

TOWN OF WASHINGTON
Bryan Memorial Town Hall
Post Office Box 383
Washington Depot, Connecticut 06794
Zoning Commission Regular Meeting

MINUTES

November 6, 2023

7:00 P.M. – Hybrid Meeting

MEMBERS PRESENT: Chair Solley, J. Hill, V. Andersen, D. Werkhoven, B. Farrell

ALTERNATES PRESENT: S. Smith

ALTERNATES ABSENT: S. Mongar

STAFF PRESENT: Attorney Zizka, S. White, T. Rill, M. Haverstock

PUBLIC PRESENT: Attorney D. Sherwood, P. Szymanski, R. Solomon, R. Averill, B. Cheney, L. Cheney, M. Solomon, S. Ullram, R. Ullram, L. Glover, Attorney J. Williams, Attorney C. McCallum, A. Braverman, B. Braverman, K. Hunt, R. Hunt, J. Fredlund, J. Fredlund, A. Carron, H. Uys, E. Klauer, S. Kessler, J. Brinton, L. Frank, A. Haestad, R. Wyant, T. Peacocke, H. Barnet, M. Gil-Rogers, S. Guillemette, M. Miner, R. Rebillard, B. Talbot, L. Gendron, T. Daly, P. Williams, G. Williams, S. Mathews, D. Sherr, M. Revere, J. Averill, E. White, P. Dutton, Other Members of the Public.

Special Meeting regarding 101 Wykeham, LLC - Compliance with the sixteen (16) covenants and restrictions of the 2013 Settlement Agreement and the twenty-five (25) Conditions of Approval of the Modification of the Special Permit dated August 28, 2018, from the Motion of Approval for a Special Permit for an Inn - with potential vote:

Chair Solley called the meeting to Order at 7:02pm.

Attorney Williams, representing the property owners of 27 Bell Hill Road, stated that he firmly believed that his clients were entitled to approve or deny the plans for 101 Wykeham Road based on the 2013 Settlement Agreement despite not owning the property at the time of the Agreement. He explained that despite that the Zoning Commission did not sign Agreement, they were legally bound to it. He added that the terms of the Agreement stated that any modification to the plans needed to go to a Public Hearing, and he believed there had been numerous modifications to the plans.

Attorney Zizka, the Washington Zoning Commission's legal counsel, disagreed stating that at the time of litigation, a specific set of plans were submitted that the developer and neighbors had agreed upon and signed. From there, the plans were presented to the Zoning Commission and in January of 2013, the Zoning Commission agreed to what was submitted, however, they chose to add more terms to what was agreed upon. He added that a specific footprint plan was approved, and that footprint plan had not changed, therefore a Public Hearing was not necessary.

Mrs. Andersen stated that she was concerned that the town could be in legal jeopardy if they do not allow the abutting property owners to agree to the approval. She also questioned why the abutting property owners waited to bring their concerns to the Commission. Attorney Williams stated that his clients purchased the home a few years ago, and they were not aware of the circumstances surrounding 101 Wykeham until after it was purchased.

Attorney Zizka clarified that any modifications made to the plans were Skz plans – which are interior changes, and several changes were at the request of the Commission or consultants.

Chair Solley stated that he would like to move on to discuss septic, water, Fire Marshall approval and lighting.

He read a letter received from Cardinal Engineering, dated November 6, 2023, confirming that the applicant had satisfactorily met the water usage, septic design and domestic water and fire suppression and lighting review.

Mrs. Hill pointed out that in a May 8, 2023, letter from Arthur Howland & Associates, it had been agreed upon that all windows would have opaque blinds or shades to reduce interior lighting impacts. Attorney Sherwood clarified that paragraph six of the draft Settlement Agreement states the obligations of the Applicant.

(41min. 25sec.) – Chair Solley reads the letter dated November 6, 2023, from Cardinal Engineering.

Mrs. Andersen questioned the location of the well to be drilled. Although the exact location of the well cannot be disclosed for safety purposes, Mr. Szymanski stated it is located in Aquarion's well fields off of Bell Hill Road, and it has already been drilled.

Mr. Werkhoven asked for clarification regarding the status for the approval for the septic. Mr. Szymanski explained it had been approved by DEEP with confirmation from them that tented events were included in that approval.

Attorney Zizka explained that there are several things the Applicant will have to do before beginning the project, but the project is ongoing, so there are things that may come up in that process. However, the Settlement Agreement holds the applicant accountable to be compliant.

Questions regarding #15 of the Settlement Agreement that will not allow the applicant to pursue a public or private school or university on the property for 50 years.

Chair Solley asked the Commission if they had any questions regarding compliance.

Mr. Farrell stated that he felt that there was a lot of information to cover and requested that all of the information be given to the Commission at one time. Ms. Andersen agreed with Mr. Farrell and added that she did not feel as though the Cardinal Engineering review was complete.

Attorney Sherwood, legal counsel for the applicant, stated that in the January 9, 2023, Zoning Commission meeting minutes, the Commission agreed that the applicant had fulfilled the condition

that a school will not be allowed on the property. He emphasized that there were three Conditions of Approval that needed to be satisfied to get to this point – fire marshal, septic, and water approval. He stated that those three conditions had been satisfied and asked the Commission to move forward.

Ms. Andersen stated that there had been several hold-ups with the applicant that were causing delays and suggested a packet of information would be most helpful.

Attorney Zizka stated that he agreed with Attorney Sherwood's assessment that the final three Conditions that needed to be met were the fire marshal, the septic and water approval, and all three of those approvals had been made. He added that he feared the Commission was putting themselves at risk for a civil rights lawsuit for deliberate delay.

Mr. Werkhoven stated that the Commission's task was to decide if the applicant had met all of the Conditions, and he trusted the professional opinions of the consultants and felt that the applicant has done everything asked of them to meet those Conditions.

Chair Solley asked the Commissioners if they thought they would be ready to vote on the matter tonight. Mrs. Hill, Mr. Werkhoven and Mr. Farrell stated that they would vote tonight. Mrs. Andersen said she was not ready to vote.

Ms. Purnell stated that she felt there was a fundamental flaw in the arithmetic in the Cardinal Review and made a request to address the Commission.

(1hr. 25min.):

Ms. Purnell addressed the water usage and table provided by Cardinal Engineering. She disagreed with Cardinal's findings.

Mr. Szymanski explained that the technical standards relate to the maximum daily flow. Ms. Purnell requested the average daily demand. They are two separate and distinct standards. He explained that this was reviewed by Mr. Long, a professional engineer, Mr. Seeyle, a professional engineer, Mr. Szymanski himself, who is also a professional engineer, and Aquarion Water Company. It was found to be acceptable by all. He added that when a Certificate of Occupancy is granted there is water monitoring that is required by DEEP. If the amount exceeds the maximum daily flow, it would be considered a violation of the Special Permit. He pointed out that water saving measures such as specialty faucets, toilets and so on, were not considered in the amounts calculated.

Ms. Purnell addressed a 10-foot-wide emergency access to the rear of the building that is not a 20-foot-wide unobstructed path as required by the National Fire Prevention Association. Mr. Szymanski stated that the Fire Marshal, Fire Department, Land Tech (first consultant) and by Cardinal Engineering (second and current consultant), all approved the road.

Attorney Sherwood stated that the plans have been designed by a Professional Engineer, a licensed Architect designed the building, and it has been reviewed by two third party engineering companies that the Commission required.

Chair Solley stated that after polling the five regular members of the Commission, four out of five of those members were ready to vote at this meeting. After the withdrawal of an original Motion that did not include the language regarding the modification of the Illumination Plan, an edit to the language made by Attorney Zizka and the Commission adding language to the Modification of the Illumination Plan stating, **“All windows at the inn will be provided with opaque blinds or shades to reduce interior lighting impacts”**, which was signed and dated by 101 Wykeham, LLC’s representative Paul Szymanski at this evening’s meeting, Chair Solley put forth the following Motion:

MOTION: I move that the Commission make the following findings: 1. That 101 Wykeham Road, LLC has complied with the conditions of approval established by the Commission in its 2013 and 2018 approvals to the extent, and only to the extent, required for the issuance of the special permit approved by those decisions. 2. That this finding does not relieve 101 Wykeham Road, LLC of any of the conditions of those approvals that relate to matters that may arise or uses that may commence after the issuance of the special permit, as set forth in the Site Plan Agreement (Draft 11-3-23) 3. That this finding of compliance is limited to the plans specified in the Site Plan Agreement (Draft 11-3-23) and is further limited in accordance with all of the terms, conditions and understandings set forth in that Agreement. 4. That, in order to assure that 101 Wykeham Road, LLC understands the limited scope of these findings, the special permit shall not be issued until the Site Plan Agreement (Draft 11-3-23) is fully executed and recorded in the land records of the Town of Washington. 5. That paragraph no. 6 of the Site Plan Agreement (Draft 11-3-23) will be modified to refer to plan ILL.1, revised through 11/3/23, and that plan ILL.1 will be modified to add the following note: “All windows at the inn will be provided with opaque blinds or shades to reduce interior lighting impacts.” Motion made by Chair Nicholas Solley, seconded by David Werkhoven, approved 4-1 vote.

Chair Solley, Mrs. Hill, Mr. Werkhoven and Mr. Farrell voted in favor of 101 Wykeham, LLC compliance of the Conditions of Approval.

Ms. Andersen voted “no” and gave the following reasons (1hr 58min. 47sec):

The Commission is “continuing to allow a 54-room, 100-parking places, a spa, with a public restaurant to be built in an R-1 zoned country road, compounded by judicial overreach”.

She went on to add that the Commission had not received the legal nullification of the permit for the school (as sited in Condition #15), that the parties of the Settlement Agreement had the right to approve and consent as part of that agreement, that the Commission had requested and were denied a full review from Cardinal Engineering that all the Conditions have been met.

Chair Solley explained that the Commission voted on the findings that 101 Wykeham, LLC had met all of the Conditions and were in compliance with those Conditions.

Mrs. Hill explained her reasoning for her vote, stating that since the last meeting on November 2, 2023, she had spent over 10-hours going through the information and feels that the Site Plan Agreement specifically lists what is complied with, however it does not let the applicant off the hook for what has not been complied with as of yet, and it includes language that would ensure compliance if the Fire Marshal, DEEP or Aquarion should change their laws.

Mrs. Hill added that she never once considered that the Compliance issues to be amendments to the Settlement Agreement. She did not feel that there were any changes to the size of the building nor the

use of the building. Any changes that were made were mostly for access ways that the Commission requested the applicant to make. She did not feel that several of the issues brought up by the public were out of the Zoning Commission's jurisdiction.

MOTION: To adjourn the November 6, 2023, Washington Zoning Commission Special Meeting at 9:07pm, by Mr. Werkhoven, seconded by Mr. Farrell, approved 5-0 vote.

Recording can be found here:

https://townofwashingtongcc-my.sharepoint.com/:u:/g/personal/trill_washingtonct_org/EdXnzAS7lQRBphfx9caBvMB_bHkBexvSysWCMvn2Y6Lag?e=kYIYHI

Respectfully Submitted,

Tammy Rill

Land Use Clerk

November 13, 2023

***Minutes filed, subject to approval.**