

ZONING BOARD OF APPEALS / TOWN OF PEMBROKE

MEETING MINUTES: JANUARY 23, 2023

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

STARTING TIME: 7:00 pm

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

ALSO PRESENT: Matthew Heins (Planning Board Assistant), Alexander Weisheit (Town Counsel, participating by phone and not physically present), David Fulton, David Williams, Walter Sullivan, James Rader, Kimberly Kroha, Brian Murphy, John Danehey, Russell Field, Kathy Field, and others.

OPENING THE MEETING

The Clerk Mr. Grenier 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 #26-22 SPECIAL PERMIT AND VARIANCES AT 108 OLD CHURCH STREET

At this time, the three board members serving on the board were Mr. Grenier, Mr. Carpenter and Mr. Boyle.

Mr. Grenier opened the public hearing on the application of SDG Development, LLC, P.O. Box 192, Cohasset, MA 02025, requesting variances and a special permit in accordance with the Zoning Bylaws of the Town of Pembroke, Section IV.5A.D.3. Front Yard Setback, Section IV.5A.D.11. Building Floor Area, and Section IV.5A.B.2. Warehousing and Wholesale Merchandise Storage Allowed by Special Permit, to construct a self-storage facility, consisting of a four-story building with a footprint of about 26,050 square feet and total floor area of about 104,200 square feet, along with access drives (three curb cuts), parking areas, and landscaping. The property would be about 1.98 acres in size, though currently it is part of a larger lot (containing a Lowe's home improvement store) of about 19.2 acres that would be subdivided. The property is located at 108 Old Church Street, Pembroke, MA 02359, in Industrial District B and the Medical Marijuana Overlay District, as shown on Assessors' Map F15, Lots 2, 29, 30, 60B, 65 and 66.

David Fulton and David Williams, the applicants through SDG Development, LLC, were present, along with the project's attorney Walter Sullivan.

Mr. Sullivan summarized the project and the application briefly.

Mr. Williams introduced himself. He explained that SDG Development primarily specializes in self-storage development, and has a relationship with Extra Space Storage which would involve this property.

Mr. Williams said that the property, owned by RK Centers, is under agreement contingent on the project being approved by the town. He noted that it is part of the Lowe's (home-improvement retailer) property, but would be subdivided off if the project advances.

Mr. Williams explained that their projects are typically modern and multi-story, with most of the access to the units from interior corridors and the units climate-controlled. The building would be four stories high, with an office, restrooms, a residential apartment for a manager to live on-site, and the storage units.

Mr. Williams noted that self-storage buildings typically have a very low impact in terms of traffic, parking and sewage, as most customers only come rarely once they put their goods in storage.

Mr. Sullivan suggested this use is not noisy, injurious, offensive or noxious to the neighborhood and does not derogate from the purpose of the bylaw. He emphasized that the impact will be low and there are no residential neighbors. With regard to the two variances, he said that the project meets the standard due to the lot's odd configuration. He opined that to deny the application would be a hardship to the applicant and property owner. He pointed out that the proposed use would be consistent with the surrounding commercial area.

Mr. Carpenter asked how the fifteen feet (the proposed front yard setback) is being measured, and a conversation followed. Mr. Williams displayed the site plan drawing.

Mr. Williams said that the site has been empty for around 30 years, but once had a house and then a bar located on it.

Mr. Boyle said he had no objection to granting the variances and special permit, and that he felt it was a reasonable project.

Mr. Grenier asked if any members of the public present wished to speak or comment, but nobody spoke.

Mr. Grenier made a motion that the board grant the requested variances and special permit, Mr. Carpenter seconded the motion, and the board voted unanimously in favor.

PUBLIC HEARING FOR CASE #27-22 APPEAL FOR 260-280 OAK STREET

At this time, Mr. McGrail replaced Mr. Grenier on the board, and Mr. Grenier explained that he had to recuse himself from this public hearing. Thus, for this public hearing, the three board members serving on the board were Mr. McGrail, Mr. Carpenter and Mr. Boyle.

Mr. McGrail 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, Section V.7.H.1. Appeal of a Site Plan Review Decision and Section VI.C. Appeals to the Zoning Board of Appeals, the Planning Board's granting of Site Plan Approval to Remand Order Site Plan #SP2-17 at 260-280 Oak Street. The appeal is regarding the property located at 260-280 Oak Street, Pembroke,

MA 02359, in Industrial District A and the Medical Marijuana Overlay District, as shown on Assessors' Map G14, Lots 25F and 25G.

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

Brian Murphy, owner and/or operator of the property at 260-280 Oak Street (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 explained that the application was to appeal the Planning Board's decision approving the site plan remand order for 260-280 Oak Street. He went over the history of the project, which was originally approved in 2017. He explained that the project was built differently in some respects from the originally approved site plan, and described these differences. Hence the applicant filed for a major modification, which the Planning Board denied. In land court litigation, the applicant and the Planning Board agreed to have a remand order.

Mr. Danehey emphasized that the remand order specified that the entire application was to be considered as though it were a new case, with all the issues open. During the remand order site plan's public hearing, Mr. Danehey said, the Planning Board focused mainly on the access drive without addressing the problematic conditions along the edge of Mr. Field's property.

Mr. Danehey went over some of the issues relating to access, landscaping, outdoor storage, and storage in the buffer areas. In particular, he described the fence raised atop concrete blocks along the border of Mr. Field's property. He urged the Zoning Board of Appeals to grant this appeal, and thereby to return the site plan to the Planning Board.

Discussion followed, and the board members asked Mr. Danehey some questions about the project's design and how it was constructed. The fence, and the concrete blocks supporting it, were discussed in particular.

Ms. Kroha replied to what Mr. Danehey had said. She contested Mr. Danehey's account of the remand order site plan public hearing, and said she did not misrepresent the remand order in that hearing. She pointed out that the building inspector (George Verry) had concluded that the concrete blocks below the fencing were not an issue.

Ms. Kroha emphasized that there is no buffer zone here and clarified the difference between a zoning yard setback and buffer zone. She mentioned that the building inspector had decided that other contested items were not violations either.

Ms. Kroha explained that the concrete blocks were partly meant to help direct stormwater back onto the 260-280 Oak St. property ("Grissom property"), rather than allowing it to flow onto Mr. Field's property.

Mr. McGrail asked about the building inspector's work, and Ms. Kroha looked for a copy of his letter.

Mr. Weisheit emphasized that the board previously did uphold the building inspector's denial of zoning enforcement for 260-280 Oak Street; in other words, the board affirmed the building inspector's position that there were not zoning violations on the property.

Mr. Carpenter asked about the storage of items within 20 feet of the property line. Ms. Kroha said that the prohibition applies to buildings and structures but not to items being stored. Especially in industrial areas, she explained, it is common for things to be stored within a zoning setback.

Mr. McGrail asked Mr. Danehey about the things being stored near the property line, and Mr. Danehey described the various items that have been stored there. Conversation followed.

Mr. Boyle said that he was inclined to support the Planning Board's decision, especially since the building inspector had concluded that there were no zoning violations.

Mr. McGrail gave any members of the public present the chance to speak or comment, but none did so.

After further discussion, Mr. McGrail explained that he was in agreement with Mr. Boyle and felt it made sense to deny the appeal.

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

Mr. McGrail made a motion that the board support the Planning Board's decision [i.e., deny the appeal application] for 260-280 Oak Street. Mr. Carpenter seconded the motion, and the board voted unanimously in favor.

ADMINISTRATIVE ACTIONS

Mr. McGrail made a motion to approve the minutes of November 7, 2022, Mr. Boyle seconded the motion, and the board voted unanimously in favor.

The meeting was adjourned.