

May 28, 2021

Town of Concord Zoning Board

Re: Subdivision Plan #246 "Center & Main" Main Street  
Earth Removal Special Permit

Dear ZBA Members:

This letter presents my request to the Zoning Board: 1) to not approve the Earth Removal for the proposed subdivision (Subdivision Plan #246 "Center & Main" Main Street); and 2) specifically consider the following.

The subdivision plan proposes a significant amount of earth removal (approximately 60,840 cubic yards) and substantial change to the existing, natural topography. The Town of Concord Zoning Bylaws "Section 7 Special Provisions 7.5 Earth Removal" require review by the Board for conditions of removal of more than 1,000 cubic yards (cy). The request by the Applicant exceeds the 1,000cy regulatory limit and will require a finding by the Board that the following three conditions are met (*italics shown here for emphasis*):

- 7.5.3.2 The plans submitted in connection with the removal are *designed to minimize changes in existing contours to enhance attractive land utilization, effective drainage, suitable road gradients, access or other design considerations*;
- 7.5.3.3 Effecting the removal *will not be detrimental or injurious to abutters or the neighborhood, either by the alteration of existing topography or by a substantial change in the use of the streets in the neighborhood*; and
- 7.5.3.1 The volume proposed for removal does not exceed the minimum practical removal required to accomplish the construction, development, or improvement in accordance with the plans therefor.

In addition, the "character of the land" is a design requirement for subdivisions per Section 6 of the Town's Subdivision Rules & Regulations, including the requirements to preserve natural features and similar community assets (6.2.1) and to conform as closely as possible to the original topography of the site (6.7.3).

It seems reasonable to infer by the regulatory standard of 1,000cy that this is generally the "acceptable" amount of earth removal that is consistent with the Town goals and regulations. Special permits are intended for situations where a marginal increase (beyond the 1,000cy limit) is justified. It seems that an application that proposes earth removal 60 times greater than the standard is not consistent with the intent of the regulation. Further, approval of this special permit could establish precedence for a completely different type of subdivision construction than has (apparently) been allowed or occurred in the past in Concord. (Will the Zoning Board identify examples for this amount of earthwork on past projects in Concord, if any, and consider this precedence in its decision?)

In recognition that the proposed subdivision plan proposes an excessive amount of topographic change, which requires excavation and earth removal that is well beyond the regulatory limit of 1,000cy, the required conditions of "attractive land utilization" and "not detrimental to abutters or the neighborhood" (7.5.3.2 and 7.5.3.3) are particularly important and relevant and should be closely considered by the Zoning Board.

While these regulatory criteria may be subject to interpretation, in this case the proposed earth removal and topographic change is so extensive and beyond the regulatory standard of 1,000cy that potential

adverse effects and future precedence warrant both consideration by the Zoning Board and demonstration by the applicant (in particular, if alternative, less impactful plans are feasible).

Concord's "Comprehensive Long-Range Plan" includes statements and goals that are pertinent to the proposed amount of earth removal and topographic change, including:

- Preserve Concord's current combination of land uses and consider design standards that preserve the Town's "New England character" including construction of landscape and topography.
- Avoid development on larger parcels of land that are contiguous with wetlands, flood plains, difficult topography or soils and open space to protect wildlife and natural habitat corridors and avoid hopscotch development that erodes the rural character and landscape of the Town.
- Explore strategies that recognize the value of landscape as well as the built environment.

Consideration of adverse impacts to the Town (and neighborhood) "character, landscape and topography", as it relates to the proposed earth removal and topographic change, seems relevant to a determination of "attractive land utilization" and "not detrimental to abutters or the neighborhood".

As a simple neighborhood "drive around" makes obvious, the character of the Town of Concord and the neighborhood is fundamentally defined by landform and landscape and is intimately linked to the natural topography. The geologic history of the Town (deposition of glacial till and outwash) defined the Town's topography (ground elevation, hills and valleys, slopes, drainage basins drumlins and kettle ponds). Post-glacial meltwaters created wetlands, ponds, rivers and streams that remain today. These natural landforms determined the location of paths that became roads, mills and dams, land boundaries and walls, building locations and building and road grades. While many of these manmade features originated in Concord during colonial and early industrial eras, they remain today. They are fundamentally influential to the current Town and neighborhood character and are the benchmark for defining "attractive land utilization".

Highland Avenue (likely named) along with Main Street was constructed along a topographically high, natural sand and gravel ridge. These landforms show up in some of the earliest maps of West Concord (1830s). As shown on a detailed 1893 print of West Concord, these were some of the earlier roads in the Town and were located and constructed in conformance with the land. The church and school were intentionally situated along this natural topographic high. This natural topographic ridge extends through the proposed project site. Rather than conform to, and maintain, the existing natural topography and landform, the project proposes to completely excavate this landform.

In reviewing the application for the Special Permit, the Zoning Board should consider the project earthwork for what is actually proposed<sup>1</sup>:

- the removal of approximately 8-acres of treed and vegetated area and topsoil;
- the extraction of approximately 60,840cy of material including sand and gravel which (in situ) has resource value to groundwater filtration (and once excavated, has commercial value);
- removal of existing natural landforms for the purpose of creating a large approximately "level" development platform, but to do so requiring wide and deep cuts and fills, alteration of drainage to the existing wetlands, and a fundamental change to the existing natural landform; and

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<sup>1</sup> Civil Plan Set 7-14-20; Subdivision Plan Application Form C

- a deep artificial slope along the project west boundary (an existing hill that is identified on some of the earliest maps of West Concord and which does not appear to have been substantially modified during construction of Center Village).

The request by the Applicant is not for a minor increase above the 1,000cy standard - it is a request to construct a fundamentally different scale of earthwork than is implied by the Zoning Bylaws, that is inconsistent with Town goals and that has no (apparent) precedence based on past residential development in Concord. Beyond this project, approval of this special permit could establish a highly uncertain precedence for the Town going forward.

To my knowledge, no alternative subdivision plan that would conform to the existing natural topography and be in line with the intent of the Town's earth removal regulations has been submitted by the Applicant, although alternatives appear to be feasible. Please confirm.

Based on review of the area topography and building footprints and a visual reconnaissance, it appears that existing development in the project neighborhood (and West Concord in general), including existing subdivisions, to have been constructed to conform to the existing, natural topography.

Thank you for your service on the Board. Your consideration of the points presented above is appreciated.

Dan Stapleton  
20 Conant Street  
West Concord MA

*Please note that this letter is submitted solely in my capacity as a resident and citizen of Concord (living near the proposed project) and as part of the normal Town public hearing and project review process. It does not represent a professional opinion or recommendation, is not intended as such and should not be considered as such by any party.*