

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

## **MEETING MINUTES: MARCH 15, 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), Alexander Weisheit (Town Counsel, KP Law), Philip Sacco, Jeffrey De Lisi, Kevin Grady, George Thibeault, Donald Nagle, Brian Murphy, Kimberly Kroha, Warren Baker, Susan Spratt, Russell Field, John Danehey, Jeffrey Perette, Robert DeMarzo, Gerald Dutson, 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 March 15, 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, via livestream at <https://www.pactv.org/pactv/towns/pembroke> or [www.pactv.org/pactv/watch/meetings-streamed-live-youtube](https://www.pactv.org/pactv/watch/meetings-streamed-live-youtube).

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.org](mailto:mheins@townofpembroke.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 #5-21 VARIANCES TO CONSTRUCT TWO-CAR GARAGE AT 14 BALTZER DRIVE**

Mr. Casavant opened the public hearing for Case #5-21 on the application of Philip G. Sacco, 14 Baltzer Drive, Pembroke MA 02359, requesting variances in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. IV.1.D.2 Front Yard and Sec. IV.1.D.3 Rear Yard, to construct a two-car garage with a footprint of 26 feet by 24 feet on a single-family residential property. The

property is located at 14 Baltzer Drive, Pembroke, MA 02359, in Residence District A, as shown on Assessors' Map D9, Lot 7A1.

Mr. Sacco explained that he wished to construct a two-car garage and described the project. The board members discussed the proposed garage, the nature of Mr. Sacco's oddly shaped lot, and the surroundings. Mr. Sacco explained that the garage would be for cars and other storage, that it would not contain any living space, and that he would not cut down an excessive number of trees around it.

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

The board members talked about the project and agreed it was justified due to the configuration of the lot and that it would not harm the neighborhood.

Mr. Boyle made a motion to allow the application based on the plan submitted, showing setbacks of 19 feet, 13 feet and 25 feet for a 26' x 24' garage, conditioned that there be no living space in the garage. Mr. McGrail seconded the motion. Mr. Casavant, Mr. Boyle and Mr. McGrail voted in favor by roll call, and the motion passed.

**PUBLIC HEARING FOR CASE #4-21 VARIANCES AND SPECIAL PERMIT TO CONSTRUCT BUILDINGS AND PARKING AREAS FOR LUMBER AND/OR WOOD PRODUCTS BUSINESS AT 715 WASHINGTON STREET**

Mr. Casavant opened the public hearing for Case #4-21 on the application of Jeffrey A. De Lisi, Esq., for George Thibeault, Ohrenberger, De Lisi & Harris, LLP, 28 New Driftway, Scituate, MA 02066, requesting variances and a special permit in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. IV.2.D.4 Front Yards, Sec. IV.2.D.5. Side Yards, and Sec. IV.2.B.2 Outdoor Storage, to construct a two-story building with a 5,000-square-foot footprint consisting of lumber fabrication on the first floor and offices on the second floor, a small kiln building, a furnace, and parking areas, along with outdoor storage and work areas. The project would be a light industrial use related to lumber and/or wood products. The property is located at 715 Washington Street, Pembroke, MA 02359, in the Residential-Commercial District, as shown on Assessors' Map F9, Lot 24.

Attorney Jeffrey A. De Lisi, engineer Kevin Grady, and the business owner George Thibeault were present. Mr. De Lisi summarized the project. He described the proposed use as a "wood kiln business" for the drying of wood under specific conditions, and explained that the site creates some constraints due to topography and wet soils. He said that he had contacted the zoning enforcement officer (George Verry) recently, who opined that such a use does fall under the category of light industry and is thus allowed in this zone. He explained that they are requesting variances for setbacks and a special permit for outdoor storage.

Mr. De Lisi said the building would be heated by a furnace whose smoke is clear and less observable than an ordinary chimney. The kilning would occur indoors. The cutting of wood on the site would be done with a special tool whose sound at a distance of 150 feet is no louder than an air conditioner.

The project engineer, Mr. Grady, went over the design and engineering. He explained why the entrance drive is located where it is, and said the wetlands and buffer leave only a third of the

lot to work with. He described the proposed buffers and screening, and where existing vegetation would remain.

Mr. McGrail asked about the noise from the cutting of the wood, and a discussion followed. Mr. Casavant asked about the “process area” marked on the drawings, and Mr. Grady said the unprocessed lumber is split there, then dried in the kiln, and then stored in bags.

Attorney Donald Nagle, representing abutter James Smith at 697 Washington Street, addressed the board, and explained that he believes the application should be denied. He said that the project is not light industry and more resembles heavy industry, and noted that special permits in this zone are issued by the Planning Board, not the Z.B.A. He objected to the waivers being requested from the Planning Board, especially for a traffic study.

Mr. De Lisi argued the project should be defined as light industry, citing a definition. Mr. Casavant asked him to get a written letter from the building inspector (zoning enforcement officer) with regard to it qualifying as light industry.

Mr. Boyle made a motion to continue the hearing to March 29 at 7:45 pm, and Mr. McGrail seconded the motion. Mr. Casavant, Mr. Boyle and Mr. McGrail voted in favor by roll call, and the motion passed.

#### **PUBLIC HEARING FOR CASE #19-20 APPEAL OF PLANNING BOARD DECISION WITH REGARD TO PROPERTY AT 260-280 OAK STREET**

Mr. Casavant reopened the public hearing for Case #19-20 (continued from January 25, 2021, and February 22, 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 attorneys Kimberly Kroha and Warren Baker. 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.

Town counsel Alexander Weisheit of KP Law was also present.

Board member Mr. Grenier did not participate in this hearing, as he is 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).

Ms. Kroha summarized the argument that the board should rule in favor of the appeal. She went over the history of the project and the site plan application process, including the application for a major modification to the site plan. She argued that the reconfigured entrance drive should not have been ruled as unsafe by the Planning Board, that the parking area accessed across the

property line is acceptable, that the buffers should not have been ruled as inadequate, and that the automotive repair use is an entirely separate issue. Thus, she stated, by the principles of site plan review, the project should be allowed.

Mr. Danehey summarized his position that the board should deny the appeal. He said that separate entities own the adjacent properties over which the parking area overlaps. He noted that the entrance drive was not built as originally designed and approved in order to avoid relocating a utility pole. This leads to a dangerous road configuration, and also results in an access span that is over 40 feet. He also argued that the access point is a common driveway because it gives access to two lots, and that furthermore there are several more common driveways (cross-access points).

Mr. Danehey also pointed out that the landscape buffers were not built as per the originally approved site plan in several locations. He emphasized that the automotive repair business on the property is not an allowed use and that its temporary occupancy permit has been rescinded. He mentioned that the entrance causes a fire truck to make an excessive turn to gain access. He also brought up the issue of parking, given that the uses are not what were stated in the originally approved site plan and so additional parking should be provided. He noted that an exercise gym is also operating there. In summary, he said that the Planning Board was within its rights to deny the major modification to the site plan, and that moreover the applicant has not been honest throughout the process.

Ms. Kroha briefly responded by re-emphasizing her previous points. She noted that the changes to the access drive and parking were handled by a letter of consent from Corporate Park. She explained that the opinions given to the Planning Board by traffic experts were that the entrance and access drive are safe, and that the building inspector stated the common driveways are not an issue.

Mr. Boyle made a motion to close the hearing and go into discussion, and Mr. McGrail seconded the motion. Mr. Casavant, Mr. Boyle and Mr. McGrail voted in favor by roll call, and the motion passed.

The board members discussed the project and the circumstances of the case, and were in agreement to uphold the Planning Board's decision.

Mr. Boyle made a motion to affirm the decision of the Planning Board, and Mr. McGrail seconded the motion. Mr. Casavant, Mr. Boyle and Mr. McGrail voted in favor by roll call, and the motion passed.

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

Mr. Casavant reopened the public hearing for Case #3-21 (continued from February 22, 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 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, along with his attorneys Kimberly Kroha and Warren Baker. 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.

Town counsel Alexander Weisheit of KP Law was also present.

Board member Mr. Grenier did not participate in this hearing, as he is 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).

Ms. Kroha summarized the circumstances of the appeal, and suggested that the hearing be continued, since the hearing for Souza Automotive's application to the board was continued to March 29 and the two are interconnected.

Mr. Danehey mentioned that the occupancy permit hinges on an approved site plan.

Mr. Boyle made a motion to continue the public hearing for Case #3-21 to March 29 at 7:15 pm, and Mr. McGrail seconded the motion. Mr. Casavant, Mr. Boyle and Mr. McGrail voted in favor by roll call, and the motion passed.

At this time, Mr. Casavant left the meeting, since he had missed the first session of the public hearing for the next item (Case #1-21), and the other three board members present could comprise a quorum.

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

Mr. McGrail reopened the public hearing for Case #1-21 (continued from February 22, 2021) 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, along with the applicant Jeffrey Perette. Robert DeMarzo, a member of the public, was also present, as was Gerald Dutson, who currently owns and resides at 37 Mattakeesett Street.

Mr. Danehey summarized the application and project. He explained that they are not seeking a use variance, but a variance of the number of vehicles allowable to store. He displayed images showing the proposed plan of the project and showing the entire property. He argued a variance is permissible because the rear portion of the property within Residence District A has no frontage and so the lot is oddly shaped, because a literal enforcement of the zoning bylaw

would inflict a financial hardship, because granting relief can be granted without harm to the public good since the neighbors would not be negatively affected, and because it would not detract from the zoning bylaw but rather render the property useful.

Mr. Heins emphasized that such a garage is only allowed in Residence District A as an accessory structure, and that the proposed site (i.e., proposed new lot) for the garage is almost entirely in that zone. Since this project clearly would not be accessory to a house or any other allowed use in Residence District A, it cannot be allowed by that criteria. Moreover, such a garage in its own right (i.e., not as an accessory structure) is not an allowed use in Residence District A (and does not appear to be allowed in the Center Protection District either).

Mr. Boyle asked how close the garage would be to the cemetery, and the answer given was 89 feet. He said that the boats on the adjacent property (43 Mattakeesett Street) mar the view from the cemetery. Mr. Danehey said that a building is being erected on that site, and the boats will be stored inside it soon. He added that a condition could be included to prohibit the outside storage of motor vehicles in this proposed project.

Mr. Danehey and Mr. Heins clarified the extent of the two zones on the property.

Mr. Danehey said, in reply to a question from Mr. Grenier, that the garage would store about 20 or 25 cars. He explained that some patrons of the boat storage business (on the adjacent property and operated by Mr. Perette, who would also operate the garage) wish to store their cars for the winter as well, and so this project would serve them and others.

Mr. Grenier raised the issue of septic systems and containment systems, given the oil runoff that could happen.

Mr. Boyle asked if the existing house at 37 Mattakeesett Street would remain or be on a separate lot, and Mr. Danehey said the entire house and lot would be bought by Mr. Perette. Mr. Danehey stated that vegetation screening would be included.

In reply to a question, Mr. Heins said that there were no communications from the public regarding this application. Mr. Danehey explained that the adjacent project at 43 Mattakeesett Street has been approved and is in the process of being built, and Mr. Heins confirmed this and added more details about how it was approved.

Mr. DeMarzo, who owns a nearby commercial property, addressed the board members and encouraged them to approve the application. He said that he has known Mr. Dutson and his family for many years, and that it would be unfortunate to deprive him of the ability to develop the property. He praised the way Mr. Perette has conducted his business at 43 Mattakeesett Street, and added that the town would benefit from the tax revenue the project would generate.

Mr. Dutson explained that he has owned this land for a long time, and that the rear portion was made less developable when the extent of the Center Protection District was altered, especially since it lacks frontage.

In reply to a question, Mr. Danehey said Mr. Perette intends to buy the whole property. It is unclear whether it would be subdivided.

Mr. Heins and the board members discussed whether possible conditions for the project could be submitted by the board members and assembled by Mr. Heins for discussion at a future session of the hearing.

Mr. Perette said he would store cars indoors only, with none outside, and emphasized that gas and oil traps would be provided. He described the visual screening that would be built. He confirmed that he would purchase the entire property.

Mr. Boyle made a motion to continue the public hearing to March 29 at 8:15 pm, and Mr. Grenier seconded the motion. Mr. McGrail, Mr. Boyle and Mr. Grenier voted in favor by roll call, and the motion passed.

#### **ADMINISTRATIVE ACTIONS**

Mr. Boyle made a motion to approve the minutes for February 22, 2021, 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.