



PEMBROKE PLANNING BOARD MINUTES

MONDAY, MAY 18, 2020

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

BOARD MEMBERS ABSENT: Daniel Smith, Jr.

OTHERS PRESENT: Matthew Heins (Planning Board Assistant), Kenneth McCormick (Acting Fire Chief), Peter Palmieri, Paul Seaberg, Stephen Saia, Susan Spratt, Kimberly Kroha, Brian Murphy, John Danehey and Russell Field.

Due to the coronavirus pandemic, this meeting of the Planning Board was held by remote participation using the internet, through the Zoom software platform arranged by PACTV, with nobody in physical proximity.

OPENING THE MEETING

At 7:00 pm, Ms. Coletta opened the Planning Board meeting. She read a modified version of the Chairman's statement, adjusted for the circumstances of the coronavirus pandemic and remote participation:

Please note that this meeting is being made available to the public through an audio and/or video 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. In this case, there will be an audio and video recording, as we are being hosted via Zoom on PACTV.

Pursuant to Governor Baker's March 12, 2020, Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor's March 15, 2020, Order imposing strict limitations on the number of people that may gather in one place, this public meeting of the Pembroke Planning Board is being conducted via remote participation.

No in-person attendance of members of the public will be permitted, but the public can view and listen to this meeting in real time while in progress. PACTV is providing this service live on Comcast Government Access Channel 15, and for those without cable, on their PRIME streaming channel by visiting www.pactv.org/live.

Members of the public attending this meeting virtually will be allowed to make comments if they wish to do so, during the portion of any public hearing designated for public comment, by emailing mheins@townofpembroke.com or calling 781-709-1433. The public also has the option now to participate interactively through the Zoom software application, if you have that technical capability.

Ms. Coletta provided details about how members of the public could interactively participate in the meeting over the internet through the Zoom software, and how this interactive participation would work.

At this time, the board members present were Rebecca Coletta (Chairman), Thomas Irving (Clerk), Daniel Taylor, James Noone and John Scholl.

REVIEW OF ROUTINE ADMINISTRATIVE MATTERS

The board and Mr. Heins discussed how documents that need to be signed by multiple board members can be circulated through the mail.

Board member Andrew Wandell (Vice-Chairman) joined the meeting at this time.

Ms. Coletta explained that a sub shop (eating establishment) was interesting in occupying the space formerly held by a Verizon store on Church Street (near Lowe's and Stop & Shop, in the building also containing a mattress store, nail salon, H&R Block and urgent care facility). The building would not be expanded or changed, aside from interior alterations and signage, but the use of the space would obviously change.

The board members discussed this. Kenneth McCormick (Acting Fire Chief) and Peter Palmieri (the board's normal peer review engineer, of Merrill Engineers and Land Surveyors) also participated in this discussion. It was agreed that the potential applicant should come before the board for an informal discussion.

DISCUSSION ABOUT LIMITED REOPENING OF EATING ESTABLISHMENTS

The board, Mr. Heins and Mr. McCormick discussed how the anticipated reopening of restaurants and other eating establishments for sit-down service, with outdoor seating only in the beginning, will be handled. Mr. McCormick described how the process would work, and further conversation followed about social distancing, the use of parking spaces for seating, etc. Some board members suggested that Mr. Heins be involved in the process.

Mr. Scholl made a motion that Mr. Heins participate in these meetings [involving the reopening of restaurants and other eating establishments] and keep the board posted on the recommendations, and if he deems it's a simple modification that does not require site plan review, he would have the authority to sign off on it. Mr. Irving seconded the motion, and the board voted unanimously in favor by roll call.

VOTE TO ACCEPT AS-BUILT DRAWINGS FOR SITE PLAN #SP4-16 BRIDGES AT PEMBROKE

Ms. Coletta noted that the board had received the as-built drawings for the completed Site Plan #SP4-16 Bridges at Pembroke, and that Mr. Palmieri had indicated the work had been performed generally in accordance with the latest approved site plan.

Mr. Taylor made a motion that the board accept the as-built drawings for Site Plan #SP4-16 Bridges at Pembroke. Mr. Wandell seconded the motion, and the board voted unanimously in favor by roll call.

The board, Mr. Heins and Mr. Palmieri briefly discussed the mechanics of returning the remaining balance in the engineering review account to the applicant of the Bridges at Pembroke.

PUBLIC HEARING FOR PROPOSED SUBDIVISION #2001 OLD CART PATH LANE EXTENSION

Ms. Coletta reopened the public hearing (continued from February 10, 2020, March 9, 2020, March 16, 2020, and April 27, 2020, though most of those were immediately continued without testimony due to the pandemic) for proposed Subdivision #2001 Old Cart Path Lane Extension. It is through the application of Stephen Saia, 70 Old Cart Path Lane, Pembroke, MA 02359, for a Definitive Subdivision entitled Old Cart Path Lane Extension. The proposed subdivision is located at 70 Old Cart Path Lane, Pembroke, MA 02359, and would consist of three new single-family houses, one existing single-family house, and a new cul-de-sac road. The property is located in the Residential A Zoning District on Assessors' Map D8, Lot 5B. A copy of the application is available in the Office of the Planning Board.

The applicant Stephen Saia was present, along with the engineer Paul Seaberg of Grady Consulting. Mr. Palmieri and Mr. McCormick were also present.

Mr. Seaberg explained that the only major change made to the design since the last public hearing was the relocation of the sidewalk from the north to the south side of Old Cart Path Lane.

Mr. McCormick requested a small change to the configuration of the fire hydrant, which Mr. Seaberg agreed to do.

Ms. Coletta and Mr. Wandell discussed using the "Mullin Rule" to enable themselves eventually to vote on the subdivision.

The requested waiver of the requirement for street trees (i.e., along the edge of the street) was discussed by the board, Mr. Heins, Mr. Palmieri and Mr. Seaberg. The drawbacks and merits of street trees in subdivisions were considered. Mr. Saia and Mr. Seaberg agreed to include street trees in the design.

Mr. Irving made a motion to continue the public hearing to Monday, June 8, at 7:45 pm. Mr. Taylor seconded the motion, and the board voted unanimously in favor by roll call.

VOTE TO EXTEND DEADLINE FOR COMPLETION FOR SUBDIVISION #1802 LISA'S LANE

Ms. Coletta noted that the developer of Subdivision #1802 Lisa's Lane (f.k.a. Libby's Lane) had submitted a letter requesting an extension of the deadline for completion.

Mr. Wandell made a motion that the board grant an extension of the deadline for completion for Subdivision #1802 Lisa's Lane to June 26, 2021. Mr. Irving seconded the motion, and the board voted unanimously in favor by roll call.

DISCUSSION ABOUT RETURNING REMAINING BALANCE OF ESCROW ACCOUNT FOR SITE PLAN #SP7-16 HOBOMOCK SOLAR PROJECT

Ms. Coletta explained that the developer of Site Plan #SP7-16 Hobomock Solar Project was requesting the return of the balance in the escrow account, which was created to cover the cost of building visual screening for the project.

Ms. Coletta noted that most of the funds in the account were used to build a fence along Hobomock Street, and that the two growing seasons (specified in the conditions of approval) were over and thus it was appropriate to return the remaining balance. Discussion ensued. Mr. Heins agreed to check if

DPW still needed to be paid for their work on the fencing, and to ask the developer to submit a letter officially requesting the return of the balance.

VOTE ON AMOUNT TO COVER COST OF CONSTRUCTION INSPECTIONS FOR SITE PLAN #SP7-19 CAMP PEMBROKE YURT VILLAGE

Ms. Coletta explained that Mr. Palmieri had submitted an estimate of \$2,880 (including a 20% contingency) for the cost of construction inspections for Site Plan #SP7-19 Camp Pembroke Yurt Village. She discussed this with Mr. Heins, and decided it would be reasonable to inform the applicant that the engineering review account balance must be raised to this amount before a building permit could be issued.

Mr. Wandell made a motion that the board require the applicant to provide \$2,134.86 to bring the engineering review account balance to \$2,880.00 in order to continue with the engineering review before issuance of a building permit. Mr. Irving seconded the motion, and the board voted unanimously in favor by roll call.

Mr. McCormick said that Camp Pembroke had already decided not to open this summer.

REVIEW OF ROUTINE ADMINISTRATIVE MATTERS

Mr. Taylor made a motion to approve the minutes for May 4, 2020, Mr. Irving seconded the motion, and the board voted unanimously in favor by roll call.

The board discussed the merits of holding public hearings during the state of emergency in Massachusetts. The board members were in general agreement that the system is working well and that it makes sense to continue during the state of emergency, given that construction in Massachusetts has been reopened or will soon be reopened.

The board and Mr. Heins talked about getting hard copy full-size drawings, for each revision of site plan and subdivision projects, sent to Mr. Irving and Mr. Heins.

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

Ms. Coletta reopened the public hearing (continued from December 16, 2019, January 27, 2020, February 24, 2020, March 9, 2020, March 16, 2020, and April 27, 2020, though some of these were immediately continued without testimony due to the pandemic) 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 and the landowner (through a trust), was present, along with his attorney Kimberly Kroha and project engineer Susan Spratt of McKenzie Engineering. Russell Field, the owner (through a trust) of the adjacent property 240 & 258 Oak Street, was present, as was his attorney John Danehey. Mr. Murphy and Mr. Field have been in contention, and in litigation, over the project. Mr. Palmieri and Mr. McCormick were also present.

Ms. Kroha gave a synopsis of where the project, and the public hearing process, currently stands. She explained that because the project was built differently in some respects from the approved site plan, the applicant requested approval of this as a major modification. She said that the building inspector, in his role as zoning enforcement officer, had issued a letter on the three zoning issues that were raised by Mr. Field's attorney, and had ruled on them in Mr. Murphy's favor by stating they were not zoning violations. She said that in the last public hearing there was discussion about whether the width of the access drive was entirely on the 260-280 Oak St. (Grissom Park) property, and so the new drawings show this access drive as being entirely within the property. She requested that the board vote on the major modification at this time.

Ms. Coletta and Mr. Heins explained that the project's engineering review account balance is low. Ms. Spratt said that the only change in the new set of drawings, dated March 4, 2020, is that the access drive is now entirely in the property, and that more drawings were included to show the turning radius and fire truck access. Mr. McCormick said that a fire truck could not make the right turn from the access drive into 20 Corporate Park Drive as the project is currently constructed. It was clarified that this issue was changed by the design proposed in the new drawings.

Ms. Coletta asked Ms. Kroha whether variances are required for a common driveway and/or the side yard (setback) landscaping requirement, as Mr. Danehey had argued in a letter. Ms. Kroha explained that she believes such variances are not necessary, and that the building inspector's letter was in agreement with this position. In reply to queries from Ms. Coletta, Ms. Kroha said the issue of fire truck access could be worked out, and opined that no variance is needed for the fencing along the boundary (and said the building inspector's letter was in agreement on this).

A brief discussion took place about the building inspector's letter. Mr. Heins clarified that a vote never took place (in the previous substantive public hearing) regarding site plan approval or approval of the proposed major modification. (The vote that happened was whether to accept the building inspector's letter.)

An email received from William Fleck of Daley & Wanzer, the occupant of a neighboring property, about the 260-280 Oak St. property was discussed. This led to a conversation about whether runoff from the 260-280 Oak St. property is causing any flooding or ponding problems on Oak Street. Mr. Palmieri and Ms. Spratt talked about the engineering details relating to this.

Mr. Danehey explained why he is requesting that the public hearing be continued. He went over the issues he views as violating the zoning bylaws, including the common driveway, the 40% landscaping requirement in setbacks, and the fence (atop a concrete structure). He said that the Zoning Board of Appeals (ZBA) will be holding a public hearing on these issues within a few months, and so it makes sense for the Planning Board to wait for the ZBA to decide rather than issuing a decision that could be invalidated by the ZBA anyway. He noted that Mr. Murphy has obtained a temporary certificate of occupancy for the property, and so he does not lose anything by approval being delayed. He criticized the building inspector's letter and the issuance of the temporary certificate of occupancy. He also expressed concern that the new design still may not be safe in its turning radius for fire trucks.

Ms. Coletta asked Ms. Kroha if it would be preferable, from her client's viewpoint, to await the ZBA's decision on the appeal of the zoning issues. Ms. Kroha said she preferred that the Planning Board

vote at this time. She noted that the Site Plan for 240 & 258 Oak St. recently approved by the board has two lots served by one common driveway.

Mr. Heins stated that he had just talked with William Fleck of Daley & Wanzer, who called him by phone in order to participate in the hearing. Mr. Heins explained that Mr. Fleck emphasized the points made in his email, in particular the problem of runoff from 260-280 Oak St. onto the Daley & Wanzer property, and the problem of flooding on Oak Street. Mr. Danehey explained that a portion of the retaining wall on the edge of the 260-280 Oak St. property borders the Daley & Wanzer property.

Ms. Coletta asked the board members who comprised the quorum for the public hearing (Mr. Wandell, Mr. Taylor, Mr. Scholl and Mr. Irving) to express their preferences on whether to continue the public hearing or vote now. Mr. Taylor suggested the hearing be continued. A conversation took place about when the ZBA's hearing will be. Mr. Wandell said he'd prefer to vote now. A detailed discussion followed. The length of the temporary certificate of occupancy was discussed. Mr. Danehey opined again that he believed the hearing should be continued. Ms. Kroha argued again that the board should vote at this time.

Ms. Coletta noted that the March 4 design (i.e., the drawings submitted on March 4, 2020) had not been reviewed by Mr. Palmieri or Mr. McCormick. Mr. Taylor, Mr. Scholl and Mr. Irving expressed a preference for continuing the hearing.

Mr. Taylor made a motion to continue the public hearing to July 27, 2020, at 7:00 pm. Mr. Wandell seconded the motion, and the board voted unanimously in favor by roll call.

Ms. Coletta asked that the applicant replenish the engineering review account for the project so that Mr. Palmieri can do a peer review report for the most recent drawings.

Mr. Wandell made a motion to adjourn the meeting, Mr. Irving seconded the motion, and the board voted unanimously in favor by roll call.

Respectfully submitted,

Matthew Heins, Planning Board Assistant