



## **PEMBROKE PLANNING BOARD MINUTES**

**MONDAY, FEBRUARY 14, 2022**

**LOCATION:** Remote Participation with Zoom Software

**STARTING TIME:** 7:00 pm

**BOARD MEMBERS PRESENT:** Alysha Siciliano-Perry (Chairman), Stephan Roundtree (Clerk), James Noone, Heather Tremblay and Andrew Wandell.

**BOARD MEMBERS ABSENT:** Daniel Taylor (Vice-Chairman) and Daniel Smith, Jr.

**OTHERS PRESENT:** Matthew Heins (Planning Board Assistant), Sabrina Chilcott (Assistant Town Manager), Lori Cook, Jason Cook, Valerie Johnson, William Reed, Joshua Natella, Donald Nagle, William "Terry" McGovern, Emile Tayeh, George Thibeault, James Lampke, Jeffrey De Lisi, "Galaxy S20 Ultr...", "bill," 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**

Ms. Siciliano-Perry 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 of the Pembroke Planning Board on February 14, 2022, is now open.

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.

Pursuant to Chapter 20 of the Acts of 2021, this meeting will be conducted via remote means.

No in-person attendance of members of the public will be permitted. We will post on the Pembroke website an audio or video recording, transcript or other comprehensive record of proceedings as soon as possible after the meeting.

All votes taken during this meeting will be roll call votes.

### **VOTE TO APPROVE EXPANSION OF SOMEWHERE ELSE TAVERN RESTAURANT AT 65 SCHOOL STREET TO PROVIDE OUTDOOR SEATING**

Lori Cook and Jason Cook, the owners of Somewhere Else Tavern, a restaurant at 65 School Street, came before the board to request approval for a proposed expansion that would provide outdoor

seating within a tent-like structure. Mr. Cook explained that this would be comparable to the outdoor seating that the restaurant has been allowed to offer due to the Covid pandemic over the past two years. The tent would be 30 feet by 60 feet in size, and would be located in the parking lot.

Mr. Cook acknowledged that about six to eight parking spaces would be lost. He explained that the neighboring property owner allows the restaurant to use his parking lot, which is adjacent, as an overflow area. Discussion followed.

Mr. Heins clarified that this would be a permanent, long-term alteration to the restaurant, even though the tent and outdoor seating might only be in place during the warmer months each year. In this regard, it differed from the temporary approvals that outdoor seating at this restaurant had received previously.

Mr. Wandell made a motion to approve the proposed expansion as a minor modification to an existing site plan, which would not require any further Planning Board review. Mr. Noone seconded the motion, and the board voted unanimously in favor by roll call.

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

Mr. Roundtree made a motion to approve the minutes of January 24, 2022. Mr. Wandell seconded the motion, and the board voted unanimously in favor by roll call.

#### **DISCUSSION ABOUT PROPOSED SITE PLAN #SP2-21 AT 715 WASHINGTON STREET**

The board considered proposed Site Plan #SP2-21 at 715 Washington Street, being the application of George Thibeault, 599 Summer Street, Marshfield, MA 02050, requesting Site Plan approval under the Zoning Bylaws of the Town of Pembroke Section V.7. (Site Plan Approval). The applicant proposes to construct a two-story building (one floor plus mezzanine) with a footprint of 10,000 square feet consisting of five separate contractor's bays, a.k.a. tradesmen's units. Each unit would contain a first-floor garage workshop and second-floor (mezzanine) office. There would also be a paved parking area and access drive. The property is located in the Residential-Commercial Zoning District, at 715 Washington Street, Pembroke, MA 02359, as shown on Assessors' Map F9, Lot 24.

The public hearing for this site plan application took place on December 20, 2021, and January 24, 2022, and was closed on January 24, 2022, at which time the board agreed to discuss and possibly vote on the project on February 14, 2022.

Mr. Heins had prepared draft decision documents approving the site plan application, which the board reviewed.

The board members and Mr. Heins discussed the variance for the size of the lot's uplands area which the project still needs.

Since the board was unsure if board member Daniel Taylor would join the meeting, it was agreed to handle some other agenda items before continuing with the discussion and vote for Site Plan #SP2-21 at 715 Washington Street.

#### **VOTE TO RETURN REMAINING ENGINEERING REVIEW ACCOUNT BALANCE FOR SITE PLAN #SP1-20 AT 50 MATTAKEESETT STREET TO APPLICANT**

The board considered whether to return the remaining engineering review account balance for Site Plan #SP1-20 at 50 Mattakeesett Street to the applicant. Mr. Heins explained that the peer review

engineer had completed the construction inspections and as-built review, and everything was now satisfactory.

Mr. Noone made a motion that the board return the funds for Site Plan #SP1-20 at 50 Mattakeesett Street to the applicant. Mr. Wandell seconded the motion, and the board voted unanimously in favor by roll call.

**DISCUSSION ABOUT NECESSITY FOR CONSTRUCTION INSPECTIONS FOR SITE PLAN #SP5-19 HERRING BROOK SOLAR PROJECT**

The board and Mr. Heins talked about the ongoing construction of Site Plan #SP5-19 Herring Brook Solar Project (the solar array behind Hobomock Arena). Mr. Heins explained that the applicant was resistant to construction inspections by the board's peer review engineer (as is typically done with site plans and subdivisions under construction), and that the building permit had been issued without the applicant making a payment into the project's engineering review account to cover such inspections. Discussion followed.

The board and Mr. Heins conversed about the construction process, the need for construction inspections, and the situation both for this project and in general. It was agreed that Mr. Heins would continue to pursue the matter with the applicant (i.e., the developer and/or construction manager of the project). The possibility of getting enforcement assistance from the building inspector was discussed.

**DISCUSSION ABOUT AND VOTE TO APPROVE PROPOSED SITE PLAN #SP2-21 AT 715 WASHINGTON STREET**

The board returned to the discussion about proposed Site Plan #SP2-21 at 715 Washington Street, which had begun earlier in the board meeting. (As already noted, the public hearing for this site plan application was closed on January 24.)

There was a discussion about the board's quorum for the application, i.e., the board members who attended every session of the public hearing and thus could vote

Mr. Roundtree expressed his concerns about the environmental impacts of the project, especially its possible effect on water quality. Conversation about this followed. Some of the other board members, and Mr. Heins, noted that the Conservation Commission handles these issues.

Donald Nagle, an attorney representing an abutter opposed to the project, wished to speak, but the board members informed him that since the public hearing was closed no further testimony could be taken from the public.

The board discussed the project's status with the Conservation Commission, and also the necessity for the applicant to go before the Zoning Board of Appeals to obtain a variance (for the size of the lot's uplands area) for the project. A condition to this effect was specified in the draft decision documents approving the site plan which Mr. Heins had prepared.

Mr. Wandell made a motion to approve the order of conditions [decision documents] for Site Plan #SP2-21 at 715 Washington Street, and Mr. Noone seconded the motion. Mr. Wandell voted in favor, Ms. Tremblay abstained, Mr. Roundtree voted in favor, Mr. Noone voted in favor, and Ms. Siciliano-Perry voted in favor (the vote happening by roll call). The motion passed.

Mr. Wandell made a motion that with reference to the waivers requested from the Planning Board Rules & Regulations Governing the Issuance of Site Plan Approval, the Board grant the following waivers, as voted and approved by this Board:

- a. Section 4.22: Traffic Impact Study
- b. Section 5.1.6: 50-Foot Landscaped Buffer Strip to Protect Adjacent Residential Properties
- c. Section 5.4: Vertical Granite Curbing at Access Drive Radii
- d. Section 5.6.2: Curbing at the Edges of All Paved Surfaces
- e. Section 5.7.1: Separation Between Access Connections

Mr. Noone seconded the motion. Mr. Wandell voted in favor, Mr. Roundtree voted in favor, Mr. Noone voted in favor, and Ms. Siciliano-Perry voted in favor (the vote happening by roll call). The motion passed.

#### **DISCUSSION ABOUT PROPOSED EXPANSION OF EXISTING MIXED-USE BUILDING AT 217 WATER STREET**

William Reed came before the board to discuss his proposed expansion of the existing mixed-use building at 217 Water Street, which contains Dream Kitchens and More (a retailer and showroom) and one residential unit. The expansion would add a second floor to the building in order to increase the size of the residential space (but would not add any more residential units).

Mr. Reed described the proposed expansion of the building, which would mainly consist of a new second floor but also a small addition to the first floor to allow egress. He confirmed that the existing nonconforming mixture of uses (commercial and residential) has been in place for a long time.

Discussion took place. The board members did not have any significant objections to the project. It was agreed that Mr. Reed would apply to the Zoning Board of Appeals first, for a special permit to alter and expand a preexisting nonconforming use, and then return to the Planning Board to request permission for the project as a minor modification to an existing site plan.

#### **DISCUSSION ABOUT POSSIBLE IMPROVEMENTS TO THRASHER AVENUE AND/OR PINE STREET TO MEET ADEQUACY OF WAY REQUIREMENTS**

Donald Nagle, William "Terry" McGovern and Emile Tayeh came before the board to discuss the possibility of making road improvements to Thrasher Avenue (a.k.a. Thrasher Street) and/or Pine Street in order to make a property owned by Mr. Tayeh into a buildable lot. The property currently lacks frontage on a way (i.e., road) that meets the standards for adequacy.

Mr. Nagle is the attorney representing Mr. Tayeh, and Mr. McGovern is the project engineer.

Mr. Nagle explained that an application for a building permit, along with a plan of Thrasher Avenue, had previously been submitted to the building inspector, who recommended it be reviewed by the Planning Board. Then revisions were made to the plan, in order to use Pine Street as the means of access to the lot. Improvements would be made to Pine Street.

Mr. Nagle said that at one point in this process the building inspector had been willing to regard the lot as a buildable lot. He added that he believed it was not necessary for Mr. Tayeh to submit an application for a determination of sufficiency of access, but that he wished to get the board's recognition of this.

Mr. McGovern went over the plan, which he displayed to the board. He described the current configuration of the houses, lots, roads and driveways in the area. He explained that the proposed improvements would widen Pine Street (a.k.a. Pine Avenue) slightly, replace a catch basin with a grate, and remove several trees. A parking easement would also be involved.

Mr. Nagle said that the building inspector now felt the project was satisfactory for a building permit to be issued, and had referred this to the Planning Board to allow the board to assent that no application for adequacy of access was needed.

Mr. Heins emphasized that an application for improvements to private ways or paper streets should be submitted, as was done in recent years with Crescent Avenue. He noted that creating a private easement on a town-owned paper street was questionable. He also pointed out that the project was proposing that a lot of about 20,000 square feet be regarded as buildable (due to when it was originally created) when the zoning bylaws specify a minimum lot size of 40,000 square feet.

Mr. Nagle said that the building inspector had deemed the lot to be buildable, and made further arguments. Discussion and debate followed. Mr. Heins expressed his disagreement with some of Mr. Nagle's statements.

Mr. Wandell said that an application for adequacy of the way was needed, and he suggested such an application be submitted. He said that the project looks reasonable and so an application would appear likely to be approved.

Mr. Tayeh asked about his options, and the board members and Mr. Tayeh discussed what he could do next.

#### **DISCUSSION ABOUT POSSIBLE "FRIENDLY" 40B HOUSING PROJECT AT 52-54 PLAIN STREET**

Joshua Natella came before the board to discuss a housing project he is considering building on the property he owns at 52-54 Plain Street. Mr. Natella said he wishes to create a "friendly" 40b housing project under the state's Local Initiative Program (LIP). The property, which is on the corner of Plain and Lake Streets, is about 1.5 acres in size and currently contains two single-family houses.

Mr. Natella described the project, referring to drawings of two site plan alternatives. The project could consist of five buildings, with four residential units (either one- or two-bedroom) in each building. Access would be off Lake Street, and possibly also off Plain Street.

In reply to Ms. Siciliano-Perry's question, Mr. Natella said the units would be rental apartments and 25% would be affordable. He described the project and possible concepts in more detail.

Mr. Heins said that the proposed density might provoke objections from neighbors and other town residents. Mr. Natella noted that the property is ideally suited for development given its lack of wetlands. Further conversation followed. Ms. Siciliano-Perry suggested that the four-building alternative was more promising.

#### **ENTERING EXECUTIVE SESSION**

Ms. Siciliano-Perry announced that the board would go into executive session, pursuant to G.L. c. 30A, Section 21(a) purpose number 3:

"To discuss strategy with respect to...litigation if an open meeting may have a detrimental effect on the...litigating position of the public body and the chair so

declares.” Specifically, the Board will discuss and take appropriate action with respect to the matter of Town of Pembroke Planning Board, et al. v. Town of Pembroke Board of Zoning and Building Law Appeals, et al., Plymouth County Superior Court Case No. 1983CV00239 regarding Pembroke Center Street, LLC, and the property located at 204 Center Street in Pembroke. Further, the Chair declares that having such discussion in open session would have a detrimental effect on the Planning Board’s litigating position.

Attorney James Lampke, representing the Planning Board in this matter, was present.

Ms. Siciliano-Perry stated that the board would adjourn directly from executive session (and thus would not return to open session).

Mr. Wandell made a motion that the board go into executive session, and Mr. Roundtree seconded the motion. The board voted unanimously in favor by roll call.

It was confirmed that the meeting was no longer being broadcast or livestreamed by PACTV.

From this point forward, participation in the meeting was restricted to the board members, Mr. Heins and Mr. Lampke.

The board entered executive session.

***The minutes of executive session are a separate document.***

Respectfully submitted,

Matthew Heins, Planning Board Assistant