

Zoning Board of Appeals Minutes, 05/03/2017

**Zoning Board of Appeals
Minutes
May 3, 2017
Land Use Meeting Room**

Members in Attendance: Shawn Leary Considine, SLC; Robert Fuster Jr. (RFjr); Cliff Snyder, (CS); Ned Douglas, (ND)
Absent with notification: Robert Fuster, (RF); Ethan Berg, (EB)

Staff present: Peggy Ammendola, Land Use Clerk, (PA); Gwen Miller, Land Use Director/Town Planner (She joined after the hearing for Rolling Hills commenced.)

Gizwood Properties, LLC, 82 West Street (Map 42 Parcel 60), a second curb cut on the property, per Section 7.1.8, #7(b), to install a circular drive.

RF was ill and unable to attend so there were only four members of the five member board sitting. Due to an illness in the Petitioner's family, they were unable to attend, and requested a continuation.
CS made a motion to continue the hearing to June 7, 2017 at 7:00 PM. ND seconded the motion. The Board voted to agree 4-0.

Rolling Hills Condominium Trust, Pittsfield Road (Route 7 & 20), (Map 27 Parcel 69), Modification of Special Permit and/or seek a Variance, Section 6.1 to construct a storage building on the property. *Continued from April 5, 2017*

Presenting the application was Doug McCormack, Manager at Rolling Hills and John Arseneau, the contractor.

It was explained to the Petitioner that because only four members were present, they had options to proceed. The Petitioner could chose to continue until all five members were available; they could proceed with the continuation tonight, and the absent member could listen to the audio, but the vote would have to be taken at a future date; or, they could proceed with the hearing and the vote could be taken, but all four would have to be in favor in order for the petition to be granted. The Petitioner chose to proceed, understanding that as the hearing progressed, if he felt that the Petition would not be granted, he could withdraw without prejudice.

There was a thorough search at Town Hall and Mass Land Records for a copy of the Special Permit that the Petitioner wanted to modify but to no avail. The only one found at the Town Hall was the December 30, 1975 *Supplement to the Decision of November 20, 1972*.

The following were obtained from MassLandRecords:
Master Deed of April 8, 1976
Plan dated December 5, 1975, 32 pages

It was noted that the Master Deed has nothing to do with the ZBA. SLC said that she did not see anything relative to the construction of a shed or open space.

Mr. McCormick referred to the Master Deed, Section 9 (I) and stated that they are in the open space area where they want to put the shed.

SLC read aloud from the Master Deed, page 17, Section 9 (I):
All of the land of the condominium lying northeasterly of a line parallel to and 1000 feet northeasterly from the north-easterly side line of said State Highway (sometimes known as Main Street) shall be preserved in perpetuity as open space, and no buildings or structures shall be erected or maintained thereon except for recreational facilities. With respect to the provisions of the foregoing clauses (h) and (i), no permission, waiver or release shall in any event be granted without the prior approval of the Board of Appeals of the Town of Lenox.

Mr. McCormick pointed out on the site plan where the open area is and described it as running parallel to the highway and 1000 feet and is behind building #8. SLC believes that the rear portion is open space is because 1,000 feet off from the highway is a different zone, R1A, and condos would be restricted from that zone.

CS asked if the shed could be put on a temporary base so that it could be lifted and moved. Mr. McCormack said that it could. Piers, rather than crushed stone, would be used, primarily due to the weight of materials and equipment being stored in the shed. Placing it on a crushed zone base would subject the structure to moisture and rot. There will be no plumbing, electricity or windows in the shed.

Petitioner, at this time, chose to proceed with the understanding that all four members would have to vote in favor to modify the special permit.

RF made a motion to close the public hearing. CS seconded the motion and the Board voted to agree 4-0.

RFjr made a motion to grant the modification of the existing Special Permit to allow construction of a 12'x 24' shed within the proposed location referred to on the map. CS seconded the motion. The Board voted to approve 4-0.

Minutes: April 5, 2017-RFjr made a motion to approve the minutes as presented. CS seconded the motion and the Board voted to agree 4-0.

CS made a motion to close to adjourn and ND seconded the motion. The Board voted to agree and the meeting was adjourned at 7:37 PM.

Respectfully submitted,
Peggy Ammendola