

Lenox Zoning Board of Appeals
Minutes
October 2, 2018
Auditorium

Members present: Acting Chair Shawn Leary Considine, (SLC); Robert Fuster (RF); Al Harper, (AH); Robert Fuster Jr. (RFjr); Clifford Snyder, (CS); Ned Douglas, (ND)

Sitting for the Regnier hearing were: SLC, RF, AH, RFjr and ND

Sitting for the MRG CRW Holdings were: SLC, CS, RF, RFjr and AH

Staff present: Land Use Director/Town Planner Gwen Miller and Land Use Clerk Peggy Ammendola, (PA)

The meeting was called to order at 6:45PM.

The hearing was recorded.

Note: Due to poor acoustics in the auditorium, I was unable to pick up much of the discussion from the audience.

Christine Regnier, 124 Cliffwood Street (Map 17, Parcel 19, Special Permit under Sections 9.2 and 5.3.3.to allow demolition and reconstruction of a pre-existing, non-conforming barn/apartment behind the existing house, for use as an Accessory Dwelling Unit (ADU) with 800 square feet of interior living space. *Continued from September 5, 2018 for a site visit on September 10, 2018 and continued hearing to September 12th. Continued to October 2, 2018 at 6:45 PM.* Note: There were only 4 members available at the first meeting on Sept. 5th. Attorney Robbins, representing Ms. Regnier, asked that a fifth member listen to the audio and sit for subsequent meetings. SLC agreed to be that fifth member and listened to the audio and attended the site visit and has participated in the other meetings.

Presenting the application was Attorney Lori Robbins. Present was Ms. Regnier and Robert Hebb, an architect with Bay Area Design.

Attorney Robbins said that as a result of the earlier hearing and site visit Ms. Regnier has amended her request with regard to the setbacks. She also stated that they have clarified the lot coverage, and eliminated a door. Originally the proposal was that the structure would be 3 feet from the side lot line, but now the proposal would be to have it 5.6 feet from the lot line to match up with existing decking on the property. The existing structure encroaches on her neighbor's property, and the new structure would be in the same location on the lot, but it would be straightened out so that the entire northerly portion of the structure is 5.6 feet from the lot line. The existing deck will be adjoining the new structure and there will be a partial basement. There will also be a loft.

Ms. Regnier plans to rent out the ADU to either her mother or son. If not to them, she would rent it out in accordance with the requirements of the zoning bylaw.

Mr. Lane asked if the 5.6 foot measurement was from the eave of building or from the foundation. Mr. Hepp said that it would be from the wall. Mr. Lane wanted assurance that the lot line would be determined by a surveyor/engineer. He is comfortable with the project as long as it is approved by the Board and the building is "done right".

RFjr stated that if the applicant were to reconstruct the building that is there, it would be grandfathered, but the applicant is asking to demolish the existing and place a new structure within the setback. He questioned relocating the construction so that it would not be within the setback. At the site visit it was observed that there are other places on the lot where the proposed structure could be positioned so that it would meet setback requirements. Attorney Robbins argued that the bylaw, Section 5.3.3, allows for the reconstruction. She disagreed that the pre-existing status was lost when a building was demolished. RFjr maintained that this project is not “reconstruction” as it is building a new structure.

AH referred to Section 5.3.4 in which a variance would be required. Attorney Robbins argued that this project is decreasing the non-conformity which relates to the setback. Discussion ensued regarding Section 9.2.4 and Section 9.2.3 Sub. 6. AH said that his concern was not with the project, but if the Board had the power to grant the Petitioner’s request. Attorney Robbins agreed to prepare a brief and provide case law to support her argument.

Ms. Regnier told the Board that her neighbors across the street, the Usows, had a 3 bay garage in which they demolished entirely and rebuilt an ADU on the site. Mr. Lane disagreed that the building had been demolished.

Ms. Regnier also stated that there has been a long history of her existing building being rented out from time to time. She has done so as well as previous owners.

It was agreed to continue the hearing to Monday, November 5th at 7:00 PM.

MRG CRW Holdings, d/b/a Miraval in the Berkshires, 55 Lee Road (Map 3, Parcel 54 and Map 4, Parcel 71-1) modify an existing Special Permit in order to add a terrace to the mansion, enlarge a parking area at Beecher’s Cottage in a southerly direction, and enlarge the parking area on the western parcel across Route 7/20. *Public hearing date was August 22, 2018. At that meeting the site visit was scheduled for September 4th and the hearing was continued to October 2, 2018*

Attorney Smithers brought the Board up to date since the August 22nd hearing. As a result of comments made previously, he was prepared to have a power point presentation at tonight’s meeting. Also, as had been suggested at the earlier meeting, he was prepared to clarify the parking. Starting with the site plan, Attorney Smithers identified buildings, parking, and condominium locations and then went through various slides providing the detail of project and changes that are proposed.

The Petitioners are seeking approvals for three major changes to the previously granted Special Permits. Among those changes would be an outside terrace addition to the mansion ballroom with steps leading up to it; the Rose Terrace will no longer have an awning but will be a glass enclosure.

The linear park that was previously proposed has been expanded in some areas by agreement with the FairWynds Condominium Unit Owners’ Association and their counsel, Attorney John Goebel, who has filed a stipulation with the board identifying certain changes to which the applicant has agreed. Attorney Smithers detailed changes.

Parking at Beechers was reviewed. At the request of residents, the existing golf cart staging area will be moved. Board members, referring to a concern expressed by Olga Weiss of the Historical Commission, asked if there would be a road across the lawn. Attorney Smithers said that there would not be a road, but access for valet personnel, and indicated its location on the site plan. With regards to the cart path, there had been a request that it be more of an oval shape. Attorney Smithers stated that Chevis Hosea, VP of Business Development at Hyatt Hotels could not be present at this meeting, but that the Board could

condition the Special Permit that access from Olmstead to the southern end of Beecher's parking lot be a curved cart path.

Attorney Richard Dohoney of Donovan O'Connor & Dodig, LLP who represents FairWynds II at Cranwell Unit Owners Trust has sent a list of agreements to GM. Attorney Smithers stated that the Petitioners have agreed to those requests.

At the last meeting, AH asked Attorney Smithers to prepare a chart which would collect the number of parking spaces over time as they had been proposed and/or permitted and as the parking is currently being proposed. Attorney Smithers complied and he reviewed in detail the figures. He said that the net change is 221 parking spaces over what exists now or 160 over what was approved last year.

In closing his presentation, Attorney Smithers stated that the Petitioners have made a sincere effort to accommodate the near neighbors. The spa and fitness center has been kept as an adjunct for them on a fee paying basis. They have entered into revised occupancy agreements and access agreements with every condominium unit owner and each has a written agreement as to what their rights are and how they can use the facilities. These have been recorded at the Registry of Deeds.

Mr. Friedberg, a resident of FairWynds asked what surface would be used for the valet parking. Mr. Mack responded that it would be a bituminous. A follow up question inquired about how rainwater would be handled. Mr. Mack stated that it was a robust stormwater management system that had been reviewed by the Town's engineer and gave detail of the system.

SLC read into the record a list of proposed conditions by both Attorneys agreed upon by the Petitioners and condominium associations.

The two following letters that were received since the last meeting were read into the record:

Stephen and Madalyn Friedberg 7 Blossom Hill- August 20, 2018, received August 23rd- Claimed that previously agreed to items had not been kept by the Petitioner and asked the Board to reject the request for a Special Permit

Olga Weiss, Historical Commission-September 20, 2018- She asked the Board to deny the request for the proposed access road to the new parking lot. Her concern was the road would cut a wide gash in front of Beecher's Cottage. The Board and Attorney Smithers discussed the substance of Ms. Weiss's letter and her concerns she raised at the site visit. Attorney Smithers was asked to provide a revised drawing. He was able to immediately make a sketch on the Beecher's parking slide showing the approximate location of Olmstead and a cart path connecting to the southern end of the parking lot. Attorney Smithers asked that a copy of the sketch be made so that he could provide it to the Petitioners to show them what had been agreed upon.

SLC said that at the last meeting, George Jordan stated that he believed that there was a "no build" requirement to the west of Route 20. This was not the Board's recollection, but research by the Town and by Attorney Smithers and nothing was found. There was, however, an open space requirement, and this has not been violated.

Chris Hodgkins of Plunkett St., stated that he was not against the project, but he feels that the Board has not been given sufficient information for lighting, parking or landscaping on the west side parcel. (This parcel is across Route 20, aka Lee Road.) He would like Miraval to consider putting a linear park on this parcel. Attorney Smithers responded that there are 45 parking spaces now and that there had been previous approval for 141 spaces and in this application the request is for 36 additional. Attorney Smithers added that he had sent detailed information to Mr. Hodgkins today. The previous SP for the 141 spaces did not have a lighting plan. Attorney Smithers said that he would agree to a condition that the

lighting on the west side would be consistent with the lighting for the rest of the project, e.g. spillage, lumens, height, etc.

RF made a motion to grant the special permit requested as presented, amended and agreed upon. AH seconded the motion.

In discussing the motion, the Board commended all parties for working well together and was in favor of the project as discussed. They felt that the Special Permit could be conditioned to address the issues with the west side parcel. The Board voted to approve by a vote of 5-0.

RF made a motion that the two lists read into the record of agreements with Attorney Goebel and his group of residents and Attorney Dohoney and his group of residents be incorporated into separate conditions named FairWynds and FairWynds II and voted on as Proposed Conditions #1 and Proposed Conditions #2. RFjr seconded the motion and the Board voted to agree 5-0.

RF made a motion that the sketch that was added to the record tonight of the Petitioners' proposed approximate location for a cart path that would accommodate the valet carting between the new parking lot at Beechers and Olmstead be approved. RFjr seconded the motion and the Board voted 5-0 to approve.

RF made a motion that the lighting on the entire parking lot, not just the new, on the west side parcel be consistent with the lighting for the rest of the project in terms of in kind, lumens, spillage, etc. that has been agreed to. AH seconded the motion and the Board voted to agree 5-0.

Discussion ensued regarding a landscaping plan for the west side parcel and the visual impact from Plunkett St. It was agreed that there were trees already there, the distance from the parking area was substantial, and that it would be difficult for the Board to dictate landscaping. It was concluded that based on their long record of maintaining aesthetically pleasing landscaping, it is expected that Miraval would continue to keep in conformance with the rest of the property.

RFjr made a motion to close the hearing and RF seconded the hearing. The Board voted to agree 5-0.

Approve Minutes: September 12, 2018-Approved by consensus.

Respectfully submitted,

Peggy Ammendola