

Zoning Commission

MINUTES Public Hearings – Regular Meeting August 28, 2017

7:30 p.m.

Main Level Meeting Room

MEMBERS PRESENT: Mr. Solley, Mr. Reich, Mr. Werkhoven, Mr. Averill, Mr. Solomon
ALTERNATES PRESENT: Mr. Burnham, Mr. Sivick
STAFF PRESENT: Mrs. Hill, Ms. White
ALSO PRESENT: Mr. & Mrs. Stork, Mr. Szymanski, Ms. Klauer, Atty. Fisher, Ms. Peacocke, Ms. Solomon, Mr. Parker, Ms. Boscarino, Ms. Radosevich, Mr. Phillips, Mr. De Rham, Mr. Woodward, Mr. Madonna, Ms. Lutz, Ms. Davis, Mr. Armstrong, Mr. & Mrs. Barnet, Mr. Owens

PUBLIC HEARING:

Mr. Solley called the Public Hearing to order at 7:32 p.m.

Seated: Mr. Solley, Mr. Reich, Mr. Werkhoven, Mr. Averill and Mr. Solomon.

Allin Cottage, LLC. /220 West Shore Road/Special Permit: Section 6.5: Construction Within 50-75 Ft. from Lake Waramaug/Foundation repair:

Mr. Solley read the Administrative Review by Janet Hill, dated 8/28/17, for this application. Mr. Szymanski was present to represent Mr. & Mrs. Stork, property owners, for this application. He addressed Section 6.5.1.A: Landscaping Plan for the entire lot consisting of existing and proposed vegetation located and designed to retain and absorb stormwater runoff and submitted a revised plan titled "Site Development Plan," prepared for Allin Cottage, LLC, by Arthur H. Howland & Associates, sheet SD.1, with a revision date of 08/28/17. Mr. Szymanski noted that the existing and proposed vegetation has been documented in the revised plans. He stated that some of the existing vegetation would be removed while the foundation is lifted and then replanted when the procedure is finished. He explained that these vegetated beds would be part of the infiltration system that is designed to reduce the impact of stormwater runoff to the lake.

Mr. Solley asked if there is going to be a basement.

Mr. Stork stated that there is not an existing basement but they would hope to have one when this project is done. He informed the commission that no one knows how far down they would be able to dig for the new foundation.

Mr. Szymanski stated that the existing foundation is leaning into the lake and is made of cinder blocks and field stone. He noted that the proposed plan is to have foundation walls around the perimeter of the existing building, at the least.

It was noted that no footing drains would be allowed. Mr. Szymanski confirmed that there would not be any footing drains.

Mr. Szymanski informed the commission that the only material that will be kept across the street in the area labelled "Easement D" on the above mentioned site development plan. They would be removing the area for the backfill around the perimeter of the house. He continued to explain that if they were able to dig for a basement, that material would be carted away from the site.

Mr. Szymanski confirmed that there will be no blasting if they run into ledge. He stated that the only existing D.O.T. drainage from the roadway is on the common property line and the D.O.T. plans to abandon it and relocate the drainage to a stormwater management system. Mr. Szymanski explained that the existing plantings along the roadway acts as an infiltration system. The plan indicates that a silt fence backed by staked hay bales will be installed.

Mr. Stork confirmed that the existing floor elevation will remain the same and the deck will be removed and replaced in the same footprint with deeper piers.

There were no comments from the public.

The commissioners briefly discussed whether adding a basement, if possible would be increasing the nonconformity and the building code requirements regarding height of livable space. The commissioner felt that if a basement is possible that the property owner keep the ZEO/Zoning Commission informed.

MOTION: To close the public hearing for Allin Cottage, LLC. At 220 West Shore Rd for a Special Permit: Section: 6.5 Construction Within 50-75 Feet of Lake Waramaug; to repair the foundation. By Mr. Averill, seconded by Mr. Reich, passed 5-0 vote.

REGULAR MEETING:

7:48- Mr. Solley called the regular meeting to order.

Seated: Mr. Solley, Mr. Reich, Mr. Werkhoven, Mr. Averill, Mr. Solomon

Consideration of the Minutes

Correction: Pg. 1, Mr. Sivick was **not** present.

MOTION: To approve the Regular Meeting Minutes of July 24, 2017 with corrections and Public Hearing Minutes of August 7, 2017, By Mr. Solley, seconded by Mr. Averill, passed 5-0 vote.

Pending Application(s)

Allin Cottage, LLC. /220 West Shore Road/Special Permit: Section 6.5: Construction Within 50-75 Ft. from Lake Waramaug/Foundation repair:

The commissioners briefly discussed whether adding a basement would be increasing the nonconformity and how this was not discussed when the revisions were made. They discussed

whether the space would be a crawlspace for storage or habitable and agreed that it would make a difference if it was habitable.

MOTION: To approve the Special Permit application for Allin Cottage, LLC. At 220 West Shore Rd for a Special Permit: Section: 6.5 Construction Within 50-75 Feet of Lake Waramaug; to repair the foundation with the following conditions: 1. A second row of silt fencing is installed if needed 2. If the foundation turns into more than a crawlspace, the property owner notifies the Land Use Office immediately, By Mr. Averill, seconded by Mr. Werkhoven, passed 5-0 vote.

New Application(s)

Martinelli/18 Titus Road/Special Permit: Sections 8.5, 8.6: Increase Maximum Lot Coverage and Decrease Minimum Setback/Install Generator:

It was noted that this property owner must obtain approval from the Zoning Board of Appeals before they could approve this application.

MOTION: To schedule a public hearing for Martinelli/18 Titus Road/Special Permit: Sections 8.5, 8.6 Increase Maximum Lot Coverage and Decrease Minimum Setback/To Install Generator, on September 25, 2017 at 7:30pm at Bryan Memorial Town Hall, Washington Depot, CT., by Mr. Solley, seconded by Mr. Werkhoven, passed 5-0 vote.

Pending Application(s) cont.

Seated: Mr. Solley, Mr. Reich, Mr. Werkhoven, Mr. Averill, and Mr. Burnham, Alt.

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

Mr. Solley announced that this meeting is specifically for the Zoning Commission to determine whether or not what is being proposed for 101 Wykeham Road as far as the Inn and associated outbuildings is consistent with the settlement agreement dated January 7, 2013. He stated that he appreciated the letters that were sent to zoning in support of the Inn but this meeting is not to determine whether the proposed Inn is a good thing or a bad thing and will not be discussed tonight.

A member from the public asked what ecological impact the proposed Inn would have on the environment. Mr. Solley noted that this would not be discussed tonight and that subject is the purview of the Inland Wetlands Commission.

Mr. Solley stated that the burden of proof lies with the applicant to show that there are no differences whatsoever than what was agreed upon in the 1/7/13 settlement agreement. He read Section 13.1.B.3 Request for Revision or Modification of a Special Permit, Town of Washington Zoning Regulations. He noted that any ambiguity and the absence of information can bring forward a denial of this application and that the applicant would need to submit a Request for Modification of a Special Permit, with a public hearing for the purposes of greater clarification. He said that it is up to the applicant to show that what is being proposed now is what was agreed upon in January 2013.

Mr. Solley listed the three areas of concern that the commission should consider: 1. The use of Condominimization (not the ownership), 2. The square footage of all floor areas of the proposed project, and 3. The height and number of floors of the buildings.

Mr. Szymanski, P.E., was present to represent Wykeham Rise, LLC. He stated that he has been working with Atty. Fisher and Ms. Klauer on clarifying some of the issues.

He reviewed his letter addressed to the Washington Zoning Commission, c/o Mr. Nicholas Solley, Chair, Regarding: Wykeham Rise, Review of Approvals and Satisfaction of Conditions , 101 Wykeham Road, Washington, CT, dated August 21, 2017 (on file in the Land Use Office).

The first item for review was the motion to approve the Special Permit application dated January 7, 2013. Mr. Szymanski reviewed conditions of approval 1-7 (Exhibit A on file in the Land Use Office).

The second item Mr. Szymanski reviewed was the Settlement Agreement covenants and restrictions approved by the all parties on January 7, 2013 (Exhibit B on file in the Land Use Office).

The third item reviewed by Mr. Szymanski was the email from Mrs. Hill, Land Use Administrator, to Atty. Rob Fisher dated July 20, 2017, items 1-7 (email & Exhibits E-S on file in the Land Use Office)

Mr. Szymanski reviewed the fourth item of correspondence which was a letter from the Zoning Commission to Atty. Fisher dated August 4, 2017. He went through all of the comments from the commission and the responses from Wykeham Rise, LLC. and their representatives (Exhibits J, K, T-W and letter on file in the Land Use Office).

Mr. Solley asked Mr. Szymanski to repeat their response to comment #2 regarding Total Square Footage.

Mr. Szymanski stated, "As part as what was approved at the settlement agreement, the site plan, the footprints are exactly the same as they were approved back then. Nothing's changed for all 6, 7 buildings, because you have the pump house as well."

Mr. Averill asked for confirmation that the site plans only show the footprint, but not all of the floors.

Mr. Szymanski confirmed that this was correct because floor plans were never submitted.

Mr. Werkhoven asked for clarification for their response to #5, page 2, **"...It is understood this will be done in concert with the staff."**

Mr. Szymanski responded that the Land Use Staff, Ms. Hill in particular, would be reviewing the landscape plan to make sure that the buffer plantings are sufficient.

Mr. Werkhoven asked for clarification for item #4, page 3, regarding the total maximum seating capacity of 68 seats during normal operations. He said that this number did not include tent events and might be why the kitchen is larger than needed for 68 seats.

Mr. Szymanski confirmed that this was true. He stated that the settlement agreement specifically said that it excluded weddings and paid for events. He confirmed that no meals will be served except for room service and there will be a total of 68 seats in the bar area.

Mr. Averill asked for confirmation that this proposed Inn is purely a commercial condominium.

Atty. Fisher confirmed that it is purely a commercial condominium.

Mr. Averill asked if Connecticut Law still requires that an owner gets warranties that are similar to homeowners even if it is a commercial property.

Atty. Fisher confirmed this was so. He explained that if it was a business commercial condominium...

Mr. Averill asked, "What else is there?"

Atty. Fisher explained that this proposed Inn is a commercial project "that has living quarters for guests and Connecticut Condominium Law requires, and also the other statutes on new construction, require that those new home guarantees be provided."

Mr. Averill asked if this would apply even for a business that provides temporary lodging. He noted that these warranties are technically required with residences. He questioned why these would be included.

Atty. Fisher stated that Mr. Averill's question was a good one and it wasn't their idea to add these additional protections but fortunately for the people who buy a unit, they are entitled to these guarantees.

Mr. Averill stated that he does not understand why this is the case when this is supposed to be a purely business arrangement, there is no residency involved in this and he is trying to clarify if this is a partial residence. He said that it seems to him that this is a purely commercial business selling lodging as the same as another commercial business selling hardware.

Atty. Fisher stated that the statutes don't differentiate between a residential condo and a commercial condominium where someone stays for 30 days. He noted that one must keep in mind that an inn is used for transient housing and transient housing is defined as being for 30 days or less and in this case the guests would be allowed to stay more than 30 days.

Mr. Averill feels that if this was a purely commercial offering there would be no need for home guarantees or warranties and that this does not seem like it is purely commercial.

Atty. Fisher stated that this is commercial but for the use of transient people who stay short term and that is what triggers the Home Warranty Act. He explained when the general assembly passes legislation, at least in theory, they do it to protect a certain class of people, in this case, people who are the owners of a residential condominium or in this case a commercial condominium that happens to be used as an inn.

Atty. Fisher stated that they received the Land Use Administrators memorandum and he and Mr. Szymanski discussed and they have some comments in response to the memorandum.

8:50 p.m. - Mr. Solley called a break so that copies could be made and distributed for the next discussion.

8:57 p.m. – Meeting reconvened.

Atty. Fisher asked to correct a comment that he made to Mr. Averill regarding commercial condominiums. He stated that according to the Connecticut General Statute §47-74.e the implied warranties apply to both commercial and residential condominiums and there is no distinctions being made in the general statutes between residential and commercial condominiums. He explained that an implied warranty is applied to new construction whether it was expressed/written out by the contractor or not.

Mr. Solley proceeded to review the response letter written by Ms. Hill (attachment a) to comments made by Mr. Szymanski in his 8/21/17 letter (previously discussed in first part of this meeting) to the Commission:

Regarding comment/response Page 9: Supplemental Response – Answer to Kitchens/Kitchenettes

Mr. Szymanski wanted to clarify the quote taken from the special meeting. He stated that he did not find that in the minutes. Ms. Hill responded that she listened to the audio. He asked what the conversation was before and after that quote. Ms. Hill stated that it was in the beginning of the presentation when what was being proposed was discussed and comparing it with the University approval.

Mr. Szymanski stated that Ms. Hill's response reads: "In other words, it did not have to discuss the parts of the University approval for which there were no changes proposed. Clearly, the dorm rooms (in the approved 12/9/2011 University) floor plans, (Sheets A100 and A102), did not include kitchens or kitchenettes" and asked that if they (the Commission and applicant) "are not rehashing that part or just saying we're basically going by those University floor plans, they're in complete conflict with the site plan that was approved." He continued, "The floor plans that were approved (submitted copies of the floor plans titled "Schematic Design," prepared for Wykeham University by Morris Adjmi Architects, Sheets A100-A104, dated July 22, 2011, on file in Land Use Office)... (Displaying large format drawing of floor plans) So, if you look at the configuration of the building, it's long, it's rectangular, it's got a silo, it doesn't have an angle on it...if we're saying we're going by those floor plans, we can't, on the one hand, say that

we're going by the fact that there's no kitchens in the dorm rooms, but then say, well what are we as part of our inn we're supposed to construct auditoriums, classrooms, cafeterias?"

Mr. Szymanski stated, that in his opinion, "they cannot piece meal pick from the floor plans as it relates to the kitchens and blatantly ignore the rest of the floor plans."

Mr. Solley stated that there was no part of the January 7, 2013 discussion of anything that included kitchens or kitchenettes.

Mr. Szymanski responded, "Whether it did or did not, that is correct."

Mr. Solley said, "So, what you're suggesting now is that we should just readily accept the fact that you're throwing it in." He noted that the settlement agreement was based upon two renderings, a site plan, and Atty. Fisher's assurance that "the physical plant is identical to what had been approved...as a school," but prior to that, he had also stated the physical plant for what is being proposed now as an inn is part of the settlement agreement is reduced in size from what was originally applied for as an inn.

Mr. Szymanski explained how computer renderings are made. He stated that they are conceptual and they are not based on any sort of floor plans. The producer of the three dimensional rendering is supplied with a footprint, where entrances are needed and they produce something that complies with height.

Mr. Solley asked if the renderings were submitted for an example of architectural style.

Mr. Szymanski confirmed this to be true.

Mr. Werkhoven stated that what was submitted was what the Commission approved and those were the things that were important at the time and the Commission cannot go back and make it a requirement.

Mr. Szymanski stated that the Commission could have asked for floor plans and elevations before approving the proposal and what was submitted as a conceptual rendering.

Mr. Solley stated that this rendering is all that was submitted. He was told by counsel that in the absence of anything else that the Commission must go by the renderings.

Mr. Werkhoven asked what the difference was in the footprints that have been submitted.

Mr. Szymanski stated that no one knows because they are not to scale.

Mr. Solley asked for confirmation that "the Commission cannot even use these (rendering) as a basis for what the building is going to look like...or that it is going to have any resemblance to this (rendering)." He stated that there is not much a resemblance among the renderings. He asked Mr. Szymanski what he wanted the Commission to take from this rendering.

Mr. Szymanski responded that it was to demonstrate that the applicant was not proposing a prison-like/barracks structure.

Mr. Averill stated that he attended the meeting at which these documents were accepted and approved and he feels that this is what the Commission has to go by. He said that he agrees with Mr. Solley that this meeting was rushed.

Mr. Solley asked Mr. Szymanski to confirm that, by his statement, Wykeham Rise, LLC. could submit anything they want regarding the structure and the Commission would have to accept it. He stated that the second rendering does represent a change from the barrack-like structures.

There was a brief discussion regarding how the rendering could be perceived as far as size, number of floors, etc. Mr. Szymanski reiterated that it was conceptual.

Mr. Werkhoven stated that the Commission has asked the applicant to verify that they are submitting what was originally approved and agreed to in the settlement agreement and they have shown that they have. He said the details are not the same as in the original agreement.

Mr. Solley stated that the Commission took the site plan and renderings at their face value and the decision was made to approve based on this information.

Mr. Szymanski responded that if there was a concern of what was in the buildings, what the height of the building was, what the window configuration was, why did four people vote in favor? Why didn't they ask for more detailed information? He continued that the idea with certain restrictions was approved and he believes that they have complied.

Regarding comment/response Page 9-10: Regarding Whether the Proposed Wykeham Rise Guest Units with Kitchens/Kitchenettes Meet the Definition of " Dwelling Unit or Residence"

Atty. Fisher stated that the reason why there is a thirty day restriction applicable to the inn is because the State building code says that an inn is for transient lodging and the code defines transient as being for thirty days or less. He noted that the ZEO has the right to take action when there is a violation to a provision that is governed by the zoning regulations. Atty. Fisher stated that in addition to zoning there is a condominium association has enforcement rights against everybody that owns a condominium.

Mr. Averill asked how the ZEO would know whether someone has been in the condominium for more than 30 days. He stated that there is no way to enforce this.

Atty. Fisher cited the Superior Court Armstrong vs. ZBA of Washington, 1969 case. As a result of this case, it was decided that "A zoning commission cannot deny an application that complies solely because of a concern of a future violation." He stated that the difficulty of enforcement is not relevant.

Ms. Hill stated that the definition of Dwelling Unit is relevant.

Mr. Averill stated that it is unlikely that the condominium association would call the ZEO for this type of violation.

Mr. Szymanski argued that the proposed structures do not meet the definition of a dwelling unit as it is in the Town of Washington Zoning Regulations (Sec. 21.1.22). He stated that the definition says "a structure" not a structure with appurtenances. Mr. Szymanski stated that definition refers to looking at the structure as a whole.

Mr. Solley stated that the individual units being proposed qualify under this definition.

Mr. Szymanski stated that an apartment fits the definition of a Multi Family Dwelling (Sec. 21.1.20) and this proposal does not fit that definition either. He explained that a dwelling unit would be a portion of the proposed structure. Neither of these definitions, Mr. Szymanski continued, says that you can have a bar, commercial kitchen, ballroom, etc.

Atty. Fisher stated that a dwelling unit or residence offers the property owner certain rights that aren't permitted in a condominium unit. He informed the Commission that there is a master insurance policy for the entire condominium complex which would not be required for a single family home in Washington. He continued to give other examples.

Mr. Solley responded that those are ancillary difference and that the basic premise of both is that it is a living unit where people can live independently because they have their own kitchen facility, they can cook for themselves, bathroom facilities and bedroom facilities.

Atty. Fisher responded that that is not what the zoning regulations say. To compare a condominium unit to a single family residence in town is like comparing "apples and tennis balls."

Mr. Averill stated that the difference is that single family dwelling unit as a single structure are allowed in the Town of Washington and dwelling units as part of a condominium are not.

Atty. Fisher disagreed with Mr. Averill. He stated that he met with Mr. Solley and Ms. Hill in November 2016 and he gave them a copy of the statute that says "no local ordinance or zoning regulation or building code can prohibit condominiums in any town."

Mr. Solley stated that the statute refers to the ownership of condominium not the use.

Atty. Fisher stated that the use is residential. He stated that Mr. Solley views this as multi-family housing and he disagrees "emphatically."

There was a brief discussion comparing ownership of an Inn Unit vs. being part owner of an Inn Organization.

Mr. Solley read from the comment/response letter; “Building Code requirements are separate and different from the Zoning Regulations. Just because the Building Code allows something, does not mean the Zoning Regulations also allow it and vice versa.”

Mr. Szymanski responded that, in this case, the building code allows for an additional level of protection that otherwise does not exist in the zoning regulations. He continued, “So, because of the building code, we have to fully comply with...the unit has to be transient.” Although the Zoning Regulations do not indicate how long someone can stay in the unit, the Building Code does. It would be in violation the C.O. if people are in for longer than 30 days.

Mr. Solley said that he would talk with the Building Official and recommended that the conversation move on.

Mr. Solley stated that regardless what the Building Codes says, he thinks this is still a dwelling unit and these restrictions are irrelevant.

Mr. Szymanski said that he respectfully disagreed with Ms. Hill’s comment that someone could rent out their house for 90 days a year and it would still be a dwelling unit. He read the definition of a single family dwelling unit (Sec. 21.1.21). The part that reads “occupied exclusively as a residence for only one family,” he noted that if the house is being rented out 90 days out of the year, then it is not occupied exclusively by one family and would be a violation of T.O.W. Zoning Regulations.

Ms. Hill asked Mr. Szymanski, where he found ‘exclusive use’ in the definition of “Dwelling Unit.”

Mr. Szymanski stated that he was referring to the definition of “Single Family Dwelling.”

Mrs. Hill stated that, in her response, she noted that the proposed plan still meets the definition of “Dwelling Unit or Residence” not “Single Family Dwelling.”

There was a brief discussion regarding the definitions for “Dwelling Unit, Residence, and Single Family Dwelling.”

Mr. Szymanski stated that he referred to “Single Family Dwelling Unit,” because it is listed as a permitted use in this zone. He explained that the definitions in the T.O.W. Zoning Regulations are exclusionary and if it is not mentioned in the definition it is not allowed.

Regarding comment/response Page10: Re: Total Square Footage

Mrs. Hill listed the differences in computations of the total square footage data that has been provided since the original inn application.

Mr. Szymanski stated that he investigated the total square footage and came up with 73,370 s.f. using the proposed footprint from the original permit for the inn in 2008 and the original site plan from 2008.

Mr. Solley stated that the footprint has been calculated at 73,370 s.f. and then asked if all floor areas were known and the total floor areas added together.

Mr. Szymanski stated that the main building is over 40,000 s.f. on the main floor. He submitted a 2011 site plan and asked the commissioners to compare the reduction in footprint.

Mrs. Hill noted that whoever filled out the original application for the inn...Mr. Szymanski said that he filled the form out. Mrs. Hill stated that it does not indicate that the calculation is only for the footprint.

Mr. Szymanski responded that it says "Total Floor Area" and in this case it was the calculation for the footprint.

Mr. Averill noted that this calculation was only for one floor.

Ms. Hill stated that definition 21.1.31 in the T.O.W. Zoning Regulations defines Floor Area as "the square footage of all floor levels with the outside perimeter of the outside walls...." She noted that the application was not correct.

Atty. Fisher stated that the important issue at that time was "lot coverage." He stated that after the plan was extensively modified they brought the lot coverage in compliance somewhere between 9 - 10%.

Regarding comment/response Page 11: Number of Levels in Both the Main Building and Cottages

Mr. Averill stated that he agreed with Mrs. Hill's response 100%. He asserted that the number of floors were specified because they were in architectural renderings, part of the submittal, and 2-3 floors were specified.

Mr. Szymanski stated that they have not proposed any number of floors and that the number of floors could not be determined by looking at the architectural renderings.

There was a brief debate as to whether the renderings indicate how many floors are being proposed.

Mr. Solley stated that the submittal is rather ambiguous and the applicant could come back with any number of floors.

Mr. Szymanski stated that if they had floor plans they would have submitted them. He noted that they have no idea how many floors were proposed.

Mr. Averill stated that he does not believe that this issue would be settled tonight and recommended the meeting move forward.

Regarding comment/response Page 11: Intensity of Use

Atty. Fisher stated that he was concerned by the use of the word “intensity” and that the intensity of use cannot be determined by the size of the building. He agreed that if the number of rooms had been increased that that would be an increase in intensity.

Regarding comment/response Page 11: Architectural Plans for the Main Building

Mr. Averill agreed with Mrs. Hill’s response.

It was agreed that both the Commissioners and the applicant do not agree on the difference between renderings A and B.

Mr. Solley read the Summary section of Mrs. Hill’s letter.

Mr. Szymanski requested that Mrs. Peacocke be able to address the Commission as she is a party to the settlement agreement.

Mrs. Peacocke noted that what all parties are looking at is consistency as to whether or not what is currently being proposed is consistent with the settlement agreement and whether there are changes in what was approved in 2013 and what is being proposed now. She said that the Zoning Commission approved application based on the materials that were submitted in 2013. She feels that the Commission is asking for elaboration on the already approved materials. She stated that as a party to the settlement agreement it is important to her that Clause 13 of the settlement agreement listed what each of the parties represent. The last representation that was made is that the agreement does not violate any law, rule, regulation, contract or agreement otherwise enforceable against the respective parties. She said that the Zoning Commission, as a party of this settlement, agreed that what was in the settlement did not violate the Zoning Regulations. She stated that it was important to her that she obtained a binding agreement. She indicated that her objection is that if the Zoning Commission comes back and says that having kitchens in these inn rooms is a violation of the Zoning Regulations then this representation does not hold good for her. She feels that litigation is the one thing that all parties should be trying to avoid.

Mr. Solley stated that Wykeham Rise, LLC. can go forth right now and build what was agreed upon in the settlement agreement. But, the Zoning Commission has the perception that there have been changes to the settlement agreement and this is what needs to be decided.

Ms. Peacocke also felt that it was important that there have been references to the applications and approvals to the University and the School and one of the most important features of the negotiations and settlement agreement was that everything to do with the school was going to be abandoned and withdrawn and there was going to be a restrictive covenant for 50 years on ever applying for permission to build a school on that property. She noted that everything to do with those applications for the University or the School were to be negated.

Mrs. Hill stated that a consideration would be that even in 2013 condo residential units were not a permitted use under the Zoning Regulations.

Mr. Reich stated that he was one of the original signers of the agreement and feel that there was not a great deal of discussion regarding the detail and that the process was very simplified. He remembers that the Commission was there to vote yes or no for the settlement agreement. He continued to explain that he did not have any idea that there was going to be an issue with condominiums and he trusted the process that led them to the agreement.

Mr. Averill thanked Ms. Peacocke for her comments. He stated that he thinks he has been the only commissioner that has been in on this project since the beginning. He said that it is his belief that the Commission is to decide that what is being proposed matches in letter and spirit to the settlement agreement and he feels that there have been a whole lot more than embellishments. He feels that these should have been discussed with the original application and that it is necessary to hold a public hearing to decide on these issues.

Mr. Szymanski asked for the Commissioners to consider that there is no other dwelling unit in the Town of Washington, that he is aware, that requires it to be placed in a rental pool, vacated after 30 days, that for a ¼ of the year requires it to not have the actual family that is supposed to be residing in it, can't reside in it.

Mr. Solley asked the Commission to consider the following motion.

MOTION: Regarding the application dated 5/8/17 submitted by 101 Wykeham Road, LLC. for an Inn at 101 Wykeham Road,

Having reviewed documents and information submitted with the application including but not limited to the following:

1. Site Plan, "Schematic Schedule A-3-1," by Arthur Howland and Associates, dated 12/2/16
2. Elevations, Sheets SKE-101 through SKE 103 and SKK-101 by H and R Design, Inc., dated 8/18/17
3. Floor Plans for all proposed buildings, Exhibits J-N, 50 sheets, no signature or date.
4. Letter from Ms. Klauer to Mrs. Hill and the Commission, dated 5/2/17 and the unsigned letter from Ms. Klauer to Mrs. Hill and the Commission, no date, but received on 7/13/17.
5. Email from Atty. Fisher to Mrs. Hill, dated 7/18/17.
6. Letters from Atty. Fisher to Mrs. Hill, dated 7/17/17 and 7/21/17.
7. Public Offering Statement for Inn at Wykeham Rise, Exhibit S, no dated (included in packet received 8/22/17).
8. Declaration of Inn at Wykeham Rise, Exhibit R, no date (included in packet received 8/22/17)
9. Packet of Exhibits A – W received 8/22/17.
10. 8/21/17 Letter from Mr. Szymanski to Zoning Commissioners.
11. 34 Sheet Site Development Plan by Arthur h. Howland & Associates.

And having reviewed the 1/7/13 Settlement Agreement, 1/7/13 Special Permit conditions and 1/7/13 Special Meeting Minutes,

The Washington Zoning Commission finds that the current proposal is not consistent with both the 1/7/13 Settlement Agreement and the 1/7/13 Special Permit and so requires an application to revise the Special Permit and a public hearing per Section 13.1.B.3 of the Zoning Regulations and therefore denies the application.

Mr. Averill seconded the motion.

Mr. Werkhoven stated that there were three things to consider and he feels that they were resolved. He said that, combined with the fact that things were not discussed during the settlement agreement negotiations and that the applicant has tried to respond to every question that was asked of them he is going to vote against Mr. Solley's motion.

There was a brief discussion regarding what happens if the application is denied and whether a denial would be appealable.

Mr. Reich stated that he has felt from day one, as a resident and then a commissioner, that the entire process has been "admirably clumsy," but he does not fault the commissioners. He feels that it would not be fair to put the applicant through the Special Permit process and he is siding with Mr. Werkhoven.

Mr. Burnham stated that he looks at what has recently been submitted as a resubmission which would be accepted but there have been too many changes from the original proposal. He feels that what was previously submitted was lacking information and should not have been approved.

VOTE: All those in favor of denying the administrative application before us today, signify by raising your hand, passed by 3-2 vote.

Other Business

Revision of the Zoning Regulations:

There is a special meeting scheduled for Tuesday, September 12, 2017 at 7:30 p.m. for the purpose of presenting the regulation changes to the public.

Enforcement

Enforcement Report:

The Enforcement Report dated August 28, 2017 by Zoning Enforcement Officer Mike Ajello was distributed to Commission members.

Communications

There were no communications to report.

Privilege of the Floor

Adjournment

MOTION: To adjourn the meeting at 10:46 p.m. By Mr. Solley, seconded by Mr. Burnham, passed 5-0 vote.

Submitted subject to approval:

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

ATTACHMENT A

In response to comments by Mr. Szymanski in his 8/21/17 letter to the Commission:

Page 9: Supplemental Response
Answer to Kitchens/Kitchenettes

Mr. Szymanski wrote, *"The Commission, in its approval of the special permit and the settlement agreement, did not restrict what would be in the rooms when it gave Wykeham Rise its special permit to operate an inn."*

That is a true statement, but it must be taken in context. At the 1/7/13 Special Meeting at which the Settlement Agreement was presented, the Commission's attorney had advised it that it need not "rehash parts of your previous application approvals that are not at issue." In other words, it did not have to discuss the parts of the University approval for which there were no changes proposed. Clearly, the dorm rooms in the approved 12/9/2011 University floor plans, Sheets A100 and A102, did not include kitchens or kitchenettes. On 1/7/13 the applicant did not propose kitchens or kitchenettes in any of the guest rooms and did not submit any revised floor plans to indicate kitchens would be installed in those rooms. So the Commission had no reason to believe there were any changes proposed. Therefore, it saw no need to discuss what would be in the rooms or to make any restrictions.

Based on the information above, the current proposal to put kitchens or kitchenettes in the guest rooms is a change to the Special Permit approval and so requires a special permit application and public hearing per Section 13.1.B.3 of the Zoning Regulations.

Pages 9-10: Regarding Whether the Proposed Wykeham Rise Guest Units with Kitchens/Kitchenettes Meet the Definition of "Dwelling Unit or Residence"

Mr. Szymanski wrote in a: *"No guest in a unit or its owner may check into a room at Wykeham Rise Inn and stay for more than 30 consecutive days. This is required by the Building Code..."*

That may be so, but:

- 1) Someone can live in his home for 30 days, leave for one or two, come back for 30 days, leave for another one or two, and on and on and it is still his residence and would still meet the definition of "Dwelling Unit or Residence" in Section 21.1.22. The definition in

Section 21.1.22 does not specify that a unit must be lived in by the same person(s) for 31 or more days to qualify as a dwelling unit or residence. This restriction by Wykeham is irrelevant for zoning purposes.

- 2) This is a restriction the Zoning Commission has no ability to enforce.
- 3) Building Code requirements are separate and different from the Zoning Regulations. Just because the Building Code allows something, does not mean the Zoning Regulations also allow it and vice versa.

Mr. Szymanski wrote in b: *"Every owner of a unit must place their unit into the Wykeham Rise rental pool when not in use,"* and in c: *"Every unit owner must place his or her unit into the Inn rental pool for a minimum of 90 days per year."*

Yes, every owner should be required to put his unit in the rental pool; this is an inn, after all. But does doing so change the definition of "Dwelling Unit or Residence?" Someone else could rent out his house for 90 days a year and it would still be a dwelling unit. And again, this is a proposed restriction that the Zoning Commission would be unable to enforce. And again, these restrictions are irrelevant.

Mr. Szymanski wrote in d: *"Unit owners may not arrange for their own housekeeping and must use the Wykeham Rise housekeeping services daily. This requirement is in sharp contrast with the definition of a residence in the Zoning Regulations, as Wykeham Rise prohibits independent housekeeping."*

Here Mr. Szymanski is using a very narrow interpretation of "housekeeping" to include maid services only. "Housekeeping" in its broader sense, which was most likely what was meant in Section 21.1.22 when the definition was adopted, would include living in a dwelling unit, having access and use of all of its common areas and use of its facilities for bathing, cooking, sleeping, etc. So again, this restriction doesn't prevent a unit from qualifying under the definition of "Dwelling Unit or Residence," is totally unenforceable by the Zoning Commission, and is irrelevant.

Mr. Szymanski wrote in e: *Wykeham Rise will seek a certificate of occupancy ONLY for an Inn...The Washington Building*

Official, William Jenks, will not issue a certificate of occupancy for residences or multifamily housing."

The Building Department may issue a certificate of occupancy for an inn, but if each guest room unit meets the definition of dwelling unit or residence, it is still a dwelling unit or residence per the Zoning Regulations. So his statement above is irrelevant. (Building Code, Health Code, and Zoning Regs don't always match. For example, the Building and Health definition of an attached apartment is not the same as the Washington Zoning Commission's definition.)

Page 10: Re: Total Square Footage

Mr. Szymanski wrote in #2; *"There were never any specific numbers outlined for the main building total square footage in either the Settlement Agreement or the Special Permit...nor were the total square footages discussed at the January 2011 approval Hearing. At the January 7, 2013 approval Hearing, Atty. Fisher said, "the physical plant was identical to what had been approved by the Zoning Commission...as a school."*

While specific figures for square footage were not provided during the 1/7/13 Settlement Agreement presentation and discussion, the total square footage was generally referred to when comparisons in size to the originally proposed inn and to the approved University were made by the applicant. At that 1/7/13 meeting, Atty. Fisher did state that physical plant was identical to what had been approved as a school, but prior to that he had also stated, "The physical plant, for what is being proposed now as an inn as part of the Settlement Agreement is reduced in size from what was originally applied for as an inn." The commissioners took him at his word. Depending on what is meant by "physical plant," if you look up the original 2008 inn application, it states the total square footage of all buildings is 73,370 sq. ft. If instead it means sq. footage of the total ground floor area of just the main building, the minutes of the 10/27/08 inn public hearing cite this as 19,000 sq. ft. Since Atty. Fisher said the physical plant had been reduced from what had originally been applied for as the inn in 2008, you could reasonably expect one of the following statements about the current application to be correct: a) The total square footage of all proposed buildings is less than 73,370 or b) The total ground floor area of the main building is less than 19,000

square feet. When the current application is reviewed, however, both figures are greater than those for the originally proposed inn; 135,000+/- (using Mr. Barnet's and Ms. Purnell's computations) for the total square footage of all buildings and 21,740 (per Szymanski's 6/26/17 email) for the square footage of level 2, which is the main floor housing the restaurant, bar, ballroom, etc.

So given that the data above differs from Mr. Szymanski's assertion that *"In comparing the floor area of the main building proposed in 2008 with the current site plan, one can clearly see here that the floor areas of the main building are smaller,"* this matter needs further investigation.

Page 11: Number of Levels in Both the Main Building and Cottages

Mr. Szymanski states, *"No number of levels in the main building, cottages, spa, or pool house were specified in any part of the Settlement Agreement, Special Permit, or Settlement Hearing."*

First, as part of the Settlement Agreement, the Commission was given Renderings A and B, which were slightly different views of the front elevation of the main building. Again, our attorney stated it was not necessary to discuss aspects of the proposal that were not at issue; that were not proposed to be changed or revised. Clearly these renderings show the building has three floors above subterranean levels and no one at the 1/7/13 meeting spoke even of the possibility of additional floors. Therefore, the Commission did not think there was any need to stipulate the number of floors allowed because it was evident from the Renderings exactly what was proposed. If additional floors had been proposed at that time, perhaps they would have been approved, but this was not considered because they were not proposed. Based on Renderings A and B dated 1/7/13, the proposal now to add floors to the main building is a revision to the Special Permit that requires a new special permit application and a public hearing.

Second, elevations and floor plans submitted for the cottages for both the original inn in 2008 (Moisan Architects, Inc. revised to 9/22/08) and the University in 2011-2012 (Morris Adjmi Architects, dated 12/9/11, sheet A104) clearly show they are two story buildings, whereas the elevations for the current application

show three levels. Since no elevations for the cottages were submitted at the 1/7/13 meeting for the presentation and vote on the Settlement Agreement, the Commission considered those plans were the same as those that were previously approved. At the time, the applicant did not mention even the possibility of adding additional floors. Therefore, the proposed addition of third floors to the cottages is a revision of the Special Permit, which requires a special permit application and public hearing.

In both the case of the number of floors/stories in the main building and the number of stories in the cottages, there was no reason for the Commission to make any stipulation in the Settlement Agreement about the number of floors allowed because no change in the number of floors was ever proposed.

Page 11: Intensity of Use

Mr. Szymanski stated, *"As detailed in this letter, the use at the Inn complies with the Settlement Agreement, applicable Zoning Regulations, and Ct. State Building Codes. Wykeham Rise understands and shall comply with all restrictions imposed on use as outlined by the terms of the agreement and permits. No modifications have been made."*

At the 1/7/13 meeting Mr. Szymanski stated about the Settlement Agreement plan, "So all that there was, was a reduction in intensity in comparison to what the Commission had previously approved." What it had previously approved was the University with a main building having three stories. It can be argued that the proposed addition of floors/stories is an increase, not a decrease, in the intensity of use. Again, at the time the Settlement Agreement was presented and approved, the Commission's counsel advised the Commission there was no need to discuss aspects that were not at issue. Since additional stories were not proposed there was no need for any discussion about them or for any restrictions to be specified in the Settlement Agreement.

Page 11: Architectural Plans for the Main Building

Mr. Szymanski states in part, *"The Commission did not input or propose conditions on architecture or elements of the main building whether use of materials, roof types, use of dormers, size of windows, etc. Additionally, the Wykeham Rise group has worked hard to come up with*

an exterior for all of the main buildings that is attractive and contextually sensitive - we have received very positive feedback."

The issue here is not whether the buildings are attractive; they are certainly an improvement over what was approved for the University. And further, the issue is not what architectural style was finally chosen. The commissioners probably have no complaints about the materials to be used, size of the windows, trim, etc. But the only references to architectural design that were submitted at the 1/7/13 meeting were Renderings A and B. These specifically show a three story building with gable end roofs. They do not include roof dormers or roof terraces/balconies. Perhaps if they had been proposed at the time, they would have been approved, but they were not proposed until the current application was submitted over four years later. There was no need on 1/7/13 for any stipulations regarding architectural design because the Commission accepted that Renderings A and B were what was proposed and were what would be constructed. No alterations to Renderings A and B were proposed at the time. Therefore, the roof dormers and terraces/balconies proposed in the current application are a change to the Special Permit and require a new special permit application and a public hearing.

Summary:

Remember: The issue is not whether or not there should be an inn on the premises. The applicant has the right to build an inn. An inn was approved when the Settlement Agreement and Special Permit were approved on 1/7/13. The question is whether what is currently proposed is consistent with that Agreement and Special Permit.

To simplify discussion at Monday's meeting, the Commission should consider first focusing on the immediate question regarding whether the current application is consistent with the Settlement Agreement and Special Permit or whether it proposes any change. Keep in mind that Section 13.1.B.3 of the Zoning Regulations; Request for Revision or Modification of a Special Permit; states, "*All modifications shall require a public hearing and approval by the Commission.*"

If the Commission determines there is any change proposed, either the applicant should withdraw the current application or the Commission should vote to deny it because a special permit application would be required

and the special permit process including a public hearing, would also be required.

If the Commission finds the current application is consistent with the 1/7/2013 Settlement Agreement and Special Permit, then if it thought it necessary, it could discuss the many issues raised and whether any conditions of approval were warranted, and then vote for approval.

Also: Mrs. Peacocke must agree to the current proposal. While we have an undated letter she wrote in which she stated she had reviewed all of the plans as of July 21 and re-confirmed her agreement, the plans have been further amended since then and we have not yet received her approval of the latest revisions. Her consent is not required prior to action by the Commission, but ultimately is legally required per #11 of the Settlement Agreement.

8/25/17

Janet M. Hill, Land Use Administrator