

Minutes of Zoning Board Meeting  
Town of Whately, MA  
January 7, 2021  
**Remote Meeting via Zoom**

Members Present: Roger Lipton, Bob Smith, Kristin Vevon, Fred Orloski  
Members Absent: Debra Carney

Attending:

Mark Stadnicki of engineering firm SVE Associates  
Walter Pieskarski, 305 Long Plain Rd.  
Gary Grybko, abutter to Walter Piekarski  
Attorney Sofia Bitzas, representing Whately RE Holdings, LLC

**PUBLIC HEARING** *continued from December 3*

Application for a Special Permit to create two flag lots that will be accessed by a common driveway, on Masterson Rd. at Lot 9 on Map 18 of the Whately Assessors Map.

At 6:40 pm Chair Roger Lipton opened the hearing. Mark Stadnicki, of engineering firm SVE Associates, appeared for Anthony Wonseski, the company's usual representative for this project. Mr. Stadnicki said he had come to request a continuance of the hearing in light of the letter from Town Counsel (Attorney David Doneski), dated and emailed today, January 7, 2021. Zoom host Kristen Vevon used her screen to share the letter with everyone viewing the hearing. Roger summarized the letter as saying that only one flag lot can come out of a parent lot. Since the project plans specified two flag lots from one parent lot, Mr. Stadnicki explained that they needed more time and added that they were currently working with the Natural Heritage Program about giving some of the project property to the state. He said he thought they would be ready to proceed by the next regularly scheduled ZBA meeting. Roger moved to continue the hearing to February 4, 2021, at 6:40 pm. Kristen seconded the motion, Roger, Kristen, and Bob each voted yes, and the motion carried unanimously.

An abutter asked whether he should wait until then to air his concerns and was advised that it would be best, since the updated plans will be available then. He was further advised that if he can't make the meeting on February 4, he should send someone to present his views, or participate by telephone if that is possible, or submit a letter if need be. The hearing session ended at about 6:50 pm. Since the second hearing was scheduled for 7:20 pm, the board recessed until then.

**PUBLIC HEARING**

Variance application by Walter A. Piekarski, Jr. regarding the side yard dimensional requirements of his property at 305 Long Plain Rd. to allow a currently installed carport, currently 3 ft from the property line, to obtain a building permit.

At 7:20 p.m. Roger opened the hearing. The secretary read the legal notice, to which the applicant had no objection. Bob Smith recused himself from voting on this matter because he is an abutter.

Applicant Walter Piekarski described how he had planned for buying a carport for his truck, to be installed by the supplier. He said he had chosen the site for ease of access, to control runoff, for reasons involving the septic tank location, and to stay within his \$2,000 budget for site preparation. Also, he continued, a couple of 2 ft – 3 ft pines would have had to be cut down if he had placed the building elsewhere.

Mr. Piekarski explained that when he placed the order at the beginning of September 2020, the company said there would be an 8 – 12 week lead time before they could perform the work. However, he said, he was told shortly thereafter that unless he had the carport installed within two days the company would not guarantee that it would do the job, and as a result the carport was installed on September 5. He had spoken with the Building Inspector before the installation and applied for a building permit, he said, adding that the Building Inspector referred him to the Zoning Board of Appeals for a variance hearing. Mr. Piekarski said he hadn't thought about applying for the variance first. He said he understands that he went about things the wrong way and now wants to make things right. He said he wants to obtain a variance from the ZBA so that he can get a building permit and make the 22 ft x 26 ft building legal and compliant. Roger Lipton observed that a variance is hard to win – an uphill battle – and that when the project is already done it is even harder.

It was noted that the existing setback is only 3 ft, when it should be 20 ft. When asked about moving the building to a different spot on the lot, Mr. Piekarski said that location would be close to the septic tank, and would require the removal of 5 sizable trees as well as the leveling of a hilly yard. Asked whether he had been told by an engineer or designer that this alternate location would be too close to the septic tank, the applicant said no, but he was thinking ahead to the 40-year old tank's eventual replacement and the working space needed to accomplish that.

It was observed that the carport rests on gravel, and Mr. Piekarski was asked whether it can be moved at all. Yes, he said, but the problem is finding another clear and level choice of site. Zoom host Kristen Vevon shared a drawing of the lot on her screen along with photos of the property, and the board considered other possibilities. Asked about “spinning” the carport 45 degrees or 90 degrees, Mr. Piekarski said he would still have to move the building in addition to pivoting it, and then he wouldn't have enough space to drive into it. Also, he said, that would create a drainage problem with the Sanderson property because of the change to the gutter drainage.

Several abutters spoke up in support of the application. Gary Grybko had no objections, stating that his neighbor keeps a very neat property and the carport fits in well. Bob Smith, speaking as an abutter and not a board member, said he also thinks Mr. Piekarski is a great neighbor and that he has no complaints. An unidentified neighbor whose audio-only transmission kept breaking up said that he, too, has no problem with the carport.

Saying that it looked like there might be some room in the backyard, Chair Roger Lipton scheduled a site viewing for Saturday morning at 10:00 after Kristin and Fred said they were available. However, the visit was soon canceled in favor of seeing more detailed information before deciding on a viewing.

Mr. Piekarski was told to submit a professional plan or drawing (not necessarily a certified one) with all distances drawn to scale, showing such details as dimensions of buildings and other features, locations of trees (with measurements), and how the pivot solution suggested by the board would affect the project. The board said it also needs to see information from an engineer or other professional about other options and why they are or are not feasible. The board's advice was to be creative in showing why the ZBA's ideas will *not* work.

Roger moved to continue the hearing to February 4, 2021 at 7:20 pm. Fred seconded, Bob abstained, Kristin voted yes, and the hearing was continued to that date and time.

**PUBLIC HEARING** *continued from December 3*

Special permit application to allow for an indoor marijuana cultivation establishment in agricultural buildings and greenhouses in existence on April 24, 2018 on premises zoned A/R1 and A/R2 located at 23A LaSalle Drive and owned by LaSalle Florists, Inc.

Roger opened the hearing and Bob rejoined the proceedings as a voting ZBA member. Attorney Sofia Bitzas, representing applicant Whately RE Holdings, LLC, explained that her client needed an extension of time before presenting new and updated plans to the board. She had submitted to Roger by email a letter dated January 7, 2021, to that effect which also asked for a joint meeting with the Planning Board and ZBA together, in the interest of expediency. She explained that the Host Community Agreement had been approved by the Selectboard, and Roger noted that he had read about that in the newspaper. Roger moved to continue the hearing to February 4, 2021, at 7:45 pm. Bob seconded, Kristin voted yes, and the hearing was continued to that date and time.

Regarding the additional request for a joint meeting with the Planning Board, Roger said that although he understands the applicant's wish to condense the process, the Planning Board and the Zoning Board of Appeals have different functions and don't normally work together. He recommended against a joint meeting. Kristin and Bob agreed.

Roger said that abutter Mark Cybulski had emailed him asking about the timeline for the hearing and decision process. In answer to the inquiry, he noted that Sofia Bitzas' letter stated,

"If our request for a continuance is granted, we agree that the board has 90 days following the conclusion of the last public hearing to render a decision".

The letter included a place for Roger to sign that he agreed with this. He said he would sign his agreement and would send it to Town Clerk Lynn Sibley.

Sofia Bitzas said she would send 5 copies of the new/updated plans to the Town, one to Roger at his office, and one to Bob at his home. She will also send electronic copies of them to the secretary for distribution to the ZBA.

The board approved the minutes of September 24, November 5, and December 3, 2020.

The board briefly discussed marijuana cultivation projects in general, noting that although some have been approved no one is yet growing any marijuana so the town still has no experience with the actual operation of such an establishment. It was noted that when the town checks with applicants who have been granted their town permits, it finds that they are all still waiting for their state permits. Roger noted that the ZBA is allowed to require that applicants pay a disinterested third party to render an opinion on whether particular odor or noise controls are likely to work, based on facts and science.

The meeting was adjourned at 8:29 pm.

*Documents Reviewed (kept in the ZBA files)*

1. A letter dated January 7, 2021 from David J. Doneski, Esq., KP | LAW, and emailed to ZBA Chair Roger Lipton, rendering an opinion which concludes, “In other words, flag lot development is permissible with a limit of one flag lot per parent lot, and a universal limit of two adjacent flag lots at any street line.
2. A drawing of the Piekarski lot at 305 Long Plain Rd., with surrounding properties.
3. 7 photos of the Piekarski lot at 305 Long Plain Rd.
4. A letter dated January 7, 2021, from Sofia Bitzas of R. Levesque Associates, Inc. and emailed to ZBA Chair Roger Lipton, requesting a continuance of tonight’s hearing.

Mary McCarthy  
Secretary  
Zoning Board of Appeals  
Town of Whately, MA