



TOWN OF WESTPORT
856 Main Road
Westport, Massachusetts 02790

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

PLANNING BOARD

PLANNING BOARD MEETING MINUTES

September 19, 2017

Chairman James T. Whitin called the meeting to order 6:00 p.m. with Clerk Marc De Rego, Member David Cole, Member Andrew Sousa and Town Planner James Hartnett in attendance. Vice-Chairman William Raus was absent.

Approval Not Required (ANR) TCB (17-011A) Request by applicant for endorsement of a 2-lot plan of land located at 1163/1175 American Legion Highway, Assessors' Map 33, Lots 17& 47A.

The applicant was not present to discuss the plan so Hartnett described the request. The purpose of this plan is to combine Assessors Lots 17 and 47A into one lot labeled "Lot D". The new Lot will have a total area of 5.33 Acres with 478.30' of frontage. Brief discussion ensued with Hartnett recommending endorsement.

Cole motioned to endorse the plan entitled "Approval Not Required Lot D" prepared for Community Builders, Inc., Dated September 11, 2017, because it complies with the provisions of MGL Ch. 41 Section 81P and is not a subdivision as defined under the subdivision control law. De Rego seconded the motion and the vote was unanimous with all four members in favor.

Approval Not Required (ANR) TCB (17-012A) Request by applicant for endorsement of a 2-lot plan of land located at 1163/1175 American Legion Highway, Assessors' Map 33, Lots 45& 47.

The applicant was not present to discuss the plan so Hartnett described the request. The purpose of this plan is to combine Assessors Lots 45 and 47 into one lot Labeled "lot A". The new lot will have a total area of 25.42 Acres with 388.76' of frontage on a private way. A note has also been added stating that "Lot A is not to be considered a buildable lot". Brief discussion ensued. Hartnett recommended endorsement.

Sousa motioned to endorse the plan entitled "Approval Not Required Lot A" prepared for Community Builders, Inc., Dated September 6, 2017, because it complies with the provisions of MGL Ch. 41 Section 81P and is not a subdivision as defined under the subdivision control law. De Rego seconded the motion and the vote was unanimous with all four members in favor.

Approval Not Required (ANR) Jarabeck (17-013A) Request by applicant for endorsement of a 3-lot plan of land located at 926-936 Drift Road, Assessors' Map 54, Lots 49 & 49A.

Sean Leach from SITEC Engineering presented the plan to the Board. Leach discussed the location, history and landscaping of the plan. The Board approved Special Permits for Flexible Frontage and a Common Driveway on October 6, 2015. This Form A plan is identical to what was approved and will serve to record the configuration of the lots as approved in the special permits. The ANR plan meets the requirements for endorsement as Approval Not Required. Hartnett recommended approval.

De Rego motioned to endorse the plan entitled “Approval Not Required Plan of Land Map 54 Lots 49 & 49A, 926 & 936 Drift Road in Westport MA” prepared for Estate of Allen L. Jarabek Jr., Dated April 21, 2015, because it complies with the provisions of MGL Ch. 41 Section 81P and is not a subdivision as defined under the subdivision control law. Sousa seconded the motion and the vote was unanimous with all four members in favor.

Public Hearing

Blue Acres Way Modification(17-011C-M/SP-FF) *Continued from July 25, 2017 and August 22, 2017.* Request by applicant for a modification to a definitive subdivision plan entitled “Plan of Land in Westport MA belonging to “Antone & Edith Almeida” dated October 26, 1988, Assessor’s Map 46, Lot 4, located at 270 Horseneck Road, to improve the roadway from a 12 foot wide graveled rural residential roadway to a 20 foot wide graveled roadway and a request for a Special Permit Pursuant to Westport Zoning By-law Article 23 for Flexible Frontage reduced density to allow the reduction in frontage to create 1 additional buildable lot.

Sean Leach from SITEC Engineering was represented the applicant and presented a revised plan to the Board. Leach reviewed the changes made to the plan since the last meeting. He discussed changes to the driveway and the drainage on the site. Leach discussed the requested waivers for the plan. The catch basins on the site were reviewed and discussed.

Hartnett read the proposed Findings of Fact, Conditions and waivers into the record:.

Proposed Findings for Flexible Frontage

The Board found that the reduction in frontage meets the purpose and intent of the Flexible Frontage By-Law by allowing for a better design by providing restrictions on further lot division, limiting areas to be cleared and reducing the number of house lots, thereby reducing disturbed areas and storm water runoff. The applicant submitted a yield plan showing that a minimum of two additional buildable lots could be developed under a traditional subdivision, by granting this special permit the applicant would be limited to one additional lot with designated open space. This would prohibit further subdivisions, limit the land clearing and thereby reduce storm water 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.

Proposed Conditions for Flexible Frontage

1. A plan suitable for recording (The Form A or Subdivision Modification 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 _____, 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 of 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 lot 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 and evidence of the recording of the restrictions has been filed with the Inspector of Buildings.

- d) Clearing area on lot 2, shall be limited to the driveway or common driveway and the area identified as “Building Envelope”. Maximum building footprints for lot 2 shall not exceed 5,000 s.f.
- e) Lot 2 shall provide a roof runoff infiltration system capable of handling a minimum of 1,500 c.f.. of roof runoff. The infiltration system shall be installed prior to issuance of an occupancy permit. The applicants engineer shall design, inspect and certify that it was installed.
- f) The septic system for Lot 2 shall be a denitrifying system designed to reduce the nitrogen level to 19 ppm or below.

Hartnett also noted the modifications to the existing subdivision:

- 1. Bound should be added to the southeast corner of the intersection.
- 2. Will need a homeowners association and it should include lots, New lots 1 & 2 and old lot 4.
- 3. There is a shed in the road layout, should this be removed?
- 4. Note for covenant should be added to the plan.
- 5. How long will be driveway crossing be?
- 6. Add construction notes for gravel way

Sample Waivers

- 1. Section V.B.1 – Waiver of Right-of-Way clearing.
- 2. Section AV.3.a – Waiver of -1% leveling area.
- 3. Waiver of standard cross section.
- 4. Waiver from required paved surface.

Sample Conditions

- 1. Homeowners Association: As a condition of approval of this subdivision, prior to endorsement of the definitive plan the Applicant shall create and properly fund a Homeowners Association. All purchasers of land within the subdivision shall be required to belong to the Homeowners Association.
 - a. The Homeowners Association shall be responsible for the maintenance, repairs and plowing of the subdivision roadways.
 - b. The Homeowners Association shall maintain permanent ownership of any drainage basins or ponds in the subdivision, including all pipes and other appurtenant devices, and shall have the permanent responsibility of maintaining, repairing and replacing said drainage systems, as necessary.
 - c. The Homeowners Association documents shall be reviewed and approved by the Planning Board, in consultation with Town Counsel (at the expense of the applicant), and the Homeowners Association shall have an initial fund that is deemed satisfactory to the Planning Board, in consultation with the Planning Board’s technical consultant.
- 2. Road Maintenance and Snow Removal: Applicant shall be responsible for periodic maintenance and snow removal until such time a properly funded Homeowners Association is created and is properly functioning.
- 3. Construction work on the subdivision road and utilities shall only be done between the hours of 7:00 a.m. and 6:00 p.m., Monday - Saturday.

4. The Binder Course in the “Standard Paving Section” shall be changed to “2” Binder Course”
5. Roof runoff from the dwelling to be located on Lot 2 shall be directed to a rooftop recharge system as shown on the Plan and Profile Sheet of the Subdivision.
6. The following notes shall be added to the plan:

Subject to a Restrictive Covenant (FORM F) dated: _____ to be recorded herewith in the Bristol County Registry of Deeds Southern District Book _____, Page _____.

The road shall be cleared of vegetation to a width of 20'. The existing gravel shall be tested by the Planning Board's consultant and improved as necessary to meet design specifications. A minimum of 3" of compacted gravel shall be installed over approved gravel base and a surface course of 1 1/2" crushed stone 3/4" minus shall be installed.

Cole motioned to close the public hearings for the Special Permit and Definitive Plan of Land entitled "Modification to Definitive Subdivision "Blue Acres Way" in Westport, Massachusetts". De Rego seconded the motion and the vote was unanimous with all four members in favor.

Cole motioned to approve the modification to the Definitive Plan entitled "Plan of Land in Westport MA" belonging to "Antone & Edith Almeida" dated October 26, 1988, and recorded in Book 123, Page 24. Modifications are shown on subdivision plan entitled: **"Modification to Definitive Subdivision "Blue Acres Way: in Westport, Massachusetts"** prepared for Maria Carvalho dated May 15, 2017, Assessor's Map 46, Lot 4 located at 270 Horseneck Road (Blue Acres Way), proposing to improve the roadway from a 12 foot wide graveled rural residential roadway to a 20 foot wide graveled roadway, subject to waivers and conditions as stated. De Rego seconded the motion and the vote was unanimous with all four members in favor.

Cole motioned to approve the **Special Permit** application for **Maria Carvalho** of 270 Horseneck Road, Westport MA 02790 for property located at **270 Horseneck Road (Blue Acres)**, Assessor's Map 46, Lot 4, pursuant to Westport Zoning By-law Article 23 for a **Flexible Frontage** reduced density Special Permit, subject to findings and conditions as stated. Sousa seconded the motion and the vote was unanimous with all four members in favor.

Briggs Landing (40B). Request by applicant for release of all lots in exchange for surety.

Muhammad Itani, Manager for Briggs Landing, was present to request the release of the Covenant. Hartnett stated surety in the amount of \$435,000 would be required for Phases 4-6 to be completed. Hartnett reviewed the Tibbetts report and estimate dated September 13, 2017, which detailed the cost of the uncompleted work on site. Discussion ensued. Hartnett also gave a brief history on the 40B plan.

Sousa motioned to approve the full release of the Covenant dated August 11, 2009, for the Chapter 40B Plan entitled "Briggs Landing A Residential Subdivision in Westport, Massachusetts" in exchange for an increase in the Performance Secured by Deposit of Money of \$148,000, for a total of \$435,000. Cole seconded the motion and the vote was unanimous with all four members in favor.

First Bristol (10-009SPA). Request by applicant for final approval.

Jamie Karam from First Bristol Corporation was present for the meeting. Karim reviewed the plan and progress made since the last meeting. They discussed the area where the stop sign was removed. Hartnett read a Tibbetts report dated September 18, 2017, into the record. Hartnett read his comments into the record.

De Rego motioned to recommend the issuance of an occupancy permit for “First Bristol Corp Professional Office Center, Westport, MA” and maintain the existing surety of \$5,000 to ensure the completion of the remaining work to be completed prior to June 30, 2018. Cole seconded the motion and the vote was unanimous with all in favor.

Public Hearing

Sousa Family LLC (17-012SPA)*Continued from July 25, 2017 and August 22, 2017.* Request by applicant, pursuant to Westport Zoning By-Law Article 15 for Site Plan approval, to develop Assessor’s Map 3, Lot 144G, into a retail used car facility with repair and detail work to be performed on site. A total of 136 parking spaces are planned of which, 128 will be exterior display parking spaces.

Sean Leach from SITEC Engineering represented the applicant and presented a revised plan to the Board. Leach noted that the plan is now for a “retail only” license. Leach discussed the changes and improvements made to the plan since the last meeting. Leach noted the change in location of the building, additional fencing for security, additional “green space” and the reduction of the number of vehicle spaces on site. The revised drainage on site was discussed. A photometric light plan was submitted to the Board for review. Hartnett read the Waivers, Conditions and Findings of Fact into the record. Hartnett read his comments into the record.

Sample Waivers

1. 20.4.b Access drive waive width
2. 20.4.c Waive minimum of 40’ area between front property line and parking area.
3. 20.6.e Waive vegetated buffers
4. 20.6.f Waive areas of broken pavement
5. 20.6.1.b Waive 10’ perimeter landscape
6. 20.6.1.d Waive 150 s.f. of landscaping for every 1,000 s.f. of parking 1 shade tree/ 10 spaces.

Sample Findings of Fact

1. The project as presented protects adjoining premises by avoiding adverse effects on the natural environment and abutters. Landscaped buffers have been adequately addressed by maintaining existing landscaping where possible and providing new landscaping on the south, west and east sides of the property.
2. The project as presented provides for convenient and safe vehicular and pedestrian movement and the location of the driveway opening is convenient and safe in relation to vehicular and pedestrian traffic circulation, including emergency vehicles, on or adjoining the site. The project as presented provides an adequate arrangement of parking spaces, including one handicap parking space.
3. The project as presented provides adequate methods of disposal of refuse or other wastes resulting from the uses permitted on the site.
4. The project as presented complies with all applicable requirements of this By-Law, the Rules and Regulations of Site Plan Approval, and the Rules and Regulations Governing the Subdivision of Land (to the extent applicable), unless explicitly waived by the Planning Board.

Sample Conditions

1. Any material changes as determined by the Building Inspector to the approved site plan shall require Planning Board approval.
2. All lighting shall conform to the requirements of Section 20.9 of the Rules and Regulations of the Westport Planning Board for Site Plan Approval and to the approved design plans (LI1, LI2, LI3 & LI4).
3. The applicant shall submit a copy of the approved Massachusetts Highway Access Permit.
4. Prior to commencement of work, the approved plan shall be submitted to the Board's Consultant Engineer. The Applicant shall be responsible for reasonable costs associated with construction observation/inspection services during the construction phase.
5. The Applicant shall install all erosion and sediment controls on site as shown on the plans as clearing begins and shall maintain said controls throughout construction
6. Street trees and other landscaping shall be installed in accordance with the approved Landscape Plan and Details.
7. Prior to the issuance of an occupancy permit, the applicant shall submit an as-built plan to the planning board for review and approval, showing all structures including, parking, drainage, landscaped areas. The applicant's engineer shall certify that the site was developed in substantial conformity with the approved plans
8. All structures shall conform to building setbacks as required by the Building Inspector.
9. The chain link fence on the south side of the property shall be removed.
10. Pavement shall extend to the fence at the north side of the office building.
11. There shall be no auto repair or detailing work on the site.

De Rego motioned to approve the site plan application of **Sousa Family LLC** for property located on the **north side of State Road between 174 and 236 State Road**, Assessor's Map 3, Lot 144G Westport, MA, pursuant to Westport Zoning By-Law Article 15 for Site Plan approval, on a request to develop the parcel into a retail used car subject to findings, waivers and conditions as stated. Cole seconded the motion and the vote was unanimous with all four members in favor.

Approval Not Required (ANR) Casey-Amaral (17-009A) *Continued from August 22, 2017.* Request by applicant for endorsement of a 3-lot plan of land located at 581 Drift Road, Assessors' Map 53, Lots 12-12B & 10J.

Sean Leach from SITEC Engineering was present along with Mrs. Casey-Amaral. Leach stated that the applicant was requesting to divide the property into three lots leaving the existing dwellings intact on three lots based on the CITGO Rule, which allows for the division of land with substantial dwellings existing prior to subdivision control. Hartnett discussed the legal opinion dated September 7, 2017 solicited from Town Counsel as a result of the last meeting. Whitin read each of the legal opinions into the record. Leach discussed shapes of the proposed lots and the septic systems on the lots. After much discussion, Cole suggested relocating one of the structures on the plan, to move it away from the proposed property line. Hartnett recommended approval of the ANR.

Cole motioned to endorse the plan entitled "Approval Not Required Plan of Land in Westport, MA, prepared for Joan Casey-Amaral" Dated August 14, 2017, because the applicant has demonstrated that substantial structures existed on each parcel prior to subdivision control law. Sousa seconded the motion and the vote was three in favor with De Rego opposed.

Approval Not Required (ANR) Ferrari (17-010A) *Continued from August 22, 2017.* Request by applicant for endorsement of a 3-lot plan of land located at 1980 Main Road, Assessors' Map 58, Lots 25-26 & 30.

Sean Leach from SITEC Engineering was present for the meeting along with Attorney Dorothy Tongue. Leach noted that the applicant was requesting to divide the property into three lots leaving the existing dwellings intact on three lots based on the CITGO Rule, which allows for the division of land with substantial dwellings existing prior to subdivision control. Hartnett stated that he had reviewed the aerial photos from 1938 and concluded that all of the three buildings were on the site at that time. Hartnett reviewed the legal opinion from Town Counsel September 7, 2017 regarding the case. Discussion ensued.

Cole motioned to endorse the plan entitled "Approval Not Required Plan of Land in Westport, MA prepared for Steven Ferrari" Dated July 21, 2017, because the applicant has demonstrated that substantial dwellings existed prior to subdivision control law. De Rego seconded the motion and the vote was unanimous with all four members in favor.

Gulf Holdings Westport LLC - Westport Gas Rt 177 (17-006SPA). Request by applicant for final approval.

No action taken at this time. No one from the project was present.

Administrative Items.

- a. Endorse Acoaxet Chapel Decision (approved 8-22-17). Endorsed.
- b. 2018 Planning Board Meeting Calendar. No Meeting October 3rd. 2017. Noted.
- c. Ch 61A Release request Adirondack Lane.
De Rego motioned that the Planning Board request that the Town of Westport release the property. Sousa seconded the motion and the vote was unanimous with all in favor.
- d. Ch 91Dock Lic Winters on Drift Rd. Hartnett reviewed the license documentation for the Board. Noted.
- e. Westport Water system. Hartnett briefly reviewed the progress.
- f. MVP Award 16K. Mass Vulnerability Program. Noted.
- g. Recreational MJ. Hartnett will attend a meeting at the Holy Cross on October 3, 2017.

Town Planner Report.

- a. Briggs Landing. Hartnett noted that he had received a call from the Board of Selectmen's Office on Friday regarding a concerned neighbor who thought the developer might be encroaching into the cemetery. The Police stopped by the site and determined that there was not any evidence of disturbance. Hartnett spoke with the contractor who is very aware of the cemetery and has notified everyone who will be working on the site not to disturbed it.
- b. Bentley Estates II – Hartnett visited the site on Tuesday and the contractor was installing gravel. There were a couple of areas that did not look gravel ready so Tibbetts was contacted. The contractor will adjust the areas that did not have sufficient gravel.
- c. Carvalho Lane – Hartnett noted that he received a complaint from an abutter that the developer cleared to the property line. This would be the westerly line of Lot 1. A condition of the subdivision approval required a 20' buffer from the property line. The owners cleared a good portion of the buffer. The applicant installed the base course of gravel and Tibbetts will be conducting compaction tests at the site.

Any other business that may come before the Board.

Whitin noted that for any plans sent for review by other departments, such plans should also be sent to the Board of Selectmen for review as well.

Correspondence.

- a. Resignation Letter from William Raus. Resigned from the Planning Board and the CPC. Noted.
- b. ZBA notice of decisions and notices of hearings. Noted.
- c. TEC Inspection reports – various. Hartnett briefly reviewed each report. Noted.
- d. WHC re Revolution Lobster. Noted.
- e. DEP re MS4. Noted.
- f. Cook Lane neighbor's letters against road widening. Multiple letters sent in from abutters. Noted.
- g. DEP GIS Mapping. Noted.
- h. WRWA staging for construction at the Head of Westport. Noted.
- i. CH 91 Snyder fine ruling by DEP. Noted.
- j. T. King memo re posting vacancy for a PB Member/Meeting with BOS 10/30/17. Noted.

Minutes.

August 22, 2017 R & PH.

De Rego motioned to approve the minutes as written. Sousa seconded the motion and the vote was three in favor with Cole abstaining due to his absence at the meeting.

ADJOURNMENT

Members unanimously voted to adjourn at 9:06 p.m.

Respectfully submitted,
Joan Steadman, Recording Clerk