



**ZONING BOARD OF APPEALS
TOWN OF CONCORD
Meeting Minutes
June 10, 2021**

Pursuant to notice duly filed with the Town Clerk, a virtual public meeting of the Board of Appeals was held on Thursday, July 10, 2021, at 7:00 p.m. using the Zoom meeting platform.

Meeting ID: 820 2460 1222 Meeting Password: 797534

PRESENT:

Members:

Elizabeth Akehurst-Moore, Chair

Ravi Faiia

Theo Kindermans

James Smith

Thomas Swaim

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:

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 60,690 c.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 explained that the Applicant had requested to continue the application without discussion to the July 8, 2021 meeting.

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 60,690 c.y. of earth at 146B & 1442 Main Street, 110 & 11B Highland Street (Parcels #2407, 2408, 2409, 2409-1) July 10, 2021 at 7:20 pm. Mr. Smith seconded the motion, and all **VOTED** in favor.

Concord Country Club, for a Special Permit for a private recreation facility under Sections 4.1.6, 7.5 and 11.6 of the Zoning Bylaw for the previous removal of 1,200 c.y. of earth without approval and the construction of an irrigation pond and pump house at 246 Old Road to Nine Acre Corner (Parcel #3079).

Chair Akehurst-Moore opened the public hearing and reviewed the application. Mark Bobrowski, Attorney with Blatman, Bobrowski, & Haverty introduced the presenters that would provide updates on the project. Paul Kirchner, Engineer with Stamski and McNary summarized the documents that had been prepared including an updated narrative giving a more comprehensive picture of the project, an updated planting plan, a monitoring well management plan, an aerial

sketch to show the proposed pond and how it compares to the surrounding properties, and aerial photographs to show what the site looks like today. He gave a comprehensive explanation of why an irrigation pond was chosen rather than a new well or underground storage. Mr. Kirchner also discussed alternative locations and noted that the Club did not want to impact the character of the historic course.

Peter Newton, Hydrogeologist with Bristol Engineering Advisors commented that he was brought on board at the suggestion of the Public Works Director to explore any benefits the irrigation pond may have for the Town. Mr. Newton explained that the proposed system will allow the club to operate wells as needed to refill but also allows them to irrigate using the irrigation pond. He explained that they have prepared, to some degree, a well management plan which discusses how the wells operation will be reduced during periods drought and when they would meet with Concord Public Works to discuss water usage.

Landscape Architect, Elizabeth Morss explained that she was brought into the process to create a planting plan and views of the project. She reviewed a planting plan that incorporates diverse plantings including tall trees, shrubs, and conservation seed mix that will help stabilize the slope.

Chair Akehurst-Moore noted that this is the first time that they have been given a comprehensive view of the plan. Mr. Kindermans agreed that this was a comprehensive package and answers questions that were raised at previous meetings but asked for the Applicant to explain exactly how the proposed project is a benefit to the Town. Attorney Bobrowski stated that one benefit is that there will be a monitoring well on the Jenny Dugan brook that does not currently exist which will provide a benchmark for the relationship between the golf course usage and the brook which feeds other water sources. He also noted that the hydrology study would be useful in establishing a protocol with the municipal water sources across the street in instances of drought that will give an opportunity to link the two going forward. Mr. Smith asked who would get to decide the course of action under a drought emergency and the Board discussed how they are working with Public Works to determine appropriate volume levels. Mr. Smith stated that there are important benefits to the Town including the idea that there is more cooperation with the Town. He also noted that the view is the primary concern of the neighbors where there was once an area of dense woodlands that will now become an elevated area that is in part no longer woodlands. Mr. Kindermans commented on the planting plan and noted that he wasn't sure that he agreed with the natural resources letter asking for a significant increase the planting materials. He agreed that they could add more planting and didn't have any issues with the plant choices. He asked if there could be more evergreens and white pines added as high on the berm as the civil engineer feels comfortable with. Chair Akehurst-Moore asked if he disagreed with Natural Resources request. Mr. Kindermans stated that the density requested might not have the same outcome as everyone is expecting. Mr. Faiia asked whether the club could address the letter from Natural Resources. Attorney Bobrowski stated that the club is not against adding more to the planting plan and would be willing to provide them within reason. Mr. Newton explained that he installed a piezometer in Jenny Dugan brook and determined that the brook is fed by groundwater. The Board discussed the monitoring wells and how they would operate.

Chair Akehurst-Moore opened the hearing for public comment.

Tara O'Donnell of 10 South Meadow Ridge commented that she is an abutter and member of the club and supports the project.

Jack Madigan of 215 Prairie Street questioned the historical water usage and the amount of water required to water versus what is allowed use by the DEP. Mr. Rappoccio with the Concord Country

Club noted that they are allowed to pump on average 120,000 per day and that they have submitted reports to the State for the last 25 years and have never had an issue.

Sharon McGregor of 70 Williams Road asked to show the area of what was cut against the preexisting conditions. She noted that she had submitted a letter and thanked the board for listening to their concerns.

Bernd Comjean of 99 Williams Road spoke against the project and asked for a peer review of the project.

Gregor McGregor of 70 Williams Road spoke against the project and asked for a complete restoration of the project area.

Rebecca Comjean of 99 Williams Road spoke against the project.

Deborah Yamin of 115 Williams Road spoke against the project and asked that the permit be denied.

Attorney Bobrowski stated that it is the choice of the Board to hire a consultant for outside review.

Chair Akehurst-Moore remarked that this latest submission seems like what they should have received with the initial application. She noted that the work has already been done but doesn't feel able to make a decision on the hydrology without a qualified professional looking at it. Mr. Kindermans commented that he was not convinced that a third-party review was necessary and was satisfied with the responses from town departments but was open to suggestions. Chair Akehurst-Moore stated that she wasn't comfortable with making a decision yet. Mr. Smith stated that he was not feeling convinced that the data is adequate and as supportive of an independent review.

Town Planner Hughes recommended that the Board continue the application to the July 8, 2021 meeting while they determine if the Public Works Director agrees that another review would provide additional facts and whether they are in complete confidence with the current plan. She also stated that she would set up a meeting between Natural Resources, the Director of Planning and Land Management and the Landscape Architect to review the landscape plan and address the concerns on spacing and growth and where additional plants can be planted. She would also have a conversation with staff about the Town's ability to enforce the mitigation plan and how that would work and whether there are conditions that can move the project forward.

Mr. Smith moved to continue the application of Concord Country Club, for a Special Permit for a private recreation facility under Sections 4.1.6, 7.5 and 11.6 of the Zoning Bylaw for the previous removal of 1,200 c.y. of earth without approval and the construction of an irrigation pond and pump house at 246 Old Road to Nine Acre Corner (Parcel #3079) to the July 8th meeting at 7:25. Mr. Kindermans seconded the motion, and all **VOTED** in favor.

Documents Used: Planting Plans and Elevations, aerial photos

John Jaddou, for a Special Permit renewal under Sections 5.3.15 and 11.6 of the Zoning Bylaw to operate a tourist home or bed and breakfast at 560 Old Marlboro Road (Parcel #2760).

Chair Akehurst-Moore opened the public hearing and reviewed the application. John Jaddou appeared for the hearing and explained that they have an existing Special Permit for an en suite apartment that they rent out. He explained that the existing Special Permit was granted for five years and that they are not proposing any changes. Building Commissioner Matte confirmed that there have been no complaints made regarding the Special Permit.

Chair Akehurst-Moore asked for questions from the Board and there were none.

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

Mr. Kindermans moved to approve the application of John Jaddou, for a Special Permit renewal under Sections 5.3.15 and 11.6 of the Zoning Bylaw to operate a tourist home or bed and breakfast at 560 Old Marlboro Road (Parcel #2760) for an additional 5 years subject to the conditions from the existing Special Permit. Mr. Smith seconded the motion, and all **VOTED** in favor.

Documents Used: none

Blatman, Bobrowski & Haverty, LLC, for a Special Permit under Sections 7.1.3 and 11.6 of the Zoning Bylaw to construct an 887 sq. ft. addition on a non-conforming house and lot at 1367 Sudbury Road (Parcel #3478).

Chair Akehurst-Moore opened the public hearing and reviewed the application. Christopher Alphen, attorney with Blatman, Bobrowski, & Haverty appeared for the hearing. He explained that the owner is proposing to add an 803 sq. ft. master bedroom addition and 84 sq. ft. mudroom addition. He noted that the lot is undersized for the neighborhood making the house non-conforming. Mr. Alphen also explained that the master bedroom addition meets the required setbacks, but the mudroom will have de minimis impacts on the setbacks. He noted that they have not heard from any of the neighbors in opposition of the project.

Chair Akehurst-Moore asked for questions from the Board and there was none at this time.

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

Chair Akehurst-Moore stated that she did not have any concerns with the project. Mr. Kindermans agreed. Mr. Smith noted that the proposed project isn't massively increasing the size of the house and they are caught in a situation where this lot is non-conforming but surrounded by conforming lots. He stated that the proposed changes are not any more detrimental than the existing non-conformity.

Mr. Smith moved to approve the application of Blatman, Bobrowski & Haverty, LLC, for a Special Permit under Sections 7.1.3 and 11.6 of the Zoning Bylaw to construct an 887 sq. ft. addition on a non-conforming house and lot at 1367 Sudbury Road (Parcel #3478). Mr. Kindermans seconded the motion, and all VOTED in favor.

Documents Used: site plans

DSK Architects + Planners, for a Special Permit under Sections 7.1.3, 7.1.5, and 11.6 of the Zoning Bylaw to construct a 1,036 sq. ft. addition on a 2,074 sq. ft. dwelling and demolish an existing 232 sq. ft. detached garage and construct a new 600 sq. ft. detached garage that is over 50% larger than the existing gross floor area on a non-conforming house and lot at 241 Elm Street (Parcel #3945-4).

Chair Akehurst-Moore opened the public hearing and reviewed the application. Ben Herter, architect with DSK Architects appeared for the hearing. He explained that the owner is proposing to expand the habitable space by replacing the existing garage with a new two car garage. He explained that the property is non-conforming, and the proposed addition is approximately 250 sq. ft. over the 50% allowed by right. He also noted that the addition will conform to the required

setbacks. He explained that they will infill the first-floor space to create a mudroom, will add a dormer to the second story and extend the roofline back about 9 feet.

Chair Akehurst-Moore asked for questions from the Board and there was none.

Chair Akehurst-Moore opened the hearing for public comment and there was none. Chair Akehurst-Moore noted that they have received two letters from abutters.

Chair Akehurst-Moore questioned the location of the garage at the front of the house but noted that both abutters were in support.

Mr. Kindermans moved to approve the application of DSK Architects + Planners, for a Special Permit under Sections 7.1.3, 7.1.5, and 11.6 of the Zoning Bylaw to construct a 1,036 sq. ft. addition on a 2,074 sq. ft. dwelling and demolish an existing 232 sq. ft. detached garage and construct a new 600 sq. ft. detached garage that is over 50% larger than the existing gross floor area on a non-conforming house and lot at 241 Elm Street (Parcel #3945-4) with the finding that the proposed garage is not more detrimental to the neighborhood than the existing garage structure. Mr. Smith seconded the motion, and all VOTED in favor.

Documents Used: site plan, photos

Sean Lyons, for a Special Permit under Sections 7.1.3, 7.1.5, and 11.6 of the Zoning Bylaw to convert 630 sq. ft. of attic space to living space on a 1,712 sq. ft. house that is over 50% larger than the existing gross floor area including expansions within a consecutive five year period on a non-conforming house and lot 42 Birch Drive (Parcel #0933).

Chair Akehurst-Moore opened the public hearing and reviewed the application. The Applicant, Sean Lyons appeared for the hearing. He explained that they had demolished the existing house and constructed a new two-story dwelling that did not increase the square footage by more than 50%. Mr. Lyons explained that they are now proposing to add more interior space by finishing part of the 3rd floor. He noted that the footprint or height of the house would not change. Building Commissioner Matte commented that total square footage with the addition will be 2,342 sq. ft. and the applicant will need to raise the interior ceiling to make habitable space.

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

Chair Akehurst-Moore commented that this is a modest increase, and the house is a reasonable size. Mr. Smith noted that this fits the character of the neighborhood.

Mr. Kindermans moved to approve the application of Sean Lyons, for a Special Permit under Sections 7.1.3, 7.1.5, and 11.6 of the Zoning Bylaw to convert 630 sq. ft. of attic space to living space on a 1,712 sq. ft. house that is over 50% larger than the existing gross floor area including expansions within a consecutive five year period on a non-conforming house and lot 42 Birch Drive (Parcel #0933) finding that the proposed increase in square footage is not more detrimental to the neighborhood than the existing house. Mr. Smith seconded the motion, and all VOTED in favor.

Documents Used: photos

Nashoba Homes Development LLC, for a Special Permit under Sections 7.1.3, 7.1.5, and 11.6 of the Zoning Bylaw to demolish the existing 1,042 sq. ft. dwelling and construct a new 4,290 sq. ft. dwelling that is over 50% larger than the existing gross floor area on a non-conforming lot at 306 Laws Brook Road (Parcel #2080).

Chair Akehurst-Moore opened the public hearing and reviewed the application. James Casella of Nashoba Homes Development appeared for the hearing. He explained that they are proposing to

demolish the existing 1,042 sq. ft. house and build new house with attached 2 car garage. He commented that the lot has 100 feet of frontage, and 120 feet is required making the lot non-conforming. Mr. Casella explained that the proposed building will meet all setbacks and height requirements and the new house will be set about 12 feet further back on the lot than the original house. He pointed out that there are only 6 out of about 35 lots on Laws Brook Road that are non-conforming and the Wright Road subdivision behind this lot are also all conforming. He also explained that have been 3 houses in the immediate area that were demolished and rebuilt, and the proposed house will be similar to the size and design of those houses.

Chair Akehurst-Moore opened the hearing for public comment.

Pamela Dritt of 13 Concord Green, Unit 4 asked how the house would be heated and cooled and whether it would be solar ready. Mr. Casella stated that they are looking to utilize the existing natural gas for heating and gas. Ms. Dritt asked if they could use an all-electric heat pump.

Cynthia Katz of 20 Conant Street spoke in opposition of the project noting that the proposed house is well above the 50% threshold and does not help to maintain a diverse housing stock for the Town of Concord.

Patrick Carey of 295 Laws Brook Road voiced his concerns that this house is disproportionately large for the neighborhood and size of the lot. He noted that the sewage plan shows an elevation change of about 20 feet and asked if there would be any major grading on the property.

Mr. Casella indicated that the septic system is in the ground and the grading really won't change because it doesn't need a mound. He also noted that they are proposing to add stormwater drainage chambers to contain the runoff from the roof.

Mr. Smith commented that this is a difficult situation for the Board because as the Applicant has pointed out the huge percentage of lots that are conforming which means that the smaller houses will become bigger by right in the surrounding neighborhood. He remarked that the proposed house is larger than they may want to see but is in character with the neighborhood. He noted that the Board needs to apply rules to every project with consistency which would make it hard for the Board to deny this application, especially where the house is conforming to the setbacks and only has non-conforming frontage. Mr. Kindermans remarked that he was in favor of the rainwater infiltration. Chair Akehurst-Moore noted that the Board is sympathetic to the Town's desire to maintain diverse housing but that doesn't give them legally defensible power in this instance to tell the Applicant that they need to build a smaller house. Town Planner Hughes commented that discussion regarding sustainability is something every Board and Committee is grappling with and pointed out that a cost analysis from the Sustainability Director is posted to the Planning Board page.

Mr. Kindermans moved to approve the application of Nashoba Homes Development LLC, for a Special Permit under Sections 7.1.3, 7.1.5, and 11.6 of the Zoning Bylaw to demolish the existing 1,042 sq. ft. dwelling and construct a new 4,290 sq. ft. dwelling that is over 50% larger than the existing gross floor area on a non-conforming lot at 306 Laws Brook Road (Parcel #2080) finding that the proposed home is not more detrimental to the neighborhood than the existing house. Mr. Smith seconded the motion, and all VOTED in favor.

Documents Used: GIS map with non-conforming layer, plans and elevations

Administrative Business

Approval of Minutes for April 8, 2021

Mr. Smith moved to accept the minutes for the April 8, 2021 meeting as amended. Mr. Kindermans seconded the motion, and all VOTED in favor.

Approval of Minutes for May 20, 2021

Mr. Smith moved to accept the minutes for the May 20, 2021 meeting as amended. Mr. Kindermans seconded the motion, and all VOTED in favor.

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

Respectfully submitted,

Theo Kindermans, Clerk