

PEMBROKE ZONING BOARD OF APPEALS

MEETING MINUTES JANUARY 14, 2019

BOARD MEMBERS PRESENT: Rick Casavant, Chairman; Christine Griffin, Vice Chairman; James Gallagher, Clerk; Michael Fay, Member

PUBLIC HEARING FOR SPECIAL PERMIT CASE #46-18 AT 125 CHURCH STREET TO OPERATE A PIZZA AND SUB SHOP

Mr. Casavant re-opened the public hearing (continued from December 17, 2018) for the requested special permit case #46-18 at 125 Church Street, to operate a pizza and sub shop at the former Papa Gino's location.

Mr. Spiro Spyropoulos was present as the applicant. He explained that they were requesting to open a basic pizza/sub shop for dine in or carry out and that the current layout would stay the same as what is there.

Mr. Casavant checks if there are abutters present for or against this proposed use; there were not. He then closed the open portion of the public hearing.

The Board members stated they were inclined to allow the use requested.

Ms. Griffin made a motion that the Board approve the special permit request of the zoning by laws section IV, 2, B, 4 uses permitted by special permit to open and operate a pizza shop for case #46-18 at 125 Church Street. Mr. Casavant notes that it will be the same set up, seating and hours as it previously was.

Mr. Casavant asks for a second, Mr. Gallagher seconds the motion, and the Board voted unanimously in favor.

PUBLIC HEARING FOR SPECIAL PERMIT REQUEST CASE #47-18 AT 254 CHURCH STREET TO OPERATE A PIZZA SHOP

Mr. Casavant opened the public hearing for the requested special permit case #47-18 at 254 Church Street, to operate a pizza shop at the former Capone's Pub location.

Mr. Meyers, Mr. Adeeb, Mr. Kamel, Mr. Greas and Attorney Middleton were present as the applicants and as counsel.

Attorney Middleton introduces the applicants. He explains they have seven years' experience operating a similar establishment. He states that a similar permit was issued years ago for Capone's Pub. These applicants would like to obtain a special permit for the pizza shop.

Mr. Casavant asks about the layout and hours of operation. Mr. Adeeb says everything will stay the same and discusses hours of operation. Mr. Gallagher then asks about keeping and operating the bar.

Mr. Adeeb says for now, no. They would like to have beer and wine but they have not applied for a liquor license yet. They would like to focus on the food aspect at first.

There is a discussion between the Board and the applicants about hours. Mr. Adeeb requests 10am to 11pm, seven days a week.

Mr. Casavant points out that nothing will really change other than the name. He then closes the open portion of the public hearing.

Ms. Griffin makes a motion that the Board approve the special permit request of the zoning by laws section IV, 4, B, 4 uses permitted by special permit to operate a pizza shop at 254 Church Street, Pembroke with the conditions that the hours of operation be no more than 10am-11pm seven days a week with no structural or interior locations, and this is the former Capone's location.

Mr. Gallagher seconds the motion and the Board votes unanimously in favor of granting the special permit.

PUBLIC HEARING FOR SPECIAL PERMIT REQUEST CASE #43-18 AT 45 STETSON HEIGHTS ROAD TO CONSTRUCT TWO ADDITIONS TO AN EXISTING SINGLE FAMILY DWELLING

Mr. Casavant re-opens the public hearing (continued from December 17, 2018) for the requested special permit case #43-18 at 45 Stetson Heights Road to construct two additions to an existing single family dwelling.

Mr. Casavant notes that a letter was received requesting to withdraw the petition without prejudice. The Board members have no issue with the withdrawal petition.

Ms. Griffin makes a motion to allow the withdrawal of the application for 45 Stetson Heights Road, filed by Lisa and Ken McDonald which requests a special permit of the bylaws section V, 5, A to construct two additions on an existing single family dwelling. The withdrawal is without prejudice.

Mr. Gallagher seconds the motions, the Board votes unanimously in favor of the withdrawal without prejudice of the application requesting a special permit.

MR. CASAVANT MOVES TO TAKE A BRIEF RECESS BEGINNING AT 7:15PM; THE BOARD WILL RE-CONVENE AT 7:30PM FOR THE NEXT PUBLIC HEARING.

PUBLIC HEARING FOR SPECIAL PERMIT REQUEST CASE #49-18 AT 16 PARK STREET TO DEMOLISH AN EXISTING FAMILY DWELLING AND CONSTRUCT A NEW SINGLE FAMILY DWELLING

Mr. Casavant opens the public hearing for the requested special permit case #49-18 at 16 Park Street to demolish an existing single family dwelling and shed, and to construct a new single family dwelling.

Peter and Martha Stamper are present, as well as Darren Grady from Grady Consulting and the builder from Highland Builders.

Mr. Grady provides the plans for the proposed dwelling. The lot is in a flood protection district. It is a pre-existing non-conforming lot. All set backs are conforming. The septic system will take away from flood storage but raising the house will make up for it. Mr. Grady informs the Board that all septic

variances were granted by the Board of Health and the applicant received approval from Conservation. Discussion about setbacks and the right of way line between Mr. Grady and the Board.

The Board and Mr. Grady discuss the flooding as well as the wetlands near the dwelling and the septic system. The new septic system will be providing more ground water separation into the pond and/or the fish canal. Discussion about how many bedrooms and bathrooms there will be, and the layout of the house.

Mr. Gallagher asks the builder about the pilings that the house will be set on. The builder responds that the house will be modular built and set on pilings that are eight feet apart. He is trying to disperse the load as much as possible. It will sit 24 inches above grade.

Mr. Gallagher asks about flooding; the applicants respond that they are not aware of any flooding that reaches the house, however the house will be raised. There is no basement.

Mr. Gallagher asks about further explanation of the leaching field and the septic system. Mr. Grady goes into detail about the tank size (1500 gallons) and the equipment used within the system. Mr. Grady explains that the material gets treated twice with this system before going into the ground water.

Mr. Casavant recognizes that there are no abutters present but that a letter was received in support of the project by a neighbor. The open portion of the hearing is now closed.

Board discusses that they are okay with the plan; Mr. Gallagher asks about the current garage on the property that is not being torn down. Mr. Stamper explains that currently he is just using it as a storage structure; there are no utilities.

Ms. Griffin makes a motion to allow the application of Peter and Martha Stamper requesting a special permit of the bylaws section V, 2, 3 (Flood Plain and Watershed Protection District) and section V, 5 non-conforming uses to demolish an existing single family dwelling and shed, and construct a new single family dwelling. A new septic system to be built and the existing garage to remain. The Board notes that the Conservation Commission approved the application before their board and the Board of Health approved the application before that board. The setbacks are in conformity within the bylaws. The approval is based on the plan submitted at the public hearing, dated November 30, 2018.

Mr. Gallagher seconds the motion, the Board votes unanimously in favor of granting the special permit.

PUBLIC HEARING FOR AN APPEAL OF THE TOWN OF PEMBROKE'S ISSUANCE OF A BUILDING PERMIT TO 14 GORHAM AVENUE AND AN APPEAL OF THE DENIAL OF THE ZONING ENFORCEMENT OFFICER, CASE #32A-18 AND #32B-18

Mr. Casavant re-opens the public hearing (continued from October 15, 2018), the appeal of the building permit that was issued to 14 Gorham Avenue and the appeal of the denial from the Zoning Enforcement Officer.

Attorney Adam Brodsky, George and Alcida Litchfield, Attorney Jeff De Lisi, Mr. Ford, and Building Inspector George Verry are all present.

Attorney Brodsky sums up what has happened thus far since the building permit was issued. The Litchfield's did not get constructive notice of the building permit until after August 28, 2018. The appeal was accepted by the Town and was filed within 30 days of constructive notice of the building permit, however they did not appeal within 30 days of the issuance of the building permit (June 25, 2018) because they were not notified. The second appeal for the zoning enforcement denial was submitted on October 12, 2018. Attorney Brodsky asked that the two appeals be joined and heard together and has no issue with two separate votes. Attorney Brodsky points out that the building circle must touch Gorham Avenue in order to get the building permit and it does not. Ms. Litchfield was not shown the building permit or given a copy of it. Ms. Grady of the building department is contesting Ms. Litchfield's testimony. There was a discussion between Mr. Litchfield and Mr. Ford about building a house in the future but there was no admission that a building permit was issued. Attorney Brodsky invites the Board to ask the Litchfield's any questions regarding this issue.

Mr. Casavant asks for the order of events when Ms. Litchfield went to the building department in July.

Ms. Litchfield stated she was shown the plot plan but not a building permit or any sign offs on one.

Mr. Casavant discusses the letter written by Ms. Grady detailing the interaction and asks if Ms. Litchfield is stating that Ms. Grady's statement is not truthful. Ms. Litchfield confirms that it not what happened despite Ms. Grady being extremely helpful in their interaction.

Mr. Casavant asks building Inspector Mr. Verry what would be in the building departments file and what the procedure would be. Mr. Verry states that the file would be pulled and laid out on the counter to be looked at. Anything that has happened with the property in question would be in the file.

Attorney Brodsky makes note that there is no evidence of the building permit in the file that was presented to Ms. Litchfield.

Mr. Casavant states a possible miscommunication may have occurred; Mr. Gallagher notes that there may have been an oversight of the building permit within the file and it may have been missed.

Attorney De Lisi responds to the previous discussion; he states that the Litchfield's did have constructive notice of the permit and that is why they went to the building department to question the permit. She was on constructive notice and that is why she asked about the permit that day in July at the building permit. The enforcement request was denied on the basis that they knew within 30 days of the building permit being issued. Attorney De Lisi states that there should be two votes.

Mr. Casavant, Attorney De Lisi, and Attorney Brodsky discuss the two appeals and whether or not second notice went out for the second appeal. It is determined that second notice did go out for the second appeal and that it is okay to hear both at the same hearing and vote at that hearing.

Attorney Brodsky re-states that Ms. Litchfield was not notified that a building permit was issued.

Mr. Casavant asks what happens with appeal two if the first appeal is denied. There is discussion about it depending on the reason for denial. Attorney De Lisi states one does not have to do with the other and Massachusetts law does not require notification of the issuance of a building permit. The question is whether they appealed within 30 days, and then if the building inspector was right in denying the zoning enforcement request because it was after the 30 days.

Discussion of a meeting that occurred between Mr. Litchfield and Mr. Ford in which Mr. Ford informed Mr. Litchfield that a building permit was issued; Mr. Litchfield denies that. Attorney Brodsky recognizes that there is no requirement for notification of the issuance of a building permit.

Mr. Casavant asks if the Board has any more questions. Ms. Griffin does not; Mr. Gallagher does not, he confirms he would like to see a house on the property since the lot has been cleared.

Mr. Litchfield states that when he went to the building department and there was no actual permit in the file. Mr. Casavant asks if he Mr. Litchfield asked if there would be a building permit issued. Mr. Litchfield says he spoke with Mr. Ford about the plans but was never told a permit was issued. Mr. Casavant asks what the Litchfield's did after they noticed the clearing of the land and Mr. Litchfield states his wife then went to the Building Department to inquire.

Mr. Casavant asks if there is anything else Counsel would like to add. Mr. Gallagher questions whether it is a legal lot, asking Mr. Verry. There is a discussion between Mr. Gallagher and Mr. Verry about the lot being a pre-existing nonconforming lot, before the building circle became a requirement. Attorney De Lisi discusses that in the 90's there was a variance hearing, the application was withdrawn because Mr. Ford was under the impression that the lot was grandfathered in and he wouldn't need the variance. Attorney Brodsky states that it would've only been grandfather for five years, ending in 2004 and now the lot must comply with the building circle unless there is a variance.

Mr. Casavant asks Counsel if there's anything else to add. Attorney Brodsky states again that the permit should not have been issued. Mr. Casavant closes the open portion of the hearing.

Ms. Griffin states that, pertaining to the first appeal, it should be denied because it was outside the 30 days and the SJC is clear that if you are outside the 30 days then you're outside the 30 days. She does not believe the Board has jurisdiction to weigh in on that part. As for the second appeal, Ms. Griffin states that after all the pertaining information, she has a difficult time believing that the Litchfield's did not have constructive notice of the building permit. They Litchfield's have been aware of the project and have been opposed to it for years. Ms. Griffin is inclined to disbelieve the Litchfield's account and credit Mr. Verry's account and deny that appeal as well. Mr. Gallagher and Mr. Casavant agree with the reasons stated by Ms. Griffin to deny both appeals.

Ms. Griffin makes a motion to deny the first appeal (32A-18) requesting an appeal of a building permit.

Mr. Gallagher seconds the motion, the Board unanimously votes to deny the appeal of the issuance of a building permit.

Ms. Griffin makes a motion to deny the second appeal (32B-18) requesting an appeal of the decision of denial by the zoning enforcement officer for the reasons previously stated, motion to deny that appeal.

Mr. Gallagher seconds the motion, the Board unanimously votes to deny the appeal of the denial of the zoning enforcement officer.

PUBLIC HEARING REQUESTING A SPECIAL PERMIT AND VARIANCES FOR CASE #35-18 AT 204 CENTER STREET TO ALTER A NONCONFORMING MIXED USE PROJECT TO ALLOW FOR THE CONVERSION OF TWO COMMERCIAL BUILDINGS TO COMMERCIAL USE ON THE FIRST FLOOR AND RESIDENTIAL USE ON THE SECOND FLOOR

Mr. Casavant re-opens the public hearing (continued from December 3, 2018) for the request for a special permit and variances to alter a nonconforming mixed use project to allow for the conversion of two commercial buildings to commercial use on the first floor and residential use on the second floor at 204 Center Street.

Attorney Galvin, Matt Dacey, Debra McCarthy, Stephen O'Keefe, John McKeown, Susan Fitzgibbons and others are present.

Attorney Galvin summarizes the previous meeting. Attorney Galvin reiterates the issue of not being able to get commercial tenants. The proposal is to have Building A include five residential units on the top floor and commercial space on the bottom floor; Building B would include residential units on the top floor and residential units on the bottom floor. A total of fifteen residential units between the two buildings. This property is nonconforming, so a variance is needed. Abutters spoke at the last meeting to voice their opinions of the project. It would be a less significant generator of traffic. We would agree to any condition for the addition of the sidewalk. Planning Assistant Matthew Heins provided comment from the Planning Board that stated that Board would like both bottom floors to remain commercial space.

Mr. Dacy informs the Board that Grady Consulting updated the plan to include the septic.

Mr. Casavant asks for clarification of the residential units for each building. There could be up to five commercial uses in Building B on the first floor.

Attorney Galvin acknowledges the Planning Board's point of view on the project; however, keeping both first floors as commercial is just not practical. There is no demand currently for commercial use.

Mr. Casavant recognizes that the Planning Board is opposed to residential units on the bottom floors. Asks if the petitioner would need to go back in front of Planning for residential; Attorney Galvin states no, because only the inside would be altered, no exterior changes.

Attorney Galvin reiterates that if they could use the space as originally designated, that they would.

Mr. Gallagher question the restrictions on the buildings commercially. Asks if it could be subdivided or if one client could take the whole commercial space. Mr. Dacy responds as yes. Mr. Gallagher asks if Building B, with the ten units, would be a parking space issue if there were four adults each with vehicles in each unit. Attorney Galvin states that parking complies with the restrictions in the district. There are handicap spots as well.

Mr. Casavant opens the hearing to public comment.

Ms. McCarthy of 199 Center Street, makes the argument that it is always a risk when you build something. Due diligence was not done by the builder and now the use is trying to be changed because of lack of due diligence.

Discussion about building spaces that cannot be occupied as opposed to altering the interior to be able to fill the space.

Jill Raffo from the management company of Pembroke Village asks if the new residential units would affect the current residential units. The new units would share the expenses, new units would also be restricted to only using designated parking and would not use the existing residents parking.

Stephen O'Keefe of 12 Holly Hill Lane, discusses the mixed use projects in the center protection district and the by-laws from previous projects. Recognizes that changing from commercial to all residential does go against by-laws. Mr. O'Keefe came to state the facts of the previous projects and what has happened with this particular project. Discusses parking space requirements for each use and that it is against the by-laws.

John McKeown, executive director of the Pembroke Housing Authority, discusses that relief is needed as demonstrated by the applicant. He would like to see 100% residential as there is a desperate need in Pembroke for housing. Any units that are approved tonight, will lessen the burden for the Town. States that there has been some compromise. We need mixed use and affordable.

Mr. Casavant closes the public comment.

Attorney Galvin states they have tried to come up with a reasonable solution to the lack of commercial need in the Town currently. The property is in conformance with parking, septic and they have maintained commercial use in the first floor, and we will comply with any conditions in regards to building a sidewalk.

Mr. Gallagher notices that the applicant was supposed to put money into the DPW for the construction of sidewalks and the applicant did not. He would like the applicant to do that as it is in the agreement. He would be in favor of keeping both bottom floors as commercial.

Attorney Galvin would like to see the condition about the money and the DPW for the sidewalks. States that they would be willing to build the sidewalk as it would be cheaper than the Town having to build them. It needs to be worked out with the DPW.

Mr. Gallagher asks about any cuts to be made into the road for utilities. Mr. Fay asks if the utilities would already be run for the units in the back. It is believed that the gas comes in by the Post Office. Mr. Gallagher would like the sidewalks done as soon as they can be if the utilities are already run.

Mr. Casavant states that Mr. Gallagher is in favor of what the Planning Board decided.

Attorney Galvin proposes adding two affordable units to the buildings. Two of fifteen units would be affordable and they could be deeded or deed restricted.

Mr. McKeown states that would help the Town greatly. The Town needs to meet the ten percent threshold for affordable housing. The housing authority would be happy to be involved in that aspect.

Mr. Gallagher proposed three affordable units.

Mr. Dacy agrees to three units as commercial space will not work in both buildings.

Attorney Galvin states that there would be three out of fifteen units be designated as affordable. One building would have one unit, the other building would have two units.

Discussion about affordable units being comparable to other units as well as occupancy maximums.

Mr. Casavant reopens public comment portion of the meeting.

Pembroke Village representative states a question about how many people can live in the units.

Attorney Galvin states there are laws prohibiting that. Mr. Casavant states that they cannot condition this to include occupancy maximums. These units are to be sold, not rentals.

Susan Fitzgibbons, 7 Holly Hill Lane, asks what the selling price would be.

Mr. Dacy says they do not know yet.

Mr. Casavant closes the public comment portion of the meeting.

Attorney Galvin states there would be three affordable housing that they would work with the Housing Authority and keep the bottom of one building as commercial.

Mr. Casavant closes the open portion of the meeting.

Mr. Gallagher states he is happy with the conditions of this project. Mr. Fay states he is also for this project with these conditions. Mr. Casavant indicates he was inclined to deny this project but with the new conditions he is in favor.

Mr. Casavant restates the conditions that include construction of sidewalks as soon as they can be, the three affordable units, two units in one building and one in the other building.

Mr. Gallagher asks about elevators, Mr. Dacy states that they cost too much money so there will not be elevators.

All Board members are in favor with those conditions.

Mr. Casavant makes a motion to allow the application of Pembroke Center Street LLC, filed by Attorney Galvin, for the special permits and variances as requested and as depicted on the plan dated 12/21/18, which will consist of fifteen residential units, three of them being affordable and conditioned on the sidewalks being done and coordinated with DPW, the applicant can construct the sidewalks himself but coordinate with DPW, to be done as soon as possible.

Mr. Gallagher seconds the motion, the Board votes unanimously in favor of granting the special permit and variances requested.

The meeting is adjourned at 9:20 P.M. on January 14, 2019.