

## Zoning Board of Appeals Minutes, 04/20/2016

### Zoning Board of Appeals Minutes April 20, 2016 Landuse Meeting Room

**Members present:** Chair Ethan Berg, (EB); Shawn Leary Considine, (SLC); Ned Douglas, (ND); Robert Fuster, RF; Clifford Snyder, (CS)  
**Staff present:** Gwen Miller, Land Use Director/Town Planner; Peggy Ammendola, Land Use Clerk

**David A. Ward, Cranwell, 112 Lee Road Map 3-55-1, Modification of a Special Permit** to add 85 parking spaces for event parking at the Harvest Barn on the property located on the west side of Route 20 and north of Plunkett Street.

Presenting the application and site plan was David Ward and his son, Matt Ward.

There was no correspondence and no abutters were present.

The Capital Steps, an American political satire group, have performed in the basement of the Olmstead building for a number of years even though the space was very small. The group will be back for two months this summer starting on July 3<sup>rd</sup>, and due to the current political climate, Cranwell felt that they needed a larger facility so plans were made to revamp the Harvest Barn, the former location of Golf Digest's golf school. Mr. Ward said that many events, weddings, parties, etc., have been held at this location over the years but when he went to get a building permit, Building Commissioner Don Fitzgerald said that more parking and ZBA approval would be necessary. Mr. Ward asked GM for her understanding of Mr. Fitzgerald's opinion. GM responded that this would no longer be temporary parking but permanent parking so that they would not have to come back in the future for approval. Mr. Ward said that parking has been available for the last 20 years for events. Harvest Barn has a certificate of occupancy for up to 300 people. Designated parking exists for approximately 15 vehicles. This permit would allow parking for 85 vehicles on a consistent basis. Mr. Ward stated that parking will be on the grass surface and if necessary he would put down wood chips.

The public hearing was closed.

The consensus of the Board was that the proposal was reasonable and met the criteria for the modification of a special permit.

RF made a motion to allow modification of a Special Permit to add 85 parking spaces for event parking. SLC seconded the motion. The Board voted to approve 5-0. ND made a motion that this permit prohibits the paving of the parking area. CS seconded the motion and the Board voted to agree 5-0.

**Electric Power Research Institute, Inc., 115 East New Lenox Road (Map 34, Parcel 1) Special Permit under provisions of Section 3, "Use Regulations"** as a planned unit office or research center to confirm that certain modifications, replacements, improvements or additions to the research and testing facilities and equipment, similar to the modifications that have occurred at the center for many years at the EPRI site, are and will continue to be permitted uses.

No correspondence was received and no members of the public were present.

Attorney Rob Dewees of Nixon Peabody, LLP presented the application. Also present were Peter White, John Morrow and Justin Bell.

Attorney Dewees said that Mr. White of EPRI sent letters to all abutters on March 24<sup>th</sup> regarding this petition. The purpose of which was to make them aware that EPRI was filing a petition for a Special Permit and to offer the abutters the opportunity to ask questions of EPRI. The only abutter to respond was Leona Butler of 916 East New Lenox Road. Attorney Dewees stated that she had no objections.

Attorney Dewees said that the test center has been in operation for over 50 years and is approximately 35 acres in size. Prior to EPRI, General Electric had owned the site since the 1950s and had used the site for similar electric industry research. EPRI brings electric power professionals to Lenox from around the country and other countries to participate in, and be trained about the research conducted at the Lenox center. Attorney Dewees said that when EPRI receives requests to conduct new research or testing projects, these requests are often subject to tight deadlines. If EPRI must modify its existing testing facilities or install new equipment for this research, the deadlines do not allow for the time required for customary zoning approval procedures. This issue has been discussed with Building Commissioner Don Fitzgerald and EPRI believes it is desirable that a special permit be issued to clarify the uses permitted at the site. As a part of the application, EPRI requested seven specific uses to be permitted by and under the Special Permit. The activities contemplated by EPRI would be conducted within the existing footprint of the site and would not exceed the height of the tallest structure currently existing at the site. There will be no change in the use or character of the site, and the same type of research and testing that has been conducted at the site for many years will continue. There will be relatively little visual impact on the neighbors from the permitted activities.

ND made a motion to close the public hearing. RF seconded the motion and the Board voted to agree.

GM said that EPRI had experienced delays in research due to the "bottle neck" in the permitting process which also hindered securing grants. In discussion with Mr. Fitzgerald an option considered to help alleviate the delay was to enter into a Memorandum of Understanding with EPRI, but it was decided that it would be better to have a Special Permit so that abutters and the public could have an opportunity to hear about the proposal.

This petition is for approval of the 7 specific items listed in the application. Anything beyond those items would require a new petition.

GM referred to Section 6.5 of the zoning bylaw, Planned Unit Office or Research Center and Section 6.5.1, Planned Unit Office or Research Center; Residential Districts, which applies to this use. She said that EPRI meets the minimum lot requirement and the building coverage is 1.3 per

cent. Much of the abutting properties are conservation land. There is the Butler property and a residence across the street from this property. Other properties are owned by GE or the Commonwealth of Massachusetts.

Attorney Dewees said up until recently, they did not have problems with delay. They feel that this request would help EPRI, provide clarity for the Building Inspector, and for future inspectors. For anything other than the list of the specified 7 items EPRI would have to come back to the ZBA.

The Board discussed at length, pointing out that usually they have specifics for proposals. They want to make sure that what is granted is proper. This would have to be consistent with the variances that have already been granted. The Building Commissioner, according to GM, has reviewed the application and is satisfied with the language of the 7 items. GM stated that a special permit is a tenable and sustainable solution for EPRI and the Town whereas relying on variances each time makes EPRI and the Town more vulnerable.

ND made a motion to close the public hearing. RF seconded the motion and the Board voted to agree 5-0.

RF made a motion that we determine that this project, as presently constituted, is a Planned Unit Research Center within the meaning of the bylaw. SLC seconded the motion and the Board voted to approve 5-0.

RF made a motion that the following uses be allowed by special permit for this site and this research center items 1-7 on page 3 and ND seconded the motion. The Board voted to approve 5-0. Those seven items are as follows:

- Add, test, remove, reconfigure and replace transmission and distribution structures and hardware (including, but not limited to, poles, conductors, insulators, ducts, cables, wires, foundations, anchors, guy wires, capacitors, lattice work structures, and other support structures) up to a height of the tallest existing structure at the site which is 150 feet;
- Add, test, remove, reconfigure and replace equipment, including but not limited to, typical transmission, substation and distribution equipment such as transformers, rotating machines, reclosers and batteries, together with wires, storage tanks, circulators, breakers, insulators, cables, ducts, capacitors, anchor rods, wiring, and structures, supporting structures and substructures;
- Add, test, remove, reconfigure and replace underground manhole test chambers and associated control sheds, piping, ducts, cables and wiring;
- Add, remove, reconfigure and replace safety equipment, including but not limited to, safety barriers, fences and associated hardware to manage risk, ensure safety, and restrict access in any amount and number of configurations;
- Erect, build, remodel, modify and demolish existing buildings and test structures, supporting structures and substructures, including but not limited to plumbing, electrical and other hookups, both above and below ground up to an area of 10,000 square feet and a height of 80 feet;
- Grade, route, re-route and maintain roads, rights of way, easements, driveways and trails; and
- Landscape to suit buildings, structures, test facilities and roads and rights of way.

SLC made a motion to condition the special permit with the stipulation that it must be reviewed by the Board 3 years from this date and the applicant is responsible for initiating that review. RF seconded the motion and the Board voted to agree 5-0.

**Gizwood Properties, LLC (Tonya DeFrist), 82 West Street (Map 42, Parcel 60), Special Permit under Section 7.2,** “Accessory Dwelling Units” of the Lenox Zoning Bylaw to build an accessory apartment to rent.

Presenting the application were Tonya DeFrist and Donald Moore of Gizwood Properties. The ADU is proposed for a family member during their last year of college. After that it is expected to be occupied by aging parents. In the distant future, they may opt to use it as income property. The unit is above the attached garage.

The required affidavit was not provided. The applicant was unaware that this was necessary. GM explained that the affidavit is a testament to the fact that the owner will occupy the home and only rent out to one other family, versus renting out both the home and ADU. The applicant will make that available within 14 days.

The Board determined that the ADU met the requirements of the bylaw.

No correspondence was received and no members of the public were present.

RF made a motion to close the public portion of the hearing. ND seconded the motion and the Board voted to agree.

SLC made a motion to approve the application as presented. CS seconded the motion and the Board voted to approve 5-0.

**130 Pittsfield—Lenox Road, LLC, Pittsfield Road (Map 22, Parcel 36 and portions of Map 22, Parcel 37),** Special Permit for a Motel under Section 3.1(F) (11) “Motels” and Section 6.1 “Motels, Inns, Hotels” of the Lenox Zoning Bylaw, a Special Permit for exception under the provisions of Section 3.1.(C)(2) “Place of Public Assembly” and a height waiver under Table 4.1.1 (5), Footnote 3. The petitioner seeks Site Plan Approval under Section 9.5 “Site Plan Approval for Developments in the C-1A and C-3A Zones”. The project is for a 100-room all suites hotel and event center at the site of the Magnuson Hotel.

Presenting the application were the following: Attorney William E. Martin of Martin & Oliveira; civil engineer and planner James Scalise of SK Design Group; landscape architect Robert Akroyd of Greylock Design Associates; David Carpenter, consultant and Director of Administration for the Mahida Family Hospitality Interests; and architect Robert Harrison, Berkshire Design Inc.

Also present were: Pravin Mahida, brother of hotel developer Vijay Mahida as well as the current owner of the site; Vijay and Crystal Mahida; Shivam Realty, and its local manager Sweta Pandya; Attorney Michael Martin of Martin & Oliveira; and Attorney John Gobel who represents Twelve Oaks, an abutting property.

Letters have not been received nor were there any members of the public present.

Mr. Scalise provided a brochure which includes photos of the existing Magnuson which was built in 1964. In 2008 there was a “catastrophic failure” in which decks fell off. Repairs made included new posts, railings and decks. From the photos the hotel looks as though it is in good shape but it doesn’t meet building codes. The building has been in need of emergency structural repairs, is not energy efficient and does not meet the state of the art systems for fire protection, handicapped accessibility and other amenities. The new construction will be generally the same footprint. The two buildings up front a utility building and the caretaker’s residence will be removed and not replaced.

Mr. Carpenter said that they are asking for a separate special permit for an event center with the capacity for 500 people. This will be unique for the area and have a major positive impact for the Town. There is an existing building with a meeting space, restaurant, bar and a large kitchen. This space is licensed for entertainment and bar. This project proposes to reconfigure this space, taking from the front and rotating to the back side so that it connects to a wedding venue where a tennis court is currently. They are proposing a 14,400 square foot building with 6800 square feet of a “clear span” meeting space with 18 foot ceilings. Mr. Carpenter feels that this will be the best meeting space in the Berkshires and will rank very high in Massachusetts in terms of an event center (not a convention center) that will be for social gatherings that are community oriented. Over the last 20 years hotels have moved to limited service and shrunk event center space to approximately 1,000 square feet with a capacity of up to 100 people. The current capacity of the meeting space is about 360; the restaurant is 96 and the number of rooms is 100. With larger events, there would be a spill over into other area hotels. The placement of the event center in the front became the driver for the architecture of the building and landscape.

Mr. Harrison, spoke of the architecture of the structures, saying that Mrs. Mahida proposed a concept that would incorporate and reflect the design and elegance of the Berkshire cottages; a sense of residential. Features include double hung windows, turned columns, and clapboard. The total layout shows an “L” shaped hotel which faces the road with a porte cochere and pool in front.

The event center is circumscribed inside the two wings in the hotel and connected to the hotel with a glass walkway which divides up the space in between an area for lawn games and courtyard. The event center can be entered from almost anywhere in the building and the meeting room is limitless in flexibility as to the size of the space. It can be divided up into 1/3 space, 2/3, etc. It will be “cocooned” into all of the hallways and support spaces to create sound isolation. It will be one story.

Mr. Akroyd discussed the landscaping plan and existing views. The project will still be in view of Routes 7 & 20 and will enhance the visual quality of that route. In designing the landscape he took cues from the architecture to create what is reminiscent of a Berkshire manor. The space between the buildings will be a courtyard with a hardscape surface and plantings to form an enclosure. A specific variety of trees which allow light to filter through will be planted and there will be water features. The use of this space will range from just a quiet space at a table to a multitude of functions i.e., rehearsal dinner or spill over from the event center. Greenspace is planned for the front and rear. The entrance to the event center will resemble that seen at some of the old Lenox manors. Fencing of wood and stone will be used to define spaces. Stormwater retention will be handled with the creation of undulating land forms to mimic the Berkshire Mountains. An ornamental orchard is planned, but may be constrained if there is ledge. The idea is to evoke the agricultural history of the corridor

Mr. Harrison presented to the Board a 60 second “fly over” visible on his computer. They built a full 3 dimensional model of the project to show the project with and without the landscaping.

Mr. Carpenter informed the Board that they had asked and received a letter from Mr. Harrison with regards to events and noise emanating from the event center. The request asked Mr. Harrison to outline the design work that has been done, and will be done to minimize the noise. It is in the interest of the developers to provide noise protection to both the hotel guests and the neighbors.

A part of the property with an elevation of 20 to 25 feet higher than the other part provides exceptional views and is a desirable location for some outdoor events such as a wedding ceremony or yoga. For a wedding, the reception would follow in the courtyard or event center. It is likely that participants would want the ability to have acoustical music and amplified for the purpose of voice. The only abutters who have expressed concern regarding outdoor events have been Twelve Oaks, who is represented by Attorney John Gobel. The developers believe that there is the potential for agreed upon conditions regarding hours etc., and the developers would like to have an agreement to provide to the Board.

Mr. Carpenter said that a separate discussion is taking place regarding a large service road that the developers are considering to eliminate and enlarging the path so that there is only one service road. Doing so would allow them to maintain about 30-40 feet more of trees.

Jim Scalise went over the site plan review. There are 10.3 acres with 446 feet of frontage. The current use is a 120 room hotel, 96 seat restaurant and 363 person capacity meeting place. A 2 bedroom caretaker’s home will be removed. The elevation is 15 feet higher than Route 7 and another 25 feet higher beyond that. Mr. Scalise said that they are working with MassDOT regarding access. He gave a quick overview of a full traffic study prepared by Fuss and O’Neill which is part of the application package. The developers have met with the Conservation Commission who issued a Negative 3 Determination which means that there are no resource areas on the site. There are 24,238 vehicles a day on this stretch of the road and this use, a very low traffic generator, would increase this number by 1.03 to 1.25 percent. In order to improve the level of service for right turn traffic out of the site, the driveway will be widened to provide a separate left turn lane and right turn lane. They will regrade the front area along the east side of Route 7 & 20 to improve the sight distance to and from the south. Currently there is a poor level for a left hand turn but this isn’t correctable. A sidewalk will be installed as required by DOT. Mr. Scalise said that the Planning Board thinks that they have too many parking places so they have looked at how this could be reduced and would welcome ZBA suggestions. In accordance with the bylaw and adding up all of the uses they would need 273 parking spaces, but have 277. Mr. Scalise concluded that there are 10 stormwater management standards. Mr. Akroyd, referring to the Master Plan of 1999, pointed out how this project fits in with the overall vision of the Town. Redeveloping an existing site is a top priority and this project is almost the same exact footprint. By bringing the number of rooms from 120 to 100 reduces the burden on the Town. This project fits the site better than the existing. He said that this hotel could not accommodate 500 people who might attend an event at the event center; therefore many would have to seek accommodations elsewhere which would be a benefit to the other inns and restaurants in the area.

Bill Martin discussed the parking in the corner and the elimination of them, which has been suggested by an abutter from Twelve Oaks. There is a small storage building for a snow blower and lawn mower. This building will be relocated. RF asked about consideration being given to lighting, noise and work hours during construction. Mr. Martin said that they have looked at the Elm Court decision framework for ideas in crafting something similar. Their goal is to work further with the neighbors and come back to the ZBA with an agreed upon set of conditions that they would ask the ZBA to include in the decision.

CS asked about the setback of the existing structure from Route 7 & 20 and that which is proposed. Mr. Martin said that it wasn’t much, but he will send a better exhibit to illustrate the setback from the road.

There was discussion as to if by reducing the parking to a level less than required if that would require a variance or a waiver. It was suggested by Mr. Scalise that perhaps this could be incorporated in the decision.

GM, referring to the peer review, said that the plan is to have tied up in a few days.  
Attorney John Gobel said that he is working out some details as he represents Twelve Oaks and Mr. Curme of The Dormers LLC. They are not meeting until April 28<sup>th</sup>.

RF made a motion to continue to April 27<sup>th</sup> at 7 PM. ND seconded the motion. The Board voted to agree 5-0.

The following were filed with the ZBA:

Petition for Zoning Approvals; Appendix A-Traffic Study; and Appendix B-Stormwater Analysis.

Additional material submitted included:

Planning Board- April 13, 2016 letter of recommendation for the project.

Weston and Sampson-April 14, 2016 Peer Review Comments

BETA-March 31, 2016 Traffic Impact Study Review

Fuss & O'Neill-April 14, 2016 Response to Comments on Traffic Impact Study Review Memo by BETA

Berkshire Design Inc.-April 20, 2016 letter from Robert Harrison to Pravin Mahida regarding noise-Mr. Carpenter referred to this letter at this hearing.

**Other Business**

**Minutes-**

*March 16, 2016-Tabled-Lack of quorum*

*April 6, 2016-Tabled-Lack of quorum*

Respectfully submitted,  
Peggy Ammendola