

ZONING BOARD OF APPEALS / TOWN OF PEMBROKE

MEETING MINUTES: APRIL 26, 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), Carolyn Murray (Town Counsel, KP Law), Jeffrey De Lisi, Kevin Grady, George Thibeault, Donald Nagle, John Danehey, 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 April 26, 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@townofpembroke.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.

ADMINISTRATIVE ACTIONS

Mr. Boyle made a motion to approve the minutes for March 29, 2021, and April 13, 2021, and Mr. Grenier seconded the motion. Mr. Casavant, Mr. Grenier, Mr. McGrail and Mr. Boyle 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, and March 29, 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 De Lisi, representing the applicant, and project engineer Kevin Grady were present. The applicant George Thibeault was also present.

Attorney Donald Nagle, representing an abutter opposed to the project, was present.

Mr. De Lisi briefly summarized the project and described the public hearing process up to this point. He explained that the plan had been revised to place the activity of wood-sawing under a partially open structure which would reduce the noise. He noted that they are no longer applying for the special permit for outdoor storage, since that would be granted by the Planning Board within this zoning district.

Mr. Grady displayed a site plan drawing showing the revised design for the project, and described the layout of the buildings, structures and machinery. He noted that an enclosure (essentially a large shed, with a roof and walls on three sides) has been added. The sawing and processing of wood would take place within this enclosure, which would help mitigate the noise and bring the equipment out of rain or snow.

Mr. McGrail asked about the abutter to the south, and Mr. De Lisi said that this property owner had been in communication and was not expressing any objections. Mr. De Lisi explained that the activities along the south edge would be less noisy or obtrusive.

Mr. Nagle addressed the board. He suggested that the Planning Board could evaluate the project before the Zoning Board of Appeals made its decision. He said that it is still not clear what equipment would be used, how much noise it would make, and what its impact would be on the abutters. He added that it is debatable whether this use qualifies as light industry.

Mr. Nagle displayed to the board a scholarly article about noise levels and impacts, and discussed certain portions of it at length. He noted that the existence of the enclosure still does not guarantee that the noise level will not be a problem.

Mr. De Lisi discussed the question of noise, and emphasized that this issue properly falls within the Planning Board's jurisdiction (as part of site plan review). Mr. Grady said that the distance from the enclosure to Mr. Smith's house would be about 410 feet, including roughly 300 feet of woods. (Mr. Smith is the abutter whom Mr. Nagle is representing.) Mr. Grady explained that the specifications for

the machinery give a noise level of 70 decibels at 150 feet for an open field condition, based on a document received from Bell's Machining and Welding.

Mr. Nagle stated that one criterion for a variance is that it can be granted without substantial detriment to the public good, and thus the question of noise was relevant to whether these variances should be granted. He noted that the applicant was seeking waivers from the development impact study and traffic study, and suggested a noise study be required.

Mr. De Lisi offered a different interpretation of how the standards for variances apply to the specific variances being requested in this case, which are dimensional variances rather than use variances. He emphasized that Washington Street is a state highway (Route 53) that already carries a great deal of traffic, including large trucks. He suggested that the board close the public hearing and vote on the project.

Mr. Nagle again emphasized his view of the standards for variances.

Mr. Grady explained that the development impact study and traffic study are frequently waived, and are more appropriate for larger projects that generate a lot of traffic.

Mr. Casavant confirmed with Mr. De Lisi that the hours of operation would be 8 am to 4 pm Monday to Saturday.

Mr. Grady explained that the "building envelope" on the drawings refers to the areas where building is allowed under the zoning bylaws.

Mr. Grenier asked if the wood cutting and chipping could be limited to certain hours of the day, and Mr. De Lisi said these activities would not occur continuously all day long (i.e., they would be intermittent), but there was no specific limit being proposed.

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

Mr. Heins confirmed that all four board members present had attended the first session of the public hearing, and that the second session had been immediately continued.

Mr. McGrail suggested that the hours of delivery be restricted, given the potential nuisance of early-morning noise, and a discussion followed. The board members agreed to limit the hours of delivery to 8 am to 6 pm Monday through Saturday.

Mr. Casavant noted that this application was only for dimensional variances, and that the project was also under site plan review before the Planning Board which would consider a variety of issues.

Mr. Casavant made a motion to allow the application of Case #4-21 at 715 Washington Street for the two variances, pursuant to Section IV.2.D.4. Front Yards for a 50-foot front yard and pursuant to Section IV.2.D.5. Side Yards for a 10-foot side yard, with no action taken on the special permit as that request was withdrawn, conditioned on the hours of operation being 8 am to 4 pm Monday through Saturday with no operation on Sunday, and the hours of delivery being 8 am to 6 pm Monday through Saturday with no deliveries or pick-ups on Sunday. Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

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.

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, March 15, 2021, and March 29, 2021) on the application of Jeffrey Perette/Old Salt Realty Trust, 43 Mattakeesett 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 Mattakeesett 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 summarized the project, and explained that the request is for a variance to go above the limit of four motor vehicles in a garage allowed by the zoning bylaws.

Mr. Danehey explained that Mr. Perette seeks to purchase the property, which is in both the Center Protection District and Residence District A, and that Mr. Perette operates a boat storage business on the adjacent property of 43 Mattakeesett Street which recently received site plan approval. He said that this business of storing motor vehicles would be linked to Mr. Perette's boat storage business, in that many of the customers would be the same.

Mr. Danehey said the proposed building would be about 60 feet by 120 feet, for a size of 7,500 square feet, with a privacy fence of either 8 feet or 6 feet in height all the way around the building. There would also be arbor vitae on two sides to create additional visual screening from the adjacent cemetery and bank.

Mr. Danehey said the applicant would be open to conditions, such as maintaining the visual screening and no outdoor storage of automobiles, which would apply in perpetuity.

Mr. Heins expressed his concern that the proposed project does not qualify as an accessory structure or accessory use to the single-family residential use of the property, and thus would violate the zoning bylaws. He also noted that the current proposal shows the property being subdivided, negating the idea of the building being accessory.

Mr. Danehey clarified that the project would hold 20-30 motor vehicles at a time, and that his client would buy the entire property and so it would not be subdivided.

Mr. Grenier asked if there would be hours of operation, and if people would work on their vehicles at the site. Mr. Danehey said no work would be allowed on vehicles there, and that some hours of operation would be imposed to prevent people from coming late at night.

Mr. McGrail asked how the access to the building, from the street or from the adjacent property of 43 Mattakeesett Street, would be provided. Mr. Perette gave an answer, but due to audio technical difficulties, portions of his reply were not entirely clear. He also said that in general most of the vehicles would be stored for the winter, and no work would be allowed on vehicles on the site.

Mr. McGrail asked if a new revised plan or design could be submitted, and Mr. Danehey agreed to do so and said some conditions would also be listed.

Mr. Heins noted an extension of the deadline would be necessary, and Mr. Danehey agreed to submit the revisions soon. It was agreed to continue the public hearing to May 17.

Robert DeMarzo, the owner of a property near the proposed project, said that it was a good project and urged the board to approve it.

Mr. Danehey requested, on behalf of his client, that the board extend the deadline for rendering the decision for another 30 days, and the board members agreed.

Mr. Boyle made a motion to continue the public hearing for Case #1-21 at 37 Mattakeesett Street to May 17, 2021, at 8:00 pm. Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

ENTERING EXECUTIVE SESSION

Attorney Carolyn Murray, Town Counsel with KP Law, joined the meeting at this time. The board, Mr. Heins and Ms. Murray conversed for a few minutes.

Mr. Casavant returned to the meeting, and so four board members were present again. The board, Mr. Heins and Ms. Murray discussed the procedures and process for entering executive session.

As stated on the meeting agenda, the board intended to enter executive session pursuant to G.L. Chapter 30A, Section 21(a)(3), "to discuss strategy with respect to...litigation if an open meeting may have a detrimental effect on the...litigating position of the public body and the chair so declares," in order to discuss and deliberate with Town Counsel in the matter of Pembroke Planning Board v. Pembroke Board of Zoning and Building Appeals and Pembroke Center, LLC, Plymouth Superior Court, Civil Action No. 1983CV00239, regarding 204 Center Street, Pembroke, MA.

Mr. Casavant made a motion to go into executive session for the purpose of discussing litigation strategy with respect to Pembroke Planning Board v. Pembroke Board of Zoning and Building Appeals and Pembroke Center, LLC, and stated that having the discussion in open session would have a detrimental effect on the board's litigating position. Mr. Boyle seconded the motion, and the board voted unanimously in favor by roll call.

Mr. Casavant stated that the board would return to open session only in order to adjourn the meeting.

From this point forward, participation in the meeting was restricted to the board members and Ms. Murray, and PACTV was no longer recording, broadcasting or livestreaming the meeting. Mr. Heins explained that he would maintain his connection (because terminating the connection as co-host risked ending the Zoom session), but would turn off his sound and turn his computer screen away so that he could not hear or see the meeting.

At this time, the board went into executive session.

The minutes of executive session are a separate document.