

ZONING BOARD OF APPEALS / TOWN OF PEMBROKE

MEETING MINUTES: DECEMBER 13, 2021

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

STARTING TIME: 7:00 pm

BOARD MEMBERS PRESENT: Frederick Casavant (Chairman), Christopher McGrail (Vice-Chairman), John Grenier (Clerk), Arthur Boyle (Alternate), and Louis Christian Carpenter (Alternate).

BOARD MEMBERS ABSENT: None.

ALSO PRESENT: Matthew Heins (Planning Board Assistant), Patrick McMahon, Maura McMahon, Anthony Riley, Patricia McCabe, William McCabe, Michael McCarthy, William Buckley, and others.

OPENING THE MEETING

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

For this entire board meeting, Mr. Casavant, Mr. McGrail and Mr. Grenier were serving as board members. Mr. Boyle and Mr. Carpenter were present but not serving as board members.

ADMINISTRATIVE ACTIONS

Mr. Casavant made a motion to approve the minutes of November 22, 2021, Mr. McGrail seconded the motion, and the board voted unanimously in favor.

PUBLIC HEARING FOR CASE #10-21 APPEAL OF BUILDING INSPECTOR'S DECISION NOT TO ISSUE BUILDING PERMIT AT 58 PHILLIPS ROAD

Mr. Casavant opened the public hearing on the application of Patrick McMahon and Maura McMahon, c/o Anthony Riley, Esq., Galvin & Galvin, PC, 10 Enterprise Street, Suite 3, Duxbury, MA 02332, to appeal, in accordance with the Zoning Bylaws of the Town of Pembroke, Section IV.1.A.4 (Accessory Uses on Same Lot as Detached One-Family House), Section VI.B. (Zoning Board of Appeals), and Section VI.C. (Appeals to the Zoning Board of Appeals), the Building Inspector's decision not to issue a building permit for a proposed garage (accessory use) on a property which currently contains a detached one-family house. The appeal is regarding the property located at 58 Phillips Road, Pembroke, MA 02359, in Residence District A and the Water Resource and Groundwater Protection Overlay District, as shown on Assessors' Map B7, Lot 15E.

The applicants Patrick McMahon and Maura McMahon were present, along with attorney Anthony Riley representing them.

Mr. Casavant explained to Mr. Riley that he lives on Phillips Road, though he is not an abutter to 58 Phillips Road (i.e., does not live within 300 feet and did not receive an abutter notification

letter). He asked if Mr. Riley had any objection to him serving on the board for the public hearing, given this proximity, and Mr. Riley said he did not have a problem with it.

Mr. Riley explained that Patrick McMahon and Maura McMahon had applied for a building permit to build a garage on the property at 58 Phillips Road, and the building permit had not been issued by the building inspector. He said that the garage complies with all the zoning requirements, and noted that the zoning bylaw does not specify a specific dimensional size limit for a garage as an accessory use to a single-family residential property. He argued that the zoning bylaw's prohibition of a garage for the storage of more than four automobiles does not apply because this garage would not contain more than four automobiles.

Mr. Heins clarified that Mr. McMahon had been previously informed that, due to the size of the proposed garage (which is larger than a four-car garage), he would need to receive a variance from the Zoning Board of Appeals before a building permit could be issued.

Mr. Riley argued that the zoning bylaw's prohibition of a garage for the storage of more than four automobiles is a use restriction, not a size restriction, and so it was wrong of the building inspector to deny the building permit. He explained that the McMahons did not intend to keep more than four cars in the garage.

Mr. Grenier and Mr. McMahon discussed the garage door. Mr. McMahon described his experience of applying for the building permit, and explained that he would store boats and a trailer (holding one of the boats) in the garage.

In reply to Mr. McGrail's question, Mr. McMahon said his electrical business (Cadillac Hill Electric) is based in his home, and described how his business operates. Mr. Riley emphasized that the garage's purpose is not related to the electrical business. Mr. McMahon described his need for more storage space in general.

Mr. Grenier, Mr. McGrail and Mr. McMahon discussed some building code issues about the garage door and fire safety. Mr. Riley restated his position briefly.

Mr. Heins said that a typical 4-car garage would be around 1,000 square feet, and so this proposed garage, being 1,800 square feet (interior space), is significantly larger than what is allowed. He argued that if this provision of the zoning bylaw is interpreted as merely use-related with no connection to size, then the provision has no "teeth" at all and becomes meaningless.

Mr. Riley argued, however, that the regulation is clearly tied to use, not size. Discussion followed among Mr. McMahon, Mr. Riley, and the board members.

Mr. Casavant opened the public hearing to comments and questions from the public.

Michael McCarthy, an abutter, said he did not object to the proposed garage, but wanted to be sure it did not become an in-law apartment someday, especially since its proposed design includes a bathroom. He noted his concern about late-night deliveries. He also questioned the need for such a large garage. In addition, he expressed concern about the extent of Mr. McMahon's business being run out of his house.

Mr. Casavant said that the size of the proposed garage is a concern and does not seem in accord with the meaning of the zoning bylaw. Debate followed.

William Buckley, a member of the public, suggested that it would be better to construct one large building than several small buildings.

Another member of the public, whose name was not clear, said that she does not object to the proposed garage. She noted that she has two pontoon boats on her property, and speculated as to how large a garage she would need if she stored them and other items in it.

In reply to Mr. Casavant's question, Mr. Riley said they are asking the board to order the building inspector to issue the building permit which Mr. McMahon applied for.

Mr. Casavant and Mr. Riley debated the issue of the garage's size. Mr. Grenier discussed the size as well. Mr. Heins said that the building inspector would probably be willing to specify an upper limit to the size of a 4-car garage.

Some discussion and debate ensued. Mr. Casavant emphasized again that his interpretation of the bylaw is that the size cannot be larger than appropriate for a 4-car garage. More discussion took place.

Mr. Boyle pointed out that he was not serving as a board member for this hearing, but that as a member of the public his main concerns would be the septic system and the potential for the garage to become an in-law apartment someday.

Mr. McGrail said the language of the zoning bylaw needed to be improved. He suggested certain things could be conditioned in the decision. Mr. Casavant said a smaller size, which was the key point at stake, could not be conditioned.

Mr. Casavant asked Mr. Riley if he wished to say anything further, and he said no. Mr. McMahon said that the nearby water treatment plant is uglier than his garage would be.

Mr. Casavant made a motion to close the open public hearing and go into deliberations. Mr. McGrail seconded the motion, and the board voted unanimously in favor.

Mr. McGrail said he was inclined to approve the appeal and order the building inspector to issue the building permit. He noted that the zoning bylaw does not specify a specific numerical size restriction. But he recommended the decision could be conditioned to prevent the garage from becoming some other use in the future.

Mr. Grenier said he agreed with Mr. McGrail, and that his main concern was future use. Conversation followed. Mr. McGrail noted that the zoning bylaw could be amended in the future to be more precise in terms of the size of an allowable garage. Mr. Casavant said he was opposed to approving the appeal.

Mr. McGrail made a motion to approve the appeal of applicant Patrick McMahon and Maura McMahon for the property at 58 Phillips Road. Mr. Grenier seconded the motion. Mr. McGrail and Mr. Grenier voted in favor, and Mr. Casavant voted against.

The result of the vote was a denial of the application, because a unanimous favorable vote of all three board members is necessary to approve an appeal.

Mr. Heins explained that he would write up the board's decision and check the verbiage with Mr. Casavant before filing it with the town clerk.

DISCUSSION ABOUT FUTURE REMOTE MEETINGS OF THE BOARD

Mr. Heins and the board discussed how to conduct the remote (virtual) Zoom meetings of the board in the future, and in particular whether to allow any member of the public to join a meeting or to restrict it to applicants and their representatives.

The meeting was adjourned.