



**ZONING BOARD OF APPEALS
TOWN OF CONCORD
Meeting Minutes
March 11, 2021**

Pursuant to notice duly filed with the Town Clerk, a virtual public meeting of the Board of Appeals was held on Thursday, March 11, 2021 at 7:00 p.m. using the Zoom meeting platform.
Meeting ID: 833 9226 6376 Meeting Password: 130163

PRESENT:

Members:

Elizabeth Akehurst-Moore
Ravi Faiia
Theo Kindermans
James Smith

Elizabeth Hughes, Town Planner
Ray Matte, Building Commissioner
Heather Carey, Admin 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:

Concord Museum, for a Special Permit under Sections 4.3.4, 5.4.5 and 11.6 of the Zoning Bylaw to host six outdoor movie events at 53 Cambridge Turnpike (Parcel #0106, 0107, 1018, 0109).

Chair Akehurst-Moore opened the public hearing and reviewed the application. Allison Shilling, Manager of Public Programs with the Concord Museum appeared for the hearing. She explained that the museum is applying to hold four outdoor movie screenings with two rain dates on the front lawn of the museum this upcoming summer. She continued that they are proposing to install a 21ft. movie screen and speakers with generator on the front lawn set up against the little building's west façade. The movies will start at dusk around 8:15 pm and end by 10:30 pm. Once the screening is complete, the company will remove the equipment until the next event. She noted that parking will be monitored by a police detail and will be available in their parking lot and in legal spaces along Lexington Road and Cambridge Turnpike. She noted that they also have an agreement with the Orchard House to use their lot for overflow parking if necessary. Ms. Shilling commented that they are expecting approximately 100 people to set up chairs and blankets on the lawn. She explained that these events are important for the reopening of the museum and noted that they are in partnership with other institutions in town to show films that resonate with our shared missions, which includes the Orchard House, the Robin's House, the Umbrella and a couple of local farms.

Chair Akehurst-Moore asked for questions from the Board. Mr. Faiia asked how the Museum would manage the numbers. Ms. Shilling said they would take advanced reservations. Mr. Smith asked if there had been any issues or complaints with past movie events. Building Commissioner Matte stated that there had not been any issues or complaints. Town Planner Hughes recommended that the Board add conditions that include the police detail, ending time of 10:30 pm, and the advance ticket sales of no more than 125 people.

Chair Akehurst-Moore opened the hearing for public comment and there was none.

Mr. Kindermans moved to approve the application of Concord Museum, for a Special Permit under Sections 4.3.4, 5.4.5 and 11.6 of the Zoning Bylaw to host six outdoor movie events at 53 Cambridge Turnpike (Parcel #0106, 0107, 1018, 0109) with the standard condition for police details, and ending time of 10:30 pm, advance ticket sales of no more than 125 people, with the events being held in July and August 2021. Mr. Smith seconded the motion and all **VOTED** in favor.

Documents Used: none

Michael Wick, for a Special Permit under Section 7.1.3 and 11.6 to reconstruct an existing non-conforming house and detached garage by constructing a 257 sq. ft. addition to expand and connect the garage to the house on a non-conforming lot at 11 Elsinore Street (Parcel #0600).

Chair Akehurst-Moore opened the public hearing and reviewed the application. The architect, Elise Stone appeared for the hearing. She explained that they are proposing to construct a 257 sq. ft. addition that will connect the existing garage to the house. Ms. Stone commented that a Special Permit is required because the lot has non-conforming area, frontage and setbacks.

Chair Akehurst-Moore asked for questions from the Board. Mr. Smith commented that the garage appears to site over the lot line and asked for clarification on what is being proposed. Ms. Stone explained that they are planning to retain the existing foundation and wall along the property line and that the roof overhang that goes over the lot line will be removed. Mr. Smith questioned why they wouldn't try to move the garage to be entirely on the property now before it causes bigger issues in the future. Ms. Stone explained that there is no other place on the lot that they could legally build the garage and the non-conformity would remain the same if they keep the existing foundation and wall. Mr. Smith stated that the garage should be built 100% on the property. Ms. Stone agreed that the applicant would be willing to move the foundation entirely on the lot. Mr. Kindermans asked if two cars could still be parked in the driveway and Ms. Stone confirmed that the driveway has ample parking to meet the requirements.

Chair Akehurst-Moore opened the hearing for public comment and there was none.

Chair Akehurst-Moore stated that the proposed plan reduces the non-conformity and is not more detrimental to the neighborhood than the existing garage. Town Planner Hughes suggested that that the surveyor go out and measure before any work is completed to ensure that the foundation is constructed on the property. Building Commissioner Matte also noted that because they are adding a room, the Board of Health will need to review the property.

Mr. Kindermans moved to approve the application of Michael Wick, for a Special Permit under Section 7.1.3 and 11.6 to reconstruct an existing non-conforming house and detached garage by constructing a 257 sq. ft. addition to expand and connect the garage to the house on a non-conforming lot at 11 Elsinore Street (Parcel #0600) with the condition that dimensions as shown on the surveyor plot plan will be followed moving the foundation wall onto the applicant's property which will make the non-conformity less. Mr. Smith seconded the motion and all **VOTED** in favor.

Documents Used: Site Plans, Elevations, Plans, Photos

Kelly Carlson and Carol Parker, for a Special Permit under Sections 7.1.3 and 11.6 of the Zoning Bylaw to extend a non-conforming deck that is 6.1 ft. from the property line on a non-conforming lot at 58 Eaton Street (Parcel #3345).

Chair Akehurst-Moore opened the public hearing and reviewed the application. Carol Parker appeared for the hearing and explained that they are looking to extend their existing non-conforming deck 7 feet further back and raise the level so that it is the same height of the existing back deck. She stated that they are also looking to extend the shed roof over the back door.

Chair Akehurst-Moore asked for questions from the Board. Mr. Smith asked for clarification that this is not adding to the non-conformity but just extending it straight back from the house. Ms. Parker confirmed that that the new deck maintains the setback and adds 7 more feet of structure at the back.

Chair Akehurst-Moore opened the hearing for public comment and there was none.

Chair Akehurst-Moore commented that this proposal doesn't seem detrimental to the neighborhood and Mr. Kindermans agreed. Mr. Smith noted that raising the deck will make the property more appealing and while it is extending the non-conformity, it is not increasing it.

Mr. Kindermans moved to approve the application of Kelly Carlson and Carol Parker, for a Special Permit under Sections 7.1.3 and 11.6 of the Zoning Bylaw to extend a non-conforming deck that is 6.1 ft. from the property line on a non-conforming lot at 58 Eaton Street (Parcel #3345). Ms. Smith seconded the motion and all **VOTED** in favor.

Documents Used: Site Plan

Kevin and Lynn Duffy, for a Special Permit under Sections 4.2.2.2 and 11.6 of the Zoning Bylaw for a 435 sq. ft. additional dwelling unit that is 5 ft. from the property line at 225 Thoreau Street (Parcel #0185).

Chair Akehurst-Moore opened the public hearing and reviewed the application. Kevin Duffy, the homeowner appeared for the hearing. He explained that they are proposing to add a bathroom and kitchenette to the room over their existing garage that was built in 2006. He commented that they will utilize the existing floor space and are not proposing to add any additional square footage. Mr. Duffy also clarified that the kitchen makes it an additional dwelling unit requiring the Special Permit. Mr. Kindermans asked if there was approval from sewer and Building Commissioner Matte confirmed that sewer permit was approved that afternoon. Mr. Smith questioned the need for the special permit. Building Commissioner Matte stated that a Special Permit is required because the additional dwelling unit doesn't meet the provisions of the Zoning Bylaw which requires the additional dwelling unit to meet the same setbacks of the main dwelling. Mr. Kindermans confirmed that the required parking spaces are available on the lot.

Chair Akehurst-Moore asked for questions from the Board.

Chair Akehurst-Moore opened the hearing for public comment and there was none.

Chair Akehurst-Moore commented that the application is straightforward and is not detrimental to the neighborhood because the garage already exists. Ms. Smith stated that this application fits the intended purpose of the Zoning Bylaw.

Mr. Kindermans moved to approve the application of Kevin and Lynn Duffy, for a Special Permit under Sections 4.2.2.2 and 11.6 of the Zoning Bylaw for a 435 sq. ft. additional dwelling unit that is 5 ft. from the property line at 225 Thoreau Street (Parcel #0185) finding it is not more detrimental to the neighborhood and does not derogate from the intent and purpose of the bylaw. Mr. Smith seconded the motion and all **VOTED** in favor.

Documents Used: Photos, floor plan

Comins & Newbury LLP, or a Special Permit under Sections 7.1.3, 7.1.5 and 11.6 of the Zoning Bylaw to demolish 1,974 sq. ft. of the existing 3,675 sq. ft. dwelling and convert it to an accessory structure and to construct a new 4,585 sq. ft. dwelling that is over 50% larger than the existing gross floor area on a non-conforming lot at 18 Windmill Hill Road (Parcel 1225).

Chair Akehurst-Moore opened the public hearing and reviewed the application. Mr. Smith noted that he missed a meeting and the site visit and asked if Mr. Faiia would vote for this application. Mr. Evarts presented updated elevations showing that they lowered the roof by 3 feet. He explained that he is not happy with the new proportions of the building and asked if he could be permitted to build a house within specific parameters set by the Board. He noted that project has received support from the neighbors and the Cemetery Committee was happy to receive funding to plant trees and for them to provide irrigation until they get established.

Chair Akehurst-Moore asked for questions from the Board. Mr. Kindermans noted that he was happy about giving parameters but wasn't sure how they would do that. The Town Planner explained that they could approve the plan but add a condition that would allow modifications to be approved by the Building Commissioner and Town Planner so that they are found in substantial conformance of the approved plan and materials. Mr. Smith asked the Applicant if he was willing to stick within the ground footprint, height, and construction materials. Town Planner Hughes clarified that the condition would allow for architectural elements to change if they are in substantial conformance with the approved plan. Mr. Evarts agreed that these parameters were acceptable.

Chair Akehurst-Moore opened the hearing for public comment.

Peter Lee of 140 Walden Street commented that the Board should reject the Special Permit because the public interest includes the stakeholders of Sleepy Hollow Cemetery and the proposed project is a detriment to the cemetery.

Nancy Frasella-Lee of 140 Walden Street spoke against the project noting that this is going to make a permanent mark and impact on 200-year-old property.

Mr. Kindermans asked for clarification on where the detriment and benefits lie. Mr. Faiia commented that the Bylaw talks about the benefit to the neighborhood and the public interest. He said that one citizen can't speak on behalf of the public interest and that many neighbors had spoken in favor of the project including the Cemetery Commission who is the most direct representative of the cemetery. Mr. Faiia noted that a by right project on the site could have a greater negative impact so working with the Applicant on the screening and a reduction in height is a benefit. Chair Akehurst-Moore agreed that they should be cognizant of what can be done on this property by right and that working together to reduce the impact is a benefit to the Town. Mr. Kindermans commented that this home will have a visual impact from the cemetery but that doesn't have to be a bad thing noting that the second story of a less appealing structure will be removed. Chair Akehurst-Moore stated that she would be comfortable with a condition for design parameters to the house and asked the Town Planner for suggestions on wording the condition. Town Planner Hughes stated that the condition could say that the proposed project shall be in substantial conformance with the approved plans and the applicant shall be permitted to make minor modifications to architectural elements such as the addition of second floor window dormers and modifications to window placement upon the review and approval by the Building Commissioner and the Town Planner. Chair Akehurst-Moore commented that the plantings on the cemetery are not within the Boards jurisdiction but acknowledged that the Applicant was working with the Cemetery Commission. Town Planner Hughes confirmed that the Board cannot make a condition that requires an Applicant to make off-site improvements but they can add to

their findings that the Applicant has indicated that he will be assisting the town with plantings and irrigation on town land. Mr. Kindermans commented that the proposed south elevation is shingled and requested that any proposed changes include the cedar shingles because this is the side most visible to the cemetery. Mr. Evarts commented that he was willing to accept that condition.

Mr. Kindermans moved to approve the application of Comins & Newbury LLP, or a Special Permit under Sections 7.1.3, 7.1.5 and 11.6 of the Zoning Bylaw to demolish 1,974 sq. ft. of the existing 3,675 sq. ft. dwelling and convert it to an accessory structure and to construct a new 4,585 sq. ft. dwelling that is over 50% larger than the existing gross floor area on a non-conforming lot at 18 Windmill Hill Road (Parcel 1225) subject to the conditions and finding already stated and subject to engineering conditions including the completion of the berm before May 1, 2021, and the south elevation shall remain shingled. Mr. Faiia seconded the motion and all **VOTED** in favor.

Documents Used: Revised Elevations

Concord Country Club, for a Special Permit under Sections 7.5 and 11.6 of the Zoning Bylaw for the construction of an irrigation pond requiring the removal of 1,200 cubic yards of soil at 246 Old Road to Nine Acre Corner (Parcel #3079).

Chair Akehurst-Moore opened the public hearing and reviewed the application. Paul Kirchner, Engineer with Stamski and McNary appeared for the hearing. He gave a brief overview of the project to construct an irrigation pond as part of a larger project to improve their overall irrigate irrigation system. He explained that since last meeting, the had an expert on groundwater hydrology present a report to the Public Works Commission to show that the project will not have a negative impact on the Town's water supply. Mr. Kirchner explained that the Public Works Commission asked that a monitoring well be installed to know how the country clubs well is impacting the Town's well. The Commission provided additional comments that have since been addressed. Mr. Kirchner reviewed the impacts of the irrigation pond as it relates to the Special Permit request noting that there are no economic impacts and that the pond may have a positive impact because there will be a monitoring well in place which would make them aware of a potential problem. He explained that the irrigation pond is expected to make the system more efficient because the golf course can be irrigated more quickly and reduce use of the wells. He commented that there would be no changes to traffic after the project is over and they will use their own well so the water supply usage will not increase. Mr. Kirchner noted that the land clearing created a slight encroachment on the riverfront but that the impacts to the natural environment had been mitigated last summer and the irrigation pond will increase efficiency and may ultimately benefit the towns water supply. Mr. Kirchner commented that a lot of earth work and tree clearing is required but that they had revised the plan and will not remove any more soil from the site.

Chair Akehurst-Moore asked whether the issues with the Natural Resources Commission had been resolved. Town Planner Hughes confirmed that they have not received an update since October or a final letter from the Natural Resources Commission. She reviewed the NRC letter requesting a third-party review which was handled through the Water and Sewer Division and a plan to restore the cleared areas to its former woodland condition should be submitted for review and approval.

Mr. Kirchner explained that approximately 4 acres of trees were cleared and that they are not proposing to replace them mainly because the area will include the irrigation pond and an infiltration basin as part of the stormwater management system. Also, planting trees in a berm would compromise the integrity of the irrigation pond. Chair Akehurst-Moore commented that the project has made a huge impact and is incredibly visible from the abutters' properties and

restoration and screening will be important. Mr. Faiia asked for information on other locations that were considered for the pond. Mr. Kirchner gave an overview of the other proposed locations and the reason that they were not feasible. Mr. Kindermans asked how long the golf course had been in operation and when they decided that the well was deficient. Mr. Cincotta stated that the course had been in operations since the 1920's and that they learned of the deficiency many years ago. Mr. Kindermans asked if they are upgrading other components. Mr. Cincotta stated that they have been replacing underground pipes and that the sprinkler heads will be replaced and will have the ability to better control and reduce water capacity. Mr. Smith admonished the club for their original violation and initial plan to remove additional earth from the site. He commented that the current plan is not thoughtful in terms of mitigating the impact from the tree removal. Mr. Smith stated that he was feeling incapable of understanding how the entire plan works because the Applicant had not provided enough information. He commented that this project has a big impact on the Community and wasn't sure how this would be a benefit to the Town.

Chair Akehurst-Moore stated that she didn't think this project could meet the requirements of the Zoning Bylaw. Mr. Kindermans commented that the Applicant has not been able to tell the Board that the irrigation pond will not impact the Town water supply and that finding out there is an issue because of the monitoring well will be too late. Town Planner Hughes recommended that the Applicants hydrologist and the Water and Sewer Division meet with the Board to discuss the impacts from the project. Chair Akehurst-Moore suggested that the Board visit the site to get a better understanding of the impacts. Peter Rappoccio, the golf course superintendent gave an overview of their usage reporting and the irrigation system evaluation that was completed in 2017 showing the need to increase efficiency and reduce energy and water usage. Mr. Kindermans asked how the wells are currently monitored. Mr. Rappoccio explained that they know the static level and the bottom of their two wells and as the summer goes on, they can see the drawdown start to drop and adjust as needed.

Chair Akehurst-Moore opened the hearing for public comment.

Sharon McGregor of 70 Williams Road spoke against the project.

Mr. Faiia questioned whether this was just an earth removal permit or whether there was also a use permit. Town Planner Hughes stated that it is not just an earth removal permit and that any recreational use in a residential area requires a Special Permit including any expansion of the recreational facility or private club. The Board reviewed the provisions of the Special Permit Bylaw and determined that a site visit would be necessary and requested Town Staff accompany them on the site visit to answer questions. Chair Akehurst-Moore commented that she was frustrated that the Board was being forced to piece the application together and wondered if there could be a narrative from the experts.

Mr. Smith moved to continue the application of Concord Country Club, for a Special Permit under Sections 7.5 and 11.6 of the Zoning Bylaw for the construction of an irrigation pond requiring the removal of 1,200 cubic yards of soil at 246 Old Road to Nine Acre Corner (Parcel #3079) to the April 8, 2021 meeting at 7:25 pm. Mr. Kindermans seconded the motion and all VOTED in favor.

Documents Used: Aerial view

Administrative Business

Adoption of MGL Ch.44, Section 53G outside Consultants

Town Planner Hughes explained that Massachusetts General Law allows Boards to hire outside consultant to review projects of which the Board of Appeals has adopted. She explained that they found the adoptions that they had done back in 2002 but they were more specific for Comprehensive Permits or Personal Wireless Facilities and Staff agreed that it would be best to have a doctrine of rules and regulations that were more general to include Special Permits and Variances.

Mr. Smith moved to adopt the provision of MGL Ch.44, Section 53G to include Special Permits and Variances. Mr. Kindermans seconded the motion and all VOTED in favor.

6X Winthrop Street: Junction Village Assisted Living Special Permit Extension

Town Planner Hughes explained that the Applicant is in the process of getting final funding from the State of MA and will be moving forward with conditions of approval. She explained that this type of project usually takes about 3 years to get funding and the Applicant needs one more year to get to that point.

Mr. Smith moved to approve the Special Permit extension for one year for 6X Winthrop Street. Mr. Kindermans seconded the motion and all VOTED in favor.

Approval of Minutes for January 14, 2021

Mr. Kindermans moved to accept the minutes for the January 14, 2021 meeting as amended. Mr. Smith seconded the motion and all VOTED in favor.

Approval of Minutes for January 21, 2021

Mr. Kindermans moved to accept the minutes for the January 21, 2021 site visit as amended. Mr. Smith seconded the motion and all VOTED in favor.

Approval of Minutes for February 11, 2021

Mr. Kindermans moved to accept the minutes for the February 11, 2021 meeting as amended. Mr. Smith seconded the motion and all VOTED in favor.

There being no further business, the meeting was adjourned at 10:29 p.m.

Respectfully submitted,

Theo Kindermans, Clerk