



## **PEMBROKE PLANNING BOARD MINUTES**

**MONDAY, JANUARY 27, 2020**

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

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

**OTHERS PRESENT:** Matthew Heins (Planning Board Assistant), Alexander Weisheit (KP Law, Town Counsel), Peter Palmieri, Russell Field, Kathy Field, John Danehey, Susan Spratt, Brian Murphy, Kimberly Kroha, Nick Evano, Stephanie Demetro, Stacy Minihane, Michael Bulman, and others.

Vice-Chairman Andrew Wandell opened the meeting by reading the Chairman's statement.

### **PUBLIC HEARING FOR PROPOSED MAJOR MODIFICATION TO SITE PLAN #SP2-17 AT 260-280 OAK STREET**

At the start of the meeting, board members Andrew Wandell, Thomas Irving, John Scholl, and Daniel Taylor were present.

Mr. Wandell re-opened the public hearing (continued from December 16, 2019) for the proposed major modification (amendment) to Site Plan #SP2-17 at 260-280 Oak Street. The site plan is to build two industrial buildings totaling 20,000 square feet of modular units occupied by multiple users, on property located in Industrial District A and the Medical Marijuana Overlay District, and its construction is nearly complete. The major modification makes various changes to the site plan, generally reflecting what has actually been built, especially regarding the access drive, parking areas, drainage system, landscaping, grading, fencing, retaining walls, vegetation, building interiors, and building entrances.

Mr. Taylor made a motion to continue the public hearing to 7:45 pm, Mr. Irving seconded the motion, and the board voted unanimously in favor.

### **DECISION TO EXTEND DEADLINE OF COMPLETION FOR SITE PLAN #SP5-17 AT 240 & 258 OAK STREET**

Russell Field, Kathy Field and attorney John Danehey came before the board to request that the board extend the deadline of completion for Site Plan #SP5-17 at 240 & 258 Oak Street, which was February 28, 2020. The site plan was approved about two years ago, but due to ongoing litigation

(from an appeal of the decision granting site plan approval), Mr. Field has not been allowed to start construction.

The board, Mr. Field and Mr. Danehey briefly discussed the project and the legal situation, and Mr. Field signed the document requesting a one-year extension.

Mr. Scholl made a motion to extend the deadline for completion for Site Plan #SP5-17 at 240 & 258 Oak Street for an additional twelve (12) months. Mr. Taylor seconded the motion, and the board voted unanimously in favor.

#### **DISCUSSION ABOUT WHETHER TO SUPPORT ISSUANCE OF PERMANENT CERTIFICATE OF OCCUPANCY FOR SITE PLAN #SP1-18 IRVING OIL GAS STATION**

The board members reviewed the most recent letter from the board's peer review engineer (Peter Palmieri of Merrill Engineers and Land Surveyors) regarding the as-built plan and condition of the site for recently completed Site Plan #SP1-18 Irving Oil Gas Station, and discussed whether to support issuance of a permanent certificate of occupancy for the project. The gas station already has received a temporary certificate of occupancy, and is operating.

The peer review engineer's letter identified one remaining issue on the site, a water valve box that was too high above the grade.

The board agreed to authorize Mr. Heins (the Planning Board Assistant) to communicate to the Building Inspector, when the final item (the valve water box) is fixed, that the board supports issuance of a permanent certificate of occupancy.

Mr. Taylor made a motion that the board support issuing the certificate of occupancy for Site Plan #SP1-18 Irving Oil Gas Station, subject to the second water valve box being adjusted per the as-built plan review and site inspection. Mr. Irving seconded the motion, and the board voted unanimously in favor.

#### **REVIEW OF ROUTINE ADMINISTRATIVE MATTERS**

Mr. Scholl made a motion to approve the minutes for January 6, 2020, Mr. Irving seconded the motion, and the board voted unanimously in favor.

The board and Mr. Heins discussed the draft annual report of the Planning Board that Mr. Heins had prepared.

The board and Mr. Heins briefly talked about the unbuilt Dominic's Way Subdivision property, the possible cluster housing development at the Pembroke Country Club, and a proposed use of the property at 300 Center Street.

Since there was nothing else to discuss or deal with until the remaining agenda items began, and one board member had not yet arrived, the board members agreed to adjourn and go into recess for a short period of time.

Mr. Taylor made a motion that the board go into recess, Mr. Irving seconded the motion, and the board voted unanimously in favor.

The board adjourned and went into recess.

## **DISCUSSION ABOUT POSSIBLE CHANGES TO TOWN OF PEMBROKE'S ZONING BYLAWS**

Shortly after going into recess, board member and Chairman Rebecca Coletta arrived, and at this time the board decided to resume the meeting.

Ms. Coletta stated that the board meeting was being re-opened.

The board embarked on a discussion about various possible changes to the town's zoning bylaws which were being considered, and reviewed a draft of some potential amendments prepared by town counsel.

The board and Mr. Heins talked about a possible amendment to the zoning bylaws to update the references to flood insurance maps.

The board and Mr. Heins discussed the possibility of banning single-family residential uses in the two industrial zones. This segued into a conversation about the possible amendment to allow certain multifamily housing projects in the industrial zones, which the Affordable Housing Committee intends to propose. Mr. Wandell described this possible change in detail, and explained why he felt it would be advantageous. Further discussion followed.

The board and Mr. Heins talked about a possible amendment to the zoning bylaws to allow the open space portion of a cluster housing project to be within the Water Resource and Groundwater Protection District.

The board and Mr. Heins discussed the idea of updating the zoning bylaws to better accommodate "doggie daycare" facilities, and perhaps some limited kennels.

## **PUBLIC HEARING FOR PROPOSED MAJOR MODIFICATION TO SITE PLAN #SP2-17 AT 260-280 OAK STREET**

Ms. Coletta re-opened the public hearing (continued from December 16, 2019, and from earlier in this board meeting) for the proposed major modification (amendment) to Site Plan #SP2-17 at 260-280 Oak Street. The site plan is to build two industrial buildings totaling 20,000 square feet of modular units occupied by multiple users, on property located in Industrial District A and the Medical Marijuana Overlay District, and its construction is nearly complete. The major modification makes various changes to the site plan, generally reflecting what has actually been built, especially regarding the access drive, parking areas, drainage system, landscaping, grading, fencing, retaining walls, vegetation, building interiors, and building entrances.

Brian Murphy, the project's developer, was present, as was his attorney Kimberly Kroha and the project engineer Susan Spratt of McKenzie Engineering Group.

Russell Field, the landowner of an adjacent property (240 & 258 Oak Street), was present, along with his attorney John Danehey, and also Kathy Field.

Alexander Weisheit of KP Law, Town Counsel for Pembroke, was also present.

Mr. Murphy and Mr. Field have been in disagreement about several aspects of the Site Plan at 260-280 Oak Street, and hence their attorneys were present to represent their positions, and town counsel was present to assist the board with the relevant legal questions.

Ms. Kroha explained the situation and the legal issues from Mr. Murphy's viewpoint. She discussed the common driveway, the 40% landscaping rule, the three-way entrance on Oak Street, and the original variance granted by the Zoning Board of Appeals. She emphasized that the board's original site plan approval is still applicable, especially since it was not appealed. She said that the original variances that were granted constructively are also applicable, since the building permit was obtained within a year.

Mr. Danehey presented his position, representing Mr. Field's stance. He explained that variances were never requested or granted for a common driveway or for the 40% landscaping rule, and noted that the project as designed for site plan review was substantially different from what was submitted with the application for variances. He acknowledged that if the site plan had been built per the design originally approved by the Planning Board, the issues of the common driveway and 40% landscaping rule could not be contested. However, he pointed out, the site plan as built differs from what was originally approved, and the difference is a material change. Thus, he argued, the original variances granted no longer apply, and the public hearing process begins anew. He also claimed that parts of the project overlap onto property owned by Corporate Park, and no site plan application has been submitted by that entity.

Ms. Kroha clarified that a letter has been submitted by Corporate Park consenting to the portion of the project being on its property.

Mr. Weisheit stated that the current application is essentially a "brand-new site plan" since two years have passed since the original site plan application was approved. He said that the common driveway and 40% landscaping issues should be resolved first, and that these are zoning questions which should be determined by the town's building inspector. A discussion followed between Ms. Coletta and Mr. Weisheit about the potential implications of this. Mr. Weisheit said that this submission should be regarded as a new site plan.

Mr. Murphy described the history of how the common driveway issue was handled during the site plan review process.

Ms. Coletta and Mr. Weisheit talked about getting guidance from the building inspector (who is also the zoning enforcement officer) with regard to the zoning interpretations.

Mr. Palmieri said that he believes the proposed redesign of the three-way entrance on Oak Street is now safe.

Ms. Coletta raised the issue of the various connections (arguably "common driveways") between the adjacent properties that are both under Mr. Murphy's control but have different owners.

Mr. Scholl asked Mr. Danehey about any remaining issues of concern. Mr. Danehey said that the concrete blocks below the fence along the edge of Mr. Field's property are a problem, and this led to further conversation and debate between various people present. The question of what constitutes a wall or structure was discussed.

Mr. Palmieri mentioned that the issue of parking and dumpsters was still ambiguous. Ms. Spratt described certain aspects of the site as it has been built. She discussed the location of the dumpsters, which led to conversation with Ms. Coletta and Mr. Murphy. Mr. Irving and Ms. Spratt discussed the grading along the property boundaries.

Ms. Coletta stated that the building inspector needs to determine three things: whether the fence or wall along the property boundary is a structure, whether there is a common driveway in violation of the zoning bylaw, and whether the 40% landscaping requirement is being met in compliance with the zoning bylaw.

Mr. Scholl asked Mr. Field how his property would be improved if the requested modifications are done. Mr. Danehey noted that the wall or fence is ugly, and said that everyone should comply with the zoning bylaws. This led to further debate between several people present.

The board agreed to continue the public hearing, and get advice from the building inspector and town counsel.

Mr. Wandell made a motion to continue the public hearing to February 24 at 7:30 pm, Mr. Irving seconded the motion, and the board voted unanimously in favor.

#### **DISCUSSION ABOUT SITE PLAN #SP7-19 CAMP PEMBROKE YURT VILLAGE**

The board members briefly discussed Site Plan #SP7-19 Camp Pembroke Yurt Village. Stacy Minihane of Beals & Thomas was present to represent the project. This site plan was previously granted approval by the board, but the decision document had not yet been voted on or signed. Since the quorum of four board members which previously voted to approve the project was not present at this time, the board could not vote on or sign the decision document.

#### **DISCUSSION ABOUT POSSIBLE USE OF PROPERTY AND EXISTING BUILDINGS AT 300 CENTER STREET AS RESTAURANT, SINGLE-FAMILY HOUSE AND OFFICE**

Nick Evano and Stephanie Demetro came before the board to discuss the possible use of the property and existing buildings at 300 Center Street as a restaurant, single-family house and office. Mr. Weisheit was still present.

A discussion took place about the previous uses of the property, and the allowed uses in Business District A (which is the zone that most of the property is located in). It was clarified that Arrow Restaurant, the previous use on the property, closed in August of 2018. The property contains the building which previously housed Arrow Restaurant, and also a smaller building that is roughly similar to a house.

The board members explained that a mixture of uses (i.e., both commercial and residential) was not previously allowed on the property (except a long time ago on a temporary basis due to a fire), though the house may have been illegally used for residential purposes at some point.

Mr. Evano explained that he wished to open a new restaurant in the building that formerly contained Arrow Restaurant, and that he and Ms. Demetro would live in the house. Ms. Demetro explained that she would also have an office in the house, for her meditation and yoga business, and this would bring some customers to the site.

The board reviewed the allowed uses in Business District A, and noted that a restaurant is allowed by special permit. To have both a restaurant and a meditation-yoga studio on the property would also probably be allowable, since they are both commercial uses. However, the board members were doubtful as to whether there was any way to allow both a restaurant and a residential house on the property, since that would be a mixture of uses, which the zoning bylaws prohibit.

The board, Mr. Weisheit and Mr. Heins discussed the complexities of an owner-occupied business in a single-family residential use, and whether that combined with the restaurant could constitute a commercial use rather than a mixed use.

It was agreed that Mr. Weisheit would give the board advice about the legality of this proposed use, and the discussion would continue at the next board meeting on February 10.

**DISCUSSION ABOUT POSSIBLE CONSTRUCTION OF LARGE GARAGE BEHIND EXISTING OFFICE BUILDING AT 50 MATTAKEESETT STREET**

Michael Bulman, representing Jack Conway Real Estate, came before the board to discuss the possibility of building a large garage at 50 Mattakeesett Street, as an ancillary, subsidiary and/or accessory use to the company's real estate (property management) offices at that location. The garage would be behind the existing office building and toward the rear of the property.

Mr. Weisheit was still present, and also participated in the discussion.

Mr. Bulman noted that Jack Conway Real Estate previously submitted a site plan application to build self-storage units on the property, and the application was withdrawn amidst doubts as to whether that qualified as an "ancillary service."

Mr. Bulman explained that the garage would be 4,000 square feet in size (80 feet by 50 feet), and it would be used only by Jack Conway Real Estate, to house its trucks, equipment and items such as furniture that need to be stored. It would be in use from 8 am to 5 pm daily.

The board and Mr. Bulman discussed various aspects of the idea, how the building could be configured on the site, and how it might impact abutters. A conversation took place about the architectural style of the building, as per the Center Protection District rules.

**REVIEW OF ROUTINE ADMINISTRATIVE MATTERS**

Mr. Heins announced to the board that it is his tentative intention to leave his job in August of 2020. He explained that, having worked as Pembroke's Planning Board Assistant for almost four years, it seems reasonable to search for a new position in order to advance his career in the field of urban planning.

The board and Mr. Heins discussed his plans for the future and the possible hiring process for his replacement.

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