

Zoning Commission

MINUTES

Public Hearings – Regular Meeting
January 29, 2018

6:30 p.m.

Main Level Meeting Room

MEMBERS PRESENT: Mr. Solley, Mr. Reich, Mr. Werkhoven, Mr. Averill, Mr. Armstrong
ALTERNATES PRESENT: Ms. Radosevich, Ms. Lodsin
ALTERNATES ABSENT: Mr. Sivick
STAFF PRESENT: Ms. Hill, Ms. White
ALSO PRESENT: Atty. Zizka, Atty. Kelly, Atty. Fisher, Ms. Klauer, Mr. Yates, Mr. Szymanski, Ms. Giampetro, Ms. Peacocke, Ms. Braverman, Ms. Purnell, Mr. Owens, Mr. Barnet, Mr. & Mrs. Solomon, Ms. Branson, Mr. Phillips, Members of the Public

Call to Order:

Mr. Solley called the meeting to order at 6:30 p.m.

Public Hearing:

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

Continuation: 101 Wykeham Road, LLC/101 Wykeham Rd/Modification of Special Permit for an Inn:

Mr. Solley read Ms. Hill's Administrative Review dated 1/29/18 (on file in the Land Use Office).

Atty. Kelly noted that he did submit a cover letter with the submission addressed to the Washington Zoning Commission dated January 23, 2018 (On file in the Land Use Office). He referred to this letter which lists the documents that were included since the first hearing on November 13, 2017 and the additional documents with this third revision to the pending application. The new documents that were submitted: 1. "Site Development Plan" by Arthur H. Howland, P.C., prepared for 101 Wykeham Road, LLC., Sheet SD.1, 1 page, dated December 2, 2016, Revision date: 01/22/18 which replaces the earlier version of the same plan 2. Architectural Plans prepared by H&R Design, Inc., for Wykeham Rise, Washington, Connecticut, 12 pages Skz-100 through Skz-111, (including both Skz-105 and Skz-105.1) dated 01/16/18 and 01/15/18. These plans replace all earlier submitted architectural plans, including elevations, footprints, floor plans and elevations, prepared by H&R Design, Inc. and the calculations related to them. "This plan set is not part of the application, but will be introduced and referenced as part of our response to public comments."

Atty. Kelly stated that the site plan has been changed in 2 areas; the grading change behind the main building and emergency gathering areas at the corners of the building which are required under the building code. He said that if, for any reason, the Commission is considering its decision at the closing of the public hearing, the emergency gathering areas is to conform with a newly required building

code. He asked that the Commission consider the emergency gathering areas and the grade changes independently. He discussed the new architectural plans that were submitted for the public and the Commission to view the entire plan to give context to the modification of the site plan that they are seeking. Atty. Kelly stated that he hopes that their effort to address points brought up by the public and the Commission is noticed.

Mr. Solley asked for clarification as to which sheets the new architectural drawing will replace.

Atty. Kelly responded that they have abandoned Exhibit T and Exhibit U. He noted that Exhibit U shows the additional buildings. He asked Ms. Klauer to confirm.

Ms. Klauer stated that the only thing they are changing is the main building.

Atty. Kelly stated that he believes that the plans that they have submitted match the original renderings and the original site plan footprint from the 2013 Settlement Agreement. He said that before the renderings showed the outside of the building and now they are showing the inside and how it fits into the agreed footprint.

Atty. Kelly read his letter addressed to the Washington Zoning Commission dated January 29, 2018 (on file in the Land Use Office) which explains how the applicant has addressed concerns expressed in previous public hearings. He reiterated that the applicant is asking the Commission to confirm a site plan change all the other information that has been submitted for the context of the project.

Mr. Solley introduced Atty. Zizka, Council for the Town of Washington Zoning Commission.

Mr. Szymanski, P.E. stated that at the November Zoning Commission he discussed the grading in the rear of the Main Building and that remains unchanged. He worked with Mr. Yates, Architect, to address any building compliance issues. He was informed that the Main Building would need emergency landings (gathering areas) at the eastern, southern and southwest corner of the building. He indicated their location on the map titled "Site Development Plan," prepared for 101 Wykeham Road, LLC., by Arthur H. Howland, sheet SD.1, revision date 1/22/18. Mr. Szymanski stated that the red paths are areas of egress on the east side and the west side of the building. He noted that these will be constructed of grass pavers. He noted that these areas were added to the lot coverage calculations. 9.39% to 9.40%.

Mr. Solley asked if the other buildings need these egress paths and landings.

Mr. Szymanski responded that they did not because of their size.

Mr. Szymanski revisited what was discussed in November regarding site plan changes. He stated that they have been working on ancillary items for the actual zoning permit process. Mr. Szymanski stated that they took the floor plans that were submitted to the Zoning Commission last week and submitted those to DEEP so they have the Zoning Commission record drawings on file. He provided a copy of the letter addressed to Department of Energy and Environmental Protection, written by S. Myles, dated January 26, 2018 (on file in the Land Use Office). He submitted the calculation flows that will also be submitted with the submission to DEEP.

Mr. Solley stated that the question the Commissioners have is with the given day flow of 10,450 gallons, how do they know that the new plan will conform to that number?

Atty. Kelly responded that they have submitted a full set of architectural plans as well as the DEEP submission as context to this application. He stated that the calculations for the new floor plans come out under the 10,450 gallons a day.

Mr. Szymanski noted that Ms. Hill reminded them that the Health Department reviews commercial kitchens. He stated that Ms. VonHolt, Sanitarian, did review the plans and approved them.

Mr. Szymanski stated that they reanalyzed the building heights with H & R architectural plans. He informed the Commission that all of the outbuildings except for the main building they have been in compliance. He stated that the Main Building is more in compliance than the last plan. He submitted a copy of the Building Height Analysis (Perimeter Average-Revised).

Mr. Szymanski informed the Commissioners that in 2007, when the first application was submitted, Ron Black was the owner of the water system and now Aquarion is the owner. These companies have stated that they would continue to serve the property at 101 Wykeham Rd. He said that most recently when they had submitted an application under Pali Group, they were going to turn the water on for demolition. He offered the Commissioners a copy of all of the correspondence.

Ms. Hill stated that she received an email from Dan Lawrence stating that they had not received an application and he gave her the name of who the applicant should contact.

Mr. Szymanski responded that normally the water company would be contacted further into the process. He offered to email a copy to Zoning of what the application entails. He noted they have not generated this information because they are not at that point in the process. Mr. Szymanski submitted a copy of the latest correspondence.

Mr. Szymanski addressed the slight increase in lot coverage and discussed the landings that are required to meet building code.

There was a brief discussion regarding how the height of the building is affected by the lowering of the grade.

Mr. Szymanski explained how the floor plan and how each room is used to calculate the gallons of water per day.

Mr. Armstrong responded that typically one person uses 80-100 gallons a day in a residential setting. He noted that at full capacity, the Inn would require around 20,000 gallons a day.

Mr. Szymanski stated that these numbers assume 100% occupancy.

Ms. Klauer stated that the calculations are adjusted per use of the room.

Mr. Armstrong feels that there are a lot of different parts to include in the calculations and he is concerned that 10,450 gallons a day is a very low estimate. He noted that he obtained this information from a few different sources.

Mr. Szymanski explained how they are not allowed to use anything but the DEEP Table 4 of the CT Public Health Code to calculate flow.

Mr. Yates, Project Architect from H& R Design stated that their objective was to design the Main Building using the image of Rendering A & B and within the site plan footprint. He displayed the approved 2013 Settlement footprint and the currently proposed footprint and noted any discrepancies.

Atty. Kelly explained that the goal was to design a building from the renderings as best they could while staying within the approved footprint. He noted that there were no renderings of the back of the building. He explained that the plan set submitted to the DEEP in December of 2012 which was before the settlement agreement. With that submission, there was a cover letter stating that the plans were preliminary and simply to illustrate the intended use (use of septic system).

Mr. Yates displayed and explained sheets Skz-100 through Skz-104 which indicated the approved footprint in green and removed areas from the plan included in the first submission in red (only on sheets Skz-102, Skz-103, Skz-104). The ground and first level remain the same. The second, third and fourth level have areas removed and different from the first submission. He then indicated the areas that are the same and different from Renderings A & B (approved at 2013 Settlement Agreement).

Mr. Solley stated that he went through levels 4, 3, and 2 which are the floors level that have guest rooms. He counted the number of suites, some suites have two bedroom units that did not have a common space between them. These bedrooms had a direct connect to the hallway and could be rented separately. He noted that he also observed suites with a common room in between the bedrooms. He asked whether a room that has direct access to a hallway but can interconnect with another bedroom next to it or a common room which then can interconnect to another bedroom, how do you ascertain individual rooms that can be rented? "Or when is the proper time we can discuss that?"

Atty. Kelly responded that any time in the administrative process. He continued to say that the "settlement" talks about units. It specifically doesn't talk about bedrooms because there was a desire to have multi-bedroom units. He said that calculations have been performed for both units and bedrooms and could provide those calculations to the Commission.

Mr. Solley stated that the settlement agreement referred to a total of 68 seats in the restaurant and 45 rooms which had been decrease from a higher number of rooms but he doesn't remember "units" in the agreement.

Atty. Kelly stated that he would defer to Atty. Fisher or Ms. Klauer as he was not present at the settlement discussions. He noted that, for clarity, there are a total of 37 units, including the cottages,

for rental purposes, in this design and there is a total of 58 bedrooms. Atty. Kelly stated that there were 54 units in the settlement agreement.

Ms. Klauer offered to calculate the numbers. She stated that if the two bedroom was locked out, basically making two units instead of a single unit with two bedrooms, there are a total of 11 lockouts, and 37 plus 11 is 48 and they are still 6 below what was agreed on in the settlement.

Mr. Yates displayed the proposed elevation drawing, sheets Skz-105 – Front and Rear Elevations with modifications, and noted the similarities of rendering A & B. Skz-105.1 Front and Rear Elevations without modifications.

Atty Kelly noted the main difference is the location of the windows.

Mr. Yates indicated that elevations show the height of the building which is in compliance with the Zoning Regulations. He then displayed sheet Skz-106 – Side Elevations (East & West).

Mr. Solley noted that East and West need to be switched. Mr. Yates agreed.

Mr. Yates displayed the floor plan and elevations for the Spa Building.

Mr. Solley asked if there would be windows on the ground floor level of the Spa Building.

Mr. Yates stated there would not be. He reviewed the floor plan and elevations for the cottages. He noted that there really haven't been any changes to these buildings and they meet the height requirements for accessory structures.

Mr. Averill pointed out that there are two separate entries in the "Waramaug Cottage," which could be used as two separate units. This puts the count of lockouts at 12, which still is under 54.

Ms. Klauer confirmed this.

Atty. Kelly stated that these cottages have always been treated as accessory structures even though this is not a residential property. He noted that they are fairly modest with two stories above grade and one below and they meet the 26 ft. requirement.

Mr. Werkhoven stated that does not include the cupola.

Mr. Solley stated that the cupola has to be a certain square footage.

Mr. Yates stated that they will meet the requirements.

Mr. Solley state that there are two elevations missing on Skz-110 and is assuming that they would be an exact replica of the "Waramaug Cottage."

Mr. Yates confirmed.

Mr. Yates displayed Skz-111 – Pool House Floor Plans and Elevations. He discussed how the footprint has not changed and it complies with the regulations and the settlement agreement.

Mr. Averill asked what will be done about the issue that none of the submitted drawings have been signed, sealed and scaled.

Mr. Solley stated that he assumes that these will be supplied.

Atty. Kelly confirmed this. He noted that some of the items were submitted in a rush and not signed and sealed.

Mr. Averill stated that he is concerned that when the settlement agreement was made, he was not on the Commission at the time. And, he thinks some of the Commissioners made some assumptions of what they were voting on. He said that these architectural drawings as they are, will be signed, sealed and scaled as they are and submitted with the administrative application.

Atty. Kelly confirmed this.

Mr. Averill asked for confirmation that these architectural drawings are not “just an idea” on what the applicant wants to do, this is it.

Atty. Kelly stated the renderings in the Settlement Agreement, they believe, was just an idea.

Mr. Averill agreed. He stated that this was not specified at the time.

Atty. Kelly said that it was specified as an idea. He added that architectural plans were not included in the Settlement Agreement. He stated that the applicant understands that there are concerns which is why they have submitted them with this modification request.

Mr. Averill stated that he would like it stated for the record that these plans are etched in stone.

Atty. Kelly responded that his point is that “if this Commission could, if it were so inclined, to grant our modification of the site plan. It could condition that approval as these plans being the plans for the Zoning Permit, corrected with the east/west, and signed, sealed by the architect. Yes, the point of everything that we’re bringing out today is to make it easy if the Commission were to entertain a motion to approve, it could make all of these a condition of its approval.”

Atty. Fisher stated that in the Settlement Agreement, the Inn was approved for 54 guest room units in the Main Building units and the three cottages. The spa building was approved as was the pool and pool house. He informed the Commissioners that he was present tonight on behalf of Ms. Klauer, who is the manager of 101 Wykeham Rise, LLC. which is the manager of Wykeham Road, LLC.

Atty. Fisher discussed the Condominium Interest Proposal and acknowledged that “it was not viewed upon with a great deal of favor.” He noted that Section 47-205 CGS is part of the Common Interest Ownership Act. This statute authorizes a condominium form of ownership of property in any town in Connecticut without regard to zoning or subdivision regulations or the building code. He continued

to explain that ownership is not the same as use and they are trying to clarify so that there is no question that this is an inn. He then discussed how originally the plan was to have condominium units in one building and this was advertised as such, and a public offering statement and condominium declaration were drafted. Atty. Fisher said that after several meeting with the Zoning Commission, Ms. Klauer and Atty. Fisher revised the public offering statement and the declaration to make it clear that the condominiums would be used solely as rooms or transient occupancy. He informed the Commissioners that the Building Code defines transient as a term of occupancy that is no more than thirty days. The public offering statement made it clear that the units would have to be put in the rental pool whenever the owners were not using it.

Atty. Fisher stated that if the Commission approves this site plan revisions, a new public offering statement and a declaration would be drafted containing all the restrictions that are contained in the most recent documents. He noted that the condominium will be declared nonresidential. He acknowledges that they understand that the Commission is concerned about multifamily housing and this will be addressed in the new public offering statement and declaration that will make it very clear that these units are nonresidential. These units will not fit within the definition of “dwelling unit” or “residence” in the Washington Zoning Regulations, will not have cooking facilities, all units will be maintained by the Inn’s cleaning services. Atty. Fisher informed the Commission that all units will fully comply with the State Building Code requirements for inns, hotels and motels. They will not be used as dwelling units or residences.

Mr. Solley stated that it could be assumed that they will sell the units but not as a residence and that the purchase of one of these units the buyers is getting potential a 2 bedroom, common room, a couple of bathrooms and what would be considered a very simple arrangement that allows for a refrigerator, microwave, and coffee maker.

There was a brief discussion regarding size of appliances.

Ms. Radosevich asked how the 30-day limit would be enforced.

Atty. Fisher stated that anyone that buys the unit would have to sign the agreement and abide by the rules.

They briefly discussed how the management of the Inn would have to enforce the rules.

Mr. Solley asked how “common area” is defined

Atty. Fisher stated that any part of the property that is not part of the unit. The owner of a unit owns that unit and a fraction of the common areas.

Mr. Averill asked if the unit owners share the profits of the kitchen and bar.

Atty. Fisher stated that he was not sure and that generally speaking he thinks they do.

Atty. Kelly stated that this type of ownership is an investment vehicle in that selling the units provides capital to build the facility and the tradeoff is that in some way the inn is sharing their profits with the unit owners. He explained that this arrangement is similar to a limited partnership.

Mr. Armstrong stated that there was a discussion regarding the ZEO monitoring the amount of days that someone stays in a unit at a previous meeting and now they are saying that it would be owner and it does not seem either method would be effective.

Atty. Fisher responded that he understood Mr. Armstrong's concern and they have tried to build in a lot of restriction in the governing document. He stated that he thinks that the previous conversation regarding the Zoning Enforcement Officer enforcing the occupancy limitation was that the ZEO had the right, not the obligation to oversee this. He said that it would be the responsibility of the management to take care of that. Atty. Fisher stated that Ms. Klauer would make the occupancy records available to the ZEO if he were to check.

Atty. Kelly stated that this type of ownership is attractive because there is a potential to make money. The unit owners have a financial incentive to want to rent it out every 30 days.

Mr. Armstrong stated that he is not seeing the financial benefit of not having less of a turnover and having someone occupy the unit for 60 days.

Atty. Kelly stated that he thinks Mr. Armstrong is referring to non-unit owners. He explained that he knows that any of the inns in Washington that have had a customer that has stayed past their allotted time, it is the owner of the inn that is eager to get that room/unit back.

Ms. Lodsin, if a non-owner occupant wanted to rent it out for 120 days that they could.

Atty. Kelly stated that yes the renter is subject to the rules.

8:00 pm - Mr. Solley called for a 10-minute break.

8:10 pm – Meeting reconvenes.

Mr. Reich asked if it would simplify the process to limit the questions and discussion to whether or not the modifications comply with the zoning regulations.

Atty. Fisher stated that the 2013 Settlement Agreement and Special Permit complied with all the laws and regulations. All parties in the agreement acknowledged that this was the case. He explained that Ms. Hill wrote a letter, sometime this year, stating that it is the job of the Commission to see if what is being proposed complies with or is consistent with the settlement agreement. He noted that everything that was part of this presentation tonight complies with the Town of Washington Zoning Regulations.

Mr. Reich stated that he is concerned about the arguments regarding Nimbyism.

Atty. Fisher stated that there are several project in Washington that has had opposition. He stated that when this was approved in 2013 the things that were looked at were traffic, size and scale of the buildings, noise, light pollution, etc. He reiterated that the Commission approved this project as a Special Permit despite the fact that there were some neighbors opposed to it. Atty. Fisher said that what is being proposed now is almost exactly the same as what was approved before. The changes that are being proposed for the modification are miniscule.

Mr. Reich stated that the topic such as water usage was addressed in 2013 Atty.

Atty. Fisher stated that it was a different owner in 2013 and they have remained in contact with the previous and current owners of the water company and they have acknowledged that they have the ability to handle the demand that is/was anticipated for the use of this property.

Mr. Szymanski stated that they are proposing zero changes to the septic and water usage on the property.

Ms. Solomon read highlights from the letter addressed to the Washington Zoning Commission, from Atty. McTaggart, regarding 101 Wykeham Road, LLC Special Permit Application, dated January 28, 2018, 10 pages (on file in the Land Use Office). In this letter, Atty. McTaggart states that “the Commission should deny this confusing application which has changed again with all new plans at the eleventh hour without adequate time to review.” She wrote why it is important to have supporting documents within the time limit specified so there is adequate time for all parties to review this information. Atty. McTaggart wrote that the applicant has provided architectural drawings that “at first glance, these comparisons may appear to minimize the changes from the 2013 plans, on close review, they actually continue to document the substantial expansion of this nonconforming building and use from that approved in 2013 by Settlement Agreement and related Special Permit.” Ms. Solomon continued to read from Atty. McTaggart's letter which states that the latest 2018 site plans (SD.1) show a significant increase in floor areas and volume for the Main Building, an increase in height in all buildings (other than the pump house), a larger dining area and bar and increased bedroom count. Atty. McTaggart wrote how these plans do not comply with Sections 17.4.A regarding the enlargement of a nonconforming structure and Section 17.3 regarding nonconforming Uses of Lots. Atty. McTaggart provide case law supporting her argument. She noted that there has been a 63% increase in floor area in the Main Building and a new story was added to each of the cottages over what was approved in the 2013 Settlement Agreement. Atty. McTaggart continued to explain the increase of size and use and concluded that the Zoning Commission should deny this request to modify the special permit for 101 Wykeham Road, LLC based on these findings.

Mr. Solley read several letters into the record. The first letter read was from Ms. Miner, Executive Director of the River Alliance expressing concern regarding water supply and management and requesting assurances that all steps will be taken through the proper channels to avoid strain or damage on the already fragile water system in the Wykeham neighborhood. Ms. Campelli of Old North Road submitted a letter expressing concern about the Aquarion water line that is already stressed and would have to share with 101 Wykeham Road if this modification were to be approved. Mr. Gendron of Wykeham Road expressed concerned about the Inn tapping into the already taxed water line as well. Mr. & Mrs. Minor of Old North Road submitted a letter expressing concern for the water system that provides their neighborhood and possibly the Inn at 101 Wykeham Rd.

Mr. Solley stated that Ms. Blumenreich submitted a letter. Mr. Blumenreich was present and provided a summary of the letter. He noted that he and his wife reside at 94 Wykeham Road and they are not opposed to an inn on this property, just this inn. Ms. Blumenreich considers the owners of the property to be poor neighbors and asking the Commission to protect the surrounding owners from facilities like this.

Mr. Averill stated that during the break a resident of the Town asked him about the fact that there is no road going to the pool house.

Mr. Szymanski stated that nothing has changed from when it was approved in 2013 and it has been reviewed and approved by the Fire Marshal.

Mr. Solley opened the floor for public comment. He asked that the comments be directed toward what is requested on the current application for approval of the two noted modifications to the site plan. He noted that the owners have a right to build an Inn as was decided in the 2013 Settlement Agreement.

Atty. Zizka requested to ask questions. He asked Counsel for 101 Wykeham Road, LLC to clarify whether the submitted "Exhibit T" and "Exhibit U" that they had previously asked the Commission to approve as part of this Special Permit application process, and, at this time, have withdrawn "Exhibit T" and left in "Exhibit U," if they are asking the Commission to approve Exhibit U.

Atty. Kelly stated that he believes that they are asking for the Commission to approve "Exhibit U" only. He asked Ms. Klauer to look at the exhibit and confirm. Atty. Kelly stated that, just to clarify, "Exhibit U" are renderings of the very same plans that were most recently submitted.

Atty. Zizka asked if the applicant is asking the Commission to approve the new architectural plans.

Atty. Kelly responded that he does not believe that they are asking the Commission to approve the new architectural plans as part of this modification. "As to "Exhibit U," because they were never part of the settlement agreement...committing to those are our submission drawings. And so those are...offering those as a condition of approval, that those are the plan sets that we seek to build." He continued to say that he did not believe that the renderings of "Exhibit U" were part of the Settlement Agreement but are happy to ask the Commission to approve them if they're so inclined.

Atty. Zizka stated that his basic question is, "Is it your position that the Commission is or is not entitled to look at architectural plans as part of the Special Permit Process?"

Atty. Kelly confirmed that they Commission are entitled to look at these architectural plans and "Exhibit U" as part of what they are seeking approval for, and to the extent that "Exhibit U" adds something else to it, for clarification, yes, we are asking the Commission to approve those as well.

Atty. Zizka responded that it seems to him as though their application has gone beyond the two things the applicant mentioned at the beginning of the discussion tonight, which is grading behind the Main Building and the emergency concrete pads. He continued to say that it seems to him that

they are also including the architectural plans in this request. Atty. Zizka stated that the Commission needs to be very clear what the applicant is asking to be approved.

Atty. Kelly stated that their request has not changed. They have submitted these plans because the Commission has asked the applicant to give the remainder of our plans as context to what they are considering. They are offering the plans, so if the Commission wishes to condition its decision based on these plans, they have no objection to that.

Atty. Zizka asked that if the applicant considers the new architectural plans to be instrumental to having the Commission make its decision, how do they respond to Atty. McTaggart's claim that the Commission and the public lacked sufficient time to review those plans.

Atty. Kelly responded that the plans for these buildings have not changed at all throughout the entirety of this public hearing. He feels that they have had more than adequate time.

Atty. Zizka stated that what he was saying is that these plans that the applicant has presented are quite a set of plans and they are asking the public to accept that they are the same as the Settlement Approval. He continued to say that the plans may be the same and he is not saying they are or they aren't, but how does the applicant respond to Atty. McTaggart's position that the public has not had sufficient time to vet those new plans and make that decision for themselves.

Atty. Kelly responded that they believe the public has had sufficient time. The time that is required is not to vet the plans themselves, but to give context to the modification that they are seeking.

Atty. Zizka stated that the problem he is struggling with is that if it is for context, then the Commission doesn't need to approve them. He continued that if the Commission needs to approve them, then it is more than for context.

Atty. Kelly stated that Atty. Zizka was correct and he would say that the Commission does not need to approve them. They are being submitted as requested to provide context for what they are seeking approval for.

Atty. Zizka asked if the applicant's position is now that the architectural plans are not before the Commission for the purpose of making a decision on those architectural plans.

Atty. Kelly confirmed this.

Atty. Zizka asked for confirmation that that includes "Exhibit U."

Atty. Kelly confirmed this.

Mr. Reich asked for clarification on the two exhibits they are considering.

Mr. Solley read from the submitted application. "The application for modification is hereby amended by limiting the modification sought to the following two items: To replace renderings A & B dated

1/7/13 with Exhibit T (which has now been replaced with a different exhibit) and Exhibit U which remains.”

The Commissioners looked at both Exhibits T & U. Atty. Kelly explained that they are replacing the architectural drawings for the renderings.

Atty. Zizka stated, “Again that’s different. When you are saying that you’re asking that they be substituted for something, you’re asking the Commission to approve.”

Atty. Kelly confirmed that this was correct. They are asking the Commission to approve these plans sheet as a replacement for the renderings.

Atty. Zizka asked if the applicant now wants the Commission to approve Skz-105.

Atty. Kelly confirmed this and stated that for clarity purposes, Skz-105 is the only building that was dealt with in the Settlement. He continued to explain that “Exhibit U” is not part of the Settlement Agreement at all. Atty. Kelly stated that those represent buildings designed for the footprints in the approved site plan.

Atty. Zizka stated that he did not care what existed in the past and that he only cares about what specifically the applicant is asking the Commission to approve. He asked if they are requested approval for Skz-105?

Atty. Kelly confirmed this.

Atty. Zizka asked if they are asking the Commission to approve “Exhibit T & U”?

Atty. Kelly responded that they are not seeking approval for these exhibits.

Atty. Kelly stated that they were asked to submit the updated materials by the 16th of January. He noted that they were a week late in doing that. Atty. Kelly explained that he was not present when this was discussed with the Commission. He said that he had just received communication that it was a request and Atty. Fisher responded they would try to provide it by that date.

Mr. Solley stated that he wanted to go back to the fact that in replacing renderings A & B with U and Skz-105.

Atty. Kelly clarified that they are not asking for approval of “Exhibit U” and are asking for approval of Skz-105.1 – the Elevations that show the grading, if approved.

Ms. Giampetro of 96 Wykeham Road read her statement that expressed that she supports an inn on this property but not the inn that is being presented to the Commission at this time. She stated that it is larger than the approved inn and will increase light pollution with headlights from more cars. There will be increased noise with more traffic from delivery trucks, guests, visitors and employee cars. She stated that under the Special Permit requirements the Commission is required to address extra light and extra noise. She stated that she is also concerned with the use of water on the

overtaxed water system and referred to the fire that occurred on the property and the difficulty finding a water source that would provide enough water to put the fire out. She expressed concern with the fact that the fire site has not been cleaned up and the chemicals are leaking into the nearby Kirby Brook. She requested that the Commission does not grant approval for the changes to the existing special permit.

Mr. Owens, Architect and resident of the Town of Washington, stated that he reviewed the most recent submittal. He displayed Illustration C that included a Procon Section Profile, Procon Profile on Rendering A, Procon Profile Compared to Wykeham 01.15.2018 Proposed Design and Wykeham 01.15.2018 Proposed Design Ease End Anomaly. Mr. Owens discussed the observations he made while reviewing the most recent submission and explained that his objectives for this review are to: "1. Establish probable height of the building depicted in Settlement Agreement Renderings A & B, 2. Illustrate the relationship between the building depicted in Settlement Agreement Renderings A & B and the Wykeham 1/15/2018 Proposed Design and 3. Assess compliance of the Wykeham 1/15/2018 Proposed Design with the building height requirements of the Zoning Regulations. At the end of his presentation he submitted a copy of his report dated 1/29/18 (on file in the Land Use Office).

Mr. Szymanski asked if Mr. Owens submitted the spot elevations along the perimeter he used to calculate the average pre-existing so that he could review them.

Mr. Owens stated that he did and that this was attached to the last comments that he made and he thought the applicant's team had a package.

Mr. Szymanski asked for confirmation that that is what Mr. Owen's analysis was based on.

Mr. Owens stated that it was and that he had not seen Mr. Szymanski's analysis but is intrigued to see it and find how they did their calculations.

Mr. Szymanski asked if Mr. Owens went outside of the retaining walls because the retaining walls are part of the structure.

Mr. Owens stated that as he reads that it would not help the applicant and it would actually work against this request. He noted it would lower the average finished grade.

Mr. Szymanski stated that he would review it.

Mr. Szymanski referred to the cross sections and asked Mr. Owens to show him, based on Renderings A & B which were part of the Settlement Agreement, how he determined the rear of those cross sections.

Mr. Owens stated that they are not based on those renderings per say. He explained that they are based on the elevations that were part of the Procon design package.

Mr. Szymanski asked for confirmation that those elevations were not submitted as part of the record for the Settlement Agreement.

Mr. Owens confirmed this. He explained that they were included in the design package that he saw. He noted that these were sent to him by Ms. Klauer but could not comment on what the purpose of that was in this setting.

Ms. Wallace of 27 Wykeham Road reiterated some of the concerns that the other neighbors have expressed and how it impacts her as a resident. She stated she chose this area specifically for its nature and rural character and since then the road has been widened and cars speed and more traffic would make it even more dangerous. She expressed that she worries that this is setting a precedent for the Town.

Ms. Kerrs of 4 Bell Hill Rd stated that she noticed that there are 100 parking places and asked if that includes staff parking and large event parking. She questioned where all the parking would be located. She stated that the Inn seems to be trying to attracting more than just an inn with a small dining room.

Mr. Solley informed her that the Settlement Agreement has stated there are 100 parking spaces approved for Inn guests and restaurant patrons. He said that this is not something that is part of tonight's discussion.

Mr. Barnett, 33 Sabbaday Lane, stated that Mr. Owens expressed and demonstrated that the Main Building volume is larger than the approved Main Building volume of the 2013 Settlement Agreement. He noted that the height has not been reduced from the earlier H & R Design and although one floor level has been eliminated, some of the floor levels have been raised. He discussed the change in heights of the different levels. He concluded that the Zoning Commission has all the information needed to deny this modification without further consideration.

Mr. Parker of Bell Hill Rd read a letter from Ms. Barnett stating her concerns and opposition of the current modification approval request who was unable to attend tonight's meeting (on file in the Land Use Office).

A member of the public asked if there are 100 approved parking spaces for this facility which requires more than 100 spaces if we are encouraging the guests to park their cars on Wykeham and Bell Hill Road. He stated that he does not see how this can't be part of the issue that the Zoning Commission needs to consider.

Mr. Solley stated that the applicant may address that question either tonight or what may be a continuance of this hearing.

Mr. Phillips of Davenport Road, Roxbury, stated that the same concerns keep coming up and they are valid and that it seems to him that the burden of proof is the responsibility of the Zoning Commission to enforce and Wykeham Rise to adhere to. He feels that it seems that the discussions cannot get to that point. He believes "just in listening to all of these meetings, that it is NIMBY...is prevailing. It's the neighbors would really prefer that this property be left a park or just wild and they don't want anything there...That isn't fair to the property owner and is a slippery slope as it relates to property ownership in Washington." He noted that he was confused and asked if the board could provide direction as to the terminology tonight of approved and accept with Atty. Kelly. Mr. Phillips stated that it seemed to him that the applicant gave plans to the Commission and offering them as a substitute for the drawings without any details for drawings that actually had elevations and it was at the Board's request, "so, accept and approve to me doesn't seem to me to be really what he was doing. He was saying please accept these as substitutes and you kept saying, do you want the board to approve them." He continued to say that "I would have had more appreciation for Atty. McTaggart's letter had she been here to hear the applicant but the attorney is on vacation so I guess she wouldn't have had time to digest any of the new info." He stated that he understood her argument for wanting the Board to continue this hearing but he feels she is dragging the process out. He feels that Atty. McTaggart is not evolving her objections. He stated that the use of this inn or as multifamily housing is not the highest and best use for the property. "Selling units as an investment, I think is an incredible way to raise the money for this project...with returns for investors. But as far as enforcing 30-day policies...I wonder how often the Mayflower has to enforce this or if they find it's an issue at \$600 a night."

Mr. Averill asked the speaker to repeat his name and confirmed that he was a resident of Roxbury.

Mr. Phillips confirmed.

Mr. Averill asked what his interest was in this public hearing.

Mr. Phillips stated that he was the Realtor for the units and stated that this benefit has largely gone away but he wanted to express that he thought the way this was being handled by the Town was not the best way and felt it was a charade.

Mr. Averill thanked him for this comment.

There was a brief exchange.

Mr. Solley cut off the conversation and suggested moving on.

Mr. White from Parsonage Lane stated that there is an agreement and now the applicant wants to change is because of different financing. He noted that this is putting strain on the water line in the neighborhood. He feels that the only remedy, in the long run is litigation, again. He stated that the Commissioners should only accept stamped and signed plans because this whole idea has changed so many times and that they should require absolute legally acceptable support documentation for this request before making a decision. He feels that this is an entirely new plan and that new noise, traffic and water studies should be performed.

Ms. Purnell, of Cornwall, Wykeham Road property owner, stated that there is a 2013 Settlement Agreement. The decision was not reached in a public forum for the Settlement agreement. She noted that the applicant did not submit to D.E.E.P. until a week before these discussions. Ms. Purnell reiterated the previous comments of others that the applicant has approval for an inn and that she can work to obtain approvals at the State level and move forward with that. She feels that the ambivalence of the public seems to come from the fact that the applicant continues to come back with larger and larger iterations. She discussed a few of her observation and stated that she prepared written comments and submitted them for the record (on file in the Land Use Office).

Mr. Solley requested that in the interest of time the applicant should consider a continuance. The Commission discussed available dates for a Special Meeting.

There was a brief discussion regarding the deadlines for decisions.

MOTION: To continue the public hearing for 101 Wykeham Road, LLC, 101 Wykeham Road, for a Special Permit modification for an Inn, at a Special Meeting scheduled for Tuesday, February 13, 2018 at 6:30 in the Upper Level Meeting Room in Bryan Memorial Town Hall, by Mr. Solley, seconded by Mr. Reich, passed 4-1 vote. Mr. Werkhoven voted against continuing the public hearing on this date.

Adjournment

MOTION: To adjourn the meeting at 10:00 p.m., by Mr. Averill, seconded by Mr. Reich, passed by 5-0 vote.

Submitted subject to approval:

By: _____

Shelley White, Land Use Clerk

February 5, 2018

*All supporting documents mentioned are on file in the Land Use Office

**A recording of the meeting is available to the public in the Land Use Office.