



**ZONING BOARD OF APPEALS
TOWN OF CONCORD
Meeting Minutes
July 8, 2021**

Pursuant to notice duly filed with the Town Clerk, a virtual public meeting of the Board of Appeals was held on Thursday, July 8, 2021, at 7:00 p.m. using the Zoom meeting platform.
Meeting ID: 845 6488 7049 Meeting Password: 309104

PRESENT:

Members:

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

Elizabeth Hughes, Town Planner
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:

Ashbrook Properties, LLC, for a Special Permit under Sections 4.2.2.1 and 11.6 of the Zoning Bylaw for a two-family dwelling at 110 Conant Street (Parcel #2259).

Chair Akehurst-Moore opened the public hearing and reviewed the application. Brooks Ware appeared for the hearing and explained that he is proposing to demolish the existing structures and pavement and construct a new two-family dwelling that is conforming on all sides. A new driveway will be constructed onto Wedgewood Common which will be further away from the intersection of Conant Street and make it safer and easier to enter and exit the driveway. He noted that the project is in keeping with the scale of houses in the neighborhood.

Chair Akehurst-Moore opened the hearing for public comment.

Pamela Dritt of 13 Concord Green, Unit 4 asked whether they were planning all electric utilities and encouraged the applicant to do that. Mr. Ware stated that it was their intention to use the existing tie ins.

Jack Madigan of 215 Prairie Street asked if both units would be connecting to sewer. Town Planner Hughes clarified that there is one connection on the lot that both units will be tied into.

Mr. Smith reviewed the requirements of the bylaw and noted that parking includes one space in the garage and one space outside and that each unit is approximately 1,800 square feet. He also noted that Town Staff has not raised any concerns with the project. Mr. Ware confirmed that each unit is 1,714 sq. ft. plus 572 sq. ft. of garage space. Town Planner Hughes stated that this application meets the intent of the bylaw having a smaller house with a one car garage within walking distance to the center. Mr. Kindermans commented that the project should include mitigation to alleviate stress to the town's stormwater management system. Town Planner Hughes

stated that a condition could be added to include roof runoff recharge or infiltration borders around the house. Mr. Faiia commented that there is an existing 1,600 square foot house and now they are proposing two modestly sized 1,600 square foot homes. He noted that the project met the requirements of the Bylaws and was in support of it.

Mr. Smith moved to approve the application of Ashbrook Properties, LLC, for a Special Permit under Sections 4.2.2.1 and 11.6 of the Zoning Bylaw for a two-family dwelling at 110 Conant Street (Parcel #2259) with the condition that the Applicant shall install stormwater infiltration borders around the house as needed. Mr. Kindermans seconded the motion, and all voted in favor. The motion passed (3-0) by a roll call vote.

Documents Used: Plans and elevations, plot plan, photos

David and Stephanie Parry, for a Special Permit under Sections 7.1.3, 7.1.5 and 11.6 of the Zoning Bylaw to construct a 1,119 sq. ft. addition on the existing 1,761 sq. ft. dwelling and construct a new 440 sq. ft. detached garage that when combined is over 50% larger than the existing gross floor area on a non-conforming house and lot at 29 Laurel Street (Parcel #0230).

Chair Akehurst-Moore opened the public hearing and reviewed the application. Elise Stone, Architect for the project appeared for the hearing. She explained that the owner is proposing construct a 1,110 square foot addition on the existing dwelling and construct a new 440 square foot detached garaged. She noted that the lot has non-conforming area and frontage, the existing shed will be removed, and the view from the street would look the same. She explained that the proposed plan exceeds the 50% allowed by 670 square feet but that the combined house and garage under the allowable floor area ratio. Mr. Kindermans asked whether they were proposing any stormwater management for the site. Ms. Stone stated they could add a drip edge.

Chair Akehurst-Moore noted the receipt of two letters in support of the project and opened the hearing for public comment.

Pamela Dritt of 13 Concord Green, Unit 4 asked that anyone doing major remodeling such as this to consider including heat pump system redesign for the entire house.

Mr. Faiia asked whether the other houses in the neighborhood are of similar size and whether their lots are non-conforming. Mr. Smith stated that this street has been in transition for quite a while but that this project is in keeping with the neighborhood.

Mr. Kindermans moved to approve the application of David and Stephanie Parry, for a Special Permit under Sections 7.1.3, 7.1.5 and 11.6 of the Zoning to construct a 1,119 sq. ft. addition on the existing 1761 sq. ft. dwelling and construct a new 440 sq. ft. detached garage that when combined is over 50% larger than the existing gross floor area on a non-conforming house and lot at 29 Laurel Street (Parcel #0230) with the condition that the Applicant shall install stormwater infiltration borders around the house as needed. Mr. Smith seconded the motion, and all voted in favor. The motion passed (3-0) by a roll call vote.

Documents Used: Floor Plans, Elevations

Ann Bauer, for a Special Permit under Sections 7.1.3, and 11.6 of the Zoning Bylaw to construct a 328 sq. ft. addition on the existing 2,146 sq. ft. dwelling on a non-conforming house and lot at 118 Belknap Street (Parcel #0633).

Chair Akehurst-Moore opened the public hearing and reviewed the application. Elise Stone, architect for the project appeared for the hearing. She explained that they are proposing to construct a side porch on the left and an addition to the second floor on the back of the existing two-story

single-family house. She noted that the existing large shed will be removed. Ms. Stone explained that the lot is non-conforming, but the new construction is not going to increase the non-conformity. She explained that they are proposing to add a new bulkhead which will be hidden by a six-foot fence. Ms. Stone also noted that construction vehicles will access the property from the front of the house on Belknap Street, not Belknap Court.

Chair Akehurst-Moore asked for clarification on whether the bulkhead could be located that close to the property line. Mr. Smith asked if there was only on street parking. Ms. Stone stated that they have a parking area to the left of the house. Mr. Faiia questioned why the bulkhead couldn't be moved to another location. Ms. Stone commented that the owner is looking to create a nice garden space and felt that putting the bulkhead in the back would keep it out of the garden but still hidden from the neighbors with the fencing.

Chair Akehurst-Moore opened the hearing for public comment.

Diane Harwood of 16 Belknap Court stated that she didn't have any issues with the addition but was concerned with the placement of the bulkhead and the potential use of Belknap Court to use the bulkhead.

Mary Ann Muscato of 22 Belknap Court voiced her concerns for emergency access to Belknap Court during and after construction.

Jim Tabner with Tabner Law, representing Tom and Diane Harwood noted that the plot plan indicates the address as 18 Belknap Court when the actual address is 18 Belknap Street and does not have any deeded rights to Belknap Court. He commented that the Belknap Court homeowners would like a condition added to the Special Permit that Belknap Court should not be used for construction. He also noted that it doesn't seem practical to access the bulkhead without going onto Belknap Court with only 1.7 feet of space between the bulkhead and a 6-foot fence.

Tom Harwood of 16 Belknap Court voiced his concerns over the location of the existing fence, the driveway maintenance agreement required for their mortgage, and the ability to sell their house in the future.

Chair Akehurst-Moore stated that she was agreeable to adding a condition restricting the use of Belknap Court but questioned the location and use of the proposed bulkhead. Mr. Faiia asked if the bulkhead could be moved. Ms. Stone stated that if it would help keep the neighborhood harmony, the homeowner was amenable to moving the bulkhead to the far-left side. Mr. Smith commented that it would be in the interest of the homeowner to have a surveyor look at the existing fence and whether it is on the property and in the right place. Chair Akehurst-Moore commented that the proposed plan is in keeping with the neighborhood. Mr. Faiia asked if they needed to request an updated plot plan. Town Planner Hughes gave an overview of the suggested conditions including the request for an updated plot plan.

Mr. Smith moved to approve the application of Ann Bauer, for a Special Permit under Sections 7.1.3, and 11.6 of the Zoning Bylaw to construct a 328 sq. ft. addition on the existing 2146 sq. ft. dwelling on a non-conforming house and lot at 118 Belknap Street (Parcel #0633) with the condition that there not be any parking or construction activity from Belknap Court, the Applicant shall install stormwater infiltration borders around the house as needed, relocation of the bulkhead from the rear to the left side, and prior to the issuance of a building permit, amending the address on the plot plan. Mr. Kindermans seconded the motion, and all voted in favor. The motion passed (3-0) by a roll call vote.

Documents Used: Site plans, elevations, photos

Charles Audi, to modify a Special Permit under Sections 7.1.2 and 11.6 of the Zoning Bylaw to convert the existing two service bays to accessory retail space for the gas station at 686 Elm Street (Parcel # 1894-3).

Chair Akehurst-Moore opened the public hearing and reviewed the application. Paul Mahoney, architect for the project appeared for the hearing. Mr. Mahoney explained that the Applicant has received special permits for previous versions of this project that included the construction of an addition. He explained that they are now proposing to convert the existing garage bays to retail space but are not seeking to add more space to the building. He stated that the overhead garage doors will be converted to glass windows, a canopy will be added to the entrance, and parking requirements will reduce by one parking spot. The Board reviewed conditions that were added to the previous special permit to determine what would be necessary and applicable to this project. Mr. Swaim commented that the Board could add a condition asking the Applicant to certify to the Building Division that the gas to retail sales ratio is maintained. Mr. Smith stated that the previous conditions specify that the retail use must be subordinate and accessory to the gas station use which would trigger the review if found in violation. The Board reviewed the parking requirement and found that the 18 proposed parking spaces exceeds the required amount.

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

Mr. Smith moved to approve the application of Charles Audi, to modify a Special Permit under Sections 7.1.2 and 11.6 of the Zoning Bylaw to convert the existing two service bays to accessory retail space for the gas station at 686 Elm Street (Parcel # 1894-3) subject to the conditions set in the previously approved Special Permit. Mr. Kindermans seconded the motion, and all voted in favor. The motion passed (3-0) by a roll call vote.

Documents Used: Site Plans, Elevations

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 60,690c.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 reviewed the application. The Applicant, Jeff Rhuda with Symes Development & Permitting LLC appeared for the hearing. Lindsey DiTonno with GPI, hired by the Board for review of the project gave an overview of their review including reuse of materials, material testing and supervision, project design, stormwater pollution prevention measures, and dust control. Curt Jelinek from Nobis gave an overview of the review and recommendations of the geotechnical and hydrogeological impacts. Mr. Rhuda commented that they have complied with many of the recommendations from the consultant and noted that the plan meets the requirements of the fire department for road grade, engineering for stormwater management, and Planning Board for landscaping to minimize erosion. He reviewed the trucking routes for removing the earth from the site and an agreement with the contractor for the nuclear metals superfund site in Concord who will purchase their export materials.

Chair Akehurst-Moore asked for questions from the Board. Mr. Kindermans commented that the peer review answered his previous questions and didn't have anything more at this time. Chair Akehurst-Moore questioned whether there was a waiver to the height restrictions. Town Planner Hughes noted that the waiver of height restrictions under subdivision control law does not apply to this application nor does the Planning Boards subdivision decision. She gave an overview of how the height is calculated per the zoning bylaw. Mr. Rhuda noted that the Board should not be discussing altering the plans that were approved by the Planning Board. Mr. Smith stated that the

Board may need input from Town Counsel and remarked that they should be focusing on the excavation only. Josh Latham, attorney for the Applicant, agreed that they should be looking at the earth removal with regards to the approved plans and the standard of whether it is injurious to the neighborhood. Town Planner Hughes clarified that in no way does this special permit grant any relief from height requirements for an individual lot for a building permit.

Chair Akehurst-Moore opened the hearing for public comment.

Scott Richardson of 260 Elsinore Street gave a presentation in opposition of the project on behalf of the group "Save 1442 Main Street".

Pamela Dritt of 13 Concord Green, Unit 4 commented that the proposed development will not appeal to environmentally aware buyers who understand the threat of the climate crisis and will make it harder for concerned residents to protect our town and achieve our carbon reduction goals.

Jack Madigan of 215 Prairie Street observed that the once the topography has been altered, that noise and air pollution from the train tracks will reach the neighborhood.

Dan Stapleton of 20 Conant Street asked the Board to deny the application.

John Cooley of 80 Highland Street spoke against the project sighting the dangers of the trucking routes where children walk to school.

Christa Collins of 55 Highland Street questioned the proposed retaining walls and how the truck traffic and vibration could affect them. Mr. Jelinek noted that they would not be impacted by vibrations fifty feet away.

Candace Nelson of 31 Center Village commented that the earth removal process will be detrimental to their household and the neighborhood.

Tanya Gailus of 62 Prescott Road disagreed with Attorney Latham's interpretation of the Zoning Bylaw.

Beverly Bryant of 175 Conant Street commented that she was concerned with the drainage of pesticides and fertilizer from homes that will affect the wildlife in that area.

Joseph Stein of 21 Thoreau Street commented that granting this will create a very dangerous precedent in town and asked the Board to deny the Special Permit.

John Cooley of 80 Highland Street noted that there were significant vibrations from construction work done on the two lots already constructed.

Pamela Dritt of 13 Concord Green, Unit 4 noted that the Board has not received one letter in support of this project.

Janet Miller of 1647 Main Street agreed that the construction will be disruptive with noise and vibration and referenced the construction noise at the new Concord Millrun development.

Patrick Henning of 28 Conant Street spoke against the project noting that this project will negatively impact the quality of life and people around the development.

Attorney Latham commented that the bylaw is a balance between public benefit and personal property rights and are subject to reasonable government rules. Chair Akehurst-Moore commented that there are private property rights, legal rights, and things called regulatory takings and that she would like to ask Town Council what the limits are. Mr. Faiia stated that Section 7.5.3.3 is the toughest to make a finding on. He commented that the public concerns are more in the spirit of the bylaws as a whole and how it relates to the town goals but that the decision is technical and needs to meet the standards of the bylaw. Chair Akehurst-Moore commented that what's before us

is specifically an earth removal permit and we as a Board did not approve this subdivision plan so discussion on the planning of this parcel is outside of this scope.

Mr. Smith commented on the volume of information presented and the need to deliberate the information against the various sections of the bylaw. He asked if Town Council could be present at the next meeting to answer questions during deliberation. Mr. Swaim asked if there was any data to support allegations of noise and air pollution. Town Planner Hughes stated that air quality issues are not under the jurisdiction of the ZBA and fall under the State level and the town has a construction noise ordinance bylaw. Chair Akehurst-Moore noted that public hearing has been closed and asked for a motion to continue to the next meeting for deliberations.

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 60,690c.y. of earth at 146B & 1442 Main Street, 110 & 11B Highland Street (Parcels #2407, 2408, 2409, 2409-1) to the August 12th meeting at 7:20. Mr. Smith seconded the motion, and all voted in favor. The motion passed (3-0) by a roll call vote.

Documents Used: Save 1442 Main Street presentation, Applicant presentation

Concord Country Club, for a Special Permit under Sections 7.5 and 11.6 of the Zoning Bylaw for the construction of an irrigation pond requiring the removal of 1,200 cubic yards of soil at 246 Old Road to Nine Acre Corner (Parcel #3079).

Chair Akehurst-Moore opened the public hearing and reviewed the application. Elizabeth Morss, landscape architect appeared for the hearing. She explained that the landscape plans have been revised with input from the Natural Resources Director requesting in increase the area and density of planting and to seed all disturbed areas with a conservation wildlife seed mix that's native to the area. She explained that the Natural Resources Commission recommend that they plant trees at ten feet on center and shrubs at five feet on center with the exclusion of some larger shrubs that can be eight feet on center. Ms. Morss noted that they have increased the area of planting from 42,775 square feet to 69,083 square feet and increased the number of trees from 54 to 421, shrubs from 137 to 664 to for a total of 1,085 plantings. Town Planner Hughes confirmed that the Natural Resources Director had approved of the revised planting plan.

Chair Akehurst-Moore asked if there were any pending issues from Town Staff. Town Planner Hughes stated that they needed to create viable conditions for the monitoring well. Mark Bobrowski, attorney with Blatman, Bobrowski & Haverty, LLC gave a summary of a letter that was submitted from the Applicant which detailed how the application meets the requirements of the zoning bylaw for earth removal. Chair Akehurst-Moore asked for clarification on what needed to be done to create viable conditions for the monitoring well. Peter Newton, Hydrogeologist with Bristol Engineering Advisors explained that the data doesn't exist yet so there aren't any trigger points and acknowledged that they should gather actual data, evaluate the data, and then discuss after a year or so of pumping. Mr. Smith asked if the everyone agreed as to where the monitors would be placed and what data would be collected, and Mr. Newton confirmed that they were in agreement.

Chair Akehurst-Moore opened the hearing for public comment.

Jack Madigan of 215 Prairie Street asked what would hold the Country Club accountable during drought conditions. Town Planner Hughes replied that these are the conditions that Town is working to create with the Applicant.

Sharon McGreggor of 70 Williams Road asked the Board to deny the special permit and to have the destruction restored.

Bernd Comjean of 99 Williams Road voiced his concerns with ongoing communication issues with the Country Club and enforcing conditions in the future.

Rebecca Comjean of 99 Williams Road requested a 3D model to see what the pond would look like from all areas and questioned whether a 3rd party hydrologist would be useful. Town Planner Hughes stated that the Public Works Director and Water and Sewer Staff did not have any issues with the expertise and information provided by Mr. Newton.

Chair Akehurst-Moore closed public comment. She noted that this application did not follow the proper procedures, but that the Board had gone above and beyond to be careful about how this has proceeded from the abutters point of view. She stated that she understood that the butters are not 100% happy with this project that but as it has been presented, would have passed scrutiny originally. Mr. Kindermans stated that the planting plan will have ecological benefits and will fill in over the next few years to screen from the neighbors. He questioned the benefit of restoring the land to the original condition and agreed that this plan likely would have been approved. Mr. Smith stated that there were three aspects to this application, one being the visual impact to the neighbors, whether the irrigation pond is better for the environment than the current system and any benefits to the town, and the violation. Mr. Smith also commented that the restoring the trees is not an appropriate response to the violation and was prepared to move forward with the review of a decision that would ultimately approve the application.

Mr. Kindermans moved to continue the application of Concord Country Club, for a Special Permit under Sections 7.5 and 11.6 of the Zoning Bylaw for the construction of an irrigation pond requiring the removal of 1,200 cubic yards of soil at 246 Old Road to Nine Acre Corner (Parcel #3079) to the August 12, 2021, meeting at 7:17 pm. Mr. Smith seconded the motion, and all voted in favor. The motion passed (3-0) by a roll call vote.

Documents Used: Irrigation Pond planting plan, berm planting plan

Administrative Business

Election of Officers

Mr. Kindermans nominated Mr. Smith as Chair, and Ms. Akehurst-Moore as Vice Chair. Ms. Akehurst-Moore nominated Mr. Kindermans as Clerk. Mr. Smith seconded the motion, and all voted in favor. The motion passed (3-0) by a roll call vote.

There being no further business, the meeting was adjourned at 10:55 p.m.

Respectfully submitted,

Theo Kindermans, Clerk