

## Zoning Board of Appeals Minutes, 12/21/2016

**Zoning Board of Appeals  
Minutes  
December 21, 2016  
Board of Selectmen's Meeting Room**

**Members in Attendance:** Acting Shawn Leary Considine (SLC); Robert Fuster, (RF); Robert Fuster Jr. (RFjr); Ned Douglas, (ND); Cliff Snyder, (CS)

**Absent with notification:** Chair Ethan Berg, (EB)

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

**107 Yokun LLC, 107 Yokun Avenue (Map 12 Parcel 2)** Special Permit under Section 5.2 (A) "Schedule of Uses" and Section 9.4 "Extended-Care Nursing, Assisted Living, Congregate Care" to permit the adaptive reuse of an existing building for a residential center for women with eating disorders.

Approximately 20 members of the public were present

Presenting the Petition were Jamie Berg, Project Director of 107 Yokun LLC; Attorney Alex Glover who represents Ms. Berg; and Jim Scalise of SK Design Group.

Also present were Attorney John Gobel who represents abutter Robert Brown and Attorney William Martin who represents George Krupp, also an abutter.

There were about 20 members of the public present.

### **Disclosures:**

Ethan Berg, Chair of the ZBA, is the spouse of Jamie Berg. He did not participate in the hearing.

CS disclosed that he is an "on leave of absence member" of the Lenox Club which is a direct abutter to the subject property. He also stated that Ethan Berg, the spouse of the Petitioner, Jamie Berg, is a member of the Zoning Board. CS said that he can give fair judgement to the Petition, but said that he wanted everyone to be aware and that he would be open to any questions.

RFjr disclosed that he is an active member of the Lenox Club and knows Jamie and Ethan Berg through the Club. He feels that he can be fair and impartial through the hearing process and asked those who were present to speak up if they were not comfortable with his participation.

ND disclosed that over last five years he has taught the two Berg children at Berkshire County Day School. This relationship would not sway his vote and asked that if anyone objected to speak up.

SLC further explained that that the Board has regularly had spouses of members who have applied for permits and that she doesn't recall that there has been an issue. It has been her experience that the Board can deal fairly with this situation. She reiterated that if anyone had any objections to make that known at the onset. While it cannot be avoided when a member or member's spouse comes before the Board for a petition, the Board would gladly listen to concerns. No one present voiced any concerns or objections.

The Public Hearing Notice was read.

### **Presentation of the Petition:**

Attorney Glover stated that this is a critically needed residential program for the treatment of eating disorders. She said that this use would be the lowest impact use for this existing building. There will be limited construction work to the interior, some exterior cosmetic work and a small amount of site work. This project meets or exceeds all zoning requirements; the general requirements for the R1A Zone, but also the specific zoning requirements for this type of use under Section 9.4. The Petitioner is applying under Extended-Care Nursing Facility because the definition includes this use. Up to 140 residents could be permitted, but this petition is asking for only 48 residents. Ms. Berg will propose a condition that would define the program. Attorney Glover said that it is possible to run this program as a "by right use" as an educational use. It will have an educational component, but the application is for a Special Permit to define the scope of the program, something that the operators are requiring.

SLC pointed out that with respect to the educational use, there is a group home downtown which is run by Austin Riggs for essentially medical purposes. The home, which has been there for many years, was permitted under the educational part of the bylaw, which is allowed "by right". SLC stated that the Petitioner might have been permitted under that section, which would

have required very little oversight by the Board. Instead the Petitioner is presenting to the Board as a medical facility which requires more oversight.

SLC asked Attorney Glover if Ms. Berg was agreeing that if there should be a different group of people or a different kind of facility she would return to the ZBA for a modification of her permit or petition for a new permit. Attorney Glover responded that if there was a different program operator, the answer would be negative, but if it were to become a different type of treatment facility, Ms. Berg would submit a new petition. SLC then asked if the operator chose to increase the number of beds significantly if the Petitioner would seek a modification to the Special Permit. Attorney Glover answered in the positive, adding that it would be within the 140 cap allowed in the bylaw.

Ms. Berg reviewed her application and said that in order to be a part of the program the women have to be medically and mentally stable. They come from high achieving families. The length of stay averages two to three months. The therapy is primarily one on one with a professional, but there is also small group therapy, art therapy, yoga etc. The women are taught to cook in a community kitchen. They will leave the facility in small groups with a staff member to learn how to shop for groceries and to dine out. There are two 8 hour shifts and overnight there are usually two licensed professionals, so it is a 24 hour a day, 7 day operation. Ms. Berg said that this proposal is for a facility in which the residents do not have cars.

RF asked about supervision, and if the residents are free to leave if they so choose. Ms. Berg said that the residents come willingly to such treatment facilities because they want the treatment and though they are free to leave, they usually do not. The professionals who stay overnight are there to provide for the residents' needs.

Ms. Berg said that the existing building is empty and not sustainable, so some use would occur at some point in time. They have been looking for the right use and they believe this program is it. Her family owns the adjoining historic mansion and the property along the south edge, the home at the front of the property and the home across the street. The impacts from this use would be benign and it would provide many benefits.

A staff of about 25 would include a medical director, clinical director, a nutritionist, teachers for art, mindfulness, yoga, a resident counselor, and social workers. Ms. Berg would manage as the property owner and work with the operator who would be the functional manager of the facility.

Mr. Scalise, a civil engineer reviewed the technical aspects and how the proposal complies with zoning. He provided a site plan and described the property regarding size and frontage as well as the dimensions of the existing building. The existing parking is for 50 vehicles, but some hardscape will be removed and parking will be reduced to 37 spaces which would provide enough for overlap with shifts. A peer review, conducted by Weston and Sampson agrees with that number. There will be no improvements to the existing driveway for the first 950 feet. The only work between the road and the building would be for the connection to the sewer. This is a mixed use neighborhood. Dr. Krofta founded Lenox Institute of Water Technology, a non-profit educational and research institution which operated at site. He had between 30 and 40 students.

Mr. Scalise reviewed the traffic and said that the project will not create undue traffic congestion or unduly impair pedestrian safety.

Regarding utilities, there is a septic system which will be abandoned and the facility will be connected to the town sewer system. There is adequate capacity. Water exists and there is also a well, but it is used only for irrigation.

Regarding stormwater, the proposed project will not increase peak flows from the 2 year, 10 year or 25 year storm event.

The site is about 40 feet lower in elevation than Yokun Avenue, so lighting will be shielded by topography. All new lighting will meet the intent of the "Dark Sky" initiatives. Lighting will be at minimal levels in areas which require lighting. Mr. Scalise suggested that the permit be conditioned to allow SK Design to submit construction plans to the Town Planner and Building Inspector for their final design.

Mr. Scalise reviewed the elevation stating that this is a Tudor style building. New stone will be added and it will look like a Tudor style home. There will not be any additions to the building nor an increase in height. The building will be renovated and updated to meet code requirements. The loading docks will be removed.

A specific screening plan was not provided, but Mr. Scalise reviewed the site and described the locations of the trees. There is a tall stand of evergreens that are on a hillside to the south and southeast. The parcel is 12.4 acres.

Mr. Scalise discussed the project's compliance with the relevant, specific zoning bylaw provisions.

The Petitioner has filed a Request for Determination of Applicability with the Conservation Commission to make sure that they are not in wetland areas. They are to appear before the Commission on January 5, 2017.

Mr. Scalise concluded his presentation by saying that this educational/wellness facility uses the "smart growth" principles, which is a goal in Lenox and in Massachusetts. He stated that the project meets the site plan review criteria as well as the special permit

requirements.

ND asked if there were plans for visitor parking. Mr. Scalise responded that he didn't know how an operator would feel about that, but that this kind of use typically has empty parking lots. He would not object to having spaces labeled for visitors.

Attorney Glover wanted to comment how this project meets the special permit criteria. Regarding community needs she said that there is a significant need for a facility for treating potentially life threatening eating disorders. This project will provide local education and outreach to the Lenox community including public schools and the greater community. The building is visible from the Berg's property, but it is not from Yokun Avenue. She pointed out that the Lenox Club has 150 members and that Belvoir Terrace has a program for about 160 girls. This project will have a residential use feel and appearance and it is an adaptive re-use of an underutilized building. This project, unlike a lot of the larger projects, will bring quality jobs to the area. The downtown businesses and restaurants will benefit as there will be grocery shopping and dining for the purposes of educating the residents in dealing with food. Hotel tax will increase as families will be coming to visit and when complete this project will bring in more real estate taxes. Attorney Glover said that Lenox has a growing reputation as a premier wellness area and this proposed facility will fit in and complement the other facilities.

Attorney Glover said that she has spoken to Attorney John Gobel and Attorney William Martin who have shared the concerns of their clients. She has some proposed conditions that she will provide to the Board. One condition would address a second driveway, unpaved, which intersects the driveway to the facility. The abutter, Dr. Brown, who is represented by Attorney Gobel, wants assurance that the only driveway that would be used to access the facility is the main one which leads off of Yokun Avenue.

### **Public Comments**

Mark Liponis, an abutter, wanted to know the purpose of the special permit and if it was to protect the value of the properties.

SLC said that special permits assure that there is a body that represents the town. The Zoning Board applies the law in granting special permits. She cited Sections 9.4 and 3.4.2 of the bylaw. Mr. Liponis feels that this proposal will reduce his property value while increasing the Berg's property value. This, he says, is not fair. He stated that he has lived here longer than the Bergs. Mr. Liponis also said that he is concerned about having a mental health facility two doors down from his home and that 48 teenage girls are free to move about and would be walking past his house. He plans to put in a pool and he doesn't want to put up a 12 foot tall fence to keep teenaged girls out of the pool. Attorney Glover responded that the facility would house some teenage girls as well as young women.

Deborah Herman, a resident of Stockbridge, related her personal experience with her daughter who hid her eating disorder for two years. She quoted statistics regarding the illness. Last March her daughter went into a treatment facility similar to the proposed and has just graduated and is healthy. She wishes that this facility had been available to her daughter, who had to seek treatment in Los Angeles.

Attorney John Gobel spoke on behalf of his client Robert Brown, a neighbor of the Bergs and stated that they agree that the use proposed is appropriate and meets the special permit criteria and that in general they are in support of the application. They do feel that this could change easily into a different use e.g., a clinic or hospital, so they want to have limits, specifically for any different type of medical or mental health facility (whether inpatient or outpatient), or to a different type of residential or inpatient facility such as for an alcohol, or drug treatment and rehabilitation facility. For that reason, if the permit is granted Attorney Gobel requested that there be a condition that any change of use from that as a eating disorders residential facility, including, without limitation, to a different type of medical or mental health facility (such as outpatient), or to a different type of residential or inpatient facility, such as for alcohol or drug treatment and rehabilitation facility, would be prohibited under this permit, but would require a new special permit. This would also apply to any expansion of the proposed facility to include more beds or different services. Attorney Gobel also spoke about the concern regarding the second driveway and asked that there be a condition that this driveway, which was created 4 years ago, not be used. Attorney Gobel proposed specific language for this requested condition.

SLC asked Fire Chief Dan Clifford if the second driveway was required and he responded that it has nothing to do with the driveway for the facility and not necessary for emergency access.

Hans Reinholdt questioned why the Bergs would want to use this property for this project. He feels that they own one of the nicest properties in the Berkshires, and having such a facility there will hinder the future sale of their property.

Attorney Bill Martin who represents Mr. and Mrs. George Krupp of 65 Cliffwood stated that there should be a site visit. He also wants the applicant to provide more specific information on the nature of the operation and who the potential operators are. He questioned if the residents might have other substantial mental health problems. He feels that no one can argue the need for supportive services for eating disorders, but questioned if such a facility is needed in Lenox.

Reid White, 89 Cliffwood St., feels that it is important to know who the operator is and that the Board should reserve the right to approve the choice or at least do due diligence to find out who the operator is. He asked if this is a "by right" use because it is for non-profit education. SLC explained that if the petitioner had filed under that section of the by-law they would have a "by right" to do what they are proposing. Mr. White then asked if it is necessary to get a "by right" use because it is for profit. RF responded

in the negative and further stated that if it was a for profit educational use, it would be by right and there is a federal statute related to this. SLC said that there are certain things that one can do by special permit in the R1A zone, and this is one of them. Mr. White said that this is a substantial business which can go up to 140 residents. SLC reminded Mr. White that this could not happen without the Board's approval. In closing, Mr. White said that he is opposed to this use. He believes that there are clinics around the country for this purpose and that this is not Lenox's problem. He stated that this use should not be permitted in the neighborhood. Attorney Glover stated that under the state law in order to have the exemption an educational use has to be non-profit, but under the Lenox Bylaw, Section 5.2 b, Schedule of Uses, it can be non-profit or for profit.

Mike Sucoff reminded the long term residents that the proposed use has a lot less impact than the previous use as Lenox Institute of Water Technology which was in existence when they bought their property and asked that they remember what it was like

Siobhan McNally-(partially inaudible) She does not support this use. She claims that facilities like this are already available in NY, MA and CT.

**Correspondence**-The following letters were read into the record. Due to the length of some letters, only excerpts were read. An abbreviated summary is provided here. These letters are available in the Town Clerk's office and will be posted on the Town's website: townoflenox.com

Michael Albert-Supports the project-Provides employment opportunities

David and Cindy Berger -Support project-Neighborhood has multiple uses, homes, social and croquet club, summer camp, an Inn, and Kimball Farms which is a rehabilitation facility.

130 Pittsfield Road LLC -Support-Excerpts were read. "Will cement the reputation of the Lenox area as the premier wellness destination in the Northeast."

Andrea Gerber-Support-She is a Clinical Psychologist with 18 years' experience in treatment and research of eating disorders.

Lance Dragonetti-Support-Lenox has businesses that share the same concept of healthy eating.

Colin Matthews-Support- Excerpts were read. "Closely aligned with Lenox's culture and values, Project invests in the life and vitality of the town.

Mark Liponis-Siobhan McNally- Oppose-Motivation is commercial-Residential health facility of 18,000 sf and in excess of 35 feet high clearly does not belong.

The Lenox Club-Trusts that the ZBA will examine and consider the recommendations of a traffic study and final design regarding site light levels and "dark sky compliance" as per relevant zoning regulations

Judy Magram-Support-She is the mother of young girl with a rapid-onset eating disorder.

Deborah Herman-Support-Excerpts were read. She is the mother of young girl with bulimia who was sent to Los Angeles for treatment. She said: "The best programs are elsewhere in the country."

Margery and Lewis Steinberg-Oppose-Such a facility does not belong in the neighborhood.

Weston and Sampson-Peer Review Comments-This is a technical memorandum. Weston and Sampson was retained by the Town and paid by the applicant to review the applicant's engineer's conclusion. Mr. Scalise said that the comments primarily applied to the sewer that was approved a year ago and he is amenable to the comments which he received today. He will follow up with a written response.

RFjr wanted everyone to know that not all letters are read aloud in their entirety due to the lack of time, but that the Board members have read them all.

It was agreed by consensus to have a site visit on January 12, 2017 at 10:30 AM. All were advised to meet at the building where parking is available.

RFjr made a motion to continue the hearing to January 12, 2016 at 7:00 PM. RF seconded the motion and the Board voted to agree 5-0.

CS advised those in attendance that if they had any specific questions about the project to contact either the Bergs or Attorney Glover prior to the meeting.

Respectfully submitted,  
Peggy Ammendola