

ZONING BOARD OF APPEALS / TOWN OF PEMBROKE

MEETING MINUTES: MAY 16, 2022

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

STARTING TIME: 7:00 pm

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

BOARD MEMBERS ABSENT: Frederick Casavant (Chairman) and Arthur Boyle (Alternate).

ALSO PRESENT: Matthew Heins (Planning Board Assistant), James Smith, Donald Nagle, Robert DeMarzo, Michael Cohen, Valerie Johnson, Kelly Green, Peter Mason, Kevin O'Callaghan, Rachael O'Callaghan, Tom Conway, John Naples, E. Naples, Clark A. Page, Dan Hatch, Shanna Hatch, Ralph Rose, Charles Quinn, Leslee Quinn, Matthew Mitchell, Kevin Grady, Jason Kriger, Dan Murphy, Matt Murphy, Cynthia Murphy, L. Sullivan, Mark Venuto, Cynthia Levesque, and others.

OPENING THE MEETING

The Vice-Chairman Mr. McGrail opened the meeting by reading the Chairman's statement.

PUBLIC HEARING FOR CASE #7-22 VARIANCES AND SPECIAL PERMIT FOR SINGLE-FAMILY HOUSE AT 80 MONROE STREET

Mr. McGrail opened the public hearing on the application of Kevin and Rachael O'Callaghan, 80 Monroe Street, Pembroke, MA 02359, requesting variances and a special permit in accordance with the Zoning Bylaws of the Town of Pembroke, Section IV.1.D.2 Front Yard Setback, Section IV.1.D.3 Rear Yard Setback, and Section V.5 Nonconforming Uses, to construct an expansion of an existing single-family house that would contain several rooms and a garage. The property is located at 80 Monroe Street, Pembroke, MA 02359, in Residence District A and the Water Resource and Groundwater Protection District, as shown on Assessors' Map C5, Lot 62.

Kevin and Rachael O'Callaghan were present. Mr. O'Callaghan explained to the board that the project is to enlarge an existing house by constructing an expansion that would contain several rooms and a two-car garage.

The expanded portion of the house would be about 25 feet from the front property line and about 21 feet from the rear property line, necessitating setback variances. Since the house is a preexisting nonconforming structure due to the lot's odd shape and the front yard setback, a special permit was also necessary.

Mr. O'Callaghan and the board members discussed the project briefly. He explained that though the house is being expanded, no bedrooms are being added. He also mentioned that the driveway will need to be slightly relocated due to the new garage. The board members indicated that they had no objections to the project.

Mr. McGrail asked if any members of the public had comments, but nobody spoke.

Mr. McGrail made a motion to approve the application to grant the variances and special permit, Mr. Grenier seconded the motion, and the board voted unanimously in favor.

PUBLIC HEARING FOR CASE #8-22 VARIANCE FOR SINGLE-FAMILY HOUSE AT 56 INGHAM WAY

Mr. McGrail opened the public hearing on the application of Clark A. Page, 56 Ingham Way, Pembroke, MA 02359, requesting a variance in accordance with the Zoning Bylaws of the Town of Pembroke, Section IV.1.D.3 Side Yard Setback, to construct an expansion of an existing single-family house by enlarging the garage. The property is located at 56 Ingham Way, Pembroke, MA 02359, in Residence District A, as shown on Assessors' Map D13, Lot 60.

Clark A. Page was present and he described the project, which is to enlarge an existing house by expanding the size of the garage.

Since the expanded garage would be about 18 feet from the side property line and the zoning bylaws specify a side yard setback of 20 feet, a variance was necessary.

Mr. Page and the board talked about the project briefly.

Mr. McGrail made a motion to approve the application for Case #8-22, Mr. Grenier seconded the motion, and the board voted unanimously in favor.

DISCUSSION AND ADMINISTRATIVE ACTIONS

Mr. Heins mentioned that a comprehensive permit ("40b") application is anticipated soon for the former Shepherd's Funeral Home property on Mattakesett Street, and this led to a brief discussion.

Mr. McGrail made a motion to approve the minutes of April 4, 2022. Mr. Grenier seconded the motion, and the board voted unanimously in favor.

PUBLIC HEARING FOR CASE #9-22 VARIANCE AND SPECIAL PERMIT FOR SINGLE-FAMILY HOUSE AT 29 PLYMOUTH STREET

Mr. McGrail opened the public hearing on the application of Shanna and Dan Hatch, 29 Plymouth Street, Pembroke, MA 02359, requesting a variance and special permit in accordance with the Zoning Bylaws of the Town of Pembroke, Section IV.1.D.2 Front Yard Setback and Section V.5 Nonconforming Uses, to construct an expansion of an existing single-family house that would consist of a six-foot-wide "farmers porch." The property is located at 29 Plymouth Street, Pembroke, MA 02359, in Residence District A, as shown on Assessors' Map A5, Lot 68.

Shanna and Dan Hatch came before the board, and described the project. The "farmers porch," with a width of six feet, would extend around two sides of the house.

The porch would be about 25 feet from the front property line. Because the zoning bylaws require a front yard setback of 40 feet, a variance was necessary. As the house is a preexisting nonconforming structure due to its current front yard setback of about 31 feet, a special permit was necessary.

Mr. Hatch, Ms. Hatch and the board discussed the project, and the board members said they supported it. Mr. McGrail opened the hearing to comments from the public, but nobody spoke.

Mr. McGrail made a motion to approve the application for a variance and special permit for Case #9-22 at 29 Plymouth Street. Mr. Carpenter seconded the motion, and the board voted unanimously in favor.

DISCUSSION

The board and Mr. Heins discussed the recently approved cell tower at 85 Washington Street (behind Circle Furniture). Mr. Heins said it would probably be built fairly soon. The conversation also encompassed wind turbines.

Mr. Heins and the board talked about affordable housing and comprehensive permit “40b” projects.

PUBLIC HEARING FOR CASE #4-22 VARIANCE FOR CONTRACTORS’ UNITS AT 715 WASHINGTON STREET

Mr. McGrail reopened the public hearing (continued from April 4, 2022) for Case #4-22 on the application of George H. Thibeault, 599 Summer Street, Marshfield, MA 02050, requesting a variance in accordance with the Zoning Bylaws of the Town of Pembroke, Section IV.2.D.1. lot size of at least 120,000 square feet exclusive of easements, cranberry bogs, wetlands, floodplains and watersheds. The applicant proposes to construct a two-story building (one floor plus mezzanine) with a footprint of 10,000 square feet (later changed to 8,000 square feet) consisting of five separate contractor’s bays, a.k.a. tradesmen’s units. Each unit would contain a first-floor garage workshop and second-floor (mezzanine) office. There would also be a paved parking area and access drive. The property is located in the Residential-Commercial Zoning District, at 715 Washington Street, Pembroke, MA 02359, as shown on Assessors’ Map F9, Lot 24.

Attorney Matthew Mitchell, representing the project, was present, along with the project engineer Kevin Grady.

Mr. McGrail explained that a revised version of the project had been submitted, and that therefore he would give members of the public a chance to comment again on the project. But first he allowed those representing the project to describe the revisions.

Mr. Mitchell spoke briefly, and then Mr. Grady described how the project had been adjusted since the previous public hearing. He explained that the size of the building had been reduced slightly to a footprint of 160 feet by 50 feet, and that the architectural style had been changed to wood siding and a sloped roof to look more traditional.

In reply to a question, Mr. Grady noted that the size of the parking lot had been reduced, and that some of the setbacks from the property boundaries had been increased. The board and Mr. Grady discussed what the lighting of the property would be like.

Mr. McGrail opened the meeting to comments from the public.

Donald Nagle, an attorney representing abutter James Smith, spoke. He acknowledged the changes to the design, but emphasized that the key question before the board was whether to grant the variance being requested. He said that the reason the applicant lacks the required 120,000 square feet of uplands is because the property owner sold an abutting lot in 2020. Thus, he said, the applicant had created his own hardship and by case law should not receive a variance.

Robert DeMarzo, a member of the public, asked if the property could be developed with single-family houses if the project were denied, and this was confirmed. Thus, he pointed out, the property owner does have other alternatives.

James Smith, an abutter, urged the board to deny the requested variances. He emphasized that the project was not a good fit with the neighborhood, and said that he felt the property owner and developer had not been acting in good faith.

Michael Cohen, an abutter, criticized the project. He said that he believed the property is commercial, not industrial, and that this project would be industrial.

Mr. Smith criticized the project again and complained about the previous process of the Planning Board approving the project's site plan application.

Mr. Cohen asked if the revised design should be approved by the Planning Board first, and Mr. McGrail explained that was not necessary (i.e., the Zoning Board of Appeals could grant the variance first), but that the revised design would have to be approved by the Planning Board eventually. A brief debate took place.

Mark Venuto, a member of the public, recommended the project be denied, and cautioned that excessive development was harming Pembroke.

John Naples, a nearby resident, asked if the applicant was requesting a variance of the environmental study, and it was explained that was not a matter for the Zoning Board of Appeals. Brief discussion followed.

Mr. Mitchell explained that the reason the project had been changed was to address the concerns of the board and abutters. He said that the project's impacts have been reduced significantly.

Mr. Grady said that the project had legal merit in relation to zoning law, and that furthermore "this lot predated zoning" (seemingly referring to when the zoning bylaw's 120,000-square-foot uplands requirement was added).

Mr. Nagle disputed Mr. Grady's claim about zoning, and cited the "doctrine of merger" to argue that the variance would be invalid because the applicant created the hardship by selling the adjacent property.

Mr. Mitchell argued that the doctrine of merger does not apply to commercial properties, but only to residential properties. He explained that the doctrine of merger is complex and has many exceptions, taking intention into account. He noted that the two adjacent lots have long been separate in practice.

A short discussion took place about the process by which the properties were split years ago. Another brief conversation took place about the project's sound study and audio impacts.

Mr. Cohen argued the property is "commercial-residential," with regard to the issue of the doctrine of merger. Discussion followed.

Mr. DeMarzo explained that the zoning district has been "Residential-Commercial" for a long time. He mentioned a nearby condominium project.

Mr. McGrail made a motion to move Case #4-22 and grant the variance application of George Thibeault for 715 Washington Street. Mr. Grenier seconded the motion.

The board began deliberating.

Mr. Grenier discussed the difficulties in making a decision. He noted that typically the board tries to be accommodating in considering variances, and that this would be for about 7% of the square footage, but acknowledged the neighbors' concerns.

Mr. McGrail emphasized that future development nearby is always a risk for homeowners, especially those living near a commercial corridor like Route 53 (Washington Street). He said that the abutters have legitimate concerns, but noted that the project does appear less impactful than what was originally proposed (the sawmill or lumber facility) on the property.

Mr. Carpenter said that he was also finding it difficult to make a decision.

The motion (to grant the variance) having been made, Mr. McGrail voted in favor of the motion. Mr. Carpenter and Mr. Grenier also voted in favor, and the motion passed.

It was clarified that the variance was being granted for the redesigned version of the project, i.e., the new drawings presented with a footprint of 8,000 square feet, and that this redesigned version had to go back before the Planning Board for that board's approval.

PUBLIC HEARING FOR CASE #9-21 APPEAL OF PLANNING BOARD'S SITE PLAN DENIAL DECISION REGARDING 715 WASHINGTON STREET

Mr. McGrail reopened the public hearing (continued from October 4, 2021, November 1, 2021, November 22, 2021, February 7, 2022, and April 4, 2022) for Case #9-21 on the application of George Thibeault, 599 Summer Street, Marshfield, MA 02050, 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 the Site Plan application for a proposed wood products and timber processing business at 715 Washington Street. The appeal is regarding the property located at 715 Washington Street, Pembroke, MA 02359, in the Residential-Commercial District, as shown on Assessors' Map F9, Lot 24.

Given the board's previous decision to grant the variance for 715 Washington Street, Mr. Mitchell requested to withdraw the appeal application without prejudice.

Mr. McGrail made a motion that the board accept the applicant's request to withdraw the appeal application without prejudice. Mr. Grenier seconded the motion, and the board voted unanimously in favor.

PUBLIC HEARING FOR CASE #10-22 VARIANCES AND SPECIAL PERMIT FOR SINGLE-FAMILY HOUSE AT 206 QUEENS BROOK ROAD

Mr. McGrail opened the public hearing on the application of Lawrence Levesque, 206 Queens Brook Road, Pembroke, MA 02359, requesting a special permit and variances in accordance with the Zoning Bylaws of the Town of Pembroke, Section IV.1.B.4. Attached Dwelling Unit, Section IV.1.B.4.c. Lot at Least 40,000 Square Feet, Section IV.1.B.4.a. Attached Dwelling Unit No More Than 50% of Existing House, Section IV.1.D.2. Front Yard Setback, and Section IV.1.D.3. Side Yard Setback, to construct an

attached dwelling unit (“in-law apartment”) as an expansion of an existing single-family house. The property is located at 206 Queens Brook Road, Pembroke, MA 02359, in Residence District A and the Water Resource and Groundwater Protection District, as shown on Assessors’ Map B7, Lot 44J.

Cynthia Levesque came before the board, and described the project. Its basic purpose is to build an attached dwelling unit (“in-law apartment”) as an addition to the existing single-family house. For this, a special permit was required. Because of the small lot size, the square footage of the attached dwelling unit relative to the house, and the front yard and side yard setbacks, several variances were required.

The board discussed the project, and Mr. Grenier made some comments. Mr. Heins mentioned that the zoning bylaw requires a minimum lot size of 40,00 square feet for attached dwelling units (“in-law apartments”), and so the board should consider the precedent it might set to grant a variance to allow a smaller lot size.

The board and Ms. Levesque talked about the project, and she described it in slightly more detail. Mr. Heins clarified that the “breezeway” portion of the house would be conditioned space so that the entire house including the in-law apartment would be one structure.

Mr. McGrail made a motion to grant the special permit and variances for Case #10-22 at 206 Queens Brook Road. Mr. Grenier seconded the motion, and the board voted unanimously in favor.

The meeting was adjourned.