

**Town of Lenox
Zoning Board of Appeals
September 2, 2020
6:30 p.m. @ Lenox Community Center**

Members Present: Robert Fuster (RF), Albert Harper (AH), Shawn Leary Considine (SLC), Ned Douglas (ND), Cliff Snyder (CS)

Staff: Gwen Miller, Land Use Director; Jessica Cote, Land Use Assistant

Others Present: Andrew Hochberg (Hochberg Attorneys), Jonathan Campano (Smith, Costello & Crawford), Steve Sevaria (Fuss & O'Neill)

RF opened the meeting at 6:00pm.

1. 55 Pittsfield Road, Special Permit and Site Plan Review hearing for an Adult Use Retail Marijuana Retail Establishment.... continued from 8/12

- Mr. Andrew Hochberg, counsel for the petitioner, presented the petition for a retail marijuana establishment at 55 Pittsfield Road. The petitioner/owner of the property has operated businesses throughout Berkshire county for over 30 years.
- Mr. Hochberg spoke to the Board that this location has always been a commercial use and the residential part of the property came after the Special Permit for a 200-seat restaurant was approved in 2005.
- Mr. Hochberg invited Mr. David Ward to speak about his discussions with the commercial condo owners. Mr. Ward stated that he is the current manager of Lenox Condo Shopping Center. Has known petitioner for some time. Other commercial tenants would like to see something fill in the location. Other tenants are in favor of some activity within this location. AH asked what the normal business hours are of other establishments. David Ward stated from 7am to about 5pm except Chocolate Springs is open to 9:30 or 10pm on some days. AH asked about maintenance of the residential and commercial condos. Each building is a separate condo unit at the property. There is an agreement with condo owners so that they may drive through to get to their condos. RF asked if the condo owners pay any fee for maintaining driveway and parking. There is an access agreement that has a fee associated. Percentage of overall operating budget is what the residential condo owners pay for maintenance.
- ND wished that the commercial condo association members attended the meeting.
- SLC asked if commercial tenants were each notified of this hearing as well as who owns the parking. The response was that the parking is a common space.
- SLC referenced the Master Plan that was created for this area and has concern of changes to that Master Plan. Attorney Hochberg does not see any change. Hochberg states that the use for cannabis will not put a burden on the residential units.
- Hochberg stated that the petitioner will have quarterly meetings with commercial and residential condo owners for the first two years to discuss.

- ND asked David Ward if has spoken to all commercial condo owners. David ward has spoken to some commercial tenants. Maybe 50-60% of tenants.
- There has been no formal meeting with the condo commercial owners/tenants.
- AH reiterated the constant complaint from abutters is the parking and the one-way areas of the parking. Is there objection with meeting with home owners and condo owners to provide additional signage for traffic flow? Petitioner agrees to that.
- Petitioner is willing to provide and pay for security systems at the entrance to Spruce and Evergreen Trail.
- Mr. Hochberg reviewed the six requirements for a SP per the ZBL and how they apply to this petition.
- Petitioner reviewed the delivery process and the traffic flow in front of the building.
- Only change to outside of building is cosmetic. Mr. Hochberg reviewed the demo plan for removal of walls. SLC asked the "advanced order pickup". John Campano explained the advanced order pickup process to the Board.
- CS asked if they would need to come back and amend if the kiosk is added. Mr. Hochberg stated that it would not be a permanent structure and it would come in and out during business hours. ND asked if they were ok to have that as a special condition. Hochberg said yes and if it would be permanent then they would come back to amend the SP.
- Steve Sevaria from Fuss & O'Neill discussed the traffic study. Steve stated that there have been extensive traffic impact studies of this site. None of the conditions from previous studies would not impact the new use of the site. The concern is that cannabis use is going to have more impact than a 170-seat restaurant. Steve stated the traffic would be less for a cannabis establishment. RF asked if Fuss O'Neill knew that the lot is a common space and Steve said they were aware.
- Conditions that the petitioner is OK with: meet quarterly with home owner's association for first two years, will increase signage if there is a need from the activity at the dispensary, they would be responsible for signage.
- AH has questions about host community agreement: Asked difference between impact fee and sales tax for Lenox. John Campano explained the difference.
- RF asked if fire or police have comments. Gwen Miller stated that no comments or correspondence from either Chiefs. RF asked Town Planner to reach out for comments from Fire and Police.
- RF asked about theft of the product or OUI data near these facilities. Jon Campano stated that there has been no theft from any facility in the state of Massachusetts.
- RF asked about the max capacity of the building as a dispensary. He would like this data presented at the next meeting.
- 26 pieces of correspondence - all are opposed. Correspondence will be uploaded website and added to the record.

PUBLIC COMMENT

- Paul Buckanavage - 17 Evergreen Trail - point of concern focus on comments made by David Ward that are misrepresentation of fact. Factually incorrect. How can board think he is a credible source of residents? Mr. Ward is not the manager of Lenox commons. Paul has been negotiating directly with new owner. New manager of the property is Mike

Leveque. (RF asked to have the commercial condo owners submit in writing if they are in favor or not in favor of this new establishment.) Paul pointed out that the Homeowners Association is in active litigation against David Ward. There are unresolved DEP issues for residential and commercial as well as other components of the litigation.

- ND asked Mr. Hochberg why he portrayed David Ward as the manager - Mr. Hochberg responded that Mr. Ward is the manager of the commercial condo associates. A better title may be building superintendent.
- Paul Buckanavage takes issues with that response.
- The Board would like the petitioner to bring proof of David Ward's representation within the condo commercial association.
- Motion to continue hearing by SLC. Seconded by AH. All in favor 5-0.
- New hearing is September 15th at 6:30pm at the Lenox Community Center.

2. Discuss Blantyre Inclusionary Housing Agreement –Terms and Conditions with Lenox Affordable Housing Trust

- Elisabeth Goodman, Cain & Hibbard, spoke in regards to the agreement between the Lenox Affordable Housing Trust and Blantyre and referenced the small change to the Inclusionary Development Agreement.
- Gwen Miller, Town of Lenox Land Use Director, explained the small change to wording of "Town Housing Trust" and "Lenox Housing Trust".
- The final hearing on Blantyre will be on Thursday, September 17th @ 7pm.

SLC moved to close the meeting. AH seconds. All in favor 5-0. Meeting closed at 9:10pm.