the living room on the upper floor.

A question was asked about the property being in the Water Resource and Groundwater Protection District, and Mr. Heins explained this isn't an issue.

Ms. Falcone confirmed that the apartment would be used by a family member.

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

The board members were in agreement to approve the application.

Mr. Casavant made a motion to allow the application of Fred and Jessica Falcone, application #6-21, for a special permit pursuant to Section IV.1.B.4. of the zoning bylaw, based on the plan submitted with the application, subject to the conditions contained in said section of the bylaw A through B. Mr. Boyle seconded the motion. Mr. Casavant, Mr. Boyle and Mr. Grenier voted in favor by roll call, and the motion passed.

PUBLIC HEARING FOR CASE #4-21 VARIANCES AND SPECIAL PERMIT TO CONSTRUCT BUILDINGS AND PARKING AREAS FOR LUMBER AND/OR WOOD PRODUCTS BUSINESS AT 715 WASHINGTON STREET

Mr. Casavant reopened the public hearing for Case #4-21 (continued from March 15, 2021) on the application of Jeffrey A. De Lisi, Esq., for George Thibeault, Ohrenberger, De Lisi & Harris, LLP, 28 New Driftway, Scituate, MA 02066, requesting variances and a special permit in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. IV.2.D.4 Front Yards, Sec. IV.2.D.5. Side Yards, and Sec. IV.2.B.2 Outdoor Storage, to construct a two-story building with a 5,000-square-foot footprint consisting of lumber fabrication on the first floor and offices on the second floor, a small kiln building, a furnace, and parking areas, along with outdoor storage and work areas. The project would be a light industrial use related to lumber and/or wood products. The property is located at 715 Washington Street, Pembroke, MA 02359, in the Residential-Commercial District, as shown on Assessors' Map F9, Lot 24.

Attorney Jeffrey A. De Lisi, representing the applicant, and project engineer Kevin Grady were present. Mr. De Lisi explained that he wished to request an immediate continuance of the hearing, given that some elements of the design were in flux and the Planning Board was still considering it. The board members were amenable to this.

Mr. Casavant made a motion to continue the hearing for Case #4-21 to April 26, 2021, at 7:00 pm, and Mr. McGrail seconded the motion. Mr. Casavant, Mr. Boyle and Mr. McGrail voted in favor by roll call, and the motion passed.

At this time, Mr. Casavant left the meeting, since he had missed the previous sessions of the public hearing for the upcoming agenda item (Case #1-21), and the other three board members present comprised a quorum for it.

ADMINISTRATIVE ACTIONS

Mr. McGrail made a motion to approve the minutes for January 12, 2021, March 9, 2021, and March 15, 2021, and Mr. Grenier seconded the motion. Mr. Grenier, Mr. McGrail and Mr. Boyle voted in favor by roll call, and the motion passed.

Since the next public hearing was scheduled to begin at 8:15 pm and that time was a few minutes away, the board members and Mr. Heins conversed briefly until 8:15 pm.

PUBLIC HEARING FOR CASE #1-21 VARIANCE TO CONSTRUCT BUILDING FOR STORAGE OF MOTOR VEHICLES AT 37 MATTAKEESETT STREET

Mr. McGrail reopened the public hearing for Case #1-21 (continued from February 22, 2021, and March 15, 2021) on the application of Jeffrey Perette/Old Salt Realty Trust, 43 Mattakesett Street, Pembroke, MA 02359, requesting a variance in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. IV.1.A.4 (garage for storage of more than four automobiles), to construct a large garage of 7,500 square feet for the business of storing motor vehicles behind an existing house. The property is located at 37 Mattakesett Street, Pembroke, MA 02359, in Residence District A and the Center Protection District, as shown on Assessors' Map C9, Lot 66.

The applicant's attorney John Danehey was present, along with the applicant Jeffrey Perette. Mr. Danehey explained that they were requesting an immediate continuance so he could have more time to formulate possible conditions for the project (which the board members had suggested at the previous session of the hearing).

Mr. Danehey agreed that, if the public hearing goes beyond the 100-day deadline for the board to make its decision, the deadline would be extended for the board to make its decision and issue the written decision.

The board members were willing to continue the hearing, and it was agreed to continue it to April 26 at 7:15 pm. Mr. Danehey agreed to extend the deadline for the board to make its decision to April 26, with an additional 14 days thereafter for the Board to file the decision.

Mr. McGrail made a motion to continue the hearing for Case #1-21 to April 26 at 7:15 pm, and Mr. Boyle seconded the motion. Mr. Grenier, Mr. McGrail and Mr. Boyle voted in favor by roll call, and the motion passed.

The board members and Mr. Heins briefly discussed the schedule of upcoming board meetings.

The meeting was adjourned.