



# WESTPORT CONNECTICUT

PLANNING & ZONING  
TOWN HALL, 110 MYRTLE AVENUE  
WESTPORT, CONNECTICUT 06880  
(203) 341-1030 • (203) 341-1079  
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Hearing: June 18, 2015, July 9, 2015, and 9/3/15  
Decision: 9/3/15

**Modified: 12/03/15**

**Condition #8**

**Modified: 3/17/16**

**Condition #8**

September 8, 2015

Gloria Gouveia  
Land Use Consultants  
131 Kings Highway North  
Westport, CT 06880

**RE: 2 Newtown Turnpike, Resubdivision Appl. #15-024**

Dear Ms. Gouveia:

This is to certify that at a meeting of the Westport Planning and Zoning Commission held on September 3, 2015 it was moved by Mr. Lessing and seconded by Mr. Whittle to adopt the following resolution.

### **RESOLUTION #15-024**

WHEREAS, THE PLANNING AND ZONING COMMISSION met on September 3, 2015 and made the following findings:

1. 2 Newtown Turnpike is a 4.539-acre lot in the Res AAA Zoning District located on the east side of Newtown Turnpike and south of the Newtown Turnpike/Crawford Road intersection.
2. The property straddles the Westport/Norwalk municipal boundary line with 4.408 acres located in Westport and 0.131 acres located in Norwalk.
3. The property is improved with a single-family home, a 2-bedroom 760<sup>+</sup> SF Pre-1959 Apartment located in a separate building identified as the cottage, a 1,240<sup>+/-</sup> SF building identified as the studio, and a shed.
4. A Zoning History dated 6/8/15 describes the Pre-1959 Apartment was approved as a legal 2<sup>nd</sup> dwelling unit by the Administrative Review Committee in 1994, pursuant to Res. #94-017.
5. The property is shown as Plot 4 on a 3-lot subdivision plan approved by the Planning and Zoning Commission on 8/21/57 and filed on the Westport Land Records as Map #4471 entitled, "Map Prepared for Melvin & Betty Zalkin." The applicant is seeking resubdivision approval to further subdivide Plot 4.

6. The proposal is to create one new building lot for a total of two (2) lots both 2+ acres in size.
7. The applicant's Site Development Plan shows the existing single-family home, cottage, shed, and swimming pool will remain and will be located on Lot 4A. The existing studio building on Lot 4B will be removed.
8. The Site Plan also shows the existing driveway will be shifted to the east on Lot 4A and a new driveway will be constructed to serve the conceptual house on Lot 4B.
9. Minor re-grading and a new drainage system are additionally proposed. The proposed grading complies with the slope requirements and excavation and fill standards listed in §32-8.3 of the Westport Zoning Regulations.
10. The grading and drainage were reviewed and approved by the Engineering Department on 6/10/15, and by the Flood and Erosion Control Board at their 6/3/15 meeting.
11. The dwelling units at 2 Newtown Turnpike are currently served by individual sewage disposal systems and a well.
12. A new dwelling once constructed will be served by a new well and septic system on Lot 4B.
13. The Westport Weston Health District submitted comments dated 6/17/15 recommending approval of the subdivision application and requesting the following notes be added on the record map prior to recording on the land records:
  - A. "Lot 4B will require a State of Connecticut licensed engineer to design the sewage disposal system. The proposed dwelling is for four bedrooms and will be served by an on-site well.
  - B. The Westport Weston Health District will require additional soil testing at the time of lot development and sewage system design for a specific lot."
14. The Town Tree Warden submitted comments dated 6/12/15 that due to the lack of any existing trees in the road-right-of way, and due to the likelihood of future landscaping improvements, tree removal, and driveway openings he recommends planting, in the Town Road Right-of Way (R.O.W.), five (5) street trees of two separate species (White Oak, Red Oak, Red Maple, Dutch Elm, Horse-Chestnut and Zelkova).
15. The Planning and Zoning Commission received a copy of a memorandum from the Town Attorney's Office to the Planning and Zoning Director dated 4/11/13, recommending if/when requiring off-site improvements, such as the planting of trees in any Town road R.O.W., this authority should be limited to circumstances consistent with the Connecticut Supreme Court case *Buttermilk Farms, LLC v. Planning and Zoning Commission of the Town of Plymouth*. The Town Attorney's Office memorandum concluded that the *Buttermilk Farms* case limits the Planning and Zoning Commission's authority to regulate offsite improvements involving roads that exist outside of the boundary of a proposed subdivision, but added there are certain circumstances where it may be appropriate for the Commission to regulate off-site improvements such as when a proposed subdivision street intersects with an existing street.

16. The Planning and Zoning staff report dated 6/11/15 identified the Planning and Zoning Commission can:
  - A. Use their discretion to require, or not require, open space as part a subdivision approval;
  - B. Require up to 10% of the total acreage of a subdivision be set aside as open space pursuant to §54-21 of the Subdivision Regulations; or
  - C. Accept from the applicant a fee-in-lieu of open space equal to 10% of the market value of the land pre-subdivision pursuant to §54-21.1.
17. The Planning and Zoning Commission discussed with the applicant at the July 9<sup>th</sup> public hearing various open space alternatives as well as the possibility of designing a conservation easement that would protect the existing trees and/or the existing stone wall located along the length of the front property line adjacent to Newtown Turnpike.
18. The applicant submitted a Conservation Easement Plan that shows a 34,555 SF conservation easement areas (or 17% <sup>+/-</sup> of the lot area) that encompasses the trees and stone wall along the length of the front property line, as well as other areas of the property containing mature trees. The applicant additionally submitted a draft Conservation Easement document (undated), received by P&Z on 8/21/15.
19. The Planning and Zoning Commission finds the proposed Conservation Easements are acceptable as submitted by the applicant, as shown on the plan prepared by J. Edwards & Associates, LLC, dated 8/19/15, and received by P&Z on 8/21/15.
20. The Planning and Zoning Commission additionally finds the applicant shall submit a final version of the Conservation Easement document for review and approval by the Town Attorney's Office, and a revised record map showing the location of the Conservation Easements prior to recording the map on the land records.
21. Members of the Planning and Zoning Commission visited the property individually prior to the public hearing.
22. Hearings were held to receive testimony from the public.

NOW THEREFORE, BE IT RESOLVED **2 Newtown Turnpike:** Appl. #15-024 by Gloria Gouveia, Land Use Consultants, for property owned by Joseph E. Levine for a re-subdivision approval to create one new building lot for property located in a Residence AAA zone, PID #A12017000 be **Approved** subject to the following modifications:

1. Conformance to Existing Conditions Map, prepared by J. Edwards & Associates, LLC, dated 5/14/15.
2. Conformance to Proposed re-subdivision plan, prepared by J. Edwards & Associates, LLC, dated 5/14/15, to be further revised to show:

- A. The notes required by the Westport Weston Health District as listed in Finding #13 herein.
  - B. The Conservation Easement as described in Findings #18-19 herein.
3. Conformance to Site Development Plans, prepared by J. Edwards & Associates, LLC, dated 6/1/15, to be further revised to show:
  - A. The Conservation Easement area as described in Findings #18-19 herein.
4. The applicant shall submit a final version of the Conservation Easement document for review and approval by the Town Attorney's Office, as described in Finding #20 herein.
5. Conformance to the Flood and Erosion Control Board approval dated 6/3/15.
6. Conformance to the Westport Weston Health District approval dated 6/17/15.
7. Prior to the endorsement of the Resubdivision Map it is the applicant's responsibility to submit the following documents to this office:
  - A. Final approval from the Town Engineer.
  - B. A revised Resubdivision Map pursuant to Condition #2 herein.
  - C. A revised Site Plan pursuant to Condition #3 herein.
  - D. A final Conservation Easement document pursuant to Condition #4 herein.
  - E. Surety in the form of a bond satisfactory to the Town Attorney prepared on the Planning and Zoning Bond Estimate Form, approved by the Town Engineer, and posted with the P&Z Office to guarantee installation of pins and monuments.
  - F. An electronic version of a 1:100 reduction of the Record Map to update the Town base maps.
  - G. Submit a fee of \$40 for Planning and Zoning staff review of the final mylar.
8. All work approved pursuant to this Resubdivision shall be completed within 5 years of date of approval, by September 3, 2020. **On December 3, 2015 the Planning and Zoning Commission granted a 90 day extension of time to record the subdivision map. On March 17, 2015 the Planning and Zoning Commission granted a 90-day extension of time to record the subdivision map which shall be recorded by 6/22/16 or the subdivision shall be null and void.**
9. All new utilities shall be placed underground.
10. Monuments and pins shall be installed according to the "Boundary Line Delineation Criteria," as required by the Town Engineer or these shall be bonded.
11. Trees shall not be removed from Town property unless authorized by the Tree Warden. The following criteria must take place before removal of trees:

- A. The applicant shall submit for evaluation to the Town Tree Warden plans noting removal of any trees in the Town right of way and a written statement of approval must be signed by the Town Tree Warden. It is illegal to remove Town trees without the Tree Warden's approval and signature.
- 12. 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.

**Reasons**

The application is found to be in conformance with the 2007 Plan of Conservation and Development and it will be in conformance with the applicable Subdivision Regulations of the Town of Westport.

**VOTE:**

AYES	-6-	Stephens, Whittle, Walsh, Hodge, Vebell, Lessing
NAYS	-0-	
ABSTENTIONS	-0-	

*Chip Stephens nc*

Chip Stephens  
Chairman,  
Planning & Zoning Commission

cc: Tax Assessor  
Town Engineer  
Tree Warden  
Westport Weston Health District Director