

## Zoning Board of Appeals Minutes, 04/27/2016

### Zoning Board of Appeals Minutes April 27, 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

**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. *This was first heard on April 20, 2016 and continued to April 27, 2016.*

The following materials have been received since the original hearing:

1. SK Design Group, Inc. April 21, 2016 response to Weston & Sampson Engineers, Inc., April 14, 2016, Peer Review Comments
2. BETA Memorandum from Kein Ho, April 25, 2016-follow up comments regarding the Applicant’s responses in April 14, 2015 letter.
3. Attorney Bill Martin-Memo-staff analysis of the hotel and event center proposal-received April 27, 2016.
4. Attorney Bill Martin-Lenox Manor ZBA Agenda-received April 27, 2016
5. Attorney Bill Martin-160420 Easement Area-received April 27, 2016

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; 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 and; David Carpenter, consultant and Director of Administration for the Mahida Family Hospitality Interests

Attorney Martin said that the neighbors at Twelve Oaks, Mr. Curme of The Dormers and the developers have been engaged in proactive constant communication and have come to agreement on design changes and other accommodations that satisfy the neighbors. Attorney Martin reviewed specifics of the agreement as follows:

- Retain as many trees as is possible
- Create an extensive retaining wall at the edge of properties
- Reduce 4 parking places
- Relocate service road out of the treed area near the abutting property
- Combine with the existing path for a new service road which will preserve the buffer of trees
- Provide conditions regarding lighting and noise

Attorney Martin added that they are providing significant funds so that the neighbors can do screening work on the Twelve Oaks property which also serves to mitigate any noise emanating from the event center. A large area of the Pandya property is being provided as a “landscaping easement” which will preserve the wooded state and it provides a substantial buffer. The developers have also agreed to compensate the neighbors’ attorney for his work in representing them.

Attorney Martin advised the Board that he had drafted conditions for the Board’s consideration with specifics regarding activity pre-construction and after construction and mitigating factors regarding traffic.

In conclusion, Attorney Martin said that this has been an extraordinary process in terms of showing how the Mahidas demonstrated engagement with their neighbors, giving them meaningful measures, not just to get reluctant support, but to get their enthusiastic support. He complimented Attorney John Gobel for his effort in securing an amicable agreement with the neighbors and to GM for her able aid and assistance.

Jim Scalise reviewed the revised site plan and provided detail on the changes that have been made. Five parking spaces have been relocated in areas that don’t require clearing and four spaces have been eliminated. A retaining slope will be built in the area of the four former spaces. The path up to the plateau will be widened. For one tier of parking, it will be grass on gravel or reinforced turf parking and this is proposed on lower lot.

Regarding the peer review, Weston and Sampson have accepted SK Design’s comments regarding water, sewer, the pool and fire suppression. The BETA traffic review has been addressed by Fuss and O’Neill and Mr. Scalise advised that Jon Dietrich, Traffic Engineer with Fuss and O’Neill was present to answer any questions. It has been noted that traffic near this location exceeds the speed limit, so a powered speed check sign was suggested. This installation must be approved by MassDOT and BETA has recommended that the developer have this discussion with MassDOT.

Mr. Scalise gave a quick overview of the 14 conditions proposed by Attorney Martin which related to the period of construction, after occupancy and conditions regarding traffic and sidewalk; the number of outdoor events that would be up on the plateau; shielded lighting; delivery times;

outdoor events and noise abutter notification e.g., fireworks in which the Fire Chief would also be notified.

Mr. Scalise said that the developers have received a conditional approval letter from MassDOT. Two small items were in question. One was asking for confirmation that the existing sidewalk was ADA compliant. The developer will replace it if it is not. MassDOT also wanted the developer to be sure to secure permission from an adjacent property owner before extending the proposed sidewalk beyond 200 feet to the south. To provide a sidewalk to the bus stop, other property owners would be involved and Mr. Scalise said that the developers were willing to pay their prorated share.

The stormwater report has been approved as well.

Rob Akroyd said that the new plan increased the buffer between the subject property and the neighbor at Twelve Oaks with additional plant material. He reviewed the landscaping as shown on the revised site plan. The court yard will stay intact. He feels that the agreement with the abutters is good and that it affords more protection to the abutters.

Mr. Harrison said that the project related to the structures remains the same as presented last week.

RF noted that in the bylaw the definition of a motel, a unit would not have its own cooking, food storage equipment and facility. Attorney Martin acknowledged and responded that there is a strong internal inconsistency between the definition of motel and the definition given just above on page 108 of the zoning bylaw. He said that they have surveyed virtually all of the hotels/motels in Lenox and all have these amenities. RF stated that he wasn't objecting, but wanted to know with how this should be dealt. Both Attorney Martin and Ms. Pandya stated that the existing units at the Magnuson have these amenities. There was considerable discussion on how to approach, to give solid footing if there were to be an appeal. SLC said that it could be considered a grandfathered use because of the fact that the current rooms have these amenities. SLC said that there could be a dual argument, a pre-existing non-conforming, grandfathered use and secondarily or equally that there is some internal conflict in the bylaw. Also, another way to look at would be as part of the presentation. Attorney Martin offered to provide the memo his team prepared regarding this issue. RF said that he would like to see the memo. GM said that both the Fire Chief and Building Commissioner have reviewed the petition and are comfortable with the layout and type of facilities and that she is comfortable with this type of facility. The Board feels that the Berkshire Design letter (Robert Harrison) should be in the application.

One letter has been received and read aloud and made a part of the public record. It was from Charlene Rosen and Felix Dulle of 89 West Dugway Road who were also present for the hearing. They expressed that there has been a need for a traffic light at the intersection of West Dugway and Routes 7 & 20 and they feel that with the new hotel and event center that need has increased. EB advised that MassDOT makes the decision as to whether or not a traffic light is installed. GM responded that the petitioner did have to provide a traffic study and it has been indicated that a traffic light is not warranted at this location, however a condition would require that once the Certificate of Occupancy is issued, the Petitioner shall recount the intersection and re-examine the signal warrants between six months and one year. Evidence of this shall be provided to the Land Use Director/Town Planner no later than 13 months after the Certificate of Occupancy has been issued to the hotel and event center.

The Planning Board letter recommending the project to the ZBA was also read aloud and made a part of the public record.

It was agreed that a third letter, from Robert Harrison, Berkshire Design Inc., which was discussed at the initial hearing will be considered to be a part of the application.

Another letter to the ZBA was from GM in which she stated how the Petitioner complies and that she recommends conditions.

Attorney John Gobel of Gobel and Hollister who represents abutters at Twelve Oaks and the Curme family of The Dormers, said that they support the petition as presented and amended. He was very complementary of the developer and their team and addressed all of the concerns that he and the abutters raised and offered solutions. Attorney Gobel also thanked the Board for having the second meeting only one week following the initial hearing.

Attorney Goebel read aloud a letter from Martin Kaplan, one of the abutting neighbors. Mr. Kaplan stated how impressed he and his wife were with the quality and every aspect of the planning and development of a first class facility. They endorse the plan and requested that the ZBA approve the proposal.

No other correspondence has been received and there were no other members of the public present.

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

GM said that the Town was very pleased with the cooperation from the Petitioner in addressing the comments of BETA and the offer to collaborate on the future sidewalk.

SLC made a motion that the ZBA grant the Special Permit for a Motel under Section 3.1(F) (11), a Special Permit for exception under the provisions of Section 3.1.(C)(2), a height waiver under Table 4.1.1 (5), Footnote 3, and approval of Site Plan I under Section 9.5 as requested by the Petitioner and modified by the recent submission. RF seconded the motion.

Attorney Martin suggested that before the Board voted that they vote on whether they deemed the conditions he offered as a part of the submissions or the Board amend their vote to include the conditions. Secondly, he suggested a second vote to the cooking issue under 3.3.2 and formally asked for a affirmation vote to approve the suite features of the units as pre-existing non-conforming uses under 3.3.2.

SLC moved that the Board, as a first condition, adopt the conditions appended to this decision the list of proposed conditions presented by the Petitioner tonight. RF seconded the motion. The Board voted to approve 5-0.

RF made a motion to grant the Special Permit, finding that the use of the rooms containing cooking and food storage facilities is a non-conforming use under Section 3.3.2. SLC seconded the motion and the Board voted to approve 5-0.

SLC made a motion to grant the Special Permit for a motel under Section 3.1 (F) (11) of the bylaw and with the conditions as stated. EB seconded and the Board voted to approve 5-0.

SLC made a motion to grant the Special Permit under Section 3.1.(C)(2). EB seconded the motion and the Board voted to approve 5-0.

SLC made a motion to grant the height waiver under Table 4.1.1 (5), Footnote 3. EB seconded the motion and the Board voted to approve 5-0.

SLC made a motion to grant approval of site plan under Section 9.5. RF seconded the motion and the Board voted to approve 5-0.

**Minutes-**

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

*April 6, 2016*-Tabled

*April 20, 2016*-Tabled

Respectfully submitted,  
Peggy Ammendola