



**ZONING BOARD OF APPEALS
TOWN OF CONCORD
Meeting Minutes
April 8, 2021**

Pursuant to notice duly filed with the Town Clerk, a virtual public meeting of the Board of Appeals was held on Thursday, April 8, 2021 at 7:00 p.m. using the Zoom meeting platform.
Meeting ID: 875 5714 9429 Meeting Password: 026483

PRESENT:

Members:

Elizabeth Akehurst-Moore
Ravi Faiia
Theo Kindermans
James Smith

Elizabeth Hughes, Town Planner
Ray Matte, Building Commissioner
Heather Carey, Admin Assistant

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

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

Public Hearings:

The Umbrella Arts Center, for a Special Permit under Sections 5.4.5 and 11.6 of the Zoning Bylaw for a temporary tent structure at 40 Stow Street (Parcel #0809).

Chair Akehurst-Moore opened the public hearing and reviewed the application. Jerry Wedge, Executive Director with the Umbrella Arts Center appeared for the hearing. He explained that due to the pandemic, they are requesting to install a temporary 30' x 80' frame tent that would allow them to continue their programming using outdoor space. He acknowledged a public comment letter that the Board received and commented that they are not aware that they are out of compliance with their special permit or how that would be relevant to the current application.

Chair Akehurst-Moore asked for questions from the Board.

Mr. Kindermans asked when they plan to remove the tent. Mr. Wedge stated that they intend to take it down at the end of the summer after summer camp program but asked for an additional two months in case the pandemic keeps them out of the building. Mr. Kindermans stated that it would be good to add a date as to when the tent would come down. Ms. Akehurst-Moore asked about parking requirements. Mr. Wedge noted that the 350-seat theater would not be open and there would not be any issues with parking. Mr. Faiia asked if there any intent for amplified sound. Mr. Wedge commented that some events may require a small portable speaker.

Chair Akehurst-Moore opened the hearing for public comment.

William Lehr of 94 Hubbard Street noted a letter that he sent along with 28 signatures from neighbors. He spoke about issues with their current Special Permit and commented that this Special Permit should be conditioned to resolve the outstanding issues.

Don Kupka of 39 Devens Street spoke against the application.

Diane Proctor of 57 Sudbury Road spoke against the application.

Chair Akehurst-Moore closed public comment. She noted that there are no outstanding violations and that this isn't the right mechanism to enforce or to revisit their existing Special Permit but that those issues should be considered as they relate to this application. Mr. Smith asked about the 8:30 am to 8:30 pm hours of operation. Mr. Wedge explained that most spring events won't start until 10:00 am and summer camp starts at 9:00 am with drop off prior to that time. He stated that they aren't planning programming for those hours every day but would need those hours for some events. The Board discussed limiting the hours and adding conditions for light and sound.

Mr. Smith moved to approve the application of The Umbrella Arts Center, for a Special Permit under Sections 5.4.5 and 11.6 of the Zoning Bylaw for a temporary tent structure at 40 Stow Street (Parcel #0809) for the purpose of holding events with the limitations beginning now through July 11, 2021 with the hours of 9:30am to 5:30 pm Sunday through Thursday and from 8:30am to 5:30 pm starting July 12, 2021 through September 6, 2021 with an end time of 8:30pm on Friday and Saturday nights, a single amplifier will be permitted which is designed to hold most of the amplification within the tent, a building inspector shall report to the Board if there are any comments or concerns, subject to the issuance of a tent permit. Applicant can return for an extension of hours if needed to run further into the fall. Mr. Kindermans seconded the motion, and all **VOTED** in favor.

Documents Used: none

Robert Gray and Martha Collins Gray, under Sections 7.1.3 and 11.6 of the Zoning Bylaw, for a Special Permit to construct a 80 sq. ft. addition on a 3,402 sq. ft. non-conforming structure at 155 Monument Street (Parcel #1273).

Chair Akehurst-Moore opened the public hearing and reviewed the application. Martha Collins Gray appeared for the hearing and explained that they had previously been approved for a Special Permit to add 122 sq. ft. to the house and extend the side setback but have since scaled back the design and are only proposing to increase the gross floor area by 80 sq. ft. Chair Akehurst-Moore stated that she was notified that the Historic Districts Commission is conducting a site visit and that if approved, they can add a condition requiring HDC approval. Mr. Smith stated that this is less non-conforming than the original approval.

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

Chair Akehurst-Moore commented that they approved the previous application, and this is less non-conforming than the original.

Mr. Kindermans moved to approve the application of Robert Gray and Martha Collins Gray, under Sections 7.1.3 and 11.6 of the Zoning Bylaw, for a Special Permit to construct an 80 sq. ft. addition on a 3,402 sq. ft. non-conforming structure at 155 Monument Street (Parcel #1273) with the condition that the Historic Districts Commission will issue a Certificate of Appropriateness. Mr. Smith seconded the motion, and all **VOTED** in favor.

Documents Used: Site Plan

Environmental Pools, for a Variance under Section 11.7 of the Zoning Bylaw to construct a 450 sq. ft. pool within the rear yard setback at 77 Revolutionary Road (Parcel #0084).

Chair Akehurst-Moore opened the public hearing and reviewed the application. Molly Obendorf, Engineer with Stamski & McNary appeared for the hearing on behalf of Environmental Pools. She explained that they have applied for a variance in order to construct a 15' x 30' pool within the 30 ft. rear yard setback. She noted that this was the most suitable location on the property and was less intrusive to the neighbors, required less tree removal and avoids existing objects on the site. Chair Akehurst-Moore stated that it is extremely difficult for an application to meet all the criteria needed for a variance. She explained that there would need to be a substantial hardship and not being able to build a pool in a specific location is not a substantial hardship. The Chair also noted that this lot does not have non-conforming setbacks and would derogate from the intent and purpose of the Bylaw. Mr. Smith questioned whether the pool could be in another location where it would not go outside the setback. Ms. Obendorf stated that another location would require tree removal and would be closer to the neighbor who has some concerns with noise. She stated that the substantial hardship is the size and shape of the lot and location of the house in relation to the septic system. Ms. Akehurst-Moore stated that she did not doubt that this was a better location, but the Board can't legally grant the variance. Mr. Smith asked for clarification as to why this is a variance and not a Special Permit. Building Commissioner Matte confirmed that the house meets the required setbacks for the zoning district. Mr. Smith stated the Zoning Bylaws require you to meet the setbacks and if this lot was non-conforming, it would be a Special Permit that could easily be approved, but because the lot is conforming it requires a variance which cannot easily be approved.

Chair Akehurst-Moore opened the hearing for public comment.

Robert Easton of 85 Revolutionary Road questioned whether the Tree Preservation Bylaw would apply and didn't see a fence laid out on the plan. The Building Commissioner confirmed that the Tree Bylaw would not be triggered for the installation of a pool.

The Board discussed moving forward with a vote and Ms. Obendorf agreed that it would be best to withdraw the application without prejudice and see if they can come up with another plan.

Mr. Kindermans moved to accept the withdrawal without prejudice for the application of Environmental Pools, for a Variance under Section 11.7 of the Zoning Bylaw to construct a 450 sq. ft. pool within the rear yard setback at 77 Revolutionary Road (Parcel #0084). Mr. Smith seconded the motion, and all **VOTED** in favor.

Documents Used: site plan, photographs

Symes Development & Permitting, LLC, for a Special Permit under Sections 7.5 and 11.6 of the Zoning Bylaw for the construction of a Definitive Subdivision requiring the removal of 60,690c.y. of earth at 146B & 1442 Main Street, 110 & 11B Highland Street (Parcels #2407, 2408, 2409, 2409-1).

Chair Akehurst-Moore opened the public hearing and reviewed the application. Rich Harrington, Engineer with Williams and Sparages appeared for the hearing and gave a brief overview of the Definitive Subdivision plan that was approved by the Planning Board. He presented a plan showing the approved lots and a topography plan showing the grading required. Mr. Harrington explained that the plan does not exceed the minimum practical removal required to accomplish the construction development or improvement in accordance with the Bylaw and they are matching existing contours everywhere possible. He continued that the earth removal isn't over the entire site and construction of the dwellings is placed close to the front setback on the left-hand side so minimize the amount of cut. Mr. Harrington noted that the plan is designed to include Title IV and stormwater management regulations. He talked about the request for an outside consultant review

and questioned whether a geotechnical review was needed for the entire property and noted that some of the bullet points had already been reviewed with the Planning Board application.

Chair Akehurst-Moore asked for questions from the Board. Mr. Faiia asked if any of the proposed dwellings would require a height variance. Mr. Harrington stated that all the houses will comply with the bylaws. Mr. Smith commented that the Planning Board approved the Definitive Subdivision with conditions which has been appealed because of several conditions. The Board discussed the appeal and asked for clarification on whether the grading plan is consistent with the approved plans and whether it would comply if the appeal was lost. Jeff Rhuda with Symes Development and Permitting commented that the appeals are on the Town ability to set aside lots for 3 years.

The Board discussed the items requested for the outside consultant review and agreed that the last two bullet items should be verified as to whether an additional review is needed and whether the information may already exist. Mr. Kindermans asked for peer review of the earthwork cut/fill numbers and if the cut/fill was indeed minimized.

Chair Akehurst-Moore opened the hearing for public comment.

Dan Stapleton of 20 Conant Street asked for some clarification on the appeal and how it relates to the application before them.

Jack Madigan of 215 Prairie Street questioned whether this land was buildable with the amount of cut and fill required. He commented that the trees are proposed to be clear cut leaving the lots available for a park to be stripped of the current woodlands.

Ellen Quackenbush of 206 Prairie Street stated that clear cutting and leveling the land will make a clear view of the train track, increase noise and carbon emissions, and reduce air quality.

Paul Winkler of 1414 Main Street commented that this plan is a severe disruption and wanted to call the Board's attention to the Planning Board's reservation to this amount of earth removal. He stated that he was in favor of the previous PRD plan but is not in favor of this plan.

John Cooley of 80 Highland Street voiced his concern with the traffic coming and going during construction and the safety of children on the street and commented that the earth removal very extreme as to what is written as a base line.

Michael Amster of 44 Prairie Street commented that traffic created from 5,000 round trips of heavy construction equipment will put any resident at risk and didn't see how this project fit any of the provisions of the Bylaw.

Pamela Dritt of 13 Concord Greene, Unit 4 stated that there is more at stake than removal and fill of land and that the Town needs the forest and natural plantings to support biodiversity and healthy ecosystems and the town needs this site to fight the climate change and achieve the Town's sustainability goals towards carbon neutrality.

Scott Richardson of 260 Elsinore Street questioned the precedence for earth removal Special Permits in the future and asked whether there were any residents who want this plan.

Josh Latham attorney for the applicant commented that the Board should focus on the issue at hand which is the earth removal. He commented that they fully support the peer review and that this subdivision will not get built until the litigation is resolved.

Chair Akehurst-Moore commented that they are still in a fact gathering stage and the Board agreed to continue the Public Hearing to the June 10, 2021 meeting to allow time for the peer review and gathering more information.

Mr. Kindermans moved to continue the application of Symes Development & Permitting, LLC, for a Special Permit under Sections 7.5 and 11.6 of the Zoning Bylaw for the construction of a Definitive Subdivision requiring the removal of 60,690c.y. of earth at 146B & 1442 Main Street, 110 & 11B Highland Street (Parcels #2407, 2408, 2409, 2409-1) to the June 10, 2021 meeting 7:00 pm. Mr. Smith seconded the motion and all **VOTED** in favor.

Documents Used: Plot plan, topography plan, GPI scope of work, W&S narrative

Concord Country Club, for a Special Permit under Sections 7.5 and 11.6 of the Zoning Bylaw for the construction of an irrigation pond requiring the removal of 1,200 cubic yards of soil at 246 Old Road to Nine Acre Corner (Parcel #3079).

Chair Akehurst-Moore opened the public hearing and reviewed the application. She acknowledged the site visit and new landscape plans that were received earlier in the day. Greg Cincotta thanked the Board for taking the time to conduct a site visit and apologized for the work that had been started without the proper permits. He explained again that the irrigation system is 25 years old and only working at 50% efficiency and that they are looking to build an approximately 3-million-gallon retention pond in the southwest portion of the golf course behind the 16th. He explained that they have revised their plan and omitted the earth removal from the project except for the 1200 cubic yards of soil that was previously removed. Mr. Cincotta commented that the retention pond allows them to operate the system more efficiently which benefits the club and the Town. He explained more benefits including a dramatic reduction in the instantaneous demand from the well and instead of operating both wells at full demand only one well would be used at a time as the refill can take place over a longer period of time. The new system would utilize the pond as a holding vessel to store water so the same volume can be applied but at a greater rate. He explained that the irrigation pond will reduce the wear and tear on their equipment as drawing water directly from the ground introduces sand and debris which cause damage and breakdowns to the irrigation piping. The pond also addresses sustainability by utilizing alternative sources for capturing water over the long term which will reduce the need to pull water from the ground, especially during drought conditions. Mr. Cincotta stated that they do not feel there are any negative impacts on the economy, community needs, traffic flow, and the proposed water management plan and monitoring well in partnership with the Town will be beneficial. He stated that once the project is complete, there will be no burden on any existing utilities or other public services. He stated that they have submitted a planting plan that will protect the neighborhood character and the closest neighbor who is over 200 feet away from the project.

Chair Akehurst-Moore asked for questions from the Board. Mr. Kindermans stated that most of his concerns had been addressed at the site visit but had asked for some definitive answers on whether they could create underground water storage. He stated that the planting plan did not sufficiently address the concerns of the neighbors. Chair Akehurst-Moore commented that having a landscape architect create a plan would be beneficial and asked if there was some mitigation planting that could be done on the neighbor's property for screening. Mr. Kindermans agreed and noted that it wasn't the species of vegetation but the groupings that were important for screening. Golf course Superintendent Peter Rappoccio explained that the berm would have a native planting mix of tall grass and would not be mowed. Mr. Faiia stated that there are significant neighborhood concerns of what this will look like long term for the residents and the screening should be presented in a way that meets the concerns of the neighbors. Chair Akehurst-Moore noted that the neighbors should be part of the discussion and could include plantings on their properties if it's not possible to add it to the country club property.

Chair Akehurst-Moore opened the hearing for public comment.

Bernd Comjean of 99 Williams Road commented that he was very concerned and that there are still issues to be addressed.

Jack Madigan of 215 Prairie Street asked what the repercussions are for the work done without approval and how Jennie Dugan brook would be affected.

John Thompson of 221 Fairhaven Hill Road commented that he is the current President of the Concord Country Club and noted that they have made mistakes in the pursuit for water storage but have worked with the Town Boards and Committees to correct those mistakes. He stated that it was their hope that the Board could consider the science behind the project in the interests of more sustainable water management and approve the Special Permit application.

Deborah Yamin of 115 Williams Road asked that the country club communicate with the neighbors to discuss projects in the future. She stated that the neighbors would like to understand and support what the Country Club has planned and asked that they get together outside of these meetings to work together for some resolution without putting the onus on the ZBA.

Greg McGregor of 70 Williams Road stated that the Board has the power, authority, and legal right to say they won't consider the rest of the project until there is restoration of the unpermitted work. He stated that the Country Club has not provided any public benefit and urged the Board to deny the application.

Rebecca Comjean of 99 Williams Road commented that history has shown that the response of the Country Club has been to deny and minimize that what they're doing has any impact on the town or the other parties.

Sharon McGregor of 71 Williams Road commented that the loss of ecosystems and groundwater will be a huge impact to the neighborhood and the Country Club at the very least should do thoughtful alternatives analysis and look at a no build alternative which recognizes that there are other means for meeting the water needs of the country club.

Carol Smith of 65 Williams Road voiced her concerns about the location of the pond, excess mosquitoes and the maintenance of it if the water level goes low. She also commented that the neighbors could have been better informed by the Country Club and asked that they reach out the neighborhood to work with them more.

Peter Newton with Bristol Engineering Associates addressed public comment stating that conversations with CPW, Water and Sewer Division made it very clear that decoupling of the irrigation from the wells is a significant public benefit and in reducing pumping from the wells during dry periods will likely help maintain flows in Jennie Dugan brook. Paul Roche with Gulf Coast Irrigation commented that a full water use study had been completed and they determined that the new irrigation system will not use more water and will create more uniformity in their water usage. He stated that currently they must take water directly from the wells and the irrigation pond gives them an opportunity to store water from stormwater runoff and also allows them to recharge the pond over a longer period of time instead of taking a big gulp from the groundwater at one time. He also noted that the Country Club will now have a drought management plan. Mr. Smith stated that he believed there is a public benefit demonstrated by the ability to take less water directly from the ground and the monitoring wells that will ensure that they are not drawing water from the brook. He stated that he was concerned with the history of the project and wasn't comfortable with any kind of approval without having the plans in writing and enforceable. Mr. Smith also stated that he was happy to hear that the Country Club would replant and add screening but wanted to see an adequate landscape plan that could be approved.

Mr. Kindermans stated that he didn't see a benefit to denying the application and asking the applicant to return the land to its original condition because that isn't possible. Mr. Kindermans stated that he would still like to see information on the possibility of underground storage and asked for a detailed alternatives analysis in writing. Chair Akehurst-Moore asked for input on the planting plan from Marcia Rasmussen, the Planning Director. Ms. Rasmussen stated that missing from the plan is the spacing of the materials and the concept and vision of how the pond fits into the landscape and an understanding of how the pond is going to be managed is also of concern. She also noted that there are no evergreen type plant materials, and there are shrubs as well as trees that could be incorporated to have a more diverse landscape that would be better for wildlife. Ms. Rasmussen stated that she did not walk the site and did not feel comfortable recommending anything else without seeing the area. Chair Akehurst-Moore stated that the Board is spending a lot of time on this and that the burden should be on the Applicant to convince the Board that this is a well thought through and manageable project, and not for the Board to say what it wants to see presented. Mr. Smith stated that it would be useful to have the town and Applicant do a write up of the discussion at the site as to why there is benefit to the town from groundwater standpoint and monitoring wells and how it will protect Jennie Dugan brook. He also commented that he would like to see a thoughtful landscape plan and a 3-d model of how this is this going to look from the Country Club and the neighbors. Mr. Smith stated that if he were forced to vote tonight that he would vote against it finding that the Country Club had not demonstrated how this is a benefit of the Town. Chair Akehurst-Moore agreed and stated that they would like to see a write up by the Applicant and the Town as to why this is a benefit along with a rendering of the landscape plan. Mr. Kindermans also requested a write up of the alternative's analysis.

Mr. Smith moved to continue the application of Concord Country Club, for a Special Permit under Sections 7.5 and 11.6 of the Zoning Bylaw for the construction of an irrigation pond requiring the removal of 1,200 cubic yards of soil at 246 Old Road to Nine Acre Corner (Parcel #3079) to the June 10, 2021 meeting at 7:05 pm. Mr. Kindermans seconded the motion and all VOTED in favor.

Documents Used: none

Administrative Business

209, 249, and 29A Musterfield Road – Special Permit Extension

Admin Assistant, Heather Carey read the letter from the Beals and Associates on behalf of the homeowners requesting an extension of their Special Permit which will expire on July 15, 2021. The letter explained that the original permit issued for the property is set to lapse prior to the commencement of any construction. The owner of the property is currently working with a potential buyer on the sale of the property but it is anticipated that the transaction will not be complete prior to the expiration of the permit and the owner is requesting a one year extension which should grant sufficient time to conclude the sell the property.

Director Rasmussen summarized comments made through the Zoom chat from Ted and Ellen O'Rourke of 301 Musterfield Road stating that a site visit should be conducted, and the Special Permit should be reviewed again with a new survey and review into the wetlands. Director Rasmussen stated that these comments were not relevant to the request for the extension of time because the extension doesn't change or impact the special permit in any shape or form.

Andrew Carey of 116 Park Lane commented that looking at the real estate markets over the past year, people are buying everything they can and didn't understand why they really need this extension or why it should be granted.

Chair Akehurst-Moore stated that the circumstances of the Special Permit remain the same and that she didn't have an issue approving the extension.

Mr. Kindermans moved to approve the extension of the Special Permit application of Beals Associates, Inc. for a Special Permit under Sections 6.3.2 and 11.6 of the Zoning Bylaw for the creation of a new Hammerhead lot from an existing lot at 209 and 29A Musterfield Road (Parcels #1794-1 & 1795-9) for one year. Mr. Smith seconded the motion, and all VOTED in favor.

There being no further business, the meeting was adjourned at 10:35 p.m.

Respectfully submitted,

Theo Kindermans, Clerk