

## Zoning Commission

### MINUTES

Public Hearings – Regular Meeting

June 26, 2017

7:30 p.m.

Upper Level Meeting Room

**MEMBERS PRESENT:** Mr. Solley, Mr. Reich, Mr. Werkhoven, Mr. Averill, Mr. Solomon

**ALTERNATES PRESENT:** Mr. Burnham

**ALTERNATES ABSENT:** Mr. Sivick

**STAFF PRESENT:** Mrs. Hill, Ms. Pennell

**ALSO PRESENT:** Atty. Fisher, Mr. Szymanski, Ms. Solomon, Ms. Purnell

### **PUBLIC HEARING:**

Mr. Solley called the Public Hearing to order at 7:30 p.m. and seated members Mr. Solley, Mr. Reich, Mr. Werkhoven, Mr. Averill and Mr. Solomon.

### **Washington Art Assoc./4 Bryan Plaza/Special Permit: Section 8.5: Increase Maximum Lot Coverage and 8.6: Decrease Minimum Side, Rear, and Front Yard Setbacks for Additions to Existing Building**

Mr. Solley stated that Mr. Peter Talbot was ill and would not be able to attend the meeting and has requested the Public Hearing be continued to next month's scheduled meeting. No one from the public had any comments with respect to this application.

**MOTION:** To continue the Public Hearing for Washington Art Assoc./4 Bryan Plaza/Special Permit: Section 8.5: Increase Maximum Lot Coverage and 8.6: Decrease Minimum Side, Rear, and Front Yard Setbacks for Additions to Existing Building to the next Zoning Commission meeting scheduled for July 24, 2017. By Mr. Werkhoven, seconded by Mr. Averill, passed 5-0 vote.

### **REGULAR MEETING:**

Mr. Solley called the meeting to order at 7:35 p.m. and seated members Mr. Solley, Mr. Reich, Mr. Werkhoven, Mr. Averill and Alt. Burnham. At this time, Mr. Solomon recused himself from the meeting.

### **Pending Application:**

### **Wykeham Rise, LLC./101 Wykeham Road/Construct Inn:**

Prior to the start of discussion, Mrs. Hill noted she had sent her 06/26/17 report to Ms. Klauer who had objected to her use of the term “condominium unit.”

Mr. Paul Szymanski, P.E of Arthur Howland and Associates and Atty. Robert Fisher were present representing applicant.

Commission members reviewed Mrs. Hill’s Administrative Review dated 06-26-17, along with a letter dated May 26, 2017 from Mrs. Erika Klauer, manager of Wykeham Rise, LLC.

Mr. Solley instructed the Commission members to refrain from voicing any personal opinions, as they are irrelevant to this discussion. As stated in Mrs. Hill’s Administrative Review, he reiterated the purpose of this current application is for the Commission to determine whether the current proposal complies with the 01/07/13 Settlement Agreement, and that if the Commission finds the current application is not in compliance with the Settlement Agreement, then this application should be denied and a Special Permit would be required for the revision of the Special Permit.

Atty. Fisher stated that at the request of the Zoning Commission, plans showing elevations of all the buildings on all four sides has been submitted by the architect and Mr. Szymanski has submitted full size plans. He noted these are in compliance with Zoning Regulations. Atty. Fisher stated there were no building heights specified in the Settlement Agreement. He stated a kitchen plan and kitchen equipment cut sheets have been submitted to Mrs. Hill. Atty. Fisher also noted the letter submitted to the Zoning Commission by Mrs. Klauer dated May 26, 2017.

Mr. Szymanski reviewed plans with the Commission members. He noted the floor plans labeling all the interior spaces as requested by the Commission. Mr. Werkhoven questioned if the Commission needed to know if these rooms have kitchens in them and why. Mr. Solley stated that if in fact kitchens are put in these 42 potential spaces considered to be suites or Inn rooms, then these spaces can be considered an independent single family residence. He stated that the zoning regulations do not permit multi-family housing in the town of Washington. Mr. Solley stated that the zoning regulations define a single family dwelling as including a kitchen, bedroom with a closet and a bathroom. Mr. Solley stated that the units can be condominiumized in terms of ownership of a given space, but if the plans include no kitchen as indicated on the floor plans submitted the proposed units would not qualify as dwelling units per the Zoning Regulations.

Mr. Szymanski questioned if the regulations prohibit an office to have a kitchen, shower and toilet similar to whether or not an Inn is prohibited to have kitchens. Mr. Averill pointed out that although the zoning regulations do not have a definition of “Inn,” he said his understanding of an Inn was that it provides temporary lodging and a meal for guests. Mr. Averill stated he did not see any mention of kitchens inside units in the Settlement Agreement, but said this could be a gray area.

Mr. Solley stated that definition of Inn is governed by the Inns that have come before and the one that still exists in Washington, and to his knowledge they do not have kitchens in their rooms. Mr. Szymanski posed the question if the Mayflower did not have a bar area or even a

tennis court located at its Inn, would that disallow having a bar and/or tennis court in another potential Inn in the town. Mr. Solley stated that he is looking at what constitutes a single family residence per the zoning regulations, which includes a kitchen, bedroom with a closet and a bathroom. He further stated that when you have 10 to 40 of such rooms in an Inn, one tends to question if it is an actual inn. Mr. Solley pointed out that the Health Department and DEEP will be taking a close look at this as well.

There was a discussion about the difference between having the units available for overnight guests vs allowing individual unit owners to choose not to make their units available for overnight guests. Mr. Solley noted the lack of specificity in the Settlement Agreement. He stated that the Commission is trying to consider all the items the applicant is requesting and determine whether all that is proposed is in accordance with the Settlement Agreement, pointing out if it is not, the need for the applicant to apply for a revision of the Special Permit.

Mr. Solley asked members if they had any questions or concerns regarding making their decisions about whether the current application is in compliance with the Settlement Agreement. Mr. Werkhoven inquired as to the square footage of all buildings and if there has been a significant change when comparing this application to the Settlement Agreement. Referring to Mrs. Hill's 06/26/17 review, Mr. Solley stated that the minutes of 1/23/12 provide the total square footage of Wykeham University, 90,252 sq. ft., and on January 7, 2013 when the Settlement Agreement had been discussed, Atty. Fisher had told the Commission the square footage for all the buildings was the same as the Commission had previously approved for Wykeham University. Mr. Szymanski said he would review these minutes in order to address the questions regarding square footage. Mr. Solley did note that with the calculations Mrs. Hill had done on the most recent set of floor plans submitted, she calculated 20,000 sq. ft. over the 90,252 sq. ft. (in her report she actually stated the current proposed was approximately 117,000 sq. ft.). Mr. Szymanski stated that there is no mention of square footage in the Settlement Agreement. He believes Zoning's concern was with regard to the limitations on outdoor activities, amplified music, the total number of rooms, restaurant seating, etc. Discussion took place regarding the size of the proposed building and the possible increase of finished floor area, and the square footage being added.

Mr. Werkhoven's then asked about the swim club, mentioned in the marketing materials on their website. Atty. Fisher stated that he talked to Mrs. Klauer who stated that this is not a club that is opened to the public or even offers a day pass and has no organization.

Mr. Solley noted the Inland Wetlands Commission's recent approval of a modification of the site plan. He further stated that a modification to the site plan requires a modification to the Special Permit. After some discussion and at Mr. Solley's request, Mrs. Hill read aloud Section 13.1.B.3, which explained the procedure for a modification of a Special Permit, which includes the requirement for a public hearing and Commission approval. The Commission members reviewed the site plan changes that were approved by Inland Wetlands and Mr. Szymanski addressed member's questions. Both Atty. Fisher and Mr. Szymanski agreed that a Special Permit application and a public hearing were required for some aspects of the application.

Mr. Solley brought up the restaurant seating and an additional area that was referred to as a lounge area. Atty. Fisher stated the lounge area is not planned to be used for serving food. He further explained that there is a main restaurant open to the public and a private dining room for staff and perhaps business meetings that will not be open to the public. There was a question regarding whether bar seats were required to be counted in the maximum 68 seats permitted in the Settlement Agreement.

With respect to the Public Offering Statement, Mrs. Hill referenced the part which states the swimming pool and related exterior facilities and the exterior or outside amenities that are part of the main Inn unit, need not be built exactly as depicted on the survey and plans. Atty. Fisher stated that this is condominium law and refers to when you have a condominium that is expandable it allows for future development. As questions arose regarding this language from members, Atty. Fisher stated he will change the language regarding this and have it state that the site plan will be implemented as approved.

Mrs. Hill referenced page 47 of the Declaration, which she understood to say that if 80% of the unit owners voted to change the rules they could prohibit or materially restrict the permitted uses. She pointed out her concern that if the permitted use is the Inn and 80% vote that they do not want their rooms available for overnight guests then it would not continue to be used as an inn. Atty. Fisher stated that is again statutory condominium law and does not mean that anything can be done that would affect the terms of the Special Permit or Settlement Agreement. He stated this does not override Zoning. Mr. Szymanski stated they could add language to clarify this.

After questions from Mr. Werkhoven, Atty. Fisher explained that the main unit of this proposed inn is owned by Wykeham Rise, LLC, who is the declarant. He stated the declarant makes the initial rules, regulations and bylaws. Mrs. Hill questioned the language of the Declaration that states the these are not residential dwelling units for the purposes of Zoning compliance and questioned why it does not just state these are not residential zoning units under any circumstances. She pointed out that throughout both of the legal documents submitted, there are reference to "units used for residential use", "new home warranties", "newly constructed single family dwelling units would be required to have renter's insurance, etc. Atty. Fisher stated this language was inserted to make potential owners aware that the Zoning Regulations, the Settlement Agreement and existing Special Permit are the controlling entities. He stated he is willing to discuss this and see what changes can be made. Atty. Fisher stated renter's insurance and moving in and out fees applies to the condominium units themselves, which is about 10 or 11 in number at this time. Mr. Solley stated there was mention of up to 46 condominium units, which according to the legal documents, the unit owners could opt to make their units available to overnight guests. He then discussed what if potentially all units become condominiums and they all decide not to have them available for overnight guests, as this is something the Commission needs to consider. Mr. Solley stated then you would have an "Inn" with single family residents. Mr. Werkhoven asked why this would be any different than Bee Brook or Quarry Ridge condominiums. Mrs. Hill stated that when Quarry Ridge was built condominiums were allowed under the zoning regulations. Atty. Fisher stated he understood the concerns presented and will discuss these concerns with Mrs. Klauer.

Mr. Solley asked who the existing partners are for Wykeham Rise, LLC and who would be signing off on any major or minor change to the Settlement Agreement. Atty. Fisher stated Wykeham Rise is an LLC and has some members. He explained that Erica Klauer is the manager of this LLC and is solely responsible for day to day operations, commitments, etc. He also stated Theresa Peacock, Erica Klauer and the Zoning Commission are the three entities that are required to agree to all revisions to the Settlement Agreement.

Mr. Solley noted that the Commission would make a condition that the special permit would not be issued without written DEEP approval. Mr. Szymanski stated the Health Department has the kitchen plans. He will look into which department will be required to approve the kitchens within the units as it was uncertain whether it would be the local Health Department or the DEEP.

Mr. Solley asked if anyone had any further comments or questions. None were noted. He stated there is still information that needs to be gathered and discussed, as well as consulting with counsel. Atty. Fisher stated he will communicate with Mrs. Klauer and explain that they have no choice given the regulations but to file a Special Permit application, which will require a public hearing. With Mrs. Klauer's consent, he may possibly withdraw the application.

Atty. Fisher discussed the concern about the traffic that has been brought up in the past. He stated he firmly believes that having a kitchen in an Inn room does not change the character of the Inn room and also will decrease the use of the property by transients. Atty. Fisher does not feel the traffic or noise will be increased. Mrs. Hill voiced her opinion that there will be an increase in traffic with dwelling units. Mr. Reich felt it would be a reduction of the intensity of the location and less hectic.

Discussion will continue at the next meeting on July 24 at which time action on the application is expected.

#### **OTHER BUSINESS:**

Mr. Solley seated Mr. Solomon at 9:10 p.m.

#### **Revision of the Zoning Regulations:**

Mr. Solley stated there is a special meeting scheduled for August 7, 2017 for the purpose of presenting the regulation changes to the public. Mrs. Hill stated these changes have been referred to the NWCOG, the Planning Commission and Lake Waramaug Association picked up a copy. She noted they have been in receipt of these changes beyond the 35 day period that is required.

#### **Enforcement Report:**

The Enforcement Report dated June 26, 2017 by Zoning Enforcement Officer Mike Ajello was distributed to Commission members.

**Consideration of the Minutes:**

**MOTION:** To approve the Regular Meeting Minutes of May 22, 2017. By Mr. Averill, seconded by Mr. Werkhoven, passed 5-0 vote.

**ADJOURNMENT:**

**MOTION:** To adjourn the meeting at 9:30 p.m. By Mr. Averill, seconded by Mr. Averill, passed 5-0 vote.

Submitted subject to approval:

By: \_\_\_\_\_  
Donna Pennell, Land Use Clerk  
June 30, 2017