

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

## **MEETING MINUTES: JULY 24, 2023**

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

**STARTING TIME:** 7:00 pm

**BOARD MEMBERS PRESENT:** Frederick Casavant (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 during this meeting.

**BOARD MEMBERS ABSENT:** Christopher McGrail (Vice-Chairman) and Arthur Boyle (Alternate).

**ALSO PRESENT:** Matthew Heins (Planning Board Assistant), Amy Kwesell (Town Counsel, KP Law), Deborah Keller, Robert Jean, Marjorie Jean, Patricia Godding, Thomas Godfrey, Mark Romanowicz, James Bristol, Taylor Corsano, Jeffery Tocchio, Brandon Li, James Rader, Jerry Seelen, Philip Bandini, Joel Horton, Maiah Jones, William Green, and others.

### **OPENING THE MEETING**

The Chairman Frederick 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 #7-23 VARIANCE AND SPECIAL PERMIT AT 39 WOODBINE AVENUE**

Mr. Casavant opened the public hearing on the application of Marjorie Jean, 39 Woodbine Avenue, Pembroke, MA 02359, requesting a variance and special permit in accordance with the Zoning Bylaws of the Town of Pembroke, Section IV.1.D.3. Rear Yard Setback and Section V.5. Nonconforming Uses, to expand an existing house by constructing an addition to the rear. The property is located at 39 Woodbine Avenue, Pembroke, MA 02359, in Residence District A and the Water Resource and Groundwater Protection Overlay District, as shown on Assessors' Map B4, Lot 157. A copy of the application is available in the Office of the Planning Board at Pembroke Town Hall.

Marjorie Jean and her brother Robert Jean were present. Mr. Jean summarized the project briefly, and explained that the addition to the house would contain a bedroom but not a kitchen.

The board members asked Mr. Jean a few questions and discussed the project.

Mr. Casavant asked if there were any members of the public present who wished to speak, but there were none.

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 were in agreement that the project could be approved and was not likely to be controversial. With regard to the variance, Mr. Casavant noted that the property is oddly shaped.

Mr. Casavant made a motion to approve the application for Case #7-23 for a variance and special permit at 39 Woodbine Avenue, based on the plans submitted with the application. Mr. Carpenter seconded the motion, and the board voted unanimously in favor.

#### **ADMINISTRATIVE ACTIONS**

Mr. Casavant made a motion to approve the minutes of June 12, 2023, Mr. Grenier seconded the motion, and the board voted unanimously in favor.

The board waited a few minutes until the starting time of the next public hearing.

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

Mr. Casavant reopened the public hearing (continued from February 27, 2023, April 24, 2023, May 15, 2023, and June 12, 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 (later changed to four buildings) and contains 66 residential units in total (46 one-bedroom units and 20 two-bedroom units [later changed to 66 one-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. (A 135-seat restaurant was later added to the project.) 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.

James Bristol, Thomas Godfrey, Taylor Corsano, Mark Romanowicz and Jeffery Tocchio were present, representing the project in various capacities.

Town Counsel (KP Law) Amy Kwesell was present, as was Deborah Keller, the board's peer review engineer for this project.

Mr. Tocchio, the attorney for the project, came before the board and described the revised design of the project. In addition to the 66 residential units, all of which would now be one-bedroom apartments, the new design would contain a "tavern," i.e., restaurant. There would now be four buildings in total, along with numerous parking spaces.

Mr. Tocchio discussed the issues of three-bedroom units and age 55+ requirements. He also described the regulations and case law regarding how a commercial use can exist in a 40B project, and explained that many people had told them that the town center area needs a restaurant.

Mr. Casavant asked about the restaurant parking, and Mr. Tocchio discussed where the parking spaces would be. In reply to Mr. Grenier's question, he said there would be 135 seats in the restaurant.

Mr. Grenier, Mr. Tocchio and Ms. Corsano discussed the number of parking spaces. Mr. Carpenter asked whether there would be common areas for the residents, and Mr. Tocchio talked about this.

Ms. Kwesell and Mr. Tocchio discussed the issue of a commercial use being in a 40B project, and Ms. Kwesell expressed doubt that a restaurant could be ancillary or complementary to a project of this nature. A discussion followed between Mr. Tocchio and Ms. Kwesell about the details of how such a restaurant can exist in a 40B project.

Ms. Kwesell asked about the storage units versus the garage spaces, and conversation followed. Mr. Romanowicz described some aspects of the design.

Mr. Casavant said that a nearby restaurant is doing so well that parking has become a problem, and he cautioned that this could also happen here. The board members, Ms. Kwesell and Mr. Romanowicz conversed about certain elements of the design.

Mr. Bristol briefly described their communications with MassHousing about the issue of the commercial use.

Ms. Kwesell summarized some of the problems, and noted the challenge of the monitored profit. Mr. Tocchio agreed, and said that they were also trying to figure out the answers to these issues.

Ms. Kwesell and Mr. Tocchio discussed the sizes of the residential units and how these would fit the 40B requirements.

Mr. Heins explained that the deadline for the board to make its decision on the project was extended to November 28.

Mr. Casavant, Mr. Heins, Ms. Corsano and Mr. Tocchio discussed what date to continue the public hearing to, and how to give sufficient time for peer review.

Mr. Casavant made a motion to continue the public hearing for Case #1-23 [Mattakeesett Village 40B] to September 25, 2023, at 7:00 pm. Mr. Grenier seconded the motion, and the board voted unanimously in favor.

#### **PUBLIC HEARING FOR CASE #8-23 SPECIAL PERMIT AT 33 RIVERSIDE DRIVE**

Mr. Casavant opened the public hearing on the application of KRR Pembroke LLC, c/o Rader Properties, Inc., 80 Washington Street, Building J-40, Norwell, MA 02061, requesting a special permit in accordance with the Zoning Bylaws of the Town of Pembroke, Section IV.5A.B.2. Warehousing and Wholesale Merchandise Storage Permitted by Special Permit. The applicant proposes to construct a 45,000-square-foot one-story building for industrial and/or warehouse uses on a property of about 6.2 acres in size. There is an existing building on the property that would remain. Additional paved areas for parking and vehicular movement would be built, improvements would be made to the site's stormwater drainage system, and a new subsurface sewage disposal system would be installed. The property is located at 33 Riverside Drive, Pembroke, MA 02359, in Industrial District B and the Medical Marijuana Overlay District, as shown on Assessors' Map F15, Lot 60. A copy of the application is available in the Office of the Planning Board at Pembroke Town Hall.

The project's developer James Rader was present, along with the project's engineer Brandon Li and the project's architect Jerry Seelen.

Mr. Li gave a summary of the project's size, use, parking and engineering characteristics, referring to the engineering drawings. He noted that the water line would be looped into Water Street, that a

new septic system would be installed, and that a new stormwater management system would be built.

Mr. Seelen went over the project's architecture, referring to the architectural drawings, and described it as a "flex" building. He said the building was one-story high, and would accommodate up to five tenants and thus had five entrances on the front and five loading docks on the back.

Mr. Casavant asked whether the use would be for warehousing or industry, and Mr. Seelen said it was a "spec" building and so that would depend on the tenants. Mr. Rader further described the possible uses the building might contain. He said there probably would not be a lot of truck traffic, because the building wasn't large enough to be a high-intensity warehouse.

Mr. Casavant gave members of the public the opportunity to speak.

Joel Horton addressed the board. He explained that as a nearby resident at 3 Packet Landing, he was worried about the proximity of the project, especially in terms of possible lights, noise, fumes and visibility. He stated that the vegetation between his property and the project site is mostly dead trees and old logs.

Philip Bandini, also a resident of Packet Landing, spoke. He strongly emphasized that the fumes from a nearby line painting company located on Riverside Drive—both the diesel truck fumes and the fumes from the mixing of paint—have an extremely negative impact on Packet Landing. He also said that the lighting on that property is very bright and constitutes a nuisance.

Mr. Bandini said that the town should do something about the activities of this line painting company before allowing any further development on Riverside Drive so close to Packet Landing.

Mr. Heins explained that the project was also before the Planning Board, as a site plan application, in an ongoing public hearing, and noted that any member of the public could attend that hearing.

Mr. Casavant and Mr. Heins discussed which board (the Planning Board or Zoning Board of Appeals) should handle issues of noise, visual screening, noxious activities, traffic, engineering details, etc., and agreed that such concerns are normally dealt with by the Planning Board through the process of site plan review.

Mr. Casavant asked the applicant's team about lighting, noise and visual screening.

Mr. Li said there would be LED lighting fixtures, and discussion followed, especially about whether the lighting fixtures would stay on all night and if their light would spill over.

In reply to a question, Mr. Rader said the hours of operation for the building would be 9 to 5.

Mr. Casavant asked if some kind of visual screening could be added to protect Packet Landing from the view and light. Mr. Rader said he was open to this. Mr. Li noted the distance from the proposed project to Packet Landing, and mentioned that the retaining wall and fence will help screen the view.

Mr. Rader said that he would not allow any use in the building to emit unpleasant odors.

In reply to a question, Mr. Li said that the distance from the closest edge of the project (the rear parking lot and retaining wall) to the property line separating it from Water Street would be about 54

feet at one corner and 30 feet at the other corner. In addition, he and Mr. Rader pointed out, Water Street (which becomes a “paper street” unbuilt right of way at its end) is about 50 feet wide.

Mr. Li briefly described the trees that would be planted around the parking area, as shown in the landscaping plan.

William Green, a Marshfield resident, addressed the board. He suggested that conditions be imposed to prevent auto body shops, and other businesses that emit odors, from locating in the building.

Mr. Green said that the high fence around the line painting company does not block the light spillover. Mr. Casavant explained that the board does not have enforcement powers and thus cannot do anything about ongoing activities on another property. Mr. Green recommended that the highest possible fence be placed between this project (33 Riverside Drive) and Packet Landing.

Mr. Casavant asked if the applicant would agree to prohibitions on idling trucks and odor-producing businesses, and Mr. Rader agreed. As regards the operating hours, Mr. Rader said they would typically be 9 to 5 but there might be exceptions.

Mr. Casavant said that the visual screening should be specified by the Planning Board. He noted that light industry is an allowed use by right at this location, with the warehousing use allowed by special permit. He said he did not believe the proposed building, given the conditions the applicant had agreed to, would be noxious or offensive to the neighborhood.

The board further discussed the fencing, lighting and screening. Mr. Casavant said it made more sense to leave these decisions to the Planning Board, for the most part.

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.

Mr. Casavant said he felt that the application met the standard for issuing a special permit.

Mr. Casavant made a motion that the board approve the application for a special permit, subject to the conditions that there be no idling vehicles, that no building tenants emit offensive odors or vapors, and that the building generally operate on a 9 to 5 schedule with some exceptions on Saturdays and Sundays. Mr. Grenier seconded the motion, and the board voted unanimously in favor.

The meeting was adjourned.

Respectfully submitted,

Matthew Heins, Planning Board Assistant