

# **ZONING BOARD OF APPEALS / TOWN OF PEMBROKE**

## **MEETING MINUTES: JUNE 12, 2023**

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

**STARTING TIME:** 7:00 pm

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

**ALSO PRESENT:** Matthew Heins (Planning Board Assistant), John Brown (Selectboard), Steven Ciciotti (Selectboard), George Verry (Building Inspector and Zoning Enforcement Officer), Alexander Weisheit (Town Counsel, KP Law), Scott Chaharyn (Master Plan Collaboration Committee), Stephen McDonough, Debi King, James Christie, Thomas Kelly, Caroline Dawson, Ed Dawson, Maryellen Dawson, Roger Gill, Janet O'Melia, Neesha Singh, Michael McDonough, Maureen Adams, Julie Caruso, Charles Kosarick, Deborah Kosarick, Alysha Siciliano-Perry (Planning Board, but present as applicant), Michael Caramanica, Anna-Maria Caramanica, Stephen Rider, Andrew Spath, Scott DeYoung, Pamela Garcia, Charles Garcia, Rick Adams, Elizabeth Adams, Sheila Amis, Paul Loiselle, Walter Costello, and others.

### **OPENING THE MEETING**

Mr. McGrail 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 #4-23 VARIANCES AND SPECIAL PERMIT AT 32 CAROL AVENUE**

Mr. McGrail opened the public hearing on the application of Alysha Siciliano-Perry, 32 Carol Avenue, Pembroke, MA 02359, requesting variances and a special permit in accordance with the Zoning Bylaws of the Town of Pembroke, Section IV.1.D.3. Side Yard Setback and Rear Yard Setback and Section V.5. Nonconforming Uses, to construct a shed of about 306 square feet. The property is located at 32 Carol Avenue, Pembroke, MA 02359, in Residence District A and the Water Resource and Groundwater Protection District, as shown on Assessors' Map A6, Lot 338. A copy of the application is available in the Office of the Planning Board at Pembroke Town Hall.

Ms. Siciliano-Perry described the project. The proposed shed would be about one foot from the property boundary, and would be roughly aligned with a neighbor's shed on the other side of the boundary and also near the boundary. An existing shed on Ms. Siciliano-Perry's property (also very close to the property boundary), which is deteriorating, would be removed.

In reply to questions from the board members, Ms. Siciliano-Perry explained that due to the small size of the property, the location of the septic tank, and the slope of the property, the proposed location for the new shed was the only place it could feasibly be placed on the site. Discussion followed.

Mr. McGrail gave the public a chance to ask questions or comment, but nobody spoke.

Mr. McGrail made a motion to close the public hearing for Case #4-23 and to approve the application. Mr. Grenier seconded the motion, and the board voted unanimously in favor.

#### **ADMINISTRATIVE ACTIONS**

Mr. McGrail made a motion to approve the minutes of May 15, 2023, Mr. Grenier seconded the motion, and the board voted unanimously in favor.

Mr. Heins mentioned that as part of the process of creating Pembroke's new master plan, a public forum would be held on June 20. He urged anyone interested in the town's future to attend.

#### **PUBLIC HEARING FOR CASE #5-23 VARIANCE AT 517 MATTAKEESETT STREET**

Mr. McGrail opened the public hearing on the application of Stephen McDonough, 517 Mattakeesett 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 construct a garage ("barn") of about 2,450 square feet. The property is located at 517 Mattakeesett Street, Pembroke, MA 02359, in Residence District A, as shown on Assessors' Map A6, Lots 240A and 394. A copy of the application is available in the Office of the Planning Board at Pembroke Town Hall.

Scott DeYoung, speaking on behalf of the applicant Mr. McDonough, addressed the board. He explained that the previous garage on the property had burned down in a very destructive fire. The use of the garage is to store the classic cars and "hot-rod" cars that Mr. McDonough collects.

Mr. DeYoung said the proposed garage would be located in a less visible location on the property, to make its large size less intrusive. He said the garage would be 40 feet from the street on the side of the property, 192 feet from Mattakeesett Street, and 75 feet from the rear property line.

It was clarified that the drawing Mr. DeYoung was showing the board members was the same drawing that had been submitted with the application.

Mr. DeYoung said the garage would be a metal building, but with wood on its front façade to make it look suitable for a residential area. It would be a single story in height.

Mr. Carpenter asked about the size of the previous garage on the property. Mr. DeYoung was unsure but estimated it was roughly 30 feet wide and 42 feet deep.

In reply to questions, Mr. DeYoung said the garage would be solely for storing cars, and not for commercial, mechanical or repair uses.

Mr. McGrail gave the public a chance to comment or ask questions, but no one spoke.

Mr. McGrail made a motion to close the public hearing for Case #5-23 at 517 Mattakeesett Street, Mr. Carpenter seconded the motion, and the board voted unanimously in favor.

Mr. McGrail made a motion to approve the application, with the stipulation that there would be aesthetically pleasing wood on the front façade of the garage and that the garage would be for personal use only and not rented. Mr. Grenier seconded the motion, and the board voted unanimously in favor.

**PUBLIC HEARING FOR CASE #3-23 APPEAL AT 98 BARKER STREET AND “BARKER STREET”  
(PREVIOUSLY KNOWN AS 409 WASHINGTON STREET)**

Mr. McGrail opened the public hearing on the application of Andrew Spath, Trustee of the 98 Barker Street Realty Trust, 41 Cavanagh Road, Scituate, MA 02066, to appeal, in accordance with the Zoning Bylaws of the Town of Pembroke, Section VI.C. Appeals to the Zoning Board of Appeals, the Building Inspector’s cease and desist order regarding work and/or activities taking place on properties owned and/or controlled by the petitioner. The appeal is regarding the properties located at 98 Barker Street and “Barker Street” (previously known as 409 Washington Street), Pembroke, MA 02359, in Residence District A, as shown on Assessors’ Map D11, Lot 26A, Map E10, Lot 1, and Map E10, Lot 2. A copy of the application is available in the Office of the Planning Board at Pembroke Town Hall.

The applicant Andrew Spath was present, along with his attorney Stephen Rider.

George Verry, the town’s Building Inspector and Zoning Enforcement Officer, was present, as was Town Counsel (KP Law) Alexander Weisheit.

Mr. Rider submitted an affidavit and legal memorandum regarding the appeal to the board members, Mr. Weisheit and Mr. Heins. In reply to a question from a member of the public, Mr. Heins explained that these are public records and anyone could get copies later.

Mr. Rider said that the appeal involves two properties, and he described them briefly. He said that the larger property (“Barker Street,” formerly known as 409 Washington Street) has been under a forest management plan since at least 1985 and has been in Chapter 61. Mr. Rider explained that Mr. Spath had bought the smaller property first, and then the larger property, and subsequently had put the larger property in the forest management plan and applied for Chapter 61. Thus, Mr. Rider said, it was Mr. Spath’s intention to plant and harvest trees on the property.

Mr. Rider said that Mr. Spath had built an access road into the properties to assist in the tree harvesting and management.

Mr. Rider said he was perplexed by the cease and desist order. He noted that the property is zoned for farming uses, including forestry. He contested the order’s statement that one property could not be used for an access drive to another property, and pointed out that the two properties contain the same use. He also stated that the building inspector had illegally entered onto Mr. Spath’s property and looked at the property without permission.

For these reasons, Mr. Rider said, the board should grant the appeal and vacate the cease and desist order.

Mr. McGrail asked if the nearby “for sale” sign was in reference to these properties, and Mr. Rider said it was not.

Mr. Grenier asked about property remaining in farmland and environmental police, and Mr. Rider discussed these issues.

Mr. Grenier asked if permits were issued for the activities Mr. Spath was doing on the property, and Mr. Rider said they were not. Mr. Rider explained that Mr. Spath had begun his activities without realizing permission was needed from the Conservation Commission, resulting in issuance of an enforcement order from the Conservation Commission.

Mr. Grenier, Mr. McGrail and Mr. Rider discussed whether or not the EPA was notified of the activities, and the issue of an EPA permit. Mr. Rider talked about the wetlands on the property. Mr. Rider said, in response to Mr. McGrail's questions, that Mr. Spath had built the gravel road on the property without obtaining the required cutting plan first.

In response to Mr. McGrail's question, Mr. Spath said the gravel road (which he has built on the property) is about 1,000 feet long and 12-14 feet wide.

Mr. McGrail expressed concern that it seems like Mr. Spath has done whatever he wished to do without seeking permission.

Mr. Verry explained that he initially entered the property due to reports that trees were being cut on adjacent properties not owned by Mr. Spath. When he entered the property, he identified himself and got an explanation.

Mr. Verry discussed the issue of access drives through another property.

In reply to Mr. McGrail's question, Mr. Verry said that when they inspected the property with a search warrant, there was equipment and machinery there, but no structures. He emphasized the damage that the newly built gravel road could do to the wetlands and the soil. He also talked about the fact that common driveways are prohibited in all zoning districts.

Mr. Rider showed the driveway permit, which Mr. Spath had obtained, to the board. Mr. Spath said he had gotten this permit a few months ago.

Mr. Weisheit said that, in his opinion, the farming exemption does not apply to the property, given that a lawful commercial forestry use does not currently exist on the property since the necessary permits have not yet been obtained.

Mr. Weisheit explained that common driveways, i.e., driveways that provide access to multiple properties as is the case in this situation, are prohibited in Pembroke.

For these reasons, Mr. Weisheit said, he recommended that the board uphold Mr. Verry's cease and desist order. Mr. Weisheit said that he could write a formal reply to Mr. Rider's submission if the board wished.

Mr. Grenier asked if Barker Street (Route 14) is a state highway, and the consensus was that it is. Mr. Weisheit said that a permit for a curb cut would thus probably be required from MassDOT.

Mr. Weisheit noted that the deadline for the board to issue its decision was August 2, 2023 (100 days from the filing date).

Mr. McGrail asked if the board members had any more questions at this time, but they did not.

Mr. McGrail opened the public hearing to comments and questions from the public. He asked members of the public to be concise, and to give their names before speaking.

Neesha Singh, a resident of 120 Barker Street, urged the board to support the building inspector's cease and desist order, and noted that Mr. Spath has committed similar violations in Scituate and Hingham. She said that she and the other neighbors were never notified of Mr. Spath's project, and described the negative impacts to the area caused by Mr. Spath's activities.

Michael McDonough, a resident of 106 Fairwood Drive, pointed out that there are town bylaws regulating earth removal and noise pollution.

Thomas Kelly, a resident of Old Washington Street, said that dump trucks have been going into Brisan Way and speculated these trucks might be accessing Mr. Spath's properties.

However, Charles Garcia, a resident of Brisan Way, said these dump trucks are entering Brisan Way because he is building a pool on his property.

Charles Kosarick, a resident of 27 Fairwood Drive, said he lives very close to the properties. He commented that there has been flooding and vibrations in the area due to Mr. Spath's activities. He emphasized the massive size of the earth berms that Mr. Spath has created, along with the dirt piled for the gravel roads and other construction. He noted that Mr. Spath has refused to acknowledge or describe what he is doing. He said that drone videos showed construction activities beyond what would be typical for logging operations, and also what appear to be the start of three foundations for houses. He emphasized the damage caused to Pembroke already by these activities, and how difficult it will be to remediate it.

Mr. McGrail confirmed that the board members had no further questions, and that no additional members of the public wished to speak.

Mr. McGrail made a motion to close the public hearing for Case #3-23 Appeal at 98 Barker Street and "Barker Street" (previously known as 409 Washington Street), and move to a vote. Mr. Carpenter seconded the motion, and the board voted unanimously in favor.

Mr. Heins and Mr. McGrail briefly discussed the verbiage of the motion to grant or deny the appeal, and Mr. Weisheit explained that an appeal can only be granted if all three board members vote in favor of the appeal.

Mr. McGrail made a motion to uphold the building inspector's cease and desist order, and explained that a yes vote on this motion would be to uphold the building inspector's order thereby denying the applicant's appeal and a no vote would be to grant the applicant's appeal. Mr. Carpenter seconded the motion. The board voted unanimously in favor of the motion, i.e., to uphold the building inspector's cease and desist order.

#### **PUBLIC HEARING FOR CASE #1-23 COMPREHENSIVE PERMIT FOR MATTAKEESETT VILLAGE 40B HOUSING PROJECT AT 7 & 15 MATTAKEESETT STREET**

Mr. McGrail reopened the public hearing (continued from February 27, 2023, April 24, 2023, and May 15, 2023) on the application of Bristol Bros. Development Corp. for a comprehensive permit pursuant to M.G.L. Chapter 40B. The project, titled "Mattakeesett Village," consists of two buildings and contains 66 residential units in total (46 one-bedroom units and 20 two-bedroom units), of which a certain percentage shall be restricted as affordable for low- or moderate-income persons or families, on a site of approximately 3.27 acres. The project is located at 7 and 15 Mattakeesett Street,

Pembroke, MA 02359, in the Center Protection District and Residence District A, as shown on Assessors' Map C9, Lots 14 and 15. A copy of the application is available in the Office of the Planning Board at Pembroke Town Hall.

Since the board's quorum (i.e., the three board members present) was different from the quorum in the previous public hearings for the project, it was necessary to immediately continue the public hearing. It was also appropriate to extend the decision deadline for the application, and the applicant had agreed to this extension in writing.

Mr. McGrail made a motion to extend the decision deadline for the application to November 28, 2023. Mr. Carpenter seconded the motion, and the board voted unanimously in favor.

Mr. McGrail made a motion to continue the public hearing for Case #1-23 Mattakeesett Village to July 24, 2023, at 7:15 pm in the Veterans Hall. Mr. Carpenter seconded the motion, and the board voted unanimously in favor.

#### **PUBLIC HEARING FOR CASE #6-23 VARIANCE AND SPECIAL PERMIT AT 885 CENTER STREET**

Mr. McGrail opened the public hearing on the application of Michael Caramanica, 885 Center 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 expand an existing house by constructing a farmer's porch. The property is located at 885 Center Street, Pembroke, MA 02359, in Residence District A, as shown on Assessors' Map B2, Lot 28. A copy of the application is available in the Office of the Planning Board at Pembroke Town Hall.

Michael Caramanica, the applicant, addressed the board. He explained that the expansion is to add a bedroom and a farmer's porch, and it will be 35 feet from the front property boundary, which is 5 feet less than the 40-foot setback requirement.

Mr. Heins confirmed that no letters or communications had been received in support or opposition to the project.

Mr. McGrail made a motion to close the public hearing for Case #6-23 Variance and Special Permit for applicant Michael Caramanica at 885 Center Street and to approve the application. Mr. Grenier seconded the motion, and the board voted unanimously in favor.

The meeting was adjourned.