

Zoning Board of Appeals
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David Pereira, Chairman
John Scanlon, Vice Chair
Richard Panofsky, Clerk
Richard Barrett
Raymond Olivier
Antonio Oliveira, Assoc. Mbr.
Stephen Silva, Assoc. Mbr.

REHOBOTH ZONING BOARD OF APPEALS
Meeting Minutes – November 21, 2019

Call to order at 6:00 PM by Dave Pereira, Chairman

In attendance: Chairman Dave Pereira; John Scanlon, Vice Chairman; Richard Panofsky, Clerk; Richard Barrett, Antonio Oliveira; associate member Raymond Olivier

The order of the agenda was changed to move the hearing to the end, because Dave Pereira will recuse himself from the discussion as an abutter.

GENERAL BUSINESS

Correspondence from the Board of Selectmen indicates they have approved renaming the following street names in Manitoak Estates: Manitoak Drive to September Way; Natick Lane to October Road; Taconic Lane to November Lane, and Wetaug Lane to December Drive. No action is needed unless the board feels any concerns. None were expressed.

The board gave authorization for Fuss and O'Neil to continue their work with the Reserve, Spring Street, as it proceeds to Phase Two. We had given approval before, but the paperwork was lost.

Correspondence dated October 16, 2019, from Andy Glines, Engineer for Fuss & O'Neil was received reporting on a site review held on October 15, 2019.

MINUTES

On a motion by J. Scanlon and seconded by A. Oliveira, the minutes of October 17, 2019, were approved unanimously as written.

FINDINGS

On a motion by J. Scanlon and seconded by A. Oliveira, the findings for the hearing of file #810, 65 Barney Avenue, from the October 17 meeting were approved unanimously as written.

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INVOICES

An invoice from Fuss & O'Neil, \$1629.59 for The Reserve on Spring Street, was approved unanimously on a motion by J. Scanlon and a second by A. Oliveira. An invoice from Gatehouse Media, \$645.84 for legal ads for 65 Barney Street and 103 County Street, was approved unanimously on a motion by J. Scanlon and a second by A. Oliveira. An invoice from WB Mason for \$5.92 for a calendar for Stacy was approved unanimously on a motion from J. Scanlon and a second by A. Oliveira.

PUBLIC HEARINGS & MEETINGS

D. Pereira recused himself, turning the meeting over to J. Scanlon. Scanlon ruled that R. Olivier would vote. Brian J. Winner attended as Town Counsel.

At 6:15 pm, a motion was made by J. Scanlon to open the public hearing and seconded by A. Oliveira. A roll-call vote was taken: Oliveira, aye; Scanlon, aye; Olivier, aye; Barrett, aye; Panofsky, aye.

File # 814 — William O'Brien, 46 Plain Street— Appealing a decision by the Zoning Officer. Zoning Officer William McDonough sent a letter to William O'Brien on August 27, 2019, responding to a complaint, finding that the construction business operated by AA Pavao on 2 Brook Street was not in violation of the noise limits in the Zoning Bylaw. The appeal packet, distributed to Board members in advance, contains the appeal form, a copy of the letter, documentation of abutters, and Mr. O'Brien's statement of reasons for appealing the decision. A number of abutters were in attendance as were William O'Brien, Robert Pavao, and William McDonough.

William O'Brien, 46 Plain Street, reviewed the letter sent by the Zoning Officer and explained his objections. He has been reporting excessive noise from AA Pavao Construction Co. in the business zone near his home. He cited his personal notes of dates and noise-level readings and distributed some photos as evidence. Contrary to McDonough's ruling, O'Brien finds excessive noise in early mornings, starting as early as 4:30 am on, from truck engines running and back-up beepers, as well as excessive noise during daytime hours. He also expressed that Pavao's business is not appropriate for a business zone; J. Scanlon ruled this line of discussion out of order, being beyond the scope of the present appeal.

William McDonough, Zoning Officer, explained his investigation leading up to the ruling. Mr. Pavao told him he agreed to back vehicles into parking spaces the day before so they would not beep in early mornings. Pavao hired Jeffrey M. Komrower and Zachary Weis, Noise Control Engineering, of Billerica, MA, to conduct a noise survey on November 20, 2019; results are contained in NCE Report 2019-047, which McDonough distributed. Noise measurements were taken between approximately 10:00 am and 2:30 pm at a location about 50 feet from Mr. O'Brien's property boundary closer to the Pavao location. McDonough drew attention to findings on pages 3 and 4 of the report. The average high dB measurement of 53.7 is lower than the 85 dB bylaw limit for daytime hours. No dB readings were taken for the early hours before 7:00 am. McDonough explained that the bylaw allows using an engineering firm hired by the business with him present and overseeing the work. Mr. McDonough also explained that he had investigated an issue of noise from crushing of old pavement at the site, found that activity to be prohibited in a business zone, and issued a cease and desist order.

Robert Pavao, 2 Brook Street, explained he had discussed the complaints with Mr. O'Brien. He could not, as requested, install switches to silence back-up alarms, as that would be illegal. His workers strive to back trucks into their parking places the evening before so as to mitigate back-up alarms in the morning before 7:00 am, succeeding 90% of the time. Trucks do run for some time to warm up before 7:00 am, some as early as 5:00 am. For business reasons

Mr. Pavao prefers to begin operations well before 7:00 am but said that he could make it work to start up after 7:00 am.

Leonard Amaral, 82 Plain Street, an abutter, supported the appeal of Mr. O'Brien and noted the harm to their property values.

Jim Paon, 223 Moulton street, an abutter, supported the appeal of Mr. O'Brien. He is also concerned whether all activities by Mr. Pavao are within those allowed by the zoning regulations for a business zone.

Ashley Sullivan, 70 Plain Street/3 Brook Street, an abutter, testified that Robert Pavao is reliable and a good neighbor.

At 7:15 pm, a motion was made by J. Scanlon to close the public hearing and seconded by A. Oliveira. A roll-call vote was taken: Oliveira, aye; Scanlon, aye; Olivier, aye; Barrett, aye; Panofsky, aye.

Attorney Brian Winner advised on three kinds of action possible in this case, to agree with the Complainant and revoke or modify the order accordingly; to agree with the Zoning Officer and find that his ruling stands; ~~or to issue a new order—the second and third requiring a super-majority vote.~~ A super-majority would be required to overturn or modify the Zoning Officer's decision. The Board could also vote to affirm the Zoning Officer's decision. If there was no successful vote to overturn or modify, then the Zoning Officer's decision would stand by default.

R. Panofsky moved that, in view of evidence that shows noise levels in excess of those allowed before 7:00 am, the ZABAZBA orders that AA Pavao must cease operating trucks and doing other work causing excessive noise until after 7:00 am; Oliveira seconded. The motion passed unanimously: Panofsky, aye; Barrett, aye; Olivier, aye; Scanlon, aye; Oliveira, aye. The Board made clarifying comments after this vote, explaining that the ruling enforces the bylaw limits to noise between 11:00 pm and 7:00 am and that bylaw violations cannot be tolerated.

NEXT MEETING

The next meeting of the Board is scheduled for Thursday, December 19, 6 PM at the ~~Counsel~~Council on Aging Building, 55 Bay State Rd., Rehoboth, MA 02769.

ADJOURNMENT

On a motion by J. Scanlon and seconded by R. Olivier, the board voted to adjourn at 7:30.

Respectfully submitted by Richard Panofsky, Clerk



David Pereira, Chairman



John Scanlon, Vice-Chairman