

**TOWN OF CONCORD**

**BOARD OF APPEALS**

**TOWN HOUSE**

Please take notice that in the matter of the APPLICATION OF HABITAT FOR HUMANITY OF GREATER LOWELL for a Special Permit under Sections 10 and 11.6 of the Zoning Bylaw to construct a 2-unit Planned Residential Development at 930 Main Street, Concord, Massachusetts (Parcel #3818), Concord, Massachusetts, the Board of Appeals has rendered a decision GRANTING said application, 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.



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

10/20/2020

DATE

## TOWN OF CONCORD

### BOARD OF APPEALS

**DECISION** of the Zoning Board of Appeals (the Board) on the APPLICATION OF APPLICATION OF HABITAT FOR HUMANITY OF GREATER LOWELL for a Special Permit under Sections 10 and 11.6 of the Zoning Bylaw to construct a 2-unit Planned Residential Development at 930 Main Street, Concord, Massachusetts (Parcel #3818).

This decision is in response to an application filed on September 8, 2020. 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 September 24, 2020 and October 1, 2020, posted and mailed to the Applicant, abutters and other parties of interest as required by law, the public hearing was conducted on October 8, 2020.

After due consideration of the application, the record, a presentation by the Applicant, and based upon review of the issues set forth herein, the Board voted 3 to 0 (Akehurst-Moore, Kindermans, Smith) to **GRANT** the Special Permit with conditions based on the following:

The proposed two-family unit Planned Residential Development project consists of the renovation of the existing single family home into a duplex, with the lower level as a 2 bedroom unit (1,376 s.f.) and the upper level as a 3 bedroom unit (1,556 s.f.). Each unit will have one bathroom. The detached garage will be converted into storage for both units and connected to the existing dwelling by a deck and covered porch. The existing deck across the entire rear of the dwelling will be removed and rebuilt significantly smaller.

The existing garage is a pre-existing nonconforming structure and extends 8.4 inches over the lot line into the adjacent State land. The Applicant notes that the garage has a foundation and would be very difficult to move. The State has agreed to issue a permanent easement for this encroachment.

The Site currently has two parking spaces; one space inside the garage and one space outside in front. The Applicant is proposing to create a circular driveway due to the difficulty of pulling out of the Site on to Main Street in this location. There will be a total of three parking spaces provided for the two units.

The dwelling units will be sold to families who qualify under DHCD guidelines, with a goal of at least one of the units to be local preference. The families will be targeted at <65% Area Median Income. There will be minimal disruption to the current foot print of the property, except some vegetation in order to run a sewer line because the house is currently on a cesspool and to create a circular driveway and additional parking. The Applicant is proposing to abandon the existing oil heat and install all electric heat.

The Community Safety Officer did not have any significant issues or concerns with the proposed project and supports the use of a circular driveway in this location. He notes that the Applicant will need to coordinate carefully the amount of construction activity at any one time since parking on Main Street in this location is prohibited.

The Assistant Fire Chief commented that each unit will be required to have a hard wired-battery back-up Smoke/CO detection system. Additionally, he is in support of the proposed circular driveway so vehicles do not have to back out onto Main Street.

In an October 5, 2020 memo, the Engineering Staff did not raise any significant issues or concerns and recommended various conditions regarding erosion control measures, compliance with CPW construction and design standards and the requirement for CPW permits.

In an October 1, 2020 memo, the Water-Sewer Engineer notes that only one sewer service connection to the parcel is allowed, only one water service connection is allowed unless the applicant provides sufficient information to the Water/Sewer Division to determine that there is no interconnection between the internal plumbing of the two dwellings, and that the existing water service at this property is more than 50 years in age, and as such must be replaced to the water main. The Water-Sewer Engineer has recommended five conditions to address these comments.

The CMLP Engineer did not have any issues or concerns with the proposed project and recommends standard conditions of approval.

The Building Commissioner notes that because both of these units will be deed restricted as affordable units, the parking requirement is one and one-half space per dwelling for a total of three required spaces.

The Public Health Director notes that the Applicant will be required to submit a Form S for the connections to the Town Sewer and pay a Sewer Improvement fee.

The Natural Resources Director notes that given the limited scope of the proposed project within wetlands jurisdiction, she does not anticipate any insurmountable issues for approving this project under the Wetland Protection Act or Concord Wetlands Bylaw. She recommends that prior to the issuance of a Building Permit, the Applicant file a Notice of Intent for review and approval by the Natural Resources Commission for the work proposed within 100 feet of wetlands.

The Town Planner did not have any issues or concerns with the proposed project and notes that a Tree Protection Permit will be required for the removal of any tree within the front yard setback for the construction of the driveway and parking spaces.

In reaching its decision, the Board reviewed the application, a written recommendation from the Planning Board dated October 5, 2020, supporting material, and plans, and made the following analysis and findings pursuant to Section 10 and 11.6 of the Zoning Bylaws in agreement with the Planning Board:

### **Section 10 Planned Residential Development**

*10.1 Purpose - The Planned Residential Development allows by special permit from the Board [of Appeals] an alternative pattern of residential land development. It is intended to encourage the 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. In a 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 and amenities should enhance the quality of living for the residents of the development, the immediate neighborhood and the Town generally. Attention, however, shall be given by the Board as 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 to be located.*

The Board believes that the proposed conversion of the single family dwelling into a two-family is harmonious with neighborhood development and will not detract from the ecological and visual qualities of the area and is a suitable development for the neighborhood because it only requires minimal alterations to the proposed structure while providing two affordable units and will not significantly increase the Town-wide population. The Board did discuss with the Applicant the potential impact to the abutting property due to vehicle headlights from the two new parking spaces shining towards the existing dwelling. The Applicant will be required to screen the parking spaces prior to the issuance of a certificate of occupancy to address this potential impact.

## **Zoning Bylaw Section 10.2 Standards**

10.2.6 Access to the Tract: *Access to the tract shall be provided from an existing public or private way and shall be through the existing frontage on such public or private way.*

Access to the Site is proposed through the existing frontage on an existing public way; Main Street.

10.2.7 Height: *The maximum permitted height of any structure within a PRD shall be 35 ft.*

The Applicant is not altering the height of the existing structure, which is 24 feet.

10.3.2 Special Provisions for Non-profit entity: *Except as provided for in subsection 10.2.6 and 10.2.7 above, the limitations contained in subsection 10.2 shall not apply to a PRD application submitted by a Non-profit entity in which seventy-five percent (75%) of the units will be of the type described in subsection 10.2.3.1 and 10.2.3.2 provided that the Board shall find that the proposed design is generally in keeping with the purposes of this Bylaw.*

Habitat for Humanity of Greater Lowell is a non-profit entity. Both units (100%) will be deed restricted at 65% AMI or below. The Board determined that the conversion of the existing single family dwelling into a two-family dwelling is in keeping with the purpose of the PRD Bylaw.

10.4.1.1 Development Statement - A written statement meeting the requirements of a Site Evaluation statement under the Subdivision Rules and Regulations by the Planning Board, as applicable:

Given the limited scope of the proposed project, the Applicant has not provided a Site Evaluation statement and the Planning Board agreed that a Site Evaluation statement is not applicable, but provided an opinion on each of the criteria.

*a) Impact of the project upon surface and groundwater quality and level;*

The CPW Engineering Staff did not raise any issues or concerns with the proposed project as it relates to impacts upon surface and groundwater quality and level.

*b) Effects upon important wildlife habitats, outstanding botanical features, scenic or historic sites or buildings;*

The Planning Board does not believe the conversion of the existing structure and proposed addition connecting the two-family dwelling to the converted garage will have an effect upon important wildlife habitats, outstanding botanical features, scenic or historic sites or buildings. The Natural Resources Director notes that given the limited scope of the proposed project within wetlands jurisdiction, she does not anticipate any insurmountable issues for approving this project under the Wetland Protection Act or Concord Wetlands Bylaw.

*c) Capability of soils, vegetative cover, and proposed erosion control measures to support proposed development without erosion, silting or other instability;*

The CPW Engineering Staff did not raise any significant issues or concerns with the proposed project as it relates to capability of soils and vegetative cover and recommends a tracking pad in the secondary driveway access path and various measures for erosion control.

*d) Estimated increase of peak run-off caused by altered surface conditions, and methods to be used to return water to the ground;*

The proposed project does not alter the surface conditions in a manner that will significantly change the peak run-off from the property. The CPW Engineering Staff did not raise any significant issues or concerns with the proposed project as it relates to run-off.

*e) Description of proposed alterations of wetlands or flood plain areas;*

The Applicant is not proposing any alterations of wetlands or floodplain areas. However, the Natural Resources Director notes that the Applicant will be required to file a Notice of Intent for work within the 100-foot buffer of a wetland prior to the issuance of a building permit.

*f) A report estimating the traffic flow at peak periods in relation to existing traffic on the streets in and adjacent to the subdivision, and the effect of the project on the public services such as water, sewer, schools, police, fire, waste disposal, and recreational facilities;*

The conversion of the existing single family dwelling into a two-family dwelling will not significantly impact existing traffic on the streets. There will be minimal impact on public services such as water, sewer, schools, police, fire, waste disposal, and recreational facilities with the addition of one dwelling unit.

*g) A summary tabulation of the total area being developed, the total area of all lots, the total area dedicated for streets and drainage or utilities, and the total area reserved for recreation, parks or other open land;*

Given the limited scope of the proposed project and the fact that there is no required open space, the Planning Board does not believe a summary tabulation is needed.

*h) A projection of the direct, current Town costs and revenues associated with this development;*

There will be minimal direct, current Town costs with the addition of one dwelling unit. Additionally, because both units will be deed restricted as affordable at or below 65%AMI, the revenue associated with the two-family will be less than a market rate development. However, the Planning Board believes that the benefit of having two affordable unit at or below 65% AMI outweighs the reduced Town revenue.

*i) An analysis of the sight distances at the intersections of the proposed street(s) with any other street(s);*

Given the limited scope of the proposed project, a sight distance analysis was not performed. However, the Planning Board notes that this stretch of Main Street is fairly straight. Additionally, the Applicant is proposing to install a circular driveway, which will improve that safety of vehicles leaving the Site.

*j) Impact of the development on any historical or cultural resources located within one hundred (100) feet of the proposed development as identified in the Survey of Historical and Architectural Resources and Historic Resources Master Plan;*

The proposed project will not have an impact on any historical or cultural resources located within 100 feet.

*k) Impact of the development on any open space or natural resources located within one hundred (100) feet of the proposed development as identified in the Town of Concord Open Space Plan.*

The proposed project will not have an impact on any open space or natural resources located within 100 feet.

10.4.1.2 Development plans - The Applicant has submitted Development Plans that include a site plan, building elevations, and floor plans.

10.4.1.3 Low income and affordable dwelling unit marketing program - The Applicant will be required to work with the Town's Regional Housing Services Office to develop a marketing plan that includes eligibility and preferences for the affordable units and proposed methods of ensuring long-term availability for the affordable dwelling units. The Applicant has stated that the affordable units will be priced at or below 65% AMI.

*10.4.2 Planning Board Report and Recommendations: The Planning Board shall review the development statement and plans and shall submit in writing to the Board its report and recommendations upon the technical quality of the proposed development, and at least the following:*

*10.4.2.1 General descriptions of the natural terrain of the PRD tract and surrounding areas, and of the neighborhood in which the tract is situated.*

The Site is a 12,250 s.f. lot that slopes from Main Street down to the rear of the lot to a wetland area that is located in the Wetland and Floodplain Conservancy District. To the west, south and north is existing residential properties, including Concord Greene residential development (north). To the east is one single family dwelling and Route 2.

*10.4.2.2 A review of the proposed development, including the design and use of buildings and of the open spaces between and around them, of pedestrian and vehicular circulation, of the location and capacity of parking, and of the provisions for grading, landscaping and screening.*

The Planning Board believes the design and use of the existing single family dwelling as a two-family dwelling is appropriate for this location. The construction of the circular driveway is an improvement to pedestrian and vehicular circulation since vehicles will not have to back out onto Main Street. The Applicant is providing the required number of parking spaces for an affordable development.

*10.4.2.3 An evaluation and opinion upon the degree to which the proposed PRD provides a range of diversity and the size of the units as it relates to increased density that may be permitted by the Board.*

The proposed project will provide a 1,376 s.f. two bedroom lower unit and a 1,556 s.f. three-bedroom upper unit. The Planning Board believes that this provides a range of diversity in the size of the units and the number of bedrooms.

*10.4.2.4 An evaluation and opinion upon the degree to which any land intended to be conveyed to, or restricted for the benefit of, the Town:*

*(a) Provides or will in the future provide an addition to areas of open space between developed sections of the Town;*

*(b) Makes available land desirable for future public use; or*

*(c) Conforms to the Town's long-range land use plan.*

The proposed project is not required to provide any open space or convey land to the Town because the Applicant is a non-profit agency and more than 75% of the units will be offered below 80% AMI.

*10.4.2.5 Its opinion as 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 Planning Board believes that the minor addition to the structure to allow for the conversion of a single family dwelling into a two-family dwelling that is approximately half a mile from the West Concord Village is the perfect type of development for the site and the neighborhood.

*Pursuant to Section 11.6 of the Zoning Bylaw, the Board considered impacts on economic and community needs; traffic flow and safety concerns, including parking and loading; 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. The Board determined that any negative impacts are negligible and finds that the proposed Planned Residential Development will have a beneficial impact to the public interest, the Town and the neighborhood, in view of the characteristics of the site and the proposal in relation to that site.*

The Board grants the Special Permit subject to the following plans and conditions

1. Approval is based on the following plans prepared for Habitat for Humanity of Greater Lowell:
  - Holly S. Darzen Architect, 155 Heaths Bridge Rd, Concord, MA
    - a. Floor Plans, P1, dated August 12, 2020
    - b. Elevations, P.2, dated August 12, 2020
  - Meisner Brem Corporation, 202 Main Street, Salem, NH
    - c. Proposed Plot Plan, dated September 3, 2020
2. Both units shall be permanently deed restricted as affordable at or below 65% Area Medium Income (AMI), and added to the Town's Subsidized Housing Inventory (Chapter 40B 10%).
3. **Prior to the commencement of any site work**, the Applicant shall meet with Water/Sewer Division to review the proposed scope of water/sewer utility work and sufficiently demonstrate that:
  - a. Water and sewer service infrastructure can be designed and constructed in accordance with the Water/Sewer Division's design and construction standards, and
  - b. water demands can be minimized via demand management tools that may be codified in a water use impact report (conservation plan) and Water Customer Data Sheet, and



- c. lawn irrigation system(s), if proposed, can be installed in accordance with the Town of Concord Rules and Regulations Governing Water Use and Connection. A lawn irrigation system is subject to an additional connection fee and shall be registered with the Water/Sewer Division and be operated in accordance with the Town of Concord Water Use Restriction Bylaw.
4. **Prior to commencement of any site work**, the Applicant shall submit to the Concord Board of Health a Request for Title 5 Building Review (Form S) to identify any potential increase in wastewater flow and associated Sewer Improvement Fee. Based on existing wastewater capacity constraints, flow increases over 1,000 gallons per day will be administratively denied by the Water/Sewer Superintendent. An appeal may be made to the Public Works Commission seeking relief for an increase in flow over 1,000 gallons per day.
5. **Prior to the commencement of any site work**, the Applicant shall include a note on the site plan stating the disturbed area adjacent to the proposed foundation and footings shall be stabilized and the catch basins on either side of the site on Main Street will be protected with a silt sack.
6. **Prior to the commencement of any site work and at any time during site work or construction**, the Applicant shall coordinate with the Police Department on the use of police details for construction vehicle activity on Main Street if it has been determined necessary by the Police Department. Parking of construction worker vehicles on Main Street is prohibited.
7. **Prior to the commencement of any site work or issuance of a Building Permit**, the Applicant's contractor shall file a Right-of-Way (ROW) permit with the CPW Engineering Division for the proposed work within Main Street ROW. All work within ROW shall conform to the Concord Public Works Design & Construction Standards & Details (CPW-Standards).
8. **Prior to the construction of the circular driveway**, the Applicant shall receive a driveway permit issued by CPW Engineering for all work associated with the driveway reconstruction.
9. **Prior to the commencement of any site work or issuance of a Building Permit**, the Applicant shall record with the Middlesex South Registry of Deeds the Special Permit Decision.
10. **Prior to issuance of a Building Permit**, the Applicant shall submit to the Water/Sewer Division for review and approval, an application for the proposed water/sewer service installation. The application shall include the following;
  - a. Identification of a Water/Sewer Division licensed "drain layer" who will be responsible for water service installation activities.
  - b. Two full size copies of the approved water/sewer utility plan.

- c. Design Data Sheets for all required cross-connection control devices. The devices shall not be installed without approval from the Water/Sewer Division.
  - d. An approved water use impact report and conservation plan which will determine sizing of the water meter and water system connection fee.
  - e. The approved Title 5 Building Review (Form S) and associated Finding - demonstrating right to connect to the municipal sewer system, and payment of any associated Sewer Improvement Fee.
11. **Prior to the issuance of any Building Permit**, the Applicant shall submit to the Town Planner a Tree Protection and Removal Permit for review and approval.
  12. **Prior to the issuance of a Building Permit**, all proposed metering will require approval from the CMLP Meter Supervisor.
  13. **Prior to the issuance of a Building Permit**, the Applicant shall incorporate into the construction plans a hard wired-battery back-up Smoke/CO detection system in each unit to be reviewed and approved by the Fire Department.
  14. **Prior to the issuance of a Building Permit**, the Applicant shall file a Notice of Intent for review and approval by the Natural Resources Commission for the work proposed within 100 feet of wetlands.
  15. **Prior to the issuance of a Building Permit**, the Applicant shall install a tracking pad in the secondary driveway access path.
  16. **Prior to issuance of a Certificate of Occupancy**, the Applicant shall submit to the Water/Sewer Division a full size record drawing (Arch D), created in accordance with Division standards, for review prior to finalizing the drawing. Once the draft is approved, the Applicant shall submit to the Water/Sewer Division a full-size (Arch D) hard copy of the final record drawing along with electronic copies in the form of CAD and pdf files.
  17. **Prior to issuance of a Certificate of Occupancy**, the Applicant shall furnish to the Water/Sewer Division Water Demand Minimization Affidavit(s) to demonstrate work was performed in accordance with the approved demand mitigation measures.
  18. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall install to the satisfaction of the Fire Department, hard wired-battery back-up Smoke/CO detection system.
  19. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall finalize to the satisfaction of the Town all required documents for the sale of the affordable deed restricted units, including the Affirmative Fair Housing Marketing Plan for both affordable units, and record with the South Middlesex Registry of Deed the affordable housing restrictions.

20. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall record with the Middlesex South Registry of Deeds a permanent easement from the State for the minor encroachment of the existing garage onto State land.
21. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall coordinate with the Town Planner on the installation of appropriate screening of the two parking spaces.
22. **This Permit shall lapse within two (2) years**, which shall not include such time required to pursue or await the determination of an appeal, from the date of grant thereof, if a substantial use has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause.
23. **Violation of any of the conditions of the Special Permit shall be ground for revocation of the Decision**, or any building or occupancy permit granted hereunder. If at any time the construction of the project is not in compliance with the Decision and the approved Plan, the Building Commissioner may order that work on the construction of the project be stopped and defer the issuance of any building permits or certificates of occupancy until the non-compliance is corrected.
24. **By acceptance of this Special Permit**, the Applicant acknowledges the binding effect of the conditions of the Decision. The Applicant shall record with the Middlesex South Registry of Deeds the Special Permit and provide a copy of the recorded decision to the Building Inspections Division.