

**TOWN OF CONCORD**

**BOARD OF APPEALS**

**TOWN HOUSE**

Please take notice that in the matter of the APPLICATION OF SYMES DEVELOPMENT & PERMITTING, LLC., for a Variance and Special Permit under Sections 7.5, 10, 11.6, and 11.7 of the Zoning Bylaw for a 34-unit Planned Residential Development at 1440, 1450, 146B Main Street (Parcel #1259-2-3), Concord, Massachusetts, the Board of Appeals has rendered a decision DENYING said Special Permit application pursuant to Section 10 and 11.6, and the record therein has this day been filed with the Town Clerk, Town House, Concord, Massachusetts. Appeals, if any, shall be made pursuant to Section 17 of the Zoning Act, Chapter 40A of the Massachusetts General Laws, and shall be filed within 20 days after the date of this notice.

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Heather C. Carey, Administrative Assistant  
On behalf of the Zoning Board of Appeals

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DATE

## TOWN OF CONCORD

### BOARD OF APPEALS

**DECISION** of the Zoning Board of Appeals (the Board) on the APPLICATION OF SYMES DEVELOPMENT & PERMITTING, LLC., for a Special Permit under Sections 10 and 11.6 of the Zoning Bylaw (ZBL) for a 34-unit Planned Residential Development at 1440, 1450, 146B Main Street (Parcel #1259-2-3).

This decision is in response to an application filed on July 20, 2018. After causing notice of the time and place of the public hearing and of the subject matter thereof to be published in *The Concord Journal* on November 28, 2019 and December 5, 2019, posted and mailed to the Applicant, abutters and other parties of interest as required by law, the public hearing was opened on December 12, 2019 and continued to January 9, 2020, February 13, 2020, and March 12, 2020. On March 12<sup>th</sup>, the Applicant requested a withdrawal without prejudice its application for an Earth Removal Special Permit under ZBL Section 7.5 and a Variance under ZBL Section 11.7 for which the Board voted 3 to 0 (Akehurst-Moore, Kindermans, Smith) to accept.

The proposed 34-unit Planned Residential Development project includes the following:

- Demolition of the two existing dwellings;
- Grading of the site, which requires removal of the majority of the site vegetation and approximately 17,625 c.y. of earth that is proposed to be trucked off site;
- Construction of 26 single-family dwellings and 4 duplex units for a total of 34 units within the PRD;
- Access from Main Street through a single driveway that will serve 32 units;
- An interior roadway consisting of a 24-foot wide looped roadway;
- Two units with individual driveways from Highland Street;
- Sewage disposal provided with 3 units connected to Town sewer and the remaining 31 units in the PRD served by an on-site sewage disposal system;
- All units served by Town water;
- Stormwater drainage handled through a series of area drains, roof drains, catchbasins and subsurface infiltration systems;

The proposed project includes nine different floor plan (Units A-1, A-2, A-3, B-1, B-2, C-1, C-2, D & E) that range in gross square footage, including basement (finished and unfinished areas) and garage; 22 units having a two-car garage and 12 units having a one-car garage:

- Unit A-1 & A-3 are 4,678 s.f.,
- Unit A-2 is 4,269 s.f.,
- Unit B-1 is 3,571.5 s.f.,
- Unit B-2 is 4,571 s.f.,
- Unit C-1 is 3,616 s.f.,
- Unit C-2 is 2,940 s.f.,
- Unit D is 4,178 s.f. and
- Unit E is 3,111 s.f.

The Applicant has stated that the project will have a Home Energy Rating System (HERS) rating on an aggregate average basis to 50 with at least 10 homes being built on speculation with specific energy conservation measures for a HERS rating of 36.

As required by ZBL Section 10.4.2, the Planning Board reviewed the development statement and plans; in the case of this Application, such review occurred over the course of ten meetings held between September 11, 2018 and December 26, 2019. As also required by ZBL Section 10.4.2, the Planning Board then made its recommendation to the Board in a written submission dated January 8, 2020.

The Planning Board recommended that the Special Permit be granted, noting in particular its “general support of a PRD at this location and denser development within walking distance to the West Concord Village.” However, the Planning Board made its recommendation subject to the following modifications:

*It is the recommendation of the Planning Board that in order to achieve greater diversity in the type, price and size of the units, reduce the area of impervious surfaces, increase the quantity and quality of the open space, the Special Permit be granted subject to the following modifications:*

1. *The overall reduction in the total amount of impervious coverage and increase in unit diversity through a combination of the following:*
  - a. *Smaller unit square footage;*
  - b. *Incorporation of more one car garages;*
  - c. *Inclusion of more duplex units, or even a triplex unit*
2. *The use of only electric utilities with no fossil fuel tie-ins or utilities.*
3. *A 10 ft. to 15 ft. natural green space corridor connection as part of the open space between the adjacent Town-owned land and the isolated wetland and a note calling for the removal of the existing chain link fence along the Town-owned land.*

The Board noted first, that while styled as modifications, items 1-3 above amounted to conditions to the Planning Boards affirmative recommendations. The Board further noted that these conditions would result in a material alteration in the plans proposed by the Applicant. Over the course of two meetings of the Board, the Applicant indicated that it was willing to alter its Application to address Planning Board conditions 2 and 3, but was unwilling to make any changes to the Plans that would meet the Planning Board condition 1.

After due consideration of the application, the record, a presentation by the Applicant, and based upon review of the issues, the Board voted 3 to 0 (Akehurst-Moore, Kindermans, Smith) on March 12<sup>th</sup> to **DENY** approval of the Special Permit. On May 14, 2020, the Board met to review and deliberate on the Board's written decision and voted 3 to 0 (Akehurst-Moore, Kindermans, Smith) to adopt the following findings for their decision:

**Section 10.4.1 Purpose:** The stated purpose of the PRD bylaw is to allow an alternative pattern of residential land development that encourages conservation of open space while at the same time providing for a mixture and diversity of housing types in the Town at somewhat greater dwelling unit densities than is otherwise permitted without a significant increase in Town-wide population density. PRD dwelling units should be constructed in appropriate clusters that are harmonious with neighborhood development and will not detract from the ecological and visual qualities of the area. The overall site design should enhance the quality of living for the residents of the development, the immediate neighborhood and the Town generally. The Board is required to give attention to whether the proposed site design, development layout, number, type and design of housing constitute a suitable development for the neighborhood within which it is located.

The Board agreed with the conclusion of the Planning Board that a PRD would be appropriate for this location and that denser development within walking distance of West Concord Village should be encouraged. However, the Board also determined that without modification to the Plans along the lines set forth in the Planning Board's first condition, the PRD as proposed does not:

- provide a mixture and diversity of housing types;
- provide an appropriate cluster of construction;
- propose a site design, development layout, number, or type of housing suitable for the neighborhood;

The Board bases its conclusion on the following findings:

- The project proposes 26 single family dwellings and 4 duplex units, which is only slightly more diverse than a standard subdivision and not sufficiently diverse with the inclusion of more duplex or triplex units as recommended by the Planning Board to warrant an increase in density;

- The site design and development layout of the roadway, utilities and dwellings is not clustered together and requires the complete alteration of the Site, including grading within the proposed public common open space; as such, the design (i) is not consistent with the recommendation of the Planning Board to reduce the total amount of impervious coverage through a combination of smaller unit square footage, incorporation of more one car garages, and inclusion of more duplex or even a triplex unit and (ii) presents the character of a standard subdivision, but with greater density than the underlying zoning would otherwise allow for a standard subdivision in this location

**Section 10.4.4 Board Issuance of Special Permit:** ZBL Section 10.4.4 requires that a special permit be issued “**only** if the Board shall find that the PRD . . . is sufficiently advantageous to the Town to render it appropriate to depart from the requirements of this Bylaw . . . .” (*emphasis supplied*) Although the Board agreed that the Plans could have met this standard if the Applicant had agreed to modify the project along the lines set forth in the Planning Board’s first condition, the Applicant’s failure to do so leaves it short of the mark

ZBL Section 10.4.4 further requires that where the decision of the Board differs from the recommendations of the Planning Board and the Natural Resources Commission, the reasons therefor shall be stated in writing.

Beginning with the Planning Board recommendation, the Board does not consider that its decision differs substantively from the recommendation of the Planning Board. The Planning Board clearly conditioned its recommendation on the Plans being altered in the manner described in condition 1, above. The Applicant explicitly stated that it would not make any modifications to the Plans to satisfy that condition. The Board therefore concludes that the Planning Board has not recommended approval of the Special Permit as presented by the applicant. Moreover, for all of the reasons set forth and referenced in the preceding section, the Board agrees with the Planning Board that its first condition was critical to the Applicant being able to satisfy the requirements of ZBL Section 10.4.4.

The Natural Resources Commission is required to provide a recommendation upon the degree to which the proposed development enhances the protection of environmental qualities and provides a valuable addition to open space resources to the Town, and the recommendation from the Commission to approve the special permit is therefore limited to this topic. The Board takes no issue with the comments of the Natural Resources Commission made pursuant to Section 10.4.3, as to the degree to which the proposed common open space will provide for a public park and 10 to 15 ft. wildlife corridor at the rear of the property. However, pursuant to Section 10.4.1, conservation of open space is but one of many factors the Board is required to consider. The Board’s decision differs from the recommendation of the Natural Resources Commission for all of the reasons set forth and referenced in the preceding section.

**Section 11.6, Special Permits:** Special Permits shall be granted by the Board only upon the written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the public interest, the town and the neighborhood. The Board's vote considered impacts on economic and community needs; traffic flow and safety concerns; adequacy of utilities and other public services; impacts on neighborhood character; impacts on the natural environment; and fiscal impacts, including impacts on Town services, the tax base and employment. For the reasons set forth and referenced above, the Board finds that the negative impacts of the proposed use are substantial and outweigh its beneficial impacts to the public interest, the Town and the neighborhood.

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