



TOWN OF CONCORD
ZONING BOARD OF APPEALS
PUBLIC MEETING MINUTES
FEBRUARY 9, 2023

Pursuant to notice duly filed with the Town Clerk, a virtual public meeting of the Zoning Board of Appeals was held on Thursday February 9, 2023 at 7:00 p.m. using the Zoom meeting platform.

PRESENT:

Members:

Elizabeth Akehurst-Moore, Chair

James Smith, Clerk

Ravi Faiia

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. and took a roll call vote.

PUBLIC HEARINGS:

WH Walden LLC, for a Special Permit with Site Plan Review under Zoning Bylaw Sections 7.7.2.12, 7.7.3.13, 11.6, and 11.8 for a 2,367 sq. ft. second story addition and relief from parking and parking design standards at 59 Walden Street (Parcel# 0115).

Mr. Rich Harrington, Project Engineer appeared for the hearing on behalf of WH Walden LLC along with Attorney Thomas Falwell of Comins & Newbury LLC. Mr. Harrington presented a cover sheet with general details about the property. Mr. Harrington stated that adding a second floor at 59 Walden Street would require 20 onsite parking spaces, and he went on to describe where the parking lot is located behind the building, and how 3-hour parking across the street is available. Mr. Harrington thanked the Planning Division and Fire Department for their assistance with the site plans and stated that the plan has support from the Natural Resources Commission. Mr. Harrington went on to say that the Natural Resources Commission asked to remove all the pavement from the 25-foot buffer zone from surrounding wetlands (Mill Brook) and narrow the angle to the parking lot. He noted that everything in the back of the building is also within the Floodplain Conservancy District, so work will be done to lower the grades or carve out areas to improve on stormwater runoff; and where possible: roof drywalls will be expanded on each side.

The Architect, Mr. Andy Bonzagni remarked that in order to meet the required height limitations, the building's ceiling will be reduced in height to around eight feet, essentially taking the roof down a couple of feet from the main first floor walls. Mr. Bonzagni shared renderings of the proposed white clapboard design (removing bricks) and indicated that the new height of the building would be 4'9" taller than the current level. Mr. Bonzagni presented 3D concepts with proposed bollard lighting in two locations.

Mr. Swaim asked if parking would be available to the public or if it would only be for employees and customers only. Mr. Harrington stated that the parking would be private-use only. Mr. Swaim also asked how the Applicant planned on deterring vehicles from passing over the 25-foot buffer between the parking lot and the adjacent wetlands. Mr. Harrington answered that the shoulder area would be painted over with white lines and there would also be a 3-4"ft height presence of planted shrubs as well.

Mr. Smith asked the Applicant to confirm that the only relief that was being asked for was for the Board to approve parking as opposed to height or setback. Mr. Harrington indicated that Mr. Smith's sentiment was correct.

Chair Akehurst-Moore asked what the Planning Board had asked the Applicant to change. Mr. Harrington answered that the Planning Board requested to add some more shrubs and plantings as well as stormwater recharge to the extent that it can be incorporated.

Mr. Smith asked if the business were to expand for example – would that be considered a change of use and require a special permit. Town Planner Hughes stated that due to the nature of the business and how it has changed with the internet and the COVID-19 Pandemic, the Planning Board felt that this was an appropriate use for the site and that the parking with 20 parking spaces was sufficient. She noted that if a different use were to go into the site, a new special permit would be required.

The Chair opened the hearing for public comment. There was no public comment and the Chair closed public comment.

Mr. Swaim moved to continue the public hearing on the application of WH Walden LLC, for a Special Permit with Site Plan Review under Zoning Bylaw Sections 7.7.2.12, 7.7.3.13, 11.6, and 11.8 for a 2,367 sq. ft. second story addition and relief from parking and parking design standards at 59 Walden Street (Parcel# 0115) to March 23rd at 7:15 PM. Mr. Smith 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.

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. Chris Claussen appeared for the hearing on behalf of Quarry North Rd LLC along with attorney William Henchy and Mathew Leidner of Civil Design Group LLC. Mr. Claussen noted that Mr. Henchy would be able to address the Board about the memo that was recently submitted regarding the building's height. Mr. Henchy stated that there is an application for a height waiver request pursuant to the Town's Zoning Bylaws, Section 10 which allows the Board to grant a height waiver provided that there is no detriment to the public good. Mr. Henchy gave his opinion on interpreting Section 6.2.11 as outlined in his memo.

Mr. Henchy went on to remark that the Town Counsel's view is that the applicant's interpretation of the height definition is certainly plausible provided that the Applicant does not restore the condition of the site to a height above the previously existing base elevation. It was Mr. Henchy's opinion that the Applicant is not engaging in any conduct which would constitute a detriment as defined under Section 10 of the Zoning Bylaw.

Attorney Mina Makarios of Anderson & Kreiger LLP (Town Counsel) stated that his only slight disagreement with Mr. Henchy's interpretation is that a court could reasonably find that the grading or mounting would be either associated with the project or proximity in time simply because it may be in some cases very difficult to tell whether the base elevation had changed over history. Mr. Makarios conclusively stated that if the Board decides that a waiver is needed, they'll only be applying a substantial detriment, and that there is a pathway where no waivers are needed; although he would encourage that whatever the Board does in a decision to address both issues anyway.

Mr. Swaim remarked he believes that this application meets the requirement of the PRD Section 10, the Special Permit sections, and Site Plan sections and he is in favor of this project. Mr. Swaim stated that for following reasons, he would recommend if he were a voting member:

- The project improves a blighted site which was used as a gravel pit.
- The Applicant has made several adjustments to the location of the buildings in response to the Board's comment.
- A waiver to the height restriction is appropriate and consistent with the provisions of 6.2.11. Mr. Swaim agrees with the argument made by the Applicant that a waiver may not be needed, although Mr. Swaim would urge the Board to grant the waiver so that they have the benefit not only of the waiver, but they can take the legal position if that ever comes up at a later time.

Mr. Faiia pointed out that the Zoning Bylaw states that the site should not detract from the visual quality of the area, and that it would be easier to grant the height waiver under the PRD standard. Mr. Faiia also indicated that feedback from the members of the public indicated that many believed the proposed visual character would inhibit many from enjoying the ecological qualities of the area. Mr. Faiia questioned the idea that as long as standards are met, is there any discretion for the Zoning Board of Appeals to say no to any PRD.

Mr. Smith asked that if it is assumed there's no excavation and the Town is measuring 35 feet from the existing grade above, then how much above that is the height of each building. Mr. Leidner stated that it varies by building, so for example, the duplex building farthest to the left on the plan is under the 35-foot height even if it is measured from existing grade because it's actually in a proposed cut. Working to the right of the site plan, one of the tallest buildings is just over 50 feet if it were to be measured from the grade that exists before the restoration of the site to what is being proposed.

The Chair opened the hearing for public comment.

Mr. Jeffrey Parker of 315 Plainfield Road opined that the planned redevelopment is a detriment to the neighborhood. He encouraged the Board to take a site walk to evaluate the area where the buildings will be built.

Mr. Nick Johnson of 38 Bolton Street stated that from a citizen's perspective, what's being presented is ultimately changing or altering the view of the topography for not just local residents, but visitors to protected lands who may not know this application is before the Board.

Mr. Jim Rickers of 58 Shore Drive remarked that there are two PRD's in town that he is aware of that are built in gravel pits. Mr. Rickers urged the Board to understand the nature of this land that's being impacted. He believes enough subjective language exists in the Bylaws to allow the Board the right to turn this development down for a variety of reasons that impact a neighborhood and impact the quality of life.

With no further comments, the Chair closed public comment.

Mr. Faiia asked the Applicant if there was any openness to redesign the house to bring the ridgeline down by 3-4" feet. Mr. Henchy answered that it would not be an inappropriate thing for Mr. Claussen to consider, however there are engineering considerations involved to determine how to respond to such a request.

Mr. Swaim asked if the Sudbury units' roofline is at the same level as the proposed development. Mr. Leidner stated that the heights of those buildings and the foundation elevations of those buildings are very similar, so they mimic the height of the proposed buildings in Concord.

Town Planner Hughes asked Mr. Leidner if pushing the homes forward towards the street would have any effect on the height of the roofline. Mr. Leidner stated that moving the homes forward would not make a difference. Mr. Leidner explained that these homes are located in what is the bottom of an existing gravel pit excavation, so in terms of the height that is being discussed, the interpretation is that the measurement would be from the grade that exists out there currently and not before any grading occurred.

Mr. Smith stated that he would like to see more reduced height and more reduced massing, however he felt that the effort which has been put forward by the Applicant is sufficient to persuade him that it is far superior to the subdivision.

Mr. Henchy asked when the Board will hold their next meeting, citing that the Applicant would be amenable to re-evaluating architecture, however, site design would be more difficult to adjust in a month's time.

The Board discussed arranging a special meeting to continue the public hearing before their regularly scheduled meeting on March 23rd, 2023.

Mr. Faiia moved to continue the public hearing on the application of 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) to February 23rd at 7:00 p.m. Mr. Smith seconded the motion. The Chair called for a roll call vote; Mr. Faiia, 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 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).

Mr. Faiia 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 March 23rd at 7:20 PM. Mr. Swaim seconded the motion. The Chair called for a roll call vote; Mr. Swaim, yes, Mr. Faiia, yes, and Chair Akehurst-Moore, yes. All VOTED in favor.

Administrative Business:

Approval of Minutes for January 12th 2023

Mr. Smith moved to accept the minutes for the January 12th, 2023 meeting. Mr. Faiia seconded the motion. The Chair called for a roll call vote; Mr. Faiia, yes, Mr. Smith, yes, and Chair Akehurst-Moore, yes. All VOTED in favor.

There being no further business, the meeting was adjourned at 9:04 p.m.

Approved by the ZBA: 5/11/23