

Zoning Commission

MINUTES

Public Hearings – Regular Meeting

September 25, 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:	Ms. White
ALSO PRESENT:	Atty. Fisher, Ms. Holmes

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.

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

Ms. Holmes, Director of Corporate Compliance for Doctor's Choice, was present to represent Mr. Martinelli, property owner of 18 Titus Rd. Ms. Holmes explained that Dr. Bodling is leasing space at 18 Titus Road and is launching a 24 hour, 7 days a week answering service on Wednesday of this week. She stated that it would hurt the business if they lose power.

The Commissioners and Ms. Holmes looked at the map titled, "Zoning Location Survey," prepared for 18 Titus Road, LLC, dated September 2017, by T. Michael Alex. Ms. Holmes indicated where their offices are located in the building.

Ms. Holmes stated that they originally wanted to locate the generator next to the building by the propane tank. The Health Department didn't approve that location because of the vicinity of the leaching fields and the floodway. Ms. Holmes stated that they are now proposing to locate the generator next to the electric transformer, 6.75' from the northerly boundary.

The Commissioners looked at the site plan which indicated that the proposed generator has a footprint of 26 Sq. Ft. which would increase the lot coverage square footage to 20,523 Sq. Ft. and the percentage of lot coverage at 38.6% would remain the same. The Commissioners briefly discussed the calculation of the lot coverage percentage.

There was a brief discussion regarding the location of the proposed generator. Ms. Holmes distributed pictures of the proposed location and the existing electric transformer.

Mr. Solley read Ms. Hill's administrative report dated September 20, 2017 (On file in the Land Use Office). It was noted that the property owner must be approved for a Special Exception from the ZBA before the Zoning Commission could approve this application.

Ms. Holmes submitted the receipts for the certified mailings to neighbors.

Ms. White confirmed that the applicant was granted a Special Exception for the proposed generator at the regularly scheduled ZBA meeting on September 21, 2017.

Mr. Solley read the letter addressed the Zoning Board Commission Members, date August 16, 2017, from Michelle Holmes, Director of Corporate Compliance.

Mr. Solley asked Ms. White for feedback from the ZBA meeting of September 21, 2017.

Ms. White stated that the ZBA voted unanimously in favor of granting this Special Exception. She stated that Mr. Brinton, neighboring property owner, had come into the Land Use Office to express his support and asked that the generator is programmed to do the once a week, 15 minute testing, between Monday and Friday within the hours of 11 a.m. to 5 p.m.

Ms. Holmes stated that to program the testing within these requirements would not be a problem.

There was a brief discussion regarding plantings, shrubs, etc. around the proposed generator. Ms. Holmes stated that the area has many full trees in the location and they would remain but would have to have some limbs cut off. She stated that she did not think a fence would make a difference in the dB levels.

There was a brief discussion regarding the size of the generator. The Commissioners reviewed the spec sheet for the Kohler Model: 48RCL generator.

It was noted that this generator would be used for only the Doctor's Choice business. Ms. Holmes stated that they have a two hour backup battery but need to be able to keep the business going in case of a power outage.

There was no public comment on this application.

Mr. Reich asked where all of the telephone operators be.

Ms. Holmes responded that there are 4 live operators that take various shifts in the office and the night time operator is off the premises.

Ms. Holmes confirmed that their clients would be from anywhere. She explained a little bit about Doctor's Choice/Avexia and what the company provides.

Mr. Solley discussed the stipulations in Zoning Regulations Section 8.5- Maximum Lot Coverage and 8.6 – Minimum Setback Requirements. He stated the maximum lot coverage in this zone is

25% and the applicant is at 36% and the minimum setback requirement is 15 ft. and the applicant is proposing 6.75.

MOTION: To close the public hearing for Martinelli (Doctor's Choice)/18 Titus Road/Special Permit: Sections 8.5 – Increase Maximum Lot Coverage, 8.6 – Reduce Minimum Setback for installation of a generator. By Mr. Averill, seconded by Mr. Werkhoven, passed 5-0 vote.

REGULAR MEETING:

8:03 - Mr. Solley called the regular meeting to order.

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

Pending Application(s)

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

Mr. Solley stated that he agrees with Ms. Hill's recommendation for the condition of proof that the Special Exception granted by the ZBA was filed on the Land Records. He noted that Ms. Hill also mentioned buffering.

Mr. Averill stated that his only concern was sound attenuation and this model has built in insulation. He said that the existing bushes should be enough buffering.

The other commissioners agreed that the existing bushes should be adequate for buffering.

MOTION: To approve the Special Permit application Martinelli/18 Titus Road/Special Permit: Sections 8.5, 8.6 Increase Maximum Lot Coverage and Decrease Minimum Setback/To Install Generator with the condition that a receipt of proof that the Special Exception granted by the ZBA on September 21, 2017 is filed on the Town Land Records. By Mr. Solley, seconded by Mr. Werkhoven, passed 5-0 vote.

Consideration of the Minutes

The Commissioners considered the minutes of both meetings.

MOTION: To approve the Regular Meeting Minutes of August 28, 2017 and Special Meeting Minutes of September 12, 2017 as presented. By Mr. Werkhoven, seconded by Mr. Reich, passed 5-0 vote.

New Application(s)

Other Business

Revision of the Zoning Regulations:

The Commissioners discussed possible effective dates.

Mr. Solley stated that the Commission must state an effective date for the revisions that were approved at the Special Meeting on Tuesday, September 12, 2017 at 7:30 p.m. the Zoning

Commission approved the expansion of the Washington Depot Business District, to retain the current boundaries of the Woodville Business District and not adopt any of the proposed boundary revisions, Sections 13.17.4 and 16.3.11 to permit off the premises directional signs for approved Town Landmark Sites by Special Permit, the complete update and revision of Section 17- Nonconforming Lots, Land, Structures, and Uses and to add the definition Section 21.1.1 - "Abandonment" to Section 21 – Definitions.

MOTION: To set an effective date of November 1, 2017 for the Revisions of Sections: 8, 10, 13.17.4, 16.3.11, 17 and 21.1.1, revised at the Zoning Commission Special Meeting of September 12, 2017. By Mr. Solley, seconded by Mr. Solomon, passed 5-0 vote.

Enforcement

Enforcement Report:

The Enforcement Report dated September 25, 2017 by Zoning Enforcement Officer Mike Ajello was distributed to Commission members.

Communications

Mr. Solley stated that the Land Use Office received an application for a modification of an existing Special Permit for 101 Wykeham Rd. He informed the Commissioners that he would like to formally receive this application. He said that he and Town Counsel have not looked at it but we have to create a start date for which we have 65 days to schedule a public hearing.

Mr. Solley stated that he spoke with Town Counsel and feels that it would be rushed to schedule a public hearing in October as the Land Use Administrator will not be back in the office until mid-October and it would be difficult to get the required reviews and reports in time for the October 23rd meeting.

Mr. Averill stated that he agrees that they should schedule a public hearing in November.

Mr. Werkhoven asked if it would be possible to have the public hearing in October.

Mr. Solley believe that it is necessary to have a meeting to set the public hearing. He doesn't feel there would be enough time for the Land Use Administrator to work with Town Counsel to be ready for the October meeting.

Mr. Reich asked why the Commission could not look at the submission together.

Ms. White responded that there are copies for the Commissioners in her office.

Mr. Solley stated that the Zoning Commission is under appeal for their decision regarding Wykeham Rise, LLC at the August 28, 2017 meeting.

Ms. White said that copies of the appeal was sent to the members that were mentioned in the document. She read the names of the people that were named in the appeal; Nicholas Solley, Commissioner Solomon, Commissioner Averill and Ms. Hill

Mr. Solley granted Atty. Fisher a chance to speak.

Atty. Fisher stated that the whole idea behind filing the modification application was because Wykeham Rise, LLC feels that the Zoning Commission was requesting it. He stated that they were hoping to schedule the public hearing sooner rather than later. Atty. Fisher informed the Commission that he does not have to file the appeal papers with the Superior Court until the last week of October. He then explained the process of serving and filing appeals.

Atty. Fisher informed the Commissioners that the Town of Washington Zoning Regulations are unique in that they require an appeal from any decision the Zoning Commission makes go to the Zoning Board of Appeals. He feels that it is foolish to have that this extra layer of appellate bureaucracy exists and unfortunately, he will be filing an appeal with the ZBA as well. He hopes that a hearing will be held and this modification of the Special Permit will be approved.

Mr. Solley spoke with Town Counsel today and an October hearing was thought to be somewhat premature given everything that the Zoning Commission would have to discuss in executive session regarding the appeal and doesn't feel that 6 working days for Ms. Hill will be enough to prepare for an October public hearing.

There was a brief discussion regarding scheduling the public hearing and if Town Counsel would be able to get prepared in time. Mr. Averill stated that he would be inclined to follow Town Counsel's advice. Mr. Solley suggested that the Zoning Commissioners could hold an Executive Session at the October meeting to discuss the legal issues surrounding this application. He feels it is very important that the Commission is legally represented.

It was noted that the submission could not be discussed at this time and would have to wait for a public hearing.

Mr. Werkhoven asked what the Commissioners would need to do with this modification request.

Mr. Solley stated that the public hearing is the time when the applicant and the Commissioners discuss the modifications.

There was a brief discussion regarding what needs to be done to be ready for the public hearing.

Mr. Werkhoven asked why the Zoning Commission can't schedule the public hearing for the October 23rd meeting if the applicant and the Commission are going to discuss what was submitted. He said that the Zoning Commission would have time over the next month to make a decision at the November meeting.

Mr. Solley stated that the Zoning Commission has to discuss how the appeal of their last decision affects this Special Permit Modification Application.

Mr. Werkhoven stated that he disagrees with not scheduling a public hearing for this application for the October Zoning meeting.

The Commissioners continued to discuss how the appeal affect this Special Permit Modification.

Mr. Solley stated that he believes the settlement agreement allows the parties involved to sit down and talk things out outside of the public hearing process.

Mr. Reich stated that he would like to discuss this and negotiate.

Mr. Solley stated he did not want to discuss substantive matters tonight because they are not in a public hearing.

There was a debate as to whether the lawyers were needed at an executive session. The Commissioners had different opinions regarding this. A lengthy debate followed.

Mr. Solley noted that it was not necessary for a motion to accept the application.

Privilege of the Floor

Atty. Fisher stated that he was not sure how the Commission was going respond to the Wykeham Rise LLC submission and stayed to hear what the Commissioners had to say. He said that he is in favor of reaching a solution that does not result in an appeal.

Adjournment

MOTION: To adjourn the meeting at 8:50 p.m. By Mr. Averill, seconded by Mr. Solley, passed 5-0 vote.

Submitted subject to approval:

By: _____
Shelley White, Land Use Clerk
October 2, 2017