

October 28, 2008

Public Hearing

7:30 p.m. Main Hall, Bryan Memorial Town Hall

MEMBERS PRESENT: Mr. Abella, Mr. Averill, Mr. Fitzherbert, Mrs. Friedman, Mr. Owen

ALTERNATES PRESENT: Mr. Wyant

ALTERNATES ABSENT: Mr. DuBois, Mr. Shapiro

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr./Mrs. Federer, Mr. Goodin, Atty. Hill, Dr. Ewing, Mrs. Hardee, Mrs. Addicks, Mr. Adams, Mrs. Solomon, Mr. Doherty, Mr. Carey, Mr. Charles, Mrs. Wildman, Atty. Fisher, Mr. Szymanski, Mr./Mrs. Rickart, Mr. Klauer, Mr. Solley, Ms. Giampietro, Mr. Pappas, Mrs. Silk, Mr. Mitchell, Mrs. Greene, Mr. Talbot, Residents, Press

Wykeham Rise, LLC./101 Wykeham Road/Special Permit: Sections 13.9 and 4.4.1/Inn/Continuation

Mr. Owen reconvened the public hearing at 7:33 p.m. and seated Members Abella, Averill, Fitzherbert, Friedman, and Owen. He stated the purpose of the final session of the hearing was to give the applicant the opportunity to make a final statement, allow the commissioners to ask questions, and receive final submissions to the file. Any other matters, he said, would be reviewed on a case by case basis. He then read the list of all of the documents that had been submitted since the 10/27/08 session of the hearing.

Atty. Hill asked if the coverage calculations by Mr. Smith were included in the file and he submitted a copy to make sure they were.

Mr. Szymanski submitted his 10/28/08 letter written in response to the points raised by Mr. Goodin in his 10/26/08 letter. 1) He said Mr. Smith concurred with the applicant's lot coverage calculations, except for the addition of the transfer pads, bringing the total figure to 9.8%. 2) The plans had been revised to move the sidewalks 4 ft. from the driveways and their width had been reduced from 5 ft. to 3 ft. On the downhill side of the driveways the curb would separate the driveway from the sidewalk. 3) Regarding the definition of lot coverage, Mr. Szymanski stated that Mr. Goodin had misquoted the regulation and he argued that porous walkways were more pervious than gravel or stones set in grass.

Mrs. Friedman noted the Commission had previously expressed its concern about the maintenance of pervious materials. Mr. Szymanski remembered that concern had been raised at the June 2008 public hearing and he submitted data from the University of New Hampshire Stormwater Center entitled, "About Porous Asphalt." He said porous asphalt was self cleaning and would last without maintenance.

Regarding access to the pump house, 4) Mr. Szymanski said that maintenance is required only a couple of times per year and that electrical generators would be located between the main building and the access drive. 5) Mr. Szymanski noted there had been concerns raised that the size of the approved buildings could not be enforced because no dimensions had been provided. He submitted plans with specific dimensions for all structures, including terraces. 6) Mr. Szymanski said the location of the lower driveway was set into the hillside to make it less noticeable and to position it half way between the wetlands and Kirby Brook.

Mr. Szymanski noted that the landscape architect had also responded to points raised by Mr. Goodin and submitted a set of revised landscaping plans. 1) He provided minimum sizes for all proposed plant material. 2) He clarified which trees would be removed. 3) He submitted the 8/28/08 letter from Mr. Branson, forester, re: removal of dying trees and shrubs. 4) He noted the wooded areas to remain as buffers were generally at least 30 ft. wide and as much as 50 ft. wide. 5) A note was added to the plans that the proposed landscaping would be staked in the field so that the ZEO and/or a neighbor could judge whether it would be sufficient, and if not, additional plantings would be added. He said the goal was to provide a solid conifer buffer.

Mr. Szymanski stated his letter covered Mr. Goodin's points re: the proposed septic system and water system design in great detail. He noted a 50,000 gal. underground water tank would be installed and that it would be filled during the night when there was less water demand. Mr. Szymanski noted the Commission had been concerned that Mr. Etherington, Fire Marshal, had referenced two swimming pools in his letter of approval. Mr. Ajello said he had asked Mr. Etherington if it mattered whether a second pool or a cistern was provided for fire protection and his response had been that it did not matter. He also said that Mr. Etherington had not been aware that a sidewalk was proposed. Mr. Szymanski stated a 20,000 gallon cistern and a dry hydrant had been added to the plans.

Other points briefly covered by Mr. Szymanski included the following. 1) He discussed building height and provided a table for review. Mr. Goodin advised the Commission to review Section 11.7.1 and said the proposed silo should be included in the average height. 2) He said his letter also addressed the access to the upper cottages, which the Fire Marshal and emergency services had signed off on. 3) Mr. Szymanski attached Land Tech's 9/25/08 letter, which in part, addressed rain garden methodology. Land Tech found the rain garden design was acceptable and that the soils found on site were capable of the necessary infiltration. 4) Mr. Szymanski stated that although Mr. Goodin complained that he had not followed the guidelines in the DEP stormwater manual, the guidelines for design that he did use, the Ideal method, would result in greater than the 80% renovation that would be accomplished per DEP guidelines. 5) He stated the proposed stormwater management system had the potential to reduce thermal impacts on Kirby Brook. 6) He noted the recommendations that Mr. Goodin had made concerning lawn maintenance had now been incorporated in the plans with the exception the applicant did not agree that no phosphorous fertilizers would be used. Instead he stated that soil testing would be required prior to fertilization so the area would not be over fertilized.

Mr. Szymanski spoke at length about the overall character, scope, and size of the main structure. He said Mr. Clark, adjoining property owner, supported the application. He stated the overlays comparing the building to Bryan Plaza were misleading because 1) the proposed building would be built into the hillside and 2) the overlays had not included landscaping, which would "break up" the building. He showed on OSD.1 how the applicant had attempted to move the building back into the vegetation to minimize its impacts and so it would be less visible from the road than the existing school buildings. He noted, too, that the proposed landscaping had been supplemented so that more screening would be provided.

The development envelopes and building sizes of the Mayflower Inn and the proposed inn were briefly compared.

Mr. Mitchell responded to the traffic concerns raised by Mr. Goodin. He stated the driveway would safely accommodate the expected traffic volumes and the worst case scenario of 30 vehicles entering and 30 exiting during the peak hour. He also said that Mr. Goodin's opinion that the inn would generate a 322% increase in traffic over the Swiss Hospitality Inst. was incorrect. Mr. Mitchell said the proposed sight lines and stopping distances met the standard design guidelines and he could not respond to other points raised as they were unclear as Mr. Goodin had not used standard CT DOT terminology. Mr. Mitchell stated that the police data provided to Mr. Goodin was inadequate data upon which to base his conclusions.

Mrs. Friedman asked Mr. Mitchell if he had considered the ability to turn into the entrance driveway from Wykeham Road. She said it was extremely difficult to stay in your own lane and avoid hitting the pillars. Mr. Szymanski said he had showed it would work for passenger vehicles. Mrs. Friedman asked if it would handle SUV's. Mr. Szymanski said he had shown it would handle vehicles up to 7 feet wide.

Mr. Mitchell objected to Mr. Goodin's claim that the "quality of service" on Wykeham Road would be negatively impacted. He responded that per DOT guidelines for a rural road with less than 1500 average trips per day, the state standards of 20 ft. minimum travel width, 30 mph speed limit, 200 ft. stopping distance, 14% maximum grade, and 4 ft. offset from the travelway to any barrier would continue to be met more often than not. He noted that Bell Hill Road is much wider and so is of less concern. Mr. Mitchell said he did not think the bulk of the traffic would use Bell Hill Road as Mr. Rickart suggested, but said even if it did, its intersection with Wykeham Road would remain at the level A service rating. He did not think residents would perceive any increase in the volume of traffic as a result of the inn.

Mr. Szymanski said he had provided turning templates for passenger cars to show they could maneuver the turns and parking spaces along the 16 ft. wide driveways. He noted he had previously submitted his 10/27/08 letter to the Commission comparing driveway widths for other uses in Washington and noting whether they function adequately. He said the approval of the Mayflower spa driveway in 2003 was comparable to the proposed driveway, noted that the Fire Dept. found the current Mayflower access to be OK, and said the Mayflower driveways were as narrow as 12 to 14 feet wide. Mrs. Friedman noted the Commission had not approved the narrow driveways; they had been existing. Mr. Szymanski agreed, but said they function successfully. He also compared the proposed driveway to the GW Tavern, which is as narrow as 11 feet, but which, he said, operates without incident.

Mr. Klauer stated that Mr. Goodin had not provided comparable analysis so his conclusion that the proposed parking is inadequate was only an opinion. He submitted industry data, which, he said, proved sufficient parking was proposed for the normal course of business and he compared the proposed parking with the existing parking at the Mayflower Inn. Mrs. Friedman noted the Mayflower function room is never open to the public and that the Health Dept. computed the number of seats in the proposed restaurant at 92. She disagreed with Mr. Klauer's count of the parking spaces at the Mayflower, saying she had counted them and had come with a different number. The estimated number of employees and level of service rating based on the ratio of the number of employees per room was discussed.

Mr. Szymanski stated there might be a rare event when more than the 103 proposed parking spaces would be needed. He submitted the map, "Overflow Parking Plan," by Arthur H. Howland & Associates, dated 10/16/08 that showed 55 additional parking spaces in the field in the eastern part of the property, the area that was formerly a driveway and the main school building. He said this would increase the parking total to 158 spaces and that no parking along Wykeham Road would then be necessary. He agreed that under the Regulations, the

Commission has the right to require additional spaces, but said the proposed overflow spaces provided more than the 146 total spaces that would be required for the maximum use of the business.

Mr. Klauer further reviewed the parking requirements, stating the average annual occupancy for a N. England inn is 62%; 70% during the high season. Mrs. Friedman asked if this included the gym, which would be open to the public. Mr. Klauer said his maximum parking figures were for evening use. He briefly described how most employees are on site from 12:00 to 5:00 after the guests check out. Mrs. Friedman noted that no parking spaces had been allotted for the function room. Mr. Klauer said it would not be used during the normal business day, but even if it was, there would be 28 “shared” parking spaces available.

Mr. Szymanski stated the 30 mph limit recommended by Mr. Goodin would encourage speeding and said 15 mph design standards would result in less impact on the neighborhood and to the environment. He said the driveway was designed for 15 mph.

Mr. Szymanski recommended that an as-built for the entire site including driveways be required. He said the applicant would certify that the construction was completed as designed.

Atty. Fisher stated two of the most important issues were engineering and traffic and he thought it necessary to respond to Atty. Hill and Atty. McTaggart. 1) He stated the previous wording of Section 13.9.2 had been logically and consistently interpreted to allow inns on either town or state roads; that the wording did not lend itself to the interpretation that inns were allowed only on town roads. 2) Regarding CGS 8-2(h), he stated that the interpretation being urged by Atty. Hill and Atty. McTaggart differed from the plain reading of this section. He urged the Commission to follow Atty. Zizka’s advice not to deny the application on this point alone. 3) He disagreed with Atty. McTaggart that the use as an inn with lot coverage under 10% differs from the intensity of the previous uses. 4) Atty. Fisher stated the Plan of Conservation and Development was advisory only and is not binding on the Zoning Commission. He said that although Section 13.1.B specifically states the Special Permit use must meet the objectives of the Plan, he thought those objectives were over simplified and needed to be reworded and revised. He thought it was clear that since inns are only allowed in the R-1 zone, if designed properly, they should be allowed within the framework of the Plan of Development. 5) He disagreed with those who think the proposed inn does not fit in with the definition of inn. He said the only comparable inn was the Mayflower, which the Zoning Commission had allowed to expand. He noted the definition of inn read by Mr. Owen had a broad interpretation beyond just an overnight facility and said amenities and entertainment for those who lodge there were included. He said the Commission could not have a different set of rules for what was proposed here. 6) He briefly gave the history of the restriction on the southern part of the property, said he did not believe Mrs. Federer had the right to enforce that restriction, and said the matter would be settled in court. 7) Atty. Fisher noted that he had found Mr. Hunter’s previous testimony concerning how the appraisals of adjoining properties would or would not be impacted by the inn confusing, so he had asked him to submit a second letter dated 10/28/08. He said it would be difficult to overcome the perception that the new use would have a negative impact on the surrounding properties, but pointed out that Mr. Hunter said there was no quantifiable objective data upon which to base that conclusion. 8) Atty. Fisher said the Commission would have to make a determination that the proposed use would not cause pollution, nuisances, etc. and said he was not aware of any information that this project would cause an unrealistic impairment of the public trust. 9) He said that Mr. Mitchell, traffic consultant, had set the record straight concerning traffic and all requirements had been satisfied. He said the driveway had existed for over 100 years, there has always been traffic coping with the Wykeham Road conditions, and Mr. Goodin was not a professional traffic consultant, so more confidence should be placed with Mr. Mitchell. 10) He stated that the question about whether lot coverage had been correctly computed had been satisfied by Mr. Smith who had calculated it to be under 10%. 11) Atty. Fisher asked the question, what would become of the property

if it was not approved as an inn. He answered his question by saying it could be left to deteriorate, it could be subdivided into four residential lots, which he did not think was realistic, or it could be used for an institutional use as endorsed by the Plan of Conservation and Development. He also noted that affordable housing would be an attractive alternative for any developer because the existing septic system could handle 69 bedrooms and local standards could be ignored. 12) Atty. Fisher said Mr. Klauer proposes an environmentally sensitive, quiet, upscale inn that will be a credit to the community and he asked the Commission to approve it.

Mr. Owen gave the commissioners an opportunity to ask questions.

Mrs. Friedman noted Mr. Klauer's 10/27 letter about his restriction for the use of the pool by children and asked him to explain it. Mr. Klauer said that while he thought there would be adequate buffering between the pool and adjoining properties to muffle the noise and that he proposed to make his inn distinct from the Mayflower by making it family oriented, he proposed to keep noise down by limiting the use of the pool by children to only three weeks from the Monday before Memorial Day through the last week in Sept.

Mrs. Friedman noted that Mr. Klauer said the function room would be restricted to use by guests only during the high season. Mr. Klauer said this was so and that it would be up to the Commission to determine whether any other restrictions were needed.

Mrs. Friedman noted that Mr. Federer had asked whether there would be a bar and grill at the pool. Mr. Klauer said this was covered in his 10/27 letter. He stated the Federer's house would be over 500 feet from the pool and that cottages would be situated between them to deflect the noise. He said he believed that the distance coupled with the proposed buffer was adequate, but would leave it up to the Commission to decide.

There was further discussion between Mrs. Friedman and Mr. Klauer regarding his proposal to limit the use of the pool by children. Mrs. Friedman thought the proposal was confusing; were the children allowed at the inn but not in the pool or would they not be allowed at the inn for all but the three weeks; and she did not see how this could be enforced.

Mr. Owen asked if the conditions suggested by the applicant were part of his application or whether they were possible conditions he would agree to abide by. Mr. Klauer said he had offered them as conditions and if the Zoning Commission thought they were necessary, he would abide by them. Atty. Fisher said that the ZEO would not want to enforce pool restrictions and that the inn would have public policies and rules that would be noticed at the pool.

Mrs. Friedman noted that any conditions of approval would apply to all future owners.

Atty. Hill stated that the applicant had submitted 16 pieces of new factual information and the sixth redesign of the project. He said with the redesign it did not now conform with the Inland Wetlands application and so should be withdrawn. He said it was not fair that the applicant had submitted the dimensions for the floor plans at the last minute so that it could not be confirmed that lot coverage had been correctly computed. He said that time and time again those against the application had demonstrated there were errors in the plans. He said that all of the implications involved in moving the sidewalks had not been considered.

Mr. Owen briefly referred to Section 13.9 and the 500 ft. minimum frontage requirement, explaining that one reason the frontage

requirement may have been increased along state roads was to prevent driveways from being dangerously close together. He noted that Atty. Zizka had hypothetically agreed. He also noted that Mrs. Hill had researched some of the history of how inns had been addressed in the Regulations and had found that first 500 ft. of frontage had been required and later “on a state highway.” had been added. He said this supported this interpretation.

Mr. Owen stated that the Special Permit regulations give the Zoning Commission broad authority under Section 13.1.B. He briefly addressed several of the criteria in this section. 1) He noted impact on property values was not an exact science and that proximity to the Mayflower Inn had been used positively in the past. 2) He noted that the claim made at the hearing that the proposed inn would be the second largest building in Washington was not accurate. He said the combined Big Top/auditorium building at Rumsey Hall School has a footprint of 38,000 sq. ft. and the Rumsey rink 34,000 sq. ft. compared with 20,000 for the proposed main building for the inn. He noted this was not the only factor the Commission should take into account.

Mrs. Solomon submitted a letter dated 10/28/08 from Mrs. Cooper who could not attend the hearing. She noted that at the previous session of the hearing Atty. Fisher had stated there would be an emergency access available except during mud season and she thought this violated Section 13.1.B.3. Mrs. Solomon said she remained concerned about traffic issues and was critical of Mr. Mitchell’s report citing his use of technical terms instead of common sense and noting that the map he submitted showed the property in the wrong location. She disagreed with his assertion that an increase to 2 cars per minute during the peak hour was not significant and she questioned what he meant when discussing the difficulty for cars making a right turn into the property, he said that it was “not all that horrible.”

Mrs. Silk said she disagreed with other realtors who wrote in support of the application. She did not think being located near an inn was a selling point because people usually do not want to live close to a commercial facility. She noted that once approved, the Town could never go back and it was truly unknown what the impact of the new inn on the Town would be. She thought it was an inappropriate use for this section of Town and for Wykeham Road, and she thought the noise that would be generated should not be underestimated.

Mr. Rogness pointed out that at a previous session of the hearing it had been noted that the ZEO would not be able to enforce many of the conditions offered by Mr. Klauer. He was “blown away” that this responsibility to report violations would fall on the neighbors and said it would impact the value of his property across the street.

Mr. Szymanski said that opponents had already verified lot coverage with Mr. Smith’s review and report.

Mr. Klauer submitted revised drawings from Moisan Architects showing details and all dimensions and the boards used throughout the hearing. He read a closing statement regarding how the application meets the Regulations and why it is the best use for the property. His points included 1) it is a sensitive proposal, 2) the existing buildings are ugly and out of character, 3) indisputable evidence had been submitted that the inn would generate less traffic than the previous school, 4) the property could again be used as a school, which would be more noisy than an inn, 5) the main building will be less visible from the road than are the existing buildings, 6) extensive buffering would be added to protect the community, 7) Washington realtors promote the Mayflower Inn to help sell properties, 8) there is no evidence that the proposed inn would have a negative impact on the surrounding property values, 9) the property could be used for another school, 10) the proposed inn is an improvement over what now exists on site, and 11) approximately 250 letters of support had been submitted.

MOTION: To close the public hearing to consider the Special Permit application:

Sections 13.9 and 4.4.1 submitted by Wykeham Rise, LLC. for an inn at 101 Wykeham Road. By Mr. Owen, seconded by Mr. Fitzherbert, and passed 5-0.

Mr. Owen closed the public hearing at 10:21 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Coordinator