

Town of Washington, CT
P.O. Box 383
Washington Depot, CT 06794
ZONING COMMISSION
Minutes
Special Meeting
August 7, 2018

6:30 p.m.
Main Level Meeting Room

MEMBERS PRESENT: Mr. Solley, Mr. Werkhoven, Mr. Averill, Mr. Armstrong
ALT. PRESENT: Ms. Radosevich, Ms. Lodsin
ABSENT: Mr. Reich, Mr. Sivick, Alt.
STAFF PRESENT: Ms. Hill, Ms. Hodza, Ms. White
ALSO PRESENT: Atty. Zizka, Atty. Fisher, Atty. Kelly, Ms. Klauer, Ms. Purnell, Mr. & Mrs. Solomon, Mr. Parker, Mr. Barnet, Ms. Von Tartwijk, Members of the Public

CALL TO ORDER:

Chairman Solley called the meeting to order at 6:30 pm. He noted that Louise van Tartwijk, representing Charter Communications CT-192 in Newtown, is making the video record of this town public hearing because the Town of Washington does not have a Washington reporter who covers these events. He explained that the videos will be used as a public information service and historical documentation.

Mr. Solley noted that Mr. Reich was not present and would listen to the recording when he returned. An alternate would be seated for tonight's deliberations.

Seated: Mr. Solley, Mr. Averill, Mr. Werkhoven, Mr. Armstrong, Ms. Lodsin, Alt.

DELIBERATIONS:

101 Wykeham Road LLC. /101 Wykeham Road/Revision of Special Permit and Site Plan for Inn:

Mr. Solley stated that this was the start of the deliberations for the public hearing that was closed on July 23, 2018 for 101 Wykeham Road, LLC, 101 Wykeham Rd for Revision of a Special Permit and Site Plan for an Inn. He noted that the Commission could not vote tonight as they are still waiting for the outcome with the Inland Wetlands application.

Atty. Zizka explained that he would review, what he sees, are the major issues, the positions that have been taken on both sides and his opinion of what the likely outcome would be if it were litigated. He stated that this is a unique application because of the existence of the Settlement Agreement of 2013, the nature of differences between the applicant and the opponents as to what is properly before the Zoning Commission and what is at issue as well as what should be at issue.

Atty. Zizka explained that what is before the Commission is an application for a modification of a Special Permit and an application that requires an Administrative Zoning Permit. He stated the request for an administrative permit is for the ZEO to decide whether the proposed use complies with the already granted Special Permit, and that the stated conditions are met before the construction process can begin. He explained that the Special Permit needs to be approved by the Zoning Commission and is site specific. The Commission considers each request on a site by site basis and its impact on the neighborhood, the environment and other standards that are listed in the regulations. Atty. Zizka said that under State Law, the Commission has the right to place conditions on their approval for a special permit and a ZEO does not have the right to place conditions on a standard zoning permit.

Atty. Zizka asked at what point does it make sense to require the zoning permit after receiving a special permit and it is his thought that it makes sense that it should be applied for when the building is ready to be built. He noted that, at this point, every condition that is related to the construction should have been met at this point.

Atty. Zizka informed the Commissioners that the applicant's main argument is that all of the details of this particular use were ironed out at the settlement agreement stage and the agreement states the limitations other than that is part of that use such as the height, etc., is available to them. It is his opinion that the applicant has submitted a proposal that meets all the conditions attached to the Special Permit and the Settlement Agreement of 2013. Atty. Zizka stated that the applicant takes the position that they have submitted plans that show an architecture that is close as possible to Renderings A and B that were discussed during the settlement agreement process. He continued to explain that it is the applicant's position that Rendering A & B were not presented to set any limits regarding floor plans, volume, etc., but to show the architectural style. Another position that the applicant takes is that the renderings could not be created as they are shown within the footprint that was approved and that the modifications that have been made are so minor and minimal. It is Atty. Zizka's opinion that the applicant takes the position that under the settlement agreement they have the right to make modifications to what was approved but the modifications would have to be approved through modifying the settlement agreement which does not require the proposed modifications to come before the Zoning Commission at a public hearing. Atty. Zizka stated that it is the position of the applicant that they would need to come before the Commission for the slight modification of the site plan regarding the grading change and the addition of emergency fire escape areas and everything else is within the scope of the 2013 Settlement Agreement.

Atty. Zizka discussed the opponents' primary positions. It is their position that the use of an inn was approved and since the T.O.W. Regulations have been modified since the approval this use of an inn on a residential road is a nonconforming use "yet to be." They have the right to build an inn but after it is constructed it will be considered nonconforming. The opponents are of the position that significant changes have been made to the structure and to the uses that are within the structure and the Zoning Commission has no legal authority to approve them because they are significant changes to a nonconforming use. They are also of the position that the renderings are based on a set of plans called the ProCon Plans that were under discussion and Renderings A & B can be tied to the ProCon Plans and in so doing can be tied to the floor

space in the ProCon Plans. The Opponents have an issue with the Common Interest Ownership aspect of this proposed inn and that it is not allowed in the Town of Washington Zoning Regulations and by allowing separate ownership of separate units they are effectively creating multifamily units. The opponents believe that regardless of whether there are full size refrigerators, stoves or microwaves and small refrigerators does not matter because the regulations only talk about cooking facilities and people can cook meals with microwaves and could use the units as a residence. He briefly explained the concept of Common Interest Ownership. The opponents are of the opinion that changing the ownership to Common Interest is a change in use which is not allowed.

Mr. Solley stated that he has heard the inn at 101 Wykeham is a legal nonconformity and asked Atty. Zizka if that was an accurate description.

Atty. Zizka explained nonconforming use under state law. He informed the Commissioners that if someone applied for this use today the Commission could not grant it. He noted that the Commission must deal with the application as the zoning regulations were at the time of the application and no changes can be made to the application and no additional requirements or restrictions can be applied by the Commission if the regulations have been changed since the approval. Atty. Zizka stated that expansions are not allowed either.

Mr. Solley said asked if the Commission must approve everything or if they could approve parts of the proposal and not the other.

Atty. Zizka responded that the Commissioners do have the option to approve part of an application and deny part of the application. He added that the Commission must have justification for their decision based on the record in the case of a denial. The Commission is responsible with explaining why the part of the application is inconsistent with the Settlement Agreement and the Special Permit requirements.

Mr. Armstrong stated that in the January 2013 Settlement Agreement discussions, the Commission based their decision on the site plan and the renderings he asked Atty. Zizka if that is what the Commission should be basing their decision for this modification as well as the Settlement Agreement.

Atty. Zizka responded that they should be basing their decision on those three areas. He noted that it is the applicant's position that the Zoning Commission had the opportunity to place limits on total floor area which they did for a couple of spaces but not in the entirety. He continued to explain that it is the applicant's position that they can plan any floor space as long as it stays within the approved footprint. Atty. Zizka stated that the opponents believe that the floor area can be calculated through Renderings A & B.

Mr. Armstrong asked if there is an understanding that there cannot be an increase the intensity of use.

Atty. Zizka responded that this is difference of opinion lies. The applicant believes that the Zoning Commission had the chance to limit the use and did so in some areas but not the entire building. The opponents believe that the use is limited, and it can't be increased by what could be intuited from Renderings A & B.

Atty. Zizka discussed the grey areas being the increase in the intensity of use and the Settlement Agreement mentioning certain sub-uses. The use of an inn comes with certain sub-uses such as a restaurant but conference rooms and ballrooms were not mentioned in the Settlement Agreement. He stated that because there is not definition of an "Inn" in the zoning regulations, the applicant is looking at the existing inn in town to compare what sub-uses are part of an inn. The opponents' position is that if the applicant wanted a ballroom and conference room, etc., it should have been included in the 2013 Settlement Agreement. Atty. Zizka stated that the Zoning Commission is entitled to limit the uses in a Special Permit because it is site-specific.

Mr. Averill asked if the Town of Washington Zoning Regulations do not have a definition of an "Inn" how is The Mayflower deemed the inn that others can compare their proposed inn to. He feels that these are resorts and just because it has the word "Inn" in its name doesn't make it an inn.

Atty. Zizka responded that in a matter of Law the Commission can state what an "Inn" means but the court is the final determiner. He stated that the Court will consider that what was approved in 2013 was approved under a rubric of an "Inn."

Mr. Werkhoven stated that the Zoning Commission never approved floorplans and rooms can be labelled whatever they want but that doesn't define the use.

Atty. Ziska read what was agreed to in the 2013 Settlement Agreement; 54 Guest Units, 100 Parking Spaces, Restaurant with 68 seat maximum capacity during normal operations including weddings or paid for events with no more than 30 of the 68 seats being outdoors, Spa & Fitness Center, Single Exercise Room in Main Building, no Treatment Rooms in Main Building, Pool House and no more that 24 Tented Events. He explained that these are the sub-uses that are spelled out in the Settlement Agreement. The opponents' position is that if the applicant wanted a ballroom or a conference room those should have been included in the settlement agreement.

There was a brief discussion regarding the difference between a site plan and a floor plan. Mr. Werkhoven noted that the floorplan was not discussed during the 2013 Settlement Agreement meetings.

Mr. Solley briefly discussed how The Mayflower Inn has developed over the years. He stated that he has never heard the larger rooms at The Mayflower being referred to as ballrooms or conference rooms.

Mr. Averill stated that his point is that there is no comparison because we don't know what an "Inn" is.

Mr. Solley stated that the opponents have concerns with the amount of parking spaces and feel that there would be a greater need for more parking spaces with tented events, weddings, conferences, etc. There was a brief discussion regarding the proposed parking.

Atty. Zizka stated that applicant's civil engineer has provided testimony that the parking would be sufficient for those uses. He noted that the Zoning Commissioners would have to weigh that

testimony and consider the applicants offer of making sure that a percentage of attendees at tented events purchase rooms at the inn. If they don't agree they must supply a reason why.

Mr. Werkhoven stated the number of spaces available will dictate the size of the event.

Mr. Armstrong asked if the Commissioners should be considering the Declaration and Public Offering.

Atty. Zizka responded he understands the issue of the opponents having concerns about the final Declaration and the Public Offering Statement and how they feel strongly that these documents should be considered as part of the Commission's decision making. He stated that he does not agree because those documents are beyond the zoning process. He explained that what the Commission finds is acceptable with this use is what is important to him.

Mr. Solley stated that Condominium Ownership is a right by statute but feels that these proposed units are considered dwelling unit as defined in the Town of Washington Zoning Regulations. He questioned how an inn room could be made not to be a dwelling unit.

Atty. Zizka informed the Commission that only seated member may participate in the deliberations.

Mr. Solley stated that one of the questions is whether the Main Building is going to be bigger than they thought it was going to be and he does not have the answer to that question. He said each building, their height and floorplans is what he believes the applicant is also asking to be included in the replacement of Renderings A & B. He asked if the other Commissioners had any thought regarding this.

Mr. Averill stated that he would like to hear what the two Commissioners, that were members in 2013, thoughts were regarding this issue in 2013.

Mr. Solley stated that there was an approval of University III with a different site plan that had previously been approved. He noted that that site plan was not at that meeting. He explained that he considered Atty. Olson's statement that they already approved University III Main Building so it was not discussed. He feels that there was a disconnect because University III had no bearing on what the new site plan was. Mr. Solley said the site plan was not at the settlement meetings and they did not have them to compare one to the other.

Mr. Werkhoven stated that his recollection of the discussions is that this building that is being applied for is within the site plan footprint of the previously approved building. He said that as long as it was within that footprint we had a general size and it was okay. Mr. Werkhoven stated that floorplans were never discussed.

Ms. Hill confirmed that in February 2012 the Wykeham University III plans were approved.

There was a brief discussion regarding the differences in the plans. Mr. Averill asked if only the footprint was approved for Wykeham III.

Mr. Solley stated that at the settlement agreement discussions they did not deliberate over elevations or floorplans because there were none submitted with the site plan.

Mr. Solley stated that they are to consider the modifications to the site plan regarding grading, retaining wall, concrete pads and the replacement of Renderings A & B for a full set of plans. He said that he does not have a problem with the modifications to the site plan but is not sure about the replacement plans. He asked if any other commissioners had thought that they could accept the modifications but not the replacement building plans or vis versa.

There was a brief discussion regarding the levels of the main building.

Mr. Solley read item 7 regarding establishing benchmarks for each building which was included in the motion to approve the special permit. He explained the process of using a benchmark to establish the height of a building.

Mr. Armstrong stated that as he reads the regulations regarding nonconforming structures the regulations not only mention the footprint and the height but the square footage of the floor space. He noted that if the structure goes from a two story to a three story the space is being increased and that will have an impact on intensity of use. He feels than any addition of levels in any of the buildings needs to be considered by the Commission.

Mr. Averill agrees with Mr. Armstrong. He stated that the Commission need to consider intensity of use especially because of where it is located. He pointed out that he feels the concrete pads are an expansion but that is not a big deal and the big issue is intensity of use.

There was a brief discussion regarding the granite sidewalk in front of the building and how it affects lot coverage.

Mr. Solley asked Atty. Zizka to discussed the special conditions that the Commission could attached to this vote versus what some of the commissioners may have thought would be part of the administrative application.

Atty. Zizka responded by pointing out the applicant's position that the modification of the site plan is minimal and the conditions could only be addressing those items. He stated that he sees the 2013 Settlement Agreement differently because it says what is agreed to but never mentions that a special permit shall be issued by the Zoning Commission. Atty. Zizka feels that the conditions under the Settlement Agreement are limitations that the Commission put on the use.

Atty. Zizka read the statute that describes what the Connecticut Courts determine what the site plan includes. He stated that the Settlement Agreement has meaning and the Commission has to stay with those limitations. Atty. Zizka discussed how he thinks the Court will see the floorplans. He feels that the Court will consider the sub-uses that were not mentioned in the Settlement Agreement not the size of the rooms. He feels that the Commission should consider whether the sub-uses not mentioned in the Settlement Agreement increase the intensity of use.

Mr. Armstrong expressed concerns regarding the concession of requiring attendees of a wedding to purchase 30 rooms for their event and asked how this would be enforced. He does not think it is a concession that should be considered by the Commission.

Atty. Zizka feels that this is going to get litigated one way or the other. He feels that the issue of intensity will probably be the major issue.

Mr. Solley stated that he is not exactly sure about the total square footage of the main building.

The Commissioners discussed the square footage and whether or not the square footage includes hallways, closets, bathrooms - finished floor area. Mr. Solley stated that he added it up and came to approximately 81,000 sf. He asked Ms. Hill to look into whether this is the gross floor area of all floors of the main building.

Mr. Solley asked Atty. Zizka if the number of levels should be a condition of approval.

Atty. Zizka responded that the Commission does not have to do that but they could reference the plans that they are approving. He stated that the Commission will have to address the issue of a dwelling unit and would have to consider a condition of approval that mentions the Common Interest Ownership and states the limitations the applicant has offered or more limitations. Or, he said, the Commission could make a motion to approve the application but with the condition that the Common Interest form of Ownership is not approved. He explained that whichever the Commission chooses it should have a condition that indicates something about what the Commission feels about the ownership.

Mr. Solley stated the permits for water and septic are necessary to build this inn and asked if the Commission could make its approval with the condition that these permits have been granted.

Atty. Zizka confirmed that the Commission could consider that condition.

8:25 – Mr. Solley announced a 10-minute break.

8:35 – Meeting reconvenes.

Mr. Solley stated that Atty. Zizka requested that the Commissioners submit to conditions of approval or conditions of denial to him for review. He suggested that the Commissioners continue the deliberations before the next regularly scheduled meeting.

Mr. Solley asked if the Commission should consider conditions regarding the air conditioning condenser units on the roof, the demolition and remediation of the burned building and the lighting.

Mr. Armstrong asked why the Commission would be voting on the renderings as a basis for the specifications of what is being built. He asked why they are not looking at more detailed plans.

Atty. Zizka responded that the way that this has to be addressed is that the only thing the Zoning Commission limited with the main building was the footprint and the architectural design. He stated that even if this is accepted to be correct, the final floorplans should be something the Commission approves. He feels this should be part of the Zoning Permit. But denying special areas of the floorplans should be based on whether you consider them to be consistent or not with what was approved by the Commission.

The Commissioners discussed approving floor plans in order for the building inspector to have something to work with.

Atty. Zizka stated that the Commission could set a condition that if there is any discrepancy in numbers regarding water and septic usage that the information must be sent to the Zoning Commission for review.

Mr. Solley confirmed what the Renderings A & B are being replaced with.

Mr. Armstrong stated that he would like to include a condition that the Public Offering Statement and Declaration cannot override the Zoning Commission's decision.

Atty. Zizka stated that the Public Offering Statement and Declaration can state whatever they want but it does not override the Zoning Commission's decisions.

Mr. Averill discussed the concessions that have been offered by the applicant that he feels are unenforceable. He reminded the Commissioners that the town zoning regulations say that any uses not specifically allowed are banned. He feels that in the spirit of the zoning regulations the Commission should only allow what is mentioned in the 2013 Settlement Agreement and if it is not mentioned they cannot do it.

Mr. Werkhoven stated that he wants to make sure that the multifamily residence issue is addressed and that what is approved should make it so this is not a concern. He feels that limiting the number and type of appliances will make it so that the units don't work as a residence.

There was a discussion regarding when to continue the deliberations.

MOTION: to schedule continued deliberations for 101 Wykeham Road LLC. - 101 Wykeham Road for revision of Special Permit for Inn at 6:30 for an hour before the next regularly scheduled Zoning Commission Meeting on August 27, and at a special meeting on August 28 at 6:30, by Mr. Solley, seconded by Mr. Averill, passed 5-0.

ADJOURNMENT

MOTION: To adjourn the meeting at 8:59 p.m., by Mr. Solley, seconded by Mr. Averill, passed unanimously.

Respectfully submitted.

By: _____

Shelley White, Land Use Clerk

August 14, 2018

(revised 8-28-18)

Minutes are subject to approval.

A recording of this meeting is available upon request.