Pursuant to notice duly filed with the Town Clerk, a public meeting of the Board of Appeals was held on Thursday, June 13, 2019 at 7:15 p.m. in the First Floor Hearing Room, 141 Keyes Road, Concord, Massachusetts.

PRESENT:
Members:
John Brady
Elizabeth Akehurst-Moore
Theo Kindermans
Ravi Faiia

Elizabeth Hughes, Town Planner
Raymond Matte, Building Commissioner
Heather Carey, Administrative Assistant

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

Voting Members: John Brady, Elizabeth Akehurst-Moore, Theo Kindermans

Continued Public Hearings:

Milltarry Market, LLC to amend a Special Permit under Section 11.6 of the Zoning Bylaw to delete Condition #43 “No public use of the second floor shall be permitted” at 77 Lowell Road (Parcels #1683-CD, 1685-cd, 1682-2).

Ms. Akehurst-Moore opened the public hearing and reviewed the Application stating that due to a lack of quorum for this application, the public hearing will be continued without discussion to a meeting on June 26, 2019 at 7:15pm.

Other Business:

Approval of Minutes for April 18, 2019
Staff commented that minutes for the April 18, 2019 meeting had not been completed.

Approval of Minutes for May 9, 2019
Staff commented that minutes for the May 9, 2019 meeting had not been completed.

Black Birch PRD Phase II – Lot Release Request: Forest Ridge Road
Town Planner Hughes stated that the developer is requesting the release of lots 18 and 20 and that 3 units will remain. She confirmed that Engineering and CMLP do not have any issues with releasing the lots. She stated that the Water and Sewer is still in the process of reviewing but doesn’t have any issues with a conditional release upon the approval of the
water/sewer connection. Mr. Kindermans moved to authorize the release of Black Birch PRD Phase II, lots 18 and 20. Mr. Brady seconded the motion and all VOTED in favor.

**Staff Updates**

Town Planner Hughes discussed applications coming up in the pipeline, Zoning Bylaw changes being made by the Planning Board and an upcoming joint meeting with the ZBA, and a public workshop for a preliminary design for a pedestrian bridge connecting West Concord Village to the Baker Avenue site.

**David Stuhlsatz for a Special Permit under Sections 7.1.3, 7.1.5 and 11.6 of the Zoning Bylaw to construct an 1,896 sq. ft. 3-car garage addition that is more than 50% larger than the existing on a non-conforming lot at 648 Annursnac Hill Road (Parcel #541).**

Ms. Akehurst-Moore opened the public hearing and stated that the applicant had requested to withdraw the application without prejudice.

Mr. Brady moved to accept the withdrawal without prejudice for the application of David Stuhlsatz for a Special Permit under Sections 7.1.3, 7.1.5 and 11.6 of the Zoning Bylaw to construct an 1,896 sq. ft. 3-car garage addition that is more than 50% larger than the existing on a non-conforming lot at 648 Annursnac Hill Road (Parcel #541). Mr. Kindermans seconded the motion and all VOTED in favor.

**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).**

Ms. Akehurst-Moore opened the public hearing and reviewed the application. Mr. Kindermans stated for the record that he listened to the recording and reviewed all application materials. Larry Beals appeared for the hearing and gave a brief overview of the proposed project creating a traditional lot and hammerhead lot that avoided wetland areas. Mr. Beals explained that the proposed plan had been reviewed by Town Staff and that a new septic system may be required for the existing house, water service will need to be located prior to construction and that the fire department was concerned about travel time and asked to include an alarm system as a condition if the Special Permit is approved. Mr. Beals presented aerial view to show how the plan fits into neighborhood, discussed two possible driveway locations and gave a review of how their submitted plan conforms to the bylaw. Ms. Akehurst-Moore asked if staff had any issues with the width coming below 50 feet. Mr. Beals confirmed that either proposed driveway impacts the trees within the side setbacks and Tree Impact and Removal plan will be submitted as part of the application. Mr. Kindermans stated that it was his understanding that the cul-de-sac is longer than what is allowed and that each proposed driveway seems to be. Town Planner Hughes stated that there are no provisions that include driveways or the length of driveway and that it would not be considered an extension of the cul-de-sac road. Mr. Faiia asked what the purpose of limiting the length of a cul-de-sac. Ms. Hughes stated that it is considered a public safety issue for exiting the neighborhood. Ms. Akehurst-Moore asked how the Fire Department felt about the safety and Mr. Beals stated that they are requiring an alarm system. Mr. Beals summarized how they demonstrated that the plan meets the requirements of the hammerhead lot. Commission Members discussed the two potential driveways.

Ms. Akehurst-Moore opened the hearing for public comment.
Ivria Fried with Miyares and Harrington LLP spoke on behalf of Rebecca and Michael Solomon of 249 Musterfield Road and reviewed a letter submitted to the file dated June 6, 2019. The letter questioned whether the proposed hammerhead lot met the requirements of the Zoning Bylaw. Town Planner Hughes explained that because Musterfield Road was extended as a residential cluster development, the lots are not considered hammerhead lots as applicable to the Zoning Bylaw. She also explained other potential ways that the property could be developed and clarified a question regarding a deed restriction on the property.

Edward O’Rourke of 301 Musterfield Road reviewed a letter submitted for the previous meeting and further explained issues with standing water and proximity to wetlands. Mr. Kindermans asked if the applicant had been before the Natural Resources Commission. Ms. Akehurst-Moore stated that the NRC has approved the wetlands for 3 years and didn’t feel that any further conversation was needed regarding the boundaries. Mr. Beal discussed the soil types on the property and stated that the applicant would be amenable to a condition that would require a drainage report etc.

Michael Solomon 249 Musterfield spoke against the project.

Brigitte Senkler of 523 Curve Street in Carlisle opined that the proposed plan is the least intrusive option for this property and the abutters.

Edward O’Rourke of 301 Musterfield Road stated that it is not advantageous to the neighborhood to build another large house on this lot.

Ms. Akehurst-Moore stated that it is more advantageous to the town to prevent more development on this proposed plan allows for only two lots. Mr. Kindermans asked for confirmation that the existing lots are not considered hammerhead lots and Town Planner Hughes stated that they were created with a Special Permit for a Definitive Subdivision. Mr. Brady stated that this is a very sensitive proposal and favored the driveway access on the original proposal. Mr. Kindermans stated that he felt that they could move forward with the application with appropriate conditions. Town Planner Hughes recommended that the Board continue the application and review a draft decision and conditions at the next scheduled meeting and discussed specific language for conditions. Mr. Kindermans asked when a stormwater report would be necessary. The Town Planner explained that a NPDES permit would only be required if there was over an acre of disturbance to the property. Mr. Beals stated that they are prepared to move forward with a plan that will have no impact on the neighbors so if they Board would like a stormwater management report they would be willing to submit one.

Mr. Kindermans moved to continue the 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) to July 11, 2019 at 7:15 pm. Mr. Brady seconded the motion and all VOTED in favor.

Documents used: Exhibit plan, proposed development aerial view, plan of land, O’Rourke abutter letter

Charles Audi for a Special Permit and Site Plan Review under Sections 7.1.2, 11.6, and 11.8 of the Zoning Bylaw to extend a non-conforming use and to allow for the construction of a 1,056 sq. ft. canopy over the existing gas pumps and a 10 sq. ft. cashiers box at 185 Fitchburg Turnpike (Parcel #3437-2).
Ms. Akehurst-Moore opened the public hearing and reviewed the application. Daniel Gannon from Stamski and McNary appeared for the hearing along with the applicant, Charles Audi. Mr. Gannon gave an overview of the project to install a canopy over the gas pumps and explained that they are no longer proposing to install a cashier’s box. He explained that the wetlands are approximately 7 feet from the existing septic systems so that will be replaced as part of the project. Mr. Gannon reviewed the requirements of the special permit and explained how this application conforms to the bylaw. He also reviewed changes that have been submitted reducing the lighting from 51 foot candles to 20 foot candles. Ms. Hughes stated that the Planning Board did not have any issues with the plan but that the revised lighting plan has not been reviewed by Town Staff. She explained that there is additional lighting on the building that does not currently meet the town lighting requirements and has recommended that this lighting be replaced with dark sky compliant fixtures.

Ms. Akehurst-Moore opened the hearing for public comment.

Janice Anderson of 154 Fitchburg Turnpike asked if it was possible for the building to be tied into town sewer and voiced concerns for light spillage. Town Planner Hughes stated that conditions could be made the limit lighting to operating hours and to limit the lighting on pumps etc. and confirmed that town sewer isn’t available in that area. Mr. Audi confirmed that music and lighting is not necessary for operation of their pumps.

Mr. Brady moved to continue the application of Charles Audi for a Special Permit and Site Plan Review under Sections 7.1.2, 11.6, and 11.8 of the Zoning Bylaw to extend a non-conforming use and to allow for the construction of a 1,056 sq. ft. canopy over the existing gas pumps and a 10 sq. ft. cashiers box at 185 Fitchburg Turnpike (Parcel #3437-2) July 11, 2019 at 7:20 pm. Mr. Kindermans seconded the motion and all VOTED in favor.

Documents used: site plans, lighting plan

**New Public Hearings:**

*Martha Rohan for the renewal of a Special Permit under Sections 5.3.17 and 11.6 of the Zoning Bylaw to for seasonal catering at 502 Main Street (Parcel #3952-1).*

Ms. Akehurst-Moore opened the public hearing and reviewed the application. Martha Rohan appeared for the hearing asking to renew the special permit for 5 years or longer if possible. She explained that she runs a seasonal catering business out of the commercial kitchen on the property during the fall, winter, and spring months or when they are not able to conduct boat cruises on the river. Board members discussed how the reasoning for the Special Permit rather than another type of permit and Ms. Rohan explained that the Building Commissioner was initially concerned about parking and that the property is in Limited Business Zoning of which a Special Permit is required. Building Commissioner Matte confirmed that there have not been any complaints regarding the use and explained that the original Special Permit had a condition that stated the operation of the seasonal catering business shall be limited to the portion of the year that the boat rental is not operational. Board Members agreed that the condition should be updated with the original wording from 1997. Board Members also agreed that granting the Special Permit for ten years would be reasonable.

Ms. Akehurst-Moore opened the hearing for public comment and there was none.
Mr. Kindermans moved to approve the application of Martha Rohan for the renewal of a Special Permit under Sections 5.3.17 and 11.6 of the Zoning Bylaw to for seasonal catering at 502 Main Street (Parcel #3952-1) for a period of 10 years with the condition that the operation of the seasonal catering business shall be limited to the portion of the year that the boat rental is not operational. Mr. Brady seconded the motion and all VOTED in favor.

**Ben T. Elliott for the renewal of a Special Permit under Sections 5.4.5 and 11.6 of the Zoning Bylaw for the temporary accessory use to hold outdoor events and dinners from April to October at Saltbox Farm, 40/54 Westford Road & 155A Lowell Road (Parcels #1549, 1550-1, 1550-2).**

Ms. Akehurst-Moore opened the public hearing and reviewed the application. Ben Elliott appeared for the hearing requesting the renewal of his Special Permit to hold outdoor events and dinners using produce from Saltbox Farm. Ms. Akehurst-Moore questioned whether Section 5.4.5 of the Zoning Bylaw was appropriate for the proposed use. Mr. Elliott explained that the events are “Farm to Table” dinners using seasonal produce grown at Saltbox Farm. Board Members discussed whether this could fall under Section 4.3.1 for education use, Section 4.1.2 Farming or agricultural, or Section 5.3.7 farm product sales. Town Planner Hughes explained how these Bylaws have been interpreted in the past.

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

Mr. Brady moved to approve the application of Ben T. Elliott for the renewal of a Special Permit under 5.4.5 and 11.6 of the Zoning Bylaw for the temporary accessory use to hold outdoor events and dinners from April to October at Saltbox Farm including educational purposes, 40/54 Westford Road & 155A Lowell Road (Parcels #1549, 1550-1, 1550-2) for a period of 5 years to expire in December 2023. Mr. Kindermans seconded the motion and all VOTED in favor.

**The Trustees for the renewal of a Special Permit under Sections 4.3.1, 4.3.4, 5.4.5, and 11.6 of the Zoning Bylaw to hold outdoor events associated with educational and philanthropic uses at 269 Monument Street (Parcel #1267).**

Ms. Akehurst-Moore opened the public hearing and reviewed the application. Sara Zarelli appeared for the hearing requesting the renewal of their existing Special Permit for an additional 5 years. She explained that the Board approved changes to their parking area in 2018 making it more efficient. Ms. Zarelli commented that based upon neighborhood concerns, they have made changes to the temporary parking area submitted with the original application and no longer plan to park cars on the left side of the parking lot. She also explained that they are working on an agreement with Care-One to use their lots for off-site parking. She explained that the estimated visitation will be in line with previous years. Town Planner Hughes stated that the applicant has asked for a renewal and that the previous conditions no longer coincide with their current activities and events. She explained that these activities and events have grown beyond what is considered a renewal which does not require review from staff.

Ms. Akehurst-Moore opened the hearing for public comment.

Marcie Berkley of 41 Monument Street spoke in favor of the responsiveness of the Trustees and the change to the overflow parking area.
Cyrus Gibson of 88 Walden Street encouraged the Board to look at the long range plan for growth of the space and whether it is in keeping with what the Town wants the Old Manse to be and suggested renewing for only one year.

Nancy Nelson of 1695 Lowell Road spoke against the size and scale of the events and didn’t think that some of the events were appropriate for the historic character of the site. She opined that this application should no longer be considered a renewal and that the Board should consider new conditions regarding parking and lighting.

Ned Perry of 362 Bedford Street spoke in opposition of the application and explained the impacts of previous uses in the meadow. He asked that parking by the garden be prohibited as a condition in the special permit and asked for more clarification on the proposed uses of the site.

BJ Dunn Superintendent of the Minute Man National Historical Park stated that the current special permit does not limit events and does not require consultation with the park to manage parking and restrict sound etc.

Ms. Hughes stated that there is an opportunity to get further clarification on uses and make changes to wording to accurately reflect the current uses. She explained the timeline for continuing the Public Hearing. Ms. Akehurst-Moore asked the applicant to explain the upcoming scheduled events.

Ms. Akehurst-Moore asked for comments from the Board.

Mr. Brady moved to continue the application of The Trustees for the renewal of a Special Permit under Sections 4.3.1, 4.3.4, 5.4.5, and 11.6 of the Zoning Bylaw to hold outdoor events associated with educational and philanthropic uses at 269 Monument Street (Parcel #1267) to July 11, 2019 at 7:25 pm. Mr. Kindermans seconded the motion and all VOTED in favor.

Documents used: site plan

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John Battle for a Special Permit under Sections 7.1.3 and 11.6 of the Zoning Bylaw to extend an existing non-conforming deck an additional 12 feet at 744 Main Street (Parcel #3846-2).

Ms. Akehurst-Moore opened the public hearing and reviewed the application. John Battle, the architect for the project appeared for the hearing. He presented the application to extend the existing 8 ft. deck an additional 12 ft. to allow the homeowner to park a car underneath in the winter months as there is no garage on the property. He explained that the side setback is non-conforming and that the adjacent house extends further than this proposed deck expansion.

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

Building Commissioner Matte stated that the expanded deck will not increase the non-conformity of the side setback.

Mr. Kindermans moved to approve the application of John Battle for a Special Permit under Sections 7.1.3 and 11.6 of the Zoning Bylaw to extend an existing non-conforming deck an additional 12 feet at 744 Main Street (Parcel #3846-2) in accordance with the plans submitted and dated May 1, 2019 with marginal changes to the support columns as required by building code. Mr. Brady seconded the motion and all VOTED in favor.

Documents used: Existing and proposed site plans, floor plans and elevations
Ms. Akehurst-Moore opened the public hearing and reviewed the application. Mike Paratore and Mark White from Bentley appeared for the hearing. Mr. Paratore gave an overview of the proposed project to demolish the existing dwelling and construct a new 5,617 sq. ft. dwelling using the existing curb cut and creating a new 5-bedroom septic system. He explained that all non-conforming structures will be removed and that they have already met with an arborist to conform to the Tree Preservation Bylaw. He continued that there is a wetland in the back that has been flagged and delineated and that all work will be done outside the 100-foot wetlands buffer. Mr. Paratore gave an overview of the Gross Floor Area and Floor Area Ration calculations along with a comparison to other properties in the neighborhood.

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

Ms. Akehurst-Moore opened the hearing for public comment. (3:15)

Jane Kelt of 8 Jonas Brown Circle asked questions regarding the footprint of the existing and proposed house, the size of houses in the neighborhood, and wetlands on the property.

Cynthia Katz of 20 Conant Street spoke against the project and stated that the Zoning bylaws need to be upheld.

Karen Jordenais of 66 Upland Road spoke regarding a current project that she believed was not under compliance of the Tree Preservation Bylaw. Mr. White confirmed that their existing project is now under compliance of the Tree Bylaw.

Jonathan Smith of 66 Upland Road also spoke about the applicant’s previous compliance with the Tree Preservation Bylaw.

Jane Kelt of 8 Jonas Brown Circle asked if frontage requirements applied to private roads and it was confirmed that they were.

Nancy Kerr of 25 Upland Road stated her concerns for exemptions to the Bylaw and thought that the Bylaw should be upheld.

Mr. Brady stated that they understand the restrictions set forth in the Zoning Bylaws but that the Board exists to allow for projects that do not conform to the Bylaws provided they meet the provisions of the Special Permit.

Mr. Kindermans asked about a Notice of Intent and Building Commissioner Matte stated that the Natural Resources Commission expects to issues an Order of Conditions on June 19th. Ms. Akehurst-Moore stated that personal opinion on the size of a house is not what is to be considered and that they need to look at the neighborhood as a whole to see how the proposed house fits. Board Members compared the house lots in the neighborhood. Ms. Akehurst-Moore commented that the purpose of this Bylaw is not to prevent expansion but to allow expansion on lots that do not conform. Board Members agreed that they felt that the proposed house conformed to the provisions of the Special Permit.

Mr. Kindermans moved to approve the application of Bentley Building Corp. under Sections 7.1.3, 7.1.5, and 11.6 of the Zoning Bylaw to demolish an existing 2,117 sq. ft.
non-conforming dwelling and to construct a new 5,617 sq. ft. non-conforming dwelling that is more than 50% larger than the existing on a non-conforming lot at 1709 Monument Street (Parcel # 1390) in accordance with the plans submitted and dated April 22, 2019, with standard conditions relating to the Tree Preservation Bylaw and an Order of Conditions is received by the Natural Resources Commission. Mr. Brady seconded the motion and all VOTED in favor.

Documents used: Elevations, Site Plan, Aerial View of neighborhood, Neighborhood GFA Calculations

**Other Business:**

**Public Comment –**

Marcie Berkley of 41 Monument Street asked for clarity on what how the application of 269 Monument Street will proceed.

Nancy Nelson of 1695 Lowell Road questioned whether a meeting with the Town Staff and an applicant is considered a Public Meeting.

There being no further business, the meeting was adjourned at 10:50 p.m.

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Elizabeth Akehurst-Moore, Clerk