

**MINUTES
WESTPORT CONSERVATION COMMISSION
MAY 9, 2019**

The May 9, 2019 Special Meeting of the Westport Conservation Commission was called to order at 7:00 p.m. in the auditorium of the Westport Town Hall.

ATTENDANCE

Commission Members:

Anna Rycenga, Chair
Paul Davis, Vice-Chair
Donald Bancroft, Secretary
Tom Carey
Paul Lobdell
Mark Perlman

Staff Members:

Alicia Mozian, Conservation Department Director
Colin Kelly, Conservation Analyst
Nick Bomonte, Town Atty.

This is to certify that these minutes and resolutions were filed with the Westport Town Clerk within 7 business days of the May 9, 2019 Special Meeting of the Westport Conservation Commission pursuant to Section 1-225 of the Freedom of Information Act.

Alicia Mozian
Conservation Department Director

Special Meeting: 7:00 p.m., The Auditorium

Work Session:

1. Request by Morningside Drive Homes LLC on behalf of Green Farms Developers LLC & Morningside Drive Homes LLC to **MODIFY: 20 Morningside Dr. South**, Approval #AA, WPL/E-10544-18 for construction of a new house, driveway, fencing and drainage appurtenances with studio building to remain and **26 Morningside Dr. South**, Approval #IWW, WPL/E-10569-18 for the subdivision of one, 2.37 acre parcel into three (3) individual parcels. All work would be outside regulated areas associated with Muddy Brook.

Ms. Mozian reviewed the request by Atty. David Hoopes. She paraphrased his letter to the Commission dated May 9, 2019. She gave a background on the original approvals for both 20 Morningside Drive South and 26 Morningside Drive South. She stated the Commission needs to modify the permits to allow the Planning & Zoning Commission and the Historic District Commission to adopt this proposal as a settlement of pending litigation. She reviewed the approved plans showing the locations of the wetland and WPLO. She then reviewed the new settlement plans; the historic house is prominent on the plan with the proposed houses setback further from the road and slightly behind the historic house. There will be pervious driveways. She explained the differences from the original approval for each proposed house. The houses are outside the 50-foot upland review area and all are outside the WPLO area. The shed will be removed. The conservation easement area remains the same, which includes the wetland and 20-foot non-disturbance buffer. Ms. Mozian reviewed the landscape plans prepared by Jay Fain. 20 Morningside Drive South landscape plan remains the same. Plan P-2 is now L-1 for the new proposal. She discussed the conservation easement. On 26 Morningside Drive South, the proposed landscape plan is demarcated by a split rail fence. There are 27 trees and 166 shrubs proposed in total within the easement. The studio to be moved to Lot #24.

Mr. Bancroft asked why more the trees were proposed on 20 Morningside Drive South.

Ms. Mozian stated the trees are meant to replace the ones that were cut.

Mr. Perlman noted gravel for 26 Morningside Drive South is not shown on the plan.

Ms. Rycenga noted Site Engineer, Lou DiMarzo's letter of May 8, 2019, which states the driveway will be porous asphalt.

Ms. Mozian asked if this was acceptable.

Mr. Davis indicated this was acceptable as long as it is permeable.

Ms. Mozian noted that in approving the modification to the subdivision, the applicant would still need individual permits for development.

Ms. Mozian spoke about meeting with the Intervenors on May 6, 2019. The Intervenors agreed the settlement proposal was better than the proposed townhouse plan under the §8-30g. However, they would like if the planting plan could be installed prior to the house construction.

Ms. Rycenga stated that the Commission and staff does not know when the applicant will start the work. Permits are good for 5 years. The Town will take a bond for the plantings. The Commission could ask for the plantings to be installed prior to the house construction but she asked why would they treat this applicant differently than any other applicant. She would prefer not to.

Ms. Mozian noted that the sooner the plantings are installed, the sooner the applicant gets their bond back. This may be incentive for them to plant earlier but it can be dependent on the time of year.

Mr. Perlman agreed with Ms. Rycenga.

Mr. Davis agreed. He stated that as long as the construction sediment and erosion control are adequate onsite, it should not be a problem. He confirmed that the Commission is only looking at the subdivision, not a permit to construct.

Ms. Mozian agreed. 20,22 and 26 Morningside Drive South will have to submit for staff review for individual permits. This is the plan proposed to the court, so the plans will not stray far from this. She reviewed the draft resolutions and where they changed from the initial approvals with the updated information and plans. She discussed draft easement language.

Ms. Rycenga noted that instead of signs, they will use a split rail fence for the easement marker for the subdivision.

Ms. Mozian highlighted the original resolution for 20 Morningside Drive South, condition 20 states the easement to be demarcated by signage.

The Commission agreed it could be demarcated at the applicant's choosing.

Ms. Rycenga asked if there were any questions for Ms. Mozian from the Commission.

There were none.

Nick Bamonte, Asst. Town Atty., stated these resolutions will help in settlement process with the P&Z Commission and HDC and is the first step to facilitate the discussion.

Ms. Mozian stated that if the settlement agreement fails to be approved by the P&Z Commission and the HDC, the Commission has to convene on May 22, 2019 at the Special Meeting set aside for 107 Old Road in order to close the hearing. If agreed to, the applicant would withdraw the pending multi-family application.

Ms. Rycenga noted the 8-30g application is still live. She asked what are the dates for the P&Z Commission and the HDC.

Ms. Mozian stated the HDC is hearing this settlement agreement on May 14, 2019 and the P&Z Commission is hearing it on May 16, 2019.

Ms. Rycenga asked if the settlement will be implemented immediately.

Atty. Bamonte stated the Court's approval is needed but the Town will try to expedite it.

Ms. Rycenga asked what is the recommendation if there are no extensions left.

Atty. Bamonte stated this is dependent on the applicant as to whether they will move forward.

Ms. Mozian noted the Commission has until the middle of June to make a decision.

Motion to amend 20 Morningside Drive South.

Conservation Commission
TOWN OF WESTPORT
Conditions of Approval
Application # AA, WPL 10544-18
Street Address: 20 Morningside Drive South
Assessor's: Map G 09 Lot 001
Date of Resolution: February 21, 2018, revised May 9, 2019

Project Description: For construction of a new house, driveway and drainage appurtenances. The work is outside the IWW upland review areas and outside the area of the WPL Ordinance.

Owner of Record: Greens Farms Developers LLC

Applicant: Morningside Drive Homes LLC

In accordance with Section 6 of the *Regulations for the Protection and Preservation of Wetlands and Watercourses of Westport* and Section 30- 93 of the *Waterway Protection Line Ordinance* and on the basis of the evidence of record, the Conservation Commission resolves to **APPROVE** Application #AA, **WPL 10544-18** with the following conditions:

1. Completion of the regulated activity shall be within FIVE (5) years following the date of approval. Any application to renew a permit shall be granted upon request of the permit holder unless the Commission finds there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued provided no permit may be valid for more than TEN (10) years.
2. Permits are not transferable without the prior written consent of the Conservation Commission.
3. It is the responsibility of the applicant to obtain any other assent, permit or license required by law or regulation of the Government of the United States, State of Connecticut, or of any political subdivision thereof.
4. If an activity also requires zoning or subdivision approval, special permit or special exception under section 8.3(g), 8-3c, or 8-26 of the Connecticut General Statutes, no work pursuant to the wetland permit shall commence until such approval is obtained.
5. If an approval or permit is granted by another Agency and contains conditions affecting wetlands and/or watercourses, the applicant must resubmit the application for further consideration by the Commission for a decision before work on the activity is to take place.
6. Conformance to the Flood and Erosion Control Board Conditions of Approval of September 6, 2017.
7. The Conservation Department shall be notified at least forty-eight (48) hours in advance of the initiation of the regulated activity for inspection of the erosion and sediment controls.
8. All activities for the prevention of erosion, such as silt fences and hay bales shall be under the direct supervision of the site contractor who shall employ the best management practices to control storm water discharges and to prevent erosion and sedimentation to otherwise prevent pollution, impairment, or destruction of wetlands or watercourses. Erosion controls are to be inspected by the applicant or agent weekly and after rains and all deficiencies must be remediated with twenty-four hours of finding them.
9. The applicant shall take all necessary steps to control storm water discharges to prevent erosion and sedimentation, and to otherwise prevent pollution of wetlands and watercourse.
10. Organic Landscaping practices are recommended as described by the Northeast Organic Farming Association.
11. All plants proposed in regulated areas must be non-invasive and native to North America.
12. Trees to remain are to be protected with tree protection fencing prior to construction commencement.
13. The bottom of all storm water retention structures shall be placed no less than 1 foot above seasonal high groundwater elevation.
14. The applicant shall immediately inform the Conservation Department of problems involving sedimentation, erosion, downstream siltation or any unexpected adverse impacts, which development in the course or are caused by the work.
15. Any material, man-made or natural which is in any way disturbed and/or utilized during the work shall not be deposited in any wetlands or watercourse unless authorized by this permit.
16. A final inspection and submittal of an "as built" survey is required prior to the issuance of a Certificate of Compliance.

SPECIAL CONDITIONS OF APPROVAL

17. Conformance to the plans entitled:
 - a. "Plot Plan Depicting 20, 22, 24 & 26 Morningside Drive So. Westport, CT prepared for Morningside Drive homes, LLC dated 5/4/2019, Scale 1"=20' by DiMarzo & Bereczky.
 - b. "Erosion & Sediment Control Plan Depicting 20 Morningside Drive South, Westport, CT Prepared for Greens Farms Developers, LLC", Sheet C-2, Scale: 1"= 20', dated November 9, 2017 and last revised to February 6, 2018, prepared by DiMarzo & Bereczky and further revised as necessary.

- c. "Notes & Details Depicting 20 Morningside Drive South, Westport, CT Prepared for Greens Farms Developers, LLC", Sheet C-3, Scale: 1"= 20', dated November 9, 2017 and last revised to February 6, 2018, prepared by DiMarzo & Bereczky.
 - d. "Details Depicting 20 Morningside Drive South, Westport, CT Prepared for Greens Farms Developers, LLC", Sheet C-4, Scale: 1"= 20', dated November 9, 2017 and last revised to February 6, 2018, prepared by DiMarzo & Bereczky.
 - e. "Wetland Mitigation Plant List & Plant Notes, 20 Morningside Drive South, Westport, CT," Sheet L.1, dated May 8, 2019, prepared by Jay Fain & Associates, LLC
18. The design engineer shall prepare a document specifying homeowner instructions for annual maintenance of all stormwater appurtenances and the wetland scientist shall prepare a document for restoration, enhancement and maintenance within the Conservation Easement Area prior to the issuance of a Conservation Certificate of Compliance.
 19. The design engineer shall provide certification of the rain garden installation to the Conservation Department prior to the issuance of a Conservation Certificate of Compliance.
 20. A bond shall be posted to cover the sediment and erosion controls, the proposed plantings within the Conservation Easement and the 20' non-disturbance buffer. The bond shall be submitted to the Conservation Department prior to the issuance of a Zoning permit. The bond shall be held for one full growing season following completion of the planting plan.
 21. The Conservation Easement Area as shown on the map entitled, "Plot Plan Depicting 20,22,24 & 26 Morningside Drive So. Westport, CT prepared for Morningside Drive homes, LLC" dated 5/4/2019, by DiMarzo & Bereczky shall be recorded on the Land records with reference made to the Conservation Easement Management Plan and Invasive Species Management Plan dated February 7, 2018 prepared by Jay Fain & Associates. A licensed Land Surveyor shall delineate all Conservation Easement Areas in the field prior to work commencement. Easement area shall be demarcated in the field with the use of posts with easement signs, or other acceptable demarcation, placed along the eastern edge of the easement at 50' intervals. Easement language shall be submitted for review and approval to the Conservation Department before a permit for the individual site development can be issued. No cutting, clearing, filling or construction activity can take place in the Conservation Easement Area without prior authorization by the Conservation Department or Commission.
 22. Final house design plans to be submitted for review and approval by the Conservation Department prior to the issuance of a Zoning permit. Low Impact Development concepts for driveway and stormwater runoff shall be incorporated into the site plan design.

This is a conditional approval. Each and every condition is an integral part of the Commission decision. Should any of the conditions, on appeal from this decision, be found to be void or of no legal effect, then this conditional approval is likewise void. The applicant may refile another application for review.

This approval may be revoked or suspended if the applicant exceeds the conditions or limitations of this approval, or has secured this application through inaccurate information.

Motion: Rycenga **Second:** Carey
Ayes: Rycenga, Carey, Davis, Bancroft, Perlman, Lobdell
Nayes: None **Abstentions:** None **Vote:** 6:0:0

Motion to amend 26 Morningside Drive South.

Conservation Commission
TOWN OF WESTPORT
Conditions of Approval
Application # IWW, WPL/E 10569-18
Street Address: 26 Morningside Drive South
Assessor's: Map G 08 Lot 017
Date of Resolution: April 18, 2018, revised May 9, 2019

Project Description: For the subdivision of one, 2.37 acre parcel into 3 individual parcels. The proposed activity is outside the WPLO area of Muddy Brook.

Owner of Record: Morningside Drive Homes, LLC

Applicant: Morningside Drive Homes, LLC

In accordance with Section 6 of the *Regulations for the Protection and Preservation of Wetlands and Watercourses of Westport* and Section 30- 93 of the *Waterway Protection Line Ordinance* and on the basis of the evidence of record, the Conservation Commission resolves to **APPROVE** Application #IWW, **WPL/E 10569-18** with the following conditions:

1. Completion of the regulated activity shall be within FIVE (5) years following the date of approval. Any application to renew a permit shall be granted upon request of the permit holder unless the Commission finds there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued provided no permit may be valid for more than TEN (10) years.
2. Permits are not transferable without the prior written consent of the Conservation Commission.
3. It is the responsibility of the applicant to obtain any other assent, permit or license required by law or regulation of the Government of the United States, State of Connecticut, or of any political subdivision thereof.
4. If an activity also requires zoning or subdivision approval, special permit or special exception under section 8.3(g), 8-3c, or 8-26 of the Connecticut General Statutes, no work pursuant to the wetland permit shall commence until such approval is obtained.
5. If an approval or permit is granted by another Agency and contains conditions affecting wetlands and/or watercourses, the applicant must resubmit the application for further consideration by the Commission for a decision before work on the activity is to take place.
6. Conformance to the Flood and Erosion Control Board Conditions of Approval of April 4, 2018.
7. The Conservation Department shall be notified at least forty-eight (48) hours in advance of the initiation of the regulated activity for inspection of the erosion and sediment controls.
8. All activities for the prevention of erosion, such as silt fences and hay bales shall be under the direct supervision of the site contractor who shall employ the best management practices to control storm water discharges and to prevent erosion and sedimentation to otherwise prevent pollution, impairment, or destruction of wetlands or watercourses. Erosion controls are to be inspected by the applicant or agent weekly and after rains and all deficiencies must be remediated with twenty-four hours of finding them.
9. The applicant shall take all necessary steps to control storm water discharges to prevent erosion and sedimentation, and to otherwise prevent pollution of wetlands and watercourse.
10. Organic Landscaping practices are recommended as described by the Northeast Organic Farming Association.
11. All plants proposed in regulated areas must be non-invasive and native to North America.
12. Trees to remain are to be protected with tree protection fencing prior to construction commencement.
13. The bottom of all storm water retention structures shall be placed no less than 1 foot above seasonal high groundwater elevation.
14. The applicant shall immediately inform the Conservation Department of problems involving sedimentation, erosion, downstream siltation or any unexpected adverse impacts, which development in the course or are caused by the work.
15. Any material, man-made or natural which is in any way disturbed and/or utilized during the work shall not be deposited in any wetlands or watercourse unless authorized by this permit.
16. A final inspection and submittal of an "as built" survey is required prior to the issuance of a Certificate of Compliance.

SPECIAL CONDITIONS OF APPROVAL

17. Conformance to the plans entitled:
 - a. "Plot Plan depicting 20, 22, 24 & 26 Morningside Drive So., Westport, CT prepared for Morningside Drive Homes, LLC", Scale: 1" = 20', dated May 4, 2019, prepared by DiMarzo & Berezky

- b. "Erosion & Sediment Control Plan Depicting 22, 24 and 26 Morningside Drive South, Westport, Connecticut Prepared for Morningside Drive Homes, LLC", Sheet C-2, Scale: 1" = 20', dated April 3, 2018, prepared by DiMarzo & Bereczky and further revised as necessary.
 - c. "Notes & Details Depicting 22, 24 and 26 Morningside Drive South, Westport, Connecticut Prepared for Morningside Drive Homes, LLC", Sheet C-3, dated April 3, 2018, prepared by DiMarzo & Bereczky
 - d. "Details-1 Depicting 22, 24 and 26 Morningside Drive South, Westport, Connecticut Prepared for Morningside Drive Homes, LLC", Sheet C-4, dated April 3, 2018, prepared by DiMarzo & Bereczky
 - e. "Wetland Mitigation 3-Lot Subdivision 20&26 Morningside Drive South, Westport, CT, Sheet L.1, dated May 8, 2019 prepared by Jay Fain & Associates and accompanying "Wetland Mitigation Plant List & Plant Notes, Sheet L.2, dated May 8, 2019 by Jay Fain & Associates.
 - f. "Wetland Mitigation 4-Lot Subdivision 20&26 Morningside Drive South, Westport, CT, Sheet L.1, dated May 8, 2019 prepared by Jay Fain & Associates.
18. No further review or permitting will be required for development of proposed #24 Morningside Drive South (Lot A-2).
19. Future site development review for Lots A-1 (#22 Morningside Drive South) and A-3 (#26 Morningside Drive South) shall include the following components:
- a. The Conservation Easement Area as shown on the map entitled "Plot Plan depicting 20, 22, 24 & 26 Morningside Drive So., Westport, CT prepared for Morningside Drive Homes, LLC", Scale: 1" = 20', dated May 4, 2019, prepared by DiMarzo & Bereczky shall be recorded on the Land Records.
 - b. A licensed Land Surveyor shall delineate all Conservation Easement Areas in the field prior to work commencement.
 - c. Said easement areas area shall be delineated in the field with a split-rail fence as shown on Sheet L.1 as referenced above in item 17 (e) and (f).
 - d. Within the Conservation Easement Area no cutting, clearing or building shall be allowed without permission from the Conservation Commission or Department, with the exception of the removal of the existing shed. Said language shall be submitted for review and approval to the Conservation Department before a permit for individual site development can be issued.
 - e. A bond for plantings and the split-rail fence associated with the Conservation Easement Area shall be posted for #22 and #26 prior to permit issuance.
 - f. The design engineer shall prepare a document specifying homeowner instructions for annual maintenance of all stormwater appurtenances and the wetland scientist shall prepare a document for restoration, enhancement and maintenance within the Conservation Easement Area prior to the issuance of a Conservation Certificate of Compliance.
 - g. Low Impact Development concepts for driveways and stormwater runoff shall be incorporated into the site plan design.
 - h. The design engineer shall provide certification of the raingarden installation to the Conservation Department prior to the issuance of a Conservation Certificate of Compliance.
 - i. Future development design shall respect all upland review areas including the 20 foot non-disturbance area. Proposed grading shall be similar to that shown on the Conceptual Site Plan. Encroachment on upland review areas or significant grade changes will need review from the Conservation Commission.

This is a conditional approval. Each and every condition is an integral part of the Commission decision. Should any of the conditions, on appeal from this decision, be found to be void or of no legal effect, then this conditional approval is likewise void. The applicant may refile another application for review.

This approval may be revoked or suspended if the applicant exceeds the conditions or limitations of this approval, or has secured this application through inaccurate information.

Motion: Carey Second: Davis
Ayes: Carey, Davis, Rycenga, Bancroft, Perlman, Lobdell
Nayes: None Abstentions: None Vote: 6:0:0

Public Hearing:

- 1. 20-26 Morningside Drive South:** Continuance of Application #IWW,WPL/E-10768-19 by Morningside Drive Homes LLC on behalf of Green Farms Developers LLC & Morningside Drive Homes LLC for a set-aside development pursuant to CGS Section 8-30g of 16 townhouse-style condominiums and related site improvements. Portions of the work are within the upland review area setback.

The hearing was continued to May 22, 2019.

The May 9, 2019 Special Meeting adjourned at 8:04 p.m.

Motion: Rycenga Second: Perlman
Ayes: Rycenga, Perlman, Bancroft, Carey, Davis, Lobdell
Nayes: None Abstentions: None Vote: 6:0:0