



ZONING BOARD OF APPEALS  
TOWN OF CONCORD  
MEETING MINUTES  
JULY 13, 2023

Pursuant to notice duly filed with the Town Clerk, a virtual public meeting of the Board of Appeals was held on Thursday, July 13, 2023 at 7:00 p.m. using the Zoom meeting platform.

PRESENT:

Members:

Theo Kindermans, Chair  
Elizabeth Akehurst-Moore  
Thomas Swaim

Paul Creedon, Building Commissioner  
Hayleigh Walker, Admin Assistant

Chair Kindermans called the meeting to order at 7:00 p.m.

**Public Hearings:**

***Karen Prussing, for a Special Permit under Zoning Bylaw Sections 5.3.15 and 11.6 to operate a tourist home at 280 Sandy Pond Road (Parcel# 4052-1-2).***

The Applicant Karen Prussing appeared for the hearing and explained why she was looking to rent out a portion of her home.

Mr. Swaim reviewed the other details of the application, noting that Ms. Prussing would be renting out two rooms for a maximum of three guests, not serving breakfast, and any extra cars would remain in her driveway off the street. He stated he had no concerns regarding the application.

Ms. Akehurst-Moore also stated that she had no concerns.

The Chair opened the hearing for public comment.

Pamela Dritt of 15 Concord Greene asked why the Applicant was not permitted to serve breakfast. Ms. Akehurst-Moore and Ms. Prussing noted that there may be Board of Health requirements that need to be met. Building Commissioner Creedon noted there was no requirements that breakfast be served.

With no further public comment, the Chair closed public comment.

The Board discussed the length of the approval period for the special permit and determined that a year to start would be suitable as this is Ms. Prussing's first time operating a tourist home.

Mr. Swaim moved to approve the application of Karen Prussing, for a Special Permit under Zoning Bylaw Sections 5.3.15 and 11.6 to operate a tourist home at 280 Sandy Pond Road (Parcel# 4052-1-2) for a period of 1 year. Ms. Akehurst-Moore seconded the motion. Chair Kindermans, yes; Elizabeth Akehurst-Moore, yes; and Thomas Swaim, yes. All VOTED in favor.

Documents Used: Floor Plan and Photos

***Mark and Kristie Ridick, for a Special Permit under Zoning Bylaw Sections 5.3.15 and 11.6 to operate a tourist home at 478 Lexington Rd (Parcel# 4087).***

The Applicant Mark Ridick appeared for the hearing and explained that they are looking to utilize the studio space above their garage, which has one bedroom and a full bath, for a tourist home. He noted that a maximum of two people would be allowed at a time and there are two parking spaces available in front of the two-car garage.

Mr. Swaim asked if, under Zoning Bylaw section 5.3.15, the garage could be included in the definition of the single family detached dwelling unit. Building Commissioner Creedon noted that the Applicants could use the space as a bedroom for themselves so he didn't see why they couldn't rent it out to others.

Ms. Akehurst-Moore stated that she had no concerns.

The Chair opened the hearing for public comment and there was none. Ms. Akehurst-Moore noted that they had received a letter from Frank Feely of 347 Lexington Rd which outlined his concerns about short-term rentals.

Ms. Akehurst-Moore moved to approve the application of Mark and Kristie Ridick, for a Special Permit under Zoning Bylaw Sections 5.3.15 and 11.6 to operate a tourist home at 478 Lexington Rd (Parcel# 4087) for a period of 1 year. Mr. Swaim seconded the motion. Chair Kindermans, yes; Elizabeth Akehurst-Moore, yes; and Thomas Swaim, yes. All VOTED in favor.

Documents used: Floor Plan, Photos

***Marybeth Baker and Irwin Hipsman, for the renewal of a Special Permit under Zoning Bylaw Sections 5.3.15 and 11.6 to operate a tourist home at 49 Seymour Street (Parcel# 3253).***

The Applicants did not appear for the hearing.

Building Commissioner Creedon stated that there had not been any issues or complaints regarding this application.

The Board reviewed the application materials and determined that they would renew the application for an additional year since the Applicant failed to attend the hearing.

The Chair opened the hearing for public comment and there was none.

Mr. Swaim moved to approve the application of Marybeth Baker and Irwin Hipsman, for the renewal of a Special Permit under Zoning Bylaw Sections 5.3.15 and 11.6 to operate a tourist home at 49 Seymour Street (Parcel# 3253) for a period of 1 year. Ms. Akehurst-Moore seconded the motion. Chair Kindermans, yes; Elizabeth Akehurst-Moore, yes; and Thomas Swaim, yes. All VOTED in favor.

Documents used: None.

***Joseph P. Flynn, for the renewal of a Special Permit under Zoning Bylaw Sections 5.3.5, 7.1.2 and 11.6 for the garaging or parking of commercial motor vehicles at 358 Strawberry Hill Road (Parcel# 1984-4).***

Due to technical difficulties the Chair moved the hearing of Joseph P. Flynn, for the renewal of a Special Permit under Zoning Bylaw Sections 5.3.5, 7.1.2 and 11.6 for the garaging or parking of commercial motor vehicles at 358 Strawberry Hill Road (Parcel# 1984-4) to a later time.

***Ros Walter, for a Special Permit under Zoning Bylaw Sections 4.2.2.2 and 11.6 for an 842 sq. ft. detached additional dwelling unit at 537 Barretts Mill Road (Parcel# 1948-4).***

Tim O'Reilly of Backyard ADU's appeared for the hearing along with the Applicant Rose Walter and her daughter Allegra Wilson. Mr. O'Reilly gave an overview of the project and the reasons the Applicant was seeking to have a detached additional dwelling unit (ADU).

Mr. O'Reilly reviewed the floor plan and elevations of the single story ADU which has been designed to accommodate present and future needs as the occupant ages, and the matter of substantial detriment to the neighborhood, noting that allowing this ADU to be built would allow this resident to take care of and be taken care of by her family – such a thing does not constitute a detriment. The ADU would be tucked into the backyard and would not be visible from the public frontage. There are vegetative buffers, though Mr. O'Reilly noted that neighbors can see into each other's respective yards. The ADU maintains all visual buffers and has been designed in a classic New England style which blends in with the other houses in the neighborhood. There will be no impact to traffic.

Ros Walter appeared for the hearing and discussed her desire to age in place with her family. She noted that they had invited their neighbors to review their plans and provide feedback. After meeting with neighbors in April, they reduced the size of the ADU.

Mr. Swaim asked for the footage of the original design that was drafted in April. Mr. O'Reilly and Ms. Wilson stated that they were closer to the 1,000 ft limit, however they removed a room, changed the overall footprint of the house and reduced the massing to fall more in line with the other outbuildings in area. Mr. Swaim asked where parking would be located. Mr. O'Reilly stated that there is a two-car garage on site with two parking space located in front and an additional space in the driveway.

Ms. Akehurst-Moore outlined what is being built by-right which includes the 750 sq. ft. and felt that the project fits the intent of the bylaw with the only thing that needs to be considered is the additional 92 sq. ft.

The Chair opened the hearing for public comment.

Paul Gromer of 521 Barretts Mill Rd gave a presentation which covered their opposition to the proposed ADU.

Pat O'Brien at 551 Barretts Mill reiterated Mr. Gromer's argument and stated he is not in favor of the proposed ADU.

The Chair reiterated that the Special Permit is not for the ADU itself but for the additional 92 sq.

Ms. Akehurst-Moore reiterated that the application meets the by-right requirements for ADU's.

Mr. Swaim stated that he was slightly persuaded by Mr. Gromer's presentation.

Ms. Akehurst-Moore stated while it may be frustrating that people are building in their backyards, the Town and Town Meeting has adopted this Bylaw.

Mr. Gromer stated that the problem with the existing dwelling isn't that it is too big, but that it is too small.

Ms. Akehurst-Moore asked Building Commissioner Creedon if he would feel comfortable issuing a permit if it was 750 sq. ft and he confirmed that he would.

Hugh and Susan McCrory of 59 Lee Drive appeared for the hearing. Mr. McCrory spoke in favor of Mr. Gromer's presentation and stated that Mr. O'Reilly's presentation was inaccurate. He also

expressed his concern about the precedent that would set for Concord as he feels that the ADU would be a detriment to the neighborhood and isn't in the Spirit of the Bylaw. Ms. McCrory requested clarification on the Zoning Bylaw 4.2.2.2. which the Board and Mr. O'Reilly provided. Ms. McCrory expressed sympathy for the Applicant but reiterated that the Board would be setting a bad precedent by granting the Special Permit.

The Chair closed public comment.

The Chair asked the Board if they would be interested in scheduling a site visit and acquiring a legal opinion from Town Counsel.

Ms. Akehurst-Moore stated that she wouldn't mind a site visit. She has not made a decision on the application but noted that she doesn't believe that the argument made by Mr. Gromer has any bearing as they are only discussing the additional 92 sq. ft. She stated that she was not in favor of obtaining a legal opinion.

Mr. Swaim stated he would be more comfortable if Town Counsel issued a legal opinion for two reasons. First, this issue may arise again and two, he isn't convinced that Mr. Gromer is entirely incorrect with regard to his interpretation of the Bylaw.

Ms. Akehurst-Moore and Mr. Swaim discussed the details of the Bylaw. Ms. Akehurst-Moore noted that the legal opinion bears on whether or not the ADU can be granted at all. The Building Commissioner would have to reach out to Town Counsel to obtain that opinion. Building Commissioner Creedon stated that he would reach out to Town Counsel.

Mr. O'Reilly stated that the height of the proposed ADU is 20 ft 8 inches, and the maximum allowable height is 24 ft. He reiterated that the application is in the spirit of the Bylaw that was approved by Town Meeting.

The Board discussed scheduling a site visit.

Mr. Gromer asked if the abutters could attend a site visit and the Chair stated that would be up to the property owner.

Ms. Akehurst-Moore moved to continue the application of Ros Walter, for a Special Permit under Zoning Bylaw Sections 4.2.2.2 and 11.6 for an 842 sq. ft. detached additional dwelling unit at 537 Barretts Mill Road (Parcel# 1948-4) to the hearing of August 10<sup>th</sup> at 7:10 p.m. Mr. Swaim seconded the motion. Chair Kindermans, yes; Elizabeth Akehurst-Moore, yes; and Thomas Swaim, yes. All VOTED in favor.

Documents used: Photos, Floor plans, Elevations

***Joseph P. Flynn, for the renewal of a Special Permit under Zoning Bylaw Sections 5.3.5, 7.1.2 and 11.6 for the garaging or parking of commercial motor vehicles at 358 Strawberry Hill Road (Parcel# 1984-4).***

Mr. Flynn appeared for the hearing and explained that he is seeking a renewal of his Special Permit for the garaging or parking of commercial motor vehicles at 358 Strawberry Hill Road. Mr. Flynn noted that there have been no changes from the previous application.

The Chair opened the hearing for public comment and there was none though the Chair noted that they had received a letter of support from David and Belinda Dapice of 169 Main Street.

Building Commissioner Creedon noted he had not received any complaints.

The Chair asked Mr. Flynn what he was seeking for an approval period and Mr. Flynn stated five years.

Mr. Swaim moved to approve the application of Joseph P. Flynn, for the renewal of a Special Permit under Zoning Bylaw Sections 5.3.5, 7.1.2 and 11.6 for the garaging or parking of commercial motor vehicles at 358 Strawberry Hill Road (Parcel# 1984-4) for a period of 5 years. Ms. Akehurst-Moore seconded the motion. Chair Kindermans, yes; Elizabeth Akehurst-Moore, yes; and Thomas Swaim, yes. All VOTED in favor.

***James Bing, for a Special Permit under Zoning Bylaw Sections 7.1.5 and 11.6 to construct a 1,115 sq. ft. addition to the existing 1,758 sq. ft. structure which increases the gross floor area by more than 50% at 367 Thoreau Street (Parcel# 0214).***

The Applicant James Bing appeared for the hearing along with architect Marshall Mclean. Mr. Mclean explained that Mr. Bing is looking to add a primary bedroom, office, side mudroom entry and powder room to the first floor of his home. The project also includes an additional room on the second floor. This would constitute an addition of 709 sq. ft which will extend off the rear of the dwelling. The dwelling is located in Zoning District A. The lot is nonconforming for its size, frontage and lot width while the existing house is nonconforming for its front setback. The new footprint will be located within the buildable lot as defined by the front and rear setback. The project increases the gross floor area by more than 50% though they are below the allowable Floor Area Ratio.

Mr. Bing explained that he has relatives on the West Coast, and he wants to have more space available to them when they come to visit.

Mr. Mclean reviewed the proposed floor plans and elevations.

The Chair opened the hearing for public comment and there was none. However, the Chair noted that they had received two letters from abutters in support of the application.

Ms. Akehurst-Moore moved to approve the application of James Bing, for a Special Permit under Zoning Bylaw Sections 7.1.5 and 11.6 to construct a 1,115 sq. ft. addition to the existing 1,758 sq. ft. structure which increases the gross floor area by more than 50% at 367 Thoreau Street (Parcel# 0214). Mr. Swaim seconded the motion. Chair Kindermans, yes; Elizabeth Akehurst-Moore, yes; and Thomas Swaim, yes. All VOTED in favor.

Documents Used: Floor plans and Elevations.

***Keystone Custom Builders, for a Special Permit under Zoning Bylaw Sections 6.2.7 and 11.6 for the construction of a new dwelling which requires a waiver to the 15 ft height limit within the required 15 ft setback at 46 Emerson Road (Parcel# 3670).***

Mike Staiti of Keystone Custom Builders appeared for the hearing and explained the existing single-story dwelling utilizes the side yard exception provision under Section 6.2.7 Side Yard so that the structure is 12.5 ft to the side property line instead of 15 ft. and the width of the other side is correspondingly increased to over 17.5 ft. The Applicant is requesting a waiver to the 15-foot height limitation within the side yard exception area to allow a two-story dwelling to be built on the existing foundation so that the proposed dwelling would be over 15 ft in height.

Mr. Swaim noted that the issue raised by the Applicant can be avoided if a new foundation were to be built.

Ms. Akehurst-Moore stated she had no issues regarding the proposed project.

The Chair opened the hearing for public comment.

Mr. Krusell of 60 Emerson Rd noted that the Applicant could build a substantially larger house if they were to construct a new foundation that met the setback requirement and he wanted to hear additional information on the subject.

Mr. Mclean stated that if they built a new foundation, they would be able to build up to 9,983 sq. ft. based on the lot size. However, Mr. Mclean did not feel that a home of that size would be appropriate for the neighborhood and that is why they are looking to retain the existing foundation.

Chair Kindermans asked what the size of the proposed dwelling would be. Mr. Mclean stated that it would be 2,980 sq. ft on the first and second floor while the basement would be 600 sq. ft. Mr. Mclean noted that the house already has an approved ADU which is 480 sq. ft. The total Gross Floor Area, including the garage would be 4,039 sq. ft.

Paul DiCesare of 43 Emerson Rd noted that the existing house already sits above the road. He noted that, according to the plans, the proposed house would be approximately 31 ft in height which would create a fair amount of shade and coverage. He asked what the Boards position was on that matter. The Chair stated the Board is considering the height waiver and noted that the Applicant could build an even larger house if they decided not to retain the existing foundation.

Mr. Swaim and Ms. Akehurst-Moore stated that they were comfortable with the proposed design.

Mr. Swaim moved to approve the application of Keystone Custom Builders, for a Special Permit under Zoning Bylaw Sections 6.2.7 and 11.6 for the construction of a new dwelling which requires a waiver to the 15 ft height limit within the required 15 ft setback at 46 Emerson Road (Parcel# 3670). Ms. Akehurst-Moore seconded the motion. Chair Kindermans, yes; Elizabeth Akehurst-Moore, yes; and Thomas Swaim, yes. All VOTED in favor.

***Howard J Soberg Jr., for a Special Permit with Site Plan Review under Zoning Bylaw Sections 4.2.3, 7.2, 7.7.2.12, 11.6 and 11.8 for a combined business/residence use in the Flood Plain Conservancy District and relief from parking for 31 parking spaces at 166 Commonwealth Ave (Parcel# 2184-2).***

Ms. Akehurst-Moore moved to continue the application of Howard J Soberg Jr., for a Special Permit with Site Plan Review under Zoning Bylaw Sections 4.2.3, 7.2, 7.7.2.12, 11.6 and 11.8 for a combined business/residence use in the Flood Plain Conservancy District and relief from parking for 31 parking spaces at 166 Commonwealth Ave (Parcel# 2184-2) to the meeting of August 10<sup>th</sup> at 7:15 p.m. Mr. Swaim seconded the motion. Chair Kindermans, yes; Elizabeth Akehurst-Moore, yes; and Thomas Swaim, yes. All VOTED in favor.

***Concord Center for the Visual Arts, for a Special Permit with Site Plan Review under Zoning Bylaw Sections 7.1.3, 7.7.2.12, 11.6 and 11.8 to demolish the existing Coleman Gallery and construct a 2,593 sq. ft. addition to an existing 7,349 sq. ft. nonconforming structure and relief from parking at 37 Lexington Road (Parcel# 0015).***

The Applicant Kate James appeared for the hearing along with John Battle and Robert Drew of Battle Architects. Mr. Battle explained that they are removing the existing gallery and replace it with an addition which will house two classrooms. The addition is more contemporary in style and was approved by the Historic Districts Commission. Mr. Battle also noted that the project was reviewed and approved unanimously by the Planning Board, and they have received support from abutters.

Ms. Akehurst-Moore asked the Applicant if they felt that any of the Planning Board conditions outlined in their recommendation were overly burdensome. Mr. Battle stated that they do not anticipate parking being an issue in the future and so they were not concerned about those conditions. Ms. Akehurst-Moore asked if the Applicant was comfortable coordinating with Concord Academy and the Library for parking. Mr. Battle stated that those conditions would be cumbersome and noted that they have letter from the adjacent churches for utilization of their parking lot on the high load circumstances. However, they don't feel that it will be a problem in the long run. Ms. Akehurst-Moore agreed that the condition was burdensome.

Mr. Swaim stated that the condition might be burdensome but noted that the Applicant accepted it. Mr. Battle and Mr. Drew agreed and stated that they would like to move forward with the recommendation unchanged. Mr. Swaim noted that any disagreement with the Planning Board's recommendation must be explained in their decision.

Ms. Akehurst-Moore stated that she had no further comments and thought it was a nice addition. The Chair asked if the existing handicap parking space meets MAAB standards. Mr. Drew stated that the space was 17 ft 3 inches in depth. Mr. Kindermans stated that per MAAB standards the space needs to be striped. Mr. Drew agreed and noted that the space is currently marked with a sign.

The Chair opened the hearing for public comment and there was none.

Ms. Akehurst-Moore moved to approve the application of Concord Center for the Visual Arts, for a Special Permit with Site Plan Review under Zoning Bylaw Sections 7.1.3, 7.7.2.12, 11.6 and 11.8 to demolish the existing Coleman Gallery and construct a 2,593 sq. ft. addition to an existing 7,349 sq. ft. nonconforming structure and relief from parking at 37 Lexington Road (Parcel# 0015) and accept the findings and conditions as outlined in the Planning Boards July 12<sup>th</sup> letter while adding the condition that the existing handicap parking space be striped and conform to MAAB standards. Mr. Swaim seconded the motion. Chair Kindermans, yes; Elizabeth Akehurst-Moore, yes; and Thomas Swaim, yes. All VOTED in favor. Documents Used: None

### **Administrative Business**

#### ***Approval of Minutes for 5/11***

Ms. Akehurst-Moore moved to accept the minutes of 5/11 as submitted. Mr. Swaim seconded the motion. Chair Kindermans, yes; Elizabeth Akehurst-Moore, yes; and Thomas Swaim, yes. All VOTED in favor.

There being no further business, the meeting was adjourned at 9:06 p.m.

Minutes Approved On: 9/14/23