



**ZONING BOARD OF APPEALS
TOWN OF CONCORD
Meeting Minutes
February 13, 2020**

Pursuant to notice duly filed with the Town Clerk, a public meeting of the Board of Appeals was held on Thursday, February, 2020 at 7:15 p.m. in the First Floor Conference Room, 141 Keyes Road, Concord, Massachusetts.

PRESENT:

Members:

James Smith
Elizabeth Akehurst-Moore
Theo Kindermans
Ravi Faiia

Elizabeth Hughes, Town Planner
Raymond Matte, Building Commissioner

Chair Akehurst-Moore called the meeting to order at 7:15 p.m.

Voting Members: James Smith, Elizabeth Akehurst-Moore, Theo Kindermans

Public Hearings:

Charles Audi, to amend a Special Permit under Sections 7.7.3.4, 7.7.3.13, 11.6, and 11.8 of the Zoning Bylaw for relief from parking design standards at 143 Sudbury Road (Parcel #0180). (Applicant has requested to continue their application to the April 9, 2020 meeting.)

Chair Akehurst-Moore opened the public hearing and reviewed the Application stating that the applicant has requested to continue the hearing without discussion to the April 9, 2020 meeting.

Mr. Smith moved to continue the hearing to the April 9, 2020 meeting at 7:15. Mr. Kindermans seconded the motion and all VOTED in favor.

Steven Keating, for a Special Permit under Sections 7.1.3, 7.1.5, and 11.6 of the Zoning Bylaw to construct an 811 sq. ft. addition that will increase the gross floor area by more than 50% on a non-conforming lot at 10 Tracy Street (Parcel #3218).

Chair Akehurst-Moore opened the public hearing and reviewed the application. Steven Keating appeared for the hearing and explained that they are looking to add 811 square feet to the house by adding a second story which would bring the total to 1,795 square feet. He continued that they have received a letter of support from the White Pond Advisory Committee as well as their neighbors. The Building Commissioner confirmed that the new height of the house would be 28'11" high which is well within the allowable height.

Chair Akehurst-Moore asked for comments from the Board. Mr. Kindermans felt that the application was straight forward.

Chair Akehurst-Moore opened the hearing for public comment.

Joseph Rogers of 20 Tracy Street spoke in favor of the application.

Mr. Smith commented that the increase in size is very modest and the application meets the criteria of the Zoning Bylaws. He also noted that a change to the Zoning Bylaws could be considered to allow additions up to 2,500 sq. ft. without the need for a Special Permit.

Mr. Smith moved to approve the application of Steven Keating, for a Special Permit under Sections 7.1.3, 7.1.5, and 11.6 of the Zoning Bylaw to construct an 811 sq. ft. addition that will increase the gross floor area by more than 50% on a non-conforming lot at 10 Tracy Street (Parcel #3218). Mr. Kindermans seconded the motion and all VOTED in favor.

Documents Used: Plans and Elevations, Site Plan

Mike Bushnell, for a Special Permit under Sections 7.1.3, 7.1.5, and 11.6 of the Zoning Bylaw to demolish the existing 2,705 sq. ft. dwelling and garage and to construct a new 4,541 sq. ft. dwelling that will increase the gross floor area by more than 50% on a non-conforming lot at 1599 Lowell Road (Parcel #1548).

Chair Akehurst-Moore opened the public hearing and reviewed the application. The architect, Elise Stone appeared for the hearing along with the owner, Mike Bushnell. She explained that the Applicant is looking to demolish the existing house and barn and replace it with a new 4,542 sq. ft. house with attached garage which is 483 sq. ft. over the 50% increase allowed. The many accessory structures on the lot will also be removed. The lot has non-conforming frontage and area but the existing and proposed house will be within the required front and side setbacks. The height of the new house will increase to about 30 feet.

Chair Akehurst-Moore opened the hearing for public comment and there was none.

Chair Akehurst-Moore asked for comments from the Board. Mr. Smith commented that the proposal is within the scale of other houses on Lowell Road and meets the requirement of the Zoning Bylaws.

Mr. Smith moved to approve the application of Mike Bushnell, for a Special Permit under Sections 7.1.3, 7.1.5, and 11.6 of the Zoning Bylaw to demolish the existing 2,705 sq. ft. dwelling and garage and to construct a new 4,541 sq. ft. dwelling that will increase the gross floor area by more than 50% on a non-conforming lot at 1599 Lowell Road (Parcel #1548). Mr. Kindermans seconded the motion and all VOTED in favor.

Documents Used: Plans and Elevations, Site Plans

Symes Development & Permitting, LLC for a Variance, Special Permit and Site Plan Review under Sections 7.5, 10, 11.6, and 11.7 of the Zoning Bylaw for a 34-unit Planned Residential Development at 1440, 1450, 146B Main Street (Parcels #2409, 2408, 2407).

Richard Harrington, Engineer with Williams and Sparages, the applicant, Jeff Rhuda with Symes Development and Permitting, and attorney Brad Latham appeared for the hearing. Mr. Harrington discussed the conditions recommended by the Planning Board for

approval of the Planned Residential Development (PRD). He explained that the applicant was willing to remove gas line tie-ins to the street and commented that the applicant would prefer to follow the 2018 stretch energy code as a compromise to the HERS rating previously requested by the Planning Board. Mr. Harrington commented that they were willing to increase the natural green space corridor back to 15 ft. as originally planned and reviewed how the diversity of unit types had changed over the course of the review process. He commented that the applicant believes that the current plan meets the requirements of the PRD Bylaw. Mr. Harrington commented that in addition to the Special Permit for the PRD, they also needed special permit approval for earth removal and felt that the current design met the requirement of the minimal amount of earth to be removed from the site. He also discussed the need for a height variance due to the unique and specific topography and slope of the site in key locations.

Chair Akehurst-Moore discussed the three sections of the application and the requirements that need to be met. She commented that if a height variance wasn't approved, the Applicant wouldn't be able to construct the proposed plan. She cited case law for a similar project where economic harm was not considered a substantial hardship and felt that the height couldn't be approved based upon the Applicant's proposed reasoning. Mr. Latham, attorney for the applicant spoke regarding the current height requirements and how the height is calculated. He questioned how this project relates to the bylaw and also gave example of case law that would allow for the approval of the variance citing the hardship as not being able to practically use this site due to its topography.

Mr. Smith asked if a standard subdivision of this property would require a height variance. Mr. Rhuda commented that they would need a Special Permit for relief of height requirements but that most of a conventional subdivision would not need height relief.

Chair Akehurst-Moore commented that she understood the case law presented by the applicant but doesn't think that it applies to this application and that if a 22-unit subdivision can be built, it would be hard to approve the additional 12 units for a PRD. Mr. Faiia agreed that the variance could not be granted if there is a reasonable alternative available. Mr. Smith explained the different standards for a Special Permit and Variance and the difficulty the Board faces in granting a variance if there is an alternative for the site. Chair Akehurst-Moore stated that because there was an alternative, she didn't see how the Board could grant the Variance. Mr. Kindermans agreed.

Chair Akehurst-Moore opened the hearing for public comment on the height variance and there was none at this time.

Mr. Latham questioned whether Section 6.2.11 of the Zoning Bylaw may be applicable in this situation and whether the Board could make a finding for the relief from height requirements under this section. Mr. Smith reviewed the differences between the Bylaw and the variance. Chair Akehurst-Moore commented that the Board would like to move the discussion on to other parts of the application but wasn't sure how to proceed if they could not move past the variance. The Town Planner stated that it is very rare to ask for comment from Town Counsel during the deliberation of an application but the Board could request review as to whether the Board could make a finding on 6.2.11 rather than 11.7. Board Members reviewed future Warrant Articles proposed by the Planning Board with changes to the height requirements. Chair Akehurst-Moore asked whether they

could vote on just this section of the Bylaw. Mr. Smith stated that he had some issues with the project and wanted to review the most recent changes but didn't see this as a situation where the Board could grant this particular variance and didn't see the benefit to the PRD as opposed to the standard subdivision. The Chair agreed with Mr. Smith and asked if the applicant would be willing to try to update the plan to remove the variance. Mr. Rhuda and Attorney Latham requested that the Board take a vote. Chair Akehurst-Moore questioned whether the whole application will fail if the Board votes to deny the variance.

Town Planner stated that she wasn't entirely clear on that process. Chair Akehurst-Moore thought they should continue the application and asked for approval to seek the opinion of Town counsel on what happens to the rest of the application if they deny the variance. Mr. Faiia questioned whether they could make a decision on one part of the application without hearing the entire package. Attorney Latham offered to withdraw the PRD without prejudice if the Board voted to deny the variance and again requested that the Board vote on the variance and then continue the other items to give them time to research alternatives. The Town Planner stated that they would need to request guidance from Town Counsel on whether this was allowable. Mr. Smith stated that guidance from Town Council and more research was needed to take a formal vote.

Mr. Smith moved to continue the application of Symes Development & Permitting, LLC for a Variance, Special Permit and Site Plan Review under Sections 7.5, 10, 11.6, and 11.7 of the Zoning Bylaw for a 34-unit Planned Residential Development at 1440, 1450, 146B Main Street (Parcels #2409, 2408, 2407) to the March 12, 2020 meeting at 7:30 pm. Mr. Kindermans seconded the motion and all VOTED in favor.

Documents Used: ZBA meeting presentation

Other Business:

Discussion: Planning Board Warrant Articles

The Board discussed the proposed Warrant Articles that would change the granting authority for Planned Residential Developments, hammerhead lots, and parking requirements to the Planning Board. The Board agreed that it made sense for the Planning Board to take ownership of hammerhead lots and parking requirements but couldn't agree that the PRD shouldn't come before the Zoning Board for final approval. Mr. Smith moved to support Article 35 and 36 and to table discussion on the changes to the PRD until the next meeting. Mr. Kindermans seconded the motion and all VOTED in favor.

There being no further business, the meeting was adjourned at 8:58 p.m.

Respectfully submitted,

Theo Kindermans, Clerk