

# ZONING BOARD OF APPEALS / TOWN OF PEMBROKE

## MEETING MINUTES: FEBRUARY 22, 2021

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

**ALSO PRESENT:** Matthew Heins (Planning Board Assistant), Brian Murphy, Kimberly Kroha, Susan Spratt, Russell Field, John Danehey, Michael Bonner, Robert DeMarzo, 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. McGrail 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 February 22, 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](http://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](mailto: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 #19-20 APPEAL OF PLANNING BOARD DECISION WITH REGARD TO PROPERTY AT 260-280 OAK STREET

Mr. McGrail reopened the public hearing for Case #19-20 (continued from January 25, 2021) on the application of Grissom Park Co., LLP, c/o Baker, Braverman & Barbadoro, PC, 300 Crown Colony Drive, Suite 500, Quincy, MA 02169, 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 approval of an application for a proposed amendment (major modification) to a Site Plan. The appeal is 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.

Brian Murphy, the owner of the property at 260-280 Oak Street through Grissom Park Co., LLP (the applicant), was present, along with his attorney Kimberly Kroha. Susan Spratt, the engineer for the 260-280 Oak Street project, was also present. The owner of an adjacent property, Russell Field, was present with his attorney John Danehey. The two neighboring property owners, Mr. Murphy and Mr. Field, have been in conflict and litigation due to various disputes.

Because board member Frederick Casavant was absent and board member Mr. Grenier was recusing himself from all matters relating to 260-280 Oak Street (due to a conflict of interest in connection with the owner of the property, Brian Murphy), the necessary quorum of the board to decide and vote on the application was not present. Mr. McGrail explained this, and stated it was therefore necessary to continue the public hearing to a future date. The board members and attorneys agreed that March 15 at 7:30 pm would be acceptable.

Mr. Boyle made a motion to continue the public hearing to March 15 at 7:30 pm, and Mr. McGrail seconded the motion. Mr. Boyle and Mr. McGrail voted in favor by roll call, and the motion passed.

#### **DISCUSSION ABOUT PROPOSED ZONING BYLAW AMENDMENT RELATING TO FLOODPLAIN PROTECTION OVERLAY DISTRICT**

Mr. Heins provided a summary of a proposed zoning bylaw amendment (i.e., a warrant article for upcoming town meeting) that would update the rules for the floodplain protection overlay district. In particular, the FEMA map references would be updated and the bylaw text would be changed to meet FEMA's new requirements.

Mr. Heins discussed the proposed change, and explained that it is necessary to maintain the flood insurance policies in the town which are supported by the federal government. He said that the current zoning bylaws prohibit new buildings and structures in the floodplain areas, other than for very limited purposes, but this zoning bylaw amendment would allow such new development, when appropriate, by special permit. He explained that it remains to be decided whether the Zoning Board of Appeals or the Planning Board would be the special permit granting authority (i.e., the board that holds hearings for and votes on the special permit applications) under this zoning bylaw amendment. He also noted that it might be possible to continue to prohibit new buildings and structures in the floodplain areas, though this is unclear.

A discussion followed about the town's floodplain areas, how this proposed zoning bylaw amendment would change the regulations, and the process by which the warrant article's text would be finalized and reach town meeting.

#### **DISCUSSION ABOUT PROPOSED CELL TOWER SITE PLAN AT 85 WASHINGTON STREET**

Mr. Boyle asked about the balloon test for the proposed cell tower at 85 Washington Street, for which a site plan review is in progress with the Planning Board. Mr. Heins explained that the test was done recently, and that a series of photosimulation images of the tower were submitted and are available online. Discussion followed.

**PUBLIC HEARING FOR CASE #3-21 APPEAL OF BUILDING INSPECTOR'S LETTER WITH REGARD TO PROPERTY AT 260-280 OAK STREET**

Mr. McGrail opened the public hearing for Case #3-21 on the application of Grissom Park Co., LLP, c/o Baker, Braverman & Barbadoro, PC, 300 Crown Colony Drive, Suite 500, Quincy, MA 02169, to appeal, in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. V.7.H.1 (Site Plan Approval – Appeals), the building inspector's letter dated December 14, 2020, for the property at 260-280 Oak Street which revoked the temporary certificate of occupancy and issued a cease and desist order for the automotive repair use. The appeal is 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.

Brian Murphy, the owner of the property at 260-280 Oak Street through Grissom Park Co., LLP (the applicant), was present, as was his attorney Kimberly Kroha. The owner of an adjacent property, Russell Field, was present along with his attorney John Danehey. The two neighboring property owners, Mr. Murphy and Mr. Field, have been in conflict and litigation due to various disputes.

Since board member Frederick Casavant was absent and board member Mr. Grenier was recusing himself from all matters relating to 260-280 Oak Street (on account of a conflict of interest in connection with property owner Brian Murphy), the necessary quorum of the board to decide and vote on the application was not present. This had already been explained in the previous public hearing, which was also for 260-280 Oak Street. Thus it was necessary to continue the public hearing to a future date, and it was agreed that March 15 at 8:00 pm would be acceptable.

Mr. Boyle made a motion to continue the public hearing to March 15 at 8:00 pm, and Mr. McGrail seconded the motion. Mr. Boyle and Mr. McGrail voted in favor by roll call, and the motion passed.

Since the next public hearing was fifteen minutes later, the board agreed to take a short recess.

Mr. Boyle made a motion that the board go into recess until 7:45 pm, and Mr. McGrail seconded the motion.

**PUBLIC HEARING FOR CASE #2-21 SPECIAL PERMIT AND VARIANCE TO OPERATE AUTOMOTIVE REPAIR BUSINESS AT 280 OAK STREET**

Mr. McGrail opened the public hearing for Case #2-21 on the application of Souza Automotive, Inc., 280 Oak Street, Unit 100, Pembroke, MA 02359, requesting a special permit and variance in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. IV.5. (Industrial District A), to operate an automotive repair business that is already in existence. The property is located at 280 Oak Street, Pembroke, MA 02359, in Industrial District A and the Medical Marijuana Overlay District, as shown on Assessors' Map G14, Lot 25G.

Michael Bonner, the attorney for the applicant, was present. Brian Murphy, the owner of the property at 260-280 Oak Street through Grissom Park Co., LLP, was also present. The owner of an adjacent property, Russell Field, was present, as was his attorney John Danehey. The two neighboring property owners, Mr. Murphy and Mr. Field, have been in conflict and litigation due to various disputes.

Since board member Frederick Casavant was absent and board member Mr. Grenier was recusing himself from all matters relating to 260-280 Oak Street (due to a conflict of interest in connection with the owner of the property, Brian Murphy), the necessary quorum of the board to decide and vote on the application was not present. Mr. McGrail briefly explained this, and said it was thus necessary to continue the public hearing to a future date. The board members and Mr. Bonner agreed on March 29 at 7:00 pm.

Mr. McGrail made a motion to continue the public hearing to March 29 at 7:00 pm, and Mr. Boyle seconded the motion. Mr. Boyle and Mr. McGrail voted in favor by roll call, and the motion passed.

The board informally paused the meeting for about ten minutes while awaiting the start time of the next public hearing.

### **PUBLIC HEARING FOR CASE #1-21 VARIANCE TO CONSTRUCT BUILDING FOR STORAGE OF MOTOR VEHICLES AT 37 MATTAKEESETT STREET**

Mr. McGrail opened the public hearing for Case #1-21 on the application of Jeffrey Perette/Old Salt Realty Trust, 43 Mattakeesett Street, Pembroke, MA 02359, requesting a variance in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. IV.1.A.4 (garage for storage of more than four automobiles), to construct a large garage of 7,500 square feet for the business of storing motor vehicles behind an existing house. The property is located at 37 Mattakeesett Street, Pembroke, MA 02359, in Residence District A and the Center Protection District, as shown on Assessors' Map C9, Lot 66.

The applicant's attorney, John Danehey, was present. Robert DeMarzo, a member of the public, was also present.

Mr. Danehey requested that the public hearing be continued, in order to give more time to consult with the project engineer. The board and Mr. Danehey agreed to continue the hearing to March 15.

Mr. McGrail made a motion to continue the public hearing to March 15 at 8:15 pm. Mr. Boyle, Mr. Grenier and Mr. McGrail voted in favor by roll call, and the motion passed.

### **ADMINISTRATIVE ACTIONS**

Mr. Boyle made a motion to approve the minutes for January 25, 2021, and Mr. Grenier seconded the motion. Mr. Grenier, Mr. McGrail and Mr. Boyle voted in favor by roll call, and the motion passed.

Mr. Boyle made a motion to adjourn the meeting, and Mr. Grenier seconded the motion. Mr. Grenier, Mr. McGrail and Mr. Boyle voted in favor by roll call, and the motion passed.

The meeting was adjourned.