



**ZONING BOARD OF APPEALS  
TOWN OF CONCORD  
Meeting Minutes  
August 12, 2021**

Pursuant to notice duly filed with the Town Clerk, a virtual public meeting of the Board of Appeals was held on Thursday, August 12, 2021, at 7:00 p.m. using the Zoom meeting platform.

Meeting ID: 850 4184 9348 Meeting Password: 672585

**PRESENT:**

Members:

Elizabeth Akehurst-Moore  
Ravi Faiia  
Theo Kindermans  
James Smith, Chair  
Thomas Swaim

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

Chair Smith called the meeting to order at 7:00 p.m.

Voting Members: Elizabeth Akehurst-Moore, Theo Kindermans, James Smith

**Public Hearings:**

***Cutting Edge Homes, Inc., for a Special Permit under Sections 7.1.3 and 11.6 of the Zoning Bylaw to construct a 151 sq. ft. addition on the existing 4,519 sq. ft. dwelling on a non-conforming house and lot at 51 Coolidge Road (Parcel #3955).***

Chair Smith opened the public hearing and reviewed the application. Sean Cutting with Cutting Edge Homes, Inc. appeared for the hearing. He clarified that the addition is approximately 150 sq. ft. and not the amount indicated in the agenda description. Mr. Cutting stated that they are proposing to construct a single-story garage bump out that will require an extension to the existing non-conformity but will add some architectural elements to the house to break down its monolithic appearance. He confirmed that there will not be any changes to the parking and that they received approval from the Natural Resources Commission because they are inside the 100 ft. wetland buffer. Ms. Akehurst-Moore questioned the discrepancy of the square footage of the addition and Building Commissioner Matte confirmed that the addition would only be approximately 150 sq. ft.

Chair Smith opened the hearing for public comment.

Pamela Dritt of 13 Concord Green, Unit 4 asked that the Board require all Special Permit applicants to follow the new environmental regulations passed at Town Meeting.

Chair Smith noted that this is a very minor change and in a part of the house that has conforming setbacks.

Ms. Akehurst-Moore moved to approve the application of Cutting Edge Homes, Inc., for a Special Permit under Sections 7.1.3 and 11.6 of the Zoning Bylaw to construct a 151 sq. ft. addition on the existing 4,519 sq. ft. dwelling on a non-conforming house and lot at 51 Coolidge Road (Parcel #3955) finding that the alteration is not more detrimental than the existing non-conforming structure. Mr. Kindermans seconded the motion. The motion passed (3-0) by a roll call vote.

Documents Used: Floor plans, Elevations

***Bohdan Lysyj, for a Special Permit under Sections 7.2 and 11.6 of the Zoning Bylaw to construct a pool within the Flood Plain Conservancy District at 245 Park Lane (Parcel #1820).***

Chair Smith opened the public hearing and reviewed the application. Ian Ainslie, Engineer with Meisner Brem Corporation appeared for the hearing and explained that the homeowner is proposing to construct a pool in their back yard. He noted that most of the back yard falls within the flood plain conservancy district but that they have located as much of the pool and landscaping as possible to reduce the amount of floodplain work needed. Mr. Ainslie also noted that they have received recommendation for approval from the Planning Board and an Order of Conditions from the Natural Resources Commission. Town Planner Hughes confirmed that the proposed plan exceeds the one and a half to one compensatory storage required in the floodplain.

Chair Smith opened the hearing for public comment and there was none.

Chair Smith stated that this project is straightforward and meets the standards of the Bylaw.

Mr. Kindermans moved to approve the application of Bohdan Lysyj, for a Special Permit under Sections 7.2 and 11.6 of the Zoning Bylaw to construct a pool within the Flood Plain Conservancy District at 245 Park Lane (Parcel #1820). Ms. Akehurst-Moore seconded the motion. The motion passed (3-0) by a roll call vote.

Documents Used: Site Plan

***Greg Adams, 96 Conant St LLC, for a Special Permit under Sections 7.1.3, 7.1.5, and 11.6 of the Zoning Bylaw to demolish the existing 1,058 sq. ft. dwelling and construct a new 2,873 sq. ft. dwelling that is over 50% larger than the existing gross floor area on a non-conforming lot at 96 Conant Street (Parcel #2261).***

Chair Smith opened the public hearing and reviewed the application. Elise Stone, Architect for the project appeared for the hearing and explained that this property is among a group of houses being sold that have been rental units for many years. Ms. Stone noted that the lot is in Residence C Zoning District and is non-conforming with only 6,976 sq. ft. of land. She explained that they are proposing to demolish the existing house and construct a new single-family dwelling with a one car garage which is over 50% larger than the existing house. She noted that the new dwelling does not go over the allowed floor area ratio.

Chair Smith opened the hearing for public comment.

Cynthia Katz of 20 Conant Street gave an overview of the history of houses on Conant Street and spoke against the project.

Janet Miller of 1647 Main Street spoke against the project.

Pamelan Dritt of 13 Concord Green, Unit 4, asked if this proposed project is all electric. Chair Smith asked for clarification from the Town Planner and she confirmed that the Town passed a warrant article to direct the Select Board to file a home rule petition with the legislature to allow the Town to go forward to adopt a Bylaw but that process has not taken place yet. She stated that

there is a strong sustainability movement within the Community but currently the Board does not have the authority to require an applicant to build a net zero home. Chair Smith reiterated that the Board could request all electric but could not require it.

Tanya Gailus of 62 Prescott Road agreed with Ms. Katz and Ms. Dritt and asked the Board to apply the existing bylaws that have been approved by the Attorney General more meticulously, in general.

The Board reviewed a map showing which lots were conforming and non-conforming in the immediate area.

Ms. Akehurst-Moore asked if this house is subject to the Demolition Delay Bylaw. Building Commissioner Matte confirmed that a review had been completed. Ms. Akehurst-Moore noted that the Historical Commission did not find any historical value and agreed that the house could be demolished. The Board discussed other dwellings on the street and how they relate to the proposed dwelling. Chair Smith explained that this house meets the Floor Area Ratio but because it is non-conforming triggers the bylaw restricting the size increase to 50% of the original house. He also noted that the Board is reviewing the standard of whether the new house fits the character of the neighborhood and asked whether the Board could decide without a site visit. Ms. Akehurst-Moore stated that it was hard to get the big picture by looking at a map and liked the idea of a site visit. Chair Smith asked if they could stake out the house for the site visit.

Mr. Kindermans moved to continue the application of Greg Adams, 96 Conant St LLC, for a Special Permit under Sections 7.1.3, 7.1.5, and 11.6 of the Zoning Bylaw to demolish the existing 1,058 sq. ft. dwelling and construct a new 2,873 sq. ft. dwelling that is over 50% larger than the existing gross floor area on a non-conforming lot at 96 Conant Street (Parcel #2261) to the September 9, 2021 at 7:00pm. Ms. Akehurst-Moore seconded the motion. The motion passed (3-0) by a roll call vote.

Documents Used: Plans and Elevations, GIS map with non-conforming layer

### **Administrative Business**

#### ***13B Commonwealth Ave – Architectural Elevations Minor Modification***

Patrick Cleary, one of the owners and original developer of Brookside Square in West Concord met with the Board. He stated that they had received a Special Permit for a 3-story mixed use building that had been designed using the old Association Hall as inspiration. Mr. Cleary explained that they hired a new architect who tweaked the original design, and this revised plan has received support from the West Concord Advisory Committee. He noted that there are no changes to the site plan and that they are only proposing a façade redesign. Town Planner Hughes explained that the Special Permit approval called out specific design plans and that the revisions were too great of a change for administrative approval by the Building Commissioner and herself. Mr. Kindermans agreed that the proposed changes are more than just a design tweak but is a vast improvement over what was originally approved.

Pamela Dritt of 13 Concord Green, Unit 4, asked whether the builder was planning to install all electric utilities. Mr. Cleary confirmed that the residential portion of the building would be completed using all electric.

Cynthia Katz of 20 Conant Street asked whether any of the eight units would be affordable housing. Town Planner Hughes noted that the Special Permit had already been issued and included two affordable units.

Ms. Akehurst-Moore moved to approve the minor modification to the Special Permit of 13B Commonwealth Avenue LLC, under Sections 4.2.3.3, 4.2.3.4, 7.7.3.4, 11.6, and 11.8 of the Zoning Bylaw for a waiver to open space and height requirements for a combined business residence and parking layout to allow for tandem parking at 13B Commonwealth Avenue/50 Beharrell Street (Parcels #2184-1-2, 2185-50). Mr. Kindermans seconded the motion. The motion passed (3-0) by a roll call vote.

### **Public Hearings:**

#### ***Bentley Building Corp, for a Special Permit under Sections 4.2.2.1 and 11.6 of the Zoning Bylaw for a two-family dwelling and two detached 1-car garages at 116 Conant Street (Parcel #2258-1).***

Chair Smith opened the public hearing and reviewed the application. Applicants Jim Kelly and Mark White appeared for the hearing with Architect Elise Stone. Mr. Kelly explained that they are proposing to build a townhouse style two-family residence. The existing home to be razed is about 1,620 sq. ft. and the proposed two-family will have 3,602 sq. ft. of combined living space with 660 sq. ft. divided among two single car garages. The new structure will meet all dimensional regulations and the square footage is under the floor area ratio. Mr. Kelly noted that the proposal to provide moderately sized housing is directly in keeping with the 2018 Envision Concord Comprehensive Long Range Plan and that providing two housing units is preferable to a single 4,000 sq. ft. home. He also commented that this proposal is an excellent option for smaller households and consistent with smart growth planning strategies for greater density close to transit and other nearby resources such as shopping and the local playground. Mr. Kelly also noted that they are targeting electric as the energy source for heat in this project. Mr. White noted that this Bylaw was overwhelmingly passed at Town Meeting and the project is the direction the residents are telling builders to go. Chair Smith agreed that the Applicant is attempting to follow the Bylaws and other desires from the community.

Chair Smith opened the hearing for public comment and there was none.

Chari Smith asked if there were any questions from the Board and asked whether they Board wanted to look at this one in person. Ms. Akehurst-Moore stated that the two-family house is a benefit to the Town. Mr. Kindermans noted that they could build this same size structure for a single-family house and didn't think that a site visit was necessary.

Ms. Akehurst-Moore moved to approve the application of Bentley Building Corp, for a Special Permit under Sections 4.2.2.1 and 11.6 of the Zoning Bylaw for a two-family dwelling and two detached 1-car garages at 116 Conant Street (Parcel #2258-1). Mr. Kindermans seconded the motion. The motion passed (3-0) by a roll call vote.

Documents Used: Site plan, plans and elevations, existing photos

#### ***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 Smith opened the public hearing and reviewed the application explaining that the project began with a violation for failure to get an earth removal permit that was needed at the time to

construct a retaining pond for irrigation of the golf course. He noted that the pond has been reviewed by Town Staff and now meets the requirements of the groundwater conservancy district. He also noted that there have been discussions with Town Staff who are working with the Country Club on a process and agreement of the issues that still need to be worked out. Chair Smith commented that there was substantial discussion with the neighbors and Natural Resources about the screening that would be put in place. He explained that the Board would now have a discussion about the Special Permit.

Chair Smith asked for questions from the Board. Ms. Akehurst-Moore agreed the draft decision incorporated the findings from the Board. She questioned the statement that a Special Permit would not have been needed with the current redesign. Town Planner Hughes confirmed that the cut and fill would be balanced on site. She also noted a change from the Natural Resources Director changing the dates for mowing to November 1<sup>st</sup> to April 15<sup>th</sup>. Mr. Faiia requested that the monitoring well be added as a benefit under Section 11.6. and Chair Smith agreed that was a good change. Mr. Faiia asked whether there was a bond required to ensure the landscaping is completed. Town Planner Hughes explained that a bond would only be required if the weather became a factor, and they couldn't complete the landscaping before winter. Chair Smith commented that the draft provides detail and discussion of the findings and asked if anyone wanted to make a motion.

Mr. Kindermans moved to approve 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) and adopting the draft decision with minor edits. Ms. Akehurst-Moore seconded the motion. The motion passed (3-0) by a roll call vote.

Documents Used: Draft Decision

***Symes Development & Permitting, LLC, for a Special Permit under Sections 7.5 and 11.6 of the Zoning Bylaw for the construction of a Definitive Subdivision requiring the removal of 60,690c.y. of earth at 146B & 1442 Main Street, 110 & 11B Highland Street (Parcels #2407, 2408, 2409, 2409-1).***

Chair Smith opened the public hearing and reviewed the application. Town Planner Hughes explained that the public hearing had been closed at the previous meeting and Mina Makarious, Town Counsel was present for deliberation of the Boards decision. Chair Smith gave a summary explaining that the Applicant has an approved subdivision by the Planning Board under the subdivision control law which goes to the issue of laying out of the street, utilities, and lots and is not contingent upon the approval of the earth removal. Chair Smith noted the three findings the Board must make including that 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, 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, and 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. He reminded the Board that their only focus should be on the earth removal application and asked Town Counsel if he had any comments to add before they start. Attorney Makarious approved of the Chair's overview and had nothing further to add.

Chair Smith stated that he has struggled with the initial peer review indicating that the amount of earth that was suggested to be removed was not the minimum amount and then later agreeing that based upon the heights of the proposed houses that the minimum amount of removal had been

accomplished. He remarked that a subdivision approval lays out the street, utilities, and lots and did not agree with the peer review that there isn't more or less earth removal that could have occurred in this particular case. Mr. Swaim asked whether there might be a basis to argue about the plan and whether the Board had any authority to do so. Attorney Makarious explained that the crux of the dispute between the peer reviewer and the applicant was whether the roadway could be altered to minimize the amount of soil being removed and applicant stated that they could not change the roadways because that would cause them to have to change the height of buildings. He noted that it is not clear yet what kind of buildings will be constructed and the subdivision control law doesn't restrict height so in this case, the Board could reasonably find that the earth removal is not minimized. Mr. Faiia asked whether the layout of the road that's approved in a subdivision plan includes the gradient. Town Planner Hughes explained that the Planning Board was very clear that they were not approving the earth removal and that the plan follows the subdivision rules and regulations without the request of waivers. Mr. Kindermans clarified that the applicant provided a plan showing the proposed topography with the approved subdivision roadway. Chair Smith asked for clarification from Town Counsel on one section of the Bylaw. Attorney Makarious stated that with respect to the contours, the Board must decide whether the design of the project is meeting the standard that it is minimizing changes to the existing contours with the purpose of enhancing the land. Mr. Kindermans commented that the plans that were submitted did not seem to be designed with the goal to minimize changes and contours and enhance the tract of land. Chair Smith agreed and noted that there has been significant discussion that these plans are to the detriment of the land utilization and not enough attention has been paid to justify it. Ms. Akehurst-Moore also agreed noting the applicant's response to the peer review is clear what considerations were considered. Mr. Swaim asked if it was within the Boards authority to say you can't take away that kind of cubic yardage because it will indeed change the contours which will in turn require the applicant to change their plans. Attorney Makarious noted that this particular provision as a separate approval is important and does not require the Board to interpret it to give the maximum buildable size.

Chair Smith commented that the next section deals with whether the removal will be detrimental or injurious to the neighborhood. He noted that there was a lot of public comment that seemed to fall into two categories, one being short term removal activities and the other being long term impact with respect to noise and pollution. Mr. Faiia noted that these impacts would also be pertinent to the analysis under Section 11.6 which also deals with environmental impact and neighborhood character. Chair Smith agreed. Mr. Kindermans noted that the abutters are the best judge of character because they live in the neighborhood, and they have been very clear on the negative impacts of this project. Chair Smith commented that he lives behind a large berm that protects his home from traffic noise and found that the comments from the neighborhood made an important point regarding the protective benefits of the earth that separates them from the railroad track.

The Board asked if Town Staff and Town Counsel could draft a formal decision to review and vote on at the next meeting.

The Board reviewed the provisions of the Special Permit and found that traffic flow and safety concerns would be directly impacted by the procedures for earth removal and the neighborhood character would be impacted by the change in topography. Town Planner Hughes commented that the Engineering Division has noted potential impacts to Main Street with the amount of truck traffic on the physical roadway. Chair Smith observed that there is substantial concern over the proposed plan and the Board is not in a position where they must grant this earth removal because there is an approved subdivision plan. He commented that there are a lot of statements in

the record and evidence indicating that the Applicant has not demonstrated a plan for earth removal that is designed to minimize changes to the existing contours and is not detrimental or injurious to the neighborhood. Chair Smith stated that there are short term issues related to the amount of earth to be removed and its impact on Main Street, the impact on the environment of the neighborhood during and after the removal process, and the long-term impact where the contours of this land are important in providing a certain character to the neighborhood, and its relationship to the railroad. He recognized that a landowner has a right to build on the property and make economic use of the property but that the Bylaws provide the Town with standards that must be met for that purpose and Applicants does not seem to have met those standards. Mr. Faiia agreed and noted that the adverse impacts under Sections 11.6 weigh more heavily than the benefits.

Ms. Akehurst-Moved moved to continue the application of Symes Development & Permitting, LLC, for a Special Permit under Sections 7.5 and 11.6 of the Zoning Bylaw for the construction of a Definitive Subdivision requiring the removal of 60,690c.y. of earth at 146B & 1442 Main Street, 110 & 11B Highland Street (Parcels #2407, 2408, 2409, 2409-1) to the September 9<sup>th</sup> meeting at 7:05pm. Mr. Kindermans seconded the motion. The motion passed (3-0) by a roll call vote.

Documents Used: None

### **Administrative Business**

#### ***Approval of Minutes for June 10, 2021***

Ms. Akehurst-Moore moved to accept the minutes for the June 10, 2021, meeting as amended. Mr. Kindermans seconded the motion. The motion passed (3-0) by a roll call vote.

There being no further business, the meeting was adjourned at 9:39 p.m.

Respectfully submitted,

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Theo Kindermans, Clerk