



ZONING BOARD OF APPEALS
TOWN OF CONCORD
MEETING MINUTES
JANUARY 12, 2023

Pursuant to notice duly filed with the Town Clerk, a virtual public meeting of the Zoning Board of Appeals was held on Thursday January 12, 2023 at 7:00 p.m. using the Zoom meeting platform.

PRESENT:

Members:

Elizabeth Akehurst-Moore, Chair

Ravi Faiia

Theo Kindermans

James Smith

Thomas Swaim

Paul Creedon, Building Commissioner

Elizabeth Hughes, Town Planner

Hayleigh Walker-Kurland, Admin Assistant

Chair Akehurst-Moore called the meeting to order at 7:00 p.m.

Public Hearings:

Quarry North Rd LLC, for a Special Permit under Zoning Bylaw Sections 10, 11.6 and 11.8 for a Planned Residential Development for six units at 48Y Fitchburg Turnpike (Parcel# 3419).

Mr. Smith moved to continue the public hearing on the application of Quarry North Rd LLC, for a Special Permit under Sections 10, 11.6 and 11.8 of the Zoning Bylaw for a Planned Residential Development for six units at 48Y Fitchburg Turnpike (Parcel# 3419) to February 9th at 7:05 PM. Mr. Swaim seconded the motion. The Chair called for a roll call vote; Mr. Swaim, yes, Mr. Smith, yes, and Chair Akehurst-Moore, yes. All VOTED in favor

Concord Center for the Visual Arts, for a Special Permit with Site Plan Review under Zoning Bylaw Sections 7.1.3, 7.7.2.12, 11.6 and 11.8 to demolish the existing Coleman Gallery and construct a 2,593 sq. ft. addition to an existing 7,349 sq. ft. nonconforming structure and relief from parking at 37 Lexington Road (Parcel# 0015).

Mr. Kindermans moved to continue the public hearing on the application of Concord Center for the Visual Arts, for a Special Permit with Site Plan Review under Zoning Bylaw Sections 7.1.3, 7.7.2.12, 11.6 and 11.8 to demolish 564 sq. ft and construct a 2,593 sq. ft. addition to an existing nonconforming structure and relief from parking at 37 Lexington Road (Parcel# 0015) to February 9th at 7:10 PM. Mr. Swaim seconded the motion. The Chair called for a roll call vote; Mr. Swaim, yes, Mr. Kindermans, yes, and Chair Akehurst-Moore, yes. All VOTED in favor

Palm Realty LLC for a Special Permit under Zoning Bylaw Sections 7.2 and 11.6 to construct a barn addition which requires 8.93 c.y of fill within the Floodplain Conservancy District and 25.43 c.y of compensatory flood storage at 160 Adams Road (Parcel# 1819-1).

Joe Rodgers of GZA GeoEnvironmental, Inc. appeared for the hearing along with property owner Beth Fishman. Mr. Rodgers gave a brief overview of the project to extend the barn towards the edge of the existing Floodplain, and it is because of this intrusion that they are seeking a Special Permit. The main emphasis of the project was to develop a plan that would address the Floodplain compensation which will require the removal of three existing auxiliary structures. Mr. Rodgers confirmed that they met with Natural Resources Commission and the project was reviewed by the Town Engineer. They are providing compensation at a 2.85 to 1 ratio, which exceeds the required 1.5 to 1 ratio.

Mr. Swaim requested clarification on the location of the sheds that are being removed. Mr. Rodgers reviewed the existing conditions plan. Mr. Swaim stated he had no issues with the proposed project.

Beth Fishman clarified that the current plan is to remove the sheds, not destroy them. Their goal is to improve what is a neglected property. She stated that they are also working with original builder of the barn on this project.

Mr. Smith stated that the analysis conducted for this project was thorough and he had no issues with the proposed work.

Neither Mr. Kindermans nor Mr. Faiia had any issues with the proposed work.

The Chair opened the hearing for public comment and there was none.

The Chair echoed the comments given by Mr. Smith. She agreed that the recommendation letter submitted by the Planning Board was very thorough. She asked if the Order of Conditions had been received from the Natural Resources Commission and Mr. Rodgers confirmed that it had.

Mr. Kindermans moved to approve the application of Palm Realty LLC for a Special Permit under Zoning Bylaw Sections 7.2 and 11.6 to construct a barn addition which requires 8.93 c.y of fill within the Floodplain Conservancy District and 25.43 c.y of compensatory flood storage at 160 Adams Road (Parcel# 1819-1) and in doing so adopt the findings and conditions set forth in the Planning Board's recommendation letter. Mr. Smith seconded the motion. The Chair called for a roll call vote; Mr. Kindermans, yes; Mr. Smith, yes; and Chair Akehurst-Moore, yes. All VOTED in favor.

Tamar Vishlitzky for a renewal of a Special Permit under Zoning Bylaw Sections 5.3.6.2 and 11.6 for a Special Home Occupation to operate a doctor's office at 350 Bedford Street (Parcel# 0901).

Tamar Vishlitzky gave an overview of her request to renew her Special Permit. She is a Social Worker whose home office is located in the barn next to her house. Presently she has three patients who visit in-person while the rest meet with her virtually. However, she wants to continue to have the option available for patients who wish to visit her in-person.

The Chair asked if there were any changes being proposed to the Special Permit and Ms. Vishlitzky confirmed there were none. The Chair asked Building Commissioner Creedon if there had been any complaints from abutters and he confirmed there were none. The Chair stated she had no issues with the renewal request.

Mr. Kindermans and Mr. Faiia discussed extending the special permit for more than one year as there have been no complaints from neighbors.

The Chair opened the hearing for public comment and there was none.

Neither Mr. Swaim, nor Mr. Smith had any concerns on the request for renewal.

Town Planner Hughes explained time limits for extending special permits. She suggested a renewal period of five years as there have been no complaints from neighbors.

Mr. Smith moved to approve the application of Tamar Vishlitzky for a renewal of a Special Permit under Zoning Bylaw Sections 5.3.6.2 and 11.6 for a Special Home Occupation at 350 Bedford Street (Parcel# 0901) for a term of 5 years. Mr. Kindermans seconded the motion. The Chair called for a roll call vote; Mr. Smith, yes; Mr. Kindermans, yes; and Chair Akehurst-Moore, yes. All VOTED in favor.

Erik and Sally-Ann Limpaecher for a Special Permit under Zoning Bylaw Sections 7.1.3 and 11.6 to extend a nonconforming structure to allow the construction of a three-season porch 9.6 ft from the side property line at 61 Black Duck Road (Parcel# 1033-20).

Attorney Christopher Alphen appeared for the hearing along with property owners Erik and Sally-Ann Limpaecher. Mr. Alphen gave an overview of the proposed project. The Applicant is requesting a Special Permit to allow for the alteration and expansion of their existing nonconforming deck and convert it into a three-season porch. The Applicant is looking to renovate their existing dwelling which they would be allowed to do by right if not for the deck. The deck currently has a setback of 9.6 ft where 15 is required. Mr. Alphen referred to the the State Zoning Act Chapter 40A, Section 7 that deems a structure that has been in existence for ten or more years without notice of violation as preexisting. The deck in question has been around since at least 1996. He stated that the deck should be treated as a legally nonconforming structure.

Mr. Swaim agreed with Mr. Alphen's legal analysis.

Mr. Limpaecher reviewed plans and clarified the location of the existing deck for the Board. They are building the sunroom on the existing footprint and enlarging it slightly.

Mr. Kindermans asked for clarification on the setback of the proposed deck. Mr. Limpaecher noted that the closest point is still 9.6 ft from the lot line. Mr. Kindermans inquired about the other proposed addition to the front of the dwelling. Mr. Alphen noted that the addition will expand the existing footprint but will not increase the nonconforming setback.

The Chair asked for clarification on the size of the extension. Mr. Limpaecher stated that the existing deck is 10 or 12 ft wide and has a length of roughly 17.5 ft. They are looking to extend the proposed deck so it connects the northwest corner of the house and to the existing deck located on the southside of the house.

The Chair opened the hearing for public comment. The Chair acknowledged that a letter of support had been received from Matthew Maalouf of 51 Black Duck Road. There was no additional public comment and the Chair closed public comment.

The Board agreed they had no issues with the proposed project.

Mr. Smith moved to approve the application of Erik and Sally-Ann Limpaecher for a Special Permit under Zoning Bylaw Sections 7.1.3 and 11.6 to extend a nonconforming structure to allow the construction of a three-season porch 9.6 ft from the side property line at 61 Black Duck Road (Parcel# 1033-20) noting that the structure is larger than the existing deck but does not increase the nonconformity and will not be substantially detrimental to the neighborhood. Mr. Kindermans seconded the motion. The Chair called for a roll call vote; Mr. Smith, yes; Mr. Kindermans, yes; and Chair Akehurst-Moore, yes. All VOTED in favor.

Barbara Guidi Kohler, for a Special Permit under Zoning Bylaw Sections 6.2.13, 7.1.3 and 11.6 to construct a 404 sq. ft. first floor addition to an existing 2,453 sq. ft. nonconforming

dwelling which exceeds the maximum floor area ratio by 351 sq. ft at 206 Thoreau Street (Parcel# 0355).

Barbara Kohler appeared for the hearing and noted that, since the previous meeting, she has worked with her neighbors to reach an agreement regarding the shared sewer. They had the sewer line scoped to determine its exact location and their plan is to line that pipe and create an easement.

The Chair stated she had no issues with the proposed project noting that the Applicant has done what they suggested in the previous meeting.

Mr. Kindermans noted that it was incredibly generous of the Applicant to allow an easement across her property.

Mr. Smith asked if they would need to incorporate the requirement to carry out the easement into their decision. Town Planner Hughes stated that she had spoken with the Water and Sewer Superintendent who confirmed that the shared sewer line needs to be replaced or relined per Town Policy as it's well over 50 years old, but that the easement between the three property owners is a civil matter and not something that the Board can enforce. She noted that the Board can include in the narrative of the decision that the Applicant has neutrally agreed that there will be an easement for the shared sewer and incorporate the standard condition regarding sewer lines that are older than 50 years having to be repaired or replaced into their decision.

The Chair opened the hearing for public comment and there was none.

Mr. Smith stated that he would be abstaining from voting as he was not present at the previous hearing.

Mr. Kindermans moved to approve the application of Barbara Guidi Kohler, for a Special Permit under Zoning Bylaw Sections 6.2.13, 7.1.3 and 11.6 to construct a 404 sq. ft. first floor addition to an existing 2,453 sq. ft. nonconforming dwelling which exceeds the maximum floor area ratio by 351 sq. ft at 206 Thoreau Street (Parcel# 0355) and in doing so adopt the standard condition regarding sewer lines that are 50 years or older needing to be repaired or replaced . Mr. Swaim seconded the motion. The Chair called for a roll call vote; Mr. Swaim, yes; Mr. Kindermans, yes; and Chair Akehurst-Moore, yes. All VOTED in favor.

Julia Miner and John Caldwell, for a Special Permit under Zoning Bylaw Sections 4.2.2.2 and 11.6 for a 989 sq. ft. additional dwelling unit at 399 Lowell Road (Parcel# 1673).

Julia Miner and John Caldwell appeared for the hearing and gave an update on the proposed project.

The Chair requested additional information regarding the revised square footage calculations that were submitted to the Board.

Building Commissioner Creedon stated that he and Local Inspector Gary Smith visited the property to calculate the square footage of the proposed Additional Dwelling Unit (ADU). They measured and determined that there was a slight error in the Applicants calculations and the error was then rectified. Ms. Miner confirmed that they are now requesting a 993 sq. ft. ADU.

Mr. Swaim stated that he reviewed the property file and noted that there were two items that spoke in favor of granting project. In 2020 the HDC granted a Certificate of Appropriateness to construct an additional three car garage with a mud room, renovate the existing buildings and freestanding garage foundation. Additionally, the two-story addition was previously approved in September and included living space, a mud room and three dormers. He noted that the structure

meets the required setbacks for the principal structure, the ADU is less than 1000 ft, the owners occupy one of the dwelling units, the height is in conformance, and he confirmed that no relief is required for this project in terms of the setbacks. Mr. Swaim stated that the concerns raised by the Applicants neighbors are inappropriate as applied to this application. He concluded that the Application is in order, and he recommended approval.

Mr. Kindermans appreciated Mr. Swaim comments. However, he also noted that he is struggling with the idea of approving something that had already been built. He acknowledged that the neighbors initially thought this was just a garage.

The Chair asked Mr. Kindermans to consider what would be accomplished should they decide not to approve the application. Mr. Kindermans stated that the Applicant could reduce the size of the unit by 200 sq. ft., so it is under 750 sq.ft. and would be permitted by right, however a smaller unit will still have an effect on neighbors.

Mr. Miner stated that it was never their intention to request approval for an ADU after it had already been built. She explained that they didn't know that they could do a legal ADU as the bylaw had not yet changed when they initially designed the garage. During that time, her daughters were living with her and creating a separate apartment seemed like an acceptable way to expand their home. They did go to HDC and received a permit to do the work; however, it wasn't until the building was being framed that they were informed that the ADU Bylaw passed and they could acquire a Special Permit for the ADU.

The Chair acknowledged the comments raised by the neighbors but she felt confident that everything meets the requirements to grant the Special Permit.

The Chair opened the hearing for public comment.

Anne Elton of 415 Lowell Rd stated that she appreciates the review process; however, the initial project was described as a garage with living space which is different from living space for the purpose of creating a rentable unit. She stated that the HDC and NRC look through their own lens which is why she doesn't put a lot of weight on their reviews when it comes to this ADU. Ms. Elton doesn't like the precedent that this application would set.

Tony and Nancy Confrey of 383 Lowell Rd asked what the typical process is when it comes to applying for an ADU. The Chair reviewed the new section of the Zoning Bylaw that discusses ADU's and explained that, if a property owner met all requirements, they build one.

Town Planner Hughes added that the new ADU Bylaw was passed in 2020 and was an action item in the Town's comprehensive long-range plan. Its purpose was to allow property owners to offset expenses and create rentable units near center of Town.

Ms. Confrey asked why neighbors are not a consideration when it comes to ADU's that go over the 750 sq. ft limit. The Chair stated that concerns about renters are out of their hands as a Board, however their approval can be given with the caveat that certain conditions must be met.

Ms. Miner noted that the light that the neighbors had mentioned had its wattage reduced from 40 watts to 25 watts. She has also ordered curtains for the existing windows, the sills of which have a height of 4 ft which make it difficult to look down on someone else's property.

Ms. Elton of 415 Lowell Road expressed confusion as to how an Applicant can apply for one thing and end up with another. Had she known that this space above the garage was going to be a rental unit and not just living space for the owners, she might have offered different input earlier in the process.

Mr. Kindermans explained that the Applicant initially applied for habitable space. However, the new ADU Bylaw allows them to rent out the space as a separate unit. An Applicant can apply for a building permit and, if it meets all the regulations, they receive one without any input from the public. He noted that they approved an ADU under similar circumstances on Lowell Road.

Mrs. Confrey noted that the Applicant removed a lot of vegetation along the fence and suggested that the Board request it as a possible mitigation.

The Chair closed public comment.

Mr. Swaim noted that his view on this matter hasn't changed. The Applicant has complied with all of the standards required in the Zoning Bylaw and obtained a building permit for the proposed project.

Mr. Smith asked if there was an option to apply for an ADU when they initially applied to construct the garage. Ms. Miner reiterated that they weren't aware of new ADU bylaw when they obtained the building permit. Mr. Smith stated that he concurred with Mr. Swaim's legal analysis. There is no reason to deny this application and the Applicant has already taken steps to mitigate issues such as lighting.

The Chair asked Town Planner Hughes if there were conditions they could impose that would assist with mitigation.

Town Planner Hughes explained that the Board has required conditions in the past to screen and buffer a project by means of a hedge or a fence. She noted that the Applicant would have to work with the abutters to determine what type of screening they would like to see. A hedge, however, will not require HDC approval.

Mr. Caldwell clarified that there already is a fence in place. Additionally, he stated that the Confrey's recently did some landscaping and could have installed several hedges if they desired more vegetation.

Town Planner Hughes noted that fencing can have a height of no more than 6ft, while a hedge can go higher.

Mr. Swaim stated that he was against requiring the Applicant to install a hedge as the living quarters are located on the second floor and planting a hedge wouldn't make a difference since it would have to reach a height of 20 to 30 feet.

Mr. Kindermans agreed with Mr. Swaim's assessment.

The Board reviewed the locations of the existing windows in the ADU. Ms. Miner stated that she has ordered light filtering curtains for those two windows.

Mr. Swaim requested confirmation that this application does not involve a variance and Building Commissioner Creedon confirmed that it does not.

Mr. Swaim moved to approve the application of Julia Miner and John Caldwell, for a Special Permit under Zoning Bylaw Sections 4.2.2.2 and 11.6 for a 993 sq. ft. additional dwelling unit at 399 Lowell Road (Parcel# 1673). Mr. Kindermans seconded the motion. The Chair called for a roll call vote; Mr. Swaim, yes; Mr. Kindermans, yes; and Chair Akehurst-Moore, yes. All VOTED in favor.

Administrative Business

Approval of Minutes for December 8th 2022

Mr. Kindermans moved to accept the minutes for the December 8th, 2022 meeting as amended. Mr. Smith seconded the motion. The Chair called for a roll call vote; Mr. Kindermans, yes, Mr. Smith, yes, and Chair Akehurst-Moore, yes. All VOTED in favor.

There being no further business, the meeting was adjourned at 8:30 p.m.

Approved by the ZBA: 2/9/23