

Zoning Commission

MINUTES

Public Hearings – Special Meeting
April 17, 2018

7:30 p.m.

Main Level Meeting Room

MEMBERS PRESENT: Mr. Solley, Mr. Reich, Mr. Werkhoven, Mr. Averill, Mr. Armstrong
ALTERNATES PRESENT: Ms. Lodsine, Ms. Radosevich
ALTERNATES ABSENT: Mr. Sivick
STAFF PRESENT: Ms. Hill
ALSO PRESENT: Mr. Szymanski, Atty. Fisher, Ms. Klauer, Mr. Yates, Atty. McTaggart, Mr. Bedini, Mr. & Mrs. Barnett, Mr. & Mrs. Hollinger, Mr. & Mrs. Solomon, Ms. Minor, Ms. Griswold, Mr. Rogness, Mr. Parker, Mr. DePerno, Ms. Purnell, Mr. & Mrs. Templeton, Mr. Owens, Mr. Sourse, Ms. Freidman, Mr. Fry, Members of the Public

Executive Session:

Present: Mr. Solley, Mr. Reich, Mr. Werkhoven, Mr. Averill, Mr. Armstrong, Ms. Lodsine, Alt., Ms. Radosevich, Alt.

Staff: Ms. Hill

Counsel: Atty. Zizka

Mr. Solley called the meeting to order at 6:30 p.m.

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

MOTION: To go into executive session to discuss pending litigation by Mr. Solley, seconded by Mr. Averill, passed by 5-0 vote.

MOTION: To end executive session at 7:20 pm by Mr. Solley, seconded by Mr. Reich, passed by 5-0 vote.

7:25 pm – Mr. Solley called the Public Hearing to order.

Public Hearing:

101 Wykeham Road, LLC/101 Wykeham Road/Revision of Special Permit for an Inn:

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

Atty. Fisher introduced himself and stated that he was present to represent the applicant, 101 Wykeham Road, LLC. He explained how the applicant had received an Inland Wetlands permit

previously which expired in November 2017 and it is necessary to have an I/W permit filed before a Zoning permit could be granted.

Mr. Szymanski, Arthur Howland & Associates, stated that the applicant is seeking a modification to the Special Permit that was granted in 2013. He noted that there are a few minor changes to the Site Plan including the retaining wall located on the eastern side of the Main Building, regrading behind the Main Building, emergency egress landings for the Spa House, Main Building and Pool House, the shifted location of the Spa House for handicap accessibility. He noted that the air conditioning condenser units will no longer be located at the rear of the Main Building but incorporated in the roof design. (Letter dated 2/6/18 from P. Szymanski to J. Hill, Re: Changes to Site Development Plan)

Mr. Szymanski discussed how this application complies with the conditions and requirements listed in the 2013 Settlement Agreement. He read the 22 conditions and how the application meets these conditions from the Memorandum, dated April 17, 2018, to Washington Zoning Commission, From Wykeham Road, LLC. (on file in the Land Use Office).

Mr. Yates, Architect, addressed the renderings A and B. He stated that they made adjustments so the footprint and the building height that comply with the Zoning Regulations.

Mr. Averill asked for clarification regarding the roof areas on drawing Skz-104 that shows Level 4 floor plan of the Main Building.

Mr. Yates responded that there is nothing above those areas indicated on the drawing.

Mr. Averill stated that he counts 51 units but are being told that there are 49 units.

Mr. Szymanski offered to review it.

Mr. Solley read a list of questions submitted by Ms. Hill to the Zoning Commission that she had after her review of the current application. (dated 1/17/18 – On file in the Land Use Office).

Mr. Szymanski responded that the a/c condensing units will be located on the lower part of the rear roof area. He explained to the Commissioners that when they originally calculated the building height they did not do as many points around the building but with this application they did a very detailed analysis around the perimeter, took many more spot elevations, calculated both the existing grade and the proposed grade. He offered to review Ms. Hill's questions and address them at the next meeting.

Ms. Klauer addressed Mr. Averill's question regarding number of units. She noted that on drawing Skz103 lists the number of units per floor.

Mr. Szymanski stated that even if there were 51 units the applicant would be below what was agreed upon in the 2013 Settlement Agreement.

Mr. Reich asked why there is a page Skz105.1.

Mr. Yates stated that there were two options with the elevation drawings; Skz105 and Skz105.1. They have eliminated Skz105.

Mr. Solley stated that the square footage is indicated for each level and he asked if that includes all the square footage of finished areas.

Mr. Yates responded that it does include the finished areas, including the balconies but not the covered porch in front of the Main Building.

Mr. Solley informed Mr. Yates, that by his calculation the entire finished square footage of this Main Building is 81,196 sf.

Mr. Szymanski stated that the square footage calculation includes exterior balconies and mechanical rooms footage calculation.

Mr. Yates added that the calculation includes underground square footage.

Atty. McTaggart was present to represent opposing parties. She stated that they had submitted a letter with the withdrawn application (dated January 28, 2018 – on File in the Land Use Office) that she was planning to refer to but due to the plan changes that were submitted yesterday she had to revise the letter to address their revised concerns (dated April 17, 2018 – on File in the Land Use Office). She submitted both letters to the Commission.

Atty. McTaggart informed the Commissioners that the Zoning Regulations are not necessarily about square footage but of use. She stated the first concern was about the process of applying for this special permit and feels that it was submitted prematurely. She discussed seven areas in which the submission is premature.

Atty. McTaggart discussed how it is important to remember that this property is located in a residential zone and that uses must “retain the rural character and natural beauty of the Town.” She reminded the Commissioners that the 2013 Settlement Agreement was a compromise and listed seven allowances that her clients agreed to.

Atty. McTaggart pointed out that the court determined basis for approval of the Settlement Agreement because the uses were scaled back and “now the applicant seek to reverse that compromise by expanding the types and sizes of uses and the buildings.” She stated discussed the importance of the public hearing for modifications of a special permit and the neighbors have the right to be heard. Atty. McTaggart stated that the Connecticut Supreme Court has not allowed modifications of this size that would increase the nonconformities and the Zoning Commission has not authority to approve “any uses or other elements not permitted in the zone or to vary the non-conforming use and structure regulations applicable to this special permit.”

Atty. McTaggart informed the Commissioners of the many ways this application increases, expands and extends the nonconforming uses and structures. She concluded by saying that this increase of intensity of a non-conforming use in a residential zone should not be permitted and the zoning permit should be “denied as premature and because it would allow uses and expansion of non-conforming uses and structures not permitted in the zone.”

Mr. Solley asked for public comment.

Ms. Freidman asked for clarifications regarding what materials a part of the record.

Atty. Zizka that this is a new special permit application and is a new record on this particular application so anything that anybody want to have in the record in the event of an appeal needs to be submitted in connection with this process. He explained a letter that someone has submitted before could be resubmitted to be part of the record for this application.

Ms. Freidman stated that the applicant has a long history on noncompliance and that concerns her. She said that the laxness of the Zoning Commission regarding the 15-day lead time for the applicant to submit material also concerns her and feels that it doesn't give the public the time it needs to respond and advised that this should be enforced with all applicants. She reminded Atty. Zizka of something he said when she was a member of the Zoning Commission. She quoted him as saying "If an applicant's approval is so relying on conditions then perhaps that application is more appropriately denied." She said the Commission needs to really consider denying an application if they have to require conditions that are difficult to enforce. (Ms. Freidman's letter is on file in the Land Use Office).

Mr. Solley stated that he they have received 3 letters from Mr. & Mrs. Minor.

Mrs. Minor stated noted that all three letters were submitted for the prior application and they are resubmitting them for the record.

Mr. Solley read Mr. Barnet's letter to Ms. Hill dated April 17, 2018 listing submissions for the record.

Ms. Barnet of Sabbaday Lane read her letter dated April 17, 2018. Her letter discussed how the current application exceeds what is allowed under the Settlement Agreement of 2013. She discussed how Mr. Szymanski's conduct is governed by State Law, specifically, Section 20-300-12 of the Connecticut Department of Consumer Protection. She explained how the Zoning Commission had every right to rely on Mr. Szymanski's statements as a professional engineer including his failure to disclose any other changes from the University plans.

Ms. Barnet talked about the 2013 Settlement discussions and the topic of any physical changes from the Wykeham University Plans. “Rather than describing any differences there were repeated reassurances from Attorney Fisher and Mr. Szymanski that the plans were the same as or smaller than the University plans except for the enlarged and reconfigured entrance to the Main Building. Mr. Szymanski even said that there is a reduction in intensity.”

Ms. Barnet stated that the plans are enlarged with each modification and now significantly larger than what was approved in 2013. (letter on file in the Land Use Office).

Mr. Steinmetz, Old Litchfield Rd, read his statement dated April 17, 2018 which states that “This is an expansion of the very settlement agreement this community has been so opposed to for the reasons detailed in the attached 1/17/2013 letter published in the Litchfield County Times.” He said that the changes that are being requested will make it bigger in size and intensity of use. (letter on file in Land Use Office).

Ms. Giampetro of Wykeham Rd read her letter addressed to the Zoning Commissioners dated April 17, 2018 and submitted previously written letters dated December 12 & 11, November 13, and October 23 of 2017 (all letters on file in the Land Use Office). Her current letter expressed concerns about the time, energy, and money that residents and the Town of Washington are spending on this matter. She discussed concerns regarding the size of the project and the noise and light pollution, maintenance of the property, traffic and toxic waste emitted from the fire on the property. She stated that she is not opposed to an inn that would fit in the existing neighborhood but IS opposed to an enormous hotel/resort project larger than downtown Washington Depot, with poorly engineered plans and buildings that are not in harmony with the neighborhood.”

Ms. Purnell, property owner, submitted all of her previously written letters for the record. She read her letter dated April 17, 2018 addressed to the Washington Zoning Commission (all letters on file in the Land Use Office). She stated that most of her previous comments and analyses remain the same with the exception of a couple points. Ms. Purnell pointed out that the pool house chimney bump out is tucked with in the footprint of the pool house; the “Restaurant” is now shown in the area previously labeled “Private Dining”; a “Private Dining” area is no longer included on the most recent plans; the Main Inn “Bar” area, previously labeled “Bistro/Bar” has now been renamed “Guest Lounge” but it still contains a large bar with 12 barstools and seating for an additional 21 guests.

Ms. Purnell discussed the highlights that she observed after a cursory review of what the applicant submitted yesterday and Atty. Kelly's 4/16/18 letter. She noted the following: A huge terrace has been added off the north side of the building in an area that used to be grass and no terrace was approved in the 2013 Settlement Agreement; The rooflines have been further reconfigured on the NE corner of the building and these changes were not approved in 2013; The average proposed grade of the Main Inn building has changed; Additional grading appears to be shown on the "new" renderings that allow access to various levels of the NE side of the Main building; A number of balconies are still shown on the "new" renderings A & B – no balconies were approved in 2013.

Ms. Purnell concluded that the recently submitted revision application is not a minor revision but encompasses significant increases and cannot not be approved by the Zoning Commission "because the commission cannot allow a legally non-conforming use to be enlarged, expanded or intensified, nor allow a legally non-conforming structure to be enlarged".

Mr. Barnet, Sabbaday Lane, reinforces what Ms. Purnell and Mrs. Barnet said and added that the one thing that is clear is that the applicant no longer wants to building the inn that was approved in 2013. He stated that the current request greatly exceeds the parameters of the existing special permit in many respects. The main concern Mr. Barnet wanted discussed tonight is the sheer size of the main building. He provided four data points for determining the size of the main building as approved in 2013 and then compared the differences with the new request. He stated that the current proposal represents a very significant expansion of the main building, from what was present by the Applicant and permitted by the Commission in 2013. (Letter addressed to the Zoning Commission from Mr. Barnett dated April 17, 2018 is on file in the Land Use Office).

Mr. Rogness read a letter from Mr. Duke of Old North Rd, dated April 17, 2018 requesting that the Zoning Commission proceed with caution and sympathetic regard for all affected parties (on file in the Land Use Office).

Mr. Parker read his letter dated April 17, 2018 addressed to the Zoning Commission explaining his opposition of the current submission as a neighboring property owner and due to the increase in size and intensity of use. He requested that the Zoning Commission deny it (on file in the Land Use Office).

The Commissioners discussed continuing the public hearing.

Motion: To continue the public hearing for 101 Wykeham Road, LLC, 101 Wykeham Road, to amend the Special Permit Application for an Inn on Tuesday, May 15, 2018 at Bryan Memorial Town Hall – Upper Level Meeting Room at 5:00 pm, by Mr. Solley, seconded by Mr. Armstrong, passed unanimously.

Atty. Zizka requested extra information regarding the parking on the site plan that was approved in 2013 because the current site plan is not very detailed.

Atty. Fisher stated that they would take care of it.

There was a brief discussion regarding adequate parking.

Adjournment:

Motion: To adjourn at 9:33 pm, by unanimous vote.

Submitted subject to approval:

By: _____
Shelley White, Land Use Clerk, April 19, 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.