



**ZONING BOARD OF APPEALS
TOWN OF CONCORD
Meeting Minutes
May 11, 2017**

Pursuant to notice duly filed with the Town Clerk, a public meeting of the Board of Appeals was held on Thursday, May 11, 2017 at 7:30 p.m. in the First Floor Hearing Room, 141 Keyes Road, Concord, Massachusetts.

PRESENT:

Members:

Robert Sepucha, Chair

Stuart Freeland

Elizabeth Akehurst-Moore

James Smith

Laurie Livoli, Local Inspector

Elizabeth Hughes, Town Planner

Heather Carey, Administrative Assistant

Chair Sepucha called the meeting to order at 7:30 p.m.

Voting was: Robert Sepucha, Stuart Freeland, and Elizabeth Akehurst-Moore

Public Hearing Continuances:

Thomas Lennon of Industrial Tower and Wireless, LLC, under Sections 7.8, 11.6, and 11.8 for a Special Permit and Site Plan Review to relocate antenna and equipment to a new 120-foot monopole telecommunications tower at Middlesex School, 1400 Lowell Road (Parcel #1533)

Chair Sepucha reopened the public hearing and gave an overview of the pending items that were brought up at the previous meeting which included a more comprehensive look at possible alternative sites for the location of the tower and an understanding of the financial arrangement between ITW Communications and Middlesex School. Chair Sepucha acknowledged several letters that were received since the last meeting and that the discussion at the meeting will revolve around the contents of the letters. Abutters from Bartkus Farm raised questions as to whether a proposed tower at the Banta Davis playing fields in Carlisle is a feasible alternative and if a less intrusive site on the Middlesex School Campus could be chosen. They also stated that cell carrier Sprint has coverage in the area without the use of the smoke stack and questioned whether the three other carriers could mirror that coverage without the use of the monopole. The Chair stated that the letter from Middlesex School confirmed that they will receive approximately fifty thousand dollars per year for rent for use of the cell tower.

Chair Sepucha continued that the two questions that remain relating to the Town Bylaw are whether there is a substantial coverage gap and whether the applicants proposed site is the only site that can relieve that coverage gap. Chair Sepucha asked for comments from the Board. Mr. Freeland stated that it was suggested that the application could be denied because of the proposed cell tower in Carlisle but didn't think that could be

considered a feasible alternative at this time. Elizabeth Akehurst-Moore questioned the specific use restrictions set on the building and why the antennas couldn't remain on the smoke stack. Mr. Freeland also questioned the health implications suggesting that the health risks are not an issue to most. Mr. Smith stated that he is troubled that Middlesex School renovated the building and changed its use which removed the only feasible site for the antennas. He suggested that the sequence of work should have been done differently to work together as a community and mitigate any issues.

Chair Sepucha asked the applicant to address the questions that were raised by the Board. Jeffrey Angley, attorney for the Industrial Tower and Wireless stated that after running a propagation study they found that the coverage at the proposed tower at the Banta Davis playing fields in Carlisle will not reach Middlesex School to cover the gap.

Matt Crozier, Chief Operating Officer of Middlesex School addressed the concerns regarding the planning process for the buildings and renovations on the campus and detailed parts of the schools master plan. He explained that the school has been discussing this plan with various Town departments over the last two years. Mr. Crozier addressed the health implications and confirmed that they were not a concern. He explained the change of use of the building and stated that leaving the antennas on building would require access 24 hours a day and 7 days a week and that the school was not comfortable allowing that type of access where students would be present. Mr. Crozier also clarified that the payment that the school would receive from lease agreements would be estimated at 30 to 40 thousand dollars per year. Mr. Angley discussed their reasoning for choosing the proposed site location as it related to the Town Bylaws. Mr. Angley addressed a question proposed by a Board Member at the last meeting asking if the tower could remain on the smoke stack and have the utilities located at another location. He stated that it would require cable to be run 600-800 ft. from the antennas and the reach on the cabling is limited to about 300-400 ft.

Chair Sepucha asked for comments from the audience. Aram Adorian of 11 Bartkus Farm and Stuart Strong of 16 Bartkus Farm spoke regarding the proposed tower in Carlisle, asking whether there are other viable sites for the tower, whether the carriers looked at all existing sites and also used the same criteria for coverage analysis. Julia Del Sobral of 18 Bartkus Farm, Ignacio Garcia, President of the Bartkus Farm Condo Association and resident at 17 Bartkus Farm and Daniel Del Sobral of 18 Bartkus Farm spoke against the project. Chair Sepucha closed public comment for the remainder of the meeting.

Mr. Crozier and Mr. Angley provided additional information in regards to questions and statements made during public comment. Chair Sepucha asked for the proposed timeline for the installation of the tower and renovations to the building on the school property and it was confirmed that they hope to put up the tower by the end of the summer and those renovations are currently in process. A propagation map was presented indicating proposed coverage from the proposed tower in Carlisle. Mr. Adorian of 11 Bartkus Farm suggested that this the 3rd propagation map that has been submitted and listed the data that should be provided for each study to reach a fair comparison. Referencing the proposed tower in Carlisle, Town Planner Hughes gave an overview of the process involved for a municipality to install a tower.

Chair Sepucha advised the room that he is not in a position to vote on this application tonight. He addressed some questions he had regarding case law related to this application and suggested that there are more questions that need to be addressed. Mr.

Freeland asked for clarification on fiber optic cabling. Mr. Smith talked about the submission of documentation for this application and suggested that the Board has not given enough time to review the submitted material and asked to put a deadline on new information. Chair Sepucha agreed and suggested that they either call the record closed now or give a deadline date for further submissions prior to the next meeting. Board Members discussed the proposed questions and materials submissions. Chair Sepucha suggested that the hearing be continued to the June 8th meeting and that any final supporting material be submitted to the Board by May 25th. He also asked that a request be made to the Town Manager for the use of Town Counsel to get an opinion on the Boards obligations under case law on the Federal Telecommunications Act and the Town Bylaw, conflicting case law provided by the applicant and abutters, and to review the last two items that were submitted. Ignacio Garcia of 17 Bartkus Farm asked if the Board would consider extending the wireless overlay district to the tennis courts. Chair Sepucha stated that the overlay district is not something that the Board can change. Town Planner Hughes confirmed a change to the overlay district would require an article in the town warrant and would require a 2/3 vote at Town Meeting.

Mr. Freeland moved to continue the hearing to the July 13th meeting at 7:30. Mr. Smith seconded. All **VOTED** in favor.

New Public Hearings:

Chris Matthews, under Sections 7.1.3(a) and 11.6 of the Zoning Bylaw for a Special Permit to add a roof dormer on a non-conforming garage at 333 Thoreau Street(Parcel #0207)

Chair Sepucha opened the public hearing and reviewed the Application. Chris Matthews appeared for the hearing and presented the application for a Special Permit stating that they are proposing to add a dormer to increase space over the garage to add a rec room and space for gym equipment. He stated that the garage does not have a gas line or furnace, water or septic, and the addition is not intended to make space for an in law apartment.

Chair Sepucha stated that a letter was received from Linda and Frank Corbett of 166 Laurel Street opposing the application over concerns that the addition would make human habitation of the garage more attractive and likely in the future.

Chair Sepucha asked for comments from the audience and there was none.

Chair Sepucha asked for clarification on whether a new permit would need to be submitted to make this space habitable. Building Commissioner Livoli stated that it will be a habitable space but to make it a livable space, it will need to have kitchen and bathroom including running water. Mr. Smith suggested that the concerns from the abutters were that this space would become an AirBnB. Town Planner Hughes stated that the only way for a detached structure to become a second dwelling is if the structure was built before 1924. Since this is not the case, there is no opportunity for the garage to become a second dwelling.

The Chair stated that given the provisions of the bylaw, the abutters concerns are addressed as the applicant would need to apply for a Special Permit to allow the space to

be used for livable space. He continued that the addition is in keeping with the existing structure and surroundings and not found to be more detrimental to the neighborhood. The Board members agreed.

Based on the findings expressed by the Chair, Mr. Freeland moved to grant to the applicant, Chris Matthews, a Special Permit, to add a roof dormer on a non-conforming garage at 333 Thoreau Street. Ms. Akehurst-Moore seconded. All **VOTED** in favor.

David A. Platt with the Fenn School, under Sections 6.2.11, 7.1.3, 11.6, and 11.8.7 of the Zoning Bylaw for a Special Permit and Site Plan Review to renovate, partially demolish, and expand a non-conforming dining hall at the Fenn School, 498 Monument Street (Parcel #1356)

Chair Sepucha opened the public hearing and reviewed the Application. David Platt from the Fenn School appeared for the hearing along with Malcolm Kent of Imal Keller Moore Architects and Sandy Brock, Civil Engineer with Nitsch Engineering. Mr. Platt explained that they are looking to renovate the existing structure to create a campus hub which includes the dining hall and kitchen, maker space innovation hall, and classrooms. The proposed renovations include a renovation and partial demolition of the existing space.

Malcolm Kent gave an overview of the existing site plan and explained that the new renovations will not change the footprint of the existing building. The existing structure is 5' 2" from the boundary and the expansion will not go any closer than that. The proposed height of the building is 41 ft. and exceeds the 35 ft. height restriction. The property slopes down on the back side so the elevation on the Carr Road side of the building is less. Board Members discussed the items that needed to be voted on and how they pertain to the Zoning Bylaws.

Chair Sepucha asked for comments from the audience and there were none.

Chair Sepucha stated that he was impressed by the plan to add a significant amount of space while keeping true to the property and neighborhood. He continued that the increase of height would not have a significant visual impact from the view of Carr Road and would not be detrimental to the community or neighborhood or further impact the setback from the road. He stated that they received a recommendation from the Planning Board with reasonable conditions that were agreeable. Mr. Freeland agreed that he was in favor of the project. Mr. Smith stated that he was happy with the project.

Based upon the findings expressed by the Chair and subject to the recommendation and conditions from the Planning Board, Ms. Akehurst-Moore moved to grant to the Applicant, David A. Platt with the Fenn School, a Special Permit, under Sections 6.2.11, 7.1.3, 11.6, and 11.8 to renovate, partially demolish, and expand a non-conforming dining hall at the Fenn School, 498 Monument Street (Parcel #1356). Mr. Freeland seconded. All **VOTED** in favor.

Town of Concord and the Umbrella Community Arts Center, under Sections 4.3.1, 4.3.4, 6.2.11, 7.7.12, 11.6, and 11.8 of the Zoning Bylaw for a Special Permit and Site Plan Review for relief of parking and height requirements, and to partially demolish, expand, and renovate existing auditorium and make parking lot improvements at 40 Stow Street (Parcel #0809)

Chair Sepucha opened the public hearing and reviewed the Application stating that the applicant has requested to continue the hearing without discussion to the July 13th meeting.

Mr. Freeland moved to continue the hearing to the July 13th meeting at 7:30. Ms. Akehurst-Moore seconded. All **VOTED** in favor.

Laurie Crockett, under Sections 7.1.3(a), 7.1.4 and 11.6 of the Zoning Bylaw for a Special Permit to demolish existing rear one story addition and replace with two story addition on a non-conforming lot at 227 Central Street(Parcel #2562)

Chair Sepucha opened the public hearing and reviewed the Application. Laurie Crockett, architect for the home owner appeared for the hearing and explained that they are proposing to demolish a one story addition built in 1970's that is in poor condition and not architecturally consistent with the original Dutch Colonial house. The first floor addition will match the set back of the existing house with 14.8 ft. on the west side and 14.5 ft. on the east. To maintain uniformity of the overhang on the new addition, the roof overhang will come closer to the property line on the roof line.

Chair Sepucha asked for comments from the audience. Richard Shuman of 233 Central Street spoke in favor of the proposed plans.

Chair Sepucha asked for comments from the Board. Mr. Freeland asked if this would be considered a waiver or a variance request. Board Members discussed sections of the Bylaws and how they related to this application. It was determined that the Special Permit request was applicable to this application.

Chair Sepucha expressed that he was in favor of granting the proposal because the removal of the addition that is not in keeping with the house or neighborhood only increases the non-conformity less than a foot, and is not substantially more detrimental to neighborhood. He recognized that the proposed structures would enhance the house, neighborhood, and surrounding environment.

Chair Sepucha moved to grant to the Applicant, Laurie Crockett, under Sections 7.1.3(a), 7.1.4, and, 11.6, a Special Permit, to demolish existing rear one story addition and replace with two story addition on a non-conforming lot at 227 Central Street. Ms. Akehurst-Moore seconded. All **VOTED** in favor.

Other Business:

Review & Adoption of Final Written Decision: The Grantham Group, LLC., for a Comprehensive Permit under M.G.L. Chapter 40B with waivers to the Town of Concord's Zoning Bylaws for an 83-unit affordable assisted living facility, 6X Winthrop Street (Parcel #2013-1)

Town Planner Hughes presented edited copies of the draft Decision that have been reviewed by Town Council, the Applicant, the Applicants Council, and discussed by both Councils. Mr. Smith recused himself from the conversation as he had not been present at the previous hearings. Town Planner explained that this project is different than any other affordable housing project in that it is an assisted living facility and it is also believed to

be the first 100% affordable assisted living facility in the Commonwealth. Board Members reviewed and discussed the proposed changes to the decision and found all to be reasonable.

Mr. Freeland moved to accept the decision as drafted and amended. Ms. Akehurst-Moore seconded. All **VOTED** in favor.

Black Birch PRD – Phase I request for Release of Covenant Unit #3 & #7

Town Planner Hughes stated that there has been a request to release units 3 and 7 from the restrictive covenant for Phase 1 of Black Birch. She explained that CMPL and Engineering have not given their written confirmation but did not think that it was appropriate to wait another month to release the Covenant. She stated that she was comfortable with the Board releasing the Restrictive Covenant with the condition that Public Works and CMPL submit written authorization that the roadway and utilities have been adequately installed to serve the two units.

Mr. Freeland moved to approve the release of the Restrictive Covenant on Unit 3 and 7 of the Black Birch Phase I with the condition that written confirmation is submitted from Public Works and CMPL. Mr. Freeland Seconded. All **VOTED** in favor.

There being no further business, the meeting was adjourned at 9:50 p.m. on a motion by Ms. Akehurst-Moore. Mr. Freeland seconded. All **VOTED** in favor.

Respectfully submitted,

Stuart Freeland, Clerk