



PEMBROKE PLANNING BOARD MINUTES

MONDAY, APRIL 8, 2019

BOARD MEMBERS PRESENT: Rebecca Coletta (Chairman), Andrew Wandell (Vice-Chairman), Thomas Irving (Clerk), John Scholl, and Daniel Taylor.

BOARD MEMBERS ABSENT: Daniel Smith, Jr., and James Noone.

OTHERS PRESENT: Matthew Heins (Planning Board Assistant), Patricia DeChristopher (Town Counsel, KP Law), Edwin Thorne (Town Manager), Kenneth McCormick (Deputy Fire Chief), James Gallagher (Zoning Board of Appeals), George Verry (Building Inspector), Peter Palmieri (Merrill Engineers and Land Surveyors), Walter "Wally" Roenick, Jo Roenick, Clifford Youse, Evelyn Sjolín, Gary Sjolín, Thomas Godfrey, James Bristol, Steven Bristol, Greg Howell, Pat Ahearn, Liane Ahearn, JoAnn O'Donnell, LouAnn MacDonald, Melissa Hogan, Michele Sullivan, Wayne Rankin, Mary Lou Ford, April Czaplicki, Patrick Sullivan, Robert Gosselin, Stephen Kotowski, Robert DeMarzo, Daniel Stevens, Ed Koplovsky, Darren MacDonald, Sean Kennedy, Douglas Arsham, Sean Foster, Mark Casey, Stephen Damon, Susan Edwards, and others.

PUBLIC HEARING FOR PROPOSED ZONING BYLAW AMENDMENT TO ALLOW AGE-RESTRICTED CLUSTER DEVELOPMENT

Mr. Wandell re-opened the public hearing (continued from March 25, 2019, and April 1, 2019) for a proposed zoning bylaw amendment to allow by special permit, throughout the entire town on tracts of land of at least 30 acres, certain age-restricted cluster developments that would contain a higher density of residential dwellings and less restrictive setbacks than is currently allowed in most of the town's zoning districts. The bylaw would require that at least 50% of the tract of land be reserved for open space, conservation, agriculture, recreation, park purposes or some combination thereof.

As of several minutes after the scheduled meeting start time of 6:00 pm, only three board members (Andrew Wandell, John Scholl, and Daniel Taylor) were present, and four members are necessary to have a quorum. For this reason, Mr. Wandell explained that the start of the meeting and the public hearing would be delayed slightly, and apologized to those present.

Mr. Wandell made a motion to continue the public hearing to 6:30 pm, Mr. Taylor seconded the motion, and the board voted unanimously in favor.

Board Chairman Rebecca Coletta arrived a few minutes later, and the board now had a quorum of four members present.

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

REVIEW OF ROUTINE ADMINISTRATIVE MATTERS

Mr. Wandell made a motion to approve the minutes for March 25, 2019, as presented, Mr. Taylor seconded the motion, and the board voted unanimously in favor.

The board discussed its schedule of future meetings in April and May.

Ms. Coletta mentioned that the Pembroke Country Club had begun the process of leaving Chapter 61 status for its land by submitting the necessary documents to the town.

Board Clerk Thomas Irving arrived at approximately this time.

DECISION TO ENDORSE FORM A (APPROVAL NOT REQUIRED SUBDIVISION) FOR SUBDIVISION #1802 LISA'S LANE (F.K.A. LIBBY'S LANE) AT 37-45 TAYLOR STREET

Robert Gosselin, the developer of Subdivision #1802 Lisa's Lane, formerly known as Libby's Lane, presented a Form A (approval not required subdivision) drawing to the board. The Form A sought to adjust the boundaries of two lots in the subdivision, which is located at 37-45 Taylor Street, and also to adjust the boundary of the adjacent property at 45 Taylor Street. The Form A would also help to officially change the name of the subdivision from Libby's Lane to Lisa's Lane, since it will be recorded in the records at the Registry of Deeds.

Mr. Wandell made a motion to authorize the board's clerk to sign the Form A drawing, and to rename the subdivision Lisa's Lane, changing it from the previous name of Libby's Lane. Mr. Scholl seconded the motion, and the board voted unanimously in favor.

The board's clerk, Mr. Irving, signed the drawing, thereby endorsing (i.e., approving) the Form A.

PUBLIC HEARING FOR PROPOSED ZONING BYLAW AMENDMENT TO ALLOW AGE-RESTRICTED CLUSTER DEVELOPMENT

Ms. Coletta re-opened the public hearing (continued from March 25, 2019, April 1, 2019, and a few minutes earlier on April 8, 2019) for a proposed zoning bylaw amendment to allow by special permit, throughout the entire town on tracts of land of at least 30 acres, certain age-restricted cluster developments that would contain a higher density of residential dwellings and less restrictive setbacks than is currently allowed in most of the town's zoning districts. The bylaw would require that at least 50% of the tract of land be reserved for open space, conservation, agriculture, recreation, park purposes or some combination thereof.

Thomas Godfrey, James Bristol and Steven Bristol, of Bristol Brothers Development, were present; they are the potential developers of a cluster development at the Pembroke Country Club.

The board discussed the modifications made to the proposed zoning bylaw amendment by town counsel, KP Law. Patricia DeChristopher of KP Law was present. Mr. Wandell asked if the affordability component would be required for a project to be approved by special permit, and Ms. DeChristopher confirmed it would be a requirement. It was clarified that the required minimum would be 10%.

Ms. Coletta asked whether the age of 55 has some legal status, and Ms. DeChristopher said that it has become a norm but she was unsure if there are any legal reasons to use that age. This issue was discussed further. Ms. DeChristopher clarified that only one resident of a particular unit would have to be 55 or over. She cautioned that an overly restrictive bylaw could be legally vulnerable.

Mr. Godfrey talked about this issue of age restrictions, and also about how many age-restricted units can count toward the state's affordability requirements.

A discussion followed about the provision of the bylaw whereby affordable units can be created in a cluster project, elsewhere in town, or through a payment in lieu to the town.

The board and Ms. DeChristopher discussed the possibility of further tweaking the language of the proposed bylaw before town meeting, and the extent to which this may be done.

The board and Ms. DeChristopher conversed about infrastructure and services in a cluster development, and the various approvals necessary for any project.

Greg Howell, a member of the public, stated that a cluster project should be limited to two bedrooms per unit. He added that condominium associations often do not keep track of the number of bedrooms very well. More bedrooms, he explained, would mean more traffic and a larger burden on the schools.

Some of the board members cautioned that too many restrictions could prevent cluster developments, and lead to single-family subdivisions instead. A conversation followed about these issues.

Mr. Howell asked when the Pembroke Country Club initiated the process of leaving Chapter 61 status for its land by submitting the appropriate legal documents, and it was explained this happened the previous week.

Walter "Wally" Roenick, who currently owns and/or operates the country club, explained that having three bedrooms doesn't necessarily correlate with three people living in a unit.

Melissa Hogan, a member of the public, expressed her concerns about how development will impact the area around her house, and Pembroke in general. A conversation followed about Pembroke's rural character and whether cluster projects threaten, or can help retain, this rural feel.

The board members talked about how some previous subdivisions have contributed open space to the town. Ms. Coletta went over the provisions in the proposed bylaw that apply to open space and the natural environment. A broader discussion took place about open space and conservation in Pembroke, and about how development impacts road funding.

Daniel Stevens, a member of the public, asked about the classification of the open space if the project is built, and a discussion followed. Mr. Stevens said it would be preferable to have the land donated to the Conservation Commission, and Ms. Coletta replied that this would be considered a legal taking.

Susan Edwards, a member of the public, asked how many units a cluster project could have compared to a single-family subdivision. Ms. Coletta clarified that it would be the same number of units, per the proposed bylaw. A discussion followed about the possible options for the country club land going forward. Ms. Coletta also described the town's current situation regarding "40b" affordable projects.

A member of the public talked about the problem of flooding for the houses along Dwelley Street. Ms. Coletta explained that stormwater regulations require that any new project not increase the

drainage runoff to surrounding properties. A discussion ensued about the problems of stormwater and drainage.

Michele Sullivan, a member of the public, asked about how the allowable number of cluster units is computed, and this was briefly discussed.

James Bristol said, regarding the issue of two versus three bedrooms, that he'd be willing to accept a figure of 2.1 bedrooms per unit.

The board agreed the bylaw would provide that affordable units can be created in a cluster project, elsewhere in town, or through a payment in lieu to the town.

Ms. Coletta said that a communication to the board had asked who the real estate agents would be for a cluster project, and the answer was unknown at this time. Ms. Coletta explained that she is a realtor, and that she has no intention of accepting listings for any project that has come before the town.

Ms. DeChristopher asked if the board wanted to add any provisions to the proposed bylaw strengthening stormwater management, and the board agreed not to.

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

Mr. Wandell made a motion that the board put the age-restricted cluster development zoning bylaw on the warrant for annual town meeting. Mr. Irving seconded the motion, and the board voted unanimously in favor.

Mr. Wandell made a motion that the board ask town counsel to add language to Section 4.B. stating that on a case by case basis the board at its discretion may allow affordable housing units to be on site, off site, or provided through a payment in lieu thereof. Mr. Irving seconded the motion, and the board voted unanimously in favor.

Ms. Coletta asked if any board member wished to make a motion to change the number of bedrooms from 2.25 per unit, and no board member did so.

Mr. Wandell made a motion that the board recommend to town meeting that the bylaw as drafted, with the revision just voted on, be recommended by the Planning Board. Mr. Irving seconded the motion, and the board voted unanimously in favor.

PUBLIC HEARING FOR PROPOSED SITE PLAN #SP1-19 AT 50 MATTAKEESETT STREET

At this time Mr. Wandell left the meeting, in order to discuss the proposed zoning bylaw amendments with the Advisory Committee as previously arranged.

Ms. Coletta re-opened the public hearing (continued from February 11, 2019, and March 11, 2019) for proposed Site Plan #SP1-19 at 50 Mattakeesett Street, consisting of two new buildings of self-storage units behind the existing building, in the Center Protection District, Residence District A, and Water Resource and Groundwater Protection District.

Ms. Coletta stated that the applicant had requested to withdraw the application without prejudice. She explained that this meant the application was being withdrawn, but could be resubmitted. If it were resubmitted, a new public hearing process would start from the beginning.

Mr. Taylor made a motion to close the public hearing for proposed Site Plan #SP1-19 at 50 Mattakeesett Street, Mr. Irving seconded the motion, and the board voted unanimously in favor.

Mr. Taylor made a motion that the board accept the withdrawal of the site plan application without prejudice, Mr. Scholl seconded the motion, and the board voted unanimously in favor.

[A letter to the board regarding proposed Site Plan #SP1-19 at 50 Mattakeesett Street from David Norman, a member of the public, is included in these minutes as an appendix.]

REVIEW OF PRELIMINARY SUBDIVISION ENTITLED TREE STAND WOODS AT 385 HIGH STREET

Ms. Coletta stated that the board would now review an application for a preliminary subdivision entitled Tree Stand Woods. The proposed subdivision is located off High Street, with access through 385 High Street, and also borders Forest Street, in Residence District A.

Stephen Kotowski of Webby Engineering described the subdivision, which the board had previously seen in an informal discussion of the board. Mr. Kotowski explained that the drawings of the preliminary subdivision application were more detailed than what the board saw before. He went over the design, describing the topography, the length and configuration of the cul-de-sacs, where the sidewalks would be, and the public access to the anticipated open space (to be owned by the town). He said that the house at 385 High Street would be razed.

Mr. Kotowski explained why it was necessary, from a financial point of view, for the cul-de-sacs to extend further than a thousand feet. Kenneth McCormick, the Deputy Fire Chief, looked over the drawings. A conversation took place about safety and fire truck access. The board members discussed the advisability of waiving the 1,000-foot limit (in the subdivision rules and regulations) for the cul-de-sac length.

Mr. Irving and Mr. Kotowski discussed the provision of water for the site.

Regarding the 1,000-foot limit for cul-de-sac length, the board again talked about whether to grant a waiver in this case, and in general. The board's peer review engineer, Peter Palmieri of Merrill Engineers and Land Surveyors, was present, and he was involved in the discussion. Mr. Palmieri suggested that such waivers should be carefully justified on a case by case basis, depending on the merits of a proposed subdivision and in a site-specific manner. The board and Mr. Palmieri discussed a previous subdivision where a waiver was granted and the town received a contribution of land. The issue of safety was discussed.

PUBLIC HEARING FOR PROPOSED SITE PLAN #SP2-19 AT 171 MATTAKEESETT STREET

Ms. Coletta re-opened the public hearing (continued from February 25, 2019, and March 18, 2019) for proposed Site Plan #SP2-19 at 171 Mattakeesett Street, to construct three new 7,000-square-foot buildings of warehouse, storage and/or industrial use, and to construct new parking areas, behind two existing buildings. The property is located in Business District A and the Water Resource and Groundwater Protection Overlay District.

Ms. Coletta explained that the applicant had requested to continue the public hearing, to give the applicant time to resolve the violations at the site cited by the town's building inspector and fire department.

Mr. Taylor made a motion to continue the public hearing to May 20, 2019, at 7:00 pm, Mr. Scholl seconded the motion, and the board voted unanimously in favor.

DISCUSSION OF POSSIBLE ALTERATIONS TO STORMWATER SYSTEM AND TOPOGRAPHY AT PREVIOUSLY APPROVED SITE PLAN #SP4-16 BRIDGES AT PEMBROKE

The board commenced a discussion about alterations being proposed to the stormwater system and topography at previously approved Site Plan #SP4-16 Bridges at Pembroke, in Industrial District B. This project has been built out and is now occupied, but the high water table has been a problem and stormwater has not been draining out of the detention basins properly. Douglas Arsham, representing the developer, and Sean Foster, an engineer working on the project, were present. The board's peer review engineer for the project, Peter Palmieri, was also present.

Mr. Arsham briefly described the situation regarding stormwater, the water table and the detention basins. Mr. Taylor expressed his disappointment with the project's current appearance and the stormwater problems.

The board members discussed the project's problematic appearance from Route 139, in particular the high mound containing the septic system and the standing water in one of the detention basins.

Mr. Foster explained they had concluded that expanding one of the detention basins, and converting both basins into "wet basins" (i.e., retention basins), would suffice to resolve the stormwater problem. It was clarified that the basin to be enlarged was the one further back and not visible from Route 139. Mr. Palmieri explained that a smaller basin or recharge area would also be added in the back.

Mr. Palmieri said that wet basins are acceptable by stormwater management policies. He explained that these wet basins will probably contain water at least half the time, and possibly always, and will gradually have typical wetland vegetation. Mr. Irving and Mr. Foster discussed the proposed stormwater design.

At this time Mr. Wandell returned to the meeting.

Mr. Irving described the soil at the site. The board members and Mr. Foster discussed the details of the proposed redesign in relation to drainage and stormwater.

The board, Mr. Palmieri and Mr. Arsham discussed the nature of the construction work to make the revisions, the possible impact on abutters, and whether it would constitute a major modification or minor modification to the site plan.

The board members agreed to discuss the project again on April 22 at 7:00 pm, and to individually look at the site before then in order to get a better sense of the conditions and how close the abutters are.

PUBLIC HEARINGS FOR FOURTEEN PROPOSED ZONING BYLAW AMENDMENTS

Ms. Coletta re-opened the fourteen public hearings (continued from March 25, 2019), running concurrently, for fourteen proposed zoning bylaw amendments. These zoning bylaw amendments are titled, in the draft warrant for annual town meeting, the legal advertisements, and other documents, as follows:

- Amend Nonresidential Frontage Bylaw
- Amend Residential-Commercial District, Special Permit Authority
- Amend Residential-Commercial District, Assisted Living Facilities
- Typographical Errors
- Business District B
- Center Protection District, Assisted Living Facilities
- Signs, Commercial Addresses
- Appeals
- Nonconforming Uses, Building Permits
- Nonconforming Uses
- Site Plan Approval, Procedure
- Special Permits, Procedure
- Effect of Unfavorable Decisions
- Use Variance

Mr. Taylor made a motion to recess the public hearings until 9:00 pm, Mr. Irving seconded the motion, and the board voted unanimously in favor.

DISCUSSION ABOUT DEVELOPMENT AND SUBDIVISION OPTIONS FOR PROPERTY AT 200 VALLEY STREET

The board began a discussion about the possible development and subdivision options for the property at 200 Valley Street, which lies in Residence District A. Stephen Damon, representing the property owner, and Mark Casey, a surveyor, were present.

Mr. Casey described the property, which is an oddly shaped, large “pork chop lot” with a 40-foot-wide strip that extends to Valley Street. The Damon family would like to subdivide the property to create a lot for the current house and a new buildable lot. To do this they would need a waiver from the requirement in the subdivision rules and regulations of a 50-foot-wide road layout.

They also hope to use the existing paved driveway, and to build a T-turnaround instead of the normal circular turnaround at the end of the cul-de-sac. Mr. McCormick said he’d need to discuss this with the Fire Chief.

Mr. Irving asked about the width of the driveway, and Mr. Casey said it’s about 14 feet. A discussion followed about supplying water to the property. It was clarified that the property is currently nonconforming due to lack of sufficient frontage and its general configuration. The frontage is about 107 feet, which also might require a waiver for the subdivision road. Mr. Casey noted that they could donate some of the unusable land to the town.

The board and Mr. Casey discussed the issues relating to the possible subdivision, how the zoning bylaws and subdivision rules and regulations would apply, and other possible complications. It was noted that abutters live nearby on either side of the current driveway. The board members expressed concern about the precedent such a project might create.

Mr. Casey suggested that a preliminary plan could be submitted, along with a payment toward engineering review, in order to help ascertain whether such a subdivision would be allowed by the board. The board members indicated this might be feasible.

PUBLIC HEARINGS FOR FOURTEEN PROPOSED ZONING BYLAW AMENDMENTS

The public hearings for fourteen proposed zoning bylaw amendments, running concurrently, were resumed from a few minutes earlier. Patricia DeChristopher of KP Law (town counsel) was present.

The board and Ms. DeChristopher discussed the “Amend Nonresidential Frontage Bylaw” proposed zoning bylaw amendment, and agreed on the explanation to be used for it in the town meeting warrant.

It was clarified that the “Amend Residential-Commercial District, Special Permit Authority” proposed zoning bylaw amendment was previously voted by the board to be recommended to town meeting.

It was clarified that the “Amend Residential-Commercial District, Assisted Living Facilities” proposed zoning bylaw amendment was previously voted by the board to be recommended to town meeting.

It was clarified that the “Typographical Errors” proposed zoning bylaw amendment was previously voted by the board to be recommended to town meeting.

It was clarified that the “Business District B” proposed zoning bylaw amendment was previously voted by the board to be recommended to town meeting.

It was clarified that the “Center Protection District, Assisted Living Facilities” proposed zoning bylaw amendment was previously voted by the board to be recommended to town meeting.

The board and Ms. DeChristopher discussed the process of creating verbiage for the explanations to be used for the zoning bylaw amendments in the town meeting warrant.

It was clarified that the “Signs, Commercial Addresses” proposed zoning bylaw amendment was previously voted by the board to be recommended to town meeting.

Since the “Appeals” proposed zoning bylaw amendment was not yet previously voted by the board to be recommended to town meeting, the board discussed this with Ms. DeChristopher and Mr. Heins. A conversation took place about the legal complexities relating to this.

Mr. Wandell made a motion to submit the “Appeals” proposed zoning bylaw amendment to the town meeting warrant. Mr. Scholl seconded the motion, and the board voted unanimously in favor.

It was clarified that the “Nonconforming Uses, Building Permits” proposed zoning bylaw amendment was previously voted by the board to be recommended to town meeting.

It was clarified that the “Nonconforming Uses” proposed zoning bylaw amendment was previously voted by the board to be recommended to town meeting.

Since the “Site Plan Approval, Procedure” proposed zoning bylaw amendment was not yet previously voted by the board to be recommended to town meeting, the board discussed this briefly with Ms. DeChristopher.

Mr. Wandell made a motion to submit the “Site Plan Approval, Procedure” proposed zoning bylaw amendment to the town meeting warrant. Mr. Irving seconded the motion, and the board voted unanimously in favor.

It was clarified that the “Special Permits, Procedure” proposed zoning bylaw amendment was previously voted by the board to be recommended to town meeting.

It was clarified that the “Effect of Unfavorable Decisions” proposed zoning bylaw amendment was previously voted by the board to be recommended to town meeting.

Since the “Use Variance” proposed zoning bylaw amendment was not yet previously voted by the board to be recommended to town meeting, the board discussed it briefly.

Mr. Taylor made a motion to submit the “Use Variance” proposed zoning bylaw amendment to the town meeting warrant. Mr. Wandell seconded the motion, and the board voted unanimously in favor.

Mr. Wandell made a motion to close the fourteen public hearings, Mr. Taylor seconded the motion, and the board voted unanimously in favor.

REVIEW OF ROUTINE ADMINISTRATIVE MATTERS

Sean Kennedy, one of the applicants for Site Plan #SP4-18 at 212 Schoosett Street (Magical Years Preschool), a site plan previously approved by the board, presented two building permit routing slips (for demolition of the existing building and construction of the proposed building) to the board.

Mr. Wandell made a motion that the board’s clerk sign the building permit routing slips, for demolition of the existing building and construction of the proposed building, for Site Plan #SP4-18 at 212 Schoosett Street, the Magical Years Preschool. Mr. Taylor seconded the motion, and the board voted unanimously in favor.

Mr. Irving signed the two building permit routing slips.

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

Respectfully submitted,

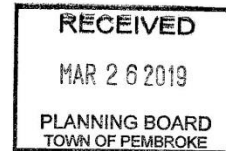
Matthew Heins, Planning Board Assistant

APPENDIX: LETTER FROM DAVID NORMAN REGARDING PROPOSED SITE PLAN #SP1-19 AT 50 MATTAKEESETT STREET (PAGE 1 OF 4)

March 25, 2019

VIA EMAIL: mheins@townofpembroke.com

Ms. Rebecca Coletta
Planning Board Chair
Pembroke Planning Board



Re: PROPOSED SITE PLAN #SP1-19 AT 50 MATTAKEESETT STREET by Jack Conway Realty ("JCR")

Dear Ms. Coletta and Planning Board Members:

Please include this letter as a public comment and include it in the minutes of next public session on this matter, without the need to read the letter into the record.

Introduction- The term, "Ancillary"

One pivotal issue with this pending proposal is the definition of "Ancillary" in the Pembroke Zoning Bylaws ("PZB"):

7. CENTER PROTECTION DISTRICT

A. Uses Allowed

3. Businesses that provide financial, legal, insurance, real estate, educational, banking, technology, mortuary, travel and vacation, consumer services or similar office uses and their **ancillary services**.

"Services" versus "Uses"

Reading this section of the PZB and overlaying the concept of primary/principal versus ancillary/subordinate, the use of the word "services" rather than "uses" (following "ancillary") by the drafters is worth some consideration. Section 7(A)(3) allows ancillary services, not ancillary uses.

The word "services" seems to have a narrower application than the word "uses" would in this context. A service would be something done for or on behalf of a client of the primary user. A use, however could be much broader, as it could include a structure or operation for the sole benefit of the primary user (if ancillary, discussed below). For example:

- A realtor that builds storage for its own signs and open house supplies may have an ancillary use, but not an ancillary service;
- A mortuary that builds a garage for its hearses may have an ancillary use, but not an ancillary service;
- A law office that builds storage for its own files may have an ancillary use, but not an ancillary service.

APPENDIX: LETTER FROM DAVID NORMAN REGARDING PROPOSED SITE PLAN #SP1-19 AT 50 MATTAKEESETT STREET (PAGE 2 OF 4)

It is important to note that the drafters of Section 7(A)(3) did not choose the overly broad “uses,” but instead chose to substantially narrow the ancillary opening with the word, “services.”

This presents a significant risk that the mini storage complex could slip into non-conformity with just slight changes in circumstances or ownership. A subsequent owner who attempts to use the storage for its own benefit might be deemed to have an ancillary use, but might not be engaged in an ancillary service. It is possible that JCR could start off with a conforming use (mini storage for clients, if ancillary), but decide later to use the storage for its own use (e.g. storage of equipment for a property management business) and would slip into non-conformity (again, use, but not service). I believe there is substantial risk that these mini-storage units, even if allowed under these very specific facts, could easily slip into non-conformity, since “ancillary services” should be read narrowly, as I believe the drafters intended.

Primary Use is measured at 50 Mattakeesett Street (the “Property”), not the JCR aggregated business

JCR has made efforts in public hearings to distort the “ancillary” question into whether the storage units would be ancillary to the JCR business at-large, throughout the South Shore. Whether JCR is a single corporation, a partnership, or a web of LLCs has no relevance. The only relevant question is whether the storage units will be an ancillary use to the primary use at the Property. JCR may be a “family business” that is not “siloeed,” but that does not qualify the entirety of its South Shore Business as the primary use at the Property, relative to the proposed “ancillary services.”

Similarly, JCR claims that the 50 Mattakeesett Street property is accessible by virtually all of its 750 employees on the South Shore. This lockbox access by 750 employees does not inflate the actual size of the primary use beyond the couple of staffers in the basement.

Analysis in the absence of a Definition

There is no definition of “ancillary” in the PZB, nor is there instruction on how to analyze undefined terms (a provision that some zoning bylaws do contain). In the absence of an express definition, the meaning of a word or phrase used in a local zoning enactment is a question of law, *Kurz v. Board of Appeals of N. Reading*, 341 Mass. 110 (1960), and is to be **determined by the ordinary principles of statutory construction**. Specific provisions of a zoning enactment are **to be read in the context of the law as a whole, giving the language its common and approved meaning** “without regard to . . . [the court’s] own conceptions of expediency.” *Id.* at 112, quoting from *Commonwealth v. S.S. Kresge Co.*, 267 Mass. 145, 148 (1929). *Shuman v. Aldermen of Newton*, 361 Mass. 758, 766 (1972). *Jackson v. Building Inspector of Brockton*, 351 Mass. 472, 475 (1966), and cases cited. **“We derive the words’ usual and accepted meanings from sources presumably known to the [by-law’s] enactors, such as their use in other legal contexts and dictionary definitions.”** *Commonwealth v. Zone Book, Inc.*, 372 Mass. 366, 369 (1977). *The Framingham Planning Clinic, Inc. v. Zoning Board of Appeals of Framingham*, 382 Mass. 283.

PZB Does define “Accessory Uses”

One piece of guidance that may be derived from the PZB is its definition of “accessory Uses,” a virtually synonymous term to ancillary, and nearly interchangeable at times:

SECTION II Definitions

Accessory Uses

**APPENDIX: LETTER FROM DAVID NORMAN REGARDING PROPOSED SITE PLAN #SP1-19 AT 50
MATTAKEESETT STREET (PAGE 3 OF 4)**

Uses closely related to, supporting, or **customarily incidental to the main use of a lot.**" (my emphasis).

A 25-unit public self-storage facility is not "related to" a property management company. To make this strained connection would be to allow public storage units behind every law office, bank, insurance agency, etc. Also, a 25-unit public self-storage facility does not "support" the proposed main proposed use of the lot (two property management staffers in a basement).

The term "customarily incidental" has been fairly well covered in Massachusetts case law and generally has resulted in restrictive readings of zoning bylaws. See *John H. Garabedian v. Mary Westland et al*, 59 Mass. App. Ct. 427 (2003) (landing strip not an accessory use to the residence on the property, because a landing strip is not customarily incidental to a residence).

The Garabedian opinion states that "incidental use is one that is "dependent on or pertains to the principal or main use," citing *Pratt v. Building Inspector of Gloucester*, 330 Mass. 344, 346-347 (1953) (sales of garden tools and equipment, sale of merchandise not grown on the premises, and use of the premises as a headquarters for a contracting business were not incidental or accessory uses to the primary use of a greenhouse and nursery.) The Garabedian opinion also states that "Customarily" implies a certain commonality of usage, **a history of the lesser uses in conjunction with the primary uses. If the usage is rare, it is not customary**" (my emphasis). The building of a 25-unit public self-storage facility would certainly be rare and is without a history as a lesser use of a property management office with a skeleton crew.

I would also draw the Board's attention to the following instructive Massachusetts cases:

- *Needham v. Winslow Nurseries, Inc.* 330 Mass 95 (keeping two show horses was not an accessory use in a residence zone).
- *Town of Harvard v. William Maxant*, 360 Mass. 432 (use of property as a private air strip would not be permitted as "customarily incidental" to the primary residential use).
- *Henry v. Board of Appeals of Dunstable*, 408 Mass 841, "The word "incidental" in zoning by-laws or ordinances incorporates two concepts: "It means that the use **must not be the primary use of the property** but rather one which is **subordinate and minor in significance**.... But 'incidental,' when used to define an accessory use, **must also incorporate the concept of reasonable relationship with the primary use. It is not enough that the use be subordinate; it must also be attendant or concomitant. To ignore this latter aspect of 'incidental' would be to permit any use which is not primary, no matter how unrelated it is to the primary use.**" *Harvard v. Maxant*, 360 Mass. 432, 438 (1971), quoting *Lawrence v. Zoning Bd. of Appeals of N. Branford*, 158 Conn. 509, 512-513 (1969)(my emphasis).

This is by no means a full listing or discussion of the relevant Massachusetts cases on what constitutes an ancillary, accessory, customarily incidental, auxiliary, supplementary, subordinate, or contributory use. This research quickly takes you down a rabbit hole of nearly interchangeable terms to "ancillary" and even to old cases from other states. Indeed, the term "ancillary" itself is not well covered in the case law (again, I may have missed something). My takeaway is that these cases strongly tend to favor a restrictive and narrow definition of ancillary-like terms, generally siding in favor of concerned abutters and towns interested in preserving and implementing the spirit and intent of their bylaws.

**APPENDIX: LETTER FROM DAVID NORMAN REGARDING PROPOSED SITE PLAN #SP1-19 AT 50
MATTAKEESETT STREET (PAGE 4 OF 4)**

Again, I leave it to Town Counsel and counsel for JCR to fully analyze “ancillary,” “accessory,” and the many nearly synonymous terms. The cases on the ancillary-like terms generally support a narrow reading of those terms and, I would argue, of “ancillary” as well.

Dictionary Definitions

The following are a few dictionary definitions of “ancillary” as an adjective (as used in the PZB):

- Providing necessary **support to the primary activities** or operation of an organization, system, etc. (Oxford English Dictionary).
- Providing **necessary support to the primary activities** or operation of an organization, institution, industry, or system. (Internet- uncredited source)
- 1) **Subordinate, Subsidiary**; 2) Auxiliary, Supplementary (Merriam-Webster, internet)
- 1) **Subordinate**; 2) **Auxiliary** (American Heritage Dictionary) (my emphasis).

And finally, the entry in Roget’s II The New Thesaurus:

Giving or able to give help or support: accessory, assistant, auxiliary, collateral, contributory, **subsidiary**, supportive (my emphasis).

The clear pattern that emerges is that to be ancillary, a use must not be the primary use and must be subordinate to a primary use. When we couple these dictionary definitions, the discussion of accessory uses (a term defined by the PZB), and the important point from *Henry v. Board of Appeals of Dunstable*, that “an accessory use, must also incorporate the concept of reasonable relationship with the primary use,” “ancillary services,” as used in the PZB, must be read narrowly. Any other approach would certainly validate the “slippery slope” concerns that have been voiced by several people.

Conclusion and Request

Given the facts as presented to the Board, it seems that the JCR proposal is much closer to constituting a disallowed primary use as a public self-storage facility than an ancillary use to anything. I join with the many voices opposed to this proposal and respectfully request that the Board deny the pending proposal.

PZB Amendment would be Helpful to Future Applicants and to the Planning Board

Since amendments to the PZB are on the agenda for Town Meeting, perhaps this would be an opportunity to insert a definition of Ancillary in Section II of the PZB, such as:

Ancillary Services

Ancillary services are subordinate to or dependent on the main, principal, or primary use of the lot or property and are customarily provided to customers or clients as incidental, concomitant, or attendant to the principal or primary use of the lot or property.

As always, thank you for your time and consideration.

Respectfully submitted,
David Norman
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