

ZONING BOARD OF APPEALS / TOWN OF PEMBROKE

MEETING MINUTES: MAY 17, 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), Kenneth McCormick (Fire Chief), Michael Bonner, Rick Souza, Gerald Franzini, Brian Murphy, Kimberly Kroha, Warren Baker, Russell Field, John Danehey, Jeffrey Perette, Robert DeMarzo, "Gerald's iPad," 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 May 17, 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.

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 #2-21 SPECIAL PERMIT AND VARIANCE TO OPERATE AUTOMOTIVE REPAIR BUSINESS AT 280 OAK STREET

Mr. Casavant reopened the public hearing for Case #2-21 (continued from February 22, 2021, and March 29, 2021) 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.

Board members Frederick Casavant, Christopher McGrail, Arthur Boyle, Jr., and John Grenier were present. 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).

Michael Bonner, the attorney for Souza Automotive, was present, as was Rick Souza, the owner of the business. The owner of the property (through Grissom Park Co., LLP), Brian Murphy, was present, as were his attorneys Kimberly Kroha and Warren Baker. The owner of an adjacent property, Russell Field, was also 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.)

Alexander Weisheit, town counsel (KP Law), was present to advise the board.

Mr. Bonner briefly described the history of Souza Automotive, and said the business has become "collateral damage," through no fault of Mr. Souza, in a conflict between adjacent landowners. He explained that the applicant sought a special permit under the provision for "gasoline sales and incidental services," which is allowed in Industrial District A by reference to Business District B. (The original application was for both a special permit and variance.) He added that Souza Automotive only provides "incidental services" for automobiles, i.e., light repairs such as brakes, oil changes, tire alignments, etc., and not gasoline sales.

Mr. Bonner explained that B&B Auto Specialists on Oak Street (also in Industrial District A) provides very similar services, and was granted this special permit (i.e., under the same provision of the zoning bylaws) about ten years ago. He displayed the documentation for the special permit that B&B Auto Specialists received from the Zoning Board of Appeals in 2011. He also noted that K.J. Auto Services on Washington Street (in Business District B) received this special permit. He stated that outside parking could be regulated in the decision granting the special permit.

Mr. Souza described the history of his business, and explained that he was previously at the Gulf gas station on Route 139 for about 30 years. He said Souza Automotive does light repairs like maintenance, diagnostic work, brakes, oil changes, and other routine services.

Mr. Bonner noted the many letters of support submitted on behalf of Mr. Souza by his customers. He emphasized that the business is clean and well run, and the repairs are done inside. He stressed that a precedent has already been set by the special permits granted to B&B Auto Specialists and K.J. Auto Services.

Mr. Bonner said that the issue of the contested site plan should not block granting the special permit, and he cited text in the zoning bylaws (Sec. V.7.G.2.) that allows the board to condition a special permit upon the owner or applicant receiving site plan approval. If the site plan ultimately is not approved, he explained, then the special permit could be revoked.

Mr. Heins stated that Paul Nourse, who lives near Souza Automotive at 107 Oak Street, had communicated with Mr. Heins by phone earlier in the day to express support for Souza Automotive. Mr. Casavant stated for the record that the board had received several letters and emails of support for Mr. Souza, but also a few letters in opposition.

Mr. Boyle said that he sympathized with Mr. Souza's position, but also had concerns about the property owner having violated site plan approval.

Mr. McGrail asked if the board even had the grounds to issue a special permit, given that the property is currently lacking site plan approval. Mr. Bonner reiterated that the board could condition the special permit on the owner or applicant receiving site plan approval.

Mr. Casavant asked about the language in the zoning bylaws referring to "gasoline sales and incidental services," and he and Mr. Bonner discussed its meaning and whether it allows incidental services without gasoline sales. Mr. Casavant asked how many parking spaces are needed for the business operations, and Mr. Souza said it varies with a maximum of ten.

Mr. Danehey confirmed from Mr. Souza that the business uses three bays of the building. Mr. Danehey said that the property owner (i.e., Mr. Souza's landlord) is really to blame here, and not Mr. Souza. He noted that the entire project (for 260-280 Oak Street) was not built in accordance with the originally approved site plan, and then the application for a major modification to the site plan was denied. He stated that the parking would not be sufficient, given the various uses on the site. Mr. Danehey added that a special permit cannot be issued without an approved site plan, and that auto repair is not an allowed use at this location. Moreover, he emphasized that prior decisions are not a binding precedent on the board.

Mr. Bonner disputed Mr. Danehey's points, and reemphasized the arguments he had previously presented.

In response to Mr. Casavant's questions, Mr. Weisheit said that the board does have the authority to condition a special permit on the project receiving site plan approval.

Mr. Boyle suggested granting the special permit on condition of the project getting site plan approval. Mr. Casavant asked how that would affect the next public hearing (Case #3-21), and Ms. Kroha stated that in that case they would withdraw the application for the appeal of the building inspector's letter.

Mr. Souza said his hours of operation are 8:30 to 5, sometimes until 6, from Monday to Friday and 8:30 to 3, sometimes until 5, on Saturday, with no outdoor storage. Kenneth McCormick, the Fire Chief, confirmed that Souza does auto repair work for the Fire Department and Police Department, and that his business is well run.

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

Mr. Casavant said he was inclined to grant the special permit but condition it on site plan approval, and Mr. McGrail and Mr. Boyle agreed. Mr. Boyle suggested imposing some sort of time limit in addition to conditioning site plan approval, and the board agreed on two years.

Mr. Casavant made a motion to allow Mr. Souza's application for the special permit, conditioned on site plan approval or a two-year limit whichever comes first, that there be ten parking spaces for Souza Automotive, that there be no outside storage, and on the current hours of operation being Monday through Friday 8:30 am to 6 pm, Saturday 8:30 am to 5 pm, and closed on Sunday. Mr. McGrail seconded the motion. Mr. Casavant, Mr. Boyle and Mr. McGrail voted in favor, 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, March 15, 2021, and March 29, 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.

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).

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. 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 present to assist and advise the board.

Ms. Kroha stated that they wished to withdraw the appeal (i.e., to withdraw the application for an appeal).

Mr. Weisheit confirmed that the board could accept the request that the appeal be withdrawn. Ms. Kroha said she would submit a letter officially withdrawing the appeal.

Mr. Casavant made a motion to accept the withdrawal of the appeal by Grissom Park, LLP, in Case #3-21, Ms. Kroha to provide a letter to town counsel. Mr. McGrail seconded the motion. Mr. Casavant, Mr. Boyle and Mr. McGrail voted in favor, and the motion passed.

Mr. Casavant left the meeting at this time, since he had missed the previous sessions of the public hearing for the upcoming agenda item (Case #1-21), and the other three board members present comprised the quorum for it.

ADMINISTRATIVE ACTIONS

The board and Mr. Heins discussed when the board meetings will return to being in person instead of through Zoom and the internet.

Mr. McGrail made a motion to approve the minutes for April 26, 2021, Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

Mr. Heins described the proposed zoning bylaw amendment to update the rules for floodplain areas, and explained that it would make the board the special permit granting authority for new construction in floodplain areas. Discussion followed.

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, March 15, 2021, March 29, 2021, and April 26, 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 nearby property owner, was also present.

Mr. Danehey explained that a new drawing had been submitted for the project. This shows that the property of 37 Mattakeesett Street would not be subdivided, and that an access drive would be built through the lot's frontage to reach the rear portion of the lot where the project would be built. It also shows a privacy fence circling most of the property and the arbor vitae trees that would be planted for visual screening.

Mr. McGrail asked about the setback from the proposed access drive, and Mr. Danehey said it was hard to determine but appeared to be at least 350 feet.

Mr. Boyle said he needed more time to review the drawing, given that it had been submitted earlier in the day. The board agreed to continue the hearing to give more time to review the design, and possibly to allow the Fire Chief to look at it.

Mr. Danehey requested the board extend the deadline to make its decision to June 28, 2021.

Mr. McGrail made a motion that the board extend the deadline to make its decision to June 28, 2021, and Mr. Grenier seconded the motion. The board voted unanimously in favor by roll call.

Mr. Boyle made a motion to continue the public hearing for Case #1-21 to June 7, 2021, at 7:15 pm. Mr. Grenier seconded the motion, and the board voted unanimously in favor by roll call.

The meeting was adjourned.