

ZONING BOARD OF APPEALS / TOWN OF PEMBROKE

MEETING MINUTES: SEPTEMBER 19, 2022

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

STARTING TIME: 7:00 pm

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

BOARD MEMBERS ABSENT: Louis Christian Carpenter (Alternate).

ALSO PRESENT: Matthew Heins (Planning Board Assistant), Denise Moraski (Open Space Committee), Daniel Smith, Jr. (Planning Board), Fraser Townley, Eamon Fee, Kathi Fee, John Jankowski, John Cannon, Brian Cain, Edward Cain, Stephen Boyden, Pamela Boyden, Donald McGill, Marzena Laslie, Alexa Laslie, Cassandra Laslie, Kevin Bonney, Kim Bonney, Carol Edgeworth, Sean Dempsey, Angela Dempsey, Frank Kelly, Sidney Kelly, Kimberly Kenney, Joan O'Donoghue, Kevin Grady, Cynthia Chekoulias, Jacqueline Ranahan, Peter Soszynski, and others.

OPENING THE MEETING

The Chairman Mr. Casavant opened the meeting by reading the Chairman's statement: "Please note that this meeting is being made available to the public through an audio 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."

At this time, the board members present and serving on the board were Mr. Casavant, Mr. McGrail and Mr. Grenier.

PUBLIC HEARING FOR CASE #17-22 VARIANCE AT 210 BARKER STREET

Mr. Casavant reopened the public hearing (continued from August 8, 2022) on the application of Eamon Fee, 210 Barker Street, Pembroke, MA 02359, requesting a variance in accordance with the Zoning Bylaws of the Town of Pembroke, Section IV.1.A.4. Garage for Storage of More Than Four Automobiles, to build a shed of about 3,500 square feet which would hold various machinery and equipment primarily to be used for landscaping and maintenance. The property is about 32 acres in size, and contains a single-family house and also an airstrip referred to as Sherman Airfield. The property is located at 210 Barker Street, Pembroke, MA 02359, in the Residence A District, as shown on Assessors' Map D10, Lots 12 and 12A.

Eamon Fee, the applicant, was present.

Mr. Casavant explained that while the application was for a variance, in his judgment it was more appropriate to consider the project as an alteration or expansion of a preexisting nonconforming use, and for the board to decide on that basis. He said that the board could issue a finding that the project, as an extension or alteration of a legal nonconforming use, would not be substantially more detrimental to the neighborhood. He explained that he had consulted with town counsel regarding

this situation. He also mentioned that this solution (i.e., approving it as an alteration or expansion of a preexisting nonconforming use) has a lower legal threshold to meet than getting a variance.

A discussion followed, and Mr. Fee indicated he was amenable to this solution.

Mr. Grenier said that he had visited the site, and felt the project was reasonable.

Mr. Casavant opened the hearing to comments from the public, and a few people present briefly said they were in favor of the project.

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

The board members deliberated, and were in agreement to approve the proposed shed, hangar or garage as an alteration or expansion of a preexisting nonconforming use. The board believed that the building would not be more detrimental than the current use in that neighborhood.

Mr. Casavant made a motion that, with regard to Mr. Fee's request in Case #17-22, the board make a finding that the alteration or extension of the proposed new building is not substantially more detrimental than the existing use to the neighborhood. Mr. McGrail seconded the motion.

A brief discussion took place among the board members.

The motion having been made and seconded, the board voted unanimously in favor.

PUBLIC HEARING FOR CASE #19-22 SPECIAL PERMIT AND VARIANCES AT 40 OLD WASHINGTON STREET

Mr. Casavant reopened the public hearing (continued from August 8, 2022) on the application of John Cannon, 40 Old Washington Street, Pembroke, MA 02359, requesting a special permit and variances in accordance with the Zoning Bylaws of the Town of Pembroke, Section V.5. Nonconforming Uses, Section IV.1.D.2. Front Yard Setback, and Section IV.1.D.3. Side Yard Setback, to construct an expansion to an existing single-family house. The property is located at 40 Old Washington Street, Pembroke, MA 02359, in the Residential-Commercial District, as shown on Assessors' Map E10, Lot 24.

John Cannon was present, and he explained that he and the adjacent property owner had agreed on a landscaping easement on the adjacent property, as requested previously by the board. The document and drawing for the easement had been submitted to the board, though they had not been signed yet. The easement's purpose is to provide a buffer and visual screening, given that the proposed expansion of the house would be so close to the property line.

There was a short discussion between the board members, Mr. Heins and Mr. Cannon.

Mr. Casavant opened the hearing to comments from the public, but nobody spoke.

Further conversation took place, as Mr. Cannon described certain aspects of the project and the adjacent property owner's considerations. (A multifamily housing project was recently approved on the adjacent property.)

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

The board members discussed and evaluated the project, and were in general agreement that it could be approved, but with a condition that the easement be executed and recorded.

Mr. Casavant made a motion to allow the requested variances and special permit for application #19-22 of John Cannon for 40 Old Washington Street, as shown on the plan submitted with the application dated July 5, 2022, subject to and conditioned on Mr. Cannon securing the fully executed easement in the unsigned form filed today, along with the plan highlighted in yellow filed today showing a 20-foot-by-100-foot easement area, and this easement to be fully executed in recordable form and recorded at the Registry of Deeds with the decision granting the variances and special permit. Mr. McGrail seconded the motion, and the board voted unanimously in favor.

At this time, Mr. Casavant left the board meeting. As Vice-Chair, Mr. McGrail became Acting Chair in his absence.

While waiting for board member Mr. Boyle to come (which would give the board three members again), Mr. McGrail, Mr. Grenier and Mr. Heins chatted for a short period of time. A few minutes later, Mr. Boyle arrived, at which time the board had three members (Mr. McGrail, Mr. Grenier and Mr. Boyle) serving again.

PUBLIC HEARING FOR CASE #21-22 SPECIAL PERMIT AND VARIANCE AT 6 MARION WAY

Mr. McGrail opened the public hearing on the application of Pamela Boyden, 6 Marion Way, Pembroke, MA 02359, requesting a special permit and variance in accordance with the Zoning Bylaws of the Town of Pembroke, Section V.5. Nonconforming Uses and Section IV.1.D.3. Side Yard Setback, to construct an expansion to an existing single-family house. The property is located at 6 Marion Way, Pembroke, MA 02359, in Residence District A, as shown on Assessors' Map B2, Lots 3146 to 3154.

Pamela Boyden and Stephen Boyden were present, and they explained that the project is to build an 8-foot-by-12-foot addition to the existing house for a pantry.

Discussion followed, with the board members, Mr. Heins and the Boydens conversing about the nearby "paper street" (unbuilt road) in particular.

Mr. McGrail opened the hearing to comments from the public, but nobody spoke.

Mr. McGrail made a motion that the board grant the requested special permit and variance for Case #21-22 of applicant Pamela Boyden for the property at 6 Marion Way, Mr. Grenier seconded the motion, and the board voted unanimously in favor.

PUBLIC HEARING FOR CASE #22-22 SPECIAL PERMIT AND VARIANCES AT 11 DEVEUVE LANE

Mr. McGrail opened the public hearing on the application of Genowefa Sarnicka, 11 Deveuve Lane, Pembroke, MA 02359, requesting a special permit and variances in accordance with the Zoning Bylaws of the Town of Pembroke, Section V.5. Nonconforming Uses, Section IV.1.D.3. Side Yard Setback, and Section IV.1.D.3. Rear Yard Setback, to construct a deck as an expansion of an existing single-family house. The property is located at 11 Deveuve Lane, Pembroke, MA 02359, in Residence

District A and the Water Resource and Groundwater Protection District, as shown on Assessors' Map A8, Lot 68.

Marzena Laslie, representing her mother Genowefa Sarnicka, came before the board. She explained that the objective is to add a 12-foot-by-12-foot deck on the rear of the house.

Discussion ensued, and the board and Ms. Laslie talked about the easement on the property and the location of the septic system. Ms. Laslie explained that the deck would not interfere with the easement or the septic system.

The board members and Ms. Laslie discussed the proposed deck's elevation, and Ms. Laslie described the project in more detail. The history of the property, and of Deveuve Lane, was also discussed.

Mr. Laslie explained that they had partly built a floating deck on the property without understanding all the applicable rules, and so they were about to remove it.

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

Carol Edgeworth, a nearby resident, came before the board. She explained that the floating deck or patio was within the easement and that the building inspector had told them to remove it a few months ago. She noted that she had no objection to the project, i.e., the proposed deck. Discussion followed.

Mr. Boyle suggested that perhaps the application could be withdrawn without prejudice to give time for Ms. Laslie to remove the floating deck. Ms. Laslie described the likely process of construction. Mr. McGrail said a decision could be conditioned on the floating deck being removed.

Ms. Laslie asked how long a decision by the board would be valid for, and Mr. Heins explained this.

Mr. Heins mentioned that one option would be to continue the hearing to give Ms. Laslie the chance to remove the floating deck. Mr. Boyle said he would prefer to do this. It was agreed that Ms. Laslie would submit photographs showing that the floating deck was gone.

Mr. Boyle made a motion to continue the public hearing to October 17, 2022, at 7:00 pm, Mr. McGrail seconded the motion, and the board voted unanimously in favor.

PUBLIC HEARING FOR CASE #23-22 SPECIAL PERMIT AND VARIANCE AT 34 PINE CIRCLE

Mr. McGrail opened the public hearing on the application of Frank and Sid Kelly, 34 Pine Circle, Pembroke, MA 02359, requesting a special permit and variance in accordance with the Zoning Bylaws of the Town of Pembroke, Section V.5. Nonconforming Uses and Section IV.1.D.3. Side Yard Setback, to construct a shed which would be 10 feet by 20 feet in size. The property is located at 34 Pine Circle, Pembroke, MA 02359, in Residence District A and the Water Resource and Groundwater Protection District, as shown on Assessors' Map B6, Lot 383.

Frank Kelly and Sidney Kelly came before the board. Mr. Kelly explained that they had recently moved into the property at 34 Pine Circle, and wish to replace a small, dilapidated shed with a slightly larger shed with dimensions of 10 feet by 20 feet. The new shed would be a bit further from the property line than the existing shed; one corner would be 5 feet from the property line and another corner would be 8 feet from the property line. Due to the small size of the property, they wish to locate the shed near the edge of the property to give themselves some usable space.

The board discussed the project briefly.

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

Cynthia Chekoulias, a resident of an adjacent property, came before the board. She said that her house is very close to where the existing shed is and the proposed shed would be, and also that on account of the topography the shed would be much higher than her house.

Mr. Kelly and Mr. McGrail discussed the likely height of the shed. Mr. McGrail asked Mr. Kelly if they could locate the shed further from the property line, and Mr. Kelly offered to make the corner distances 10 feet and 8 feet. He pointed out that a new shed would be less of an eyesore than the existing shed.

Ms. Chekoulias said she would prefer that there be no shed on the property at all. She speculated that the new shed would be a fire hazard, and Mr. McGrail said that was outside the board's purview.

Ms. Chekoulias suggested the new shed be located on the other side of the property, but Mr. and Ms. Kelly said that was not feasible. Ms. Chekoulias suggested the septic system's leaching field would be a problem, but Mr. Kelly disagreed.

Kimberly Kenney, a nearby resident, said that she was concerned that the shed would affect her view of the pond.

A discussion took place among Mr. Grenier, Ms. Chekoulias, Mr. McGrail, Mr. Kelly and Ms. Kelly about various aspects of the project.

Joan O'Donoghue, a member of the public, said that she was the former owner of the property. She said the septic system was in a particular location, and that the boundary line between the two properties is unclear.

A dispute arose among various people present about the property line, how it had been surveyed, and the history of the conflicts over the property line. Mr. Heins said that it is not the board's role to adjudicate property boundary disagreements, and that typically a decision of the board is based on (and thus conditioned on) the specific drawings and dimensions submitted by the applicant.

Mr. McGrail made a motion to close the public portion of the public hearing, and Mr. Grenier seconded the motion.

Mr. McGrail and Mr. Kelly discussed the situation, and Mr. McGrail suggested they submit septic plans and surveyor's plans. Conversation ensued.

Mr. McGrail made a motion to continue the public hearing to October 17, 2022, at 7:15 pm, Mr. Grenier seconded the motion, and the board voted unanimously in favor.

PUBLIC HEARING FOR CASE #24-22 VARIANCES AT 74 CONGRESS STREET AND 0 CONGRESS STREET

Mr. McGrail opened the public hearing on the application of Whatbarn, LLC, 29 Duck Hill Lane, Duxbury, MA 02332, requesting variances in accordance with the Zoning Bylaws of the Town of Pembroke, Section IV.2.D.4. Front Yard Setback, Section IV.2.D.5. Side Yard Setback, Section IV.2.D.6. Rear Yard Setback, and Section IV.2.D.1. Lot Size Upland Area & One Dwelling Unit Per 10,000 Square Feet of Upland Lot Area, to construct a multifamily residential project of eight (8) buildings

containing a total of eleven (11) residential units, along with access drives, parking areas, and landscaping, on a property of about 3.3 acres in size that consists of two adjacent lots. The property is located at 74 Congress Street and 0 Congress Street, Pembroke, MA 02359, in the Residential-Commercial District, as shown on Assessors' Map F9, Lot 11, and Map F9, Lot 12C.

Donald McGill, the developer of the project, was present, along with the project engineer Kevin Grady.

Mr. Grady summarized the project, describing the location, the surrounding properties, and how the site would be configured with the buildings and landscaping. He also described the existing structures on the property, and explained that most of them would be removed (or were in the process of being removed) but the existing barn would be kept and converted into residential units.

Mr. Grady said that the proposed use is an allowed use per the zoning bylaws, and explained that a total of 11 residential units were being proposed in 8 structures. He said that if the variances are granted, then they would apply for a special permit from the Planning Board. Mr. Heins clarified that they would also need site plan approval from the Planning Board.

Mr. Grady went over the design of the project in more detail, describing why the variances were being requested. Mr. Heins further clarified which variances were applied for.

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

Denise Moraski, the resident of an adjacent property and a member of the Open Space Committee, objected to the project. She explained that many wetlands are on and around the property, and that water from there drains into the North River. She said that the property did not perc in previous years, but now it percs due to the drought. She mentioned that she has an organic farm, and is worried about the impact of this project. She emphasized that a nearby intersection is hazardous, and this project would cause more traffic and make it even worse. She suggested that single-family houses be built instead on the property.

Angela Dempsey and Sean Dempsey, nearby residents of Taylor Street, spoke against the project. Ms. Dempsey said that the project does not meet the standard for variances, and suggested that single-family houses would be more compatible with the surrounding neighborhood. Mr. Dempsey emphasized that the setback variances are not necessary.

Jacqueline Ranahan, a resident of Taylor Street, expressed her concerns about the wetlands, drainage and potential flooding. She emphasized how many accidents happen at the intersection of Congress and Taylor Streets. She said that the area is historic.

Mr. McGrail cautioned those present that some sort of development will probably happen on the property eventually, given the zoning district it lies in and its location near a state highway.

Kevin Bonney, the owner of an adjacent property, said he did not mind the property being developed but objected to the requested setback variances.

Mr. Grady said that the project would improve the property, and might improve the drainage and runoff as well. He mentioned that Mr. McGill's previous projects have benefited the town. He said that the project meets the wetlands requirements, but they are asking for zoning variances. He emphasized that the shape of the lot is the reason they are requesting the setback variances. He

noted that they are meeting the maximum density requirement of one residential unit per 10,000 square feet of upland. He described the measures that will be taken to handle the stormwater.

Mr. McGill explained that setback variances would allow them to space out the units, improving the appearance of the project. He noted that the project is designed for downsizers, and so it would not add many children to the schools.

A member of the public (who did not give her name) expressed various objections.

Mr. Grady and Mr. McGill described how the perc tests had been done.

Mr. McGrail made a motion to continue the public hearing to October 17, 2022, at 7:30 pm, Mr. Grenier seconded the motion, and the board voted unanimously in favor.

INTERVIEW WITH FRASER TOWNLEY, APPLICANT TO SERVE AS MEMBER OF THE ZONING BOARD OF APPEALS

Fraser Townley, a resident of Pembroke who has submitted an application to become a member of the Zoning Board of Appeals, came before the board for an informal interview.

Mr. Townley explained that he runs a business based in Pembroke, and described it in more detail. He is from Britain but has lived in the U.S. for many years and recently became a U.S. citizen.

Mr. McGrail described some aspects of being a board member, and Mr. Townley discussed his desire to play a role in the town's governance. Further discussion took place about the experience of being a board member and some of the conflicts that come before the board.

Mr. Heins explained that the Select Board actually has the authority to appoint members to the board, but typically accepts the recommendations of the board.

Mr. McGrail made a motion to recommend that Fraser Townley be appointed to the vacant seat on the Zoning Board of Appeals, Mr. Boyle seconded the motion, and the board voted unanimously in favor.

ADMINISTRATIVE ACTIONS

Mr. McGrail made a motion to approve the minutes of August 8, 2022, and Mr. Grenier seconded the motion. Mr. McGrail and Mr. Grenier voted in favor, and the motion passed.

The meeting was adjourned.