

ZONING BOARD OF APPEALS / TOWN OF PEMBROKE

MEETING MINUTES: DECEMBER 7, 2021

LOCATION: Room 6 (Veterans Hall), Pembroke Town Hall

STARTING TIME: 7:00 pm

BOARD MEMBERS PRESENT: Frederick Casavant (Chairman), Christopher McGrail (Vice-Chairman), and Arthur Boyle (Alternate).

BOARD MEMBERS ABSENT: John Grenier (Clerk) and Louis Christian Carpenter (Alternate).

ALSO PRESENT: Matthew Heins (Planning Board Assistant), Amy Kwesell (Town Counsel, KP Law), Karen McCormack, Michael McCormack, Shannon Wilson, Jace Wilson, Grace Wilson, Jane Cournan, Martin Cournan, George Howe, Sharon Spadorcia, Robert Schmitz, Andrew Marshall, John Kan, Chad Johnson, Christopher Graham, Richard Burrige, Carolyn Crossley, April Czaplicki, Cliff Youse, Gino Fellini, Art Egerton, Samantha Woods, and others.

OPENING THE MEETING

The Chairman Mr. Casavant opened the meeting by reading the Chairman's statement.

DISCUSSION, DELIBERATIONS AND VOTE REGARDING PROPOSED RIVER MARSH VILLAGE 40B MULTIFAMILY RESIDENTIAL PROJECT AT 0 AND 274 WATER STREET (CASE #48-18)

The purpose of this meeting of the Zoning Board of Appeals was for the board to deliberate and vote on the application for a comprehensive permit (i.e., a "40b" project) for the proposed "River Marsh Village" project at 0 and 274 Water Street in Pembroke. The board's public hearing for the proposed project was closed on November 2, 2021.

Amy Kwesell, Pembroke Town Counsel of KP Law, was present. She explained that she had drafted procedural findings, jurisdictional findings, and factual findings, along with a standard list of conditions. She explained that the deadline to submit the board's decision to the town clerk was Friday, December 10, 2021. She said that the board's options were to approve the project as filed (with no conditions), to approve the project with conditions, or to deny the project.

Ms. Kwesell noted that Pembroke does not meet the criteria for a "safe harbor" under the state's 40b regulations, and so to deny the project there would need to be a significant "local concern." She mentioned a 40b case elsewhere in Massachusetts where a local concern cited for denying a 40b application was found to be valid, but she noted that this is a high threshold to meet.

Ms. Kwesell summarized the history of this application, which involved some appeals to the state and a lengthy public hearing continued over many dates. She described some of the abutters' concerns about the project.

Ms. Kwesell went over some of the rules and procedures for comprehensive permit (40b) applications, and explained that the applicant had established evidence of control over the site. She noted that MassHousing (a state agency) denied a previous 40b project on the site in 2005, but issued a project eligibility letter for this project in 2018.

Ms. Kwesell explained that she had prepared a draft decision that could be adjusted and finalized to be an approval or denial of the project. Then she discussed her draft factual findings, which were an extensive description of certain facts about the project and the application process.

Ms. Kwesell discussed the draft conditions that she had prepared, though she did not describe them all due to the length of the document.

Ms. Kwesell's presentation being complete, a discussion began among the board members of their views on the project.

Mr. Boyle said he was in favor of denying the project. He mentioned its environmental risks and the previous history of the applicant. Ms. Kwesell explained that specific reasons for denial would be needed. Discussion followed, and Mr. Boyle described the environmental problems with a project this applicant built in Kingston. Mr. Boyle and Ms. Kwesell talked about the differences between the 2005 and 2018 versions of the project. They also discussed the wastewater treatment plant that is proposed for the project, and Ms. Kwesell explained that the Massachusetts DEP has jurisdiction over that.

Mr. Boyle said that in the past he has backed 40b projects when he felt they were worthy, but he believes this one is not a good project.

Mr. McGrail said he felt this is not a good project, but added that it was important to keep the legal factors in mind and to avoid making an emotion-based decision.

The board members and Ms. Kwesell discussed the easement that the applicant possesses, which would provide one of the two access drives to the project from Water Street, and the legal issues relating to it.

Mr. Casavant emphasized his concerns about safety and traffic, both within and outside the site. He noted the size of the roads and the extent of the traffic. He also mentioned the environmental issues, and Ms. Kwesell explained that the Conservation Commission would need to consider these.

Ms. Kwesell discussed some of the problems raised by the project. She said that while many 40b projects have issues relating to the environment or wetlands, the presence of the North River is a particular added concern for this project.

Ms. Kwesell explained that for 40b projects, local wetlands bylaws do not apply and only the state law is relevant. She noted that wetlands issues would generally fall within the jurisdiction of the Conservation Commission.

In reply to Mr. Casavant's question, Ms. Kwesell said that if this application was denied then the applicant could pursue an appeal, and she described how this would happen. She explained that if the application was approved with conditions then the applicant also could appeal it in order

to overturn certain conditions, and that given the conditions she was recommending (some of which the applicant had stated an unwillingness to do), such an approval decision would probably be appealed. She described how an appeal would take place, the procedures involved in it, and the possible outcomes.

Ms. Kwesell explained that if the project was denied and the applicant won the appeal, then the project would essentially go forward in its proposed form (without conditions), whereas if the project was approved with conditions and the applicant won the appeal, then only those conditions specifically appealed would be lost.

Mr. Boyle said that he wished to deny the application.

Ms. Kwesell went over a possible condition she had drafted about creating space for a school bus stop. Mr. Boyle said that a 40b project can contain more school children than expected, and Ms. Kwesell explained that the board cannot consider this as a factor in its decision. Mr. McGrail emphasized the risk of children waiting outside for the school bus, and this led to discussion.

Mr. McGrail said that he was inclined to deny the project.

Ms. Kwesell and the board members discussed the problems and issues that could be cited in a decision to deny the project, such as traffic concerns (including sidewalks, traffic volume and road width), the wastewater treatment plant, the project's density, the natural environment (especially the North River), the nearby wetlands, the surrounding neighborhood character of single-family houses, the environmental risk of snow disposal, the lack of detail in the landscape plan, the excessive scale of the proposed buildings, the threat of flooding, and the applicant not owning the fence that blocks traffic sightlines.

Ms. Kwesell suggested the board make a motion to deny the project, and a second motion to allow the Chairman to finalize and sign the decision.

Mr. McGrail made a motion to deny the proposed River Marsh project based on the findings discussed at this public hearing. Mr. Boyle seconded the motion.

Mr. Boyle said that he felt it was right to deny the project. Mr. Casavant said he was aware of the public's concerns about the project.

The board voted unanimously in favor, by roll call, of the motion to deny the project.

Mr. Boyle made a motion to allow the Chairman of the board to finalize and sign the decision. Mr. McGrail seconded the motion, and the board voted unanimously in favor by roll call.

Ms. Kwesell also suggested the board make a motion to deny the requested waivers.

Mr. Casavant made a motion that the board deny the requested waivers in the application. Mr. Boyle seconded the motion, and the board voted unanimously in favor.

The meeting was adjourned.