



**ZONING BOARD OF APPEALS
TOWN OF CONCORD
Meeting Minutes
April 14, 2022**

Pursuant to notice duly filed with the Town Clerk, a virtual public meeting of the Board of Appeals was held on Thursday, April 14, 2022, at 7:00 p.m. using the Zoom meeting platform.

PRESENT:

Members:

Elizabeth Akehurst-Moore
Ravi Faiia
Theo Kindermans
James Smith, Chair
Thomas Swaim

Elizabeth Hughes, Town Planner
Paul Creedon, Local Inspector
Heather Carey, Admin Assistant

Chair Smith called the meeting to order at 7:00 p.m.

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

Public Hearings:

Eycon Development, for a Special Permit under Sections 7.1.3, 7.1.5, and 11.6 of the Zoning Bylaw to demolish the existing 1,035 sq. ft. dwelling and construct a 4,406 sq. ft. dwelling on a non-conforming lot at 57 Grove Street (Parcel #1938).

Chair Smith opened the public hearing and reviewed the application. Bruce Ringwall with Goldsmith, Prest & Ringwall appeared for the hearing on behalf of Mike Walsh and Eycon Development and gave an overview of the existing conditions. The structure is 1,035 square feet and the parcel is 1,000 feet shy of the 2,000 square foot requirement. He noted that the house has been left in disrepair for a long time though the applicant has begun cleaning up the property. Mr. Ringwall clarified that the proposed dwelling will have four bedrooms but will have a five bedroom septic-system which is necessary for a house of this size. The septic system will be placed in the back yard. Mr. Ringwall noted that the proposed dwelling meets all the required setbacks and the allowable FAR on this property is 5,757 square feet. Mr. Ringwall stated that under the advisement of the building division, the the roof was redesigned with a truss system to lower the roof which would give the proposed structure a total GFA of 3,874 square feet. He noted that there are larger homes on similar sized properties.

Chair Smith asked for questions from the Board. Mr. Faiia asked for clarification on the plans dated November 18th, 2021 vs. the GFA that was updated. Mr. Ringwall clarified that the attic ceiling height was reduced using a truss system. Mr. Swaim asked if the applicant was mindful of the letters that had been received. Mr. Ringwall stated that they made changes based upon comments. The house was pushed back a bit further in the hopes of addressing the abutters concerns. Mr. Swaim asked if any response was given regarding the neighbor's concern that the house is not consistent with the neighborhood. Mr. Ringwall stated that their design was

comparable to the size of abutting homes as it has a living space of 3,200 square feet and 3,800 square feet with the garage. Mr. Ringwall also stated that they would not be removing any of the larger trees on the property.

Chair Smith opened the hearing for public comment.

Thomas Siebert of 52 Grove Street spoke against the house noting it's too large, too tall, too close to the road and out of character for the neighborhood.

Richard Higgins of 15 Grove Street spoke against the house noting that the size of the proposed house is out of character for the neighborhood.

Mary Anne Jasinski of 22 Grove Street asked that they receive new plans and requested that the Board come to the neighborhood to see how the house does not fit the neighborhood.

Cindy Warren of 825 Barretts Mill Road stated that she hasn't heard any information presented that would back up granting the Special Permit.

Julia Robinson of 86 Grove Street emphasized that the style of the house is important in order to keep the aesthetic of the neighborhood.

Mike Lanieri of 37 Grove Street submitted a letter and wanted to clarify that he was in full support of demolishing the existing house but was not in favor of any specific proposal.

Ted Bayne of 71 Assabet Avenue spoke against the project. He noted that the proposed house is not in keeping with the history of the neighborhood.

Mr. Ringwall stated that the proposed house meets the zoning but will consider making changes to address some of the concerns.

Chair Smith clarified the requirements for applying for a special permit. He stated that it may be beneficial for Mr. Ringwall to confer with the applicant and request that they reschedule the site visit and review any changes made to the design at a later date. Town Planner Elizabeth Hughes explained that the board could review the application again next month or two months from now. Once it is determined what changes are being made to the application, the Board can schedule the site visit. Mr. Ringwall requested a continuance for one month

Jenny Rankin 15 Grove Street asked about procedures for a site visit.

Chair Smith asked the Town Planner if the town was required to notify abutters in the event of a site visit. Town Planner Elizabeth Hughes confirmed that it was not a requirement. Site visits are not public meetings, so it is up to the applicant if they want to make site visits open to the general public. She stated that site visits, where a quorum of members is reached, are posted on the towns web page 48 hours prior to the site visit itself. Chair Smith reaffirmed that a site visit was about evaluating the overall character of the neighborhood. However, he said that no decisions are made at that time and that they would need to reconvene at another hearing and begin the process over again.

Mr. Kindermans stated that the amount of increase in impervious area on the site plan is large. He expressed interest in the stormwater and how it is being managed for this project. Mr. Ringwall stated that they will be recharging more water on the site than is under the current standards which is standard operating procedure for new development and redevelopment of a property.

Mr. Kindermans moved to continue the application of Eycon Development, for a Special Permit under Sections 7.1.3, 7.1.5, and 11.6 of the Zoning Bylaw to demolish the existing 1,035 sq. ft. dwelling and construct a 4,406 sq. ft. dwelling on a non-conforming lot at 57 Grove Street (Parcel

#1938) to the May 12, 2022 meeting at 7:00 pm. Ms. Akehurst-Moore seconded the motion. The motion passed (3-0) by roll call vote.

Documents Used: Site plan, existing photos, neighborhood photos, GIS non-conforming property map, elevations

Matt Sepe, for a Special Permit under Sections 7.1.2 and 11.6 of the Zoning Bylaw for a change of use to a two-family dwelling at 1264-1266 Main Street (Parcel #2448).

Chair Smith opened the public hearing and reviewed the application. Matt Sepe appeared for the hearing along with the building owner Bob Helsinger. Mr. Sepe gave a brief overview of the history of the property which is located in the West Concord Business District. The dwelling which was built in 1916 as a 2,861 square foot two-family home until 1970 when it was converted to four residential units and 1971 when converted again to residential and office uses. Two of the offices and one residential unit are currently occupied. Mr. Sepe explained that per the Zoning bylaw, they need ten parking spots but the site currently has only five spots available. Additionally, the site currently does not have open space that would equal twice the gross square footage of the residential area. Mr. Sepe noted that parking has always been an issue and the property owner is looking to return it to a two-family house. The application does not add any square footage or change the elevations but does include upgrades to the interior and exterior of the building.

Chair Smith asked for questions from the Board. Mr. Swaim clarified that the parking is located at the rear of the house. Chair Smith asked for clarification on the square footage and Mr. Sepe confirmed that each unit would be about 1,430 square feet. Town Planner Hughes commented that it is a legally non-conforming structure and the change of use would bring the parking into compliance.

Chair Smith opened the hearing for public comment.

Matthew Blackham of 10 Wright Farm spoke in support of the project.

Ms. Akehurst-Moore, Mr. Kindermans, Mr. Swaim all agreed that this was appropriate and an improvement with no changes to the exterior or footprint of the building.

Ms. Akehurst-Moore moved to approve the application of Matt Sepe, for a Special Permit under Sections 7.1.2 and 11.6 of the Zoning Bylaw for a change of use to a two-family dwelling at 1264-1266 Main Street (Parcel #2448). Mr. Kindermans seconded the motion. The motion passed (3-0) by roll call vote.

Documents Used: none

Zur Attias, for a Special Permit under Sections 4.2.2.2 and 11.6 of the Zoning Bylaw for a 999 sq. ft. additional dwelling unit at 39 Assabet Avenue (Parcel #1909).

Chair Smith opened the public hearing and reviewed the application. Zur Attias appeared for the hearing on behalf of the property owner. Mr. Attias clarified that the proposed work would not alter the exterior of the current structure. He noted that the main house currently has four bedrooms, and the owner is looking to add a fifth bedroom to the property as there is a five-bedroom septic system in place. The space originally added on to the property was previously used for housing in-laws and the owners are looking to make it a formal additional dwelling unit.

Chair Smith asked about the existing conditions. Mr. Attias explained that there is a family room attached to the main house. The project will include a firewall to provide separation between the family room area and the proposed space. The basement of the additional dwelling unit will still

be accessible through a bulkhead. Mr. Attias concluded that the unit would include a bathroom, kitchen, dining area and one bedroom; all of which would be below the 1,000 square foot guideline.

Chair Smith asked for questions from the Board.

Mr. Swaim asked where the parking would be located. Mr. Attias stated that there is existing parking to the left of the house.

Ms. Akehurst-Moore asked for clarification about the existing rooms in the unit. Mr. Attias confirmed the existing rooms and stated that the only thing needed was the firewall separation from the main house to create the proposed additional dwelling. Ms. Akehurst-Moore asked when the additional unit was built and the permitting involved. Town Planner Elizabeth Hughes explained that the unit was originally built as an addition to the main house and that she, the Building Commissioner and Mr. Attias discussed how the addition could transition into a conforming additional dwelling unit under the new provisions.

Chair Smith opened the hearing for public comment.

Cindy Warren of 821 Barretts Mill Road asked if the intention for this project was to allow for the sale of an individual unit. Ms. Hughes clarified that per the Zoning Bylaws, it can't be sold off from the main dwelling as an individual dwelling unit. Mr. Kindermans added that the owner needs to live in one of the two houses.

Mr. Kindermans moved to approve the application of Zur Attias, for a Special Permit under Sections 4.2.2.2 and 11.6 of the Zoning Bylaw for a 999 sq. ft. additional dwelling unit at 39 Assabet Avenue (Parcel #1909). Ms. Akehurst Moore seconded the motion. The motion passed (3-0) by roll call vote.

Documents Used: none

Britt Ambruson, for a Special Permit under Sections 6.2.13, 7.1.5, and 11.6 of the Zoning Bylaw to construct a 166 sq. ft. addition on a legally non-conforming lot that exceeds the Floor Area Ratio. The addition will increase the non-conformity so that the lot exceeds that maximum FAR by 222 sq. ft. at 44 Central Street (Parcel #2598).

Chair Smith opened the public hearing and reviewed the application. Mr. Swaim recused himself from the hearing. Britt Ambruson of DSK appeared for the hearing along with the owners James and Ashley Cohane. Ms. Cohane stated that they are longtime residents of Concord and expressed the desire to add a first floor bathroom for the sake of their aging parents when they visit. Ms. Ambruson gave an overview of the project to add a powder room to the first floor. She also stated the additional design goals of turning an entry hall into a mud room, relocating the laundry room to the second floor and connecting the existing living space to the rear yard. The house exceeds the FAR by 56 square feet and adding a 166 square foot addition will increase that. It was determined that the best location for the addition is where the existing bulkhead sits as it was a natural extension towards the garage and the proposed deck space. Ms. Ambruson explained that the deck would include a trellis overhead and stairways out to the backyard.

Chair Smith stated that the applicant would need to provide alternatives that would prove there is no reasonable alternative. Mr. Kindermans asked to look at the floor plans again and asked for alternatives. Chair Smith asked for clarification on the location of the proposed laundry room. Ms. Ambruson explained that it will be added on the second floor in place of a chimney that is no longer in use. She also reviewed the alternatives and explained why their current design was the most feasible given the space available.

Chair Smith asked for questions from the Board.

Town Planner Elizabeth Hughes stated that this is already a legally non-conforming structure. She clarified what parts of the Zoning Bylaw should be considered by the board when reviewing this application; specifically 7.1.3 and 11.6.

Chair Smith opened the hearing for public comment.

Matthew Johnson of 21 Winthrop Street and member of the select board appeared for the hearing but spoke on his own behalf. He provided an example of another house on a non-conforming lot that was proposing to exceed the FAR and was denied. He questioned why the circumstances here are different. Ms. Hughes clarified the provisions of the Zoning Bylaw which offers certain protections as 44 Central Street is already a legally non-conforming structure. The Board discussed the provisions of the bylaw and the Zoning Act.

James Cohane noted letters received from abutters in favor of the project.

Chair Smith stated that he understands the precedent but is not sure it matters because he believes they will meet the standards under bylaws 7.1.3 and 11.6. Ms. Akehurst-Moore stated that she was not yet convinced that there isn't a reasonable alternative. Chair Smith asked for clarification on the total gross square footage. Ms. Ambruson stated it was 2,971 square feet, including the garage, and 2,957 square feet is what's proposed. Mr. Kindermans stated that the alternatives are limited and the owners design changes are reasonable. Mr. Faiia stated that previous approvals remained within the footprint of the existing house and this does not give him pause. He noted that you could argue that the mudroom needs to be where it is, but the powder room could be located elsewhere to reduce the size of the addition. Ms. Ambruson stated that the owners wanted to preserve the front of the house and keep the impact of the changes in one zone. Mr. Kindermans stated that the powder room can't be located just anywhere and you are limited. Ms. Akehurst-Moore questioned what is reasonable for modern living. Mr. Faiia stated that this isn't a mansion, isn't becoming one and this is a reasonable use that is a benefit to keeping people in town. It's a very specific situation. Chair Smith provided the specific example of not being able to have guests because the house isn't ADA compliant. Town Planner Hughes asked if the addition could be reduced to only include the power room. She also questioned whether the findings under 6.2.13 apply to a non-conforming structure but added that she can't answer that at this meeting. Ms. Akehurst-Moore stated that she wanted to go through the discussion to talk about all the issues. Mr. Kindermans stated that the increased FAR will only be visible at the back of the house. Chair Smith reiterated that this is a tough standard but is in support of the project because the argument can be made that the powder room and associated closet and mudroom are highly desirable to allow any home to function for having guests and particularly guests with mobility issues. He noted that the work is being done to the back of the house and that the neighbors have spoken in favor.

Ms. Akehurst-Moore moved to approve the application of Britt Ambruson, for a Special Permit under Sections 6.2.13, 7.1.5, and 11.6 of the Zoning Bylaw to construct a 166 sq. ft. addition on a legally non-conforming lot that exceeds the Floor Area Ratio. The addition will increase the non-conformity so that the lot exceeds that maximum FAR by 222 sq. ft. at 44 Central Street (Parcel #2598) finding that the impact will be reduced to one zone of the house. Mr. Kindermans seconded the motion. The motion passed (3-0) by roll call vote.

Documents Used: Existing and proposed site plan, floor plans and elevations

Dennis Fiori, for a Special Permit under Sections 7.1.3 and 11.6 of the Zoning Bylaw to construct a 976 sq. ft. detached garage at 309 Strawberry Hill Road (Parcels #1984-7-1/1984-7-2).

Chair Smith opened the public hearing and reviewed the application. Attorney Christopher Alphen appeared for the hearing along with the owner Dennis Fiori. Attorney Alphen explained that the existing barn is non-conforming and the applicant is looking to reconstruct and increase the size of the barn. Mr. Fiori summarized his history as an owner of the property. He stated that they could not change the location because it would impact the historic garden. Mr. Fiori also noted that moving it closer to the nearby pond was not a preferable choice. The barn was dangerous and needed to be demolished. Chair Smith asked for confirmation on the location of the non-conformity. Mr. Alphen stated that the only non-conformity is the front setback.

Chair Smith asked for questions from the Board. Mr. Swaim asked whether this barn was not taken down as a result of a building inspector or board of health confirming it was unsafe and expressed concern that this is a voluntary demolition which would result in the loss of the non-conforming status. Mr. Swaim cited the case Berliner vs. Feldman. Mr. Alphen confirmed that this is not the case as there was no intent to abandon and the case law cited has since changed. Ms. Akehurst-Moore stated that she went back to the NRC meeting and it was clearly stated that he was intending to rebuild the barn. Town Planner Hughes stated that there was not a formal notice given by the building inspector but that one would have been issued based on existing conditions. Town Inspector Paul Creedon confirmed the barn was in a decrepit state. Mr. Swaim stated that if he had known at the beginning that a building inspector thought that the barn needs to come down, he would have had a different opinion from the start.

Mr. Faiia asked for clarification about the setbacks. Mr. Alphen confirmed that the non-conforming front setback will remain the same.

Chair Smith stated that it was helpful to clear up the issue of abandonment when it comes to the decision of approval.

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

Mr. Kindermans moved to approve the application of Dennis Fiori, for a Special Permit under Sections 7.1.3 and 11.6 of the Zoning Bylaw to construct a 976 sq. ft. detached garage at 309 Strawberry Hill Road (Parcels #1984-7-1/1984-7-2). Ms. Akehurst-Moore seconded the motion. The motion passed (3-0) by roll call vote.

Documents Used: Existing conditions photo

Kevin Hurley, for a Special Permit under Sections 2.3.4, 4.2.2.1, and 11.6 of the Zoning Bylaw to extend Residence C Zoning District by 30 ft. into Residence B and for a two-family dwelling at 23-25 Lang Street (Parcel #1284).

Chair Smith opened the public hearing and reviewed the application. Kevin Hurley of 17 Musterfield Road the applicant and owner of the property appeared for the hearing. Mr. Hurley gave an overview of the property which is partially in Residence B and partially in Residence C Zoning District. Mr. Hurley stated that they were proposing to remove the garage, the carport and other elements on the property and make minor modifications to 23 and 25 Lang Street. Chair Smith asked what the advantage was to changing the zoning. Mr. Hurley stated that in 2021 the measurements changed under section 4.2.2.1 of the Zoning Bylaw. The board of appeals now has the ability to grant approval for a two family structure that is not subject to the space limitations that are set forth in the first paragraph of that section. This allows for more flexibility in how the

site is handled. Mr. Hurley noted that the abutters support the project. Chair Smith clarified for the record that if they were to attach the garage, they would exceed the space that's permitted. Town Planner Hughes stated that the Planning Board was in unanimous support of the zoning change to allow for the better usage of the site, reduction of impervious pavement, an improvement for direct abutters. She added that the Board was in full support that this remain a two family due to its proximity to Concord center. Mr. Faiia asked Town Planner Hughes if the fact that the corner of the addition, which is slightly over the 30 foot extension, nullifies the fact that they are governed by the Residence C portion of the 4.2.2.1 bylaw. Town Planner Hughes stated that these items meet the zoning requirements for each zoning district.

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

Chair smith praised Mr. Hurley's diligence.

Ms. Akehurst-Moore stated the plan was sensible and well vetted.

Mr. Hurley stated that in his revised project narrative dated April 6th, he requested that the board include three conditions and that he would like to see those conditions included in the decision. He also noted that the water department had conditions as well. Town Planner Hurley stated that she had an issue with regard to the matter of the condition that allows for blanket modifications in instances where the gross floor area can be increased. She asked Mr. Hurley for clarification on allowing modifications to the plans. Mr. Hurley clarified that the purpose of the condition was flexibility so they could exceed the proposed FAR by as much as 148 square feet which is well below the maximum allowable FAR. Town Planner Hughes stated that the boards decisions were very specific about the plans and square footages that are approved. The language with regard to flexibility is not one that the Board has previously used. She explained that it would be up to the Building Commissioner to make a determination whether the project is in substantial conformance when changes are made prior to the issuance of the special permit. Mr. Hurley withdrew his request for the aforementioned condition. Town Planner Hughes asked for clarification on condition three. Mr. Hurley stated that he wanted the ability to acquire a Certificate of Occupancy for 25 Lang, so long as the work complies with all the building departments requirements and with a written guarantee to complete the landscaping should the weather not allow for it. Town Planner Hughes stated that they already have a standard condition which covers the issue of landscaping and requested that they modify the language within the standard condition to make it explicit that the occupancy permit for 25 Lang can be issued in the event of inclement weather. She stated that she had no issues with the other conditions.

Ms. Akehurst-Moore moved to approve the application of Kevin Hurley, for a Special Permit under Sections 2.3.4, 4.2.2.1, and 11.6 of the Zoning Bylaw to extend Residence C Zoning District by 30 ft. into Residence B and for a two-family dwelling at 23-25 Lang Street (Parcel #1284) subject to standard conditions and the language set forth in 2a and 2b and water/sewer conditions dated 4/13. Mr. Faiia seconded the motion. The motion passed (3-0) by roll call vote.

Documents Used: Site Plan

There being no further business, the meeting was adjourned at 9:50 p.m.

Respectfully submitted by,
Hayleigh Walker
Administrative Assistant