

September 15, 2021

Shelley White, Land Use Administrator
Town of Washington
Bryan Memorial Town Hall
P.O. Box 383
Washington Depot, CT 06794

Re: 101 Wykeham Road
Zoning Permit Review

Dear Ms. White:

LandTech has conducted a review of available documents to determine if the applicant's submitted documents comply with the zoning permit conditions of approval contained in the approval letter dated August 31, 2018 and the Settlement Agreement approved by the Zoning Commission. Reviewed application documents were in PDF format and numbered #1 through #54.

The specific conditions are copied below in italics. Comments regarding compliance or non-compliance with each condition follows each condition. The numbering of a reviewed PDF application documents is included in the response as appropriate.

Zoning Permit Conditions of Approval

1. *This approval remains subject to all of the conditions and limitations set forth in the Settlement Agreement approved by the Commission on January 7, 2013, together with the conditions of approval that were incorporated into the Commission's motion of approval of that Settlement Agreement.*

Compliance with the Settlement Agreement is addressed starting on Page 5 of this letter.

2. *The Commission finds that the separate ownership of guest room units is inconsistent with its interpretation of the word, "inn," as used in the Zoning Regulations. An "inn" is a lodging facility owned and managed by a single ownership entity, with rooms available for transient occupancy by lessees. Therefore, a condition of approval is that the inn must be owned as an undivided property. Guest room units, however they may be designated, may not be separately owned. This ownership restriction and some of the following use restrictions could be incorporated by placing a full copy of the Zoning Permit Conditions of Approval on the final plan set or by being filed on the town land records.*
3. *No guest room unit shall have a kitchen.*
Architectural plans Skz-102 (main inn level 2 plan) (PDF #40), Skz-103 (main inn level 3 plan) (PDF #41), and Skz-104 (main inn level 4 plan) (PDF #42) contain notes that no guest room unit has a kitchen.
4. *No guest room unit shall contain a refrigerator having a capacity larger than 4.0 cubic feet.*
Architectural plans Skz-102 (main inn level 2 plan) (PDF #40), Skz-103 (main inn level 3 plan)

- (PDF #41), and Skz-104 (main inn level 4 plan) (PDF #42) contain notes that no guest room unit has a refrigerator having a capacity larger than 4.0 cubic feet.**
5. *No guest room unit shall have a stove, stove top, oven, or convection oven.*
Architectural plans Skz-102 (main inn level 2 plan) (PDF #40), Skz-103 (main inn level 3 plan) (PDF #41), and Skz-104 (main inn level 4 plan) (PDF #42) contain notes that no guest room unit has a stove, stove top, oven, or convection oven.
 6. *No guest room unit shall have any cooking facilities, including microwave ovens.*
Architectural plans Skz-102 (main inn level 2 plan) (PDF #40), Skz-103 (main inn level 3 plan) (PDF #41), and Skz-104 (main inn level 4 plan) (PDF #42) contain notes that no guest room unit has cooking facilities, including microwave ovens.
 7. *No guest room unit shall have a dishwasher.*
Architectural plans Skz-102 (main inn level 2 plan) (PDF #40), Skz-103 (main inn level 3 plan) (PDF #41), and Skz-104 (main inn level 4 plan) (PDF #42) contain notes that no guest room has a dishwasher.
 8. *No guest room unit shall have a washing machine or dryer.*
Architectural plans Skz-102 (main inn level 2 plan) (PDF #40), Skz-103 (main inn level 3 plan) (PDF #41), and Skz-104 (main inn level 4 plan) (PDF #42) contain notes that no guest room has a washing machine or dryer.
 9. *The interior floor plans shall be modified to eliminate the ballroom, because that use was neither contemplated nor approved in 2013 and (without reductions in the uses actually approved in 2013,) would expand or extend the nonconforming nature of the principal use. In addition, the applicant failed to prove that 100 parking spaces allowed under the 2013 approval would be adequate to accommodate the additional use.*
Architectural plan Skz-102 (main inn level 2 plan) (PDF #40) contains a note that no space is labeled as a ballroom, and is now labeled as a Meeting Room/Library.
 10. *The emergency accessway shall be used for emergency purposes only and shall not be used to service the pool, poolhouse, or tented events.*
We recommend that a note be added to Sheet SD-2 stating that the emergency accessway shall be used for emergency purposes only and shall not be used to service the pool, poolhouse, or tented events.
 11. *As-built drawings shall be submitted to the Zoning Commission upon the completion of the foundations and again upon the completion of framing. The as-built drawings must be approved by the Commission or its authorized agent(s) before the commencement of further construction. The Commission shall, at the expense of the applicant, refer such drawings to a professional engineer and/or surveyor for review.*
This condition could be incorporated by placing a full copy of the Zoning Permit Conditions of Approval on the final plan set.
 12. *Outside construction may take place only between 7:00 a.m. and 5:00 p.m. Monday through Friday and between 8:00 a.m. and 4:00 p.m. Saturday and Sunday. No blasting, no operation of heavy equipment, and no site work are permitted on Saturday or Sunday, before 8:00 a.m. Monday through Friday, and on Memorial Day, Fourth of July, and Labor Day.*

We recommend that a note be added to the construction drawings regarding the time restrictions.

13. *In accordance with Section 13.4 of the Zoning Regulations, a performance bond, in the form of a cash bond or an irrevocable letter of credit from a financial institution with offices in Connecticut, in an amount and for items to be determined by the Commission in consultation with the Commission's attorney and/or by an engineer approved by the Commission and paid for by the applicant, shall be secured before disturbance of the site begins.*

Land Use office should confirm receipt of performance bond prior to issuance of building permits.

14. *No day passes or memberships of any kind may be issued for the pool, which is to be used by overnight guests only.*

This use restriction could be incorporated by placing a full copy of the Zoning Permit Conditions of Approval on the final plan set or by being filed on the town land records.

15. *No day passes or memberships of any kind may be issued for the spa, which is to be used by overnight guests only.*

This use restriction could be incorporated by placing a full copy of the Zoning Permit Conditions of Approval on the final plan set or by being filed on the town land records.

16. *The finished floor levels for the main building shall not exceed those shown on Sheet SD.1, revised to 12/17/12 as was approved in the 1/7/2013 Settlement Agreement.*

The finished floor elevations shown on Architectural plans Skz-105.1 (PDF #43) and Skz-106 (PDF #43) do not exceed the finish floor elevations shown on Sheet SD.1 as follows:

	Sheet SD.1	Sheets Skz 105.1 & Skz 106
Level 0	460.0	460.0
Level 1	470.0	470.0
Level 2	482.0	482.0
Level 3	504.0	498.0
Level 4	Not Specified	508.0

17. *The main inn building is limited to 5 levels; 2 underground and 3 above ground.*

Architectural plans Skz-105.1 (PDF #43) and Skz-106 (PDF #43) indicate five levels. The North/Front Elevation shows 2 underground and 3 above ground levels. The South/Rear Elevation shows 3 underground levels and 2 above ground levels.

18. *Outdoor lighting must comply with the requirements of Section 12.15 of the Washington Zoning Regulations. A plan for all such lighting must be submitted to and approved by the Zoning Commission prior to the commencement of construction.*

Illumination Plan ILL.1 dated May 29, 2019 (PDF #34) includes lighting plans and specifications in conformance with Section 12.15 of the Washington Zoning Regulations.

19. *All cottages shall be limited to two floors only per Sheet SD.1, revised to 12/17/12.*

Architectural plans Skz-109 (PDF #47) and Skz-110 (PDF #48) indicate that the three proposed cottages are two levels.

20. *There shall be no kitchen in the pool house.*

Architectural plan Skz-111 (PDF #49) floor plan shows no kitchen and a note is included indicating that there shall be no kitchen in the pool house.

21. *Written approval by the Fire Marshal shall be submitted to the Commission prior to the issuance of the special permit.*

Three plan modifications were requested by the Fire Marshal in an email to Paul Szymanski dated June 4, 2019 (PDF #8). Sheet OSD.1, with latest revision date of 3/04/20 (PDF #35), incorporates the three requested plan modifications. The Fire Marshal's email states "With the above changes the site plan is acceptable to us as presented."

22. *Written approval of the DEEP of the final septic plans shall be submitted to the Commission prior to issuance of the special permit.*

CT DEEP Approval of Wastewater Management Plan dated August 5, 2019 (PDF #9) has been submitted to the Commission.

23. *Written approval by Aquarion Water Company of the final plans for the water supply shall be submitted to the Commission prior to the issuance of the special permit and shall include a) a determination that the water supply is adequate to serve the inn and sprinkler systems, and b) a statement of how many additional wells will be needed and where they will be located. The applicant must also provide the Commission with a signed statement that it agrees to pay for all required system improvements. (See 6/27/18 letter.)*

A letter from Aquarion Water Company to Ms. Erika Klauer dated July 8, 2021 (PDF #51) confirms that Aquarion is willing to serve the development and has identified an additional well (Well 8A) which will allow Aquarion to meet the projected average day and maximum daily water supply demands. The letter further states that service to the development is contingent upon receipt of final Well Use Approval from the CT Department of Public Health. A signed letter from 101 Wykeham Road LLC to Washington Planning and Zoning Commission (not dated) (PDF #52) states "Please be advised that 101 Wykeham Road, LLC hereby agrees to pay all costs associated with the Aquarion system improvements necessary to serve the Wykeham Rise commercial development as required by the letter dated July 8, 2021 from Ingrid M. Jacobs, PE, Manager, Water Resources & Infrastructure Planning, Aquarion Water Company to Ms. Erika Klauer, a copy of which is attached."

24. *Any further modifications to any of the approved plans; H&R Design, Inc., Plan Set for Wykeham Rise, Sheets: Skz-A, Skz-B, Skz-100, Skz-101, Skz-102, Skz-103, Skz-104, Skz-105.1, Skz-106, Skz-107, Skz-109, Skz-110, Skz-111, all dated 04/13/18. Arthur H. Howland & Assoc., plan set titled, "Site Development Plan for Wykeham Project," Sheets: C.1, dated 2/14/18, EC.1, dated 4/16/08, EC.2, dated 4/16/18, RM.1, dated 2/14/18, OSD.1, OSD.2 and OSD.3, dated 12/2/16, SD.1, dated 12/2/16, SD.2, dated 12/2/16, SEQ.1a, SEQ.1b, SEQ.2, SEQ.3, SEQ.4, dated 2/14/18, PL.1, PL.2, PL.3, dated 12/2/16, PL.4, PL.5 PL.6, dated 12/2/16, SES.1, dated 2/14/18, D.1, dated 2/14/18, D.2, D.3 dated 2/14/18, D.4, D.5, D.6, dated 2/14/18 must be submitted to and approved by the Zoning Commission prior to implementation.*

It is our understanding that modifications to the approved plans are included in the revised architectural drawings and site plan cited above in Conditions 3-9, and 16-21.

25. *No passenger drop offs by buses carrying more than 15 passengers or more.*

This use restriction could be incorporated by placing a full copy of the Zoning Permit Conditions of Approval on the final plan set or by being filed on the town land records.

Settlement Agreement

1. *The Inn's complete site plan is represented in the attached document as Overall Site Plan for Applicant Matthew & Erika Mauer Development: Wykeham Project Date: July 8, 2011 Scale 1" = 60' SHEET 050.1 Revised to 11/19/12, Prepared by Arthur H. Howland & Associates P.C. ("Site Plan").*
No response needed.
2. *The Inn will contain a maximum of fifty-four (54) guest room units ("Units").*
Architectural plans (PDFs #38-42, #47) indicate a total of 34 Units in the Main Building and 3 Cottages.
3. *There will be a maximum of one hundred (100) parking spaces provides on the Property. There will be no "overflow" parking.*
Site Plans SD-1 and SD-2 indicate a total of 100 parking spaces.
4. *The Inn's restaurant shall be open to the public but shall have a total maximum seating capacity of sixty-eight (68) seats during normal operations, excluding weddings, or "paid for events." Of the maximum seating capacity, no more than thirty (30) seats shall be outdoor seating.*
Architectural Plan Skz-102 (PDF #40) indicates a 68 seat restaurant. No outdoor seating is depicted on the Architectural Plans.
5. *The Inn's spa and fitness center will be limited to the area within the building that is labeled "Fitness Building" on the Site Plan and cannot exceed floor area totaling more than 11,400 square feet SAVE THAT a single exercise room no larger than 3,800 square feet and containing only exercise equipment may be located within the "Main Building," labeled as such as depicted on the Site Plan. If the single exercise room is located in the Main Building, the size of the Fitness Building would then be reduced by the same amount so that the combined floor area devoted to spa and fitness facilities in the Fitness Building and Main Building cannot exceed 11,400 square feet in total. There shall be no treatment rooms in the Main Building under any circumstances and treatment rooms in the Fitness Building may not be used for overnight stays. Wykeham will not issue "day passes" for the spa and fitness center or for any such exercise room.*
Architectural Plan Skz-107 (PDF #45) indicates at total floor area of 10,518 square feet on three floors in the Spa (Fitness) Building. No exercise rooms or treatment rooms are shown in the Main Building floor plans.
6. *The existing driveway of the Property that intersects Bell Hill Road will be permanently abandoned.*
Removal Plan Sheet RM.1 (PDF #17) includes notes indicating the removal of bituminous pavement and existing cross culverts along the driveway from Bell Hill Road.
7. *There will be no amplified sound on the grounds or outside the footprints of all fully*

constructed and enclosed buildings at any time. Non-amplified sound is allowed; however, non-amplified music must cease 30 minutes after local sunset.

This use restriction and the following items (8-16) could be incorporated by placing a full copy of the Settlement Agreement on the final plan set or by being filed on the town land records.

8. *The pool house shall be permitted to serve alcohol but will not have any grill or cooking equipment. There shall be no outside grill on the Property. The pool house and pool shall open no earlier than 8:00 AM and close no later than at 8:00 PM each day. Wykeham shall use best efforts to minimize noise or raucous behavior at the pool house or pool. All exterior lights shall be subject to the lighting standards of the Washington Zoning Regulations in effect at the time this Agreement is fully executed by the parties herein.*
9. *There shall be no more than twenty-four (24) tented events between and only during the period from May 1 through October 31 of each calendar year and no more than one (1) tented event may be held per day. Tented events may be held in two general locations, the first being north of the Main Building (as those specific locations are depicted on the Site Plan) and the second being south of the Main Building (the specific south side locations are as depicted on the Site Plan.) Of the twenty-four (24) tented events, up to but no more than twelve (12) tented events may occur on the south side of the Main Building during any one calendar year. The balance of the twenty-four (24) total number of tented events that may be held in a calendar year, less the actual number of tented events not to exceed twelve (12) that occur on the south side in any calendar year, shall be allowed on the north side. No buildings, tents or other structures shall be constructed, placed or erected above, or on the ground in the Restricted Area as depicted on the Site Plan. No permanent or temporary parking is permitted in the Restricted Area. No food or beverages, including but not limited to, alcoholic beverages, shall be prepared or served in the Restricted Area.*
10. *A separate "Stipulated Judgment" by and between Wykeham and Federer relating to Wykeham Rise LLC v. Eric A. Federer, et ux., Docket No. LLI-CV-08-4007541-S, J.D. of Litchfield at Litchfield, will be signed by the parties therein and filed with the court for approval contemporaneously with the submission for approval of this Agreement by the court.*
11. *Any amendments to this Settlement Agreement must be consented to by all the parties herein or their heirs, successors or assigns.*
12. *If any provision of this settlement agreement is deemed unenforceable or against public policy by a court of competent jurisdiction, such provision shall be deemed severable from the remainder of the Agreement and shall not affect any other provision or, if such provision should not be wholly severable then, to the maximum extent possible, the remainder of this Agreement shall be modified so as to maintain the original intent and remain in full force and effect.*
13. *Each of the parties represent that he, she or it has the complete authorization and power to execute this Agreement in an individual capacity, on behalf of an LLC, or Commission -as the case may be and that all necessary approvals, signatures or consents of any other person or entity has been obtained and that this Agreement is a valid and binding obligation of the individuals, Wykeham Rise, LLC and the Commission and such Agreement does not violate any*

law, rule, regulation, contract or agreement otherwise enforceable against the respective parties.

- 14. This settlement agreement shall be construed in accordance with the laws of the State of Connecticut.*
- 15. Once this Settlement Agreement has its Approval, Wykeham shall give up and surrender its two existing approvals for a school granted by the Commission on December 27, 2010 and February 14, 2012.*
- 16. This Settlement Agreement may be signed in counterparts and the parties may rely on facsimile or email copies provided to each as long as the originals are thereafter provided so that an original composed of all original counterparts may be presented to the Court for approval.*

Please contact me if you have any questions.

Yours truly,



Christopher P. Allan
Senior Associate