

MEMORANDUM OF SUPPORT

SUMMARY

APPLICANT: 107 YOKUN, LLC

PROPERTY: 107 YOKUN AVENUE

ORIGINAL PERMIT GRANTED: JANUARY 26, 2017 (decision provided to Town Clerk)

APPEALED: KRUPP V. TOWN OF LENOX ET AL. Berkshire Superior Court Docket No. 1776CV00048

CASE DISMISSED WITH PREJUDICE: OCTOBER 10, 2017

SPECIAL PERMIT RECORDED: Berkshire Middle District Registry of Deeds in Book 6092, Page 37, on November 9, 2017

LAND USE RESTRICTION (per Settlement Agreement) RECORDED: Berkshire Middle District Registry of Deeds Book 6092, Page 47

APPLICABLE SPECIAL PERMIT SECTION. Town of Lenox Zoning Bylaw §5.2(A), §9.4 Extended-Care Nursing Facility, Assisted Living, or Congregate Care.

STANDARD

A Special Permit shall lapse two (2) years after its issuance if a substantial use or construction has not begun under the permit within said two years, except for good cause. Town of Lenox Zoning Bylaw, Section 3.4.6.

REQUEST

Applicant met the standard for substantial use but, because the treatment facility is not open, Applicant seeks confirmation that the Special Permit, issued on January 26, 2017, followed by an appeal that was settled on October 10, 2017, has not lapsed and remains valid and / or is extended for an additional two (2) year period until October 10, 2021.

FURTHER BACKGROUND

In its Decision, the Zoning Board of Appeals (copy provided) found as follows:

“The residential eating disorder program qualifies under the Bylaw as an Extended Care Nursing Facility, Assisted Living, or Congregate Care use pursuant to Section 5.2(A). ...The proposed use meets or exceeds all General Standards for Extended-Care Nursing, Assisted Living, and Congregate Care, contained in Section 9.4.1”

“The Project will be an adaptive re-use of a building and will complement the existing mixed uses in the neighborhood. The development will generate minimal incremental traffic and town utility systems have adequate capacity to serve the planned use.”

“The Board finds, for reasons set forth herein, that the beneficial impacts of this Project to the Town significantly outweigh any potential adverse impacts to the neighborhood or to the Town.”

“Specifically, the Program is an adaptive reuse of an existing building that otherwise has not been productively used for over ten-years. The owners of many estate-type properties in Lenox struggle to find beneficial and economically-stable uses for those properties. The Bylaw recognizes the value of adaptive reuses of such structures.”

“The Petitioner’s building is well suited for this adaptive reuse, because it is not visible from any public way and is located on a secluded lot. The building is not in close proximity to any neighboring residents. The Program, itself, is expected to be unobtrusive to the neighborhood. based on the report of Beta, the Town’s traffic engineer, the Program will not cause a significant change in traffic impact. ... The proposed center is expected to create year-round professional and non-professional jobs, and to provide other economic benefits to the Town such as hotel, restaurant, and retail use by visitors and employees and increased tax revenue”

CONDITIONS

The Zoning Board set six (6) conditions upon the operation of the Program, including limiting its scope to a residential program for the treatment of women with eating disorders and with a maximum of 48 beds. The Applicant is required to connect the property to the public sewer system prior to occupancy.

SUBSTANTIAL USE / GOOD CAUSE

After issuance of the Zoning Decision granting the Special Permit, a neighbor appealed the decision by suing the Town of Lenox and the Applicant. After nine (9) months of litigation and negotiation, the parties resolved the Appeal through a Land Use Restriction that restricted the Applicant's rights and obligations in certain respects relative to its use of its land and the operation of the treatment program.

Upon resolution of the litigation in the late fall of 2017, the Applicant was able to begin in earnest its goals of creating a center for the treatment of women with eating disorders.

The Applicant has spent a great deal of time, effort and resources on this Residential Eating Disorders (ED) Project. The Applicant has completed extensive research on various eating disorder treatment centers and modalities for care. The Applicant also attended national conferences in the ED field, visited academic departments doing ED work, connected with ED service providers, practitioners, founders, doctors and business people. The Applicant also met with patients and patients' families. The Applicant drafted and circulated a Request for Proposals ("RFP") and began a search for a partner. The Applicant chose three finalists from the RFPs submitted and then one with whom they pursued extended negotiations exclusively for a period of time which was extended after initial discussions went well. Currently, the Applicant has signed two non-disclosure agreements with eating disorder treatment facility operators and is in various conversations with additional operators.

Also, the Applicant began to draft designs for the renovation of the building, developed a design book and rough floor plans and consulted with construction professionals to estimate costs for the reuse of the building as ED residential treatment facilities.

In addition, Applicant is in the process of contracting with a commercial national behavioral health real estate brokerage firm who will be conducting a broader search for a tenant, connecting the Applicant with additional interested parties. To help further this project, the Applicant recently hired someone fulltime.

In furtherance of the Special Permit conditions, the Applicant received a building permit to dig a trench for the sewer installation and contracted with a contractor for the same and has commenced work.

The Applicant remains committed to completing the Residential Eating Disorders Project at 107 Yokun Avenue for which they received a Special Permit in 2017.

APPLICANT'S PLANNED ACTIONS DURING THE NEXT TWELVE TO TWENTY-FOUR MONTHS

- Continued recruitment and selection of lead/primary operator to create and to implement a Residential ED Program;
- Completion of the trench work for the installation of the new sewer system;
- Selection of an architect and design team and selection of the final renovation design;
- Selection of operating organization; and
- Selection of construction firm to rehabilitate and to renovate the building.