

Zoning Commission

MINUTES Public Hearings – Regular Meeting July 24, 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, Mr. Sivick

ALTERNATES ABSENT:

STAFF PRESENT: Mrs. Hill, Ms. White

ALSO PRESENT: Mr. Talbot, Ms. Branson, Ms. Peacocke, Atty. Fisher, Mr. Szymanski, Ms. Klauer, Ms. Solomon, Ms. Purnell, Mr. Owens, Mr. Sullivan

PUBLIC HEARING:

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

Mr. Solley stated that the Commission received a great deal of information at the last minute and it is unacceptable. He advised the authors of the information to submit a couple days before the meeting so that it may be reviewed by the commissioners.

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. Peter Talbot stated that he was present to represent the Washington Art Association as the president. He submitted an updated floor plan entitled “Washington Art Association Schematic Design for Special Permit, Proposed Site Plan by Gray Organschi Architecture, sheet SD1.1, dated 7-24-17,” to the commissioners and stated that none of the other submitted plans have changed. He presented photos of the existing structure, existing and proposed elevations and a highlighted site plan indicating the existing and proposed footprint.

Mr. Talbot addressed Zoning Regulation Section 8.5 Maximum Lot Coverage as it relates to this request for a Special Permit. He informed the commission that the existing lot coverage (building and hardscape) is 5,012sf or 31.3% which is above the allowable 25% maximum lot coverage. Mr. Talbot stated that, for this application, they are requesting an increase to 6,104sf or 38.1% for the proposed additions and hardscape. He noted that this would be a net increase of 1,092sf or 6.8%.

Mr. Talbot addressed Zoning Regulation Section 8.6 Minimum Setback & Yard Dimensions as it relates to this Special Permit application. He indicated that the existing nonconforming front

yard setback is 18.75', the allowable setback per zoning regulations is 50' and the WAA is requesting a reduction of 17.05' with a 1.8' front yard setback. He stated that WAA would like to create an entrance that meets ADA requirements as well as create a "beacon" at the end of Bryan Memorial Plaza to draw people into the building. He noted that he has discussed a possible easement into the plaza area, if necessary, with the Selectman's Office in which case, Mr. Talbot would work with the engineers that are renovating Bryan Memorial Plaza.

Mr. Talbot discussed the request for a reduction of the required 30' rear yard setback. He stated that the WAA has an existing nonconforming rear yard setback of 14.25' and they are requesting an additional 13.92' to be reduced to 0.33'. Mr. Talbot stated that the reason for this request is for an addition which would increase the educational space for children and add storage to the WAA building.

Mr. Talbot stated that the side yard setback to the west is in compliance with the required 15' and the existing nonconforming eastern side yard setback is 0.42' which will remain the same even with the proposed extension of the middle section and rear additions to the building. He noted that these additions will align the side of the building replacing the existing stepped sections.

Mr. Solley asked Mr. Talbot to review the new addition to the front of the building. Mr. Talbot stated that the addition will be a new entrance into the WAA, has glass doors on one side, solid doors on the other side and a flat sod roof with sedum growing on top of it. The interior will have a display area and will provide access to the back terrace area.

Mr. Talbot stated that the third area the WAA is asking the Zoning Commission to consider is Section 8.7 Additional Criteria of the zoning regulations. They are requesting that no other buffer be required as there are existing buffers. He informed the Commission that he has spoken to the adjacent property owner regarding the portion of the WAA property that is landlocked across Canoe Brook and she is not concerned with the WAA property. Mr. Talbot stated that the WAA are planning to install a footbridge to access that section of the property but will apply separately for this. He noted that this will allow access to maintain the buffer on that portion of the property. This buffer will be planted as part of the present scope of work.

Mr. Talbot closed his presentation by stating that other locations for the additions were considered but due to the layout of the property and its restrictive characteristics there is no other choice than what has been presented. He stated that the WAA feels that these changes are important to continue their mission, meet ADA requirements for access and internally meet current code requirements.

Mr. Talbot read the letter from Gray Organschi Architecture to Janet Hill, Land Use Administrator, undated (on file in the Land Use Office). The letter explains the exterior elements of the proposed improvements and concludes by stating that "Our design proposal brings WAA into ADA compliance, improves flow, provide better gallery and art-making space and harmoniously signal's WAA's presence to people on Bryan Plaza, enhancing the 19th century brick building that is WAA's original home." Mr. Talbot explained some history regarding the structure.

Mr. Solley requested that Mr. Talbot review the three sections of the Zoning Regulations that are involved with this proposed application with the commission.

Mr. Solley read Section(s) 8.5.1-4 Maximum Lot Coverage of the zoning regulations. Mr. Talbot addressed Sec. 8.5.4 and stated that the WAA do not plan to have outdoor storage but would like to add something to hide the recycling and garbage bins. Mr. Talbot addressed Sec(s). 8.5.1 & 2 by explaining how the materials, change in roofline and new front entrance will enhance the existing structure and be in harmony with other structures in the village. Mr. Averill asked Mr. Talbot to what the eastern side yard setback and rear yard setback abuts. Mr. Talbot indicated these areas on the presented plans and stated that the side yard setback abuts the pavement of the driveway between WAA and the Police Station and the rear yard setback is abutting the Town's paved parking area. Mr. Averill noted that the setbacks will not be encroaching on anything important such as open space. Mr. Talbot noted that the WAA has received Health approval for the new septic system, from ZBA for the setback from Canoe Brook as well as approval from the Inland Wetlands Commission. Mr. Solley noted that the applicant has addressed Sec. 8.5.3 by providing all supporting surveys, drawing, photographs and plans.

Mr. Solley read Section(s) 8.6.1-4 Minimum Setback and Yard Dimensions of the zoning regulations and stated that they are the same as 8.5.1-4 which has already been discussed. He proceeded to Section 8.7. Mr. Solley noted that this section was previously explained by Mr. Talbot.

Mr. Solley asked if the other commissioners had questions regarding this application.

Mr. Werkhoven asked about the difference in lot coverage in Ms. Hill's administrative report and the supporting documentation submitted with the application. Mr. Talbot and Ms. Hill confirmed that the lot coverage was revised to 38.1%. Mr. Werkhoven asked about if all required documentation has been received by the Land Use Office. Ms. Hill confirmed that it has. Mr. Werkhoven asked for confirmation that the footbridge is not part of this application. Mr. Talbot confirmed they will submit a separate application for the footbridge in the future.

Mr. Talbot stated that the WAA would like to install the proposed septic system in August and the proposed entrance in September in time for the WAA 60th anniversary in November. Mr. Talbot confirmed that he has talked with the First Selectman's Office and they have agreed on the staging area during construction.

Mr. Talbot and the commission discussed the progress and possible delays with finishing the Bryan Plaza improvement project. Mr. Talbot stated that he has architects working with the Town engineers and they have set points. They are working with the Town with the fiber optics system.

There were no comments from the public.

Mr. Solomon stated that he feels at a disadvantage to not hearing all this information last month and he does not feel he would be able to make a decision without having some more time to think about it.

Mr. Reich asked about the proposed glass entry that will be in the front of the WAA building. Mr. Talbot explained that there is a need to get handicap entrance into the building. The current building entrance allows the building “to sit quietly in the corner.” The WAA would like to put something “artful” that draws people into the building. Mr. Talbot continued with a history of how the building has progressed over the years and the WAA reasoning for the proposed design. Mr. Talbot and the Commission briefly discussed the parking. Mr. Talbot stated that he is working with the Town with that.

Mr. Solley asked about signage. Mr. Talbot answered that they would like to put something on the side of the building and possible on the glass façade that they are planning to install interior lighting. Mr. Talbot stated that he would come back to Zoning with the signage package.

There was a brief discussion regarding the roofline. Mr. Talbot used the submitted elevation drawings to explain.

There was a brief discussion regarding the timing of the proposed project.

MOTION: To close 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. By Mr. Averill, seconded by Mr. Reich, passed 5-0 vote.

REGULAR MEETING:

Consideration of the Minutes

MOTION: To approve the Regular Meeting Minutes of July 26, 2017.
By Mr. Averill, seconded by Mr. Reich, passed 5-0 vote.

Pending Applications

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. Averill stated that he thinks this will be a wonderful addition to Bryan Plaza, the new entrance will not detract from the existing brick building. He feels that the WAA is one of the best institutions in town and the proposed addition will provide a welcoming entrance to the public and that the improvements will allow the association to continue its contribution to the community in terms of education as well as art. He is in favor of this application.

Mr. Reich asked the Zoning Commission if there has ever been an approval of an application such as this that squeezes a structure “with a shoehorn” into a piece of property. Mr. Solley stated that Titus Park Garage was approved for a canopy that was approximately a foot within the property line and the entire Washington Market is somewhere between 94-97% lot coverage. They briefly discussed the lot coverage of the market and how it would be affected with the plaza improvements. Mr. Reich commented that the lot coverage numbers are staggering.

Mr. Solley stated that the Zoning Commission is given the tools to modify the regulations to allow this to happen in commercial districts where there are setback limitations due to rivers, town owned property, etc. Mr. Reich asked if this would encourage other businesses to push the boundaries. Mr. Solley responded that the WAA have been offered another location but they are seeking to use the tools of the zoning commission to allow them to continue in their present location and enhance the property. Mr. Reich stated that he plans to support this application but wanted to ask these questions.

Mr. Averill stated that if another applicant comes before this commission that seeks to improve the village center to this degree that he would support it.

Mr. Werkhoven stated that he would have a problem supporting it if it was not already nonconforming. Other than that, he agrees with Mr. Averill and he supports this application.

Mr. Solomon stated that he feels more time and that he will abstain.

Mr. Solley stated that he concurs with the other commissioners’ comments.

MOTION: To approve the Special Permit application 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 as indicated on plans titled “Proposed Site Plan,” prepared for WAA, by Gray Organschi Architecture, sheet SD1.1, dated 7-24-17, “Proposed Elevations prepared for WAA, by Gray Organschi Architecture, sheet SD2.1, dated 6-10-17, and other submitted documentation on file, by Mr. Werkhoven, seconded by Mr. Averill, passed 4-0-1 vote. Mr. Solomon abstained.

NEW APPLICATION

Allin Cottage LLC./220 West Shore Rd/Special Permit: Section 6.5: Construction Within 50-75 ft of Lake Waramaug/Foundation Repair.

MOTION: To schedule a public hearing for Allin Cottage, LLC./220 West Shore Road/Special Permit: Section 6.5: Construction Within 50-75ft of Lake Waramaug/Repair Foundation, on August 28, 2017 at 7:30pm at Bryan Memorial Town Hall, Washington Depot, CT., by Mr. Solley, seconded by Mr. Reich, passed 5-0 vote.

Pending Applications (cont.)

Mr. Solley informed everyone present that July 26, 2017 will be the 65th day of the submission of this application and the goal for tonight would be to either approve this application or deny it. He stated that if the applicant plans to withdraw the application, they should do so at this time. He continued by saying if the applicant wanted an extension, that does not guarantee that the Commission has to agree to an extension and in the event of a denial the Commission would request that the applicant submit a Special Permit Application and a public hearing would need to be scheduled to deal with the issues with this application that the Commission feels are inconsistent with the settlement agreement.

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

Mr. Solley seated Mr. Reich, Mr. Werkhoven, Mr. Averill and Alt. Burnham. At this time, Mr. Solomon recused himself from the meeting.

Mr. Solley informed everyone present that this was not a public hearing and typically the conversation is between the applicant and the commission.

Atty. Fisher stated that the main point that they had at the last meeting on June 26, 2017 had to do with the changes to the site plan. The plan, at that time, was to do some minor regrading and build a small retaining wall. He stated that they have looked at the plans exhaustively and decided not to make any changes to the site plan and instead they have revised the floor plans. He noted that there is a reduction of seven rooms in the proposed inn. He stated that the goal was to keep the approved site plan, remain consistent with the granted special permit and zoning regulations as well as meet the requirements of the settlement agreement.

Atty. Fisher noted that Ms. Klauer and Ms. Peacocke are both parties to the settlement agreement and are present.

Ms. Klauer thanked the commission for the time the attorneys gave to them before they submitted this application to make sure the plan was in compliance with the settlement agreement, zoning regulations, and the approved special permit. She stated that it was a long process before submitting this application and that they have looked at every aspect of the plans, settlement agreement and special permit and she is excited to start.

Mr. Szymanski P.E., was present to represent Ms. Klauer. He stated that one of the outstanding items was the labelling of the buildings to make sure they were consistent with the actual architectural plans that were submitted. He submitted the revised plan for the record titled "Schematic, Schedule A-3-1, Inn at Wykeham Rise/for Declaration of a Common Interest Community," prepared for 101 Wykeham Road LLC by Arthur H. Howland & Associates, PC, sheet labeled 'Exhibit' with a revision date of 7/21/17. Another outstanding item was the size of the cupola. Mr. Szymanski stated that "yes, they will be under 25sf in size, including the center one." Mr. Szymanski addressed the labeling of the Bistro Bar of the submitted floor plan. He confirmed that there are no meals to be served in that area but finger foods will be available which, is required for a liquor permit for a bar; so it does not meet the requirements of a restaurant. He read an email from the sanitarian that requests that the word 'Bistro' be

removed from the plan as it implies that meals will be served. He confirmed that there will be no meal service.

Ms. Klauer asked to take a moment to review the responses that they have given the Zoning Commission. She stated that this review includes not only what has been before Zoning in the last 2 or 3 months but also what was discussed when they met with Ms. Hill and Mr. Solley last November 2016. She noted that 1.) They have confirmed that the building heights are in compliance with the zoning regulations, 2.) Shown all elevations comply with the zoning regulations, 3.) They have submitted floor plans, 4.) Provided the program options that will be available at the Inn and its compliance with the definition of an Inn, 5.) Spent an enormous amount of time explaining what the Connecticut statute is regarding the difference between condo ownership and condo residence that are two different things. She stated that what they are proposing is a type of ownership structure similar to a partnership or holding a property in trust. She stated that that is a Connecticut state law that does not apply to the zoning regulations because how one owns one's property is not the purview of the Zoning Commission. She noted that in the Inn at Wykeham Rise offering document it states that there cannot be any residential use in any part of this inn and the only use that is going to be permitted at this inn is an inn. 6.) They have provided a list of other inns in Connecticut that do have kitchenettes which, per Ms. Klauer, was part of the settlement agreement discussions and they believe that kitchenettes have become an important part of having an inn especially for families. 7.) Eliminated one of the four bedroom units in one of the out cottages, 8.) They have responded to Ms. Hill's concern that their Inland Wetlands Permit had expired and provide her with the legal materials to confirm that the IW permit still exists. 9.) All declaration documents and public offering statements have been revised to reflect all of the changes. 12.) All kitchen plans have been submitted. 13.) All kitchen equipment cut plans have been submitted. 14.) Agreed to remove the issue of spa membership for a later date. 15.) Buildings have been renamed at the request of Mr. Solley. 16.) Ms. Klauer stated that she wanted to address Ms. Hill's last email regarding language that included 'residence.' She stated that this was Connecticut State Statute language which is in their offering plan and declaration and they cannot change that language but they have stated throughout the documents that residences are not permitted at this property. 17.) The size of proposed kitchen appliances in the rooms has been restricted to reduce the concern that these units are going to be used as residences.

Ms. Klauer stated that Ms. Hill had asked if Ms. Peacocke was in agreement to what has been proposed.

Ms. Peacocke stated that she had two concerns when asked to confirm the compatibility of proposed plan to the settlement agreement; 1.) She was not sure that, since the Zoning Commission did not participate in the settlement negotiations in 2012 that they weren't fully aware of what they had discussed. She stated that they discussed the existing application for a special permit, that was submitted in 2008, but also all the issues that arose on appeal which introduce matters that were never a part of the applications. Ms. Peacocke stated that during the negotiations they decided to put together a comprehensive agreement, go through everything of concern, and decide what they would agree to and what they would prohibit. She stated that she had concerns that issues were being raised by zoning that were already discussed and agreed upon in the negotiations of the settlement agreement. Ms. Peacocke

stated that she would be amenable if the Zoning Commission, upon approval, add conditions that are refinements or modifications of the agreed upon settlement. She stated that the recording of the agreement would suffice and that the actual written settlement agreement does not need to be modified, but there must be a record of all parties involved agreeing to the refinements or modifications.

Ms. Klauer asked Ms. Peacocke to explain what her understanding was regarding the subject of kitchenettes in the Inn. Ms. Peacocke said that the parties were aware that some units would have kitchenettes and the main debate during the negotiations was regarding the number of rooms. She stated that they ultimately decided that if they put kitchen equipment in some of the rooms, those rooms need to be family size rooms, and essentially result in larger but less number of rooms.

Mr. Solley stated that the member of the Zoning Commission, at the time, were not given a lot of time to review the settlement and participate in any in-depth discussions regarding it. He stated, that in his mind, it was hurried and that is why it was denied by two of the commissioners. He acknowledged that he knew of numerous discussions during the negotiations that zoning was not present.

Ms. Klauer reminded the commission that the Zoning Commission, at the time of the negotiations, was invited to the discussions and chose to have the parties work it out to a point of progression and at that point the Zoning Commission would participate in the negotiations.

Ms. Peacocke stated that, in fairness to the Zoning Commission, there were enormous budget constraints and this was full scale litigation that went on for years. She stated that the Commission made it clear that they did have the right to review the settlement and when that time came it was rushed, there were distractions and some people were unhappy that they were not included in the negotiation discussions. She noted that it was just the way things “unfolded because of the nature of the litigation.”

Mr. Solley stated that in July 2016 the Zoning Commission enacted a regulation that said that any modification or changes to a special permit application must come back to the commission as a special permit with a public hearing.

Mr. Solley asked Ms. Klauer to go through number 5 & 6 of her review.

Ms. Klauer explained the Connecticut Statute about condominiums. She said that any business can be a condominium and she gave an example of a business where each space was owned separately by an owner and stated that this is how they are structuring the Inn at Wykeham Rise. She reiterated to the commission that their concerns have been addressed regarding multiple single residential family units in that they are only offering inn units and the owners have no other option but to use it as such.

Mr. Averill stated that he was skeptical that these units would not be used as a residential unit.

Ms. Klauer informed the commission that all units will be required to put their unit into the rental pool. She stated that the only exception would be during one or two weeks of the year for maintenance.

Mr. Solley said, "They're buying a specific square footage of a building...It's going to be listed as a deed in the Town Hall, they're going to pay property taxes on it." Ms. Klauer confirmed this to be true. Mr. Solley then asked Ms. Klauer what would happen if the owner chooses not put it in the rent roll because they are using it permanently.

Ms. Klauer stated that an example would be that a resident of Washington would be able to send their child to school and the bus would pick the child up at the residence. She said that this would be prohibited at the Inn.

Mr. Solley asked what would prevent one of the owners from living there 365 days out of the year and choose not to put the unit in the rent roll.

Mr. Szymanski asked if Mr. Solley was asking if they are renting a room or they bought one of the units because "there is nothing to preclude you from renting a room either for a whole year or in perpetuity." He noted that there is no prohibition on how long someone rents a room at an inn.

Mr. Solley stated that that person would then be a guest of the inn and have to abide by the inns rules.

Mr. Szymanski stated the owner has to abide by the inn rules as well.

Mr. Solley stated that his point is that if every unit is a room or a suite with bathrooms and has a kitchenette, which, as described, has appliances that the majority of homes in this town have in their kitchens, "in our minds you are proposing single family residences." He noted this qualifies under the definition of a single family residence in the town zoning regulations

Ms. Klauer disagreed and stated that a single family residence is an entity unto itself. She said that the owners would have to use the services of the Inn. She noted that as an example, a couple rented a room at the Mayflower Inn for almost four years but lived in New York City.

Mr. Burnham asked if the difference was that they were renting rather than owning. He stated that this proposed plan has people purchasing the units.

Ms. Klauer confirmed that Mr. Burnham was current in that there is a difference between the ownership structure of the two but the use is exactly the same.

Mr. Burnham asked if the owner was going to be restricted in his use even though he owns it.

Ms. Klauer responded that the unit owner is restricted to only use their unit in the capacity of an inn and are not allowed to have additional rights of a residential unit. She stated that there

is no restriction, as far as she knows, how frequently or infrequently and owner can use an inn unit.

Atty. Fisher state that the legal answer is in the public offering statement which says that if someone buys a unit it cannot be used as a residence and can only be used in conjunction with the other rooms at the Inn.

Mr. Averill asked what the response would be if he was an owner and said that he will stay there fifty weeks out of the year and live somewhere else the other 2 weeks.

Mr. Szymanski responded that it would be the same as if someone rented a room for fifty weeks, went away for two weeks and continued to rent the unit for another fifty weeks.

Mr. Averill stated that he would be the owner and would receive his mail there.

Ms. Klauer responded that she understands Mr. Averill's point and they will not be restricting anyone's length of stay whether they are renting or own a unit.

There was brief discussion regarding The Mayflower Inn and its rental structure.

Ms. Klauer stated that the Mayflower Inn is an adult only inn and they feel there is a need to have a family based inn in town. She stated that their proposed plan and the settlement were constructed around this concept and many family based inns include kitchenettes in their units. She gave examples of how this concept would work for a family travelling with children.

There was a brief discussion regarding septic capacity. Ms. Klauer stated that this has been considered in the calculations for the septic capacity. Mr. Szymanski stated that DEEP and the state health code consider self-prepared meals vs meals prepared by a central kitchen when calculating capacity.

There was a brief discussion regarding the difference between a kitchen and a kitchenette.

Ms. Hill made the point that she was informed that her concern of the unit owners having the option in participating renting out the units had been taken care of but on page 37 of the declaration it still says that the owners can still voluntarily participate. She also noted that someone had said that there would be no housing but on page 34 it says that household staff may occupy the units.

Ms. Klauer apologized that the adjustment was not made on page 37 and was going to make a statement for the record. Ms. Hill stated that it was not in the revised version of the document that was submitted for the record. She was concerned that there are other places in the document that might have these mistakes.

Mr. Reich stated that he does not have much faith that the declaration is going to stop owners from doing what they want to do with the property that they own.

Atty. Fisher spoke to Mr. Reich's concern by informing him that the by-laws are in the declaration and action will be taken against an owner that does not follow them.

Mr. Solley stated that he feels that the commission has more concerns that will require further discussions before they can come to a conclusion as to whether this proposed plan is in compliance with the approved special permit, the settlement and the zoning regulations.

Mr. Szymanski stated that there is no definition of an 'Inn' in the Town of Washington Zoning Regulations and that it appears to him that the Commission is using The Mayflower as a basis of what the definition of an 'Inn' is. He asked if the Commission concludes that since The Mayflower doesn't allow children that another inn would not be able to allow children.

There was a brief discussion regarding State Statute regarding condominium ownership.

Mr. Solley stated that the issue he has is not regarding whether the unit is rented or sold it is the fact that there is a kitchen which makes it a single family residence. He said that these units are being built the same as a year round residence.

Ms. Klauer stated that her goal has been to be as compliant as possible with the zoning regulations, the special permit and the settlement.

Mr. Solley stated that the Commission was not privy to the discussion of kitchenettes.

Atty. Fisher stated that according to Ms. Peacocke kitchenettes were discussed and deemed unimportant because the key point was the number of rooms. Ms. Klauer added that very specific things were agreed to in the settlement and kitchenettes were discussed and none of the parties took issue with the concept so they were not listed in the settlement as a restriction. She stated that the kitchenettes were always part of the Inn's business plan.

Mr. Solley stated that kitchenettes were not included in the settlement agreement or the special permit.

Atty. Fisher asked the commission if it would make a difference if the kitchenettes had apartment size appliances.

Mr. Solley stated that any kitchen, in his mind, constitutes a modification in the special permit and the settlement agreement and would require a new special permit with a public hearing. He feels that the public hearing would be the time to discuss specifically what constitutes a kitchenette.

Ms. Klauer stated that there were very specific restrictions put in the settlement so, in her mind, since kitchenettes were not listed as a restriction that it does not constitute a change in the agreement.

Mr. Solley asked Ms. Klauer if there were anyone representing zoning present at these discussions other than Atty. Zizka.

Ms. Klauer replied that there was not anyone else present.

Atty. Fisher stated that Atty. Zizka made it clear that if the Ms. Klauer, the Federers and the Peacockes came to an agreement that the Commission would not oppose a settlement along those lines.

Atty. Fisher stated that the minutes from January 7, 2013 show that there was a lengthy discussion that the Zoning Commission had regarding the restrictions that they wanted to impose. He stated that the list of restrictions, with the exception of #5, which had to do with the sale of alcohol, was the one that was approved. He noted that at that time it was approved by 4 out of 5 members of the commission.

Ms. Klauer expressed her frustration and asked that the commission provide her with more specific direction as to what they feel would be in compliance.

Mr. Werkhoven feels that Ms. Klauer's team has tried to answer all of the commission's questions and respond to their requests. He asked what the difference between what is being proposed and a time share is.

Atty. Fisher stated that the two are entirely different. He discussed Condominium Law and noted that the State Statutes and the Town of Washington Zoning Regulations are in conflict.

There was brief discussion regarding the definition of a condominium vs. inns.

Mr. Solley stated that the kitchenette is a sticking point.

Ms. Klauer asked if Mr. Solley was saying that if they remove all of the kitchenettes that this application would be approved.

Mr. Solley stated that, in his opinion, the units would not be in conflict of the definition of a dwelling unit in the zoning regulations.

There was a brief discussion regarding offices with kitchenettes.

Mr. Averill stated that his issue with this proposal is that he does not like the fact that an owner or renter of a unit can live in there year round.

Mr. Solley asked for clarification on the approved gross floor square footage.

Mr. Szymanski stated there were no floorplans as part of the settlement agreement or discussion in the January 7th 2013 minutes regarding square footage.

There was a brief discussion regarding floor plans and gross floor square footage and what was originally approved.

Mr. Solley noted that, regarding Ms. Klauer's review #16, that it was the schools request not to have the buildings named after them not his.

Mr. Reich asked if all the issues from the administrative review been satisfied.

Mr. Solley asked about the issue regarding the pool building. Ms. Hill stated that it was agreed that if the pool building is built it has to be according to the plan.

Mr. Averill stated that, in his opinion, the proposed plan is not of an inn but of multifamily dwelling units.

Mr. Werkhoven stated that he feels the Commission is between a rock and a hard place because of the definition of a dwelling unit in the zoning regulations. He stated that he would like to see something positive come out of this but feels the plan needs to depict something that does not meet the definition of a dwelling unit.

Mr. Reich stated that he is impressed with the effort to comply but the objections need to be discussed and addressed.

Mr. Solley reviewed the actions that the Commission could take tonight and if the Commission denies this application then the applicant must apply for a new special permit with a public hearing. He stated that during the special permit process is when the Commission and the applicant can negotiate the issue of kitchenettes.

Ms. Klauer asked if the Commission could provide her an explanation of what would be required for there to be no new special permit and if they must apply for another special permit what the commission feels is reasonable.

Mr. Solley stated there is an option for the applicant to grant a continuance tonight. He reiterated that the Commission cannot agree to any modification without a public hearing.

Mr. Solley reviewed his areas of concern as 1.) Chimney on pool house 2.) Confirmation of the gross floor area 3.) The sixth level of the building.

Mr. Werkhoven asked what was in the original plan in regards to kitchens.

Mr. Szymanski stated kitchens/kitchenettes were not discussed. He stated that the only things that were discussed were the number of rooms and the number of seats in the restaurant.

The commissioners discussed whether the subject of kitchenettes should be considered a change if it was never discussed with the original special permit or in the settlement.

Ms. Klauer stated that the settlement agreement was very specific in what was a concern and silent on any other subject and kitchens were not mentioned.

Mr. Solley and Mr. Reich confirmed that they attended some of the settlement discussions and do not recall that kitchenettes were ever discussed.

Ms. Klauer submitted a written request for a continuation. She asked that the Commission provide specific parameters regarding what they would accept.

Mr. Solley asked if the Land Use office has the most recent floor plans depicting the reduction of seven rooms.

Mr. Szymanski stated that they had submitted it but it does not have specific labels which may change based on future discussions.

Ms. Klauer stated that with regards to the kitchenettes, if not permitted, they would have to go back to the drawing board because it has always been part of their business plan.

The commission acknowledge that they would need to provide specific items that need to be addressed by the applicant. Mr. Averill stated that his main concern is that the proposed inn is multifamily housing in the R-1 Zone. Mr. Solley stated that he would review Ms. Hill's administrative report and they would email counsel.

Motion: To continue the discussion regarding Wykeham Rise, LLC./101 Wykeham Road/Construct Inn at the regularly scheduled zoning meeting, August 28, 2017, by Mr. Solley, seconded by Mr. Reich, passed by vote 5-0.

Mr. Solley stated that the commission will try to get a list of concerns together within 10 days.

Atty. Fisher stated that one of the key issues regarding the Inn was the number of rooms and the applicant has reduced the proposed plan by 7 rooms.

Ms. Peacocke asked what her involvement would be with these procedures. She stated that she would take issue if these proceedings have the effect of undermining the approved special permit and the legally binding settlement agreement.

Mr. Solley explained that the commission realizes that she is a party. He noted that Ms. Klauer could build this inn today based on the site plans that have been submitted but the main issue is the Zoning Commission's interpretation of the "condominium-ization" and some additional issues that they will provide. He stated that the Commission cannot be held responsible for discussions that they were not present for.

Ms. Peacocke stated that the Commission should have addressed these concerns at the January 2013 meeting and feels like the approved special permit and settlement agreement are being undermined because of second thoughts that the commissioners are having.

Mr. Averill acknowledge Ms. Peacocke's concerns but stated that the condominium-ization and some other issues were never introduced to the Commission in 2013.

Discussion will continue at the next meeting on August 28, 2017.

OTHER BUSINESS

Revision of the Zoning Regulations:

There is a special meeting scheduled for August 7, 2017 for the purpose of presenting the regulation changes to the public.

ENFORCEMENT

Enforcement Report:

The Enforcement Report dated July 24, 2017 by Zoning Enforcement Officer Mike Ajello was distributed to Commission members.

COMMUNICATIONS

Ms. Hill informed the commissioners gave them each a copy of the Proposed Revision of Roxbury Zoning Regulations re: Tree Houses and Lighting.

PRIVILEGE OF THE FLOOR

Ms. Purnell asked if the commission was going to hear comments from the public.
Mr. Solley stated that if it was regarding Wykeham Rise, LLC that it would have to wait for a public hearing if one is scheduled.

Ms. Hill assured Ms. Purnell that her letter was submitted to the commission and is part of the record in the Land Use Office.

ADJOURNMENT

MOTION: To adjourn the meeting at 10:45 p.m. By Mr. Averill, seconded by Mr. Reich, passed 5-0 vote.

Submitted subject to approval:

By: _____
Shelley White, Land Use Clerk
July 31, 2017