

Zoning Commission

MINUTES

Special Meeting - Public Hearing

November 13, 2017

7:00 p.m.

Upper Level Meeting Room

MEMBERS PRESENT: Mr. Armstrong, Mr. Averill, Mr. Reich,  
Mr. Solley, Mr. Werkhoven  
ALTERNATES PRESENT: Mrs. Lodsin, Ms. Radosevich  
ALTERNATE ABSENT: Mr. Sivick  
STAFF PRESENT: Mrs. Hill  
ALSO PRESENT: Atty. Olson, Atty. Zizka, Atty. Fisher,  
Atty. Kelly, Ms. Klauer, Atty. McTaggart, Mr./Mrs. Solomon,  
Mr. Collum, Mrs. Collum, Ms. Giampietro, Mr./Mrs. Hollinger,  
Mr. Adams, Ms. Friedman, Mr. Wright, Ms. Davis, Mr. Rogness,  
Mr. Rogers, Ms. Gilrogers, Mrs. Peacocke, Mr. Sherr,  
Mrs. Auchincloss, Mr. Sorce, Mr./Mrs. Smith, Mrs. Branson,  
Mr./Mrs. Boyer, Mr. Combs, Mr./Mrs. Owens, Mr. Brinton,  
Mr. Horan, Ms. Benn, Mr. Woodward, Mr./Mrs. Barnet, Ms. Purnell,  
Mr./Mrs. Minor, Mrs. Silk, Mrs. Anderson, Mr. Steinmetz,  
Mr. Blumenreich, Residents

101 Wykeham Road, LLC./101 Wykeham Road/Application to Revise  
Special Permit for Inn

Mr. Solley called the public hearing to order at 7:11 p.m. and seated Members Averill, Reich, Solley, and Werkhoven and Alternate Lodsin. He then read the 10/25/17 legal notice published in Voices on 11/1 and 11/8/17.

Representing the applicant, Atty. Fisher read a statement giving a summary of the history of the previous owners, applications, actions taken by the Zoning Commission, appeals, and Settlement Agreement since 2008 for 101 Wykeham Road. He noted that under the 1/7/13 Settlement Agreement the inn had been approved with conditions and explained the applicant was now applying to revise its Special Permit. He described the two revisions being applied for: 1) a change to the site plan for grading behind the main building and the construction of a retaining wall to allow for windows on that side of the building and 2) changes in elevations. He stated that complete floor plans had now been submitted and that the applicant was not proposing any increase in the number of units or restaurant seating, nor any expansion of the approved inn.

Atty. Kelly reviewed the administrative process the applicant had recently gone through to comply with the Zoning Regulations and noted the Commission had denied that application on the grounds that some of what was proposed was not consistent with what had been approved in 2013. He said he had reviewed Atty. McTaggart's 11/8/17 letter and Mrs. Hill's 11/9/17 report and had concluded that the current application had been too broad; that it had included a few things that were normally administrative. He noted the applicant has the right to construct an inn. He explained the application to revise the Special Permit was now limited to two modifications: 1) changes to the exterior elevations of the main building and 2) slight changes to the site plan in grading and the addition of a retaining wall. He submitted a revised application form for the record and read the revisions now being applied for: 1) Renderings A and B, dated 1/7/13 would be replaced by Exhibits T and U and 2) the "Overall Site Plan for Matthew and Erika Klauer," dated July 8, 2011 and revised to 12/17/12 would be replaced with the "Site Development Plan for 101 Wykeham Road, LLC," dated 12/2/16. He said much of the feedback he received had addressed whether the inn proposal complied with all aspects of the Zoning Regulations, which was not now part of the application. He said there had been extensive comments on the Declaration and whether what was proposed was an attempt to couch multi family housing under the guise on an inn. He said it was the applicant's intent to comply with all Zoning Regulations. Therefore, to address the issue of the character of the use proposed they would make a future separate parallel application at which time they hoped they could come to an agreement with the Zoning Commission that all that is proposed complies with the Special Permit and Zoning Regulations. Much of the documentation submitted with the application, he said, did not pertain to the revised application submitted tonight, but rather to the future application that would be submitted at a later date.

Mr. Solley asked if the binder submitted was now a part of the current revised application. Atty. Kelly said it was not; that only Exhibits T and U and the 12/2/16 plan were now relevant.

Mr. Armstrong arrived at 7:35 p.m. Mr. Solley noted he must listen to the recording of the first part of the hearing in order to be seated next time.

Atty. Kelly noted for the record the attachments to the revised application just submitted: 1) the 11/12/17 letter from Ms. Klauer in response to Mrs. Hill's 11/9/17 administrative review, 2) Ms. Klauer's 11/3/17 memo with revisions updated to

11/12/17, 3) the 11/10/17 email from Mr. Oskandy to respond to the question of whether the main building has a mansard roof(s), and 4) "Building Height Analysis (Perimeter Average-Revised,) unsigned, dated 6/21/17.

Atty. Fisher noted the proposed site plan revisions had already been approved by the Inland Wetlands Commission. He said he was submitting the minutes of the 1/7/13 Zoning Commission meeting, the Settlement Agreement, and Mrs. Hill's notice of approval for the record.

Mr. Solley referred to the 1/7/13 meeting, saying the Zoning Commission had accepted the documents submitted at that time, he was not sure whether the then chairman had asked for more, and that he would have thought the applicant would have been prepared to submit more than it had. Regarding the Commission's August denial of the administrative permit, he stated there had been much discussion regarding whether or not what was proposed was consistent with the original Special Permit and the Commission had determined it was not consistent, but had not zeroed in on the specific ways in which it was not consistent. So he said the Commission would get comments tonight on all aspects even though the applicant had now applied for only two. He said he thought it would be a grave injustice to the public if it was not permitted to comment on all aspects.

Atty. Fisher noted the applicant had not been required to provide floor plans at the time of the Settlement Agreement and that due to the expense of generating those plans, did not want to draft them without first having Zoning approval. He said the focus of the debate in 2013 had been on intensity, not the lack of floor plans. He added that the applicant understood that ultimately the floor plans, height of buildings, etc. would have to comply.

On behalf of neighbors, Atty. McTaggart said she thought the revision of the application was confusing and asked if it still included the Declaration and Public Offering Statement.

Atty. Fisher said he would be happy to go to the Land Use Office to remove all irrelevant documents, adding that the conversion to condominium ownership was off the table for tonight.

Atty. McTaggart noted, however, that what had been handed to her tonight had nothing crossed off. Atty. Kelly said that was an error and read from the corrected application with the 11/12/17 letters attached that he had submitted earlier. He said the applicant's only intention is to build an inn and that he

intended to go through an administrative process with the Commission to do so.

Atty. Kelly noted that Mr. Solley had been the one dissenting vote against the Settlement Agreement and thought it was inappropriate for him to suggest on the record that it was incomplete at the time it was approved. He reminded Mr. Solley he is now the chairman of the Commission that voted to approve the Agreement.

Mr. Solley responded that the record shows he voted, No, because he felt the Commission had not had enough time to review or discuss the proposed Agreement.

Atty. Zizka reviewed with Atty. Kelly the list of documents the applicant said were remaining in the amended application: 1) the modified application form, 2) 11/12/17 letter from Ms. Klauer, 3) 11/3/17 memo from Ms. Klauer with 11/12/17 update, 4) 2 page email memo from Mr. Oskandy dated 11/10/17, 5) Exhibit T - 3 pages, 6) Exhibit U - 2 pages, 7) the site development plan, one sheet, by Arthur H. Howland and Assoc., dated 12/2/16, and 7) plans by H&R Design, 2 pages of elevations, dated 7/14/17 and the old 2013 site plan and proposed 2017 site plan. Atty. Zizka noted that Atty. Fisher also submitted the minutes of the 1/7/2013 Zoning Commission meeting, a copy of the Settlement Agreement, and a copy of the notice filed on the Land Records; vol. 231, pp. 1131-1132 and he noted the date of the new site plan was 12/2/16 because that was the plan approved by the Inland Wetlands Commission. Atty. Zizka noted for the record that the copy of the Settlement Agreement submitted was not signed by the Zoning Commission.

Atty. Fisher stated the list of documents above was correct.

Atty. Zizka asked if the floor plans submitted by Ms. Klauer mentioned earlier in the hearing were part of the application. Atty. Fisher said they were not.

Mr. Solley asked if the condominiums were part of the application. Atty. Fisher said they were not. He said the application was for the modification of the site plan without any discussion about use. Mr. Solley asked for confirmation that the applicant had removed the most contentious issue in the public process from the application and would take it up administratively some other time. Atty. Fisher stated that based in part on Atty. McTaggart's letter, which was very critical of the application, the applicant would proceed in this manner. He noted the applicant would not create dwelling units or multifamily housing and did not want anything other than an inn.

Mr. Solley asked if the floor plans included kitchens or kitchenettes. Atty. Zizka stated that the floor plans were no longer part of the application.

Atty. Kelly stated that the Declaration was no longer part of the application, either. He again stated that since the applicant had received substantial feedback that the application did not comply with the Zoning Regulations, it had been amended, and a separate administrative application would be submitted in the future for the Commission's consideration. He noted the future administrative permit application would be between the applicant and the Commission without public participation. He added that condominium ownership is not under the Commission's jurisdiction, but the character of use is. He stated the applicant was entitled to an administrative process with the Commission to see if an agreement could be reached and explained the applicant is also now separately following the proper path to apply for the changes that he had agreed were changes to the Special Permit.

Atty. McTaggart reviewed the application process described in Section 2.4 of the Zoning Regulations, and noted the application amendments submitted tonight did not comply with the public hearing submission requirement. She noted, too, for a Special Permit application the plans are integral to the application because a use will be made of the property based on those plans. She said the original plans for an inn, spa, and restaurant had morphed into what is before the Commission tonight. Atty. McTaggart took great exception to Atty. Kelly's claim that the applicant can apply administratively for a change of use from an inn units to multi family residential housing. She said that a change of use is a change to the Special Permit and would require a public hearing, not an administrative approval.

Atty. McTaggart stated it was true that the applicant can develop the property as approved. But she added that all aspects of the application were not specified in the motion of approval; just as all aspects are not mentioned in any motion of approval. She said the courts have recognized that what is approved is reflected in the entire record of what was before the Commission. She said the inn and three university applications had been reviewed by the Commission and were a part of the record. She said the Commission must know exactly what's to be approved; that the applicant should not be able to claim it is too expensive to bring in floor plans and that the Zoning Regulations require plans for Special Permit applications.

Atty. McTaggart informed the Commission that the applicant is advertising residential units, much larger units than the approved inn units. She said she worried that if the Commission approves this application, the applicant will say that means it also agreed the change of use would be an administrative sign off. Atty. McTaggart said the advertising and the Declaration show that the applicant's intended use differs from the approved inn. She added that she had reviewed the Declaration, which allows the applicant to change the use to another use. She noted that Atty. Fisher had taken the Declaration off the table, but said when it is again submitted, it must come back before the Commission in a public hearing to consider modification of the Special Permit to add a use. She stressed that the uses; inn and restaurant, are no longer permitted uses in the district and that the expansion of those uses does not reflect the use that was originally approved. She stated the Commission cannot approve the expansion of a non conforming use per the Zoning Regulations.

Atty. McTaggart submitted a corrected version of her 11/8/17 letter. She said the Commission should apply the nine Special Permit standards to the application and she then detailed changes to the approved Special Permit. 1) She stated there is a substantive increase in floor area of approximately 35,000 sq. ft. over that of university plans, which were the basis for the inn plans and the addition of two floors, which, she said, were both significant increases. She again noted that under the Zoning Regulations a non conforming use may not be expanded. 2) There is a substantive increase in the volume of the main building, which again, is the expansion of a non conforming use. She compared the figures cited in previous applications, in an 6/26/17 email from Mr. Szymanski, and on the Assessor's cards to show an increase of between 24,500 and 26,000 sq. ft. 3) There is an increase in the volume of the pool house. The height of this building has increased. 4) There is an increase in multiple venues beyond that of an inn, spa, restaurant, and small bar area. She gave examples such as the addition of a ballroom, private dining area, multiple other dining areas, multiple bars, Tree Tops library, pool deck, etc. She asked the Commission to contrast what had been submitted to the DEEP with what had been submitted for this application and noted the DEEP plans must be consistent with what was submitted to the Zoning Commission; there should not be two separate sets of plans. She said the Commission had approved a small country inn with a restaurant and spa, but additional uses were now being proposed. She said there were now multiple units with two bedrooms, that kitchens had not been understood to be included, nor had they been mentioned in the Settlement Agreement discussion, and that the proposed kitchen and laundry facilities make the units appear residential.

5) Regarding parking, Atty. McTaggart stated that inns don't have two parking spaces reserved for specific units and that if the parking spaces were reserved for specific units, there would be no parking spaces left for the restaurant. 6) She noted there were new balconies, 6,000 sq. ft., and a new terrace,, 2600 sq. ft., proposed. 7) She said the Commission is required to look at the location, type, character, size, scale, proportion, appearance, and intensity of the proposed use and said these are required to be in harmony with the Town and the neighborhood. 8) She referred to Section 13.1.C.8, which states that nuisances may not be created at or beyond the property line, noted the huge windows in the main building, and questioned whether the proposed lighting would have impact beyond the property line. 9) She said the tented events areas now appear to be limited to two locations, the two areas closest to Wykeham Road. 10) Atty. McTaggart said the size of the proposed restaurant and kitchen approved by the Settlement Agreement and submitted to the DEEP was now being greatly expanded. She said when all food service areas proposed were considered, it was a 450% increase over what had been approved in 2013. Atty. McTaggart said these were all germane changes to the plans and must be approved by the Commission.

Atty. McTaggart stated Soethebys has marketed the units and has possibly sold one. She said she was not concerned about the form of ownership, but was concerned about the nature of the proposed use, which, she said, was residential. She noted per the Declaration, the unit owner is permitted to stay in his unit and use it as a residence 9 months of the year, which makes these units primarily residential. She noted there is also a problem that the main building and pool house do not meet the minimum setback requirement of 50 ft. for an inn. She stated that vertical increases are increase just like lateral increases and that the increase to 5 stories and the increase in volume of the main building were increases in a non conforming use.

Regarding issuance of zoning compliance, Atty. McTaggart stated that if the units were to be used residentially, the enforcement officer could not sign off on them and that it must be clear that both the plans and the uses comply with the inn that was approved in 2013.

Mr. Solley noted that in 2013 the Commission had not noticed that the proposed inn was only 31 feet from the boundary line and had approved the location when it had approved the Settlement Agreement. Atty. McTaggart said the pool house setback was still an issue.

For the record, Atty. Zizka explained the Zoning Commission had gone through a lengthy process to consider the administrative permit application and that the Commission had rendered a decision that the plans were not consistent with the 2103 Settlement Agreement. He noted that decision has been appealed and so it is anticipated that the proposed uses on the property will be taken up before the Zoning Board of Appeals and Superior Court. He said then, that everyone should understand that the issue of use is under consideration on a different level.

Mrs. Hill read the sections of her 11/9/17 administrative review, which still applied to the amended application.

There was a brief recess at 8:58 p.m. Mr. Solley reconvened the public hearing at 9:12 p.m. and asked for comments from the public.

Ms. Giampietro, 96 Wykeham Road, stated that the blighted, neglected property at 101 Wykeham Road was an eyesore and that even after the January fire, there were still unsafe buildings and toxic contaminants on site. She said she was not against what had already been approved, but opposed any increases. She stated that without regard for the Town or its Regulations, the applicant already had approval for the largest inn in this section of Ct. and so it should not be allowed to increase in size. She referred to the Special Permit standards 13.1.C.2 and 13.1.C.4 and asked the Commission not to grant approval, but to uphold the laws of the Town of Washington.

Mr. Bent read a statement from Ms. Michaud that stated inns were not permitted on town roads for a reason and that the past approval had been due to a legal technicality.

Mrs. Peacocke, 14 Bell Hill Road, provided background information concerning her involvement as an adversary and intervener since 2008 and said she had been involved in every stage of the negotiations. She strongly objected to Atty. McTaggart's statements about the Settlement Agreement, saying that Wykeham had agreed to withdraw its permits for a school and that comparing the school permit with the inn application was inappropriate. She also disagreed with Atty. McTaggart's statements regarding why the Zoning Commission had revised its Regulations to require inns to be accessed from state roads, saying that it had corrected ambiguous language. She also stated that the comparisons to Trump Hotel in Atty. McTaggart's 11/8/17 letter were false. She concluded by saying she wanted to uphold the Settlement Agreement.

Mr. Barnet, 33 Sabbaday Lane, noted the Commission had been blindsided by the applicant's 11th hour change in the



application, which he said was typical and the reason why he had requested the tape of the 1/7/13 Zoning Commission meeting be included in this application file. He said that during the Commission's Settlement Agreement discussions, Atty. Olson had advised the Commission that there was no need to rehash the parts of the project that would not change, but to focus on the changes. So he said he did not understand why Mrs. Peacocke claimed the school comparison was irrelevant. He read from the 1/7/13 minutes. He noted Renderings A and B showed a 3 story building and that at the time, Atty. Olson stated it was clear what was being approved, and Mr. Fitzherbert said that any changes would have to be approved by the Commission. He again asked that the tape of the 1/7/13 meeting be included in the record.

Atty. Zizka stated for reasons of staff time and budget, it was not appropriate to ask staff to make copies for the file; that it was up to him to get copies made and submit them. Mr. Barnet requested the hearing be continued long enough for him to do so. Atty. Zizka noted the applicant had made it clear that use issues were not on the agenda for discussion tonight. Mr. Barnet responded that he was trying to establish what the previous plans were. Atty. Zizka said it was up to him to find them and to make copies.

Ms. Purnell, property owner on Wykeham and Old Litchfield Roads, said it was important that the Commission have accurate information for the record and so submitted her 11/13/17 letter with attachments to the Commission and her chart, "Coverage and Gross Living Area Comparisons, 101 Wykeham Road." She said the chart had been generated from Arthur H. Howland and Assoc.'s lot coverage data, Smith and Company's lot coverage data for the original inn application, the Town's Assessor's cards, and renditions of Wykeham Rise School, the University, and the Inn. She noted the packet of material she submitted included the floor plans submitted to the state DEEP, which were generated in Sept. 2012. She stated that these floor plans had been submitted to the DEEP in support of Wykeham Project, that they corresponded to Renderings A and B, and that the cover letter to the DEEP states that Renderings A and B and the 9/2012 floor plan is what is being proposed. She said her letter also included the floor plans for Wykeham University, which were single bedroom units. She discussed the permitted areas for the tented events referred to in the Settlement Agreement, saying that most of the areas pin pointed in the SA could no longer be used and the one area still available was adjacent to the spa and fitness building, which would negatively impact the residences across Wykeham Road. She also noted that what is now being marketed on line includes 2

parking spaces to be sold with each condo unit, the remainder to serve the inn and restaurant.

Mr. Rogers, Rivers Alliance Board of Directors, noted the tremendous amount of runoff that would be generated by a 95,000 sq. ft. footprint and the tremendous amount of water the operation would require will both impact the environment, the water table, Kirby Brook, and the Shepaug River. He asked the Commission to pay particular attention to how the discharge is handled because the area would be highly susceptible to damage.

Mr. Blumenreich, 94 Wykeham Road, agreed with Ms. Giampietro. He said he wanted a tasteful inn, but the current plans were a monstrosity. He asked that the applicant return to the original approved plans, noted the importance of holding a public forum, and said the public should have the right to voice its opinions in the future.

Mr. Steinmetz, Old Litchfield Road, said the character of the proposed use, condominiums, not an inn, should be what is discussed at this public hearing. He thought the purpose of the language written by lawyers was to create a loophole.

Ms. Friedman, 36 West Morris Road, agreed that the condo issue was the elephant in the room. She stressed the need to enforce any conditions of approval because conditions are effective only when they are complied with. She said the applicant has a record of noncompliance and provided examples of tax liens by the Town and unauthorized activity for which a fine was paid to the Inland Wetlands Commission. She stated the applicant has stated her intent to build an inn, but her history states otherwise.

Mrs. Solomon, 43 Bell Hill Road, referred to a statement made by a Zoning commissioner in support of a previous application because people want to see the inn built. She said the Zoning Commission has the responsibility to follow the Zoning Regulations rather than what some people may want. She said arguments such as job creation and economic development are not reasons to approve the application. She noted the applicant already has approval for a 54 room inn and the Commission does not have to accept the applicant's desire to build units for greater profit. She urged the applicant to stop applying for changes, noting this was the largest inn in this part of Ct. and was already shoe horned into this residential neighborhood. She asked the Commission to deny the application.

Mr. Werkhoven asked the public to be civil.

Mr. Adams, 36 West Morris Road, was concerned that certain Zoning commissioners have allowed their personal feelings to guide how they vote. He stated that the inn was already the largest commercial development in Town. He noted the townspeople depend on the Zoning Commission to uphold its Regulations, asked the commissioners to apply the Zoning Regulations fairly and consistently, and said if it had done so in the past, we would not be here today discussing the current proposal.

Mrs. Barnet, 33 Sabbaday Lane, was dismayed that the applicant both fought not to have a public hearing and thinks that only two changes to the Special Permit are relevant. She hoped the Zoning Commission would not succumb to the applicant's request to not allow any discussion about use. She noted several times when she alleged that Mr. Szymanski, the applicant's engineer, had given the Commission incorrect information, saying that made it difficult for the Commission to check out what are facts and what are not. She also stated the applicant had filed a recent lawsuit with no substantial arguments. She noted the applicant already has approval for a 54 room inn and said she hopes she can rely on the Commission to uphold its laws and to protect the R-1 District.

Atty. McTaggart said that Mrs. Peacocke had not accurately represented what she had said, but noted what she did say would be in the record. She stated that the reference in the Building Code to a 30 day limit for transients to stay at an inn was deleted in 2016.

Mr. Solley advised Atty. McTaggart that the references to Section 17 of the Zoning Regulations in her letter dated 11/9/17 were outdated as Section 17 had recently been updated. Atty. McTaggart said she would update her letter.

Atty. Fisher said the 30 day limit for transients staying at an inn had not been deleted from the Building Code in 2016 and he submitted a page from the Code for the record.

Ms. Purnell commented on the increases in volume proposed for the main building, which she said was a very large increase, the pool house, a small increase, and in each of the cottage buildings. She noted that two stories had been added to the main building, and one story had been added to each of the cottages. She also noted that 68 vertical feet of the main building will be visible from Wykeham Road and that the location of the pool house had not been moved to meet the required setback or the applicant would have applied for that change in the current application.

Mr. Solley thought the Commission needed time to study the application and to understand exactly what it would be voting on

and so recommended the public hearing be continued to a date in December. Discussion ensued regarding whether the hearing should be continued and if so, to what date. Atty. Zizka stated that one advantage of continuing the hearing would be that if upon reviewing the application the commissioners had questions, they could raise them at the hearing; if the hearing was closed, there would be no opportunity to get those questions answered. Upon hearing this, the three new members, Mr. Armstrong, Mrs. Lodsine, and Ms. Radosevich, requested that the hearing be continued. It was the consensus to continue the public hearing to 7:00 p.m. on Monday, December 11.

MOTION: To continue the public hearing to consider the application to revise the Special Permit for an Inn at 101 Wykeham Road submitted by 101 Wykeham Road, LLC. to Monday, December 11, 2017 at 7:00 p.m. By Mr. Solley, seconded by Mr. Averill, passed 5-0.

At 10:15 p.m. Mr. Solley continued the hearing to December 11 and adjourned the Special Meeting.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Administrator