

# **ZONING BOARD OF APPEALS / TOWN OF PEMBROKE**

## **MEETING MINUTES: MARCH 9, 2021**

**BOARD MEMBERS PRESENT:** Frederick Casavant (Chair), Christopher McGrail (Clerk), and Arthur Boyle, Jr. (Alternate).

**ALSO PRESENT:** Sabrina Chilcott (Assistant Town Manager), Matthew Heins (Planning Board Assistant), William Chenard (Town Manager), Amy Kwesell (Town Counsel, KP Law), Peter Palmieri, Brian Murphy, Warren Baker, Kimberly Kroha, Susan Spratt, Bradley McKenzie, Christine Perkins, Dennis Murphy, Scott Chapman, Jeffrey Dyer, Martin Cournan, Matthew Hitchens, Samantha Woods, Daniel Mahoney, Peter Moll, Christopher Graham, 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. The three board members (Mr. Casavant, Mr. McGrail and Mr. Boyle) introduced themselves. Mr. Casavant 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 March 9, 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@townofpembroke.com](mailto: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 #48-18 COMPREHENSIVE PERMIT [40B] FOR “RIVER MARSH VILLAGE” PROJECT AT 0 AND 274 WATER STREET**

Mr. Casavant reopened the public hearing (continued from January 25, 2021) for Case #48-18 comprehensive permit [40b] for the proposed “River Marsh Village” project at 0 and 274 Water Street.

Mr. Casavant noted that Amy Kwesell, Pembroke Town Counsel with KP Law, and Peter Palmieri, the board’s peer review engineer for this project, were present. Also present were Brian Murphy, the manager of River Marsh, LLC (the entity that is the applicant), the applicant’s attorneys Warren Baker and Kimberly Kroha, and project engineers Susan Spratt and Bradley McKenzie.

Mr. Casavant explained that this meeting would be primarily intended to go over Mr. Palmieri’s first review report (which deals mainly with engineering issues), and that public comment on that topic would be allowed later in the meeting. He noted that traffic would be discussed at a later session of the public hearing.

Mr. Palmieri went over the more important items in his review report. He suggested that some type of vegetated buffers be provided, especially where the project is adjacent to residential uses, and that sidewalks be built within the project. He recommended that a fire truck access and maneuvering plan be provided. In addition, he stated that he feels additional soil testing should be done, which would have possible consequences for the stormwater system design. He also said that additional information should be provided in the stormwater management report.

Mr. Boyle asked Mr. Palmieri if the soil on the site has possibly changed significantly since the previous soil samples were taken in 1992, especially given the amount of construction that has taken place along Route 139 in recent years. Mr. Palmieri said that it probably hasn’t changed dramatically but may have changed slightly, and that moreover the modeling techniques and other procedures have improved since then. A brief discussion followed.

Ms. Kwesell spoke briefly, and then Mr. Baker talked. He acknowledged that new soil testing needs to be done, but said that it’s unlikely the soil has changed and that it would be appropriate to do the soil testing at the time the building permit is issued, rather than now. He discussed the process of 40b review, and stated that the submission meets the preliminary design requirements. He also said that certain tests relating to utilities would be appropriate at the building permit stage, rather than at this application stage. He mentioned the process of listing required waivers.

Ms. Kwesell agreed that the applicant has site control but emphasized that soil testing should be done, and noted that the stormwater system had to be reviewed by this board.

Ms. Spratt went over the design of the project. She said they would provide estimated earthwork quantities, site distances for entrances and exits, and a fire access plan. Displaying a site plan drawing of the project, she explained it would comprise 56 units, and noted the minimum distance between buildings would be 13 feet. She said the minimum distance from the driveway (face of the garage) to the edge of pavement would be 23 feet, and she clarified the distance from the stormwater basin to certain things. She said that natural grass buffers, and a six-foot privacy fence, were now being proposed along particular property lines. She

noted that 3 handicapped spaces were provided. She also discussed the stormwater calculations, described the infiltration basin, and said TSS figures would be provided.

Mr. Boyle questioned whether the 23-foot distance from the driveway to the edge of pavement is sufficient, and a conversation took place with Ms. Spratt about this. Mr. McGrail asked why the roof drainage isn't being included in these preliminary documents, and a short discussion followed. Mr. Casavant asked about the buffers and the wastewater treatment plant, and Ms. Spratt described these.

Mr. McKenzie described the stormwater system and the D.E.P. requirements relating to it. A discussion also took place about the requirements in connection with the North River.

At this time, Mr. Casavant opened the hearing to comments and questions from the public.

Christine Perkins, resident of 275 Water Street, asked why the drawings depict Water Street and Church Street as wider than they are in reality, and Mr. Palmieri and Ms. Spratt explained that these drawings show the road layout along with the paved area. Discussion ensued. Ms. Perkins also asked about the easement through the property.

Mr. Baker said that if the existing public roads are insufficient for the project's traffic, it's the town's responsibility to improve them. He explained that the easement was created in 1985, and that per state law they can shift its location provided it still fulfills the same function.

Dennis Murphy of Hill Law, an attorney representing some of the neighbors on Water Street, asked how close the existing house (which will be part of the project) would be to the nearest building, and Ms. Spratt said the distance would be 13 feet. Mr. Murphy urged the board to be willing to enforce its rules. He emphasized that 1992 was a long time ago, and so the soil tests from that date need to be updated, and that the stormwater system and drainage should be evaluated now rather than later. He also suggested that vegetated buffers be as large as possible.

Mr. Casavant asked Mr. Palmieri about the soil testing, and Mr. Palmieri said it's not overly costly and should be done during this public hearing process. Mr. Baker said they would prefer to wait on the soil testing until the project's design is closer to being finalized. Ms. Spratt and Mr. McKenzie discussed the soil testing and probable soil conditions, and Mr. McKenzie said the cost of soil testing would be two or three thousand dollars.

Scott Chapman, a resident adjacent to the project, asked the engineers about the proposed wastewater treatment plant. Mr. McKenzie said that at a larger project in Norwell the wastewater treatment plant has not generated any odor or noise. He explained that the standards are higher than for a Title 5 system.

Mr. Chapman noted that a certified vernal pool is near the project, and this led to conversation. Ms. Kwezell said this is an issue for the Conservation Commission to consider.

Jeffrey Dyer, a member of the public, asked why this site was chosen for the project. Mr. Baker noted that his client owns the property, that he has a right to build there as other property owners do, and that the town needs affordable housing.

Martin Cournan, resident of 260 Water Street, argued that the gain in affordable housing would be minimal relative to the negative impacts of the project. He mentioned that the town has almost reached the 10% threshold for affordable housing. But Ms. Kwesell explained that until the town actually gets to the 10% figure, Pembroke is limited in its ability to block a 40b project.

Mr. Cournan emphasized the traffic problems the project would cause, and asked about the likely impact of construction vehicles. Mr. McKenzie described the construction of the wastewater treatment plant, and said he wasn't yet aware of the vernal pool's location. Mr. Cournan re-emphasized his doubts about the project.

Matthew Hitchins, resident of 337 Water Street, explained that his house's foundation is sinking, and so the soil testing is of critical importance. He also noted that a historic cemetery is in the neighborhood.

Samantha Woods, executive director of the North and South Rivers Watershed Association, expressed her concerns about the project. She noted the scenic value of the North River, which is adjacent to the property and is used by thousands of people for recreation and enjoyment. She also emphasized the issues of stormwater, wastewater and density. She suggested the applicant consider low-impact design techniques for stormwater, and recommended that no wetlands be filled in to enable the siting of the wastewater treatment plant. She explained that an endangered species was listed for the site previously, but while this has been lifted because no endangered species has been documented there in 25 years, the possibility remains that an endangered species may be on the site.

Mr. Casavant asked about the river's scenic impact status and whether any analysis or procedures were associated with it, and Ms. Kwesell said this is something the North River Commission would probably require.

Jace Wilson, a resident at 248 Water Street, asked about the easements on the site. Ms. Spratt displayed the site plan drawing, and a discussion took place. Mr. Wilson questioned how a building could be placed on the easement, and Mr. Baker agreed to investigate this.

Ms. Kwesell asked if the project triggers any of the MEPA thresholds, and Mr. McKenzie and Ms. Spratt said it does not.

Mr. Wilson asked about the turning radius for a car or truck entering or leaving the more southerly (closer to Route 139) access drive, and Ms. Spratt described this and said she would check whether a fire truck can make a left turn safely into the access drive.

Mr. Wilson also asked about how the boundaries would be handled between his property and the project, and Ms. Spratt described how the topography, grading and vegetation would work. Mr. Wilson asked about the curbing of the access drive, and Ms. Spratt said they would be Cape Cod berms. In reply to Mr. Casavant, Ms. Spratt said they would consider adding screening along the access drive.

Daniel Mahoney, a nearby resident, expressed concern about the project's impact on the traffic through Water Street, which is a narrow roadway, and criticized the applicant. He said he has seen three major car accidents at the intersections of Water Street and Cross Street with Route 139 in recent years, and he urged the town to widen a portion of Route 139 to two lanes.

Peter Moll, resident of 174 River Road in Hanover, explained that he lives along the North River and that the river's level has risen in recent years. Thus, he said, the board should insist on new soil testing to ascertain the water levels in the ground.

Christopher Graham, a nearby resident, asked what the distance is between the existing house on the site and the nearest proposed building, and Ms. Spratt said 13 feet. Mr. Graham suggested the existing house be demolished. He stated that the access drives seem too narrow, and that he has concerns about the wastewater treatment plant.

Mr. Casavant asked the board members if they had any comments or questions. Mr. Boyle stated that new soil testing should definitely be carried out, and suggested that a study be done to check if there are burial grounds on the site. He also expressed concerns about traffic.

Mr. McGrail asked if the board has grounds to request a new soil analysis, and Ms. Kwesell replied that she believes it would be legitimate for the board to insist on this. Mr. Casavant asked Mr. Baker about this, and Mr. Baker said he would check with the applicant.

Mr. Casavant suggested that the vegetative buffers be shown definitively on the site plan drawings, that more information be provided about the possible noise, odor and maintenance related to the wastewater treatment plant, that the easement be looked into, and that the left-handed turning radius be examined. He asked Ms. Kwesell about the burial ground issue, and she replied that if there is no MEPA threshold then there is no jurisdiction to look into that.

Ms. Kwesell suggested that the fencing be extended along the property boundaries for all the adjacent neighbors, or else that vegetation be used as screening. Mr. Baker said he would discuss this with the applicant.

Mr. Casavant, Ms. Kwesell and Mr. Baker agreed that the traffic discussion will take place at the next public hearing on April 13.

Mr. Boyle made a motion to continue the public hearing to April 13 at 7:00 pm, and Mr. McGrail seconded the motion. The board voted unanimously in favor by roll call.

The meeting was adjourned.