

ZONING BOARD OF APPEALS / TOWN OF PEMBROKE

MEETING MINUTES: NOVEMBER 30, 2020

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

ALSO PRESENT: Matthew Heins (Planning Board Assistant), A. Alexander Weisheit (Town Counsel, KP Law), Russell Field, John Danehey, Brian Murphy, Kimberly Kroha, Warren Baker, 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 November 30, 2020, 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@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 #6-20 SPECIAL PERMIT FOR OUTDOOR STORAGE, DISPLAY, AND SALE OF GOODS AT 240 AND 258 OAK STREET (PER REMAND ORDER ISSUED BY LAND COURT)

Mr. Casavant reopened the public hearing (continued from September 21, 2020, and October 26, 2020) for Case #6-20 on the application of Russell D. Field, 25 James Way, Scituate, MA 02066, requesting a special permit in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. IV.5.B.3. referring to Sec. IV.4.B.1. Outdoor Storage, Display, and Sale of Goods, to construct a new curb cut and gravel access drive to provide access to the site's two lots through the site's frontage on Oak Street, in order to serve the current business operations on the site, which is the storage of empty dumpster containers. This application is a modification of

a previous special permit application, as per a remand order issued by Massachusetts Land Court. The property is located at 240 and 258 Oak Street, Pembroke, MA 02359, in Industrial District A and the Medical Marijuana Overlay District, as shown on Assessors' Map G14 Lot 25D and Map G14 Lot 25E.

The applicant Russell Field was present, as was his attorney John Danehey. The owner of an abutting property, Brian Murphy, was present, as were his attorneys Kimberly Kroha and Warren Baker. Mr. Murphy and Mr. Field, neighboring property owners, have been in litigation due to various disputes. This case had previously been decided by the board but was now returning to the board per the remand order of land court.

A. Alexander Weisheit, an attorney with KP Law and Town Counsel for Pembroke, was also present.

Board member John Grenier stated that he wished to recuse himself from both of the public hearings involving Oak Street, i.e., this public hearing for 240 and 258 Oak Street and the one following for 260-280 Oak Street. He explained that his wife's business is a tenant in one of Mr. Murphy's properties.

Mr. Heins confirmed that two other board members present, Mr. Casavant and Mr. Boyle, could both vote on this case. Mr. Weisheit advised that the applicant should decide whether he was comfortable with the public hearing proceeding with just two board members qualified to vote; if not, the application could be refiled to begin a new public hearing with three board members.

Mr. Danehey asked to take a short break so that he could privately discuss the matter with his client, Russell Field, and Mr. Casavant consented. During the break, Mr. Heins and Mr. Casavant decided to use the time to deal with some routine administrative items.

Mr. Casavant made a motion to approve the minutes for September 21, 2020, and October 26, 2020, in the draft form presented by Mr. Heins. Mr. Boyle seconded the motion, and the board voted unanimously in favor by roll call.

Mr. Danehey and Mr. Field returned to the meeting, and Mr. Danehey said that his client was willing to proceed with the public hearing with two board members participating.

Mr. Danehey summarized some recent information related to the application and the public hearing. At this point, Ms. Kroha noted that the zoning bylaws require the unanimous vote of the three sitting board members to grant a special permit or variance (zoning bylaws Sec. VI.B.5, page 71), and mentioned that she had requested a continuance of the hearing.

Mr. Casavant asked Mr. Danehey how he wanted to proceed, and Mr. Danehey and Mr. Weisheit agreed that the best option would be to withdraw and resubmit the application, in order to have three board members participating in the hearing. Receiving approval from his client Mr. Field, Mr. Danehey asked the board's permission to withdraw the application without prejudice.

Mr. Boyle made a motion that the board allow the petitioner to withdraw the application without prejudice, and with no additional application fee [for a resubmittal]. Mr. Casavant seconded the motion. Mr. Boyle and Mr. Casavant voted in favor by roll call, and the motion passed.

ADMINISTRATIVE ACTIONS

Mr. Heins mentioned that the board needed to vote to accept the applicant's offer to extend the deadline to hold the first public hearing for the proposed River Marsh Village 40B project. Discussion followed.

At this time, Mr. Casavant lost his remote connection to the board meeting. (Due to high winds sweeping through the region, many houses were without power.) Casual conversation took place for a brief period of time, as it was unclear if he would be able to return.

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

There was a public hearing scheduled for Case #4-20, two appeals regarding 260-280 Oak Street, and Mr. Casavant was not available having lost his connection, Mr. Grenier had recused himself, and Mr. McGrail had not previously been participating in this hearing. Hence the only board member able to participate in this hearing was Mr. Boyle. Obviously having just one board member was not appropriate, and so it was agreed to immediately continue the hearing.

This public hearing (continued from September 21, 2020, and October 26, 2020) was for Case #4-20 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.

The applicant Russell Field was present, along with his attorney John Danehey. 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. The adjacent property owners Mr. Murphy and Mr. Field have been in litigation due to several disputes.

Mr. Boyle made a motion to continue the public hearing for Case #4-20, the appeals for 260-280 Oak Street, to December 14 at 8:00 pm. Mr. Boyle also seconded the motion, since no other board member present could vote on it. He voted in favor by roll call, and the motion passed.

A discussion followed about the quorum situation for the public hearing for Case #4-20, in terms of whether it would be possible for three board members to participate in the future given Mr. Grenier's recusal.

At this time, Mr. Casavant rejoined the meeting.

Mr. Weisheit advised that Mr. Casavant should also vote on the motion to continue the public hearing for Case #4-20, and Mr. Casavant voted in favor by roll call.

The meeting was adjourned.