



Town of Westport
Planning and Zoning Commission
Town Hall, 110 Myrtle Avenue
Westport, CT 06880
Tel: 203-341-1030 Fax: 203-454-6145
www.westportct.gov

June 18, 2021

The following meeting of the Planning & Zoning Commission was held remotely using Zoom Technology:

Planning and Zoning Commission Minutes

June 24, 2021

Meeting Started: 6:00P.M.

P&Z Commission Members and Alternates in attendance:

Danielle Dobin, Paul Lebowitz, Neil Cohn, Amie Tesler, & Patrizia Zucaro.

P&Z Staff & Others:

Mary Young, P&Z Director.

I PUBLIC HEARING

- 1. Text Amendment #793:** Appl. #PZ-21-00226 submitted by Peter Romano/ LANDTECH to amend §5, Definitions, to modify the swimming pool definition to exclude swimming pools of a certain size from Total Coverage calculations; to amend §5, Definitions, to create a new definition for Sports Court, and to exclude Sports Courts of a certain size from Total Coverage calculations; to modify §11-2.4 Accessory Uses permitted in a Residence AAA district, to modify language for Swimming Pools to exclude them from Total Coverage calculations; and add language permitting Sports Courts as an Accessory Use to a Dwelling and to exclude Sports Courts from Total Coverage calculations. The amendment if adopted will apply to all properties in all zoning districts. A copy of the text amendment is available on-line at www.westportct.gov, is on file in the Town Clerk's Office, is on file in the Planning and Zoning Office, and is attached to this notice.

Action: No testimony taken, continued to 7/8/21 hearing.

II PRE-APPLICATION

- Submitted by Michael Calise with the intended benefiting property being located at 215 Post Road West to discuss a potential text amendment to create a new zoning district to incentivize preservation of Historic buildings on certain sized properties in the Business Preservation District by expanding allowable uses to include uses permitted in a Corporate Park District.

Action: Discussed.

III PUBLIC HEARING

1. **Text Amendment #795:** Appl. #PZ-21-00277 submitted by the Westport Planning and Zoning Commission to adopt a definition for Bus Shelters and exempt them being considered a "Structure," thereby removing zoning obstacles if/when they are located. A copy of the text amendment is available on-line at www.westportct.gov, is on file in the Town Clerk's Office, is on file in the Planning and Zoning Office, and is attached to this notice.
Action: Testimony received, item closed.
Adopted, 5-1 (Zucaro)- 0, see resolution
Effective date: July 1, 2021

2. **118 Wilton Road:** Special Permit/ CAM Site Plan Appl. #PZ-21-00075 submitted by Tom Ryder, LANDTECH for property owned by Victoria Fuller for after-the-fact approval for excavation and fill activities and to find consistency with the Coastal Area Management Act, for property located in the Residence AA District, PID#C10070000.
Action: Testimony received, item closed.
Denied, 5-1 (Cohn)- 0, see resolution

3. **16 Fresenius Rd:** Subdivision Appl. #PZ-21-00319: submitted by Bryan Nesteriak of B&B Engineering LLC for property owned by Patricia Colgan Davis for a request a 3-Lot Subdivision of property plus an Open Space, located in the Residence A/ Residence AA zone, PID# F09098000
Action: Testimony received, item closed.
Approved, 6-0-0, see resolution

III WORK SESSION

(The following items will be discussed and voted on as time permits. The public may observe the work session, but not participate.)

New Business:

- **126 & 128 Bayberry Lane-** Request for 90-Day extension to record subdivision mylar for project approved per Resolution #PZ-20-00973.
Action: Testimony received, item closed.
Approved, 6-0-0

- **40 Fullin Road-** Referral from City of Norwalk for comments on pending Special Permit to redevelop property for 40 Units of elderly housing.
Approved, 5-1 (Zucaro)-0

Meeting Ended 10:00pm

Respectfully submitted by S. McNally, June 25, 2021



**Town of Westport
Planning and Zoning
Commission** Town Hall, 110
Myrtle Avenue Westport,
CT 06880
Tel: 203-341-1030 Fax: 203-454-6145
www.westportct.gov

Hearing: June 17, 2021 and June 24, 2021

Decision: June 24, 2021

Tom Ryder
LANDTECH
518 Riverside Avenue
Westport, CT 06880

RE: 118 Wilton Road, Coastal Site Plan #PZ-21-00075

Dear Mr. Ryder:

This is to certify that at a meeting of the Westport Planning and Zoning Commission held on June 24, 2021 it was moved by Mr. Lebowitz and seconded by Ms. Dobin to adopt the following resolution:

RESOLUTION #PZ-21-00075

WHEREAS, THE PLANNING AND ZONING COMMISSION met on June 24, 2021 and made the following findings:

Property Description/Background

1. The property is a conforming lot with 1.8 acres in a Res. AA zoning district. The lot is improved with a residence, detached garage and retaining walls on the property. Steeps slopes and wetlands cover 55,493 SF of the property. The property is located within the Coastal Area Management boundary; within the Waterway Protection Line Ordinance (WPLO) and is within the AE 10 flood zone per FIRM Panel 09001C0413G.
2. The owner was issued a Notice of Violation by the Conservation Department on November 20, 2020 for conducting regrading without approvals. Approximately 55' of the upper wall was installed when the work was halted by Conservation Department staff. Grading behind the walls was done, in part, to level an area of pre-existing slopes and remains partially incomplete due to work stoppage.
3. The proposal was approved by the Flood and Erosion Control Board on 2/3/21 with standard conditions. The Conservation Commission approved the application

at their 2/17/21 meeting with the conditions that a performance bond be submitted to cover the cost of plantings prior to the issuance of a Zoning Permit.

4. This site is adjacent to approved multi-family development at 122 Wilton Road.

5. This property lies within the Coastal Area Management (CAM) boundary, as defined by C.G.S. §22a-94 and therefore, a CAM review is required in accordance with C.G.S. §22a-109 and the Town of Westport Zoning Regulations §31-10.6. §31-10.5 of the zoning regulations states that no use, activity or project for which a Coastal Site Plan is required by §22a-105 (b) of the CAM Act shall commence until a Coastal Site Plan has been approved by the P&Z Commission or the Zoning Board of Appeals in accordance with the requirements of §22a-105 through 22a-109 of the CAM Act.

6. The following coastal resources have been identified on the site or within the influence of the project The applicant indicates the following coastal resources are on and/or adjacent to the site: Coastal Hazard Areas, Coastal Waters, Shorelands and Tidal Wetlands.

Proposal

7. The application requests authorization of existing fill and retaining walls as well as to construct an additional wall and place additional fill. The proposal seeks to approve an approximately 107' long section of rock wall and an approximately 55' long section of an upper, second tier rock wall to retain fill to level the rear yard of the existing residential property. The applicant also proposes to complete the construction project by extending the upper rock wall an additional 55', place fill, and modify the existing stormwater drainage by adding a level spreader between the two rock walls.

8. The purpose of the regrading, according to the applicant, was to level off the area to create a walkway. The excavation and fill activities include 65 CY of fill and 40 CY of cut, totaling 105 CY, over a 2,500 SF area. The average depth of the fill is 3.5 feet.

9. The Staff Report prepared by Michelle Perillie, dated 6/10/21, conclude the application is not consistent with CAM policies as it adversely impacts the adjacent coastal systems.

10. The application was referred to be the CT DEEP as the project proposed what CT DEEP has identified as a shoreline flood and erosion control structure. Comments from John Gaucher dated 4/19/21 state, *"Both the constructed and the proposed rock walls constitute a shoreline flood and erosion control structure, which is defined to mean:*

"any structure the purpose or effect of which is to control flooding or erosion from tidal, coastal or navigable waters and includes breakwaters, bulkheads, groins, jetties, revetments, riprap, seawalls and the placement of concrete, rocks or other significant barriers to the flow of flood waters or the movement of sediments along the shoreline."
[CGS Sec. 22a-109(c)]

Shoreline flood and erosion control structures are specifically not exempt from coastal site plan review pursuant to sec. 22a-109(b)(7). In fact, proposals of shoreline structures are required to be referred to the Commissioner of the Department for review and comment 35 days prior to the Commission rendering a decision on the application in accordance with CGS Sec.22a-109(d)."

Additionally, the comments conclude by recommending that the proposal be denied due to its inconsistency with the applicable policies cited above and that, *"the public nuisance be remedied by requiring that the constructed walls be removed and that the site be restored as nearly to its pre-construction condition as feasible."*

11. The Westport Planning and Zoning Commission has determined that this project is not consistent with the policies identified in Section(s) 22a-92(b) (1) and 22a-92 (b) (2) of the Connecticut Coastal Management Act; that it will not adversely affect adjacent Coastal Resources (General Resources, Beaches and Dunes, Coastal Hazard Areas, Intertidal Flats and Shellfish Concentration Area) identified in Sections 22-93 (a) (7) of said Act.

Public Participation

12. Hearings were held on June 17, 2021 and June 24, 2021, to receive testimony from members of the public as required pursuant to State Statutes.

13. The public hearing was held remotely using electronic means due to the COVID-19, as Town Hall remains closed. The public hearing was broadcast live on public access television, live on-line on the Town's website, and interested parties were provided the opportunity to join the meeting and offer "live" testimony.

14. All application materials, and public comments received were posted on the Town's website consistent with the Governor's Executive Order to maintain transparency while conducting remote meetings during COVID-19.

NOW THEREFORE, BE IT RESOLVED 118 Wilton Road: Special Permit/ CAM Site Plan Appl. #PZ-21-00075 submitted by Tom Ryder, LANDTECH for property owned by Victoria Fuller for after-the-fact approval for excavation and fill activities and to find consistency with the Coastal Area Management Act, for property located in the Residence AA District, PID#C10070000 be **DENIED** for the following reasons:

Reasons:

1. The Westport Planning and Zoning Commission has determined that this project is not consistent with the policies identified in Section(s) 22a-92(b) (2), 22-a-92 (c) (2) and 22a-92 (e) of the Connecticut Coastal Management Act; that it will adversely affect adjacent Coastal Resources (Coastal Hazard Areas, Coastal Waters, Shorelands and Tidal Wetlands) identified in Sections 22-93 of said Act.

2. The Connecticut Coastal Management Act requires *“Structural solutions are permissible when necessary and unavoidable for the protection of infrastructural facilities, cemetery or burial grounds, water-dependent uses, or commercial and residential structures and substantial appurtenances that are attached or integral thereto, constructed as of January 1, 1995, and where there is no feasible, less environmentally damaging alternative and where all reasonable mitigation measures and techniques have been provided to minimize adverse environmental impacts.”* The existing house was not constructed prior to 1995.
3. Comments from CT DEEP Department of Land and Water Resources Division Director Brian Thompson, dated 4/19/21, recommends denial of the application and states, *“the public nuisance be remedied by requiring that the constructed walls be removed and that the site be restored as nearly to its pre-construction condition as feasible.”*
4. The 2017 Plan of Conservation and Development in Chapter 7 (Protect Natural Resources) includes a goal of promoting non-structural activities in the coastal area as opposed to groins, seawall revetments, etc. (pg 52).
5. The 2017 Plan of Conservation and Development in Chapter 7 (Protect Natural Resources) includes a goal of preserving coastal resources and carefully manage development in coastal areas (pg 45).
6. The walls are not necessary or unavoidable to protect the existing pre-1995 residential structure;
7. The walls are likely to have adverse impacts rather than beneficial impacts on coastal resources over the long term;
8. The walls could lead to a loss of species diversity and richness; and
9. The walls impact the movement of wildlife and prevent the shoreline and adjacent flora from adjusting to changes in sea level.

VOTE:

AYES	-5-	{Dobin, Lebowitz, Olefson, Tesler, Zucaro}
NAYS	-0-	
ABSTENTIONS	-1-	{Cohn}

Very truly yours,

Danielle Dobin
 Chairman, Planning & Zoning Commission

cc: Peter Ratkiewich, Public Work Director
 Alicia Mozian, Conservation Director
 John Gaucher, CT DEEP



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Hearing: June 24, 2021

Decision: June 24, 2021

June 25, 2021

RE: Text Amendment #795/App. #PZ-21-00277, Modification of §5-2 and §35-2 to define and permit Bus Shelters within the Front Landscape Area setbacks.

To Whom It May Concern

This is to certify that at a meeting of the Westport Planning and Zoning Commission held on June 24, 2021 it was moved by Mr. Lebowitz and seconded by Mr. Olefson to adopt the following resolution.

RESOLUTION #PZ-21-00277

WHEREAS, THE PLANNING AND ZONING COMMISSION met on June 24, 2021 and made the following findings:

Background

1. The current Westport Zoning Regulations consider bus shelters to be a structure. As such, bus shelters on Town-owned or private property must conform to setbacks and coverage requirements. Furthermore, bus shelters, as with all structures, are not permissible within the 30-foot front setback area along all roads. However, their effectiveness for transit users depends in part upon their being located adjacent to the street to allow for safe and efficient boarding and deboarding. An effective location adjacent to the street for a bus shelter currently requires a variance from the Zoning Board of Appeals.

2. To address the zoning obstacles described above, this Planning and Zoning Commission-authored amendment originated from the Economic Growth Subcommittee of the Planning and Zoning Commission. The Economic Growth Subcommittee was created at the Annual Meeting held in December 2020 by P&Z Member Neil Cohn who volunteered to serve as Committee Chair.
3. The Economic Growth Subcommittee held three (3) subcommittee meetings to receive feedback and to help structure the proposed text. At the subcommittee meetings, the attendees recognized that without an exemption through a text amendment, bus shelters would need a variance to be located near the street where they are most needed. A decision was reached in support of drafting such an amendment in the spirit of promoting economic vitality in Westport.
4. In addition to the Economic Growth Subcommittee meetings, a group of residents and Town Officials formed the ad-hoc Bus Shelter Working Group. The Group gave a presentation to the Economic Growth Subcommittee at their March 18, 2021 meeting which presented research about current transit operations in Westport, plans and studies pertaining to transit conducted by local, regional, and state-level agencies, and opportunities to improve transit in Westport.
5. There are currently two (2) types of transit service operating in Westport, both operated through an arrangement between the Norwalk Transit District and Westport Transit District: fixed route service and on-demand service.
 - A. The Coastal Link route provides service through Westport, from Norwalk to Milford, seven days per week along the Post Road (US Highway 1) with 30-minute headways in both directions.
 - B. The Westport Transit District launched the Wheels2U Westport transit service in October 2020. It is an on-demand shuttle service that currently picks up and drops off users anywhere in Westport, as long as the trip starts or ends at either Metro-North Railroad station in town: Saugatuck and Greens Farms.

- C. Additionally, the Westport Transit District, through an arrangement with the Norwalk Transit District, operates the on-demand Westport Americans with Disabilities (ADA) Paratransit service and a non-ADA paratransit service.
 - D. Finally, the Westport and Norwalk Transit Districts operate an on-demand service for town-to-town travel for anyone with a disability and/or impairment that prevents them from using the Coastal Link bus. The service area extends west from Westport to Greenwich.
6. There is currently one bus shelter along the Post Road in Westport which serves the eastbound Coastal Link route; it is located on state-owned right-of-way in front of 1790 Post Road E (Stop & Shop).
 7. The Connecticut Department of Transportation (ConnDOT) plans to implement roadway improvements at three (3) signalized intersections along the Post Road “to provide safety and traffic operational improvements.” The signalized intersections along the Post Road are at: Fresh Market/The Village Center driveways, Roseville Road/Hillspoint Road, and Bulkley Road North and South. Per the Westport Public Works Director, P. Ratkiewich, ConnDOT is planning to include locations for up to three (3) Town-maintained bus shelters in the project area.
 8. The Explanatory Statement for Text Amendment #795 dated April 23, 2021 and revised May 27, 2021 describes that the Planning and Zoning Commission’s Economic Growth Subcommittee, at the Feb. 10, 2021 meeting, recommended staff draft a text amendment to remove zoning obstacles that might inhibit locating bus shelters. The Planning and Zoning Commission unanimously endorsed the proposal at their April 22, 2021 Work Session, and offered additional edits to the draft text amendment.

Proposal

9. Text Amendment #795 authored by the Planning and Zoning Commission, dated April 23, 2021 and revised May 27, 2021, proposes to remove zoning obstacles to enable bus shelters to locate in Westport without the need for variances from the Zoning Board of Appeals.
10. Text Amendment #795 will modify §5-2, Definitions, to add a definition for “Bus Shelter” and specify who shall have the authority to approve locations and what amenities and features are permitted or prohibited.
11. Text Amendment #795 will modify the “Structure” definition in §5-2, Definitions, to exempt bus shelters from being considered structures for purposes relating to coverage and setbacks.
12. Text Amendment #795 will modify the requirements in §35-2.2, Landscaping Area, to permit bus shelters, like sidewalks and driveways, to locate within the first 30ft of a property. Specifically, the change states that bus shelters are exempt from the 30ft front setback requirement along all streets.
13. The proposed changes would apply broadly throughout Westport; no specific location is the target of this amendment. The Public Works Department, in consultation with the Police Department and Fire Marshal’s Office, will be vested with the authority to approve all bus shelter locations.

Department Comments

14. Text Amendment #795 was referred to Town Officials for comments in anticipation of a public hearing with no objections received.
15. The Town Attorney issued a statement saying they have “no comments” on Text Amendment #795.
16. The Fire Marshal recommended to P&Z Staff that the Public Works Department shall coordinate with the Fire Marshal’s Office concerning shelter locations. This recommendation was incorporated in the 5/27/21 revision of Text Amendment #795.

17. The Department of Human Services expressed support for the proposed zoning change, stating that “[e]nhancing safe access points to public transportation may improve traffic congestion, increase ridership, and send a message to the greater community that Westport values and welcomes all.”

18. The Westport Weston Health District stated that it is in support of the proposed zoning change.

Public Participation

19. A hearing was held on June 24, 2021 to receive testimony from members of the public as required pursuant to State Statutes.

20. The public hearing was held remotely using electronic means due to the COVID-19. The public hearing was broadcast live on public access television, live on-line on the Town's website, and interested parties were provided the opportunity to join the meeting and offer “live” testimony, consistent with executive orders issued by the Governor.

21. Two emails were sent from Westport residents offering support for provisions that improve transit opportunities in Westport but cautioned against an amendment that is overly broad.

22. The Ad Hoc Bus Facilities Working Group sent an email in support of Text Amendment #795.

23. All application materials and public comments received prior to the public hearing were posted on the Town's website consistent with the Governor's Executive Order to maintain transparency while conducting remote meetings.

NOW THEREFORE, BE IT RESOLVED Text Amendment #795: Appl. #PZ-21-00277 submitted by the Planning and Zoning Commission is **ADOPTED** to add a definition for Bus Shelters and exempt them being considered a "Structure," thereby removing zoning obstacles if/when they are located. A copy of the adopted text amendment is on file in the Westport Town Clerk's Office, is on file in the Westport Planning and Zoning Office and is attached to this notice.

REASONS

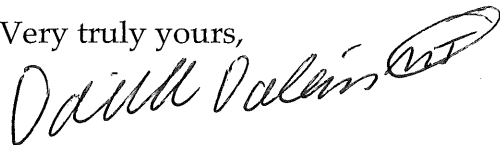
1. Text Amendment #795 will facilitate the provision of bus shelters that supply convenient and safe harbor for residents, commuters, as well as visitors to wait at a bus stop protected from the weather.
2. The provision of bus shelters can improve efficiency for bus drivers to know when/where people are waiting for service and improve safety for riders who will no longer need to “flag” the bus driver to stop where bus shelters are provided.
3. Text Amendment #795 will address the current and growing need to accommodate transit ridership, enhance the image of public transit by providing supportive infrastructure, and heighten the experiences for those transit users who live in, work in, and visit Westport.
4. The Planning and Zoning Commission finds this amendment is consistent with the Comprehensive Plan (Zoning Regulations and Zoning Map), and the *2017 Plan of Conservation and Development* that recommends supporting bus transit.

VOTE:

AYES	5	{Danielle Dobin, Paul Lebowitz, Neil Cohn, Amie Tesler, Jon Olefson}
NAYS	0	
ABSTENTIONS	1	{Patrizia Zucaro}

The effective date of this amendment is: July 1, 2021

Very truly yours,



Danielle Dobin, Chairman
Planning & Zoning Commission

Attached

Adopted Text Amendment #795

cc: First Selectman
DPW Director
Fire Marshal
Human Services Director
Police Chief
Town Attorney
Town Engineer
RTM P&Z Committee Chairman
RTM Moderator

Text Amendment #795
 Submitted: 4/23/21
 Received: 5/13/21
 Revised: 5/27/21
 Public Hearing: 6/24/21
 Adopted: 6/24/21
 Effective date: 7/1/21

New language is underlined.

From §5, Definitions

§5-2, Specific Terms

Bus Shelter *(New)*

A covered structure providing convenience and protection against the weather for people waiting for public transportation buses. Bus shelter locations shall be subject to approval by the Public Works Director in consultation with the Police Department and the Fire Marshal's Office. Bus shelters may contain reasonable accessories, such as individual seats and trash receptacles; provided that benches are not permitted. Bus shelters may have electricity and necessary electrical accessories, including solar panels and energy storage, charging for personal electronics and phones, security lighting, security cameras, and digital signage to provide transportation information. Commercial signage is prohibited anywhere on a bus shelter. Donor plaques and curated art are permitted.

Structure

Anything constructed or erected which requires location on the ground and or/ attachment to or placement on something having a location on the ground. Except as otherwise indicated, "Structures" as used in these regulations shall be deemed to include buildings, parapets, turrets, ground-mounted and roof top mechanical units, swimming pools, tennis courts, towers, paddle or platform tennis courts, balconies, open entries, porches, decks, signs, permanent awnings, ground mounted antennas, ground mounted solar panels, satellite dishes, flagpoles and fences or walls more than eight (8) feet in height and a gas or liquid storage tank that is principally above ground. (See §32-7.4 for rooftop dishes)

Any structure, such as a deck or porch, attached to a building shall be deemed to be part of the building.

Ground-mounted mechanical units, such as air conditioning compressors, shall not be deemed structures for purposes of coverage, for permitted uses, (as distinct from special permit uses) in residence districts. Patios or terraces shall not be deemed structures for purposes of coverage but shall adhere to all required setbacks. If the patio/terrace is 3 feet or more above adjacent grade at any point, such as with a retaining wall, it will be included in total coverage. (See patio or terrace definition). Handicapped ramps, platform lifts necessary for ADA compliance and temporary signs as specified in §33-5 are not considered structures. Access stairs required by a public utility and no larger than 50 square feet are not considered structures. Bus Shelters are not considered structures for purposes of coverage and setbacks.

An arbor or pergola is considered a structure if it has any type of roof or covering or a deck or patio floor or is over 8 feet in height.

From §35, Landscaping, Screening and Buffer Areas

§35-2.2, Landscaping Area

§35-2.2.1, Location

The required front setback area, as measured from the property line, except for Bus Shelters, sidewalks, light poles and perpendicular driveways, shall include a minimum thirty (30) foot deep front landscape area along all streets, as shown on the attached "Landscape Design Standards." Such landscape area shall be retained and is to be used for no other purposes. Raised beds and planters are not acceptable substitutes for trees.



Town of Westport
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Hearing: June 24, 2021

Decision: June 24, 2021

June 25, 2021

Bryan Nesteriak
B&B Engineering LLC
15 Research Drive, Suite 3
Woodbridge, CT 06525

RE: 16 Fresenius Road, Subdivision Appl. #PZ-21-00319

This is to certify that at a meeting of the Westport Planning and Zoning Commission held on June 24, 2021 it was moved by Mr. Lebowitz and seconded by Ms. Dobin to adopt the following resolution.

RESOLUTION #PZ-21-00319

WHEREAS, THE PLANNING AND ZONING COMMISSION met on June 24, 2021 and made the following findings:

FINDINGS

Background

1. 16 Fresenius Road was originally created in 1947 by subdivision of a larger landholding formerly owned by Albert H. Fresenius. The lot lines between 15 and 16 Fresenius Road were changed in 2019 by the owner of both properties, Patricia Colgan Davis, to establish the current 5.548-acre parcel that is now 16 Fresenius Road.
2. 16 Fresenius Road is currently vacant/undeveloped.
3. Two areas of inland wetlands exist on the property, totaling 65,560 SF (1.505 acres), one of which is within the jurisdiction of the Waterway Protection Line Ordinance. There are 45,230 SF (1.038 acres) of steep slopes of 25% or greater across the site.
4. 16 Fresenius Road is split-zoned between the Residence A and AA districts.

Project Background and Prior Approvals

5. §52 of the Subdivision Regulation requires all approvals from other boards and agencies be obtained prior to Planning and Zoning Commission review. The applicant satisfied these requirements as follows:
 - A. The Water Pollution Control Authority approved the project on September 9, 2015; and
 - B. The Flood and Erosion Control Board approved the project on October 3, 2018; and
 - C. A three-phase Archaeological Report was completed in October 2018; and
 - D. The Conservation Commission approved the project on December 12, 2018.

6. The December 12, 2018 Conservation Commission approval required that each individual house on the subdivided lots will need to return to them for review and approval so that the impact of the specific house designs can be analyzed. The Conservation Commission's approval also contained seven (7) Recommendations:
 - I. The applicant should identify the methodology for ledge removal and how rock removal will be managed from the property.

 - II. Future site designs must consider incorporating Low Impact Development (LID) features as practical. Said features include but are not limited to: permeable driveways, patios and walkways, use of raingardens and limiting the amount of tree clearing and or requiring a certain percentage of tree replacement take place for those that will be lost.

 - III. A maintenance plan for the common stormwater drainage structure located on Lot A serving the two driveways should be submitted prior to issuance of a Certificate of Compliance for the first of the three houses completed on the property. Said plan to be approved by the Engineering Department.

 - IV. A homeowner's association must be established which will be responsible for the maintenance of the common stormwater drainage structure located on Lot A serving the two driveways. Said document should be reviewed by the Town Attorney's office and recorded in the land records prior to issuance of a Certificate of Compliance for the first of the three houses completed on the property.

 - V. The Construction Phasing Plan dated October 9, 2018 prepared by the applicant should be amended to take into consideration extensive tree, ledge and topsoil removal relative to the timing of any construction activity or site preparation.

 - VI. The Commission recommends the applicant submit the "Change of Lot Line Survey Map of Property Prepared for Patricia Colgan Davis 15 & 16 Fresenius Road, Westport, CT", Scale: 1"= 40', dated February 12, 2008 and last revised to July 20, 2018, prepared Walter H. Skidd- Land Surveyor LLC for review by P&Z and recording on the Land Records.

- VII. The Commission recommends the applicant explore the positive impacts to the environment of seeking a waiver of the 5:1 slope requirements to a 2:1 slope in order to reduce site disturbance.
7. The applicant sought relief from the Zoning Board of Appeals to address the Conservation Commission's Recommendation VII, the pursuant to Case #7411, but was denied.

Proposal

8. Bryan Nesteriak, the applicant, is seeking approval from the Planning and Zoning Commission for a Subdivision pursuant to §51-§56 of the Subdivision Regulations.
9. These regulations allow lots to be divided into multiple lots, provided that the area and shape of the resulting lots meet the requirements of lots in the zoning district they are located in. In this case, 16 Fresenius Road is split between the Residence A (1/2-acre) and AA (1-acre) districts. Pursuant to §4-4, lots located in two or more residence districts shall be governed by the standards of the zoning district in which the greater portion of the minimum required lot area lies.
10. The Subdivision Plan shows three (3) building lots, Lots A, B, and C. Lot A is to be 2.382 acres and located predominantly within the Residence A district. Lot B is to be 0.637 acres (not including a 0.070-acre accessway), with 0.394 acres in the Residence A district and 0.243 acres in the Residence AA district; therefore, the standards for the Residence A district govern development of Lot B. Lot C is to be 1.310 acres and located predominantly in the Residence AA district.
11. The Subdivision Plan shows one (1) open space parcel of 1.148 acres, or 20.7% of the total lot area, containing a wetlands area within the Waterway Protection Line Ordinance jurisdiction. The open space parcel is proposed to be preserved in its natural state in perpetuity, consistent with a requirement by the Conservation Commission to prevent cutting, clearing, filling, grading, or the construction of any such structures or buildings without the consent of the Conservation Department of Conservation Commission.
12. The plan also proposes:
- A. Lot A will have an exclusive 12-foot-wide driveway with direct access to Fresenius Road.
 - B. Lots B and C will share a 16-foot-wide common driveway along a shared 30-foot-wide driveway and utility easement, accessed via the Fresenius Road cul-de-sac.
 - C. Lot B, which is to be a rear lot without direct frontage on Fresenius Road, will have a 20-foot-wide accessway approximately 137 feet long, less than the Residence A district maximum of 250 feet.
 - D. The open space parcel, which wraps around a northern portion of the cul-de-sac, will have direct frontage on Fresenius Road.

- E. All storm water from the dwelling roofs and a portion of the proposed driveways will be collected, detained, and treated on-site with the use of underground detention systems to be located on each Lot A, B, and C.
- F. A shared 6,259 SF stormwater easement is to be located on Lot A to collect, distribute, and discharge the storm water from the driveways serving all three proposed lots.
- G. A slope easement of 11,882 SF is to be located on Lot A and a slope easement of 6,421 SF is to be located on Lot C to protect the steep slopes and natural features contained within those areas.
- H. All lots are to be served by municipal sewer and public water supply.

Planning and Zoning Staff Report

- 13. The Planning and Zoning staff in a report dated June 22, 2021 found the proposed 3-lot subdivision meets all applicable standards for resulting lot acreage, shape, frontage, regularity factor, and accessways.
- 14. The applicant submitted a conceptual site plan layout adequately demonstrating that each Lot A, B, and C can feasibly be developed with conformance to all lot coverage and setback requirements.
- 15. The Engineering Department in their May 20, 2021 comments confirmed the proposed drainage, grading, sedimentation & erosion control plans are in compliance with all applicable Town regulations.
- 16. The Public Works Department will review and approve the proposed street addresses subject to the filing of the Subdivision map on the Westport Land Records when a formal street address change will be required.
- 17. At the suggestion of the Fire Marshal the applicant shall install one additional fire hydrant at the northern end of the cul-de-sac in the vicinity of Eversource Pole 30398, and the proposed driveways shall be reviewed for compliance with the Engineering Department's width, slope, and approach radii requirements.

Public Participation

- 18. All application materials, and public comments received prior to the public hearing were posted on the Town's website consistent with the Governor's Executive Order to maintain transparency while conducting remote meetings.
- 19. A public hearing was held pursuant to §53-3 of the Subdivision Regulations that requires the Planning and Zoning Commission shall hold a public hearing on a subdivision or resubdivision, even though the State Statutes do not require public hearings for subdivisions.
- 20. The public hearing was held on June 24, 2021, to receive testimony from members of the public.

21. The public hearing was held remotely using electronic means due to the COVID-19. The public hearing was broadcast live on public access television, live on-line on the Town's website, and interested parties were provided the opportunity to join the meeting and offer "live" testimony, consistent with executive orders issued by the Governor.
22. The Planning and Zoning Commission at the June 24, 2021 hearing asked the applicant if he would agree to the Conservation Commission's seven (7) recommendations, described herein in Finding #6, being included as conditions of approval. The applicant agreed with Recommendations I, II, III, V, and VI. The applicant objected to Recommendation IV on the grounds that a homeowner's association is not intended to be established; instead, the proposed Storm Water Easement will require joint maintenance of the common stormwater drainage structure by the owners of proposed Lots A, B, and C, and the deeds for the individual lots will include these responsibilities. The applicant objected to Recommendation VII on the grounds that a variance from slope requirements was sought and denied by the Zoning Board of Appeals pursuant to Case #7411.
23. A majority of the Commissioners were satisfied with the applicant's response regarding the Conservation Commission's Recommendations.

NOW THEREFORE, BE IT RESOLVED, 16 Fresenius Road: Subdivision Appl. #PZ-21-00319 submitted by Bryan Nesteriak for property owned by Patricia Colgan Davis for a requested 3-Lot Subdivision of property plus an Open Space Parcel, located in the Residence A / Residence AA zones, PID#F09098000 is **APPROVED**, subject to the modifications below:

Modifications

1. Conformance to prior approvals and recommendations received from other boards and agencies, as agreed to by the applicant, including:
 - A. The Water Pollution Control Authority approval received September 9, 2015;
 - B. The Flood and Erosion Control Board approval received October 3, 2018; and
 - C. The Conservation Commission approval received December 12, 2018, including Recommendations I, II, III, V, and VI, and excluding Recommendations IV and VII, as listed in Finding #6.
2. Conformance to Storm Water Management Report, prepared by B&B Engineering, dated March 29, 2021.
3. Conformance to recommendations by the Fire Marshal to install one additional fire hydrant at the northern end of the cul-de-sac in the vicinity of Eversource Pole 30398 and obtain Engineering Department approval for driveway width, slope, and approach radii, as agreed to by the applicant.

4. Conformance to Proposed Residential Subdivision Plan Set (8 sheets), submitted by B&B Engineering on April 29, 2021:
 - A. Cover Sheet;
 - B. Improvement Location Survey, prepared by Land Surveying Services, LLC, dated 2/19/21;
 - C. Subdivision Map, prepared by Land Surveying Services, LLC, dated 3/29/21, to be revised to note that solar access and energy conservation have been considered in the subdivision design, as agreed to by the applicant;
 - D. Easement Sheet, prepared by Land Surveying Services, LLC, dated 3/29/21;
 - E. 10-01: Site Layout Plan, prepared by B&B Engineering, dated 4/28/21;
 - F. 11-01: Site Development Plan, prepared by B&B Engineering, dated 4/28/21;
 - G. 13-01: Soil Erosion & Sediment Control Plan, prepared by B&B Engineering, dated 4/28/21;
 - H. 20-01: Construction Notes & Details, prepared by B&B Engineering, dated 4/28/21, to be revised such that the Common Driveway Cross-Section 'A-A' detail reflects a pavement width of 16 feet, as agreed to by the applicant.
5. The endorsed Record Map (mylar) shall be recorded by the applicant on the land records in compliance with the timeframes set forth in CGS §8-25(a).
6. Prior to the endorsement of the Subdivision map and prior to recording this map on the Land Records, the applicant shall submit the following to the Planning and Zoning office:
 - A. Final signoff from the Engineering Department.
 - B. Final signoff from the Conservation Department;
 - C. Final signoff from the Water Pollution Control Authority;
 - D. A record plan that identifies the location of the monuments and pins that will be installed according to the "Boundary Line Delineation Criteria," as required by the Town Engineer.
 - E. A bond with surety that shall be in a form acceptable to the Finance Department in such amount as deemed appropriate in consultation with the Department of Public Works and Planning and Zoning staff to cover the costs of sediment and erosion controls, if not already bonded by the Conservation Commission, and any improvements that will be conveyed to the Town, consistent with CGS §8-26c(c).
 - F. The final Open Space Declaration, Slope Easement, Storm Water Easement, and Driveway Easement, and any other legal documents, which shall be transmitted to the Town Attorney's Office for their review and approval; and
 - G. A fee of \$40 for Planning and Zoning staff review of the final mylar.
 - H. An electronic version of a 1:100 reduction of the Record Map to update the Town base maps.
7. Prior to the commencement of any construction, site work, tree removal or demolition, the soil and erosion controls shall be installed and inspected by the Town's sediment and erosion control inspector.

8. Prior to the issuance of a zoning permit for any lot, the applicant shall:
 - A. Provide evidence that the endorsed Record Map has been filed on the land records;
 - B. Provide the address for the lot that has been assigned by the Department of Public Works;
 - C. Submit plans for review and approval by the Conservation Commission for each specific house design;
 - D. Obtain Engineering Department approval of the grading and drainage systems for each specific house design;
 - E. Obtain approval from the Engineering Department and Town Attorney for the final Storm Water Easement on Lot A.
9. All work approved pursuant to this Subdivision shall be completed within 5 years of date of approval, by June 24, 2026.
10. Trees and shrubs on Town property or in the Town right of way shall not be removed, pruned, injured, or defaced without prior approval of the Town's Tree Warden.
11. The replacement and/or repair of any stone wall greater than 4 feet in height shall require the issuance of building permit.
12. All new utilities shall be placed underground.
13. Grading for each lot created in this subdivision will be exempt from excavation and fill Special Permit/Site Plan review if they remain consistent with the grading shown on the submitted site development plans, pursuant to §32-8.1.2(c).
14. A site monitor, designated and compensated by the applicant, shall be retained to oversee installation and maintenance of erosion and sediment controls, house foundation activity, retaining wall activity, and installation of subsurface drainage systems. Contact information for said site monitor shall be submitted to the Planning and Zoning Department prior to issuance of a Zoning Permit. Said monitor shall prepare weekly reports to the Planning and Zoning Department throughout the construction process unless said timetable is adjusted by Planning and Zoning Department staff, and after 1" rainfall events.
15. 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.

ENFORCEMENT Failure to comply with any standard or condition contained in this Resolution, shall be considered a zoning violation pursuant to §45-2 of the Westport Zoning Regulations. The failure to undertake corrective action within 10 days of being notified of such violation may result in the following remedies: 1) issuance of a notice of violation; 2) issuance of a cease and desist order; 3) issuance of a municipal citation with daily fines of up the maximum allowed by statute; and/or 4) enforcement action through a judicial proceeding.

Reasons:

The application as modified above conforms to all applicable zoning and subdivision regulations.

VOTE:

AYES: 6 {Danielle Dobin, Paul Lebowitz, Neil Cohn, Jon Olefson, Amie Tesler, Patrizia Zucaro}

NAYES: 0

ABSTENSTIONS: 0

Very truly yours

A handwritten signature in cursive that reads "Danielle Dobin" followed by "VT" enclosed in a circle.

Danielle Dobin
Chairman, Planning & Zoning Commission

- cc: A. Mozian, Conservation Director
Paul Friia, Tax Assessor
K. Wilberg, Town Engineer
Bryan Thompson, WPCA Coordinator