

July 28, 2008

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

ALTERNATES PRESENT: Mr. DuBois, Mr. Shapiro, Mr. Wyant

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr. J. Picton, Mr. Solley, Mr. Bedini, Mr. Carey, Mrs. Wildman, Mrs. Addicks, Mrs. Hardee, Atty. Fisher, Ms. Klauer, Mr. Klauer, Mr. Szymanski, Mr./Mrs. Federer, Mrs. Silk, Ms. Connolly, Mr./Mrs. Solomon, Mr. Brinton, Mr./Mrs. Ullram, Mr. Peterson, Mr. Hinkel, Mrs. Greene, Ms. Forese, Mrs. Talbot, Mrs. Condon, Mr. Long, Mr. Caroe, Mr. Hunt, Atty. McTaggart, Atty. Strub, Mr./Mrs. Minor, Mrs. Clark, Mr./Mrs. Ewing, Mr. Parker, Mr. Titmann, Mr. Owens, Mr. Adams, Mr. Mustich, Atty. Rybak, Mr. Charles, Ms. Giampietro, Mrs. Sadler, Mr. Beaver, Atty. Hill, Mrs. Cooper, Mr. Peacocke, Press, Residents

Mr. Owen called the Meeting to order at 7:34 p.m. and seated Members Abella, Averill, Fitzherbert, Friedman, and Owen.

PUBLIC HEARINGS

Hedley/214 Nettleton Hollow Road/Special Permit: Section 13.11.3/ Detached Accessory Apartment

At 7:34 p.m. Mrs. Friedman read the legal notice published in Voices on 7/16 and 7/23/08.

Mr. Owen read the list of documents in the file and the 7/28/08 ZEO Report.

Mr. J. Picton, agent, explained an existing barn would be converted to a detached apartment by adding a kitchen and installing a septic system. He noted the septic system had been designed by Mr. Neff, engineer, and approved by the Health Department. It was noted that the proposed apartment was 1,031 square feet and that the owner had submitted a statement that she would reside on the property for the duration of the permit.

Mr. Shapiro asked how large the primary dwelling on the property was. Mr. Picton did not know exactly, but said it was several thousand square feet.

Mrs. Friedman asked if the dimensions of the building would change. Mr. Picton said they would not.

There were no comments from the public and no further questions or comments from the commissioners.

MOTION: To close the Public Hearing to consider the Special Permit application: Section 13.11.3 submitted by Mrs. Hedley for a detached accessory apartment at 214 Nettleton Hollow Road. By Mrs. Friedman, seconded by Mr. Fitzherbert, and passed 5-0.

Mr. Owen closed the Public Hearing at 7:38 p.m.

Nichols Hill Group, LLC/6 Bee Brook Road/Section 8.3.9 and Special Permit: Sections 8.5 and 8.6/Office Expansion and Renovation of Existing Commercial Building

At 7:39 p.m. Mrs. Friedman read the legal notice published in Voices on 7/16 and 7/23/08.

Mr. Owen read the list of documents in the file and the 7/28/08 ZEO Report.

Mr. Hinkel, architect, presented photos of the existing building and summarized the proposal to tear down the rear wing of the existing commercial building, renovate it, and “reassemble the volume.” He noted the volume of the existing building was 12,103 sq. ft. and the proposed volume 12,015 sq. ft. and that the non conforming footprint would be reduced to make it less non conforming. Lot coverage would be reduced from 9,080 sq. ft. to 8,590 sq. ft. The map, “Proposed Site Plan,” by Hinkel Design Group, LLC., dated 6/20/08, the “Elevation Comparison,” EL-1, also dated 6/20/08, and floor plans were reviewed. Mr. Hinkel stated there would be no change to the existing parking on site and noted the existing 14 spaces fell between the minimum 10 and maximum 25 required per Section 15. In case of parking overflow, the adjoining Town lot would be available and/or staff could be asked to park at the old Town Garage property. Traffic flow was briefly discussed. A handicapped ramp would be constructed, but would be partially hidden behind a fence with a “topper.” Landscaping plans were reviewed. It was noted the existing sign would remain and that lighting would be kept to a minimum. Although the Commission does not yet have commercial outdoor lighting regulations, Mrs. Friedman pointed out that the applicant could consult Section 12.15 of the Zoning Regulations for the Commission’s outdoor lighting recommendations.

Mr. Owen noted the Commission had revised its Regulations so that under specific circumstances more coverage and smaller setbacks could be allowed for commercial buildings in the Depot, but in this application the lot coverage was decreasing.

Mr. Carey, property owner to the east, said the plan was a sensitive one and he supported the application.

There were no other comments from the commissioners or the public.

MOTION: To close the Public Hearing to consider the application: Section 8.3.9 and Special Permit: Sections 8.5 and 8.6 submitted by Nichols Hill Group, LLC. for office expansion and renovation of the existing commercial building at 6 Bee Brook Road. By Mrs. Friedman, seconded by Mr. Abella, and passed 5-0.

Mr. Owen closed the Public Hearing at 7:59 p.m./p

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

At 8:00 p.m. Mrs. Friedman read the legal notice published in Voices on 7/16 and 7/23/08.

Mr. Owen read the list of documents in the file and the 7/28/08 ZEO Report

. Mr. Klauer gave a brief history of the property, noting that when it operated as Wykeham Rise School there were 120 students with supporting staff on site and most recently, under the Swiss Hospitality Institute the state had approved a septic system with a 10,500 gallon per day capacity. He said the proposed inn would benefit both the land and the Town. Benefits to the land would be: 1) It would seek LEED certification with environmentally sustainable construction, 2) the existing buildings impacting the wetlands would be removed and the wetlands would be restored to their natural state, and 3) the development would not be obtrusive, with one story buildings throughout and designed to reflect the characteristics of Washington. He said the Town would benefit because 1) jobs would be created both during construction and for the operation of the inn, 2) the inn would support local agriculture, 3) the Town’s tax revenues would increase, and 4) the inn would provide locally sourced meals to guests and the community at a reasonable price. He submitted 41 letters in support of the application, which, he said, brought the total number in support to 108. He said the property had been left in a dilapidated state for too long and he submitted his letter to Town Officials dated 7/28/08 to address neighbors’ concerns about trash removal and odors.

Atty. Rybak submitted a letter to the Commission dated 7/28/08. He stated that his client had consulted with the Commission prior to his

purchase and had closed on the property based on the October through December 2007 Zoning Commission discussions and Mr. Owen's and Atty. Zizka's interpretation of Section 13.9 that state road frontage was not a requirement for an inn. In his opinion, at the time the property was purchased and when the application was submitted, Section 13.9 did not limit the location of a country inn to a state highway. He advised the Commission to rely on the counsel of its attorney and said it could not change its interpretation in the middle of a Public Hearing.

Atty. Rybak agreed there was no guarantee of approval, but said if the property had been ineligible for an inn due to its location on a town road, Mr. Klauer would not have proceeded with the application.

Mr. Owen said the property had been purchased even though the regulation had been ambiguous and the interpretation cited was his and Atty. Zizka's, who were the minority. He noted the question had remained open.

Atty. Rybak said it would be inappropriate for the Commission to reverse its interpretation at this time, adding that the matter would ultimately be decided by the court.

Mrs. Sadler, architect, presented elevations, floor plans, and material and color samples for the proposed buildings. She stated their design would be in keeping with the aesthetics of Washington and the goals of the Plan of Conservation and Development. The appearance and volume of the buildings would be barn-like and residential. She reviewed the streetscapes within a mile of the property and said the inn's design would be appropriate to its surroundings, although she noted that most of the proposed buildings would be set back and buffered so they would not be visible from the road. She presented photos of the present views from the road and from other properties and renderings depicting what they would be post development. She explained the proposed location of the buildings was to keep them out of the wetlands and in part to deal with the challenging grades on site.

Mrs. Sadler discussed the two main buildings, showing how the architects had tried to work with the site and break up the design of these large scaled, multi-leveled structures. She said they would be built into the hillside to give them a smaller appearance. Stonewalls in keeping with the area's character, vertical siding, copper roofs, and traditional colors were proposed. She also reviewed the plans for the cottages, which would range in size to accommodate one to four units. These would have either wood siding or shingles and wood trim. "Night friendly" traditional lighting, which would comply with the Zoning Regulations, would be installed on all buildings and parking areas. In the spa building, the fitness center on the first floor would be open to the public, the spa would be on the second floor, there would be no indoor pool, and the building would have its own area under cover for garbage. The second main building would contain a lobby area and function room on the first floor and a restaurant and bar on the second.

Mr. Shapiro asked how much of the facility would be open to the general public. Mr. Klauer responded the restaurant and bar would be open to the general public, the function room would be used by the public on a limited basis, and there would be limited public membership to the gym. He noted the outdoor pool would not be open to the public.

Mrs. Friedman asked how many seats the restaurant/bar would have. Mr. Klauer stated there would be 80 seats plus 55 maximum in the function room, and 54 double capacity guest rooms.

Mrs. Sadler noted the outdoor connector between the two main buildings. She stressed the inn would be quiet and tranquil with no noise or odors. She added that each visitor would have a private garden area and there would be walkways and gardens throughout the property.

Mr. Owen asked if the inn would be economically viable with fewer rooms. Mr. Klauer said the 108 guest capacity was needed.

Mr. Owen asked what would be deleted if the ZBA did not grant a variance for lot coverage. Mr. Klauer noted he had first proposed 17.6% coverage and had reduced it to 11.99%, so he was putting "his best foot forward."

Mrs. Friedman asked why the walkways were not included in the coverage calculations. Mr. Szymanski, engineer, explained they were not included because the definition of lot coverage does not include pervious surfaced walkways. He went on to say that the application kept

coverage down, but to decrease it further would mean that the buildings would have to be massed closer to Wykeham Road and he did not think that would be in keeping with the character of the area. In addition to aesthetics, he noted that locating the buildings farther from the road would allow for more screening and would reduce noise. Mr. Szymanski stated when the existing tennis courts and dorms were demolished and the main buildings located farther from the road, the property would have a more residential appearance.

Mr. Fitzherbert asked what was the diameter of the proposed silo on the restaurant building. Mrs. Sadler said it would be 25 ft. with a maximum height of 40 ft. She also noted that any cupola more than 25 sq. ft. would be included in the total height calculations.

Mr. Abella asked if all of the bedrooms would be in the cottages. Mrs. Sadler said they would.

Mrs. Friedman asked why "quads," four unit cottages, were proposed. Mrs. Sadler said this would keep the total number of buildings down and Mr. Klauer said they could use the natural topography of the land without having to do excessive regrading.

Mrs. Friedman asked for the square footage of the main buildings. Mrs. Sadler said the restaurant building would be over 15,000 sq. ft. and the spa building would be 12,660 sq. ft. She noted the original proposal had one massive main building, but the two proposed now fit in better with the neighborhood.

Mr. Beaver of Didona Associates, spoke about the proposed planting plan. He said the plantings would match the overall character of the area and that native plants and shrubs would be planted for variety, seasonal interest, and as a sound buffer. He stated that along Wykeham Road the existing 30 to 90 ft. wide buffer and along Bell Hill Road the existing 40 to 60 ft. wide buffer would remain and would be supplemented. Most of the supplemental planting was proposed along the east boundary line, especially in the SE corner where there was now little vegetation. A 30 to 50 ft. wide tightly spaced evergreen buffer was proposed there. Along the south and west boundaries the existing vegetation would remain.

Mrs. Friedman asked if the proposed grassed areas would be fertilized. Mr. Beaver said the project would seek LEED certification so organic fertilizer would be used and kept to a minimum. Mr. Szymanski noted that at the Inland Wetlands hearing the applicant had received a request to limit the use of fertilizers by restrictive covenant and he said this would be looked into.

Mr. Szymanski, engineer, summarized the proposal for the 26.9 acre property on Wykeham and Bell Hill Roads. He noted the access on Bell Hill would be removed due to safety concerns and would be planted out. He then reviewed how the application complied with the Special Permit standards in Section 13.1.B of the Regulations. He made the following points: 1) He said the inn would be consistent with the objectives of the Plan of Conservation and Development because the stonewall could be preserved and the buildings set back and screened from the road to preserve the rural character of the area. Also, the dilapidated buildings would be removed and the building on Bell Hill Road that is listed on the historical resource map would be moved elsewhere on the property and preserved. 2) He said natural resources would be protected by fully protecting the wetlands and watercourses, moving the buildings further from them, and increasing the width of the vegetated buffers along them. 3) Water quality would be maintained because the proposed stormwater management system would be consistent with the state's 2004 Stormwater Management manual. He noted that currently stormwater flows directly into Kirby Brook, but post development it would be treated by several methods prior to discharging into the brook. He said the drainage improvements would also lessen downstream erosion problems. 4) He noted the property was not located in a proposed open space greenway. 5) He stated the proposed architecture would help to protect the scenic assets of the community because it would not appear institutional, but would strive to look both residential and barn-like as the structures on the surrounding properties do. 6) He said the inn would not be heard or smelled off site. All refuse would be enclosed. 7) He stated the plans met all Fire Dept. requirements. 8) He noted increased traffic was a concern to many. He reported that a traffic study had been conducted and that in 8 hours only 4 pedestrians and 8 bikers had been on Wykeham Road. He said there would be no decrease in the level of service of Wykeham Road due to the operation of the inn and that he would demonstrate there would be no adverse impacts to the road. 9) He said the lot was sufficiently sized for the inn. In response to concerns previously raised

that the inn would have twice as many rooms as the Mayflower Inn on half the land, he noted that a lot of screening was proposed and that the total impervious surface proposed was only 63% of the impervious surfaces at the Mayflower. 10) He stated that some of the existing lawns would be removed and buffering added to improve water quality. 11) Mr. Szymanski again stated that the stormwater management plan was consistent with the state's 2004 guidelines, and added that the six pages of proposed sedimentation and erosion control plans conformed to the state's 2002 guidelines.

Mr. Owen asked where the air compressors would be located. Mr. Szymanski said they would be adjacent to each building and that he would add them to the site plan. He said there would be one generator for the entire site.

Mr. Fitzherbert asked if there was an internal traffic flow plan. Mr. Szymanski said the entrance and exit would remain one way, but there would be two way traffic elsewhere on the property. He noted all driveways would be wide enough to accommodate emergency vehicles.

Mr. Fitzherbert asked if the sight line was adequate at the existing exit. Mr. Szymanski did not know.

Mr. Owen recessed the Public Hearing for 10 minutes to give the public the opportunity to study all the maps and plans that had been facing the Commission during the presentation.

At 9:40 p.m. Mr. Owen reconvened the Public Hearing and asked for public questions and comments.

Atty. Hill represented Mr. and Mrs. Federer. He noted his clients had not had adequate time to review the plans revised to 7/23/08 and asked that the Hearing be continued so they could submit specific comments. He raised several issues. 1) He cited Section 2.3.6 of the Zoning Regulations, which states that an application involving the installation or modification of a septic system shall not be accepted nor a zoning permit issued until the septic plans have been reviewed and certified suitable by the Town Health Officer. He noted there was no sign off from the Town Health Officer in the file and so the application requirement had not been met. He said he had also contacted the DEP because Section 22a-430-3i of the Health Code requires the DEP to approve a change of use, but said this had not yet been approved. 2) Atty. Hill noted the proposed lot coverage was 20% over the maximum allowed and a variance had not been granted. He noted Mr. Klauer had not answered the questions when asked what he would do if the variance application was denied. 3) He circulated copies and read Section 8-2h of the state statutes for the record. He said although the Commission assumed the application was governed by the previous Section 13.9 because it had been submitted before the revisions to clarify that 500 feet of frontage on a state road is required became effective, he said this was not so. He argued that unless the application complied with all sections of the Zoning Regulations at the time it was submitted, it was not grandfathered. Since a variance for lot coverage had not been granted as of the date of submission, he said the application did, indeed, require 500 feet of frontage on a state road. He submitted his letter dated 7/28/08 for the record. 4) He passed out copies of the A-2 survey filed with the application and a deed restriction on file in the Town Land Records, which states that nothing may be constructed within 330 feet of the field where the tennis court is now proposed. He presented a site plan with this restricted area colored in yellow. 5) He also submitted a copy of Section 47-42d of the state statutes regarding the 60 day notification requirement to the holders of conservation easements on properties with pending projects and said his clients had not been notified. He then referred to the Town's mandatory conservation easement signoff sheet and noted it had not been submitted with the application as required.

Atty. Strub represented Dr. and Mrs. Ewing. He noted that when he reviewed the Revision of the Regulations/Inns/Section 13.9 file on 5/19 there had been no written communication from Atty. Zizka in it. He said there was now acknowledgement from Atty. Zizka in the file that there are two reasonable interpretations of the previous Section 13.9.3. Atty. Strub stated that the current application should not influence the Commission's interpretation. He read into the record the 7/27/08 email to Mrs. Hill from Mr. Martin, former Zoning Commission chairman, and urged the Commission to be consistent and logical in its interpretation, to read Mr. Martin's email, and to consider its source. He

submitted a summary letter dated 7/28/08 for the file. He then asked that both entire files for the Revision of Section 13.9 and for the Mayfair Properties First Cut and Mayflower Spa, where, he said, Section 13.9 had previously been interpreted, be incorporated into this record.

Atty. McTaggart also represented the Ewings and submitted two letters dated 7/28/08 to the Commission. Points she summarized from the first letter included: 1) She agreed with Atty. Hill that to be grandfathered under the previous Section 13.9 the application had to comply with all of the Zoning Regulations, which it does not. 2) She also agreed with Atty. Hill that the Zoning Regulations state that an application shall not be accepted until the proposed installation or modification of the proposed septic system is approved by the Town Health Officer. 3) She did not think the application would qualify as adaptive reuse as all of the existing buildings would be torn down. 4) She noted that three of the existing buildings were listed on the Town's historic resources map, but only one would be preserved. 5) Atty. McTaggart stated that the application conflicts with Section 13.9.1 and she stated several reasons why the interpretation that 500 ft. was required on a state highway was the correct interpretation. 6) She stated that the property had previously been an institutional use, whereas, the current application was for commercial uses in a residential district. She read an excerpt from the Zoning Regulations, which states the intent of the Farming-Residential District is to allow low intensity residential and agricultural uses that retain the rural character and the natural beauty of the Town. In the second letter she stated that every Special Permit must be in compliance with the goals of the Town Plan of Conservation and Development and she reviewed some of those goals. She said the main goal was the preservation of rural character and enhancement of village centers and argued that if a commercial use such as the proposed inn were allowed in a residential area, it would detract from what makes Washington special. She maintained that the intensity of use of this property and the traffic it would generate could change the rural character of the area. She stated that to allow the proposed commercial use of this property would require an amendment to the Zoning Regulations. She also stated the proposed use was dense compared to other Ct. inns and she reserved the right to comment further on the final plans.

Mrs. Silk spoke of the Wykeham Rise School in the 1980's, noting it generated little traffic and cautioning that noise carries in this neighborhood.

Mr. Caroe voiced his support for the application, saying the deteriorating buildings would be cleaned up, visitors would have a place to stay, and the inn would contribute to the Town's tax base.

Mrs. Cooper expressed her concerns about the possible increase in traffic on the curvy, narrow neighborhood roads if the application was approved. She noted that both the volume and speed of vehicles on these roads are a danger to pedestrians, bikers, and to the residents who use them. She asked if the Commission would consider approving a bar and restaurant on any other residential Town road and said she thought it was spot zoning.

Mrs. Solomon asked who were the principals of Wykeham Rise, LLC. She said Mr. Klauer had told her they might be uncomfortable to have this be public knowledge, but she thought the Commission should know so that it could determine whether there were any conflicts of interest.

Mr. Peacocke found the proposal to be inconsistent. He did not think the tranquil nature of the property could be preserved with the operation of an inn with the capacity for 108 guests plus function room, restaurant, bar, and staff, which could bring the total number of people using the facility to 200. He asked for the business plan, saying the public needed more information regarding the economic feasibility of the proposal. It would be a catastrophe for the Town, he said, if the project started and then failed.

Mr. Minor urged the Commission to make sure the proposed intensive use of the property would not diminish the water supplied by the Judea Water Company to the homes it already serves in the area. He noted there are already problems in the summer months and that the water system is antique and leaking.

Mr. Hunt noted that Special Permit applications must meet all of the requirements of Section 13.1.B. He said he was concerned about nuisance conditions beyond the property line. He described how noise carries in this area and thought the guests and functions at the inn would be noisy and would be heard off site.

Mr. Parker said he did not support the application for reasons listed in the letter he submitted to the file. Also, he asked if the inn were approved, what would stop a separate business from taking over any aspect of it? For example, what would prevent a chain company from taking over the inn's restaurant in this residential zone?

Due to the late hour, Mr. Owen suggested that the Public Hearing be continued to the next Meeting date.

MOTION: To continue the Public Hearing to consider the Special Permit application Sections 13.9 and 4.4.1/Inn submitted by Wykeham Rise, LLC. to 7:30 p.m. on Monday, August 25, 2008 in the Main Hall, Bryan Memorial Town Hall. By Mr. Owen, seconded by Mrs. Friedman, and passed 5-0.

At 11:02 p.m. Mr. Owen continued the Hearing to August 25, 2008 at 7:30 p.m. in the Main Hall, Bryan Memorial Town Hall.

These public hearings were recorded on tape. The tape is on file in the Land Use Office, Bryan Memorial Town Hall.

REGULAR MEETING

Mr. Owen called the Meeting to order at 11:04 p.m.

Consideration of the Minutes

MOTION: To accept the 6/23/08 Public Hearing-Regular Meeting minutes as written. By Mr. Owen, seconded by Mr. Fitzherbert, and passed 5-0.

Pending Applications

Hedley/214 Nettleton Hollow Road/Special Permit: Section 13.11.3/ Detached Accessory Apartment

MOTION: To approve the Special Permit application: Section 13.11.3 submitted by Mrs. Hedley for a detached accessory apartment at 214 Nettleton Hollow Road. By Mrs. Friedman, seconded by Mr. Abella, and passed 5-0.

Nichols Hill Group, LLC./6 Bee Brook Road/Section 8.3.9 and Special Permit: Sections 8.5 and 8.6/Office Expansion and Renovation of Existing Commercial Building

MOTION: To approve the application: Section 8.3.9 and Special Permit: Sections 8.5 and 8.6 submitted by Nichols Hill Group, LLC. for office expansion and renovation of the existing commercial building at 6 Bee Brook Road. By Mr. Owen, seconded by Mrs. Friedman, and passed 5-0.

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

Mr. Owen noted the Public Hearing had been continued to August 25, 2008 at 7:30 p.m.

Other Business

Possible Revision of Regulations/Sections 12.4, 12.14.3, 12.14.5/ Generators, Air Conditioners, Pool Filters, and Other Noise Generating Equipment: Mr. Owen reported that he had discussed this issue with Mr. Sedito, ZBA Chairman, who described to him the standards used by

the ZBA when it deliberates whether to grant a variance for any of these sections. Mr. Owen pointed out, however, that there was no basis for these standards in the current Regulations. He noted the surest way to ensure that noise generating equipment is quiet is to require it to be located close to the structure it serves. The commissioners will discuss possible revisions at the next Meeting.

Possible Revision of Regulations/Section 16/Business Signs in the Residential Districts: Mr. Owen circulated a sheet, "Business Signs in Residential Zones," which will be used as the basis for discussion at the next Meeting.

Possible Revision of Regulations/Preservation of Stonewalls and Dance Studios in the R-1 District: There was nothing to report on either topic.

Communications

3/3/08 Letter from Mr. Talbot re: Creation of Parcels: Mr. Ajello said the Mr. Talbot was waiting for a response on how to prevent the type of loop hole he discusses in his letter. This matter will be referred to Atty. Zizka.

6/26/08 Letter from Mr. Owens re: Conditions of Mayflower Spa Special Permit: Mr. Ajello said the question was whether the access was permanently restricted to the state highway or whether the restriction was just during the construction period. Mrs. Friedman said she had reviewed the files and had found a letter from Mr. Owens, which he submitted with the application, stating that the access for the spa would be only from the state highway.

MOTION: To adjourn the Meeting. By Mr. Owen.

Mr. Owen adjourned the meeting at 11:10 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Coordinator