

ZONING BOARD OF APPEALS / TOWN OF PEMBROKE

MEETING MINUTES: NOVEMBER 7, 2022

LOCATION: Room 13 (second floor), Pembroke Town Hall

STARTING TIME: 7:00 pm

BOARD MEMBERS PRESENT: Frederick Casavant (Chairman), Louis Christian Carpenter (Alternate), and Arthur Boyle (Alternate).

Note: Board member Fraser Townley (Alternate) was also present, but was not serving on the board and was not seated with the board.

BOARD MEMBERS ABSENT: Christopher McGrail (Vice-Chairman) and John Grenier (Alternate).

ALSO PRESENT: Matthew Heins (Planning Board Assistant), George Verry (Building Inspector and Zoning Enforcement Officer), Alexander Weisheit (Town Counsel, participating by phone and not physically present), Kimberly Kroha, Brian Murphy, John Danehey, Russell Field, Kathy Field, Alan Hoye, 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."

PUBLIC HEARING FOR CASE #25-22 APPEAL FOR 260-280 OAK STREET AND 20 CORPORATE PARK DRIVE

Mr. Casavant opened the public hearing on the application of Russell D. Field, Trustee, 25 James Way, Scituate MA 02066, to appeal, in accordance with the Zoning Bylaws of the Town of Pembroke, Sec. VI.C. (Appeals to the Zoning Board of Appeals), the Zoning Enforcement Officer's decisions in response to the petitioner's previous request for zoning determination and enforcement. The appeals are regarding the properties located at 260-280 Oak Street and 20 Corporate Park Drive, Pembroke, MA 02359, in Industrial District A and the Medical Marijuana Overlay District, as shown on Assessors' Map G14, Lots 25F, 25G and 40.

George Verry, the Building Inspector and Zoning Enforcement Officer whose decisions were being appealed, was present.

The applicant Russell Field was present, along with his attorney John Danehey.

Brian Murphy, owner and/or operator of the properties at 260-280 Oak Street and 20 Corporate Park Drive (through LLCs or other corporate entities), was present, along with his attorney Kimberly Kroha.

Alexander Weisheit, an attorney with KP Law serving as Town Counsel (i.e., representing the town), was participating remotely by a cellphone on speakerphone.

Mr. Danehey gave a lengthy description of the reasons for the appeal, and also summarized the ongoing litigation regarding the 260-280 Oak Street property and described the history of the project recently built by Mr. Murphy on the property. He explained that the litigation is in land court at present, and that this appeal was before the board in part due to the judge's recommendation.

Mr. Danehey explained that the project at the 260-280 Oak Street property was not built in accordance with the approved site plan design. Because of this and also for other reasons, Mr. Field asked the Zoning Enforcement Officer to decide on certain issues, which Mr. Field and Mr. Danehey believe are zoning violations, on the adjacent properties at 260-280 Oak Street and 20 Corporate Park Drive. The Zoning Enforcement Officer (Mr. Verry) issued a letter stating that these are not zoning violations, which this application was appealing.

In his statements, Mr. Danehey often referred to the 260-280 Oak Street property and the entity that owns it as "Grissom Park," and to the 20 Corporate Park Drive property and the entity that owns it as "Corporate Park."

Mr. Danehey raised the issue of the 40% required landscaping for side yards, noting that 260-280 Oak Street and 20 Corporate Park Drive are owned by different entities and thus the rule applies along their borders.

Mr. Danehey said that the 260-280 Oak Street property violates the zoning bylaws' ban on common driveways, because of the multiple points of access between 260-280 Oak Street and 20 Corporate Park Drive.

Mr. Danehey described the storage of items outside at 260-280 Oak Street, and emphasized these were large items (not automobiles) being stored on a long-term basis. He said that such outside storage is only allowed, per the zoning bylaws, by special permit. He showed the board photographs of items being stored outside on the properties.

Mr. Danehey said that the 260-280 Oak Street property never received a valid occupancy permit, but only got a temporary occupancy permit which was rescinded.

Mr. Danehey described how items are being stored within the zoning setbacks at 260-280 Oak Street, which he stated is illegal.

Mr. Danehey said that the use of one of the buildings (at 260-280 Oak Street) was changed after the special permit and site plan approval were granted. He said this is not allowable.

Mr. Danehey explained that the fence at 260-280 Oak Street is higher than the allowed height of six feet, due to concrete blocks positioned below the fencing.

Mr. Danehey said that the 260-280 Oak Street property has more than two access points, in violation of the rules.

Mr. Danehey said that the property at 20 Corporate Park Drive also violates the zoning bylaws' prohibition against common driveways.

Mr. Danehey said that the illegal storage of items outside is also happening at 20 Corporate Park Drive.

Mr. Danehey said that items are also being stored illegally within the zoning setbacks at 20 Corporate Park Drive.

Mr. Danehey reiterated that 20 Corporate Park Drive is violating the zoning bylaws' prohibition against common driveways.

Mr. Danehey stated that for the 20 Corporate Park Drive property, a variance is needed from the landscaping requirements.

Mr. Danehey said that the 20 Corporate Park Drive property needs an approved site plan, since some of the work for the project at 260-280 Oak Street is overlapping onto that property.

Ms. Kroha responded to many of Mr. Danehey's points. First, she noted that the applicant bringing the appeal, Mr. Field, stores dumpster containers on his adjacent property at 240 and 258 Oak Street, and therefore does not suffer any negative impact from the properties at 260-280 Oak Street and 20 Corporate Park Drive.

Ms. Kroha went over aspects of the litigation history, and contested certain particulars of how Mr. Danehey had described it. She noted that the site plan had been substantially completed within two years of being approved.

Ms. Kroha stated that Mr. Field does not qualify as "aggrieved" under state law, and thus lacks the standing to bring such an appeal. Ms. Kroha also said that Mr. Verry's letter stating these are not zoning violations is correct.

Ms. Kroha said that the 40% landscaping requirement does not apply to setback areas containing access ways. She noted that this was part of the original site plan design, which Mr. Field did not appeal.

Ms. Kroha stated that the Planning Board had determined that the cross access between the two properties does not constitute common driveways.

Ms. Kroha described the judge's determination regarding the dumpsters stored outside by Mr. Field, and said that by this logic the outside storage on the properties is allowed because it is incidental. Moreover, she said that the special permit did not intend to limit the storage of items to inside the buildings.

Regarding the occupancy permit, Ms. Kroha said the remand order site plan's public hearing (before the Planning Board) is currently ongoing and will determine this issue.

Ms. Kroha said that the things within the zoning setbacks, such as the concrete blocks forming a retaining wall, are not structures. She stated that the height of the six-foot fence, atop concrete blocks, is not a violation, and that the doors and building footprint are not issues.

In closing, Ms. Kroha said that the appeal should be denied because the applicant is not aggrieved, and because the applicant failed to appeal on the prior occasion.

In reply to Mr. Casavant's question, Ms. Kroha explained that previously the building inspector issued a cease-and-desist letter, and so the zoning enforcement request was denied.

Mr. Casavant asked which issues could be resolved once the Planning Board makes its decision on the amended (remand order) site plan, and Ms. Kroha discussed this.

Mr. Danehey said that the building inspector's cease-and-desist letter was never sent to his client Russell Field, and thus Mr. Field did not have proper notice.

Mr. Casavant asked if the board's decision on this appeal could be appealed to land court, and Mr. Danehey answered in the affirmative.

Mr. Casavant asked Mr. Weisheit if he had anything to add. Mr. Weisheit said that he believes Mr. Verry's position and interpretation on these issues has been consistent over time, and that it is the board's discretion to interpret the zoning bylaws and agree or disagree with him. Ultimately, Mr. Weisheit said, the land court will probably address these issues.

Mr. Weisheit also expressed concerns about the "standing" [aggrieved] issue. In reply to Mr. Casavant's question, Mr. Weisheit said the board could use this issue as a basis for its decision. Mr. Casavant asked Mr. Danehey about this, and Mr. Danehey gave reasons why Mr. Field qualifies as aggrieved.

Mr. Boyle and Mr. Danehey discussed what changes would satisfy Mr. Danehey's client (Mr. Field).

Mr. Casavant asked Mr. Verry if he had anything to add, and Mr. Verry said he did not. Mr. Casavant and Mr. Verry discussed the issue of the concrete blocks holding up the fence.

Mr. Casavant asked Mr. Danehey if he had anything more to add, and Mr. Danehey said he did not.

Mr. Casavant asked if Ms. Kroha or Mr. Murphy had anything more to say about the fence. Mr. Murphy said such a fence is common, and Ms. Kroha noted that it is part of the ongoing site plan (remand order) public hearing.

Mr. Casavant asked if the concrete blocks (below the fencing) serve as a retaining wall to some extent, and Ms. Kroha said they do. Mr. Danehey expressed disagreement and criticized the blocks' appearance, and Mr. Murphy replied.

Mr. Casavant asked about the arbor vitae screening which will be in place eventually on Mr. Field's adjacent property, and Mr. Danehey briefly described this.

Mr. Field said that the concrete blocks are leaking because water is getting through the cracks, and a brief debate ensued.

Mr. Boyle made a motion that the board close the public comment portion of the public hearing and go into deliberations. Mr. Casavant seconded the motion, and the board voted unanimously in favor.

Mr. Casavant said he was inclined to agree with Mr. Verry's letter of determination, i.e., to deny the appeal.

Mr. Boyle raised the issue of the concrete blocks and whether they make the fence too high.

Mr. Carpenter said he was also inclined to agree with Mr. Verry.

Mr. Casavant reiterated his preference to agree with Mr. Verry and deny the appeal, and noted that the board has dealt with these issues on this property before.

Mr. Boyle commented that the rules which exist should be obeyed, and said he would vote to allow the appeal to go further.

Mr. Casavant asked Mr. Weisheit about the board's options as to approving the appeal, approving parts of the appeal, or denying the appeal. Mr. Weisheit said these were all options.

Mr. Heins pointed out that for a three-member board to approve an appeal, all three board members must vote in favor of it. (In other words, the appeal is denied unless all three board members vote to approve it.) Mr. Weisheit confirmed this.

Mr. Casavant made a motion that the board deny Mr. Field's appeal of Mr. Verry's response letter dated September 23, 2022. Mr. Carpenter seconded the motion. Mr. Casavant and Mr. Carpenter voted in favor, and Mr. Boyle voted in opposition.

Mr. Casavant explained to Mr. Weisheit that two board members had voted to deny the appeal and one board member had voted against this motion, and Mr. Weisheit confirmed that the appeal had been denied.

Mr. Casavant made a motion to close the public hearing, Mr. Carpenter seconded the motion, and the board voted unanimously in favor.

ADMINISTRATIVE ACTIONS

Mr. Casavant made a motion to approve the minutes of October 17, 2022, Mr. Boyle seconded the motion, and the board voted unanimously in favor.

Mr. Heins mentioned that the creation of a new master plan would be discussed at the Planning Board meeting on November 14.

The meeting was adjourned.