

ZONING BOARD OF APPEALS / TOWN OF PEMBROKE

MEETING MINUTES: JANUARY 4, 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), Kevin Grady, 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 January 4, 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, 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 #17-20 SPECIAL PERMIT TO BUILD IN-LAW APARTMENT AT 11 QUAKER CIRCLE

Mr. Casavant opened the public hearing for Case #17-20 on the application of John M. Riordan, P.O. Box 244, Whitman, MA 02382, 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 11 Quaker Circle, Pembroke, MA 02359, in Residence District A, as shown on Assessors' Map F13 Lot 31A.

Kevin Grady of Grady Consulting, the project engineer, was present, and he said that the applicant wished to add an 800-square-foot in-law apartment to the existing house. He explained that he believed the project was in accordance with the relevant zoning bylaws.

In reply to questions from Mr. Boyle, Mr. Grady said the septic system would be upgraded and two tanks would be installed.

There was a technical problem with the sound of Mr. McGrail's Zoom connection, and so he left briefly to deal with it. He returned a few minutes later.

Mr. Boyle made a motion to close the public hearing and move on to a vote, and Mr. Grenier seconded the motion. Mr. Boyle, Mr. Grenier and Mr. Casavant voted in favor by roll call, and the motion passed.

Mr. Boyle, Mr. Grenier and Mr. Casavant agreed that they were in favor of the project.

Mr. Boyle made a motion to approve the application of John M. Riordan, application #17-20, for a special permit in accordance with Sec. IV.1.B.4., to construct an in-law apartment, based on the drawings and submissions made with the application, subject to said section of the bylaws, and the applicant to provide a covenant or deed restriction for review and approval by the board. Mr. Grenier seconded the motion. Mr. Boyle, Mr. Grenier and Mr. Casavant voted in favor by roll call, and the motion passed.

PUBLIC HEARING FOR CASE #18-20 SPECIAL PERMIT FOR OUTDOOR STORAGE, DISPLAY, AND SALE OF GOODS AT 240 AND 258 OAK STREET (PER REMAND ORDER ISSUED BY LAND COURT AND RESUBMISSION)

Mr. Casavant opened the public hearing for Case #18-20 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.

This application is a resubmission of Case #6-20, which was withdrawn due to a lack of a quorum.

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

Board member John Grenier did not participate in this public hearing, having recused himself from the case due to a connection with Mr. Murphy.

Mr. Baker summarized his argument that the special permit should be denied, referencing a Powerpoint-style sequence of images and text which he displayed. He noted that the recent site visits did not allow everyone to see the site at the same time. He went over the history of the dumpster containers being stored on the property, and described how this has changed over time. He argued that most of the dumpster containers are in deteriorated condition, are no longer in use, and thus essentially are abandoned scrap.

Mr. Baker also went over the history of the approvals and litigation relating to the dumpster containers being stored on the property. He explained that the land court's remand allowed the board to grant or deny the special permit. He stated that prior to a recent site visit, Mr. Field had removed numerous dumpster containers, especially the most run-down ones. Ms. Kroha read aloud an affidavit statement from a person based in Corporate Park saying that during September 22-28, 2020, many of the dumpster containers were removed.

Referencing images, Mr. Baker said that several dumpster containers had been moved to the adjacent property of Daley & Wanzer. He noted that Mr. Field's business is located in Scituate. He argued that Mr. Field is not storing "goods" as per the zoning bylaw, but rather junk, scrap or abandoned equipment, which is banned by the zoning bylaw. The removal of many of the most dilapidated dumpsters shortly before a site visit, he argued, demonstrates this.

Mr. Danehey responded to Mr. Baker's presentation. He emphasized that the site visits taken by board members show the true condition of the property. He said that the dumpsters were not moved in order to trick the board. He noted that when Mr. Murphy clear-cut his property on 2016, he was punished by the building inspector. He explained that Mr. Field agreed to put arbor vitae, but not a fence, along the property boundary in certain places as a visual buffer.

Mr. Danehey said that the project was remanded back to the Planning Board and the Zoning Board of Appeals because it did not meet the 40% requirement for natural vegetation and/or landscaping in one of the setbacks. Thus, he argued, the project was not in violation. With regard to the affidavit, he noted that presumably this person is a tenant of Mr. Murphy and does work for Mr. Murphy, and hence is biased. He described how the dumpsters were pulled back from the property lines. He said it was irrelevant that Mr. Field's business is based (per the corporate papers) in Scituate.

Mr. Danehey said that the business of storing the dumpster containers, though it would be unacceptable in a residential area, is an appropriate use for an industrial zone. He explained that the issue of whether they are junk is being determined in land court.

Mr. Baker noted the rusted, deteriorated appearance of some of the dumpster containers, and argued they are junk or abandoned. He read some quotations from previous Zoning Board of Appeals decisions (or other documents) regarding the property.

Mr. Baker and Mr. Danehey briefly debated the issue of the fence. Mr. Baker concluded by stating that the dumpsters are in fact junk, and cannot be disguised as anything else.

Mr. Casavant asked Mr. Boyle and Mr. McGrail if they had any questions, and both said they did not.

Mr. Casavant asked Mr. Danehey where the arbor vitae (serving as visual screening) would be placed per the site plan design, and Mr. Danehey showed an image of the property and

explained where they would be located. He said they had requested a maximum of 135 dumpster containers be allowed on the site.

A discussion took place about how long the dumpsters typically stay on the property and how long they are gone.

Mr. Murphy argued that currently most dumpster companies hardly have any dumpsters stored on their own properties, due to the boom in construction, and Mr. Field argued that is not the case. Mr. McGrail asked Mr. Field how many dumpsters he owns in total, and Mr. Field said the figure is roughly 230.

Mr. Boyle made a motion to close the open portion of the public hearing to go into deliberations and a vote. Mr. McGrail seconded the motion. Mr. Boyle, Mr. McGrail and Mr. Casavant voted in favor by roll call, and the motion passed.

Mr. McGrail said that in his experience, in the construction industry, broken and run-down dumpsters are inevitable. He said that Mr. Field seemed to have addressed the issues, and so long as the property is kept in good condition from this point forward, it would be acceptable.

Mr. Boyle said that the property is reasonably well taken care of, given the nature of the use, and pointed out that the dumpsters are empty, which is preferable.

Mr. McGrail suggested a probationary period could be a condition of approval, and Mr. Casavant said the special permit could be limited to a two-year period.

Mr. Casavant, Mr. McGrail and Mr. Boyle agreed to reduce the maximum number of dumpster containers allowed on the site to 100.

Mr. Casavant made a motion to allow the application for #18-20, of Russell Field, granting the special permit in accordance with Sec. IV.5.B.3., referring to Sec. IV.4.B.1., conditioned on the same screenage plan from the prior approval (the previous case), and reducing the amount of containers stored on site to 100. Mr. Boyle seconded the motion. Mr. Boyle, Mr. McGrail and Mr. Casavant voted in favor by roll call, and the motion passed.

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

Board member Mr. Grenier returned to participation in the meeting at this time.

Mr. Casavant reopened the public hearing (continued from December 14, 2020) 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, and he explained that he was still in the process of revising the design to reduce the setback, as the board members had suggested previously. He and the board members agreed to continue the public hearing to January 25.

Mr. Boyle and Mr. Falcione discussed the design layout and the leaching field restricting expansion on one side.

Mr. Casavant made a motion to continue the public hearing to January 25, 2021, at 7:50 pm, to allow Mr. Falcione time to submit a revised plan. Mr. Boyle seconded the motion. Mr. Casavant, Mr. McGrail and Mr. Boyle voted in favor by roll call, and the motion passed.

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

Mr. Casavant reopened the public hearing (continued from December 14, 2020) 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.

Mr. Heins explained that the new drawing submitted earlier in the day did not show any change to the actual floor plan, and so the square footage was still roughly 935 square feet, significantly above the 800-square-foot limit set by the zoning bylaw.

An extended discussion and debate took place about the new drawing submittal, the total square footage, and the history of the project. It was agreed that a new drawing, showing the revised floor plan, would be submitted by January 25.

Mr. Casavant made a motion to continue the public hearing for application #16-20 to January 25, 2021, at 8:00 pm, to allow Mr. Woods to submit a revised and final drawing. Mr. Grenier seconded the motion. Mr. Casavant, Mr. Grenier and Mr. Boyle voted in favor by roll call, and the motion passed.

ADMINISTRATIVE ACTIONS

Mr. Casavant made a motion to approve the minutes for December 14, 2020, and Mr. Boyle seconded the motion. Mr. Casavant, Mr. Grenier and Mr. Boyle voted in favor by roll call, and the motion passed.

The meeting was adjourned.