



## **PEMBROKE PLANNING BOARD MINUTES**

**MONDAY, JUNE 8, 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), Peter Palmieri, Paul Seaberg, Stephen Saia, Robert DeMarzo, Kathy Savage, Mark Savage, David Norman, Jill Roffo, Greg Morse, Michael Bulman, Richard MacDonald, Linda MacDonald, Paula Trinqué, Sharon McNamara, Andrew Timmis, Paul Bacon, Matthew O'Donnell, Eoghan Kelley, Tyler Nims, and others.

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:

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.

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 while in progress on PACTV Comcast Government Access Channel 15, and for those without cable, on their PRIME streaming channel by visiting [www.pactv.org/live](http://www.pactv.org/live).

We have received permission and access from PACTV to allow members of the public to attend this meeting virtually, and to make comments if they wish to do so during the portion of any public hearing designated for public comment. They can do this by emailing [mheins@townofpembrokemass.org](mailto:mheins@townofpembrokemass.org) or by calling Planning Board Assistant Matthew Heins at 781-709-1433. The public can also participate interactively through the Zoom software application, if it is technically feasible for them; they just need to email [mheins@townofpembrokemass.org](mailto:mheins@townofpembrokemass.org) in order to get access to the meeting.

Ms. Coletta explained how the meeting would be run, given that it was taking place “virtually” by remote participation through the Zoom software and many people were expected to be present. She asked some of the people already present to identify themselves.

#### **ELEVEN PUBLIC HEARINGS FOR ELEVEN PROPOSED ZONING BYLAW AMENDMENTS**

Ms. Coletta reopened eleven public hearings running concurrently (continued from March 16, 2020, April 27, 2020, and May 4, 2020, though March 16 was not substantive) for eleven proposed amendments to the zoning bylaws. (There are twelve proposed amendments to the zoning bylaws intended to be on the warrant for annual town meeting or multiple town meetings, and so in the beginning there were twelve public hearings, but the public hearing titled Flood Plain District was closed on April 27, 2020.)

Ms. Coletta stated that the eleven proposed zoning bylaw amendments are titled (in the legal advertisements) as follows: Definition: Residential Affordable Housing Development; Industrial District A, Residential Affordable Housing; Industrial District B, Residential Affordable Housing; Residential Affordable Housing, Special Permit; Industrial District A, Prohibition of Houses; Industrial District B, Prohibition of Houses; Industrial District A, Prohibition of Accessory Dwelling Units; Industrial District B, Prohibition of Accessory Dwelling Units; Water Resource and Groundwater Protection District; Kennels; and Center Protection District, Mixed-Use.

Mr. Wandell described certain aspects of the proposed zoning bylaw changes relating to affordable housing, and some other possible approaches to encouraging affordability in Pembroke. Discussion followed among the board members and Mr. Heins. The conversation encompassed several of the proposed zoning bylaw amendments, especially the affordable housing proposals, and the question of which amendments would be considered at the upcoming town meeting.

The board dealt with technical issues arising from Zoom for a few minutes.

Ms. Coletta put a draft of the proposed zoning bylaw amendments, showing revisions and questions from town counsel, on screen, thereby facilitating discussion. In particular, the board talked about the key affordable housing amendment, which is “Residential Affordable Housing, Special Permit.”

A discussion took place about whether to push for affordable housing in zones other than Industrial A and Industrial B, and whether it makes sense to impose a minimum size of 25 units on an affordable multifamily project.

The board briefly discussed the proposed zoning bylaw amendment that would change the rules for kennels, dog daycare facilities, and dog grooming facilities.

Ms. Coletta noted that the proposed zoning bylaw amendment to allow mixed-use projects in certain areas required a longer discussion.

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

The board members agreed they would be willing to go to town hall (at different times) to sign documents and drawings as necessary.

Mr. Scholl made a motion to approve the minutes for May 18, 2020, Mr. Taylor seconded the motion, and the board voted unanimously in favor by roll call.

### **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, April 27, 2020, and May 18, 2020, though some of those were not substantive) 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, as was project engineer Paul Seaberg (of Grady Consulting).

There was a conversation about which board members were using the "Mullin Rule" to enable themselves to vote on the subdivision.

### **ELEVEN PUBLIC HEARINGS FOR ELEVEN PROPOSED ZONING BYLAW AMENDMENTS**

The board members and Mr. Heins discussed which date to continue the eleven public hearings for the proposed zoning bylaw amendments to.

Mr. Wandell made a motion to continue the eleven public hearings running concurrently for the eleven proposed zoning bylaw amendments to July 27, 2020, at 8:00 pm. Mr. Irving seconded the motion, and the board voted unanimously in favor by roll call.

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

Having continued the public hearings for the proposed zoning bylaw amendments, the board returned to the public hearing for proposed Subdivision #2001 Old Cart Path Lane Extension.

Ms. Coletta noted that the covenant form for the subdivision had not yet been submitted, and Mr. Saia said he would take care of that and had no objection to this requirement.

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

With regard to the draft final conditions of approval for the subdivision, Mr. Seaberg asked if the deadline for completion (i.e., to build the roadway and utilities) could be December 31, 2022, rather than two years from the date of approval. The board discussed this and decided against changing the standard two-year deadline. It was noted that extensions are frequently granted to projects that are under construction.

Ms. Coletta and Mr. Heins discussed having a condition (in the final conditions of approval document) requiring that the covenant (Form D) be recorded with the Registry of Deeds before issuance of any building permits, and this condition was added and read aloud.

Mr. Taylor made a motion that the board approve Subdivision #2001 Old Cart Path Lane Extension at 70 Old Cart Path Lane, Pembroke, MA 02359, with the final conditions of approval as printed in the draft emailed to the board on June 8, 2020, with the added condition [regarding the covenant] that Mr. Heins had just read aloud. Mr. Wandell seconded the motion, and the board voted unanimously in favor by roll call.

## **PUBLIC HEARING FOR PROPOSED SITE PLAN #SP1-20 AT 50 MATTAKEESETT STREET**

Ms. Coletta reopened the public hearing for proposed Site Plan #SP1-20 at 50 Mattakeesett Street (continued from March 9, 2020, March 23, 2020, and May 4, 2020, though only May 4 was substantive), consisting of a new building for garaging and/or storage, behind the existing building on the site. The property is located in the Center Protection District, Residence District A, and the Water Resource and Groundwater Protection District.

The applicant Michael Bulman (actually co-applicant with Conway Family Properties, LLC) and the project engineer Greg Morse (of Morse Engineering) were present. Peter Palmieri (of Merrill Engineers and Land Surveyors), the board's peer review engineer for the project, was also present.

The proposed building would be behind the existing building and parking area at 50 Mattakeesett Street, and would be sited toward the rear of the property. It would be 4,000 square feet in size and one story high, and would consist of warehouse and storage space for the Jack Conway Company. The existing building on the property is an office building used in part by the Jack Conway Company, and the property is owned or co-owned by JCP/Pembroke Realty Trust.

Ms. Coletta clarified the identity of some of the people accessing the public hearing through the Zoom software. She noted that those members of the public unable to participate through Zoom could submit a comment or question to the Planning Board Assistant, Matthew Heins, by emailing [mheins@townofpembrokmass.org](mailto:mheins@townofpembrokmass.org) or calling 781-709-1433.

Ms. Coletta noted some of the items discussed at the previous hearing for the project.

Mr. Morse explained that several changes had been made to the project since the previous hearing. The access drive on the left and rear sides of the building was widened and changed to reclaimed asphalt, some minor discrepancies relating to drainage were corrected, and a more detailed planting table was added. Also, the building's design was revised. The building was changed to entirely wood construction, with wood shingles on the front facade and vinyl siding on the other facades. The building's colors would be consistent with the historical requirements for the zone.

Mr. Palmieri noted the board should consider whether to grant a waiver of the required 50-foot landscape buffer (adjacent to a residential property, as per the site plan rules and regulations). He also mentioned that he had requested documentation to verify the runoff curve number used for the reclaimed asphalt.

The distance from the building to the property boundary was discussed. Mr. Morse went over the waivers that were being formally requested. He and Ms. Coletta talked about the evergreen trees proposed as a buffer between the building and the residential properties.

Some confusion between the previous site plan application for 50 Mattakeesett Street and the current site plan application was clarified.

Robert DeMarzo addressed the board. He explained that he is the trustee of the entity that owns the commercial property directly to the east. Mr. DeMarzo noted the purpose of the Center Protection District, and the site plan approval process. He stated that this site plan application should be denied for multiple reasons. Showing images of two buildings approved in the past by the Planning Board in the Center Protection District, he argued that this project does not meet the required level of architectural design. He said that the application does not refer to percolation testing on the

property, and so the percolation rates are unknown. He opined that the 50-foot landscape buffer (for adjacent residential properties) should be required on all sides. The most important reason to deny the project, Mr. DeMarzo said, is because its proposed warehouse use does not conform to the zoning bylaw, as warehouse uses are only allowed in the two industrial zones. He stated that there is no “hardship” that would justify the project. He described a past court case in which a proposed warehouse use on Barker Street was denied. He also discussed a communication from the previous assistant to the Zoning Board of Appeals about the property’s history and the past proposed uses. In summary, he urged the board to deny the application.

Ms. Coletta asked Mr. DeMarzo to explain the distinctions between the proposed site plan at 43 Mattakeesett Street (across the street), which is for boat storage, and this proposed site plan. A conversation followed about the details of both projects.

Ms. Coletta asked Mr. Palmieri about the drainage from the access drive of reclaimed asphalt, and this was briefly discussed.

Kathy Savage, a residential abutter directly adjacent to the property who lives on Grove Street, explained that she and Mark Savage are opposed to the project. She expressed doubt that the storage building’s use would really be limited as the applicant claims. She said waivers should not be given for the 50-foot landscape buffer and traffic study, and argued that the location is not appropriate for the proposed use.

David Norman, a resident who lives at 15 Pleasant Street, addressed the board. He suggested the board consider the issue of use carefully, in particular since the zoning bylaw’s verbiage refers to ancillary services to allowed office uses in the Center Protection District. He emphasized that an ancillary service differs from an ancillary use. A conversation ensued between Ms. Coletta and Mr. Norman about the nuances of the zoning bylaw in this regard.

Jill Roffo addressed the board. She explained that she works for the company that manages Josselyn Farm, the condominiums behind the project. She asked how, if the project were to cause problems with drainage and flooding for a neighboring property, that would be addressed. A conversation followed with Ms. Coletta and Mr. Palmieri.

Paula Trinique, a resident of Josselyn Farm, emphasized her concerns with drainage, given that their leaching field is close to the property. She also stated that she feels the use is not appropriate for the location.

Richard MacDonald, a residential abutter directly adjacent to the property who lives at 79 Grove Street, said that he agreed with the other objections to the project. He stated that having a warehouse so near his backyard would be unpleasant, and would hurt his property value.

Mr. DeMarzo re-emphasized his objections, and said the building is fundamentally a warehouse that could be used for various storage purposes, regardless of the applicant’s claims as to the precise nature of the use.

Sharon McNamara, whose business is at 19 Mattakeesett Street, warned that once a use is allowed for one property, it becomes difficult to deny that use to other applicants in the same zoning district. A discussion took place about how clearly the proposed building would be visible from Mattakeesett Street.

Linda MacDonald, a resident directly adjacent to the property who lives at 79 Grove Street, said that she would be able to see the proposed building from her house. A conversation ensued about whether the architectural requirements in the Center Protection District apply to all buildings or only those visible from a street.

Ms. McNamara expressed concern about what use may eventually be located on the property formerly occupied by Shepherd's Funeral Home, which is next to her building and in the Center Protection District.

Mr. Morse acknowledged that the building would be seen to some extent from the street, but emphasized that it would be designed to meet the architectural requirements of the Center Protection District. He described the architectural appearance. He said the building's storage would be limited to the Jack Conway Company, as appropriate, and opined it was an allowed use. He stated that the building would not lead to a significant increase in traffic.

Mr. Norman said that if the building was for the Jack Conway Company's use, then it wouldn't qualify as an ancillary service.

Mr. DeMarzo said that the previous design for the project had three doors, as opposed to what had been previously stated.

Ms. Savage said she felt the building would not be aesthetically pleasing, and suggested that a traffic study was necessary. She expressed concern about the building's use, and about how to monitor the use, the hours of operation, and the nature of the items stored. She stated that the Jack Conway Company has not had an active office at 50 Mattakeesett Street for many years.

Mr. Bulman explained that he came before the board in January (for an informal discussion, before the application was submitted), to discuss the project. He said the existing building at 50 Mattakeesett Street has been used by the Jack Conway Company since 1984, and is currently being used in the basement by their property management company and maintenance workers. He explained that the proposed building would be used for storing furniture used in staging, for their snowplows, and for their maintenance equipment. He emphasized that it would cause little traffic.

Mr. Bulman said that when he talked with the board in January, an attorney who is town counsel to Pembroke happened to be present, and this attorney opined that the proposed use would qualify as an ancillary use. He emphasized that the building would not be used for storage by all of the company's employees, but only for the specific intended purpose. He stated that the building would be aesthetically attractive, and that the presence of trees and other landscaping would minimize its visibility from abutting properties. He noted that he had made the necessary changes to the project requested by the board, the Fire Department Chief, and others.

Mr. MacDonald warned that the use of the warehouse could change over time, and would be difficult to monitor. A discussion followed.

A conversation took place about the uses allowed for Residence District A versus the Center Protection District. Mr. Noone suggested the board get advice from town counsel about the project's legality. Mr. Taylor agreed.

Mr. Wandell noted that a warehouse use has been allowed across the street at 43 Mattakeesett Street.

Mr. Heins read aloud the contents of an email received during the public hearing from a member of the public. The email, from a sender identified as “NFW,” asked two questions: will the facilities be open 24/7, and will there be a tree barrier between the building and Josselyn Farm condominiums?

Mr. Morse explained that there is already 50 feet of natural vegetation between the proposed building and Josselyn Farm, and Mr. Bulman said the building’s hours would be 9 to 5. Ms. Coletta said that the hours of operation and other items could be formally restricted through conditions in the project’s decision document.

A discussion took place between Ms. Coletta, Mr. Wandell and Mr. DeMarzo about the proposed project at 43 Mattakeesett Street.

Mr. Taylor made a motion to continue the public hearing to June 29, 2020, at 7:00 pm. Mr. Wandell seconded the motion, and the board voted unanimously in favor by roll call.

The board directed Mr. Heins to request that town counsel be present at the next session of the public hearing to advise the board.

#### **DISCUSSION ABOUT CONSTRUCTION ISSUES AT SUBDIVISION #1701 BRISTOL ESTATES**

The board discussed several construction problems at Subdivision #1701 Bristol Estates, located on Taylor Street in Residence District A, which is currently under construction.

Eoghan Kelley, representing the project’s developer Stonebridge Homes, was present, as was Tyler Nims, the board’s peer review engineer for the project. Three residents of Bristol Estates, Andrew Timmis, Paul Bacon and Matthew O’Donnell, were also present.

Mr. Nims described the current status of the subdivision and some of the construction problems that he noticed (and had described in his recent inspection report), especially relating to stormwater drainage.

Mr. Kelley explained that two lots were recently sold in the subdivision, and so construction would resume shortly.

Mr. Timmis, who had sent email communications to the Office of the Planning Board that originally raised these construction issues, summarized the problems as he saw them. Most of these related to the stormwater drainage infrastructure. He emphasized that the construction in some ways deviates from the approved subdivision drawings. The rain gardens were discussed in particular.

Mr. Nims talked about some of the construction problems, especially the rain gardens. Mr. Irving asked about the status of the road bond and engineering review account.

Mr. Kelley asked about the board’s preferences for the gravel road. A discussion followed about the drainage basins, especially their slope. Mr. Kelley talked about certain portions of the drainage system, and said the rain gardens were designed both for wetlands and drainage.

Mr. Timmis said the type of gravel used in the basin was not the appropriate type, and suggested it be covered by loam eventually. Mr. Nims, Mr. Irving and Ms. Coletta discussed this. Mr. Irving said he would examine the project’s drawings and visit the site to look at the project.

Mr. O’Donnell said there is no loam anywhere in the project, and so grass doesn’t grow. Mr. Bacon noted that the other problems should not be overlooked. Ms. Coletta asked if there is enough loam

for hydroseeding to be successful, and conversation followed with some opinions expressed that it wouldn't work at present. Mr. Irving said it would make sense to look at the site and then decide how to go forward. Mr. Kelley asked when the loaming and seeding of the basin should be done. The board discussed how to advance.

Ms. Coletta stressed that the final condition of the project must match the design as shown in the approved drawings. Mr. Timmis noted that Mr. Nims had said topsoil could be placed over the gravel. Discussion followed. It was agreed that Mr. Nims and Mr. Irving would look at the site.

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

The developer of Site Plan #SP7-16 Hobomock Solar Project had formally requested (in writing) the return of the balance in the escrow account created to cover the cost of building visual screening for the project. However, Ms. Coletta explained the question had been raised as to whether the developer ever made a payment into the decommissioning fund for the project. Whether or not such a decommissioning fund was ever agreed on for this project was discussed. The board directed Mr. Heins to check with other offices in town hall to determine if the town was owed money for a decommissioning fund, before the board would consider returning the balance in the escrow account.

**VOTE TO RETURN REMAINING BALANCE IN ENGINEERING REVIEW ACCOUNT FOR SITE PLAN #SP4-16 BRIDGES AT PEMBROKE**

Ms. Coletta explained that it was now appropriate for the board to return the remaining balance in the engineering review account for the completed Site Plan #SP4-16 Bridges at Pembroke. Mr. Heins confirmed the board had accepted the as-built drawings for the project.

Mr. Taylor made a motion that the board return the remaining balance in the engineering review account for Site Plan #SP4-16 Bridges at Pembroke. Mr. Wandell seconded the motion, and the board voted unanimously in favor by roll call.

**REVIEW OF ROUTINE ADMINISTRATIVE MATTERS**

Mr. Heins noted that the annual reorganization of the board would need to happen in the near future.

The board and Mr. Heins discussed the mandatory furlough days that Mr. Heins would take in June, and the board members said that in the future they would like more communication about such matters from town hall.

The board and Mr. Heins briefly conversed about the reopening of restaurants with outdoor seating in Pembroke and Mr. Heins's role in this process.

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

Respectfully submitted,

Matthew Heins, Planning Board Assistant