

Zoning Board of Appeals Minutes, 08/29/2016

**Lenox Zoning Board of Appeals
Minutes
August 29, 2016
Auditorium**

Members present: Acting Chair Shawn Leary Considine, (SLC); Robert Fuster (RF); Al Harper, (AH); Clayton Hambrick, (CH); and Jedd Hall, (JH)

Absent with notification: Ned Douglas, (ND) Ethan Berg, (EB); Clifford Snyder, (CS)

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

CRW Holdings, LLC, d/b/a Miraval Lenox, for the property owned by 55 Cranwell LLC, 55 Lee Road (Map 3, Parcel 54 and Map 4, Parcel 71-1) Modify existing Special Permit under Section 9.4 “Special Permits” and Section 6.10 “Estate Preservation Area” of the Lenox Zoning Bylaw, to complete previously permitted development through renovating and repurposing existing structures, the addition of five new buildings, reconfiguring the driveway and parking throughout the property, and constructing a pedestrian and golf cart tunnel under Lee Road. First hearing was August 3, 2016, at which time a site visit was on August 11th. Continued to August 29, 2016.

SLC began the PH by addressing the issues of the first hearing of August 3rd and the inability of the attendees not being able to hear very well which resulted in the microphones not being used. At tonight’s hearing the public address system malfunctioned, and despite efforts to remedy the situation, the hearing continued on.

Following the first hearing, a site visit was held on August 11th.

There were approximately 150 people in attendance.

SLC also advised everyone that the Board received new proposed plans from Miraval. Because of that and voluminous correspondence that the Board hasn’t had a chance to read, the decision phase of the hearing will not take place tonight. She stated that the ZBA’s determination considers each of the following:

- Community needs served by the proposal;
- Traffic flow and safety, including parking and loading;
- Adequacy of utilities and other public services;
- Neighborhood character and social structures;
- Impacts on the natural environment; and
- Potential economic and fiscal impact to the Town, including impact on town services, tax base and employment

Attorney Smithers of Cain, Hibbard and Myers, introduced the following:

Steve Rudnitsky, CEO of Miraval

Chevis Hosea, VP of business development for Miraval

Jon Dietrich, Traffic Engineer of Fuss and O’Neill

Steve Mack of Foresight Land Services

David Rua, Senior Architect at Hart Howerton

Ellen Powell of Cain Hibbard and Myers

Attorney Emil George who represents the co-applicant, 55 Cranwell, LLC

Documents provided:

- Miraval Group Presentation-To the Town of Lenox Zoning Board of Appeals-August 29, 2016

Attorney Smithers said that since the first hearing and subsequent site visit the applicants have responded to comments made by the Board and others about the size and location of the 52 room guest lodge facility and have revised their plan to scatter four smaller facilities on the campus with them having somewhere between 8 to 12 rooms. With regards to comments about public

access to the fitness center and indoor swimming pool they have made a proposal to the representatives of the condominium owners' association at Cranwell because it was felt that residents of the town should have some access as well. They have a proposal to include a spa pass for residents of the Town of Lenox.

A slide presentation demonstrated the changes to the initial proposal. It is estimated that Miraval will be investing three times the price of the acquisition of Cranwell to create a spa and resort that will be good for Lenox, residents and for the condominium neighbors of the project.

Attorney Smithers said that the ZBA should not put itself in the middle of the situation as a mediator between 55 Cranwell, LLC and Miraval to mediate private property rights between condominium unit owners and the owners of the property. He and Attorney Gobel disagree on whether there should be free and open access to amenities. Recorded documents say that condominium unit owners have to be afforded access to certain amenities on the same basis as resort/hotel guests for a fee. Attorney Smithers said that Attorney Gobel feels that they should get everything at no cost. Attorney Smithers said the facility cannot function by offering amenities at no cost.

Attorney George said that he agreed with Attorney Smithers. He also said that his clients want to be certain that everyone is treated fairly. He spoke to Attorney Goebel last week to determine what his clients' concerns are. He feels that Miraval has gone the extra mile to address their concerns as indicated in the changes that have been presented.

David Rua, in the slide presentation, gave an overview of the previous development plans and the proposed revised campus plan. Details were provided for community access, site plans, site access, elevations of the guest cottages, architecture, etc. He pointed out that Miraval is a "valet only" facility with no self-parking. Parking and screening were identified.

AH asked about buildings identified as "C" and "D" in the slide presentation. There are two existing buildings; one, a maintenance building, is hidden behind the berm. The fire marshal wants the building demolished. It and the one next to it, used as a laundry, will be removed and the uses will be combined and relocated to another location off site of the campus.

Mr. Dietrich said that the changes that have been made since the first hearing do not affect the conclusion of the traffic detail analysis and this is because the number of rooms proposed to be added has not changed. Their analysis focused on six intersections around Cranwell and trip generations on weekdays, afternoon peak hours, and Saturday mid-day. Delivery vehicles would be directed to a central location on the west side of Lee Road and deliveries will be made in smaller vehicles. The Town hired a traffic consultant for a peer review who had submitted comments to Fuss and O'Neill to which Fuss and O'Neill responded. Additional responses were requested on Walker Street and Lee Road during the summer season. Mr. Dietrich said that this has been completed, but it hasn't been submitted yet. They were also asked to do a worse case trip generation analysis for an event on weekdays. They will be submitting that, but the result is that this does not change any differences in their conclusions. He concluded that there is not a significant change to their original analysis.

Mr. Mack discussed briefly the municipal impacts and noted that the changes presented tonight by Miraval did not result any significant changes to municipal impacts.

Mr. Rudnitsky expressed appreciation to Mr. Rau for his diligence in making the changes to the plans and to Attorney Phil Heller for his letter regarding Amended and Restated Declaration of Rights, privileges and Amenities from October 5, 1999. He then reviewed the changes and proposals that have been developed as of August 26th as a result of the comments and concerns expressed. He stressed that Miraval was listening and responding to those comments. His presentation included a list of the amenity wants, needs, and other concerns of Cranwell abutters; fees for current and proposed memberships for Fairwynds I & II, Coldbrooke South, East and Estates as well as Lenox area residents. He also talked about the greater setbacks to the parking areas. A copy of his presentation will be made available for the record.

Attorney Smithers addressed the issue of a required 200 foot setback as per the zoning bylaw. Attorney Goebel has alleged that Miraval's proposal fails to comply with the 200 foot setback. Town Counsel was called upon to analyze materials provided by Attorney Smithers and she has concluded that it does comply and that the Board has the power to grant the modification as requested without consideration of the 200 foot setback of new buildings from existing condominiums.

Attorney Smithers said that Attorney Heller represented the former owners of Cranwell, Daniel and Peter Burack and their two related corporations which entered into an amenities agreement in 1999. This document has become a "bone of contention" between Attorney Smithers and Attorney Goebel, and the source of some disagreement with some unit owners as to their rights and at what costs. Attorney Heller has said that it was the intention of the Buracks that the words "on the same basis as guests of The Resort" meant at the same hours, under the same conditions, rules and regulations of use and at the same cost or price as was charged to guests of the resort. Attorney Smithers said that the fact that for many years the Buracks didn't impose a cost on condo unit owners was great but that doesn't create a perpetual right of free access. Attorney Smithers said: "People walking off the street have to pay, people who live at Coldbrooke have to pay, and people who live at Fairwynds have to pay and if Miraval is going to buy this property and invest three times the acquisition cost fixing it up to be a good resource to the town and an income driver to

the town, it is only going to do so on a basis that is fair and equitable to it and not a perpetuation of what might be a bad business decision for not charging from the beginning.”

SLC asked Attorney Smithers to define “key”. Attorney Smithers said that it is a hotel room. She then asked if his view of the land court decision is not that it treats hotel rooms and condominium rooms in a multi-use zone, significantly the same such that the ZBA would be prohibited from putting different restrictions on hotel rooms as on condominiums.

Attorney Smithers responded that SLC was referring to a land court case that was started by Attorney Heller on behalf of the Buracks and their corporation. The Buracks had petitioned the ZBA to build what became Fairwynds II and they wanted to break the Fairwynd units into individual rooms that could be rented back to the hotel and used as lodging. The ZBA denied the petition and Attorney Heller appealed. The case was tried by a land court judge and he ruled that the ZBA couldn’t prohibit the method of creating hotel rooms by dividing the condominium. The proposed hotel rooms, “keys” are refurbished in existing places where there are hotel rooms or constructed and scattered around the campus, as with the four separate buildings in this revised proposal.

Attorney Goebel, who represents Fairwynds, Fairwynds II, Coldbrooke East and Coldbrooke South submitted a letter from all four associations on August 24th and August 28th. He said that he has had the opportunity to address the associations’ concerns in a meeting with Miraval on Aug 11 and another on August 26th and feels that progress was made at each meeting. The changes that have been presented at tonight’s meeting show substantial changes, but there hasn’t been time to digest.

Attorney Goebel argued that Town Counsel did not have the benefit of his opinion when she issued her opinion relative to the 200 foot setback, therefore he doesn’t believe that Town Counsel’s opinion is the final word. He referred to Attorney Heller’s letter stating that he only spoke of the Amended and Restated Declaration of Rights, Privileges and Amenities dated October 5, 1999, but not of the one dated in August of 1999 noting different language in the documents. He would like to have another site visit with balloons.

SLC stated that from the perspective of the ZBA, the issue of the 200 foot setback is clearly a legal issue and this is why the Board will be again requesting Town Counsel’s opinion with the additional information submitted by Attorney Goebel. With regards to Attorney Goebel’s issue with amenities, SLC said that these are deeded rights which are a matter for Attorney Goebel and his clients to work out with Miraval. Deeded rights are relevant to the ZBA’s decision only to the extent that it has an effect on if whether or not the proposal serves community needs which is one of the standards the ZBA looks at to determine whether or not to issue the permit.

JH asked Attorney Goebel what legal authority the Board had to regulate this issue if it assuming everything else is correct, e.g., meets set back etc. Attorney Gobel responded that the Board has a responsibility to protect abutters and the issue is whether the associations are a part of the resort or not.

Attorney Smithers, referring back to Attorney Goebel’s argument that Attorney Heller only looked at the amended declaration of October 1999 and not the August 1999 one, is because the latter one supersedes the previous one.

Public comment:

Jan Blaszak, 39 East St.-The Great Estates Bylaw was created to preserve and protect for the owner of the properties and the community and he is concerned about development and the effect of rain and drainage. He offered to provide pictures. SLC, advising Mr. Blaszak that this is not a zoning issue, asked Attorney Smithers if any part of the proposal would require a filing with the Conservation Commission. Attorney Smithers said that only the raising of staff housing which is in the buffer zone would require the applicants to file either a Request for Determination or a Notice of Intent.

Louis Soloway 20 Wexford Court-He reviewed the criteria required for the issuance of a permit and said that amenities should continue to be available to visitors and tourists.

Robert Speilman, Fairwynds, wanted to ask technical questions of the architect regarding the site plan. SLC responded that this was not a forum to ask questions of the petitioner and suggested he list his concerns and submit to the Board. She added that he could provide that same information to Attorney Goebel who could relay to the Petitioner.

Linda Miller, 30 Clifden Court-She says that the changes that have been presented at this meeting don’t address the issues of the members of the community. She doesn’t feel that there should be gates and walls as they keep the community out which is not in keeping with the preservation bylaw.

David Rothstein, 20 Wexford Court, He enjoys the use of Cranwell, but now hears about locking out those who live around Cranwell. He asked that Miraval not overcharge those who are a part of community.

Sumner Milender, 15 Wexford Court-He was denied entrance to Miraval in Tucson, AZ because he didn’t have a permit. He believes that such a facility keeps guests on site which takes away from the businesses in the local area.

Julie Quain, Clifden Court-She understands that there is talk about valet parking and asked where members of the community who come to use the facility would park. Also, since this is being proposed as a health related facility, she feels that walking back and forth to a car would be better.

J. Carroll, 327 Walker St. She questioned the Great Estates Bylaw, building category and the 200 foot setback. SLC and AH explained that there were originally three Category 1 buildings. They were the mansion, Wickham Hall, now known as Beecher's Cottage, and Berchman's Hall, with the "Designated Building" being Wickham Hall. The latter is the only one which has the special protection of the 200 foot buffer.

Sheila Weiner, 245 Leisure Lee, Lee, MA-She goes to Cranwell 5-6 days a week and she would like Miraval to define "greater Lenox". She said that of the 20 who were in a class at Cranwell earlier today, only 1 or 2 were staying at Cranwell. She said that Cranwell has been a gathering place for people who are from communities in addition to Lenox.

David Teperson, resident of Cranwell- He said that Miraval is a resort of exclusion and suggests that they should build on an empty lot and not affect everyone else.

Steve Friedberg-Miraval has said that their project will bring in 1.3 million in additional taxes. He would like for the Board to ask how they came to that figure and what their intentions are.

Jo Ann Gallerstein-She doesn't understand why there can't be a more symbiotic relationship between the parties.

Peter Arment, 27 Bentrup Court-He wanted to clarify that materials for this application would be available. SLC said that copies are available at the Town Clerk's office for a fee. He also asked if there would be another site visit. SLC said that if one is scheduled, notice would be posted on the town website

Rosalie Goldberg- She lives in an abutting community to Cranwell and is in favor Miraval's proposal. She has guests who have stayed at Cranwell who have spoken of the lack of upkeep of the rooms and grounds and employees at the spa have said that help is needed to keep up the standards that Cranwell had been known for.

Unidentified person- She asked what the charges would be for amenities. Some were listed that only stipulated to be as a certain percentage off, i.e., what is the fee that is to be discounted?

Rori Kanter 129 East Dugway- She uses the facilities 5-6 days a week and believes that people have purchased property in the area to be able to access these facilities. She questioned the benefit to the Town when Miraval is selling exclusivity.

The Board decided that at this time there would be no site visit between now and the next hearing. SLC made a motion to continue the hearing to September 26, 2016 at 7:00 PM. AH seconded the motion and the Board voted to agree 5-0. Due to the issue that the sound system was not working, it was left that if available, the auditorium of LMMHS on East Street would be used. As soon as this could be determined, the hearing location will be posted on the website, www.townoflenox.com. A sign will be posted in the Town Hall.

Respectfully submitted,
Peggy Ammendola