

MAPLEWOOD SENIOR HOUSING DEVELOPMENT

Working Document Re: Negotiations between Kings Highway North Neighbors United (“KHNNU”) and Maplewood Senior Living (“Maplewood”)

Revised on 01-12-2021

1. Submit a written and specific sound and light mitigation plan to protect neighbors on Ludlow and Kings Highway North as part of the zoning approval process. Create an Escrow account for the first 12 months of operation in the event that the as built does not meet the plan specifications for noise and light abatement.

Response: Maplewood has retained a sound engineer and is awaiting a report regarding the sound engineer’s findings. Depending on that report, Maplewood may be willing to establish an escrow to assure that there’s proper sound mitigation.

As to the issue of lighting mitigation, Peter Romano of LandTech is preparing a lighting plan that fully complies with the Westport Zoning Regulations and shall be submitted as part of the zoning package. Maplewood will comply with the lighting plan as it is required pursuant to the Zoning Regulations but is not presently willing to create an escrow assuring the compliance. The enforcement method would be to complain to the Zoning Department to the extent that Maplewood fails to comply with the approved plan.

Follow Up:

1. Has Maplewood received a report from its sound engineer and, if so, kindly provide it by e-mail for circulation and review by KHNNU; and
2. Has LandTech completed its lighting plan and, if so, would you kindly provide it by e-mail for circulation and review by KHNNU.

Response by KHNNU: An escrow account shall be established for both sound and light mitigation for the first twelve (12) months of operation. Even though the lighting plan, for example, may be compliant with local building code, KHNNU shall require a means of recourse for its stakeholders without the necessity of incurring the time and expense associated with pursuing a complaint to the Planning and Zoning Commission as the enforcement procedure is not well established.

Reply by Maplewood: We will agree to a \$10,000 escrow to resolve noise and lighting violations. The trigger for a release of those funds to correct any future violation will be the zoning enforcement officer issuing a notice of violation. We will then utilize the escrowed funds to remedy the violation. The escrow will terminate one year after we start operating and if there are no zoning violations, or if the any violations are cured, the funds will be released back to Maplewood.

Response by KHNU: Accepted but escrow fund shall be \$25,000.

RESOLUTION: The above is acceptable to both parties.

2. Landscaping at the rear of Ludlow Road properties (41 and 33 Ludlow) within sight of the proposed development

Response: Maplewood shall submit a robust landscaping plan including a landscape buffer abutting the properties on Ludlow Road and the Elson property on Kings Highway. The landscaping plan will be submitted with the Historic District package as well as the application to the Zoning Commission.

Follow Up:

1. Kindly forward a copy of the proposed landscaping plan by e-mail for circulation and review by KHNU.

Response by KHNU: A landscape buffer consisting of evergreen trees shall be planted by Maplewood on the properties at 33 and 41 Ludlow Court and 40 Kings Highway North at the border with the Maplewood property to shield those properties from light and sound in addition to the summary landscaping plan provided by Maplewood.

Reply by Maplewood: Westport has a zero light ordinance (meaning all of the light will remain on our property) and our proposed use is one of the most quiet uses for a commercial operation.

- a. In regards to 33 and 41 Ludlow: Our engineers have provided studies that show that these homes will not be impacted by light from Maplewood's property. Their view will be limited to the roof of the new building. Moreover, there are existing deciduous trees buffering the properties that may already block the view of the roof. If this is the case, planting of additional landscaping will not block views of the roof. We are willing to conduct a site inspection of those two properties to see what the

visibility of our site is after considering the existing buffer. Please help us coordinate that. Also, this is a zoning issue that we can continued to discuss, and we will do so in good faith, while the zoning application is pending. We will not agree to delay the HDC hearing any further relating to this issue.

- b. In regards to 40 Kings Highway North: We will agree to relocate the plantings currently shown on our property to 40 Kings Highway North in the pool area as well as the entrance to 38 Kings Highway North.

Response by KHNU: Maplewood shall provide a \$15,000 landscaping allowance as required to shield view of the project from 33 and 41 Ludlow to be paid upon presentation of invoices by the homeowners. Relocation proposal acceptable subject to review of modified landscape plan.

RESOLUTION: The Landscaping Subcommittee of the P&Z Committee will take jurisdiction of any additional plantings that are required on 37 & 39 Kings Highway North and 33, 41 & 51 Ludlow in order to reasonably screen the project from their properties. Attorney Green will be permitted to appear and to advocate for additional screening, and Maplewood will be able to appear and advocate on its own behalf, but the subcommittee ruling will be final and binding on the parties. Maplewood will place \$15,000 in escrow to cover the landscaping required by the subcommittee, however, the \$15,000 is not a cap.

3. Complete a full traffic study assessing impact of Cross Street, Burr Road and Maplewood projects with mitigation plan for the impact on Ludlow Road and Kings Highway North;

Response: Maplewood has commissioned a traffic study which shall comply with the requirements for the application to Planning and Zoning. Maplewood notes that the proposed use shall be a lower volume use than the existing approved uses of the various properties. In other words, while the various properties are not generally operational at the present time, if they were, they would generate more traffic than Maplewood proposes with its development.

Follow Up:

1. Has Maplewood received a report with respect to the traffic study and, if so, kindly it by e-mail for circulation and review by KHNU;

2. Kindly indicate how Maplewood is accounting for present reduced volumes of traffic due to COVID and how that is factored into the findings and conclusions in its traffic study.

Response by KHNU: A full peer review by the Town's traffic consultant and a mitigation plan shall be implemented, as required, to address concerns with respect to additional traffic speed and volume.

Reply by Maplewood: We cannot commit to a full traffic peer review from the Town of Westport P&Z because only they can determine what they will require. I can assure you that the P&Z Commission is more than capable of enforcing their regulations and we will provide whatever is required of us. We are also aware that the Town has spoken to their consultant about this project and anticipate that he will be involved when we submit our zoning application. To reiterate, Maplewood's intended use is arguably one of the lowest traffic generators of any commercial and/or residential use. The intended use will have less trips per day than the existing uses at full occupancy.

Response by KHNU: Generally acceptable with the understanding that KHNU reserves the right to advocate for a peer review and/or traffic study before Planning and Zoning Commission.

RESOLUTION: The above response is approved by both parties.

4. Deed restriction to preserve historic structures on parcel known as 38 Kings Highway North. We require that this restriction includes language that if the facility is sold or changed by current owners for any other intended use, the properties known as 38 Kings Highway North will be sold to individual owners for use as private residences. (Specifically, the 38 Kings Highway North property cannot be included in any manner for future calculations for coverage of future commercial properties. In addition, restrict the changing of the current structure to any use that creates single owner or renter apartments or condominiums.)

Response: Maplewood notes that there are preservation requirements on all historic structures. Pursuant to the application that will be made to the Zoning Commission in accordance with Section 32-18 of the Westport Zoning Regulations, a preservation easement shall be required as part of that application.

Follow Up:

1. What assurances is Maplewood able to provide to the community that it will not subsequently amend the preservation easement granted pursuant to Section 32-18 of the WZR? In other words, there is significant concern that Maplewood or others will, in the near term, seek to modify the preservation easement by application to P&Z and HDC. KHNNU is requesting further assurances that this shall not occur in the near term and request that Maplewood identify additional assurances that it can provide in this regard.

Response by KHNNU: With the comments presented at the December meeting of the Historic District Commission and follow-up discussions with the Planning and Zoning Commission, KHNNU believes that deed restrictions are necessary to the preservation and maintenance of the historic properties (see summary remarks and the end of this document).

KHNNU needs to protect the neighborhood in the event that the premises at 38 Kings Highway North are sub-divided and sold to a third-party. In addition, concern exists as to the access to the property as required by the Fire Marshall in that event. Specifically, would Maplewood then seek to then establish the curb cut that has been eliminated from the most recent submission? That is unacceptable.

Reply by Maplewood: If we obtain approval to sell 38 Kings Highway North and 174 Post Road West, we will reserve an easement to access our turnaround. We will retain title to the turnaround (grass paver area) on our property. So our easement rights will allow us access if needed and we have no plan to seek an alternate curb cut.

Response by KHNNU: A deed restriction shall be required providing that structures shall be preserved as historic and residential use for single family dwelling with no additional curb cuts or widening of them within the historic district (other than existing proposal for pavers).

RESOLUTION: Maplewood will submit a preservation easement to ensure the historic residential structures are preserved and maintained as required by the zoning regulations. That preservation easement will be recorded on the Land Records and the Town and the Historic District Commission will have the right to enforce it. We will agree to a deed restriction on 174 Post Road West and 38 Kings Highway North that will prohibit any use that is not permitted under Section

11-2 of the Zoning Regulations, which are the permitted uses for a AAA zone in Westport.

5. Deed restriction covering the ongoing maintenance of 38 Kings Highway North with the ability of the Historic District Commission to enforce required building and property maintenance standards. = preservation easement

Response: 38 Kings Highway will stay as a market rent unit. The historic structure at 174 Post Road West will be moved without the addition. No addition shall be attached to the historic structure after it is relocated. 174 will then stay as a single family residence at market rent.

172 Kings Highway North will be moved to a position that is outside of the Historic District. While it shall front on Kings Highway, there shall be no access from Kings Highway. Rather the access will be through the Maplewood parking lots which shall eliminate the curb cut to the south. It is also possible that Sam Gault will permit Maplewood to use his existing curb cut on Kings Highway North for access.

Follow Up:

1. Kindly confirm the status of the proposed access to 172 KHW. For example, has an agreement been reached with Sam Gault permitting access?
2. What assurance can Maplewood provide that it or others will not subsequently apply for access to these properties from KHN?

Reply by Maplewood: No new comments were provided by KHNU. We have a deeded right of way across the Gault property for access.

Response by KHNU: Provide deed restriction prohibiting any other or larger curb cut within historic district serving this property.

RESOLUTION: Maplewood will agree that once the project is approved, it will not pursue any other or larger curb cuts within the Historic District that access its property. We will also agree to push for approval of the site plan that is submitted and before the HDC. However, if the Town of Westport requires Maplewood to modify our site plan by enlarging or adding additional curb cuts, KHNU can object to that requirement and Maplewood will, in good faith, push for approval of the submitted plans. However, if the Town will not sign off on the submitted plans and requires a

modification to the proposed curb cut, we will need to concede on that issue in order to get our approvals in place. You will be permitted to speak against that change at P&Z.

6. Deed restriction to preserve gated status for access/egress point on Kings Highway North and the driveway on 38 Kings Highway North at south end for fire safety;

Response: See above.

Follow Up: See above.

Response by KHNNU: See response to paragraph 5, above.

Reply by Maplewood: No new comments were provided by KHNNU. We will be bound by our zoning approvals and will not be able to alter them without further zoning and HDC approvals. Furthermore, if we are permitted to sell 38 Kings Highway North and 174 Post Road West, we will not be able to modify our easement without their consent as we will no longer own those properties.

Response by KHNNU: See response to paragraph 5, above.

RESOLUTION: See resolution in item 5 above.

7. Limit building services including trash collection, deliveries, maintenance of generators, landscaping work to business hours (M-F 8am-5pm)

Response: This has been accepted by Maplewood with the exception that if there is an emergency repair or an emergency delivery on the weekend, then Maplewood reserves the right to address the emergency issue. To be clear, however, all routine collection, deliveries, maintenance and landscaping work shall be performed on weekdays between the hours of 8 A.M. and 5 P.M.

Follow Up:

None.

Response by KHNNU: Accepted.

Reply by Maplewood: Accepted.

RESOLUTION: Approved per above.

8. Seismic impact of blasting & other sitework to older historic structures in the neighborhood;

Response: As required by law, Maplewood will survey all structures in the neighborhood, including historic structures, and will obtain insurance to protect against any damage resulting from any blasting or other site work.

Follow Up:

None.

Response by KHNNU: KHNNU expects that bond shall be posted as is typically required by the Planning and Zoning Commission for blasting and site work activities.

Reply by Maplewood: Typical and lawful P&Z bonds will be acceptable. Our construction plan does not call for blasting. However, if blasting were to occur, the blasting company would provide the insurance required by law.

Response by KHNNU: Maplewood shall keep all affected properties advised as to any blasting that may ultimately be necessary and shall provide affected properties with copies of any bonds required and policies insuring against any loss associated with any blasting.

RESOLUTION: Maplewood agrees to KHNNU's requirement to keep affected properties informed and provide copies of legally required bonds/insurance

9. Preservation of the streetscape especially for 37 Kings Highway North with older plantings being removed;

Response: As noted above, there is a landscaping plan as part of the Historic District package as well as the application to Zoning.

Follow Up:

1. Kindly provide a copy of the landscaping plan by e-mail as requested above.

Response by KHNU: The landscaping plan for the streetscape along Kings Highway North including in front views of 37 and 39 Kings Highway North are currently protected by landscaping. An agreement needs to be in place that provides that after improvements are completed, the landscaping shall be supplemented as necessary to block the view of Maplewood from 37 and 39 Kings Highway North.

Reply by Maplewood: We will agree to allow the P&Z Landscape Subcommittee to have oversight over our landscape plan after the building is constructed and before we plant the proposed plan. We will be willing to adjust the landscape plan we are currently proposing based on their recommendations. You may attend and speak at that subcommittee meeting on behalf of the property owners at 37 & 39 Kings Highway North after the building is complete and prior to our planting the landscaping.

Response by KHNU: Maplewood shall inspect and adjust landscaping accordingly (similar to the response to Paragraph 2, above, "Our engineers have provided studies that show that these homes will not be impacted by light from Maplewood's property. Their view will be limited to the roof of the new building...We are willing to conduct a site inspection of those two properties to see what the visibility of our site is after considering the existing buffer. Please help us coordinate that..."). An agreement needs to be in place that provides that after improvements are completed, the landscaping shall be supplemented as necessary to block the view of the project from 37 and 39 Kings Highway North.

RESOLUTION: The Landscaping Subcommittee of the P&Z Committee will take jurisdiction of any additional plantings that are required on 37 & 39 Kings Highway North and 33, 41 & 51 Ludlow in order to reasonably screen the project from their properties. Attorney Green will be permitted to appear and to advocate for additional screening, and Maplewood will be able to appear and advocate on its own behalf, but the subcommittee ruling will be final and binding on the parties. Maplewood will place \$15,000 in escrow to cover the landscaping required by the subcommittee, however, the \$15,000 is not a cap.

10. Provide survey including elevations (including height) of buildings currently existing, houses on Ludlow and Kings Highway North, and the proposed Maplewood complex so that Maplewood landscaping can be planned with maximum coverage

Response: LandTech is in the process of preparing elevations of the properties on Kings Highway North and Ludlow which will be provided when they have been completed.

Follow Up:

1. Kindly provide the elevation survey prepared by LandTech by e-mail for review by KHNNU.

Response by KHNNU: The elevations have been reviewed and this prompted the request by KHNNU to have additional evergreen planting on Ludlow and Kings Highway North properties per Paragraph 2, above.

Reply by Maplewood: See response in number 2 above.

Response by KHNNU: See Responses to Paragraphs 2 and 9.

RESOLUTION: See resolutions to paragraphs 2&9 above.

11. Coordinate shift changes with sensitivity to Kings Highway School schedule to minimize traffic during school drop off and pickup and students walking to/from school

Response: Maplewood is in the process of preparing a presentation entitled “Day in the Life” which will provide an overview of all operations at the facility. This presentation will be provided to KHNNU and should address all concerns in this regard.

Follow Up:

Kindly confirm when this presentation will be made available to my clients. Would it be in advance of the scheduled HDC hearing?

Response by KHNNU: This item remains open as the presentation has not been received as requested. In addition, the potential impact to the Kings Highway Elementary is of continuing concern.

Reply by Maplewood: This was provided verbally at the last HDC meeting by Tom Gaston. I will be sending a separate e-mail with the details typed up shortly.

Further to my prior e-mail with responses to your working issues list, our “Day in the Life of Maplewood” is below.

Staffing

- The bulk of Maplewood’s staff, including line staff, caregivers and dietary staff, operate on hospital hours: 7:30 A – 3:00 P; 3:00 P – 11:00P; 11:00 P – 7:30 AM.
- The remaining staff, mostly administrative, work from ~ 8:30A – 6:00 P.

Residents

- The average age of our residents is ~ 85 years old.
- Approximately 50% of the residents in the building will likely have some form of memory impairment and live in a secure area of the building. They will not leave the building unless accompanied by someone.
- Our residents usually wake between 7:30 – 8:30. Most residents are asleep between 7:30 – 8:30.
- All meals are served in a central dining area. There are no cooking appliances (cooktop, stove) in bedrooms.
- It is unusual for any residents to own an automobile or drive
- The building will have two internal courtyards plus walkways around the property. It is very unusual (and discouraged) for residents to walk off premises in the surrounding area

Events

- Mother’s Day and Thanksgiving are the two busiest events of the year at the building.

Visitors

- Family members tend to visit sporadically during late afternoons and on weekends
- Other professionals, including therapists and VNA, visit between 10:00 – 3:00. We would expect ~ 4-6 professional visits on weekdays

Deliveries

- Trash pickup is two times per week. Maplewood has agreed to control the time so that pickups do not occur early morning.
- Because of the age of our residents and the fact that they have smaller bedrooms, the building does not receive a great deal of package deliveries
- Sysco food deliveries are also twice a week usually mid-morning.

- Housekeeping and paper supplies occur once a month.

Generator

- Generator Testing occurs once a week between 10:00 and 11:00, on the same day every week.

Response by KHNNU: This shall be formalized in the zoning approval.

RESOLUTION: We will agree to formalize trash pickup, generator exercise and Sysco (food) deliveries at Planning & Zoning and will agree to P&Z's reasonable conditions of approval requiring those operational standards relating to deliveries and the weekly generator testing

12. Installation of sidewalks from Woodside Ave to Post Road West;

Response: The traffic consultant for Maplewood is looking into this and a response shall be forthcoming.

Follow Up:

Kindly update the status of your response on this.

Response by KHNNU: A sidewalk extension from Woodside to Post Road West is necessary to assure pedestrian safety during and after construction. This remains an open item as no response has been received by KHNNU from Maplewood.

Reply by Maplewood: We will not agree to offsite improvements. Maplewood's employees and residents will not be utilizing offsite sidewalks in the HDC. In addition, there will be no construction access from Kings Highway.

Response by KHNNU: Accepted, however no construction access from Kings Highway shall be a stipulated condition of all approvals.

Resolution: Maplewood will prohibit construction vehicles from using Kings Highway North in our construction contract and we will attempt to enforce same in good faith. The one exception relates to the relocation of the two residential structures and the construction of the driveway at 38 Kings Highway North. We will need access to perform that work from Kings Highway North, but the large majority of construction will relate to the assisted living facility and all construction access relating to that will be through the Post Road West.

13. Installation of crosswalk at intersection of Kings Highway North and Post Road West.

Response: The traffic consultant for Maplewood is looking into that and a response shall be forthcoming.

Follow Up:

Kindly provide an update on this.

Response by KHNNU: A crosswalk at the intersection of Kings Hwy N and Post Road West is necessary to assure pedestrian safety during and after construction. This remains an open item as no response has been received by KHNNU from Maplewood.

Reply by Maplewood: We will not agree to offsite improvements.

Response by KHNNU: Accepted.

RESOLUTION: Agreed pursuant to the above reply by Maplewood and response from KHNNU.

14. Do not relocate the historic properties on Post Road West to lot known today as 38 Kings Highway North thereby leaving the density the same;

Response from Maplewood: This is a “hard no”. Once again, however, Maplewood only proposes to relocate the historic structure and not the later addition. Moreover, the parking lot serving that building will be reduced from 10 spaces to 6 spaces. Finally, the driveway serving the property will be created using landscape or turf pavers and the like to create an appearance of a driveway that is just 16 feet wide (while it will actually function as a 20 foot driveway) that is more harmonious with other Kings Highway North properties.

Follow Up:

Kindly provide detail on the proposed driveway design including the proposed gate limiting access from Kings Highway North to emergency vehicles.

Response by KHNNU: Accepted.

RESOLUTION: Agreed pursuant to the above reply by Maplewood and response from KHNNU.

General Comments:

While KHNNU greatly appreciates the responses by Maplewood to these many issues, there is significant concern that these matters shall not be conclusively resolved in advance of the scheduled HDC hearing next week. Accordingly, KHNNU looks forward to working with Maplewood to both refine the responses as well as to formalize them in writing in advance of the hearing.

Certainly, it is the hope of KHNNU that it can appear with Maplewood before the HDC with a unified and agreed upon position. Of course, KHNNU would like to avobehooves the parties to reach an agreement and to cooperate in the presentation before the HDC.

Supplemental Comment by KHNNU: During and following the December meeting of the Historic District Commission, counsel for Maplewood introduced the notion of subdividing the two (s) building on the 38 Kings Highway North parcel and selling them. He went on to say that there was a precedent with the 270 Saugatuck Avenue project. In conversations with Mary Young, Planning Director, she mentioned the two are not comparable. That takes KHNNU back to the matter of the deed restriction. KHNNU requires the protection of such a covenant in the event that the property is sold. KHNNU is also concerned that an additional curb cut shall then be required.

While there is deep and widespread concern regarding the scope, scale and impact of the Maplewood Project, KHNNU is nonetheless willing to work with Maplewood in crafting a final and binding resolution that precludes future unintended consequences. A preservation easement coupled with a deed restriction shall afford KHNNU the binding and permanent resolution it seeks and the protection it requires against similar issues arising in the future.

Reply by Maplewood: The notion of subdividing 38 Kings Highway North and 174 Post Road West will require a zoning amendment, which the P&Z Commission will either approve or deny. If approved, we will be able to sell those two properties as separate lots. If denied, we will not be able to sell separate lots. If KHNNU would like to see those properties sold and out of the Maplewood portfolio and control, I suggest that you be prepared to support that portion of our application. If the subdivision is not approved, we have no intention of seeking any different layout than currently on our plans.

All of these concessions are subject to P&Z approval of the project. If they prohibit any of the concessions we are willing to make to appease the KHNNU, then the P&Z will trump any agreement we have with KHNNU as we do not control what they will approve.

Response by KHNNU: Any support and cooperation with respect to the proposed zoning amendment is specifically conditioned on the deed restrictions providing that structures shall be preserved as historic and for residential use for single family dwelling with no additional curb cuts or widening of them within the historic district (other than existing proposal for pavers).

Resolution: This agreement will be contingent on approval of the project and construction of same, as well as no KHNNU member appealing our approvals. We will need a list of all KHNUU members prior to formalizing this agreement in writing. However, I can agree with you via e-mail that we will formalize this in writing during the P&Z process and if there are any disputes over the terms of that agreement and we are unable to memorialize it in writing, we will be permitted to disclose these e-mails and the status of our written agreement to memorialize same to the P&Z and advocate our position in front of them to ensure this is resolved prior to any approval or denial.