Pursuant to notice duly filed with the Town Clerk, a public meeting of the Board of Appeals was held on Wednesday, June 26, 2019 at 7:15 p.m. in the First Floor Hearing Room, 141 Keyes Road, Concord, Massachusetts.

PRESENT:

Members:
Jim Smith
John Brady
Stuart Freeland
Elizabeth Hughes, Town Planner
Raymond Matte, Building Commissioner
Heather Carey, Administrative Assistant

Chair Smith called the meeting to order at 7:15 p.m.

Voting Members: James Smith, John Brady, Stuart Freeland

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).**

Chair Smith opened the public hearing and reviewed the application. Chair Smith explained that the public hearing was continued from the April 18, 2019 meeting.

Chair Smith read into the record two letters from abutters.

Building Commissioner Matte completed a parking analysis using the second story space as an assembly space and after meeting with the applicant recalculated the number using retail space. Chair Smith asked what the parking requirements are now. The Building Commissioner confirmed that the second floor is currently calculated as warehouse and office space, and by converting warehouse into retail and taking in other factors, it still came out to 48 parking spaces. Town Planner Hughes stated that they have been meeting with Town Staff regarding concerns with the change of use. She gave examples of market/retail use and what would not be allowed and how they should define the use of space to market functions and events. The Town Planner also stated that the Board of Health may need a food service permit and other requirements under the food code and that the Applicant is working with the Water and Sewer department for sewer improvement review. Chair Smith reviewed a letter dated June 25th from the Applicant which included proposed conditions that could be added to the Special Permit which would be agreeable to the Concord Market. Town Planner Hughes discussed the meeting with the Building Commissioner and the Applicant regarding the conditions and stated that these draft conditions would need to be refined for inclusion into the Special Permit. She also discussed parking in the lot and how joint parking to include all businesses would need to be considered.
Chair Smith asked for comments from the applicant. James White appeared for the hearing and explained that the Town Planner had covered their meeting and had nothing more to add.

Chair Smith opened the hearing for Public Comment.

David Wiener of 20 Bow Street stated that a parking study was done with the original Special Permit for proposed use at that time and thought another study should be conducted with the current proposed use.

Linda Escobedo, Select Board Member spoke regarding an application that was presented to the Select Board to remove the second floor from their current liquor license. Mr. White explained that the whole building is listed under their current retail alcohol sale license and that per Alcoholic Beverages Control Commission rules and regulations, alcohol cannot be served and sold at the same location. After further discussions, the ABCC would permit them to serve alcohol on the second floor but it must be removed from the current retail sale license.

Martin Lueck of 8 Barretts Mill Road spoke in favor of the application.

Judy Hill of 100 Keyes Road stated her concerns for late night events and how they would impact the neighborhood.

Chair Smith asked the Town Planner for more explanation on the events that would be allowed at the site. Town Planner Hughes commented that the events would need to be related to the market and gave several examples. She commented that conditions added to the Special Permit will address these concerns. The Town Planner also explained how parking was calculated for the original Special Permit and recalculated for the proposed change of use. Chair Smith asked the Applicant to explain some of the events that they Market is envisioning. Mr. White stated that there may be a book reading or children’s cooking classes and events that are tied to the market.

Jennifer Schunemann of 63 Cedar Way spoke in favor of the proposed changes.

David Weiner 20 Bow Street commented on the proposed site improvements on the existing Special Permit that have not been completed. Town Planner stated that Town staff is aware have expressed that they are amenable to extending the condition 6 months from the issuance of a Certificate of Occupancy allowing the Applicant time to complete the final site improvements.

Marcia Marlow of 30 Bow Street asked for clarification on the amount of parking spaced needed. Chair Smith explained that 48 spaces were needed for the original proposed building and that after a reduction in building square footage and changes to the building use, the amount of required spaces remained the same. Chair Smith stated that he would like to see a mechanism to verify that there are not any issues with parking. Mr. Freeland stated that he has never noticed the parking lot overly full. Mr. Brady asked the applicant why there was a delay to the site work and Mr. Freeland stated that he felt that there has been a significant effort to make this property look good. Town Planner commented that the Applicant could keep a log during events as to what type of events, how many people attended, and how many cars are in the parking lot which can be used to assess the parking rather than hiring a licensed Professional Engineer to conduct a traffic study. Town Planner Hughes suggested continuing the public hearing so that a draft decision could be made including the conditions recommended by various town departments. Chair Smith stated that he was in favor of extending the special permit for six months.
Mr. Brady stated that a year would give a better picture of the use over all four seasons.
Chair Smith stated that he would like to see actual evidence and asked if there was a bond on the project. Town Planner stated that there is a $30,000 bond that will not be released from the bank until all the requirements of the project are completed. Mr. Freeland stated that he felt that the property has been improved. Chair Smith stated that he wanted to discuss the hours of operation and asked if the current hours are acceptable. Mr. Brady thought that ending events by 11:00 pm was not unreasonable. Chair Smith stated that in general the Board favors this use but that they are just working on creating the right conditions that work for the neighborhood.

Mr. Brady moved to continue the public hearing of 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) to July 11, 2019 at 7:45pm. Mr. Freeland seconded the motion and all VOTED in favor.

Documents used: letters from abutters, letter from applicant dated 6/25/19

**Other Business:**

**Black Horse PRD – Lot Release Request: Commerford Road**

The Applicants have requested a lot release for Lot #10. Town Staff has confirmed that they do not have any issues with the approval of the release. Town Planner stated that there is still a restrictive covenant in place on 3 lots.

Mr. Brady motioned to approve the release of lot #10. Mr. Freeland seconded the motion and all VOTED in favor.

**317 Garfield Road – Special Permit Condition Clarification**

Town Planner Hughes explained that the Special Permit for a reduced frontage lot references the words Preservation Restriction and that what was intended was a preservation plan. The Town Planner further explained that the Historical Commission has spent many hours drafting the preservation plan with Town Counsel and can confirm that a preservation plan is significantly different than a Preservation Restriction as it is referenced in Massachusetts General Law. The Board agreed that their intention was a preservation plan as described in the Town Bylaws and not a Preservation Restriction as described in MGL.

**Staff Update –**

The Town Planner discussed a joint meeting they are proposing with the Planning Board to discuss possible changes to some Zoning Bylaws and asked the Board to submit any thoughts they had for that meeting.

There being no further business, the meeting was adjourned at 8:23 p.m.

Respectfully submitted,

Elizabeth Akehurst-Moore, Clerk