

Zoning Commission

MINUTES

Special Meeting - Public Hearing

July 19, 2018

6:30 p.m. upper level meeting room

MEMBERS PRESENT: Mr. Armstrong, Mr. Averill, Mr. Reich,
Mr. Solley, Mr. Werkhoven

ALTERNATES PRESENT: Ms. Lodsins, Ms. Radosevich

ALTERNATE ABSENT: Mr. Sivick

STAFF PRESENT: Mrs. Hill, Ms. Hodza

ALSO PRESENT: Mr. Bedini, Mr./Mrs. Solomon, Mrs. Minor,
Mrs. Peacocke, Mr. Szymanski, Atty. Kelly,
Atty. Fisher, Atty. McTaggart, Ms. Klauer,
Mr./Mrs. Templeton, Mr./Mrs. Barnet,
Mr. Gendron, Mr./Mrs. Williams, Mr. Owens,
Ms. Purnell, Mr. Rogness, Mr. Steinmetz,
Mrs. Revere, Ms. van Tartwijk, Mrs. Tagley,
Mrs. M. Minor, Ms. Blumenreich, Residents

101 Wykeham Road, LLC./101 Wykeham Road/Application to Revise
Special Permit for Inn/Continuation

Mr. Solley reconvened the public hearing at 6:30 p.m. and seated Members Armstrong, Averill, Reich, Solley, and Werkhoven. He advised those in attendance that the Settlement Agreement and Special Permit had been approved by the Commission on January 7, 2013 and so 101 Wykeham Road, LLC. already had a Special Permit to construct the inn. He explained the application now before the Commission was to modify the site plan and to replace Renderings A and B. He asked that public comments be pertinent to the current Special Permit application.

Mr. Szymanski, engineer, stated that since the last meeting the following had been submitted: 1) his letter dated 5/13/18 in which he said he had addressed Atty. Zizka's questions regarding parking and 2) the 6/27/18 letter to Ms. Klauer from Mr. Skov of Aquarion Water Company, that said Aquarion would serve the inn, there would be a pump house on the property, and a well or two would have to be drilled at the applicant's expense.

Atty. Fisher offered to let the public speak first.

Atty. McTaggart responded to Mr. Szymanski's 5/13/18 letter re: parking requirements. She stated the number of parking

spaces approved in the Settlement Agreement (SA) had been based on the limited use of 54 guest room units and a 68 seat restaurant. She disagreed with Mr. Szymanski's computation that only 11 spaces were required for the restaurant because the parking requirements are based on the gross floor area, meaning 26 spaces were required. She said he had also disregarded the parking required for 6700 sq. ft. of the main building, which he thought would not usually be used. She stated the Settlement Agreement's 100 parking space limitation indicated what the scope of the inn was meant to be, and that when the parking was no longer adequate, the uses were beyond the scope allowed. She noted in addition to the restaurant and the not usually used areas of the main building there were also 58 guest rooms and all of the employees, which had to be accommodated with the 100 spaces with no overflow. She disagreed with Mr. Szymanski, saying the parking was inadequate for the uses proposed.

Atty. McTaggart said she would comment on the Public Offering Statement later in the hearing.

Ms. Blumenreich, Wykeham Road, said the property was an eyesore, that it would be nice to have a small inn on the property, but said she realized she had been deceived when she saw the actual plans for the site, that Wykeham Road could not handle the traffic that would be generated from a large inn, and that the inn would negatively impact her family. She asked the applicant to respect her quaint, residential neighborhood.

Ms. Giampietro read the 6/21/18 letter from Ms. Griswold who stated the applicant has no respect for the property or the neighbors, the project was out of scale for the community, and the aesthetics were "egregious." She was concerned about damage to the groundwater from the fire debris leaching into it, about the capacity of the water supply to meet both the needs of the inn and those currently served, and about the capacity of Wykeham Road to handle the increase in traffic.

Ms. Giampietro played a recording of the nature sounds at the corner of Golf Course and Wykeham Roads and said this would be destroyed by the increase in traffic and the noise from the proposed resort.

Mrs. Tagley read the 7/17/18 letter from Ms. Allard who was concerned about the traffic, noise, odors, and light pollution that would be generated by the inn and the glare from the windows in the "huge" main building.

Mr. Barnet stated that Mr. Solley's description of the proposed Special Permit modifications was unduly restricted as there was a new floor plan, new site plan, and new proposed uses.

He stated that during the Settlement Agreement discussion, Atty. Fisher had informed the Commission the inn's physical plant would be the same as had been approved for Wykeham U. He added there had been no mention of a ballroom or bar in the SA. He said only the specific limited uses listed in the SA had been permitted and no others allowed. Mr. Barnet said the SA was meant to be a compromise, not a blank check and quoted Judge Pickard, who said that the SA was a substantially reduced project, which would be more acceptable to the neighbors. In addition to an expansion of use, Mr. Barnet also said when compared with what had been approved in 2013, an expansion in the height and volume of the main building was now proposed and could not be allowed by the Zoning Commission.

Mrs. Solomon stated she accepted the "grossly oversized" inn approved in the SA, but objected to the proposed changes. She said there were two sections of the Zoning Regulations, which would expressly require the denial of the application. She read Section 13.1.C.8 re: nuisances. She spoke specifically about noise, saying the unique topography of the land gives it amphitheater-like qualities, which amplify outdoor noise. She said that outdoor balconies and terraces had been added and would result in more noise. She also noted that multifamily residences were not permitted. She circulated a section of a brochure from a guest room at Ocean House advertising Wykeham Rise Inn that included a photo of a kitchen in one of the proposed Wykeham units. She said this was evidence of the applicant's intent to build multifamily residences.

Mr. Solley noted there was a list of all of the documents included in the file and said the public was invited to review them.

Ms. Purnell noted the latest plans submitted to both the Inland Wetlands and Zoning Commissions include a number of changes to the stormwater management plan previously approved. She addressed the 6/27/18 letter from the Aquarion Water Company, saying it speculated that the inn would use an average of 4000 gallons of water per day, but that she thought that estimate was "woefully inadequate." She submitted quarterly water monitoring reports from the Swiss Hospitality Institute showing a daily average use of 7720 gallons per day for 70 students and 30 faculty. She listed changes to the site plans, which were zoning violations including: 1) multiple structures are located within the setbacks, which for inns is 100 feet from any street and 50 feet from any property line, 2) yard drains were not included in the coverage calculations and so the lot coverage must be recalculated, 3) no location was given for the generator using

diesel fuel, 4) the A/C units, which are noise generating equipment, would now be located on top of the main building, 5) golf cart service to the pool house had been acknowledged, 6) the emergency accessway would most likely be used to service the pool and would, therefore, no longer be for emergency use only and would have to be included in the lot coverage calculation, resulting in coverage exceeding the maximum permitted, 7) the poolhouse had been winterized, 8) the addition of the haul road and use of the restricted area for storage of excess excavated material violates the SA and restrictive covenant, 8) non conforming buildings and uses may not be expanded, but the applicant proposes a large expansion. She said if the Commission were to allow the replacement of Renderings A and B, it would be an expansion of the non conforming building because terraces and balconies would be added and the size of roof bump outs would increase. She also noted the interior uses had expanded since 2013. She noted the applicant could move forward with the approved 2013 plan.

Mrs. Barnet stated there were two main reasons the Commission could not approve the current application. The first was that a physical expansion of non conforming buildings was proposed and the second was that an expansion of non conforming uses beyond what had been approved in the 2013 SA was proposed. She stated the reason the replacement of Renderings A and B was proposed was to remove them from the record so the building could be expanded. She said the SA approved an inn that would not be larger than what had been approved for the university. She referenced Section 17.4.A of the Zoning Regulations (non conforming structures may not be expanded) and stated levels 3 and 4 of the main building were being expanded both horizontally and vertically in the setback area and that such expansion was illegal. She noted the proposed main building was non conforming because inns were no longer permitted on town roads and that the restaurant use was non conforming because restaurants are not permitted in the R-1 District. Mrs. Barnet said that the addition of unlimited indoor functions such as the separate bar-lounge and conference rooms was expansion of the non conforming use. She also said that multifamily residential use was not allowed in Washington and the Commission had no basis for concluding the units would not be used for residential use. She said the Commission had no discretion to approve the application.

Mrs. Peacocke reminded the Commission there had been four attorneys present during the SA negotiations and they had not undertaken to draft a comprehensive agreement. She said they had not intended to list only those uses allowed. She noted that #13 of the SA said it was in compliance with all Zoning rules and

regulations and so contended it was enforceable. Mr. Averill asked if that meant whatever was in the SA was compliant with the Zoning Regulations thereafter and that everything complied. Mrs. Peacocke responded yes, it had all complied and that it had complied at the time. Mrs. Barnet agreed the 2013 SA was enforceable, but said it was a non conforming use that had been approved and that changes were now being applied for.

Mr. Averill asked if there was anyone in attendance who did not have a professional relationship with the applicant who was in favor of the application. No one responded.

Atty. McTaggart said she had done a comprehensive itemized review of the proposed changes. She asked Mr. Solley if this would be the last session of the hearing. He responded he would like to continue it since the Commission's counsel had not been able to attend.

In response to Mrs. Peacocke's previous statements, Atty. McTaggart explained that the way zoning regulations work in CT, all uses not expressly permitted are prohibited.

Atty. McTaggart reviewed her 7/19/18 letter, making many points including the following: 1) Section 17.1 may not be used as the grounds for adding other non conforming uses to the property because those proposed are not accessory uses. 2) When the 2013 and 2018 plans were compared, as had been done by Mr. Owens, there was a 31,000 sq. ft. increase in the size of the main building, which, she said, was not a small change. She said the current H&R plans show a 37,000 to 40,000 sq. ft. increase over the 2013 plan. She urged the commissioners to view the plans on line and to note the increased dining area, conference rooms, etc. to be served by this rural road. 3) The restaurant use had been expanded beyond the 2013 SA. She said the approval of the 68 seat restaurant except for public function events did not mean a 2000 sq. ft. ballroom, conference rooms, etc. could be added. 4) She listed the specific uses proposed such as the "great lounge", which she said were increases to the restaurant use approved in the SA. She again pointed out the Regulations permit no expansion of non conforming uses. 5) Both the poolhouse and main building were being expanded vertically and have proposed additional uses. She said such expansions violate the Zoning Regulations and the Commission may not violate its own Regulations. 6) She referred to the review by Mr. Owens, which demonstrated the height and volume of the proposed main building had increased in the current plans. 7) She stated that third floors had been added to the cottages. 8) She said a large terrace for outdoor events had been added to the main building. 9) She noted the 2018 plans include a plating kitchen,

member/guest only dining room, and pool house dining; all expansions not permitted under Section 17.1. She added the member/guest only dining room was referenced in the Public Offering Statement and was more of a residential use, than an inn. 10) She said the proposed dedicated bar use was not permitted in the SA and was not appropriate on rural and windy Wykeham Road. 11) Atty. McTaggart stated that the proposed increases such as the addition of the ballroom were inconsistent in size and scale with the purpose of the R-1 District. She read Section 4.1; the purpose of the R-1 District. 12) She stated increases resulting in a more intensive use of the property were not permitted, that such increases would impact the noise generated, and that the use had to be in harmony with the neighborhood. 13) She complained the applicant had not submitted a statement of use, although she pointed out the various uses proposed were labeled on the plans. 14) Atty. McTaggart said the Public Offering Statement referred to residential requirements of the building code, not the Zoning Regulations. She noted the definition of residential dwelling unit in the Zoning Regulations defines residential use and that using that definition, the guest room units were predominately a residential use. She also noted the Public Offering Statement says that all of the units are "convertible;" the owner may convert them to country units. She explained that when the units are converted, the owners may live there without paying a guest fee. In addition, she noted the Public Offering Statement refers to the Declaration, which was not submitted for review. 15) Atty. McTaggart said there was evidence that the units were being marketed as residential units. She said today when she looked at the Ocean House site, she found a luxury hotel and residences offered. 16) She stated the 2018 plans showed a 29% increase in the number of bedrooms over the Wykeham University plans. 17) It was noted that insufficient parking was proposed for the increased uses; that the 100 approved parking spaces limited any expansion of uses. In conclusion, Atty. McTaggart stated the plans were for inn expansion "in all directions" and no expansion of a non conforming use is permitted under the Zoning Regulations. She also stated that the reasons for approval such as providing jobs and tax revenue cited in Ms. Klauer's 5/1/18 letter were not reasons under the jurisdiction of the Zoning Commission.

At 8:00 p.m. Atty. Fisher asked for a five minute break in order to discuss the applicant's response. Mr. Solley granted the request.

At 8:06 p.m. Mr. Solley reconvened the hearing. Atty. Fisher expressed his surprise that so much information had been submitted at this hearing as the applicant had previously been

accused of not providing information at least two weeks before a hearing. He submitted a request to continue the public hearing to Monday, July 23, with the understanding, he noted, that it would be the last session of the hearing. Mr. Solley noted Atty. Zizka would attend on Monday. He said there would be a brief opportunity for the public to speak at that time and final statements from the applicant. Mr. Werkhoven thought the public had had an opportunity to speak and that there should be input only from the applicant on Monday.

MOTION: To continue the public hearing to consider the application to revise the Special Permit for an inn at 101 Wykeham Road submitted by 101 Wykeham Road, LLC, By Mr. Solley, seconded by Mr. Averill, passed 5-0.

The meeting was adjourned at 8:14 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Administrator