

TOWN OF CONCORD PLANNING BOARD
Town Hall

March 4, 2025
6:00 p.m.

ITEM # 1:

The meeting was called to order by Planning Board Acting Chair Julie Zybert, at 6:00 p.m.

ITEM #2: Roll Call

Present:

Julie Zybert, Acting Chair
James Jozwiak
Guy Marlette
James Miller

Also Present:

Darlene Schweikert
Clyde M. Drake, Town Council Liaison
Thomas Roberts, CEO
Daniel Szewczyk

Not Present:

Joseph Edbauer, Chairman
Michael Cochran

ITEM #3: Citizen Participation

There was no one for Citizen Participation.

ITEM #4: Daniel Szewczyk – 11378 Springville Boston Road-Addition to Garage

Acting Chair Zybert advised that Mr. Szewczyk is interested in adding on to this garage on his Springville Boston Road property. He had filed for a building permit which was denied by CEO Roberts because of front and side setbacks; he also submitted the application for a ZBA hearing which is on hold at this point pending this review of his matter by the Planning Board. In the agenda packet, the members had a copy of his survey showing the garage that sits close to the property line. Acting Chair Zybert had a couple of questions about the garage as it currently sits: Right now, the garage is roughly 22' x 24' and he wants to add on to it to make it 30' x 40' overall? Mr. Szewczyk confirmed. Acting Chair Zybert asked if that footprint going to be all enclosed in roof or will some just be an overhang? Mr. Szewczyk said he planned on enclosing the whole addition. Acting Chair Zybert asked about the current ridge of the roof; add on to the building and move the peak, is the ridge more or less parallel to the property line? It is parallel to the property line. Acting Chair Zybert noted that she is not familiar with his property and the area; Mr. Szewczyk had taken some pictures of this property on his phone and shared them with the members. J. Jozwiak also brought up the property on google earth. Acting Chair Zybert asked about the neighbor on the northwest side; where is their house situated in comparison to this garage? Mr. Szewczyk showed the members on the pictures and explained where their driveway was and that the two sides go uphill and that the neighbor is up on the hill; when the trees are grown in, you can't even see his

house and the location of the nearest neighbors. Mr. Szewczyk noted that he was planning on adding on 8' feet to the right side of the structure and 16' back which would turn it into a 30' by 40' garage. It is just a two-car garage now and with two vehicles in it, he can barely open the doors to get out of the vehicle. He noted that the extra space would also be used for his riding lawn mower and storage space. Mr. Szewczyk said that he downsized from his last home, he wanted something smaller but now that he is situated, he is really short of storage space. He does not plan on changing the footprint of the property; he likes the trees and the seclusion and he has enough room to do the addition without disturbing the landscape. In the construction, he plans on taking the existing roof off of the garage and when he expands it, he will use 30' trusses all the way down so it will just be a whole new roof; one peak. J. Jozwiak asked if it would be a pole barn; Mr. Szewczyk said that he was planning on doing poles because he would not have to put the concrete in the whole thing. Mr. Szewczyk would be using metal siding except for on the front he would like to do wood to keep it natural, the nature look. Acting Chair Zybert saw on the tax work paperwork that the property was built in the 1960's and she asked if the garage is right where it is when he purchased the property; he said yes. Acting Chair Zybert advised that the Board is in the process of reviewing the Town Code and are in the process of looking at side setbacks; all setbacks. As she understands the situation, that is why Planning Board Chairman Edbauer wanted Mr. Szewczyk to come before this Board. J. Miller asked if there was concrete in the existing garage; yes, there is. J. Miller continued that that is why Mr. Szewczyk can't move the garage to a different location; that he wants to use this footprint. G. Marlette asked how far the corner of the garage was to the side line; Acting Chair Zybert noted that it is fairly close. Mr. Szewczyk advised that it's at an angle. The front corner is 5.75' and the back is 6.74'; a little further away from the borderline than the front. J. Miller asked if he would be going higher; Mr. Szewczyk said yes. The ceiling in it is only 7' and he drives a Tahoe and he doesn't have much clearance on the garage door and he noticed with the snow build-up that he had to shovel down to get in. He would like to go a couple feet higher. J. Miller asked if the additional height would cause a viewing issue for the neighbors or traffic; Mr. Szewczyk said no. G. Marlette stated that in the R District, Section 150-152 (B)(2), the side setback is 5'. In R-AG Section 150-50 (B) it notes two side yards are required and for dwellings it is 15'. During the Code Review, the Board realized that the zoning sections of the Code only stated a setback for dwellings, not other structures and the members had already agreed that language would be added to the Code to note that the side setbacks for other non-dwelling structures would be 5'. This property is not obstructing anything. G. Marlette does not think that the side setback is out of compliance because of Section 150-152(B)(2). The front setback does not meet the 50' requirement but Section 150-50(A) allows the exception of a garage minimum requirement for setback from the edge of the right-of-way of 20' when approved by the Concord Town Board. Mr. Szewczyk measured and the front of the garage is 65' from the center of the road and it should be 83'. J. Miller noted that this is a grandfathered, existing building and J. Jozwiak noted that Mr. Szewczyk is not making it worse because the addition is going further away from the road. G. Marlette said that he would say that this would not qualify for grandfathered anyways because of there is going to be too much construction; the original structure would be changed too much to say that it is grandfathered. G. Marlette advised that he does not have an issue with the setback on the

side or the front, but he would have to go before the Town Board for approval on the front; that the Planning Board's recommendation should be to approve the side setback pursuant to Section 150-152(B)(2) and refer the matter to the Town Board for the front setback. Acting Chair Zybert asked about the ZBA application fee which Mr. Szewczyk had paid to Town Clerk Schweikert; Town Clerk Schweikert noted that the fee would be refunded to Mr. Szewczyk if the matter did not need to go before the ZBA for a hearing. Town Board Liaison Drake will take this to the March 13th Town Board meeting. J. Jozwiak made the motion, seconded by G. Marlette, that Mr. Szewczyk meets the side setbacks for this project and that the matter go to the Town Board to resolve the front setback. Mr. Szewczyk will be attendance for the March 13th. If the Town Board does not approve the matter, then Mr. Szewczyk will need to proceed with the ZBA application. Acting Chair Zybert told Mr. Szewczyk that she hopes that this will resolve his issue with a little bit of a savings and wished him good luck. Mr. Szewczyk thanked the Board and left the meeting at 6:19 p.m.

ITEM #5: Comments from Council Liaison Drake

Town Board Liaison Drake noted that the members just need to keep on going on the Code and get it done before Town Clerk Schweikert retires at the end of this year. Secretary Schweikert noted that she had reached out to General Code to see if there was a way on the eCode system that would allow for the members to see what Secretary Schweikert has been uploading. There is a way that General Code can see all the uploads but not a way for our members to see that information. When it gets closer, Secretary Schweikert will ask General Code to make all the information available via email attachments so that the members can do a final review before Secretary Schweikert submits all changes finalizing this Code update. Once the submission is made, General Code any changes the Town would like to make will incur more costs to the Town. The submission will not be made until the Town adopts the new local laws on solar energy and BESS later in the year. The moratoriums expire this July; the Town has already contracted with Wendel Companies to update both those local laws. Secretary Schweikert noted that she has had contact with another solar company and believes there will be another solar project application coming before the Town once the moratorium ends and a new local law is in place. Town Board Liaison Drake noted that in any new local law for solar, prime farmland has to be a big part of that new law. There are still a lot of acres in Concord that are being farmed. Town Board Liaison Drake noted that he wrote the first local law on Solar when he was Supervisor and changed it twice after that and then Supervisor Drozd came into office and it fell off the table for a while; this will now be the fourth law. This is how fast these laws are changing.

ITEM #6: Approval of Minutes

a) February 4, 2025– J. Jozwiak made the motion, seconded by Acting Chair Zybert, to approve the Minutes as presented. All in favor. Carried.

Acting Chair Zybert asked to move Business from the Members up on the Agenda to be discussed before the members start the Code review.

ITEM #8: Business from the Members

1) Secretary Schweikert informed the Board that Joe McCarthy came in to get a building permit for a pole barn on this property on Spaulding Road. This parcel was the McCarthy Pit and zoned Mining. The pit has been reclaimed and not being mined. A pole barn is an allowable use in the Mining District so the building permit was approved. The question is, how does it now come out of the Mining District and go back into R-AG? Does Mr. McCarthy have to initiate a rezoning application? Or since the DEC said it has been reclaimed; can the Town Board do a rezone? Town Board Liaison Drake advised that this should be reviewed by Town Attorney Attea. G. Marlette thinks that the Town Board could initiate the rezoning because the usage changed. The Town did receive documentation from the DEC. The parcel is 33.6 acres; Mr. McCarthy had previously split some acreage off the original parcel when he sold the house. G. Marlette asked what Mr. McCarthy's long-term plans for the property were; the Town does not know. At this time, the building permit was for a pole barn.

2) Acting Chair Zybert noted that she had talked with Secretary Schweikert earlier today about crypto mining and that it appears is going on at Kissing Bridge; how big is the operation? Will they be using water for cooling? Is this being done or is that future expansion? She discussed Digihost in North Tonawanda and what is going on with their much larger operation and all the neighbor complaints about noise and disruption to their daily life. Now it appears that Digihost was digging in their heels and saying that if they didn't like them using natural gas, they could consider using nuclear options. This got her wondering what exactly is going on at KB and is there the potential for this operation, whatever size it currently is, to become much larger? She questioned if any of the members knew anything about it. J. Miller asked if anything had been discussed with the Town about this; and no, the Town has not had any discussion with KB. J. Jozwiak thought that the new owner thought he bought KB because of the crypto mining; that was what he had heard. Acting Chair Zybert noted that she read an article from November 2024 that New York State Public Service Commission was getting involved because there were a number of people who felt that the facility and the operation was not aligned with the new climate goals for New York State; in North Tonawanda they are using natural gas. Acting Chair Zybert noted that the cooling fans are creating all of the vibration and noise. The members questioned where this was being done at KB; was it being done in a building in the Town of Concord or Colden? Town Board Liaison Drake asked what exactly is crypto mining and Acting Chair Zybert noted that she had looked up a definition earlier today. Crypto mining is associated in some fashion with bitcoin and if she understands the bigger picture because there is no bank the ledger is actually created and stored online and in order to verify all of these journal entries, there are these computations that computers will sit and just chug through to verify, because there is no human and there is no bank that oversees who owns what bitcoin; this online process is crowd-sourced and anybody who has enough computers

can set up their equipment to grind through these computations which are very chip intensive creating a lot of heat which is the reason they need all these cooling fans. It appears to take a lot of time to verify one of these entries, and when your business or industrious person decides to verify this stuff, they get paid in bitcoin which apparently creates another entry; like an on-going process. J. Jozwiak noted that the one he knows is in an industrial complex in downtown Buffalo. The big fans were already there; they did something smart though because it's a big, old industrial building, they now have tenants in there and they pump the heat that comes off of this and heats the rest of the building. The heat the rest of the building through duct work. Acting Chair Zybert believes that that heat could also be converted to geothermal; it seems very wasteful to use all that power and then create all this heat to just let it dissipate. G. Marlette said it would liquid cool the servers; they don't want to generate that heat; they actually want to not let the heat be generated to begin with so they use all these racks; typically they use cooling agents. G. Marlette noted that if you go into one of these facilities, they are usually pretty chilly. Acting Chair Zybert said that there was a question in all of this: this crypto mining could actually get rolling in the Town without anyone from the Town knowing anything about what they are doing because it's a legitimate business? How does that work? This topic is not in our current Code. G. Marlette thinks that the way to control this is with noise levels and other controls because it is a business. Acting Chair Zybert noted that it is a business conducting a legitimate business. Town Board Liaison Drake noted that the Town does not have a noise ordinance because the Town is a rural, agricultural area. J. Jozwiak said that this has been discussed over the years but it opens up a can of worms; the Town has farmers out early in the morning with their tractors; snowmobiles. J. Jozwiak had brought in a decibel meter reader in the past when a noise ordinance was being discussed in the past; different readings off of different sounds and places. J. Miller asked if the fans were that loud? J. Jozwiak said that they can be; he did not think it would be any different from a cow farm because there are fans in barns. J. Miller mentioned the noise from windmills and how loud they are. Town Board Liaison Drake said about the helicopters going over the houses to get to the hospital garage where its stored. G. Marlette questioned if there could be decibel levels based on zoning classifications; i.e. commercial lots could have decibel sounds can't be emitted 100' from the building at whatever level of decibels. Acting Chair Zybert asked the zoning for KB; it is zoned Commercial-Recreation; can KB even have a crypto mining operation in a C-R Zone? There was discussion about the past noise complaints at KB with the motor-cross events. J. Jozwiak noted that the KB owners can't make enough money just doing skiing seasonally. KB is not set up like Holiday Valley. G. Marlette looked at our Code and informed the members that if KB is zoned Commercial-Recreation, KB can't have facility in there because it is not a permitted use. Our current code mentions downhill skiing, campgrounds; accessory uses does not say anything about other commercial businesses, it is all recreation. G. Marlette stated that crypto mining should really go into a Commercial classification; if KB is actually doing crypto mining, they are in violation and should be cited. The Town does not have enough information about the KB and what may be going on there; was it there before KB was sold? J. Miller asked how the Town would stop it; G. Marlette said it's not an allowable use in C-R District so CEO Roberts would need to verify and cite KB with a violation. G. Marlette noted that if the Town lets it sit too long, you get a different issue, that it has been operational for a

number of years. If they are running a crypto farm or a server farm, the next step could be electricity and they could be looking at a battery farm; none of which the Town is prepared for so the Town would be better off to cite them and stop it and see what direction they are going. J. Jozwiak noted that there is also a problem at KB getting fire trucks across that bridge. The members discussed where the Town line is; where does Town of Colden start? Is KB doing this crypto mining in a location in the Town of Concord or is it Colden? CEO Roberts arrived and the members asked him what he knows about the crypto mining at KB. CEO Roberts does not know the location or the extent of the operation; he does not know if it's in Colden or Concord. CEO Roberts said he will look into this matter.

Acting Chair Zybert thought that during the Code Update, a chapter could be added for emerging technologies; nobody could have anticipated crypto mining. CEO Roberts mentioned Amazon delivering by drones. Town Board Liaison Drake said he had a conversation with someone who said if they would've invested in bitcoin when it first came out, they'd be a billionaire now. G. Marlette believes that instead of having a chapter like a junk drawer, the Town should really take these emerging technologies and figure out where they are going to go. Secretary Schweikert noted that the Code book was put together in patchwork sections; trying to figure out what is happening today and trying to figure out where to put it in the Code that was written in 1960; as you go along, you can see that things are out of date, out of order. J. Jozwiak said that someone should take our whole Code and drop it into ChatGPT and tell it to reorganize the Code; he said ChatGPT is amazing. J. Jozwiak said that he has used it for one of his trips; wrote a whole brochure. Acting Chair Zybert said that sometimes if it doesn't know something, it will just make it up; you need to proofread. J. Miller wondered if you did do this, would it lose stuff that might be important in the Code. J. Jozwiak said if you just reorganize, it would take everything in it and reorganize and tell you what it did. J. Jozwiak explained how he uses WPS AI; it will review and let you know what it sees that it doesn't like and ask if you want to change it. Acting Chair Zybert had questioned if when the Code changes are made, these changes may affect something else and how will the Town know that all these changes have been caught. (As a follow up, Secretary Schweikert emailed General Code who noted that once the submission is made, they will not do any further legal analysis nor is there any review for discrepancies caused by any changes that may have been made during this process.) G. Marlette questioned that since the Town is doing the Code update, under one of the Commercial classifications, add in data mining and server farms. Commercial classifications may already have decibel level standards already written into the Code but if you are looking for a placeholder for these types of operations, if the Town puts it under a Commercial use then, for the KB matter, if they are doing crypto mining in the Town, KB would have to come before the Town to rezone and the Town would get the big picture of what their ultimate plan is; put it in one of the Commercial districts. CEO Roberts wondered if it should be an allowable use with a Special Use Permit so the Town would have some control over it; regulate it. G. Marlette noted that it needs to be put somewhere to begin with and then fix. Acting Chair Zybert agreed; if the Town doesn't put it somewhere, it's everywhere. G. Marlette noted that if it is in the Town, then the Town could find out all the issues associated with it; sometimes the non-compliance is the way to make everything compliant. J. Jozwiak

agreed with this. G. Marlette thinks it's 35 decibels in commercial; there is concern about the noise and neighbors so if the Town were to put it in there, at least the Town can have part of it covered. CEO Roberts asked who would enforce the 35 decibels; and G. Marlette said Code Enforcement would; take a decibel reading. This would have to be defined in the Code. G. Marlette said it would be complaint driven in most cases; he thinks it is in our Code.

ITEM #7: Code Update

Acting Chair Zybert started the review at Section 150-172 Site Plan Review. The members started to review this Section last meeting. Started at 150-173 (A)(7) and the wording about Public Hearings: In the event that a public hearing is required by this "article". The word "article" and "chapter" is in various places. What is article/chapter are being referenced? Acting Chair Zybert went to Section 150-172 and interprets that first sentence to mean that if you have a single-family dwelling, you're good as long as you meet the permitting process. If you have a two-family dwelling or permitted structures, you don't need to do anything additional besides the permitting process but if you are doing something different than that, then you do. Pulling that first line apart even more, what does "as regulated by the Subdivision Regulations of the Town of Concord" mean? Where are they? Is that the subdivision section, Chapter 129? If so, why doesn't that reference Chapter 129 instead of the Subdivision Regulations of the Town of Concord? Should this be changed to say "Chapter 129 and not Subdivision Regulations of the Town"? CEO Roberts stated that in that definition any commercial building would have to go through this entire process. Acting Chair Zybert said yes, basically, if not single family, or two-family or an accessory use building. CEO Roberts said that everyone would have to meet all these requirements. Does anyone have a feeling of what that wording was meant to mean? J. Miller thinks it almost sounds like it should be changed to Chapter 129. Acting Chair Zybert said she reads it like CEO Roberts just did, that if it is not a single family, or two-family dwelling, not an accessory building, there needs to be a lot more oversight. CEO Roberts said that if that's the intent, the Town will need to start to follow this or modify this section. CEO Roberts said that this sounds like it should be for a Walmart or Dollar General; Acting Chair Zybert said it could be for anything not single family or two family; a business, an addition to a business, a commercial building. J. Miller questioned that if it wasn't a single family or two family, what would be a circumstance that the Town could run it through for the Town to determine if it would make sense to do this site plan review? CEO Roberts said like a litmus test; if you do this, you need to do this. Acting Chair Zybert re-read Section 150-172 and said that if it is not a single family or two-family dwelling, or accessory use, then the applicant has to go through this process. CEO Roberts said that it would be anything with three or more dwelling units and anything commercial; these would have to follow this whole process. CEO Roberts referenced permits from Jake Miller's business who had three additions to his greenhouses in the last five years. Would he have to do all of this in order to put up a farmstand? There are exemptions because of agriculture. If

Wendel's Poultry wanted to extend the length of his BBQ operation, it would be an addition to the existing structure and would require a permit; he'd have to go through this process which requires SEQR and it would be a three-month process. J. Jozwiak noted that all of this section would be ridiculous in those scenarios. G. Marlette asked all that it is asking for is a drawing as to what is being done; that's the site plan. CEO Roberts said yes, if it would stop at the site plan but there's a list of what needs to be done. CEO Roberts questioned if language could be added here that the project could be deemed as a major or minor type of project. If it is minor, continue on as has been done in the past. If it is a major, then it would be required to go through this process. CEO Roberts thought maybe it could be as simple as stating under CEO's discretion. Acting Chair Zybert brought the conversation back to the Szewczyk matter that was before the Board tonight. If the setbacks were appropriate, front and side, the CEO would have just taken care issuing a building permit. CEO Roberts noted that he always thought that the side setback was 15'. Now getting deeper into this Code review, in these supplemental sections, there are things that he didn't know even existed even though he read through the book. J. Miller noted that it is not easy to find things in the book either. This goes back to the whole patchworking of the Code. Are we reading more into these sections? CEO Roberts said that it doesn't give him authorization to bypass this section; it doesn't say under his discretion. G. Marlette used the Szewczyk matter for discussion in that when the CEO rejected the permit, then it has to go through a process and that it what triggers everything else. If it is within Code, it goes forward. If it not within Code, it gets kicked back. CEO Roberts said that Szewczyk was not in Code; there is the section that R-AG could allow the garage with Town Board approval; that is the process that will be followed. G. Marlette continued that Szewczyk submitted a plan and it did not meet the conditions, so CEO kicked it back. It started to go to the ZBA and then it was changed to Planning Board and it was resolved but his point is that if Szewczyk was within all of his setbacks, it would have been approved. The approval process when they submit to get the building permit, is what triggers it? J. Jozwiak said he agrees; he just re-read it and thinks that we are reading too much into this. You need a site plan and then afterwards it talks about the Town Board; that's further. He thinks the Board took it too literally. He thinks we are doing what is in there. G. Marlette stated that his only point is that the building triggered what is further required. Acting Chair Zybert said that that makes sense; if someone isn't allowed to do something by Code, they need to have some kind of recourse instead of just being told no. CEO Roberts said that if this is correct, then Buffalo Flex should have gone through this process. Secretary Schweikert said she still doesn't understand this section and asked for clarification. Acting Chair Zybert said that how she reads this, it's a very complicated way to say, that if you do not have a single-family house or a two-family house or an accessory building, then you need to go through this. CEO Roberts agreed. Acting Chair Zybert said that one way it could be read is that for single family or two-family dwellings that fit in the Code, it is under CEO's purview but everything else needs to go to the Planning Board. Secretary Schweikert said she can understand where, like CEO Roberts said, Dollar General; she can see why this would go through this process but how do Wendel's or Miller's projects fit into this section? Not to say they are little because their businesses have grown considerably, but how do these fit in? G. Marlette said site plans would be based on major or minor. Secretary Schweikert noted that this section doesn't say anything about

major or minor; G. Marlette noted that that should be fixed. Define major site plans and minor site plans, address that. In the earlier example, Wendel's would probably be a minor adjustment. It could be a big addition but already in line with what is already on the property. G. Marlette referred the members to Amherst Code Section 8-7 for further review. Maybe site plan review could have categories under it which would have for new development or existing development? CEO Roberts thinks this section may be ok but would need some definition as to what triggers a major or minor project. J. Jozwiak thought the Amherst code may be a good template. G. Marlette noted that the Amherst Code has everything for site plan based on square footage; existing and new construction. There's a chart. G. Marlette said it would need to be edited for the Town; maybe Code Enforcement for major or minor. Wendel's may be a minor adjustment. CEO Roberts questioned if this is site plan for just R Districts or for every District? G. Marlette volunteered to edit the Amherst Code section as a template for our Code. Amherst paid about \$150,000 to get their Code updated.

There was a brief discussion about new technologies coming to Concord. Acting Chair Zybert said that the thing that we don't want, may not really be happening. G. Marlette noted that the things the Town does not want, as much as the Town can, should be put into a Commercial type classification because the Town has very few Commercial properties in the Town and the owner would have to do a rezoning application where neighbors would be notified of the proposed project. G. Marlette said that that is the easiest way to capture it now, without all the wording. Acting Chair Zybert thought she read somewhere in our Code that said, basically, if it is not on the allowed list, no go. G. Marlette noted that that is not good for business. Acting Chair Zybert said that that comes with its own set of problems.

ITEM #9: Motion of Adjourn

G. Marlette made the motion, seconded by J. Jozwiak, to adjourn the meeting at approximately 8:20 p.m. All in favor. Carried. The next meeting will be Tuesday, April 1, 2025.



Darlene G. Schweikert
Planning Board Secretary