

Zoning Board of Appeals Minutes, 09/26/2016

Zoning Board of Appeals Minutes September 26, 2016 Auditorium

Members in Attendance: Shawn Leary Considine (SLC), Acting Chair; Albert Harper (AH); Jedd Hall (JH); Clayton Hambrick (CH) and Robert Fuster, Sr. (RF)

Staff in Attendance: Gwen Miller, Land Use Director & Town Planner, (GM); Peggy Ammendola, Land Use Clerk, (PA)

Continued Public Hearing from

August 3rd, and August 29th

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.

Present were: Attorney Syd Smithers, Ellie Collins, and Justina Jordano of Cain, Hibbard and Myers; Attorney Alex Glover; David Rua, Senior Architect at Hart Howerton; Steve Rudnitsky, CEO of Miraval; Jon Dietrich, Traffic Engineer of Fuss and O'Neill; Steve Mack of Foresight Land Services; Attorney Emil George who represents the co-applicant, 55 Cranwell, LLC; and Attorney John Gobel who represents the unit owner associations for the Fairwynds at Cranwell, Fairwynds at Cranwell II, Coldbrooke South and Coldbrooke East condominium communities.

SLC told the audience of about 150 people that since the last hearing the Board has asked Town Counsel for opinions to two issues:

- 200 foot buffer-The question had been if this buffer applied to the periphery of what is known as the Cranwell property of internal lines that were created when parts of Cranwell were sold off to the condominium association. Town Counsel's opinion is that the buffer is only around the periphery of the Cranwell property.
- Amenities-The issue regarding the claim that amenities are in the deeded rights is not going to be dealt with by the Board as this is a matter of property rights between owners of condominiums, condominium trust and Cranwell. The broader issues of amenities to the Town of Lenox is something the Board will discuss, but not specifically with respect to the deeded rights of people who already live on the Cranwell mixed use property.

Attorney Smithers said that Miraval has put forth a serious and expensive effort to modify their proposal to accommodate condominium owners and residents of Lenox who raised legitimate concerns.

Mr. Mack responded to two comments that had been received from Brent White of White Engineering who has been retained by Fairwynds to review the proposed plans for redevelopment.

- Mr. White had asked for assurances Miraval would commit to remedial action should the additional flow become detrimental to Fairwynds and suggested the Board consider a bonding requirement. Mr. Mack responded that the applicant had previously agreed to a smoke test and evaluation of the existing sewer system and that Miraval would be willing to agree to a bonding requirement which would cover only disruptions that are directly caused by Miraval activities.
- Mr. White recommended that Miraval conduct test pits in the proposed infiltration areas to confirm the soil conditions and depth of the groundwater levels. Mr. Mack stated that Weston & Sampson had made this suggestion and Foresight Land Services had submitted an agreed upon response August 3, 2016. Mr. Mack noted that the infiltration areas are designed within "fill" locations which will raise the bottom of the areas several feet (in most locations) above existing grade minimizing the potential for any groundwater mounding.

In conclusion, Mr. Mack said that there would not be any impact to municipal infrastructure and referred to the previously submitted municipal impact report. There could be minor revisions, e.g., a change of piping.

Mr. Rau presented slides and reviewed the changes that have occurred during the hearings. Included, but not limited to, was the proposed diagram of the entire site, the site plan originally submitted, and proposed elevations of Cottage A and Cottage B. Additionally he discussed site access for Fairwynds residents, parking and community access.

Attorney Smithers referred back to the opinion rendered by Town Counsel and commented that it was clear that the proponent's view of the 200 foot buffer was supported by Town Counsel. He also stated that the access to the property is a private matter between the condominium owners and ownership of Cranwell and it is not within the purview of the ZBA.

Attorney Smithers shared that recently he attended a meeting with the Town Manager, out-going Treasurer and the new Treasurer, other Town officials and a representative of Standard and Poor's a financial services company. At that meeting Attorney Smithers presented the financial impact Miraval would have on Lenox. He stated that presently Cranwell pays in property taxes \$600,000.00 but with the investment by Miraval, that will rise to \$1,900,000.00 a year. Subsequent to the meeting, Standard and Poor's awarded a rating of "AAA" to Lenox, the highest possible category. This will make for lower interest rates as the town is borrowing significant funds for its infrastructure. Attorney Smithers attributes this rating in part to the business tactics which prevail in Lenox and the fact that Lenox is a tourist designation.

Attorney Glover discussed the constitutional limitations on certain permit conditions. She stated that while Miraval is committed to providing access to the resort for Lenox residents this is not a factor that may be considered by the Zoning Board in determining whether the granting of the permit serves community needs. Any courtesies may not be converted by the Board into conditions of a permit, nor may the lack of any courtesies be the basis for denial of the permit.

Town Counsel has reviewed Attorney Glover's September 26, 2016 letter and has opined that any dispute between the residents of the Fairwynds Condos and the developer of the Cranwell Estate concerning the rights of the condominium owners to access the resort amenities is a private property dispute which should be resolved between the parties without the involvement of the ZBA.

Town Counsel also responded to the Board's question as to whether a 200 foot buffer requirement between the Cranwell Estate resort activities and residential uses would apply to Coldbrooke, Fairwynds I and Fairwynds II Condominium Developments. Counsel determined that it would be reasonable for the ZBA to determine that the condos were developed as part of a comprehensive mixed-use development plan under the Estate Presentation Area Bylaw and do not constitute the type of residential development that would be subject to buffer protection.

Mr. Rudnitsky stated that Miraval wanted to establish another resort and chose New England and came to Lenox because they knew that their guests would enjoy the local attractions. He added that they are open to the community, want to be a part of the community and will give back to the community.

SLC asked the Board if they were comfortable making a decision in the absence of having engineering plans showing drainage, etc., and in the absence of having bond amounts to be set by Weston and Sampson. They agreed that it was incumbent on the Board to have both to be a part of the record before voting as well as peer review.

Public Comment:

Lewis Soloway, 20 Wexford Court-He wants public access to be preserved.

Arnold Miller, 30 Clifden Court-He wanted to go on record to object to Mr. Rudnitsky's reference to the word "needless" in discussing letters and comments from residents.

Bob Romeo- He stated that he had been one of the five Planning Board members who drafted the Great Estates Bylaw. A number of mansions of the "Gilded Age" had fallen into disrepair and abandoned. The purpose of the bylaw was to permit commercial activity and to preserve the view and vista. He concluded that had the Great Estates Bylaw not been approved by the community, Lenox would not be what it is today.

Linda Procopio Messana-She read from a prepared statement that was written by four of the five Trustees of Coldbrooke South Unit Owners' Trust. (CSUT) The fifth member, due to illness, was unable to participate. CSUT believes that the acquisition of Cranwell by Miraval could be a benefit to CSUT and the community. They believe that the latest proposal by Miraval gives a framework from which CSUT can negotiate favorable terms for continued use by CSUT unit owners, their immediate families and guests after the acquisition, but negotiations with Miraval have been halted because Miraval wants to complete negotiations with the Fairwynds Condominium owners. The result is that at this time CSUT cannot take a formal position with respect to the ZBA approval.

Warren Widmann, 15 Fairwynds Drive-He said that he represents the effected homeowners who live on Fairwynds Drive. He objects to the parking that is proposed to be placed in front of their homes which will result in lights shining into their homes and noise from car alarms. He referred to the failure of a Miraval in NY and some pools which failed PCHD inspections at the Tucson Miraval. He claimed that Mr. Rudnitsky has misrepresented Miraval in the presentation and that there is misrepresentation in Miraval's brochure.

Carl Pratt- Former president of the Lenox Chamber of Commerce, who had been the Managing Director of Canyon Ranch for a number of years, and was the General Manager of Cranwell for 4.5 years, spoke in favor of the proposal saying that it would be of value to Lenox and the Berkshires. He talked of the benefits afforded to our community by the existence of Canyon Ranch, noting that a retailer told him recently that one Canyon Ranch guest made their month. Mr. Pratt added that this is a national brand that would bring national recognition to Lenox and urged the Board to grant Miraval's request as it would benefit Tanglewood, Shakespeare and Company as well as other cultural activities.

Alan Milbauer- He is the Chairman of Fairwynds I Trust. Speaking in response to earlier negative statements made by one of the condo owners, Mr. Milbauer said that this is not the sense of the Fairwynds Community and that the majority of the owners want to work with Miraval. He stated that they have had many discussions with Miraval and that they haven't always agreed on everything, but he feels that it is wrong to say the kinds of disparaging comments made about Miraval and Mr. Rudnitsky.

SLC advised that there will not be any further opportunity for public comment and no more letters from the public will be accepted. She stated that the letters are a matter of public record and are available in the Town Clerk's office for anyone who is interested in reading them.

Attorney Gobel who represents the Associations and Board of Trustees of Fairwynds I and II said that the revised plans should have the same level of detail as the original plans. He addressed concerns which included, but not limited to, access and cost of access for amenities; drainage; and community needs. He suggested that a special permit should be conditioned regarding bonding and construction times.

The following letters were read into the record:

Beth Gamble, 47 Tucker St.-opposes exclusivity

Janet and David Rothstein, 20 Wexford Court, Unit #40,-denying access to amenities does not meet the needs of the community

Deborah Winslow, 172 Plunkett St.-She doesn't believe that fees and membership rates should be a part of a zoning hearing

Jack Zwick, 206 Walker St.-Supports the petition

Attorney Smithers will submit documentation for agreeing to the continuation

RF made a motion to continue the hearing to October 24, 2016 at 6:30 PM. AH seconded the motion and the Board voted to agree 5-0.

Respectfully submitted,
Peggy Ammendola