

Zoning Commission

MINUTES
 Special Meeting-Public Hearing
 August 31, 2015

7:00 p.m. upper level meeting room

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

ALTERNATES ABSENT: Mr. Sivick, Mr. Wyant

STAFF PRESENT: Mrs. Hill

ALSO PRESENT: Atty. Olson, Atty. Fisher, Atty. Fuller,
 Mr. Fisher, Mr. Wolfe, Mr. Szymanski,
 Mr. Stickles, Ms. Klauer, Mrs. Peacocke,
 Atty. McTaggart, Mr./Mrs. Solomon, Ms. Kurz,
 Ms. Purnell, Mr./Mrs. Minor, Mr. Parker,
 Mr./Mrs. Barnet, Mrs. Canning, Mr. Charles,
 Mrs. Middlebrook, Mr. Drucker, Mr. Duke,
 Ms. Giampietro, Mr. Williams, Atty. Moran,
 Residents

101 Wykeham Road, LLC./101 Wykeham Road/Request to Modify the
 Site Plan and Settlement Agreement for a Previously Approved
 Specially Permitted Use: Section 14.1 and 13.1.B Standards

Mr. Solley reconvened the public hearing at 7:00 p.m. and seated Members Averill, Reich, Solley, Sorce, and Werkhoven. He then read the list of documents received for the file since the last session of the hearing and explained the purpose of the hearing was to consider the proposed revisions to the site plan and not to "relitigate" the inn approval under the original Settlement Agreement.

Representing the applicant, Atty. Fisher noted that in his July 31, 2015 letter he had addressed points previously raised by Atty. McTaggart and by Atty. Olson in her July 22 memo.

Atty. Olson noted her July 22 memo had been a draft, which she had not yet signed.

Atty. Fisher stated that the issue of encroachment into the side yard setback had been addressed by moving the poolhouse and its hardscape out of the setback area.

Mr. Szymanski, engineer, presented the 8/19/15 proposed site development plan. He outlined the latest revisions: 1) per request of the Fire Marshal, an emergency access driveway was added at the entrance area to access the main building, 2) the poolhouse was shifted to the west to bring it outside all of the required setbacks; a 5 ft. sq. portion of the sidewalk

remained in the setback, but could be removed if required by the Commission, 3) the associated underground propane tanks were moved 25 feet to the west, 4) the spa/hot tub in the SE corner of the pool area was removed, 5) retaining walls and vegetation had been added to screen neighboring properties, 6) the mechanical equipment for the main building, which had been within the 50 ft. side yard setback, had been placed on the roof out of the setback area, and 7) the main building had been moved 9 to 10 inches further from the property line and its sq. footage was smaller than what had been originally approved. Regarding landscaping Mr. Szymanski stated: 1) retaining walls had been added to provide topographic screening for the uphill adjoining properties, 2) notes had been added regarding additional screening of the front parking lot so its view would be obscured from the road and giving the Commission the right to require more screening if it was determined what was proposed was not adequate, 3) additional buffering was added at the east entrance, and 4) a series of evergreen plants had been added to provide a better buffer between the tree line and the successional woodland.

Mr. Solley asked if the maximum building height requirement was still met with the change to the roof line and placement of the mechanical equipment on the roof. Mr. Szymanski said it was. Mr. Solley asked if the mechanical equipment would be screened and Mr. Szymanski said the angle of the roof would screen it.

Mr. Wolfe, architect, presented an enlargement of the proposed front façade and said it was more in keeping with the neighborhood and was a more compact and efficient layout than the previous plan. He said the mechanical equipment on the roof would not be seen from any viewshed.

Atty. McTaggart spoke at length. Her points included: 1) Revisions to Special Permits and to site plans require review under the Special Permit standards in Section 13.1.B. 2) She referred to her 8/28/15 letter and listed all of the relevant sections of the Zoning Regulations that apply to this request, which include sections 4.1, 2.2.2, 13.4, and 14.7. 3) She noted that because inns are not allowed on town roads, the inn is a non conforming use and the expansion of a non conforming use is not permitted under Section 17. 4) She maintained that the number of guest rooms proposed exceeded the number allowed in the Settlement Agreement (SA) because each of the proposed suites had two doors and two separate baths so that they could be used as separate unit. She said there were 9 more rooms proposed than allowed. 5) The pool area was vastly greater, increasing from 2160 to 5755 square feet and would be even larger if the fenced in lawn area was included in the

calculation. She submitted three overlay diagrams to compare the pool area in the SA with what the applicant was currently proposing. She said the increase in area was even more dramatic because according to the plans submitted to the DEEP food service to the pool was proposed. She said the number of swimmers that could be accommodated had increased from 15 to 45, which meant there would be even more people, activities, and noise in this area. She referred to a previous letter from Mrs. Silk, which noted how the topography amplifies the noise. She asked the Commission to consider the increased intensity of use per Section 13.B. 6) Atty. McTaggart stated the proposed food service to the pool area was not permitted under the SA. She said the SA mentioned only a 68 seat restaurant; 30 of those seats permitted outside, presumably on the proposed terrace. She referred to Sheet L-203, which, she said, showed at least 30 more seats around the pool and that food service could not be expanded to these seats as this would increase the intensity of use and would not comply with Section 13.1.B.2. 7) Atty. McTaggart said the section of the main building that could be used for events had increased 60%; from 1100 to 1800 sq. ft. meaning there would be more capacity for holding larger events. 8) Regarding the proposed increase in the size of the kitchen, she thought it was over sized for serving a 68 seat restaurant and occasional events. 9) Atty. McTaggart stated the SA specifically described the permitted uses, but that a review of the proposed floor plan showed additional uses are proposed. She again stated per Section 17.1 a non conforming use could not be expanded and per Section 13.1.B the intensity of use must be considered. 10) She specifically discussed the proposed lobby-bar, which, she said, was not listed as permitted per the SA. She said a tiny bar area had originally been approved, but this lobby-bar area was 2400 sq. ft.; larger in area than the entire restaurant. She also noted it was located two floors up from the entrance and one floor up from the restaurant, so it was an entirely new and separate area. She added that this was a major issue for neighbors who were concerned about increased noise and traffic. 11) Atty. McTaggart noted the main building had been reconfigured. She stated flat and mansard roofs have a maximum total height of 35 feet permitted. She also noted that the reconfigured building utilizes areas that weren't previously utilized, contrary to Section 17. 12) Atty. McTaggart referred to page 10 of her 8/28/15 letter in which, she said, the proposed items that violate the Zoning Regulations were listed and she also noted again the inn was non conforming.

Mr. Solley asked Atty. McTaggart if she thought the approval of the SA made the inn a conforming use as the applicant believes. Atty. McTaggart disagreed, saying that no

matter when the regulation concerning inns on town roads had been revised, the approved SA was no different than a Special Permit use and that expansion of the non conforming use was not permitted under Section 17.

Mr. Averill explained the history and reasons why Section 13.9 had been clarified to state that inns are permitted only on state roads.

Atty. McTaggart stated that while the inn was legally created, it was now a non conforming use. She pointed out the intensifications of use within the main building and expansion of the pool area and said these were not permitted.

Regarding compliance with the Zoning Regulations, Atty. McTaggart said there was a corner of the pool hardscape that was within the required 50 ft. setback, she questioned whether the height of the mansard roof exceeded the maximum 35 ft. permitted, and she also questioned whether the lot coverage had been correctly calculated. She also stated that if the proposed expansions were allowed to occur, the proposed parking would no longer be adequate. She pointed out that no lighting plan had been submitted, although that is a requirement in Section 14. She stressed that the requested revisions not only changed the site plan, but also changed the intensity of use and so said the Commission has a duty to review them under Section 13.1.B.

Atty. Fisher said that Section 13.1.A states that when a Special Permit is approved, its use is permitted, not non conforming.

Mr. Solley asked for public comments.

Mr. Minor reported that the Aquarian water company was pumping 6000 gallons of water a day into the water system, and said the 65 homes served by this company were in dire straits because the Aquarian could barely supply its existing customers. He asked for proof that Aquarian would be able to support all that is proposed and for a complete engineering plan for wells, holding tanks, etc. Mr. Szymanski said he had had preliminary discussions with Mr. Black, who consults for Aquarian, and said that prior to the issuance of a building permit adequate water supply would have to be demonstrated. He noted the property would not necessarily be served by the system as it now exists, but by an updated system. He stated that once the Zoning Commission had approved the revisions, the applicant would apply to the Ct. Dept. of Public Health. He said current Aquarian customers would not experience conditions that would be worse than they are today.

Mr. Averill asked whether this was an issue under the Zoning Commission's jurisdiction. Mr. Solley noted it was a health concern, but one that was an enormous concern to the public.

Ms. Giampietro said the proposed changes were not minor. She noted that quiet is important for her work as a musician and asked the Commission to protect her from the noise of the large outdoor events that are proposed. She noted the residential nature of the neighborhood and said routine commercial outdoor gatherings were not appropriate in this area. She also voiced her concern about the water problems in the area, noted she was not permitted to drill a well on her property, and said the proposed increase of uses for the inn would increase the noise and water problems on her property.

Ms. Klauer, adjoining property owner, stated that she had not been supplied with plans to review even though she is a party to the SA. She said she wanted the opportunity to review and ask questions about the plans and asked that Zoning condition any approval subject to approval by both her and Mrs. Peacocke.

Mr. Drucker read Section 1.3, the purpose of the Zoning Regulations, and told the commissioners it was their job to defend the R-1 District.

Mr. Parker said the SA had been approved and he saw no need for changes. He said the proposed changes were massive in size and scale and said the Commission must consider whether what is proposed fits in with the surrounding community. He questioned whether the ZEO would enforce what would be approved, saying that he had failed to enforce the provision of the SA that the use of the Bell Hill driveway be abandoned. Mr. Solley read that provision of the SA and noted no timeline had been given for the abandonment. Atty. Fisher said that when the SA had been negotiated, all parties had agreed the Bell Hill driveway would be abandoned, but they had not said this would be done immediately.

Mr. Williams stated the presentation had been "insulting and disingenuous" and the plans were not in keeping with the Town or this area of Ct. He did not think that the narrow and winding Wykeham Road was suitable for the increase in traffic that would result from the proposed expansion of uses.

Mrs. Barnet said that Paligroup was trying to hide what they are actually proposing and that what the applicant promises is unenforceable. She read from the 5/18/15 minutes that Atty. Fisher had stated the proposed revisions were insignificant, minor, and improvements, but she said actually the number of rooms and parking spaces would increase and the property would be made "slightly less ugly." She said the focus on the change of use of the property was the Paligroup brand and cited the increases in the size of the bar, kitchen, and pool areas as proof of expansion. She said Paligroup had a history of deception and compliance with the Regulations would be

impossible to enforce. She concluded that Paligroup had been aware of the SA when it purchased the property and so should not be allowed to expand now. She asked the Zoning Commission to deny the request.

Mr. Duke made three points: 1) He said there was ample legal backing for rejecting the proposed revisions to the site plan. 2) He agreed that the proposed changes were enormous and said the small country inn was being changed to an event venue in a residential neighborhood in one of the loveliest sections of Town. 3) Mr. Duke said that residents were worried about balancing commercial interests with the need to preserve the character of Washington. He questioned whether the character of the proposed revisions was compatible with the character of Washington and said he was trusting the Zoning Commission to "do the right thing."

Mr. Parker asked if it was true that Ms. Klauer was not part of Paligroup. Mr. Solley said that was correct.

Mr. Barnet said he was confused by Ms. Klauer's statement because the applicant had previously told the Commission that the other SA parties had already agreed to the proposed changes. He urged the commissioners to read the letters from Atty. McTaggart. Regarding the proposed revisions, he noted there are things that could be worse than the present fallen down property.

Ms. Kurz made several points: 1) She questioned whether the wonderful stand of trees along Bell Hill Road would be removed and a series of smaller trees planted. 2) She noted Mr. Wolfe had said the current architectural plans were an improvement over what had been previously approved, but she said that the proposed building design had nothing to do with New England; that it was a "ridiculous" design that matched what she had seen in Utah. 3) She voiced her concern that the proposed changes would result in an increase in noise. 4) She was also concerned about the Bell Hill/Wykeham Road intersection, which she said was dangerous. Mr. Szymanski said all existing landscaping along Bell Hill and Wykeham Road would be preserved except for the removal of dead trees and that there would also be supplemental plantings.

Mrs. Peacocke, party to the SA, stated she had not agreed to the proposed revisions.

Atty. Olson explained that modifications to the terms of the SA may only be made if all parties to the SA agree to them. Mr. Averill stated, and Mr. Werkhoven and Mr. Sorce agreed, that the Commission had been told by the applicant that the other parties had already agreed to the revisions and that the Commission was the only party who had not yet agreed. Atty. Fisher stated the other parties had agreed to the plans several

months ago, but there had been revisions since then. Mr. Solley asked if both other parties had signed off on the initial request. Atty. Fisher said they had.

Atty. Moran, representing Ms. Klauer, stated she had not consented to the proposed plan in its present form.

Mrs. Peacocke said she had been asked in March if she would agree to a reduction in size of the main building; nothing else, and she had not signed her agreement to any revisions.

Mr. Solley asked the applicant to supply copies of all plans to Ms. Klauer and Mrs. Peacocke.

Atty. Olson again noted that whatever action the Commission takes, changes to the SA may not go forward unless approved by all SA parties.

Mr. Parker thought the other parties should agree to revisions first so that the Zoning Commission's time would not be wasted. Atty. Olson stated the applicant was proceeding at its own risk.

Mr. Minor stated the situation was not clear and should be clarified so that the Commission can make a clear decision.

Mr. Solley noted the Commission's deadline for closing the hearing was 9/21/15 and said if there were no more comments from the public he would consider continuing the hearing one more time so that final comments and summations could be made.

Mr. Averill asked if there was anyone present in support of the requested revisions to the SA. There was no response.

Atty. Olson explained the request was actually to revise the site plan, which is part of the SA; there had been no request to modify the Settlement Agreement.

Ms. Purnell compared the approved SA landscaping plans to the proposed plans. She noted the applicant had previously stated that there would be adequate screening for everything proposed and that 5000 trees would be planted. However, Ms. Purnell said she had counted the proposed trees on the landscaping plan and less than 400 would be planted. Other comparisons included: 1) At the entry area nearest Bell Hill Road: Eastern Hemlocks are proposed, but she noted this was a poor choice as they are dying in the region due to an infestation. She stated that landscaping had been requested by the Zoning Commission to screen the view from the roads and to buffer noise and lights, but that compared to the SA plan, the current plan indicated a reduction of screening near the Bell Hill access. In addition, she pointed out that six additional parking spaces had been added near this area where additional screening could have been planted. 2) At the lower end entrance previously 20 pine trees had been proposed, but currently proposed was a type 1 meadow with some pines. 3) Behind the main building the SA plans called for 70 or more pine trees,

whereas the proposed plan shows 34. She also noted that it would not be possible to plant trees in some of the areas where they are currently proposed due to the location of catch basins and hardened surfaces. 4) Ms. Purnell noted that screening would increase behind the proposed poolhouse and along the Klauer border. 5) She stated while this evening the applicant stated that only dead trees would be removed along Wykeham Road, the 2013 SA removal plan noted 45 trees would be removed. 6) She noted the trees proposed on the downhill slopes of basins had been removed and that wooded areas would be preserved, but selectively cleared to obtain views. She read the note on sheet L-201. In conclusion she stated that the overall number of trees to be planted would decrease, some species that were not suitable had been proposed, some trees could not be planted where they were proposed, and the prior SA plan called for all native species, which were more appropriate than the plants now proposed.

Mr. Sorce asked for clarification about which trees along Bell Hill and Wykeham would be removed. Mr. Szymanski stated all the trees to be cut would be those dead or diseased and he referred to Sheet SD.1.

Ms. Purnell stated that the size of the area to be disturbed per the SA was approximately 11 acres, while the current proposal would disturb 13.8 acres. She said this was not a reduction in activity. She also encouraged the Commission to compare the floor area data for the main building for the SA plan vs the Paligroup proposal.

Mr. Solley asked if the Commission had a complete floor plan. Mr. Szymanski, said Atty. McTaggart had supplied it.

Atty. McTaggart said she had reviewed the legal memos from Atty. Fuller, Atty. Fisher, and Atty. Olson and had consulted case law. She explained why she thought the Barbarino case was relevant, referred to other court cases, explained why she disagreed with Atty. Fuller about the TLC Development case, and generally reviewed her 22 page 8/28/15 memorandum, which she now submitted in response to the referenced legal memos.

Atty. Fuller complained that the late submissions by Atty. McTaggart was "not the fair way to do things." He referred to Section 13.1.A, which he said states that uses deemed as Special Permit uses are deemed permitted uses in the district and that therefore, the approved SA uses are now permitted by right. He cited several court cases including Barbarino, Fair Street, LLC. vs the City of Norwalk, and Joshua Tracts vs the Town of Windham, and again stated that Barbarino does not apply here because Washington's Regulations differ from those in the case. He noted he had included other relevant cases attached to his 8/31/15 letter to the Commission, which he then submitted,

and he read a May 2010 decision by the Ct. Supreme Court. He stated the Commission was not strictly dealing with a non conforming use because the use (the inn) was an approved use as the result of a stipulation. He also stated the Commission should not micro manage the interior of the building because that is not part of the site plan review or a function of the Commission.

Atty. McTaggart stated Washington's regulations were like Farmington's in that they do require site plans as part of the review process, to which Atty. Fisher responded that Washington's regulations do not tie site plans to Special Permits.

Atty. Fisher responded to points raised by Atty. McTaggart. 1) Regarding her position that each of the suites was actually two rooms, Atty. Fisher stated he had been involved in the SA negotiations and that the term, "room unit," had been deliberately used to include suites. 2) He argued that the pool area lawn was the only lawn on the property. 3) Regarding the size of the restaurant, Atty. Fisher noted the SA referred to the number of seats only and not to the square footage so the Commission should not review this as a change to the approved plan. 4) Regarding the size of the kitchen, Atty. McTaggart had claimed it was oversized and compared it to the size of the kitchen at the White Horse. Atty. Fisher noted Mr. Harris has applied for an addition to increase the size of his kitchen because it is too small. 5) Atty. Fisher stated the lobby-bar is actually a lobby and that a 2400 sq. ft. lobby is normal for an inn this size. He said it was for guests only and it would be used to serve snacks and drinks to guests.

After a brief discussion the commissioners decided to continue the hearing to September 16.

MOTION: To continue the public hearing to consider
101 Wykeham Road, LLC./101 Wykeham Road/
Request to modify the site plan and Settlement
Agreement for a previously approved specially
Permitted use: Sections 14.1 and 13.1.B
Standards to Wednesday, September 16, 2015 at
7:00 p.m. in the upper level meeting room for
the purpose of summations and whatever business
that must come before this assembled body. By
Mr. Solley, seconded by Mr. Reich, passed 5-0.

Mr. Solley continued the hearing at 9:42 p.m.

Atty. Olson told the commissioners she would review the cases cited, but said she did think the Barbarino case applies.

She advised the Commission it should apply the Special Permit criteria to the proposed revisions, compare what had been approved under the SA to what was now proposed, and decide for itself whether the changes are major or minor. She explained the meaning of "non conforming use" as a use that no longer complies with the regulations even if it did comply at the time it was approved. She stated that since the Commission had clarified its Regulations regarding inns, she thought the inn was a non conforming use. She said she would review this matter again, though, before giving final advice.

MOTION: To go into executive session to discuss pending Litigation; Montrose Realty Partners, LLC., Steven Spiegel and Virginia Spiegel VS Town of Washington Zoning Commission. By Mr. Solley, seconded by Mr. Reich, and passed 5-0.

The Commission entered the executive session at 9:58 p.m.

MOTION: To end the executive session. By Mr. Averill, seconded by Mr. Reich, and passed 5-0.

The executive session concluded at 10:30 p.m.

MOTION: To adjourn the meeting. By Mr. Averill.

Mr. Solley adjourned the meeting at 10:30 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill
Land Use Administrator