

ZONING BOARD OF APPEALS / TOWN OF PEMBROKE

MEETING MINUTES: DECEMBER 14, 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), George Verry (Building Inspector / Zoning Enforcement Officer), Cary Coveney, Christine Coveney, Jason Pithie, William Kennedy, John Falcione, Michael Woods, 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 December 14, 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@townofpembroke.com.

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 #13-20 APPEAL WITH REGARD TO PROPERTY AT 458 CENTER STREET

Mr. Casavant reopened the public hearing for Case #13-20 (continued from October 26, 2020) on the application of Cary Coveney and Christine Coveney, 450 Center Street, Pembroke, MA 02359, c/o Jason Pithie, Esq., 158 Pleasant Street, Weymouth, MA 02190, to appeal, in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. VI.A.3. (Enforcement) and Sec. VI.C. (Appeals to the Zoning Board of Appeals), the Zoning Enforcement Officer's decision dated August 19, 2020. The appeals are regarding the property located at 458 Center Street,

Pembroke, MA 02359, in Residence District A and the Water Resource and Groundwater Protection District, as shown on Assessors' Map C6 Lot 17A.

Cary Coveney and Christine Coveney were present, as was their attorney Jason Pithie. Attorney William Kennedy, representing Warren Gardner and Deborah Gardner (the owners of the 458 Center Street property through Skadingle Realty Trust), was also present.

The members of the board present at this time were Frederick Casavant, Arthur Boyle, Jr., and John Grenier.

Mr. Boyle explained that he had visited the property at 458 Center Street, and he said it was unkept and disorganized but there was nothing illegal happening there in his opinion. Mr. Grenier, having also visited the site, expressed the same opinion.

Mr. Pithie said he was expecting that George Verry (the building inspector and zoning enforcement officer) would be present. He expressed his concern that the Gardners had violated the zoning bylaws in the past, and that enforcement of the zoning bylaws had lagged. He argued that the Gardners had been in violation when the appeal application was filed. He also stated that the Gardners had been manufacturing and/or processing asphalt ("cooking asphalt") on the property in the past for a period of two years, causing a noxious odor.

At this time Mr. Verry joined the meeting.

Mr. Kennedy said there were no present zoning violations, and that what may have happened in the past was not at issue. He acknowledged the property might not be as well kept as it could be.

Mr. Verry said that currently, based on observations from his recent visits to the site, none of the zoning bylaw violations claimed in the appeal are taking place. He acknowledged it was probable some of them had happened in the past. He said the Gardners have a permit to construct a pool on the property, they are fixing up the backyard, and they are bringing small trucks in and out which they drive themselves.

Mr. Casavant asked Mr. Pithie what he expected the board to do at this time, given the circumstances. Mr. Pithie said (among other things) that the zoning bylaws should be enforced more thoroughly in the future with respect to the property, so his clients would not have to undergo the time and expense of filing appeals.

Mr. Kennedy emphasized there was no proof that any of the allegations had taken place in any relevant period of time, and so the appeal should be dismissed.

Mr. Boyle made a motion to close the open portion of the public hearing to go into deliberation, Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

The board members were in agreement that since there did not seem to be zoning violation problems with the property at present, there was nothing for the board to do on the appeal. However, Mr. Casavant acknowledged there were probably issues in the past and expressed the hope that the Gardners would keep the property in good condition.

Mr. Boyle made a motion that the board dismiss the action, Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

ADMINISTRATIVE ACTIONS

Mr. Boyle made a motion to approve the minutes for November 30, 2020, Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

Mr. Heins explained 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.

At this time, board member Christopher McGrail joined the meeting, and so the members of the board present were Frederick Casavant, Christopher McGrail, Arthur Boyle, Jr., and John Grenier.

Mr. Boyle made a motion that the board grant an additional 12-day extension of the deadline to hold the first public hearing for the proposed River Marsh Village 40B project, through Tuesday, January 12, 2021. Mr. McGrail seconded the motion, and Mr. Boyle, Mr. McGrail and Mr. Casavant voted unanimously in favor by roll call. (Mr. Grenier did not vote.)

Mr. Casavant noted the date for the extension was given incorrectly in the letter from the River Marsh attorney and asked it be fixed. Mr. Heins explained that the town manager's office would request the three board members sign the letter before December 31.

PUBLIC HEARING FOR CASE #15-20 SPECIAL PERMIT AND VARIANCES TO EXPAND HOUSE AT 10 ALVERN ROAD

Mr. Casavant opened the public hearing for Case #15-20 on the application of John Falcione, 10 Alvern Road, Pembroke, MA 02359, requesting a special permit and variances in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. V.5. (Nonconforming Uses), Sec. IV.1.D.2 (Front Yard Setback), and Sec. IV.1.D.3. (Side Yard Setback), with Front Yard Setback and Side Yard Setback as referenced by Sec. IV.3.D.1 (Dimensional Regulations), to construct an addition to an existing single-family house. The property is located at 10 Alvern Road, Pembroke, MA 02359, in Business District A and possibly the Water Resource and Groundwater Protection District, as shown on Assessors' Map A5 Lots 148, 149 and 264.

The applicant John Falcione was present.

As four board members were present but only three could vote, it was agreed that Mr. Boyle, Mr. Grenier and Mr. Casavant would vote on this application, with Mr. McGrail participating but not voting.

Mr. Falcione explained that the addition mainly consists of a garage, and would also provide indoor access to the house's basement. Mr. Heins noted that the neighbor to the north had stated he supports the project, even though the addition would only be about four feet from the property line.

Mr. Boyle and Mr. Grenier expressed concern about the addition being just four feet from the edge of the property. Mr. Boyle mentioned that such additions occasionally become in-law apartments or extra bedrooms, and Mr. Falcione assured him its sole purpose is to be a garage. Mr. Falcione also said that his working on cars would not be a problem for the neighbors. Mr. McGrail stated that he supported the project.

Mr. Casavant said that he felt four feet was too close to the property boundary, and he and Mr. Falcione discussed the layout of the addition and whether an alternate configuration would be feasible. Mr. McGrail suggested another way of designing the addition. Discussion followed, and it was agreed that Mr. Falcione would adjust the design to reduce the distance from the property line.

Mr. Boyle made a motion to continue the public hearing to January 4, 2021, to allow the applicant additional time to submit a revised drawing. Mr. Grenier seconded the motion, and Mr. Casavant, Mr. Grenier and Mr. Boyle voted unanimously in favor by roll call.

PUBLIC HEARING FOR CASE #16-20 SPECIAL PERMIT TO BUILD IN-LAW APARTMENT AT 42 EDGEWATER DRIVE

Mr. Casavant opened the public hearing for Case #16-20 on the application of Michael Woods, 42 Edgewater Drive, 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 an addition to an existing single-family house. The property is located at 42 Edgewater Drive, Pembroke, MA 02359, in Residence District A, as shown on Assessors' Map F10 Lot 86.

The applicant Michael Woods was present, and he explained that he wished to construct a three-car garage with an in-law apartment above it, as an addition to his house.

A discussion took place about whether the proposed in-law apartment had a square footage within the limit of 800 square feet specified by the zoning bylaw. Mr. Woods assured Mr. Boyle that the apartment would only be for the use of a family member or relative.

The board agreed to have the building inspector check the calculation of the square footage, and to continue the public hearing to allow time for that. Discussion followed.

Mr. Boyle made a motion to continue the public hearing for Case #16-20 to January 4, 2021. Mr. Grenier seconded the motion, and Mr. Casavant, Mr. Grenier and Mr. Boyle voted unanimously in favor by roll call.

At this time Mr. Grenier recused himself, due to a possible conflict of interest for the upcoming public hearing, and left the meeting. So from this point forward the board members present were Mr. Casavant, Mr. Boyle and Mr. McGrail.

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

Mr. Casavant reopened the public hearing for Case #4-20 (continued from September 21, 2020, October 26, 2020, and November 30, 2020) 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. Mr. Murphy and Mr. Field, adjacent property owners, have been in conflict and litigation due to several disputes.

Mr. Danehey noted that he had been in isolation for the past few days, and unable to go to his office, because a family member had contracted the coronavirus. He explained that he was waiting for the building inspector/zoning enforcement officer, George Verry, to issue an enforcement letter for 260-280 Oak Street. Since the letter had not been issued yet, Mr. Danehey suggested that the public hearing be continued to allow more time for it. Discussion ensued, and Mr. Danehey described some of the relevant legal matters.

Ms. Kroha said the appropriate course of action would be to dismiss the appeal and end the public hearing. Since the building inspector had not issued a written decision yet, she said, there was nothing to appeal at this time. She also stated that Mr. Russell does not qualify as an aggrieved party (i.e., does not have standing).

Mr. Danehey said that at this time he was only requesting a continuance of the public hearing. He said that whether Mr. Russell is an aggrieved party is being contested, and described other aspects of the situation.

The board members agreed to continue the public hearing, and decided that Mr. McGrail would not vote on this since he had not yet caught up using the Mullin Rule. It was agreed to continue the hearing to January 25.

Mr. Boyle made a motion to continue the public hearing to January 25, 2021, at 7:00 pm. Mr. Casavant seconded the motion. Mr. Boyle and Mr. Casavant voted in favor, and the motion passed.

The meeting was adjourned.