

Zoning Commission

MINUTES Public Hearings – Special Meeting February 13, 2018

6:30 p.m.

Main Level Meeting Room

MEMBERS PRESENT: Mr. Solley, Mr. Reich, Mr. Werkhoven, Mr. Averill, Mr. Armstrong
ALTERNATES PRESENT: Ms. Lodsin
ALTERNATES ABSENT: Ms. Radosevich, Mr. Sivick
STAFF PRESENT: Ms. Hill, Ms. White
ALSO PRESENT: Atty. Zizka, Atty. Kelly, Atty. Fisher, Ms. Klauer, Mr. Yates, Mr. Szymanski, Ms. Giampetro, Ms. Purnell, Mr. Owens, Mr. Barnet, Ms. Branson, Mr. Phillips, Mr. Parker, Mr. Talbot, Mr. Wadleton, Ms. Freidman, Members of the Public

Call to Order:

Mr. Solley called the meeting to order at 6:32 p.m.

Public Hearing:

Seated: Mr. Solley, Mr. Reich, Mr. Werkhoven, Mr. Averill, Mr. Armstrong

Continuation: 101 Wykeham Road, LLC/101 Wykeham Rd/Modification of Special Permit for an Inn:

Mr. Solley called the meeting to order and invited Mr. Averill to speak.

Mr. Averill read an apology letter that he had written to Mr. Phillips, the Zoning Commission and the public regarding the heated discussion between himself and Mr. Phillips at the last January 29, 2018, Special Meeting.

Mr. Solley stated that he would like that the comments made tonight be specifically about the differences that are before the Commissioners to consider versus the information that was presented at the last hearing. this application before the Zoning Commission. He asked what has changed. He noted that there is an administrative application with the submitted documentation and this application will be accepted at the next Regular Meeting on February 26, 2018.

Mr. Szymanski, P.E. stated that the reason the applicant's team submitted a binder was to clarify what the modification request is and what the zoning application would be for. He explained that, since the last meeting, the only changes to the Site Plan that have been made are due to Mr. Yates Building Code Review. He noted that a Building Code Review is typically not done for the Special Permit and site plan process.

Mr. Szymanski displayed the map entitled "Site Development Plan," prepared for 101 Wykeham Road, LLC, by Arthur H. Howland & Associates, revision date 02/05/18, sheet SD.1. He pointed out changes to the site plan since the last meeting as the addition of the concrete landing adjacent to the Spa Building, used for emergency access, a pull off area for handicapped accessibility in front of the Spa Building, and a shift in the location of the Spa Building 5 feet closer to the pull off area. Mr. Szymanski stated that 3 concrete pads were added adjacent to the Pool House for emergency egress purposes. He stated that Mr. Yates would discuss the architectural changes which include a reduction in the size of some of the cupolas and the actual average grade on his plans.

Mr. Szymanski clarified what the items that the applicant is seeking approval for with this modification request: 1. Re-grading along the rear of the Main Building, 2. Addition of a retaining wall on the east side of the Main Building and a minor modification to the existing retaining wall, 3. Removal of the 20 air conditioning unit concrete pads located behind the Main Building, 4. Addition of 3 emergency egress landings at the Main Building, 3 emergency egress landings at the Pool House, and 1 at the Spa Building, with associated pathways and gathering areas to comply with the building code, 5. Addition of a pull-off area adjacent to the driveway in front of the Spa Building, moving the Spa Building 5ft closer to the driveway to satisfy ADA requirements.

Mr. Szymanski informed the Commission that they have provided their submittal for a zoning permit for contextual reasons. He stated that the majority of these additional requests that they are discussing tonight are in relation to building code requirements. He noted that the application for a Zoning Permit has been filed in conjunction with their motion for modification of the Settlement Agreement and Special Permit so that the Commission would know what administrative permit the modification request relates to. Mr. Szymanski continued to explain that they know that if the pending modification is granted, this application for a zoning permit will fully comply with the Zoning Regulations, the Special Permit, and Settlement Agreement of 2013, as modified. He informed the Commissioners that they (the applicant) have "no objection if our application or zoning permit application was made a condition of the modification approval. So we're volunteering that if you grant this modification to the Special Permit, that these floor plans and detailed elevations of every single building can be made a condition of your approval of the modification to the Special Permit."

Mr. Szymanski provided a brief explanation of the PROCON plans. He explained that they were working with the DEEP at the time and the plans were provided for basic estimating along with the application for a general permit. He noted that they were only provided to state use of the building.

Mr. Solley stated that three gathering areas for the Main Building were mentioned.

Mr. Szymanski offered to go through the additions to the Site Plan. He indicated the location of the three concrete landings with grass pathways leading to the gathering areas off of the Main Building. A concrete landing was added to the south side of the Spa Building with a grass pathway leading to the front of the Spa House. Mr. Szymanski stated that there are concrete landings with associated grass pathways on the south, rear and north sides of the Pool Building

as well. The only other change was the addition of the pull-off area, 5' x 20' at the front of the Spa Building.

Mr. Reich asked about the removal of the twenty concrete air conditioning pads.

Mr. Szymanski stated that when the original settlement agreement was approved there were 12 air conditioning condenser pads and they are no longer required. The removal of the pads decreased the lot coverage and offsets some of the other areas.

Mr. Reich said that they were told the applicant was removing 20 concrete pads.

Mr. Szymanski confirmed that it was 20 concrete pads and Mr. Yates would explain where the air conditioning units would be located within the building.

Mr. Szymanski confirmed that the amount of excavation in the rear of the building has not been increased.

Mr. Yates from H&R Design was present to discuss any changes made to the architectural plans. He noted that the elevations of the Cottages have been modified by changing the cupolas to 5' x 5' and elevations confirmed by the calculations provided by A.H. Howland. The Spa Building heights were confirmed coordinate with the calculations. Mr. Yates stated that no changes were made to the Main Building except some roof lines to pick up some inconsistencies. He confirmed that the heights coordinated with the calculations.

Mr. Solley asked if the labeled 508' elevation is the floor level of level four (4) on sheet Skz-105.1.

Mr. Yates confirmed that it is.

Mr. Solley asked Mr. Szymanski why the Main Building on his site plan is labeled "FF 504." He said that means "Finished Floor."

Mr. Szymanski stated that that label is incorrect and he will cross it out and initial the site plan. The correct elevation is 508'.

Atty. Zizka noted, for the record, that Mr. Szymanski included written notes which were signed on sheet SD.1 dated 12/2/16, revisions through 2/5/18.

Mr. Solley stated that he feels that there is some confusion as to whether the Cottages were going to be two levels and now there are three.

Mr. Szymanski responded that as part of the Settlement Agreement of 2013 the only respect given to outbuildings was only for the Spa Building. He said the footprint of the other buildings were approved the number of floors in these buildings was not discussed. He stated that three of the Cottages are proposed to be built into a hill will the bottom level essentially underground but with the rear wall exposed which will have doors and windows.

Atty. Fisher stated that at the beginning of the hearing Ms. Hill had written an administrative report that said that the job of this Commission is to determine whether the plans as being presented comply with the Settlement Agreement. He informed the Commission that early on the initial concern was lot coverage because it had exceeded the 10% limit and as a result of the negotiations it was determined that they would have to rely on the Site Plan. He said the other issues were intensity of use, number of rooms, number of parking spaces, seating capacity of the restaurant, number of outdoor restaurant seats, the floor area of the Spa Building, abandon existing driveway on Bell Hill Rd., no grilling of food or food preparation in the Pool House or around the pool and finally, no more than twenty-four tented events to occur on the site in certain locations. Atty. Fisher state that these are the items that were agreed to in the 2013 Settlement Agreement and there was no discussion about floor areas other than for the Spa Building. He added that there was never any discussion regarding the interior volume of any of the buildings and floor plans were not looked at.

Atty. Fisher concluded that the modifications to the site plan are mild and the floor plans that are being proposed now are entirely consistent with the Settlement Agreement and all of the conditions set forth therein.

Atty. Kelly requested that the applicant and her representatives reserve the right to speak after public comment and at the end of the public hearing.

Mr. Solley agreed.

Mr. Barnet displayed a sheet that showed the Proposed North/Front Elevation, Proposed South/Rear Elevation, Skz-103A – Main Inn – Level 3 Floor Plan and Rendering A. He informed the Commission that he spent a fair amount of time studying the applicant's latest modification request. Mr. Barnet discussed his observations which are written out in detail in his Memorandum for Zoning Commission dated February 12, 2018 (on file in the Land Use Office). He touched on the subjects regarding increased heights of Levels 3 and 4 of the Main Building, increased floor area of Level 3, and increased floor area of Level 4. He indicated the areas in question on the sheet he displayed.

Mr. Solley read letters of support for this application submitted by Ms. C. LaPlante, Mr. & Mrs. P. Williams, The Cheney Family, and Ms. L. Anderson (on file in the Land Use Office).

Mr. Solley opened the floor for public comment.

Mr. Phillips read a letter from the property owner of 276 New Milford Turnpike in support of approving the modification request before the Commission (on file in the Land Use Office).

Mr. Madonna read a letter on behalf of Mr. Duran, property owner at 115 River Road, in support of this application.

Mr. Parker of Bell Hill Rd. stated that, on behalf of the neighbors that are being represented by Atty. McTaggart, they acknowledge that the applicant has a Special Permit to build an Inn.

However, he continued, “we do not acknowledge that there is an unlimited ability to grow the size of this facility.” He explained that this is their main objection.

Mr. Parker read a letter on behalf of Ms. Giampetro of Wykeham Road who was unable to attend this meeting. In her letter, Ms. Giampetro reiterated Mr. Parker’s comments and requested that the Commission deny this application.

Ms. Purnell, property owner in the Town of Washington, read highlights from her letter addressed to the Washington Zoning Commission, dated February 13, 2018 (on file in the Land Use Office). Ms. Purnell pointed out inconsistencies in the applicant’s submitted plans and the differences of the proposed plans to what was agreed in the 2013 Settlement Agreement.

Ms. Lodsin asked if the applicant was going to address where the air conditioner condensing units would be installed.

Mr. Yates stated that they will be in the attic within the volume of the building.

There was a brief discussion regarding how the air conditioning system would work.

Mr. Solley feels that there is a lot of evidence that seems that the applicant has not put forth plans and elevations that too many people in the audience consider inconsistent to the approved elevations of the PROCON plans.

Mr. Szymanski stated that the floor plans and elevations are part of the applicant’s advocacy set. He continued to explain that the floor plans that were submitted incorporated the PROCON layouts and they are entirely consistent with what Mr. Owens submitted at the last meeting. He stated that it is in the record. Mr. Szymanski said that it is clear that the DEEP floor plans do not overlay with the footprint on the site plan. He informed the Commission that during the Settlement Agreement, the only discussion regarding the renderings was, and he read from the minutes, “Mrs. Hill asked what architectural style was proposed.” He continued to read the excerpt from the minutes and stated that it doesn’t say height or window layout and clearly stated style.

Mr. Szymanski addressed the regrading in the rear of the Main Building. He stated that they submitted two alternative plans as part of this modification application process. He noted that one plan had a little bit of grading and one had more and that is the one they are proposing.

Mr. Szymanski addressed the comments that there would be a larger and more intense use regarding the misrepresentation of an increased floor area. He stated that there were no discussions of floor plans/area in the Settlement Agreement of 2013 and everyone has to go by the record of what was agreed to in the Settlement Agreement and the Special Permit.

Mr. Szymanski stated that Ms. Purnell pointed out that the DEEP Floor Plans were dated September 8, 2012, which was before the settlement negotiations had concluded. He reiterated that it would be false to claim that these floor plans are part of the Settlement Agreement. The whole purpose was to represent number of rooms and restaurant seats.

Mr. Solley read Ms. Peacocke's letter into the record (on file in the Land Use Office). In her letter, she discussed her relationship as a neighboring property owner and gave a brief history of how the Settlement Agreement was negotiated and what was agreed upon by all parties involved. She encouraged the Commission to work with Wykeham Road, LLC and to approve these modifications within the parameters of the Settlement Agreement of 2013.

Ms. Purnell stated that she transcribed the recording of the Zoning Meeting of January 2013 at the approximate 23: 23-minute mark of the recording. She read the portion of the meeting that she transcribed (on file in the Land Use Office).

Atty. Kelly gave his closing thoughts for the applicant. He wrote noted the three words that he found important in Ms. Purnell's transcription..." for the architecture." He feels that the opponents believe that the Zoning Commission approved the floor plans designed by PROCON in the 2013 Settlement Agreement. He stated that the applicant agrees that there was a reference to the floor area in the Settlement Agreement, however, it was a single reference regarding the Pool and Fitness Building. Atty. Kelly paraphrased a Latin saying, " If one thing is included, all else is excluded." He said that the idea that "we settled this matter in 2013 incorporating all these PROCON plans is complete and total fiction." Atty. Kelly discussed the conditions of the 2013 Settlement Agreement. He noted that there are no floor plans and no floor area references for any of these buildings and the applicant is agreeing to limit the accessory buildings to the zoning regulation specified accessory building height. He stated that the PROCON plans were introduced at the last minute in response to a single question regarding the architectural style.

Atty. Kelly informed the Commission that the applicant was in no position to commit to any architectural plans as she was negotiating the detailed conditions and barely had enough time to obtain the engineering and feasibility studies that were required by those conditions. He pointed out that the Town of Washington Zoning Regulations does not govern floor area and explained how total floor area in our regulations equals footprint. He reiterated that out of the twenty conditions listed in the Settlement Agreement, floor area was not one.

Atty. Kelly addressed the concerns regarding intensification of use. He stated that the use must be consistent with an Inn and there is the same number of people are in a bedroom that is 100 square feet or 400 square feet, or if they're in a room that is 6 feet tall or 8 feet tall. He said, "An intensification of a nonconforming use is legally allowed to grow...What you cannot do is change the character of the use." Atty. Kelly stated that the applicant has met the conditions that were included in the 2013 Settlement Agreement.

Atty. Kelly explained how the PROCON plans were not architectural plans and could never get permitted or built. He questioned how the opponents of this application can dictate the architectural style to the only person who is investing in this project. He stated that nothing

that is being proposed here is in any way, shape or form, changes any of the conditions of the Settlement Agreement. Atty. Kelly stated that Mr. Owen's comparison of the PROCON plans to the only legitimately submitted architectural plans is troublesome because he knew that "it would become inflammatory and ripe for misinterpretation." He informed the Commission that because of Mr. Owen's prior involvement in this project, his opinion could not be considered objective.

Atty. Kelly stated that the water concern of the neighbors is also a concern of the applicant. He said that the property at 101 Wykeham Road was on this water system before many of the houses in the neighborhood were built. He noted that the applicant has every right to use the existing water system that has always been used on this property.

Mr. Solley sought advice from Atty. Zizka as to whether there is a process where all parties concerned can check on facts that they might have questions on before the Commission makes their decision.

Atty. Zizka stated that once that hearing is closed the Commission can no longer take comment of any sort from either the applicant or the opponents. He informed everyone if the question(s) relate to something that is shown on a map or letter, etc., the Commission does have the right to seek answers from its own consultants.

There was a lengthy discussion regarding Zoning Commission members, alternates and who can vote under certain circumstances.

Atty. Kelly asked Mr. Solley if the Commission is going to have time to consult with Mr. Zizka regarding any questions regarding how the conditions of the 2013 Settlement Agreement influences their decision.

Mr. Solley stated that if they close the hearing tonight a special meeting will be scheduled to discuss matters with Counsel. He noted the Commission would appreciate the guidance of Atty. Zizka before voting.

There was a brief discussion regarding the agenda for the next Regular Scheduled Meeting of the Zoning Commission on March 26, 2018.

The Commissioners discussed when the special meeting should be scheduled.

MOTION: To close the public hearing for 101 Wykeham Road, LLC, 101 Wykeham Road, for a Special Permit modification for an Inn, by Mr. Werkhoven, seconded by Mr. Reich, passed 5-0 vote.

The Commissioners discussed a date for the special meeting. The Commissioners scheduled a meeting for March 5, 2018, to go into Executive Session at 6:30 pm and then commence a Special Meeting at 7:00 pm in the Upper-Level Meeting Room at Bryan Memorial Town Hall, Washington Depot, CT.

MOTION: To adjourn the meeting at 9:04 p.m., by Mr. Averill, seconded by Mr. Armstrong, passed by 5-0 vote.

Submitted subject to approval:

By: _____
Shelley White, Land Use Clerk
February 5, 2018

*All supporting documents mentioned are on file in the Land Use Office

**A recording of the meeting is available to the public in the Land Use Office.