



TOWN OF WESTPORT
856 Main Road
Westport, Massachusetts 02790

Tel. (508) 636-1037
Fax (508) 636-1031

PLANNING BOARD

PLANNING BOARD MEETING

September 8, 2020

Chairman Jim Whitin called the meeting to order at 6:01 p.m. with Vice-Chair Robert Daylor and members John Bullard, Manuel Soares, Mark L. Schmid, and Town Planner James Hartnett in attendance.

Chair's Announcement – Under MGL Chapter 30A, section 20(f) – The meeting is being recorded.

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, this meeting of the Westport Planning Board is being conducted via remote participation. No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public can adequately access the proceedings as provided for in the Order. A reminder that persons who would like to listen to or view this meeting while in progress may do so by following the remote links:

A video recording of this meeting is posted on the town's website. (www.westport-ma.gov)

Call to order 6:00 p.m.

1. Approval Not Required (ANR) David and Janice Arruda (20-016A) Request by the applicant for endorsement of a Plan showing 4 lots, for land located at 357 Sanford Road, Assessor's Map 18 Lot 10.

Greg Nicholas from South Coast Engineering was present virtually along with Attorney Brian Corey representing the applicant.

Nicholas briefed the Board on the proposed plan to divide the property into four lots leaving the existing house on one lot and creating two buildable lots and one non-buildable Parcel. The frontage for the three lots would be on Legacy Lane, a private laneway/easement abutting the property to the north. The Planning Board approved a Form A plan for 4 lots fronting on the northerly side of Legacy Lane in 2009.

Hartnett expressed his concern regarding the adequacy of the access to each lot and would like the limits of the way clearly defined. Without defining the limits, he cannot confirm that the way is of adequate width.

Attorney Corey stated the plan was approved by the Planning Board in 2009 recorded in Plan Book 164 Page 46, and the Planning Board determined at that time that the way was adequate.

Whitin asked if there is wording stating the client has the right to use the lane. Attorney Corey confirmed that per Plan Book 92 Page 280 Sanford Deed does include the right to use.

Hartnett noted the most current deed does not mention the way.

Whitin asked if the easement rights get deleted if they weren't transferred to the new deed.

Hartnett would like to seek the legal opinion of Town Counsel on the adequacy of the way. Whitin agreed.

Daylor remarked he visited Legacy Lane and agrees that more evidence is needed to describe the way in more detail.

Corey commented only Lots 2 & 3 would be utilizing Legacy Lane and Lot 1 would be accessed from Sanford Road.

Bullard was not in favor of approving the plan as is. Nicholas agreed to provide more information and will revise the plan.

Attorney Corey requested a time extension to provide additional information.

Motion

Daylor moved to grant an extension to October 20, 2020, to review the plan. Seconded by Bullard. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

b. Approval Not Required (ANR) Rockwood Homes, Inc. (20-017A) Request by the applicant for endorsement of a Plan showing 3 lots, for land located between 36 White Oak Run and 453 Fisher Road, Assessor's Map 41 Lot 20.

Greg Nicholas from Southcoast Engineering was present virtually representing the applicant. He stated that these lots have the required frontage, area, and uplands.

Hartnett commented the lots shown on the plan meet the frontage, access, and zoning requirements and he recommends endorsement.

No comments or input from the public or the Board.

Motion

Daylor moved to approve endorsement of the plan entitled "Plan of Land White Oak Run, Westport, MA" prepared for Rockwood Homes Inc." dated August 20, 2020, because the plan complies with the provisions of MGL Ch. 41 Section 81P. Seconded by Bullard. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

c. Approval Not Required (ANR) Francis and Judith Cottrell (20-018A) Request by the applicant for endorsement of a Plan showing 2 lots, for land located at 109 Pettey Lane, Assessor's Map 73 Lot 80.

Greg Nicholas was present virtually representing the applicant.

Nicholas commented the applicant is proposing to transfer a small portion of 109 Pettey Lane to the abutter to address an encroachment. The remaining parcel will have 87,064 s.f. and 150.00' of frontage.

No comments or input from the public or the Board.

Motion

Daylor moved to approve endorsement of the plan entitled "Plan of Land Assessors' Plat 73 Lot 80, 109 Pettey Way Westport, MA" prepared for Frances and Judith Cottrell dated August 18, 2020, because the plan complies with the provisions of MGL Ch. 41 Section 81P. Seconded by Bullard. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

d. Approval Not Required (ANR) Carricorp Industries, LTD Trustee of 190 C.W. Trust (20-019A) Request by the applicant for endorsement of a plan showing two lots for land located on Meadowbrook Lane, Assessor's Map 69 Lots 5 & 10G and Map 68 Lot 24.

Bob Carrigg was present virtually from Carricorp. Carrigg stated that the plan is very similar to the one approved by the Board a couple of months ago. He is proposing to divide Lot 118 into two lots.

Hartnett commented Lot 118 was approved by the Planning Board in May of this year. The applicant would like to divide Lot 118 into two lots, Lot 118A and Parcel G. This would allow parcel G to be sold separately. A note has been added to the plan stating that "Parcel G, No Frontage, Not a Buildable Lot."

Carrigg confirmed Parcel G and Lot 118 will be transferred to the Buzzards Bay Coalition some time in 2022.

No comments or input from the public or the Board.

Motion

Daylor moved to approve endorsement of the plan entitled “Approval Not Required Plan of Land in Westport, Massachusetts prepared for Carricorp Industries, LTD, Trustee of 190 C.W. Trust” dated August 27, 2020, because the plan complies with the provisions of MGL Ch. 41 Section 81P. Seconded by Bullard. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

e. Chapter 61A Release – Selectboard is requesting comments on the Release of Land owned by the Meader’s for land located at 0 River Road, Map 87 Lot 87 Parcel F (a portion of 87B).

Hartnett mentioned the Planning Board has released 5 of the lots in this older subdivisions, Lot 87F is one of the remaining lots to be sold.

Motion

Daylor recommends the release of Lot 87 Parcel F from Chapter 61A. Seconded by Bullard. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

f. Master Plan Update Committee – Form Subcommittee

Whitin would like to form an updated committee to review the Master Plan. Daylor agreed that a review is needed to incorporate changes in the Town.

Motion

Daylor moved to form a subcommittee of Planning Board members and members outside the committee appointed by the Chair that are familiar with the Town’s issues. Seconded by Bullard. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

g. East Beach Corridor Study – New member Antony Vivenzio

Mr. Vivenzio stated that he is a seasonal resident of East Beach and would like to be on the committee.

Motion

Bullard motioned to appoint Anthony Vivenzio to the East Beach Corridor committee. Seconded by Daylor. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

6:05 P.M. Public Hearing

2. Kittiwynk Run 795 Pine Hill Road (06-011C-R)

Request by the applicant to consider RESCISSION of a definitive subdivision plan entitled “**Definitive Plan Kittywynk Run at 795 Pine Hill Road, Westport, MA**”, prepared for **David and Paula Emilita** located at **795 Pine Hill Road, Assessor’s Map 38, Lots 13 & 13A.**

Hartnett mentioned the five lot subdivision was approved by the Board in 2007 and endorsed by the Board in 2015. The owners are looking to sell the entire parcel and would like to have the subdivision rescinded. The process to rescind is similar to that of a new subdivision plan, the abutters were notified and the hearing was advertised in the paper.

David and Polly Emilita were present virtually. They are requesting to rescind the plan to revert to an ANR.

No comments or input from the Board.

Joel Alstein and Nan Laird, of 797 Pine Hill Road, were present virtually and noted they were in favor of the rescission.

Whitin added the owners could refile for a different type of subdivision.

Hartnett recommended the Board vote to rescind the subdivision and release the covenants.

Motion

Bullard moved to rescind the Definitive Subdivision Plan entitled “Definitive Plan Kittiwynk Run at 795 Pine Hill Road, Westport MA” and release the Form F Covenant and the Form F-RRL Covenant. Seconded by Daylor. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0. **6:15 p.m. Public Hearing**

3. CVE North America Inc. (20-005SP)- Soule’s Way

Request by the applicant to consider the Special Permit and Site Plan Approval Low Impact Development applications for **CVE North America, Inc.** for property owned by **John B. Hathaway Trust and The Westport Lot 24 Nominee Trust, Daniel C. Perry Trustee**, located south of Soules Way between Route 88 and Drift Road, Assessor’s **Map 57, Lots 19 & 24**. Pursuant to Westport Zoning By-Laws Article 20 Low Impact Development and Article 24 Large Scale Solar Energy System, the applicant requests permission to construct a solar energy system, approximately 5.0 Megawatts, lot size 35 acres.

Attorney Dan Perry representing the applicant, Ryan Young from CVE North America, and Nicholas Clini of Atlantic Design were all present virtually.

Attorney Perry addressed the access issue from Soule’s Way. He stated that there was an arbitration decision that confirmed his client could use Soule’s Way to access the property.

Young commented CVE will remain the owner for 20-30 years and he added the community will benefit from renewable energy.

Clini mentioned the project would be accessed through Lot 18D via the current 40’ R.O.W. easement and would increase the road width 5’ on each side to meet the 50’ requirements. The total acreage of lots 19 & 24 is 32.1 acres and 17.1 acres overall for the 4.13MW DC solar project.

Mitch and Susan Finn of 27 Soule’s Way was present virtually. Finn asked if there was a reduction of the setback was from Lot 5. Clini responded it was not.

Whitin asked the applicant to explain why the setbacks should be waived. Perry explained Lot 5 would be reserved for conservation land and felt the lot provided more than enough of a vegetated buffer to make up for the waiver they are requesting.

Whitin asked how many acres are needed for clearing. Clini responded 17.1 acres for the solar panels and requested a waiver for 1.1 acres.

Whitin read the Department's comments into the record.

Hartnett noted the following items that were submitted.

1. S.W. Cole Review Letter dated: July 30, 2020
2. Narrative by Atlantic Design dated: Revised August 25, 2020
3. Response Letter Atlantic Design dated: August 25, 2020
4. Drainage Calculations Atlantic Design dated: Revised August 25, 2020
5. Letter from Daniel C. Perry dated: August 25, 2020, includes Stipulation Regarding Easement Rights dated: October 24, 2008, Decision and Award of the Arbitrators, dated: July 15, 2008
6. S.W. Cole 2nd Review dated: August 31, 2020

Requested Waivers by the applicant:

- a. 24.3.8 Minimum Setbacks from Street Lines (250’)
Request waiver to allow the Soules Way Solar Project to be constructed within 250’ of Soules Way and Rte. 88.
- b. 24.3.8 Maximum Clearing Areas
Request a waiver of the requirement for a maximum of 16 acres to be cleared. (Proposed Clearing 23 Acres)
- c. 24.3.8 Minimum setbacks from property lines

Request waiver from setbacks for clearing and trimming of natural vegetation and setbacks of solar panels. (Clearing or trimming on all sides of the project up to the property line) (Panels are located about 50' from the northerly and southerly property lines)

d. 24.3.11, 24.3.9 e. Hazardous Material

Request a waiver for the submission of a list of hazardous materials.

e. 24.3.9 g. Lighting and Photometric Plan

Request a waiver for the submission of a photometric plan and the requirement of site lighting. Lighting is not proposed for the project.

f. 24.3.9 m Plan showing provision for the water

Request a waiver for the submission of plans showing provisions for water. A water system is not proposed for the project.

g. 24.3.9 n Plan showing Trees 6" Caliper or Larger

Request waiver of the requirement to show trees 6" caliper.

Hartnett read S.W. Cole's second review report dated August 31, 2020, into the record.

Chris Bednarz of 8 Fox Lane was present virtually. Bednarz voiced his concern about the 100 buffer zone, access road width, and clear-cutting to the property lines. Clini responded the trees would be stumped and would clear up to the property lines.

Cindy Scheller was present virtually. Ms. Scheller expressed her concern the wildlife wouldn't have access to the freshwater spring due to the fencing on three sides and Rt. 88. She added, 30 acres of woodland are being destroyed due to the two CVE projects being so close.

Bullard was concerned that ConCom did not give their approval and asked why the Board should give a waiver of setbacks when the town had just approved the changes.

Daylor stated that this is the first solar project submitted under the new regulations that were changed to address the public's concerns. He is reluctant to allow 44% more clearing than the regulations permit. Schmid agrees with Daylor and Bullard. The By-Law intends to preserve the fast-disappearing rural character of the town.

Soares was not in favor of granting waivers and feels they should get an accurate wetlands line.

The Board members were all in agreement the By-Laws need to be followed.

Motion

Daylor moved to continue to November 4, 2020, at 6:15 p.m. Seconded by Bullard. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

6:45 p.m. Public Hearing

4. Coelho (20-006SP) – 60 American Legion Hwy

Request by the applicant to consider the application of **David Coelho** for property located at **60-66 American Legion Highway**, between 20 American Legion Hwy and Tickle Road, Assessor's **Map 21, Lots 2B & 2D**, Westport, MA, pursuant to Westport Zoning By-Law Article 23 for Flexible Frontage Special Permit requesting approval to reduce otherwise applicable frontage requirements on a public way in exchange for a corresponding reduction in development density.

Steve Gioiosa of Sitec Engineering was present virtually representing the applicant. Gioiosa briefed the Board on the project. The owner evaluated the option of creating a small subdivision but believes the proposed plan would be better. The yield plan shows that 4 lots could be designed under a traditional subdivision. The lots look very similar to the proposed plan. Gioiosa stated that lots 1 & 2 would have denitrification septic systems. Lots 1, 2, and 4 would have roof infiltration systems. Access to lot 4 will be from Tickle Road.

Hartnett commented the applicant has submitted a yield plan showing that 4 lots could be designed under the Board's Subdivision Rules and Regulations.

Whitin asked if lot 1 & 2 would have a shared driveway. Gioiosa would like to avoid the shared driveway if possible.

Whitin addressed the safety concerns with the speed limit and the many accidents at that intersection.

Schmid was in favor of the shared driveway for lots 1 & 2.

Soares added there are future improvements to this intersection and mentioned Mass Highway may have some important input.

Hartnett added money has been earmarked and submitted to MassDOT to review the safety of the location and to make improvements soon.

Shanna Palmer, of 20 American Legion Hwy, was present virtually. Ms. Palmer commented the speed limit was 50 mph but vehicles travel faster and there have been 4 fatalities in 6 years. She was concerned with the addition of new driveways, which would increase the number of accidents.

Whitin would like the plan to show clearing areas and building envelopes and the clearing areas should not include the wetland buffer areas.

Bullard read the Sample Findings and Sample Conditions into the record.

Daylor commented Lot 1D & Lot 4 are to only have access from Tickle Road with a minimum of 150' setback from Route 177.

Sample Findings

The Board found that the reduction in frontage meets the purpose and intent of the Flexible Frontage By-Law by allowing for better design by providing restrictions on further lot division and limiting areas to be cleared, thereby reducing disturbed areas and stormwater runoff. The applicant submitted a yield plan showing that a minimum of four lots could be developed under a traditional subdivision, by granting this special permit the applicant would be limited to four lots with designated open space. This would prohibit further subdivisions, limit the land clearing, and thereby reduce stormwater runoff. The Board found that the Flexible Frontage design standards were utilized to the maximum extent feasible as defined in section 23.3 of the Zoning By-law.

Sample Conditions

1. A plan suitable for recording (The Form A Plan may be used to meet this Condition) shall be submitted with the following statements and conditions:
 - a) "Subject to a Special Permit pursuant to the Town's Flexible Frontage By-Law, Article 23 granted on September 8, 2020, by the Westport Planning Board and Recorded in the Bristol County Southern District Registry of Deeds in Book _____, Page _____."
 - b) Lots 1, & 2, as shown on this plan benefiting from reduced frontage under Zoning By-law, Article 23 shall not be further subdivided and no modification of the clearing restrictions and the building locations shall occur without a corresponding modification of the Flexible Frontage Permit.
 - c) No lot clearing shall begin and no building permits shall be issued for lots 1 & 2 as shown on this plan benefiting from reduced frontage under Zoning By-law, Article 23 until the Special Permit has been duly approved, executed, and recorded.
 - d) Clearing areas on lots 1 & 2 shall be limited to the areas identified as "Maximum Clearing Limits" for each lot. Clearing areas shall not include the land within 100' of the existing wetland line. Maximum building footprints for lots 1 & 2 shall not exceed 5,000 s.f.

- e) Lots 1, 2 & 4 shall each provide a roof runoff infiltration systems capable of handling a minimum of 1,500 c.f. of roof runoff. The infiltration system shall be installed prior to the issuance of an occupancy permit. The applicant's engineer shall design, inspect, and certify that it was installed.
- f) Lots 1 & 2 shall install and maintain denitrifying septic systems designed to reduce the nitrogen to a maximum level of 19 ppm and shall be approved by the Board of Health and MassDep.
- g) Access to Lots 1 & 2 shall be limited to a shared curb cut on American Legion Highway.
- h) Prior to issuance of a building permit the applicant shall demonstrate that the State Highway Department has issued a State Highway Access Permit.
- i) Access to Lot 4 shall be from Tickle Road and the curb cut shall be setback from the intersection of Route 177, a minimum of 150.00'.

Motion

Bullard motioned to approve with Findings and Conditions. Seconded by Daylor. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

7:00 p.m.

5. Recreational Marijuana – Review existing Recreational Marijuana By-Laws and potential.

At the request of the Board, Hartnett presented a chart to compare the By-Law proposed in March 2018 and the article that was approved by the Special Town meeting by petition article in February 2020.

Whitin asked if the Recreational By-Laws change how they would preserve the grandfathered rights. Hartnett responded, yes they could freeze the zoning for 8 years.

Whitin asked Hartnett to consult with Town Counsel if an applicant can freeze zoning on a non-conforming lot.

Daylor agreed to hold a public hearing to discuss a revised recreational marijuana By-Law.

Mike Fernandes was present virtually and asked for clarification of the zoning business district. Fernandes asked if the Selectboard and the Planning Board could meet to discuss zoning in the business districts. Whitin agreed to set up a meeting with the Selectboard Chair.

Jay Caroselli was present virtually and asked for clarification on the grandfathering process and suggested changing the property line dimension requirements.

6. Planners Report

Hartnett read the Planners Report into the record.

1. Coastal Healing on Route 6 has filed a Special Permit application for Recreational Marijuana. A public hearing has been scheduled for October 20, 2020.
2. He will be working with Kleinfelder to get the MS4 Annual Report completed prior to the end of September.
3. A petition article has been filed for Recreational Marijuana, this should be added to the Special Town Meeting.
4. There are several Public hearings scheduled over the next couple of months so if the Board could let Nadine know if you will not be around for any meetings, we will try to schedule accordingly.

7. Matters not reasonably anticipated.

None

8. Correspondence

a. Westport Solar (15-006SP) Reseeding Plan

Hartnett updated the Board on the 703 Old County Rd Solar project. The Board will plan a site visit.

b. Rita Lane Ext. (19-001C)

Hartnett read S.W. Cole COR report dated 7-29-20

c. Meadowbrook Farms (98-007C)

Hartnett read S.W. Cole report dated 8/24/20

d. Zoning Board decisions (Fall River/Westport) - *Noted*

9. Minutes

August 25, 2020

Motion

Bullard moved to approve the minutes as written. Daylor seconded. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

10. Invoices

None

Adjournment

The members unanimously adjourned at 9:51 p.m.

Respectfully submitted,

James Hartnett, Town Planner

Nadine Castro, Assistant Town Planner II