

December 19, 2011

Present: Gary Fitzherbert, Lou Abella, Ray Reich, Nick Solley, Dave Werkhoven

Alternates Present: Andy Shapiro

Absent: Harry Wyant, A.J. Dubois

Staff Present: Shelley White, Janet Hill, Mike Ajello

Others Present: Atty. Fisher, Atty. Olson, Atty. Branse, Atty. Schain, Mr. Szymanski, P.E., Mr. Klauer, Mr. Parker, Ms. Giampetro, Mr. & Mrs. Solomon, Mr. & Mrs. Federer, Ms. Purnell, Mr. Millington, Residents

Mr. Fitzherbert called the meeting to order at 7:32 p.m.

Seated: Mr. Fitzherbert, Mr. Werkhoven, Mr. Abella, Mr. Reich, Mr. Solley

PUBLIC HEARING(S)

Wykeham Rise, LLC./101 Wykeham Road/Special Permit: Section 4.4.10/School:

The Commissioners acknowledged that they read the reports submitted at the November 28, 2011 Public Hearing. Mr. Fitzherbert stated that there is a large amount of information that has been submitted for this application that does not have a lot to do with Zoning. He stated that Zoning is the final approval for an application but the applicant's plan needs to be approved by the Health Department, the Inland Wetlands Commission, the Fire Marshal, etc. He stated that the Zoning Commission would not be basing their decision on areas that are not in their purview. Mr. Reich read the list of documents added to the file since November 28, 2011.

Mr. Klauer stated that they have responded to each of Ms. Purnell's concerns that she included in her letter to the Zoning Commission dated November 28, 2011 (on file in the Land Use Office). He stated that one of her observations was that the size of the proposed building footprint is substantially larger than any of the properties surrounding it. Mr. Klauer stated that this seems to be the case with all of the schools that are in the Town of Washington. He stated that most of her points had to do with inland wetlands and these issues were addressed at the Inland Wetlands Commission meeting.

Mr. Klauer stated that Mr. Rogness's letter to the Zoning Commission dated November 28, 2011 (on file in the Land Use Office) contained impertinent information and states repeatedly that inns are not allowed on Town roads. He stated that this application is for a school and meets the criteria for a school. Mr. Klauer stated that the sight line interpretation that Mr. Rogness submitted to the Commission at the regular meeting of the Zoning Commission on November 28, 2011 is inaccurate. He submitted a photo of the same view and explained the location of the proposed main building compared to the existing structures and stated that the proposed main building would not be as visible as Mr. Rogness's photo suggests. The Commission and Mr. Klauer looked at the map titled Overall Site Development Plan, prepared for Mathew and Erika Klauer, sheet OSD.1 with a revision date of 12-7-11 by Arthur H. Howland & Associates. Mr. Klauer stated that the proposed main building would begin approximately 700 feet away from the curb cut and the existing building is approximately 325 feet

away from the curb cut. He stated that the main building would be difficult to see from the road due to the distance from the curb cut along with the proposed plantings for screening and he feels that Mr. Rogness's photo along with the elevation that he produced should not be considered as part of the record for this application.

Mr. Reich asked Mr. Klauer to discuss the difference in the height of the existing main building and the proposed main building. He stated that the proposed main building is not higher than 40 feet and that six foot markings are included on the architectural drawings to indicate scale. He stated that the broad side of the proposed main building is positioned so that it is not visible from the road and that one would have to stand directly in front of the building to see the full length of it.

Mr. Szymanski, Engineer, stated that the applicant would be requesting an extension of the Public Hearing so that there would be time to meet with Mr. Ohmen, Fire Marshal, and Ms. Hill, Land Use Administrator to address the questions Ms. Hill included in her Administrative Report dated December 19, 2011 (on file in the Land Use Office). He stated that he would take that time to address questions about access.

Mr. Szymanski stated that Ms. Hill recommended that a Traffic Management Plan be implemented during the construction due to the large scope of the project, the duration of the project and safety concerns on the winding, narrow road. He asked the Commission if they are requesting a flag person for entering and exiting trucks. Mr. Fitzherbert stated that a flag person would be important to maintain safety on Wykeham Road. Mr. Szymanski stated that he would submit a formal response regarding traffic management. Atty. Branse stated that typically a Traffic Management Plan would include days and hours of operation.

Mr. Szymanski stated that Mr. Natale, Licensed Surveyor, submitted a letter certifying the lot coverage using class A-2 standards and he asked the Commission to confirm whether that is acceptable or not acceptable. Mr. Fitzherbert stated that it was acceptable. Mr. Szymanski stated that areas of 8-10 inches of $\frac{3}{4}$ aggregate base with 4-6 inches of top soil is often used to provide access for emergency vehicles but is maintained as lawn and he asked if this Commission would consider it part of the lot coverage. Mr. Fitzherbert stated that Glenholme Devereux uses this method for emergency access vehicles, the fire department has a map locating the areas and he does not feel it would be considered lot coverage.

Mr. Szymanski addressed Ms. Hill's comment in her Administrative Report that architecture of other schools in town is irrelevant. Mr. Klauer stated that he submitted photos of other school's buildings to show that there is not a consistent type of architecture throughout any of the existing schools.

Mr. Szymanski displayed and discussed the drawing titled Planting Plan prepared for Mathew and Erika Klauer, revision date of 9-21-11, sheet PL.1 (on file in the Land Use Office). He stated that the design of the planting plan takes into consideration potential impacts to neighboring properties by proposing 10-12 foot Eastern White Pines and Norway Spruces to screen along property lines, Wykeham Road and to visually break up buildings. The Commission and Mr. Szymanski agreed that the addition of some coniferous trees along the east and west sides of the driveway would be added to the plan.

Mr. Szymanski agreed that the site plan sheets erroneously indicate 8 units in Dorm#1 but should indicate 16 units, which is indicated in the floor plans. He stated that he would revise the plans and submit a new set for the records.

Atty. Fisher, representing the applicant, stated that he met with Ms. Hill and she indicated that she still had some outstanding questions for the Fire Marshal. He stated that he invited Mr. Oles, a professional appraiser, to look at the property and the plans and to speak tonight and give his opinion on the impact, if any, on the neighboring property values.

Mr. Oles introduced himself and gave a brief history of his career. He stated that this property has been used as a school since 1903 and it is his opinion that the reuse of a school on this property would not devalue the surrounding properties

Mr. Werkhoven asked if the applicant could explain the phases of construction. Mr. Szymanski stated that the project would be split into four phases of construction. The Commission and Mr. Szymanski looked at maps titled Detailed Erosion Control Plan & Construction Sequence (Phase 1,2,3& 4), prepared for Mathew & Erika Klauer, by Arthur H. Howland & Associates, revision date 12-7-11, sheets SEQ.1, SEQ.2, SEQ.3, SEQ.4. Mr. Szymanski stated that no more than 5 acres would be disturbed at one time and unstable at any point of construction and that a weekly timeline of the construction was submitted for the record. He stated that site construction should take a year and recommended that the I/W Commission and the Zoning Commission hire the same person for the Construction Inspection Consultant job.

Mr. Reich asked if there was an estimated date for the start of the first class. Mr. Szymanski stated that that would be difficult to determine at this point of the permitting process.

Mr. Reich asked how legal challenges would affect the timeline of the proposed plan. Atty. Fisher stated that they have fine-tuned the plan, considered input from people who are opposed and in favor of the project and also have taken feedback from the Commissions into consideration over the past couple of years and hopefully the residents that were opposed to this project realize that this is a good plan. He stated that he does feel that legal challenges are inevitable.

Mr. Solley stated that the width of driveway #2 is indicated on the site plan as 16 feet wide, yet the Fire Marshal approved a plan for a 20-foot wide driveway in which 4 feet would be a cape cod curb and this is not indicated on this map. Mr. Szymanski stated that the plans have always shown a 16-foot driveway and he was not sure where the Fire Marshal got 20 feet. Mr. Szymanski and the Commission looked at the Overall Site Development Plan. Sheet OSD.1. Mr. Szymanski stated that the width of the driveway and the curbing were considered in the lot coverage calculation and that he would discuss the 20 foot requirement with the Fire Marshal and Ms. Hill when they meet. He stated that reinforced lawn alongside the driveway would support emergency vehicles and would not need to be included in the lot coverage calculation. There was a brief discussion regarding pavers and lawn with an aggregate base reinforcement. Mr. Solley stated that he did not feel that there was sufficient area for food service vehicles to maneuver access to the Main Building. Mr. Szymanski stated that he was comfortable with the plan. Mr. Solley asked how Mr. Aubrey came up with a different lot coverage calculation that Mr. Szymanski's firm. Mr. Szymanski stated, "The only calculations that have been submitted that have been certified by a Licensed Land Surveyor in the State of Connecticut are ours."

There were no further questions or comments from the Commission at this time.

Atty. Branse recommended that Ms. Hill's Administrative Report be reviewed. Mr. Fitzherbert addressed main points from Ms. Hill's Administrative Report, dated 12-19-11. He stated that a meeting with the Fire Marshal would be scheduled. Mr. Fitzherbert stated that the

report raises questions about the safety of the entrance and exits and he read portions of the section titled Safety of the Existing Entrances/Exits in Ms. Hill's report. Mr. Szymanski stated that it was his understanding these access points were used for two-way traffic in the past. This plan proposes a one-way entrance and exit and he stated that the lower driveway would make the most sense to be used as an entrance and the upper access (near Bell Hill) used as an exit "from a user perspective." Mr. Szymanski stated that the existing service access driveway would be closed off so that it could not be used during construction. He stated that he would add notes to sheet SEQ.1 that states that other than during the removal and restoration of the existing access driveway area to lawn, there would be no construction traffic on Bell Hill. Mr. Fitzherbert, reading from Ms. Hill's report, stated that the topics of Lot Coverage, Driveway Width, Dorm #1 number of units have been discussed and Architecture would be discussed. In order to address the section titled Erosion and Sedimentation Control Plan in Ms. Hill's Administrative Report he asked Mr. Ajello, ZEO, to explain the Inland Wetlands Commission's decision to approve the request by Wykeham Rise, LLC to amend Permit #IW-08-31 for 101 Wykeham Road (on file in the Land Use Office). Mr. Ajello briefly discussed the conditions of this approval.

Atty. Branse stated that he thinks it is a legitimate request to have the applicant explain the height difference between the existing main building and the proposed main building and he suggested that if Smith and Co. performed a peer review on the prior set of plans regarding lot coverage that maybe this should be done for this set of plans. Mr. Fitzherbert stated that based on the past he is not inclined to question the integrity a second time. Atty. Branse stated that it might not be a question of integrity but the report that was submitted tonight from Mr. Donald Aubrey of Towne Engineering, Inc., addressed to Atty. Mark Branse, dated December 19, 2011, list many mistakes on the plans.

Atty. Olson stated that one of the questions tonight is "what actually constitutes lot coverage depending upon what the applicant decides to construct." She recommended that it is important to meet with the Fire Marshal to produce a plan of what exactly is going to be constructed and then the Commission could seek a legal opinion on whether what is proposed should constitute lot coverage or not, regarding the emergency access.

Atty. Branse asked if Mr. Oles did a written report, if he had done comparables and if the report he issued tonight conforms to Uniform Standards of Professional Appraisal Practice. Mr. Oles stated that he did not feel there was any reason to do a report because this is a continued existing use of the property. He stated that he visited the site and the surrounding area, reviewed the proposed plans and it is his opinion that this school would not affect the value of the surrounding properties and therefore there was no need to produce a report with comparable sales analysis. Atty. Branse asked if this is an appraisal or not. Mr. Fitzherbert stated that it is Mr. Oles opinion at this point and not an appraisal. Atty. Branse asked if Mr. Oles reviewed the architectural plans. Mr. Oles stated that he reviewed all of the current plans.

Mr. Fitzherbert asked the applicant to speak about the height of the existing and proposed main building. Mr. Klauer stated that the heights of the existing main building and the proposed main building are comparable and that they could discuss the scaled elevations tonight if the Commission would like. There was a discussion regarding the number of stories in each building and the definition of a 'story'. Mr. Klauer stated that the proposed main building would have 3 floor levels.

Atty. Branse submitted his follow up report with attachments addressed to the Zoning Commission dated December 19, 2011 (on file in the Land Use Office).

Mr. Werkhoven asked why this information isn't received ahead of time so that the Commissioners would have time to review the materials

before the public hearing.

Atty. Branse stated that he agrees with Commissioners that it would be better to have the materials in advance. He stated that his office received the updated materials late and that is why his response was handed in today. Mr. Fitzherbert stated that this issue would be addressed after everyone has made his or her comments tonight.

Atty. Branse discussed the main points of his report. Mr. Branse stated that the documents submitted prior to this public hearing are missing information necessary to evaluate the modifications to the plans. He stated that the Commission has addressed the Fire Marshal issue tonight and he and his clients will be interested to hear the results of the meeting with Mr. Szymanski, Ms. Hill and Mr. Ohmen. He stated that the width of the driveway and the discrepancies in architectural drawings regarding the width of the four and six pod dormitories would affect the lot coverage calculation. Atty. Branse stated that the height of the proposed main building is not indicated on the site plans. He asked that the Commission to review his report.

Atty. Branse submitted a follow up Report to the November 28th, 2011 Peer Review from Mr. Donald Aubrey of Towne Engineering, Inc., addressed to Atty. Mark Branse, dated December 19, 2011. He stated Mr. Aubrey addresses the issues regarding the driveway and traffic in his report. Mr. Aubrey's report notes that the detail of the plan shows a dumpster pad but this pad is not indicated on the site plan and State Code prohibits indoor trash storage exceeding 1.5 cubic yards and a dumpster pad would need to be included in the lot coverage calculation. Atty. Branse stated that Mr. Aubrey addresses issues regarding the Judea Water Company in his report as well.

Atty. Branse submitted a copy of Mrs. Peacocke's letter to the Zoning Commission dated November 15, 2010 regarding requirements for a university for the record. He stated that this letter is from a previous application but he wanted it submitted for part of the record for this application. Atty. Olson stated that she would like to clarify that her advise to the counsel is that "it is not wise to incorporate complete records of a prior application because of the fact that you would be incorporating information that is not relevant...that if you want information from a prior application that it would be best to have it actually incorporated and specifically put in to this record." Atty. Branse agreed with her and stated that he feels Mrs. Peacocke's letter brings up some legitimate questions. He stated that his clients would welcome a school that is comparable to the previous schools on this site but they question whether this is a university and his clients are concerned that the plans have been "cheapened".

Mr. Parker asked if this public hearing would be continued and Mr. Fitzherbert confirmed that it would be. He stated that Mr. Rogness's photo of the proposed main building was produced with the materials that were available to him and he was trying to put the proposed main building into perspective. Mr. Parker submitted copies of renderings of the proposed buildings for the inn application and noted the detail on these drawings. He stated that the size and scope of the proposed main building for this application is difficult to see and asked that the applicant submit perspective drawings. Mr. Parker questioned why the applicant is pushing the 10% lot coverage with no proof of how this business would operate.

Mr. Millington stated that he is part of the Washington Community Housing Trust which had its eye on this property. He stated that he envisioned 6-8 condominiums on this site because he feels that this Town has a need for moderate income housing and housing for older residents.

Ms. Purnell stated that her report to the Zoning Commission, dated December 1, 2011 (on file in the Land Use Office) includes the specifications of the existing buildings on the Wykeham Rise property and that “from a volumetric perspective” there is a significant difference between the existing and the proposed. Regarding the peer review done by Smith & Company in 2008, she stated that the applicant had calculated 2.78% lot coverage and Smith & Co. calculated 2.80% lot coverage. Ms. Purnell discussed what was and was not included in the lot coverage calculation. She stated that there has been “a level of non cooperation” with regard to information requested of the applicant and as a result making it difficult to determine the size, scope and scale of the project.

Ms. Giampetro stated that she appreciates all of the time people in this Town have put in to this work.

Mr. Parker read and submitted a letter addressed to Mr. Fitzherbert and the Zoning Commission dated December 19, 2011 (on File in the Land Use Office) which questions if this proposed plan is for a school or an inn and why is the school not going to seek accreditation. Atty. Fisher stated that whether the school is accredited is not a Zoning issue.

Mr. Fitzherbert explained the accreditation process for the State of Connecticut and stated that an institution does not have to be accredited to be a school. Atty. Olson stated that the Town of Washington Zoning Regulations does not require that a school be accredited.

Mr. Parker stated that he agrees with Atty. Fisher and Atty. Olson but what the neighbors cannot understand is what the function of this school is going to be. Atty. Branse stated that this is a legitimate topic to discuss at a public hearing.

Ms. Purnell stated that she listed the various development constraints that exist on the property. She stated that two of the critical underlying assumptions made by the applicant are that the onsite soils will be mapped as NRCS (Natural Resources Conservation Service) though because of the mapping resolution the soil boundaries can be off as much as a few hundred feet and that ground water is not going to be an issue on the site. She stated that since 2009 she has asked for the test pit results and found them in the inn application documents of 2008. She stated that she has provided information along with a comparison of the typical soil profile for what would be expected in those areas. It shows disturbed soils and an overburden of approximately two feet of topsoil on top of fill or fine sandy loam. She stated that she feels the Commission should consider whether additional information is necessary in order to properly evaluate whether construction can be done safely. She stated that in her report that she included some conditions of approval that the Commission may want to consider.

Mr. Klauer stated that in addition to requesting an extension of this public hearing it would be helpful for the Zoning Commission to facilitate the meeting between the Fire Marshal, Ms. Hill and Mr. Szymanski due to time constraints.

Atty. Fisher submitted a written request to extend the Public Hearing to January 23, 2012 on behalf of the applicant.

There were no further questions or comments from the Commission or the Public.

Motion:
to continue the Public Hearing at the next Zoning Commission Meeting on January 23, 2012 at following the first Public Hearing at 7:30 pm in the Land Use Meeting Room at Bryan Memorial Town Hall to consider the application for Wykeham Rise, LLC, 101 Wykeham Road/Special Permit: Section 4.4.10/School,

by Mr. Reich, seconded by Mr. Abella, passed by 5-0 vote.

Mr. Fitzherbert stated that he would like to discuss future document submissions. He stated the Zoning Regulations set a policy to limit submissions of documents from the applicant to 15 days before the Public Hearing. Mr. Szymanski stated that they would submit any additional materials by Friday January 6, 2012.

Mr. Fitzherbert asked Town Counsel if a limit could be placed on other submissions. Atty. Olson stated that there could not be a limit placed since there is no regulation in place but the Commission could request the information is submitted by a certain date. Mr. Fitzherbert requested that any other submissions be handed in to the Land Use Office a week before the Public Hearing. Atty. Branse stated that he could email the material. The Commission agreed that paper would be better at this point.

There was a brief discussion regarding monitoring of the site to check for compliance.

REGULAR MEETING

Mr. Fitzherbert called the Regular Meeting to order at 9:45 pm.

Seated: Mr. Fitzherbert, Mr. Werkhoven, Mr. Abella, Mr. Reich, Mr. Solley

Consideration of the Minutes

The minutes of the November 28, 2011 Zoning Commission Meeting were considered.

Corrections:

2nd page, last paragraph, 1st sentence, should read: Mr. Shapiro asked Mr. Szymanski to discuss the difference in the exterior materials that will be used for the approved main building from the last application to the proposed main building of this application.

Motion:

to accept the Zoning Meeting Minutes of November 28, 2011, as corrected,

by Mr. Reich, seconded by Mr. Abella, passed by 4-0-1 vote

Mr. Solley abstained because he did not receive the 11-28-11 minutes.

New Application(s)

Stone/295 New Milford Turnpike/Special Permit: Section 9.4.1.d/Eating and Drinking Establishment/Addition of Outdoor Seating:

Ms. Hill stated that the applicant has received approval from the Health Department. The Commission scheduled a Public Hearing for this application.

Motion:

to schedule a Public Hearing for the next regular Zoning Commission Meeting on January 23, 2012 at 7:30 p.m. at Bryan Memorial Town Hall in the Land Use Meeting Room to consider the application for Stone/295 New Milford Turnpike/Special Permit: Section 9.4.1.d/Eating and Drinking Establishment/Addition of Outdoor Seating, by Mr. Fitzherbert, seconded by Mr. Reich, passed by 5-0 vote.

Other Business

Nominating Committee for Officers:

Mr. Fitzherbert asked that Mr. Reich and Mr. Abella to be the Nominating Committee and to prepare a slate for the January 23, 2012 regular Zoning Commission Meeting.

Privilege of the Floor

No one from the public was present at this time.

Communications

2010 Zoning Commission Meeting Calendar:

The Zoning Commission considered the Zoning Commission 2012 Calendar.

Motion:

to approve the Zoning Commission 2012 Calendar as submitted, by Mr. Werkhoven, seconded by Mr. Abella, passed by 5-0 vote.

Zoning Enforcement

Parking at the Community Table/223 Litchfield Turnpike:

Mr. Ajello stated that he sent a letter to Mr. Anderson, the owner of CT. He stated that his letter offered several workable site improvement concepts to the owner and that as the owner, he is ultimately responsible for making the decision that he feels is best for his business but he must be proactive in addressing the issue. Mr. Ajello requested a response before the January 23, 2012 regular meeting of the Zoning Commission.

The Commission briefly discussed the parking availability at the Dobson property and Mr. Ajello stated that the property is being used but there is no formal agreement between Mr. Dobson and the Community Table. Mr. Ajello has observed no more than 3 employee vehicles parked on Wilbur Road during his drive by inspections over the past month.

The Commission considered the Zoning Enforcement Report dated 12-19-11.

Adjournment

Motion: to adjourn at 10:05 pm.
by Mr. Fitzherbert, seconded by Mr. Solley, passed by 5-0 vote.

Mr. Fitzherbert adjourned the meeting.

SUBMITTED SUBJECT TO APPROVAL:
Shelley White, Land Use Clerk,