

ZONING BOARD OF APPEALS / TOWN OF PEMBROKE

MEETING MINUTES: APRIL 4, 2022

LOCATION: Veterans Hall (Room 6), Pembroke Town Hall

STARTING TIME: 7:00 pm

BOARD MEMBERS PRESENT: Christopher McGrail (Vice-Chairman), John Grenier (Clerk), and Louis Christian Carpenter (Alternate).

BOARD MEMBERS ABSENT: Frederick Casavant (Chairman) and Arthur Boyle (Alternate).

ALSO PRESENT: Matthew Heins (Planning Board Assistant), Jeffrey De Lisi, Kevin Grady, James Smith, Donald Nagle, Robert DeMarzo, Eric DeCoste, Valerie Johnson, Kelly Greene, Chuck Quinn, Peter Mason, Bryan Johnston, Michael Cohen, Dan Robinson, Eric Reiche, Andrea Daniels, Eric Wilson, and others.

OPENING THE MEETING

The Vice-Chairman Mr. McGrail opened the meeting by reading the Chairman's statement.

PUBLIC HEARING FOR CASE #9-21 APPEAL OF PLANNING BOARD'S SITE PLAN DENIAL DECISION REGARDING 715 WASHINGTON STREET

Mr. McGrail reopened the public hearing (continued from October 4, 2021, November 1, 2021, November 22, 2021, and February 7, 2022) for Case #9-21 on the application of George Thibeault, 599 Summer Street, Marshfield, MA 02050, 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 the Site Plan application for a proposed wood products and timber processing business at 715 Washington Street. The appeal is regarding the property located at 715 Washington Street, Pembroke, MA 02359, in the Residential-Commercial District, as shown on Assessors' Map F9, Lot 24.

Jeffrey De Lisi, the attorney representing the applicant bringing the appeal (George Thibeault), described the history of the project and explained that a new site plan application for the site had been approved by the Planning Board. He and Mr. McGrail discussed the situation. Mr. De Lisi explained that they would withdraw the appeal if the board granted the necessary variance for the new site plan, which was the next agenda item.

Discussion followed. Mr. Heins suggested continuing the hearing to later that night.

Mr. McGrail made a motion to continue the public hearing for Case #9-21 on the application of George Thibeault regarding 715 Washington Street to April 4, 2022, at 8:10 pm. Mr. Grenier seconded the motion, and the board voted unanimously in favor.

ADMINISTRATIVE ACTIONS

Mr. McGrail made a motion to approve the minutes of March 14, 2022. Mr. Grenier seconded the motion, and the board voted unanimously in favor.

PUBLIC HEARING FOR CASE #4-22 VARIANCE FOR CONTRACTORS' UNITS AT 715 WASHINGTON STREET

Mr. McGrail opened the public hearing for Case #4-22 on the application of George H. Thibeault, 599 Summer Street, Marshfield, MA 02050, requesting a variance in accordance with the Zoning Bylaws of the Town of Pembroke, Section IV.2.D.1. lot size of at least 120,000 square feet exclusive of easements, cranberry bogs, wetlands, floodplains and watersheds. The applicant proposes to construct a two-story building (one floor plus mezzanine) with a footprint of 10,000 square feet consisting of five separate contractor's bays, a.k.a. tradesmen's units. Each unit would contain a first-floor garage workshop and second-floor (mezzanine) office. There would also be a paved parking area and access drive. The property is located in the Residential-Commercial Zoning District, at 715 Washington Street, Pembroke, MA 02359, as shown on Assessors' Map F9, Lot 24.

Jeffrey De Lisi, the attorney representing George H. Thibeault, addressed the board. He introduced the project and briefly described the history of the site. He explained that this new site plan application for 715 Washington Street, consisting of five separate contractor's bays, had been recently approved by the Planning Board. But the project needs a variance due to the zoning bylaws' requirement of a lot size of at least 120,000 square feet of uplands (i.e., exclusive of easements, cranberry bogs, wetlands, floodplains and watersheds).

Mr. De Lisi said that about 111,000 square feet of the 182,000-square-foot parcel is uplands, so they are close to the requirement of 120,000 square feet. He emphasized that the Planning Board had done extensive review of the project through the site plan review process, and had approved it (with the condition that it receive the variance). In addition, the Conservation Commission had approved the previous project (the lumber facility, i.e., "wood kiln" or "sawmill") proposed by this applicant for the site, and this new project has a virtually identical limit of work compared to that one.

Mr. McGrail asked about the role of the Conservation Commission, and Mr. De Lisi described this in more detail and explained that the appeal of the commission's decision had been withdrawn.

Mr. Grenier asked if there would be oil-water separators, and Kevin Grady (the project engineer) explained that there would be one for the entire project, rather than one for each bay.

Mr. Grady explained that the building would have a footprint of 10,000 square feet, with a mezzanine in each bay. There would be 25 parking spaces, with maneuvering room in the parking lot, and an enclosed dumpster. The access drive would be 25 feet wide.

Mr. Grady described the stormwater design, and said that the septic design had been approved by the Board of Health. He said the building was set back 100 feet from the street. He described the landscaping plan and said it would help screen abutting properties.

Mr. McGrail and Mr. Grady discussed the possible noise impacts, and Mr. Grenier and Mr. Grady talked about the lighting plan. Mr. Grady briefly described some of the surrounding properties, and explained that the project would be in harmony with the area.

Mr. De Lisi discussed the variance criteria, and explained that he believed the project met some of these criteria and thus should receive the variance. He noted that some other properties in

this zoning district had been commercially developed despite being substantially smaller. He emphasized that if the variance was not granted, then the property owner would in effect be unable to commercially develop the property. He said that the hardship was not self-imposed because the property dates to the 1960s, even though at one point it was in common ownership with an adjacent property.

Donald Nagle, an attorney representing abutter James Smith, addressed the board. He emphasized that the sole purpose of the hearing is to decide whether a variance is justifiable, and said a variance should not be given. He explained that the property's current owner sold the adjacent lot (which has a commercial building on it) in 2020. The 715 Washington Street property if combined with that adjacent lot would have met the required 120,000 square feet of uplands, and so by selling the lot, Mr. Nagle argued, the property owner created the hardship and the need to receive a variance.

Mr. Nagle quoted from a legal case that supported his position. He described some of the legal zoning principles of minimum lot sizes and adjacent lots in common ownership.

Robert DeMarzo, a nearby resident though not an abutter, addressed the board. He explained the importance of requirements for uplands square footage—not just total square footage—in the zoning bylaws. He criticized the justifications given for granting variances. Explaining that the town is proposing to build a new well for drinking water nearby, at the Swanberg property off Pleasant Street, he argued that the project could harm the water quality of this well. He also noted that the property owner could easily build a single-family house on the property, and thus the property is not undevelopable.

Michael Cohen, a direct abutter living at 42 Congress Street, spoke. He said that the stream which goes through the property is not an intermittent stream but runs constantly. He questioned how “contractor” or “tradesmen” is defined, and said the building imposes on the buffer zone. He stated that the property is owned by Rose Realty Trust, not George Thibeault, and criticized Mr. Thibeault for not having met the abutters. He argued that the proposed project would be an industrial building and therefore should not be at this location, and criticized its appearance.

Mr. Grenier asked if the neighbors would drop their opposition if the building size were reduced, and discussion followed.

Mr. McGrail made a motion to close the public comment portion of the hearing. Mr. Grenier seconded the motion, and the board voted unanimously in favor.

Mr. Grenier said that perhaps the scope of the project could be reduced to satisfy the neighborhood. Conversation ensued.

Mr. McGrail asked Mr. De Lisi if he was open to shrinking the project to satisfy the concerns of the abutters. A very brief discussion took place.

Mr. McGrail suggested the hearing be continued. Mr. Nagle emphasized that the core issue is the size of the uplands area on the property.

Mr. McGrail made a motion to continue the public hearing for Case #4-22 on the variance application of George Thibeault for 715 Washington Street. Mr. Grenier seconded the motion, and the board voted unanimously in favor.

Mr. Heins and Mr. McGrail discussed when this hearing, and the other hearing for the 715 Washington Street appeal, should be continued to. It was agreed that the hearing for Case #4-22 (the variance application) would be continued to May 9, 2022, at 7:30 pm, and the hearing for Case #9-21 (the appeal) would be continued to May 9, 2022, at 7:45 pm.

Mr. McGrail made a motion to continue the public hearing for Case #9-21 on the appeal application of George Thibeault regarding 715 Washington Street to May 9, 2022, at 7:45 pm in Room 6 (Veterans Hall) of town hall. Mr. Grenier seconded the motion, and the board voted unanimously in favor.

PUBLIC HEARING FOR CASE #5-22 VARIANCE FOR SINGLE-FAMILY HOUSE AT 54 PRISCILLA DRIVE

Mr. McGrail opened the public hearing on the application of Eric DeCoste, DeCoste Remodeling, 21 Champion Way, Pembroke, MA 02359, requesting a variance in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. IV.1.D.3 Side Yard Setback, to construct an expansion of an existing single-family house. The property is located at 54 Priscilla Drive, Pembroke, MA 02359, in Residence District A, as shown on Assessors' Map A3, Lot 12.

Eric DeCoste was present, and he explained to the board that the project was to build a 24-foot-by-24-foot garage on the right side of the house, which would leave about 14 feet to the property line.

Mr. DeCoste and the board members discussed the project. Mr. Heins confirmed that no letters or emails opposing the project had been received from the public.

Mr. McGrail made a motion to close the public hearing for Case #5-22 on the application of Eric DeCoste for the property at 54 Priscilla Drive. Mr. Grenier seconded the motion, and the board voted unanimously in favor.

Mr. McGrail made a motion to grant the variance requested for the application of Eric DeCoste for the property at 54 Priscilla Drive. Mr. Grenier seconded the motion, and the board voted unanimously in favor.

PUBLIC HEARING FOR CASE #6-22 SPECIAL PERMIT FOR SINGLE-FAMILY HOUSE AT 5 BONNIE BRIER PARK

Mr. McGrail opened the public hearing on the application of Andrea Daniels, 5 Bonnie Brier Park, 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, 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 5 Bonnie Brier Park, Pembroke, MA 02359, in Residence District A, as shown on Assessors' Map E7, Lot 7E.

Eric Wilson addressed the board and explained that the project is to convert the space of the existing garage into an in-law apartment and to raise the roof over that area. The project would

not enlarge the building footprint. The board members and Mr. Wilson discussed the proposed improvements. The board was not opposed to the project.

Mr. McGrail made a motion to close the public hearing for Case #6-22 on the application of Andrea Daniels for the property at 5 Bonnie Brier Park. Mr. Carpenter seconded the motion, and the board voted unanimously in favor.

Mr. McGrail made a motion to grant the special permit requested for the application of Andrea Daniels for the property at 5 Bonnie Brier Park. Mr. Carpenter seconded the motion, and the board voted unanimously in favor.

PUBLIC HEARING FOR CASE #3-22 VARIANCE FOR SINGLE-FAMILY HOUSE AT 140 OAK STREET

Mr. McGrail reopened the public hearing (continued from March 14, 2022) on the application of Kimberly Jardim, 140 Oak Street, Pembroke, MA 02359, requesting a variance in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. IV.1.D.3 Side Yard Setback, to construct a deck as part of an expansion of an existing single-family house. The property is located at 140 Oak Street, Pembroke, MA 02359, in Residence District A, as shown on Assessors' Map F13, Lot 131.

Mr. McGrail explained that the applicant was redesigning the project to avoid needing a variance, and thus had requested in writing to withdraw the application without prejudice.

Mr. McGrail made a motion to close the public hearing for Case #3-22 on the application of Kimberly Jardim for the property at 140 Oak Street. Mr. Carpenter seconded the motion, and the board voted unanimously in favor.

Mr. McGrail made a motion that the board accept the applicant's request to withdraw the application without prejudice. Mr. Grenier seconded the motion, and the board voted unanimously in favor.

The meeting was adjourned.