



**ZONING BOARD OF APPEALS
TOWN OF CONCORD
Meeting Notes
August 13, 2020**

Pursuant to notice duly filed with the Town Clerk, a virtual public meeting of the Board of Appeals was held on Thursday, August 13, 2020 at 7:00 p.m. using the Zoom meeting platform. Meeting ID: 882 3032 7717 Meeting Password: 472198

PRESENT:

Members:

James Smith
Elizabeth Akehurst-Moore
Theo Kindermans
Ravi Faiia
Stuart Freeland

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

J.P. Chase Morgan Bank, for a Special Permit and Site Plan Approval under Sections 7.2, 11.6, and 11.8 of the Zoning Bylaw to demolish the existing bank building, construct a new bank building, and perform related site improvements including parking reconfiguration, drive-thru ATM and stormwater management updates in the Floodplain Conservancy District at 1134 Main Street (Parcel 3790-1).

Chair Akehurst-Moore opened the public hearing and explained that the Applicant requested to continue the application without discussion to the September 10, 2020 meeting.

Mr. Kindermans moved to continue the public hearing of J.P. Chase Morgan Bank, for a Special Permit and Site Plan Approval under Sections 7.2, 11.6, and 11.8 of the Zoning Bylaw to demolish the existing bank building, construct a new bank building, and perform related site improvements including parking reconfiguration, drive-thru ATM and stormwater management updates in the Floodplain Conservancy District at 1134 Main Street (Parcel 3790-1) to the September 10, 2020 meeting at 7:00 pm. Mr. Smith seconded the motion, and all VOTED in favor.

Documents Used: none

Other Business:

1651, 1657, and 165X Main Street PRD – Decision Deliberation

The Board commented that they had reviewed the draft Decision and agreed with the edits that had been submitted and incorporated into the Decision.

Mr. Smith moved to adopt the Decision as amended. Mr. Kindermans seconded the motion, and all VOTED in favor.

Aaron Desatnik and Jenna Levy, for a Special Permit under Sections 6.2.11 and 11.6 of the Zoning Bylaw to construct an addition that exceeds the maximum 35-foot height by 3 ft. 2 in. at 5 Ledge Rock Road (Parcel 1592).

Chair Akehurst-Moore opened the public hearing and reviewed the application. Paul Mahoney, the architect appeared for the hearing along with the homeowner, Aaron Desatnik. Mr. Mahoney gave an overview of the property and the aspects of the land requiring them to apply for a Special Permit which includes a significant slope to the left of the house. He explained that they looked at various locations in the house to create additional office space but because of previous work that was completed and other challenges with the layout of the house, they could not find another suitable location. Mr. Mahoney commented that the actual height of the proposed addition if measured from grade falls under the 35 ft. height limit but because of the way that the height is calculated, the height is over the limit. The Board discussed the requirements and waiver provision for Section 6.2.11. Chair Akehurst-Moore commented that the lower grade is an anomaly if you didn't use that portion of the house for the calculation, the height would not be an issue. Mr. Smith commented that this application is similar to a recent application for Highland Street where a steep drop off in the back of the property caused them to need a Special Permit for relief from height because any alternative would be more detrimental to the neighborhood. Mr. Smith examined the wording of the Bylaw and thought that the applicant is attempting to create a plan that looks like a typical house from the street and that this is the reasonable alternative. Board Members discussed the Bylaw and agreed that they the wording empowers them to grant relief.

Chair Akehurst-Moore opened the hearing for public comment and there was none. She acknowledged receipt of 3 letters of support.

Chair Akehurst-Moore commented that this was a reasonable plan and was in favor of it. Mr. Faiia questioned the intent of the Bylaw and thought that this well thought out plan is a better alternative than other options like expanding the footprint. Chair questioned the height and Mr. Mahoney confirmed that this section of the house will be 31.5 feet. Mr. Smith commented that this is a very unique situation where there is an extraordinary drop off on one corner of the house and the majority of the house falls within the height limits.

Mr. Smith moved to approve the application of Aaron Desatnik and Jenna Levy, for a Special Permit under Sections 6.2.11 and 11.6 of the Zoning Bylaw for relief of the definition of the height of the building to construct an addition that exceeds the maximum 35-foot height by 3ft. 2 in. at 5 Ledge Rock Road (Parcel 1592) and note that unique circumstances of this house having a dramatic drop off at one end of the house leading to an excess over the 35 ft. height requirement and that a literal application of height requirement would be unreasonable because a desired relief can be granted without derogating from the intent of the Bylaw. Mr. Kindermans seconded the motion, and all VOTED in favor.

Documents Used: GIS map, existing conditions photos, floor plans and elevations

Milltarry Market, LLC, for the renewal and amendment of a Special Permit under Section 11.6 of the Zoning Bylaw to delete item #8 of condition #43 requiring the applicant to maintain a list of classes and functions, the date, duration of each class or function, number of attendees and the number of available parking spaces on the

entire site at the start of each class or function and to amend item #13 of condition #43 to renew the Special Permit from 1 year to 5 years at 77 Lowell Road (Parcel 1685-2).

Chair Akehurst-Moore recused herself from the public hearing. Mr. Kindermans opened the public hearing and reviewed the application. The Applicant, Jim White appeared for the hearing and explained that they were able to hold several functions prior to the pandemic shutting the space down and were able to determine that parking was not an issue. He commented that the Applicant is looking to renew a special permit for an additional five years and would like to remove the condition requiring them to track parking as a matter of practicality. Mr. Smith asked for clarification on which condition was to be deleted. Mr. Faiia commented that this condition was in place to determine that the parking lot was not overwhelmed during events and confirmed that the Applicant was not able to count them practically but was able to qualitatively conclude that there was enough parking available during events. Mr. Kindermans asked whether there had been any complaints and the Building Commissioner confirmed that there had not been any.

Mr. Kindermans opened the hearing for public comment and there was none.

Mr. Smith questioned whether extending the Special Permit out to 5 years this soon was typical. Town Planner explained that there have been other commercial businesses and philanthropic uses where a 1 year permit was granted because of issues and complaints and there are other examples where the Board has allowed 5 year extensions without issue. She commented that in there was a lot of discussion and speculation of availability of parking and with consistent and heavy use of the employee parking area she had not observed any issues with parking availability. The Town Planner also commented that the intent of the parking count was to determine a baseline number and didn't see an issue with removing the condition or granting the Special Permit for 5 years. Mr. Kindermans stated that he wasn't sure if he was ready to extend the special permit to 5 years. Mr. Faiia questioned whether the Applicant needed to continue tracking the parking if they are going to come back sooner than 5 years. The Town Planner stated that the other items in condition 43 help to limit the issues and didn't see a relevance of tracking the parking. Mr. Kindermans didn't feel that tracking parking would be necessary but felt that 2 or 3 years would be a good time frame. Mr. Smith stated that they only ended up with about 6 months of data before the pandemic and agreed that they could remove item 8 under condition 43 and favored renewing for 3 years under condition 13.

Mr. Faiia moved to approve the application of Milltarry Market, LLC, for the renewal and amendment of a Special Permit under Section 11.6 of the Zoning Bylaw to delete item #8 under condition 43 requiring the applicant to maintain a list of classes and functions, the date, duration of each class or function, number of attendees and the number of available parking spaces on the entire site at the start of each class or function and to amend item #13 under condition 43 to renew the Special Permit for a period 3 years at 77 Lowell Road (Parcel 1685-2). Mr. Smith seconded the motion, and all VOTED in favor.

Documents Used: None

Other Business:

77 Lowell Road – Release of Letter of Credit

Town Planner explained that the Concord Market has completed a list of off-site improvements required in their Special Permit to the satisfaction of the Town and is requesting a release of the letter of credit.

Mr. Faiia moved to authorize the release of the letter of credit for 77 Lowell Road (Parcel 1685-2). Mr. Smith seconded the motion and all VOTED in favor.

Elizabeth Akehurst-Moore returned to the meeting.

Warrant Article Discussion

Town Planner commented that there was some opposition to moving the permit granting authority for the Planned Residential Development to the Planning Board and so the Planning Board has decided that they will amend the article on the floor of town meeting to keep the Bylaw as it exists now.

The Board also discussed green standards and the difficulties of adding them to a Zoning Bylaw.

Approval of Minutes:

Approval of Minutes for February 13, 2020

Mr. Kindermans moved to accept the minutes for the February 13, 2020 meeting as written. Mr. Smith seconded the motion and all VOTED in favor.

Approval of Minutes for March 12, 2020

Mr. Kindermans moved to accept the minutes for the March 12, 2020 meeting as written. Mr. Smith seconded the motion and all VOTED in favor.

Approval of Minutes for April 9, 2020

Mr. Kindermans moved to accept the minutes for the April 9, 2020 meeting as written. Mr. Smith seconded the motion and all VOTED in favor.

Approval of Minutes for May 14, 2020

Mr. Kindermans moved to accept the minutes for the May 14, 2020 meeting as written. Mr. Smith seconded the motion and all VOTED in favor.

Approval of Minutes for June 11, 2020

Mr. Kindermans moved to accept the minutes for the June 11, 2020 meeting as written. Mr. Smith seconded the motion and all VOTED in favor.

Black Horse Place – Release of performance guarantee

Town Planner Hughes explained that the applicant has completed the work for the project to the satisfaction of the Town.

Mr. Kindermans motioned to release the performance guarantee for Black Horse Place. Mr. Smith Seconded the motion and all VOTED in favor.

There being no further business, the meeting was adjourned at 8:13 p.m.

Respectfully submitted,

Theo Kindermans, Clerk