



PEMBROKE PLANNING BOARD MINUTES

MONDAY, JANUARY 7, 2019

BOARD MEMBERS PRESENT: Rebecca Coletta (Chairman), Thomas Irving (Clerk), John Scholl, Daniel Taylor, and Daniel Smith, Jr.

BOARD MEMBERS ABSENT: Andrew Wandell (Vice-Chairman) and James Noone.

OTHERS PRESENT: Matthew Heins (Planning Board Assistant), Michael Hill (Fire Chief), Kenneth McCormick (Deputy Fire Chief), Sabrina Chilcott (Assistant to the Town Manager), Peter Palmieri (Merrill Engineers and Land Surveyors), Lawrence Mayo, Jeffrey Bilezikian, Edward J. Mullin, Kenneth Staffier, David Sanderson, Max Puyanik, Douglas Bailey, Denise Burnham, Todd Szymczak, Sean Kennedy, Anthony Vacca, Carolyn Murray, Patricia DeChristopher, Gerald Dutson, and others.

Chairman Rebecca Coletta opened the meeting by reading the Chairman's statement.

PUBLIC HEARING FOR PROPOSED SITE PLAN #SP5-18 MEDICAL URGENT CARE FACILITY AT 296 OLD OAK STREET

Ms. Coletta opened the public hearing for proposed Site Plan #SP5-18 Medical Urgent Care Facility, on the application of D and C Real Estate Trust, CTS Fiduciary LLC Trustee, c/o Turtle Rock, LLC, 231 Willow Street, Yarmouthport, MA 02675, requesting Site Plan Approval under the Zoning Bylaws of the Town of Pembroke Section V.7. (Site Plan Approval). The applicant proposes to construct a one-story, 5,230-square-foot new building containing a medical urgent care facility, with associated parking and other improvements, on a site that is already developed with a retail building and parking area. The property is located in the Business B zoning district, at 296 Old Oak Street, Pembroke, MA 02359, as shown on Assessors' Map G15, Lot 35.

Attorney Lawrence Mayo, representing D and C Real Estate Trust (the applicants), briefly summarized the project. He introduced Jeffrey Bilezikian and Edward Mullin, the trustees of D and C Real Estate Trust, Max Puyanik, the chief executive officer of Convenient MD, David Sanderson, the chief real estate officer of Convenient MD, and Kenneth Staffier, an engineer with VHB working on the project. Convenient MD is the prospective tenant of the proposed building.

Mr. Puyanik described Convenient MD, the nature of its business, and the medical needs that the company fulfills. Convenient MD was founded in New Hampshire and currently has 15 facilities operating. Mr. Puyanik explained that the company is extensively involved in the communities where it is located. In reply to questions, he described the staffing of their facilities, and also explained how often their patients require a trip to an emergency room.

Mr. Staffier described the project's site plan and engineering. He explained that the project is sited on the same property, and using the same parking lot, as the existing Sun & Ski Sport retailer at 296 Old Oak Street. He noted that the needed variances were granted by the ZBA (Zoning Board of Appeals), and explained why these variances were necessary. The building would be close to the corner of Old Oak Street and Church Street (Route 139), due to the soil conditions determining that the best location for the septic system is elsewhere, and also due to the parking lot's configuration. He explained that the redesigned parking area will provide sufficient parking for all the uses on the property, and that a separate loading berth for the building was unnecessary.

Mr. Staffier said that he had received the peer review comments from Peter Palmieri (the board's peer review engineer for the project). He explained that he had not been able to reply to all of them yet, but did not anticipate any major issues. He described the stormwater system and drainage in detail. He also discussed the required offset of the infiltration system, based on requirements of Title 5 and D.E.P.

In reply to questions from Mr. Scholl, Mr. Staffier described the handicapped accessible parking spaces and parking spaces for the elderly. Mr. Taylor asked about how drainage would function on the site given that the existing rain garden will be eliminated, and Mr. Staffier and Mr. Palmieri explained this won't be an issue.

Michael Hill, the Fire Chief, and Kenneth McCormick, the Deputy Fire Chief, discussed the fire department's concerns (regarding curbing in particular) with Mr. Staffier and Mr. Palmieri.

Mr. Palmieri raised the question of the sign at the site, and whether it would be changed. A discussion took place about whether the building would be sprinklered.

It was generally agreed that Mr. Palmieri and Mr. Staffier would communicate further regarding the technical engineering issues and the changes that need to be made to the drawings, and that these revisions would be complete in two or three weeks.

Mr. Taylor made a motion to continue the public hearing to January 28, 2019, at 7:15 pm, Mr. Irving seconded the motion, and the board voted unanimously in favor.

DECISION TO ENDORSE FORM A (APPROVAL NOT REQUIRED SUBDIVISION) FOR PROPERTY AT 44 CENTER STREET

Douglas Bailey, a surveyor with Grady Consulting, presented a Form A (approval not required subdivision) drawing to the board, which would adjust the boundaries of a previous subdividing of the property at 44 Center Street.

A Form A was previously endorsed in late 2018 by the Planning Board to split the property at 44 Center Street into two parcels, but Mr. Bailey explained that a problem arose with this due to the desire to keep both properties qualifying as Chapter 61B land. This Form A makes a slight new adjustment to the boundary so that both parcels can remain Chapter 61B.

Mr. Taylor made a motion that the board endorse (i.e., approve) the Form A, approval not required subdivision, at 44 Center Street in the Residence A Zone, based on a plan dated December 18, 2018. Mr. Irving seconded the motion, and the board voted unanimously in favor.

The board's clerk, Mr. Irving, signed the drawings for the Form A.

REVIEW OF ROUTINE ADMINISTRATIVE MATTERS

Mr. Scholl made a motion to approve the minutes of Monday, December 17, 2018, Mr. Irving seconded the motion, and the board voted unanimously in favor.

Ms. Coletta explained that the Office of the Planning Board had sent out three letters for various purposes. The board reviewed the response (to one of those letters) from Brian Murphy of Grissom Park Co. regarding the problem of flooding on Oak Street adjacent to Site Plan #SP2-17 under construction for 260-280 Oak Street. It was agreed that Mr. Heins would arrange for Mr. Murphy to come discuss this with the board.

DISCUSSION ABOUT, AND APPROVAL OF, SMALL PARKING AREA, SHED, AND OPEN-AIR ROOFED STRUCTURE AT NORTH RIVER COMMUNITY CHURCH AT 334 OLD OAK STREET

Todd Szymczak, the executive pastor of North River Community Church, came before the board to discuss the possible construction of a small parking area, shed, and open-air roofed structure enclosing them both, at North River Community Church at 334 Old Oak Street in the Industrial B Zone and Adult Use Overlay Zone.

Mr. Szymczak summarized the project, which had been already been discussed at a previous board meeting. The church wishes to build a small (12 feet by 36 feet) parking area for a rapid-response trailer the church uses, a small storage shed (8 feet by 12 feet, and 8 feet tall) on it, and an open-air roofed structure ("an A-framed carport," 12 feet by 24 feet) to cover them both. He distributed site plan drawings to the board that showed two options for where this project would be located on the property.

The board and Mr. Szymczak discussed the project, the two options for its location, and the existence of a septic system on the property. The board members were in general agreement that the proposed project was acceptable, and that, as a minor alteration to an existing site plan, it did not necessitate going through the full process of site plan review.

Mr. Taylor made a motion that the board approve the construction of a small parking area, shed, and open-air roofed structure enclosing them at North River Community Church at 334 Old Oak Street, as a minor modification to an existing site plan that will not therefore require full site plan review, as per the sketch presented on January 7, 2019. Mr. Irving seconded the motion.

The board clarified that either of the two options shown for the location of the parking area, shed and open-air roofed structure would be acceptable. The motion being on the table, the board voted unanimously in favor.

VOTE ON DECISION AND CONDITIONS FOR SITE PLAN #SP4-18 AT 212 SCHOOSSETT STREET

Mr. Heins had prepared the documents of the decision, including the cover letter, record of proceedings and conditions, granting site plan approval to Site Plan #SP4-18 at 212 Schoosett Street (the Magical Years Preschool) in the Business B Zone, for the board to consider and vote on. At a previous meeting the board had voted to grant site plan approval to the project and closed the public hearing.

Mr. Heins explained that some of the language in this decision had been changed from the typical verbiage previously used in site plan decisions, and the board discussed this. The verbiage regarding

the deadline for completion of the site plan was altered (to prevent a partially built project from effectively having no deadline), and the verbiage regarding the signage was altered to specify that the address must be shown on the sign.

Mr. Scholl made a motion to approve the waivers stated in section 8 of the conditions:

With reference to the waivers requested on the second sheet of the drawings entitled “Site Plan, 212 Schoosett Street, Assessors Lot E14-134, Pembroke, Massachusetts,” by Grady Consulting, L.L.C., dated September 28, 2018, and revised November 19, 2018, November 21, 2018, November 29, 2018, December 11, 2018, and December 27, 2018, and accepted by the Board on December 31, 2018, the Board grants the following waivers, as voted and approved by this Board:

- a. Section 4.15: Development Impact Statement.
- b. Section 5.1.2: 3-foot-wide landscaping strip along all foundation walls.
- c. Section 5.1.6: 50-foot landscape buffer to all residential properties.
- d. Section 5.4: Parking & Loading: Parking to be located between the proposed building and street layout.
- e. Section 5.6.2: Curbing to be placed at the edges of all paved surfaces. Curbing shall not be bituminous concrete.
- f. Section 5.7.1: Access connection spacing.
- g. Section 5.7.2: Width of access connection.
- h. Section 5.7.3: 40-foot depth between the property line and the beginning of any parking areas.
- i. Section 6: Development Impact Statement, including 6.7 & 6.8 Traffic Impact Assessment and Standards.

Mr. Irving seconded the motion. Ms. Coletta, Mr. Irving, Mr. Scholl and Mr. Smith voted in favor, and Mr. Taylor abstained (because he was not present at all the public hearings for the project). The motion passed.

The board members directed Mr. Heins to correct a typographical error in the waivers.

By this time, Sean Kennedy, one of the applicants for the site plan, and Anthony Vacca, a real estate agent handling the project, had arrived. Mr. Kennedy reviewed the decision’s text and had no questions.

Mr. Scholl made a motion to approve the conditions for Site Plan #SP4-18 at 212 Schoosett Street, the Magical Years Preschool, as outlined on pages 5 and 6 of the decision. Mr. Irving seconded the motion. Ms. Coletta, Mr. Irving, Mr. Scholl and Mr. Smith voted in favor, and Mr. Taylor abstained (because he was not present at all the public hearings for the project). The motion passed.

Mr. Vacca asked about whether there is an appeal period for the project, i.e., for site plan approvals, and this led to discussion since it has been a longstanding point of ambiguity. Carolyn Murray and Patricia DeChristopher, two attorneys with KP Law (the firm that is town counsel for Pembroke), had already arrived for an upcoming discussion of changes to the zoning bylaws and were waiting outside, so at this time they were invited in to help answer this question. Ms. Murray explained that a developer can apply for a building permit once the signed decision has been submitted to the town

clerk, but there is the possibility an appeal could be filed within the 20-day appeal period. However, at present the town's zoning bylaws are not entirely clear as to whether there is an appeal period or not. Ms. Murray and the board also discussed whether a site plan decision should be recorded at the Registry of Deeds.

The appropriate board members (Ms. Coletta, Mr. Irving, Mr. Scholl and Mr. Smith) signed the site plan decision and the final site plan drawings.

Mr. Kennedy asked about the peer review engineering costs for the project, particularly for the future construction inspections, and a lengthy conversation about this ensued.

DISCUSSION ABOUT VARIOUS POSSIBLE CHANGES TO ZONING BYLAWS

The board members, Ms. Murray, Ms. DeChristopher, and Mr. Heins embarked on a long and detailed discussion about a variety of possible changes to the town's zoning bylaws. Mr. Hill and Mr. McCormick, who had stayed throughout the board meeting, remained present and participated in the conversation. Gerald Dutson, a member of the public, was present for part of the discussion and participated occasionally.

Ms. Coletta and Ms. Murray talked about the advisability of doing a complete rewrite of the zoning bylaws, which Ms. Murray recommended against.

A lengthy, thorough conversation took place about requiring signs, especially for commercial properties, to have addresses shown on them, and whether this would best be handled through the zoning bylaws, through the town bylaws, with conditions in decisions, or by other means.

There was a discussion about the possibility of adding assisted living facilities as an allowed use in some zoning districts. This encompassed the issue of when it is appropriate for variances to be given, especially for certain uses, and the benefits of special permits as the mechanism for allowing uses. A conversation followed about where assisted living and/or multifamily housing might be allowed, and the possibility of overlay districts. It was noted that assisted living is currently only allowed in the two industrial zones. The possibility of the Planning Board being the special permit granting authority for certain uses was raised.

A discussion took place about reducing the minimum lot size and certain setbacks in the Business B Zone, as the board had previously agreed, and Ms. Murray explained she had drafted those changes.

Mr. Irving left at this time.

The conversation resumed about where to add assisted living facilities as an allowed use. The board discussed whether it should be by right or by special permit. The board members decided to propose making assisted living an allowed use in the Center Protection District and the Residential-Commercial Zone, and to propose it be allowed by special permit.

There was a conversation about the 300-foot depth from the way lines of the Center Protection District, and whether that zone's size should be expanded to a greater distance or to the depth of the lots with frontage on the way lines.

The board and Ms. Murray agreed to propose that site plan approvals be subject to a 20-day appeal period, with appeals going to court rather than the ZBA, and it being required that site plan decisions be recorded with the Registry of Deeds.

The board and Ms. Murray agreed to propose that construction or use must begin within 12 months of the issuance of the building permit (or other appropriate permit) in order to avoid conforming to a zoning bylaw that has been amended in the interim. This would change the length of time from 6 months, to be in accordance with state law.

The board and Ms. Murray agreed to propose changing the period of time upon which zoning violations if not challenged qualify as legal nonconforming uses, to be in accordance with state law.

A discussion took place about the current zoning bylaw requirement (in Section III Subsection 9) that limits which ways can provide frontage for nonresidential uses in certain zones, and how to change this to allow several more ways that are not residential in nature to qualify. It was agreed to propose that in the two industrial zones, any ways contained within the zones would qualify for frontage.

The board and Ms. Murray agreed to propose reducing the minimum lot size and certain setbacks in the Business B Zone.

The board, Mr. Heins and Ms. Murray discussed the requirements for scenic roads, and how to ensure developers are made aware of them.

The board members and Ms. Murray decided they would propose making assisted living an allowed use, in the Center Protection District and the Residential-Commercial Zone, by special permit and site plan review, with both the special permit and site plan approval to be issued by the Planning Board.

Ms. Murray confirmed that she is working on a zoning bylaw change to authorize the building inspector to approve certain alterations of preexisting nonconforming single-family and duplex residential uses without the necessity of a public hearing with the ZBA.

The board, Mr. Heins and Ms. Murray discussed expanding the size of the Center Protection District, and how best to do this. It was agreed to propose that the extent of the zone be 300 feet from the way line, or the depth of a lot with frontage on the way, whichever is greater.

The board and Ms. Murray talked about using the zoning bylaws to ban marijuana-related uses (aside from medical marijuana). The town bylaws already prohibit marijuana-related uses, but the attorney general recommends doing so through the zoning bylaws. The board members felt this might be divisive and was not worth pursuing at present.

It was agreed that Ms. Murray and Ms. DeChristopher would return to talk with the board on January 28 about the actual language of the zoning bylaw amendments.

Mr. Scholl made a motion to adjourn the meeting, Mr. Taylor seconded the motion, and the board voted unanimously in favor.

Respectfully submitted,

Matthew Heins, Planning Board Assistant