Minutes of the Planning Board Meeting of August 24, 2021

Pursuant to a notice and agenda filed with the Town Clerk, the Planning Board met at 7:00 p.m. on August 24, 2021 virtually online via https://zoom.us. The meeting was recorded and will be available on the Minuteman Media Network.

At 7:03 p.m. Mr. Flint opened the meeting and asked for a roll call of the Board members. Present were Ms. Miller, Ms. Ferguson, Ms. McEneaney, and Mr. Flint. Absent were Mr. Bosdet, Mr. Boardman, and Ms. Orvedal.

Public Hearing, Definitive Subdivision Plan, 11B, 146B and 1442 Main Street, and 110 Highland Street, Remand Order

Pursuant to the Land Court’s remand order of June 23, 2021 in Symes Development & Permitting LLC v. Concord Planning Board et al., 21 MISC 000021 (HPS), the Planning Board held a public hearing on the Definitive Subdivision Plan application of Symes Development & Permitting LLC, for a sixteen-lot subdivision of land at 11B, 146B and 1442 Main Street, and 110 Highland Street (Parcels 2407, 2408, 2409, 2409-1).

Present for the applicant were Jeff Rhuda, of Symes Development and Permitting LLC, and Attorneys Brad Latham and Don Pinto.

Town Counsel Mina Makarious, of Anderson & Kreiger LLP, was present. He explained the process. He noted that the Board was provided a copy of the draft decision that follows from staff and Town Counsel’s recommendation to align the prior decision with the Land Court’s decision.

The Board reviewed the draft decision. Mr. Flint noted that the Applicant’s attorney suggested an edit. Mr. Flint then suggested, and the Board agreed, to edit the fourth paragraph on page 13 to remove the wording about the finding being conditional on the earth removal bylaw and replace it and the last sentence of the paragraph (Planning staff suggestion) with “pursuant to Section 6.2.2 of the Concord Subdivision Rules and Regulations, and the Board makes no finding as to their adequacy and meeting the requirements of any other Concord Zoning or General Bylaw.” Town Counsel agreed with the suggested changes. He suggested the correction of one small typo and suggested the addition of the words “or regulations” be added to the end of the sentence for clarity.

The applicant’s attorney, Mr. Latham, requested that the decision by the Land Court judge be incorporated by reference in these proceedings. Town Planner Hughes pointed out that the remand order is referenced in the opening paragraph of the draft decision. Town Counsel said that the Land Court’s binding judicial decision was not appealed by the Planning Board, and, while valid, is not the findings of the Board. Mr. Makarious said he has not seen a decision incorporated in that fashion.

Mr. Flint acknowledged that the Land Court decision was given due consideration by the Board. Town Planner Hughes noted that in the third paragraph of the draft decision, last sentence
contains the language “the Board’s decision is consistent with the remand order” and so the Land Court decision is referenced twice in the Board’s decision.

Mr. Flint asked for public comment. Before taking comment, he reminded those present that the purpose of the hearing is to consider solely the remand decision and not to revisit the application itself or the proceedings leading up to the original decision.

Stephan Bader, 7 River Street, noted that the issue of taking [of lots] without compensation was raised by the Land Court Judge and asked if there was any further discussion as to whether the compensation could be offered at this juncture, so that it is not a taking but rather a payment option. He asked if that was ever discussed by Town Counsel or the Board. Mr. Flint replied that it was not discussed at any hearing on this matter by the Planning Board. Town Planner Hughes said that issue was not part of the Land Court proceedings and asked Town Counsel to expand on that for the Board.

Town Counsel replied that the compensation issue does arise in both the Federal and State litigation and said that the Federal litigation is still pending. Mr. Makarious explained that State Court finding that the exclusionary housing bylaw which allows the Planning Board to reserve lots [in subdivisions] for affordable housing purposes was entirely struck, so, as a result, the basis for compensation is no longer present. He explained that Subdivision Control Law permits reservation of lots for park purposes for three years with just compensation if they are purchased.

Mr. Flint closed the public hearing.

Mr. Flint moved that the Board approve an amended Definitive Subdivision Plan Decision consistent with the Land Court’s order [referenced above]. Ms. McEneaney seconded. Mr. Flint, Ms. McEneaney, Ms. Miller, and Ms. Ferguson all voted in favor.

Minutes

The Board reviewed and amended the August 10, 2021 draft minutes. Ms. Ferguson moved, and Mr. Flint seconded, that the Board approve the minutes of August 10th as amended. Ms. Ferguson, Ms. Miller, Ms. McEneaney, and Mr. Flint all voted in favor.

Lot Release for Lot 1 (24 McCallar Lane)

The Board considered the Town Planner’s memorandum dated August 19, 2021. The developer of the Hosmer Meadow subdivision has requested a release of Lot 1 from the Restrictive Covenant and has submitted an interim as-built plan and cost estimate for the remaining work. Town Planner Hughes explained that the Engineering Division of Concord Public Works reviewed the as-built plan, conducted a site visit, and reviewed the cost estimate and found both to be satisfactory to grant lot release for Lot 1 and that Lots 2, 3, and 4 would remain as part of the restrictive covenant.

Mr. Flint moved that the Board release Lot 1 (24 McCallar Lane) in the Hosmer Meadows Definitive Subdivision from the Restrictive Covenant and authorize the Chair, Clerk or Town
Site Plan Review, Concord Children’s Center, 250 Old Bedford Road

The Board reviewed the draft decision dated August 18, 2021 prepared for the application of the Concord’s Children’s Center under Section 11.8.7 of the Zoning Bylaw to convert the existing single-family dwelling to a childcare center with reduced parking, construct a 7,063 s.f. addition and make related site improvements (parking lot, subsurface stormwater drainage and landscaping) at 250 Old Bedford Road, Parcel 4220.

Town Planner Hughes explained that the Applicant has amended the plans to change the elevations of the addition to change the pitch in the roof, because the height of the proposed building was approximately 18” over the 35’ limit. She explained that on Monday a letter was received from an abutter. She said that the revised plans were reviewed by the Building Commissioner and that he suggested an additional condition of approval that prior to the framing inspection, the applicant shall have a surveyor verify that the height of the structure is 35 feet or less per the regulations. Mr. Flint said that the Board would include the Commissioner’s condition.

Mr. Flint acknowledged that the Board was in receipt of a great amount of public comment which the Board found to be insightful and informative. He reminded the audience of the Board’s purview in Site Plan Review for an educational facility. He also reminded the audience of the Board’s purview in allowing a reduction in the number of required parking spaces and in determining the adequate number of parking spaces for teachers and employees of the facility.

The Board discussed the application as it relates to Section 11.8.7 of the Zoning Bylaw.

Chairman Flint asked for public comment.

Henry Haff, 10 Philip Farm Road, spoke about his concerns that this project will negatively impact his property and the neighborhood. He referred to the points in his email sent to the Board 8/22/21. Mr. Flint acknowledged the Board’s receipt of Mr. Haff’s email.

Sam Nagler, 51 Kenney Lane, referred to the email that he sent to the Board 8/24/21 which adds to the points of concern raised by Mr. Haff. Mr. Nagler questioned the adequacy of the proposed number of parking spaces.

Attorney Mark Bobrowski, spoke on behalf of the Applicant. He explained the provision of the so-called “Dover Amendment” as it applies to the Board’s purview for site plan review of a childcare facility. He spoke about the “Tufts College Balancing Test” to support the application’s merits.
Mr. Haff asked the Board to restrict non-resident parking on Old Bedford Road, and Virginia Road, as well as Philip Farm Road, Meriam Road, and Kenney Lane. Town Planner Hughes explained that a condition in the draft decision specifies that the applicant shall require all construction worker vehicles to park on the site and that parking of construction worker vehicles is prohibited on any public road is prohibited.

The Board returned to their review of the draft decision and discussed the addition of conditions pointed out by the Town Planner.

Ms. McEneaney asked that the minutes include, for the record, her comments this plan could work, adequately mitigates impacts, and there is a lot of evidence in the record to support that, and if it doesn’t work that way, the Board has the authority to bring the Applicant back in and potentially make changes to the approval. Mr. Flint said that the minutes will reflect her comments.

Mr. Flint moved that the Board approve the application of Concord’s Children’s Center under Section 11.8.7 of the Zoning Bylaw to convert the existing single-family dwelling to a childcare center with reduced parking, construct a 7,063 s.f. addition and make related site improvements (parking lot, subsurface stormwater drainage and landscaping) at 250 Old Bedford Road, consistent with the draft decision and conditions as amended by discussion at this meeting and authorize the Chair or Clerk, or another member of the Board to review the final decision and then authorize the Chair, Clerk, or Town Planner to the final decision. (Mr. Flint volunteered to review the decision). Ms. Ferguson seconded. Ms. Ferguson, Ms. Miller, Ms. McEneaney, and Mr. Flint all voted in favor.

Potential 2022 ATM Zoning Bylaw Amendments

The Board discussed amendments to the Subdivision Rules & Regulations and potential Zoning Bylaw amendments for the 2022 Annual Town Meeting. Discussed were whether a Zoning Bylaw relating to food trucks is needed, how to add sustainability criteria, and the potential of moving forward towards the crafting of a neighborhood conservation districts bylaw. The Board will discuss the Thoreau Depot Business District redevelopment project and potential Zoning Bylaw amendments at the meeting on September 14th.

Subdivision Rules & Regulations Updates

The Board discussed amendments to the Subdivision Rules & Regulations, necessary revisions, and potentially adding green design elements to the engineering requirements for subdivision road layout and construction.

Planning Board Liaison/Town Planner Updates

The Board decided to hold the September 14th meeting as a hybrid, in-person and virtual, meeting. Ms. Ferguson said that she is unable to attend that meeting. Ms. Miller said that she may not be able to attend either. Ms. Hughes went over the potential upcoming agenda items.
**General Public Comment**

Stephan Bader, 7 River Street, expressed his appreciation to the Board for their diplomacy and diligence in the review of applications. He asked if there is currently a liaison from the Planning Board for any of the affordable housing groups in Town or for the Concord Housing Authority. He suggested that it would be beneficial for those groups to have a Planning Board liaison. Town Planner Hughes said that she would follow up with Liz Rust, of the Regional Housing Services Office. The Board thanked Mr. Bader for his comments and suggestions.

The meeting adjourned at 10:05 p.m.

Documents presented which are on file in the Planning Division Office at 141 Keyes Road, Concord, MA:

- Town Planner’s agenda memorandum dated 8/19/21
- Draft decision dated 8/18/21 for Site Plan Review application, 250 Old Bedford Road

Respectfully submitted,

Kate McEneaney, Clerk

Minutes approved on: 9/14/21