

**TOWN OF WEST GREENWICH
ZONING BOARD OF REVIEW
280 VICTORY HIGHWAY
WEST GREENWICH, RI 02817
FEBRUARY 16, 2016
7:30 P.M.**

A regular meeting of the West Greenwich Zoning Board of Review sitting as Board of Appeal was held on February 16, 2016. Present were Chairman Ken Jones, Raymond Stewart, Dr. Clyde Fish, Gregory Breene and Gilbert Rathbun. Also present were alternates John Ruzzo and Charlotte Jolls. Town Solicitor Michael Ursillo was present as well.

CALL TO ORDER – 7:30 P.M.

Chairman Jones called the meeting to order at 7:30 p.m. opening as the Board of Appeals.

Country View Holdings, LLC. : Notice of Appeal of the NOV. (Notice of Violation) concerning the Subdivision Stonebridge Estates Phase 2, Stonebridge Lane, Plat: 33, Lots: 1-13 through 1-20 and recorded on December 21, 2015 in Book 483 at Page 157 according to Zoning Ordinance of The Town of West Greenwich Article I, Section 7.1.

Attorney John McGreen was present to represent the appellant Armand Cortelleso of Country View Holdings, LLC.

Attorney McGreen began that the appeal revolves around a notation on the plan that was approved by the Planning Board that indicates paved driveways on the plan. After my client had pulled building permits and when he went to get a Certificate of Occupancy he was denied stating that he needed to pave the driveways. We explained that it wasn't a requirement of the plan that it was just a typical representation on the plan. The plans that were approved to get the building permit did not say paved driveway it just said driveway.

Chairman Jones asked if the plan that they were looking at, which was dated September 2008, was the same plan that went to the Planning Board. Attorney McGreen said that the plan the Board was looking at was a smaller version of the large plan.

Attorney McGreen went on to state that the plans that were submitted to the Building Inspector were the plans on pages 2, 3 and 4 of the packet given to you. These three lots 18, 19 and 20 are the lots that were being built on. Lot 18 was denied the building permit. The planner would not issue COs unless the apron at the end of the driveway was paved. My client elected to gravel these driveways because of the owner's preference. When we bonded this subdivision there was no requirement that we set aside money for the aprons. That was for both the maintenance bond and the performance bond. I looked through the zoning ordinance and I couldn't find anything that said that driveways or aprons were required to be paved. On this plan it shows a four bedroom house, but they are actually three bedroom houses. The planner said we don't have to pave the driveways but we have to pave the aprons because it crosses over town property and because the plan said paved driveway she wanted the apron paved. I printed out that section, Note 21, because that indicates houses and drives are shown to demonstrate conformance with various state and local site requirements for permitting purposes. These may all vary according to buyer preferences.

Fish asked if that statement that was just said does that go with the plan that was sent to the Planning Board. Attorney McGreen stated yes. Fish said so the plan that was sent to the Planning Board stated that it was going to have paved driveways. Attorney McGreen said yes, but I am pointing that Note out because it varies according to buyer preference. For example, there is a four bedroom house shown on

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that plan, but you can build a two bedroom house. Also, it says paved driveway it doesn't say paved apron. Apparently the town wants us to pave the apron. We have a gravel driveway installed and in order to get the CO, we at minimum had to pave the apron.

Chairman Jones asked and why isn't your client happy with that? Attorney Mc Green replied because that cost money quite frankly. Chairman Jones replied and that's why you're here. Attorney Mc Green stated yes that's why were here. Chairman Jones said I believe the Town Administrator tried to help your client. You have a plan that was approved by the town and the plan says paved driveways. Is that ambiguous? Attorney McGreen says yes it is ambiguous because the town interpreted that to mean that we are actually not required to pave the driveways. Chairman Jones asked how the town interpreted that as to not pave the driveway. Attorney McGreen said I'm not sure, you can ask the town. Chairman Jones said well the Town Planner was good enough to come but I'm not sure I need to ask her. The plan says paved driveway. Attorney Mc Green said the town has said you do not have to pave the driveways just the aprons. Chairman Jones asked then what the problem is. Attorney McGreen said because it costs money to pave 12 or 14 aprons. They are \$1,200 each. What I am trying to point out is you need to read the plan in conjunction with the Note. The Note says these may all vary according to buyer preferences.

Chairman Jones said isn't the standard Note for bedrooms referring to an on site water treatment system or the water table on the site or the septic that was done on the site for what can be built on that property as opposed to what must be built. Attorney McGreen replied it's to make sure that it all fits. I am certain the town didn't say we want to make sure that you actually pave that driveway. That was not a consideration because when we had to set the performance and maintenance bond they went through the subdivision and added everything up. The driveways, the curbs and everything. Chairman Jones replied so they had an amount for the driveways. Attorney McGreen said no they did not. Chairman Jones said but you just said the driveways. Attorney McGreen said I said they did not have an amount posted as a bond for the driveway apron nor the driveways. If they thought he needed to do that they would make sure there was enough money available if he walked away and didn't do it. That's just more evidence that the Planning Board did not require the driveway to be paved.

Board Member Fish said in Note 21 it states the location, size, and shape of the house or driveway. It does not say what the driveway is constructed of. Therefore if this plan was approved with paved driveways I don't see how you can say Note 21 obverts that because it says location size and shape. It does not say what the driveway will be constructed of, correct? Attorney McGreen replied it doesn't say that one way or the other. Fish said well the plan said paved and that was the plan that was approved by the planning board. Attorney McGreen says yes that is correct, but I must say we are trying to get into the Planning Boards head of what they were really thinking. This Planning Board was very strict when deciding what the bond was going to be. There's not a doubt in my mind that if the Planning Board meant for the driveways to be paved they would have required my client to post a bond. I believe that's strong evidence that the town didn't care if the driveways were paved. As a matter of fact we've issued three COs and the only thing the town required was for us to pave the aprons.

Board Member Breene asked if any of the houses with COs have paved driveways. The first house had a CO issued with just gravel the second one we couldn't get the CO without paving the apron and the third one the buyer wanted paved so we paved the driveway. Board Member Breene asked what the selling price of these houses are. Mr. Cortelleso answered between \$365,000 and \$389,000. Board Member

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Stewart asked a persons going to buy a \$389,000 house and doesn't want their driveway paved?
Cortelleso responded that he has about 40 houses in West Greenwich that don't have paved driveways.

Chairman Jones asked if the final pavement is down on the road. Attorney McGreen said yes the town has accepted the road. The bond has been released for everything except some trees. Chairman Jones asked aren't the aprons on public property? Attorney McGreen said yes. Chairman Jones asked and who's responsible for maintaining aprons on public property. Attorney McGreen said I believe most people would have to shovel the apron. Chairman Jones said well how about maintain it as far as washouts and damage to the edge of the road. Attorney McGreen said I don't think anyone has called this town saying listen my driveway is paved and I'm hiring a paving company to pave my driveway but the town needs to throw in some money to pave the end of my driveway because it's really the apron. Chairman Jones said so it's the homeowner's responsibility to pave the apron. Attorney McGreen said yes there's no maintenance responsibility on the part of the town.

Town Planner Jenny Paquet was asked if she had anything to say. She stated that what was represented to the Planning Board was that the driveways would be paved. I agree with Mr. McGreen that the details about the house are subject to buyer preference. That's specific to that actual house lot and not what's in the right of way. We do reference that the driveways show pavement, but from my perspective I only look at the Planning Boards review and that would be anything in the right of way which is the actual apron. What the homeowner wants to do on their own property whether it's a 3 bedroom or 4 bedroom house I don't really get into those kinds of details, that's the stuff that the building official looks at. The building official has a process in place that he sends around a routing slip to make sure that everything from my dept. is taken care of. He leaves that jurisdiction to me. It is all part of the CO. Based on the plan showing paved driveways I did sign off on the first CO without having looked at the property. When I got out there a few minutes later I noticed that the driveway was crushed stone and I was surprised. That very same day September 28, 2015 I informed Mr. Cortelleso that I would not sign off on anymore CO's unless the aprons were paved. It was expected that the driveways would be paved, they were not. Therefore the only other option is to require paved aprons prior to CO on the individual house lots.

Attorney McGreen states that the plan says paved driveway it does not say paved apron. That's why I don't think there was intent there from the Planning Board to care one way or the other.

Board member Fish responded I think it's hard to say what the intent of the Planning Board was when they looked at the plan and it said paved driveway. I will not sit there and say only pave the apron. They are looking at a plan that says the entire driveway including the apron is going to be paved.

Attorney McGreen says that he doesn't come before this Board that often so I don't have the benefit of sitting in the audience when this issue might have come up at a prior point in time. I suspect that if it was something that the Planning Board said on a regular basis it would be in the ordinance by now. The fact that it's not in the ordinance indicates to me that the town doesn't care one way or the other. Just a final thought is that the plans that were approved and issued with the building permit don't say paved driveway. I think we can rely on this plan going forward. Fish responded this plan granted you your building permit but not your co. When you take out a building permit you're not guaranteed a CO. Attorney McGreen says they come out and do their final inspections before granting a CO and everyone needs to sign off.

Board Member Breene asked what number house it was. Mr. Cortelleso answered 18. That's the one in dispute? Mr. Cortelleso said at this point. Breene asked what the plan looks like for 20. Attorney McGreen said it says proposed drive. Breene asked and a CO has been issued on that? Mr. Cortelleso

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said yes. Chairman Jones interjected but that's the one we heard from the planner that she was unaware that the driveway wasn't paved. Jennifer Paquet said yes that's correct.

Chairman Jones asked if anyone from the audience wanted to speak. Holly Howard stood and said she's an abutter to the property. Many of us in the area kept close watch on what was going on with the plan that showed paved driveways. We didn't expect there would be any change in that plan without any notification. The permits were issued with paved driveways and there shouldn't be any change in that at this late date. All of us are expecting that and what the plan says is what should be enforced.

Kevin Breene, Town Administrator, stood up to speak. This application went to the Planning Board. It went through extensive planning. There are two engineers, a surveyor and a building inspector all on that Board. They all looked at the plan that said paved driveways so there was no reason to bring it up. Quite frankly, if you drive around town and look at subdivisions, most of the lots that are on regular roads we always make them put an apron or they put it in on their own. You don't put a subdivision if the towns got to plow it and there would be stone all over the place. Unfortunately, how many appeals have you heard in the last 10 years? Not many. I hate to say this but we keep changing ordinances in this town for one particular developer. We don't have all this trouble with everyone else. The first house that went in there, the owner actually paved his own driveway. Never ever would the Planning Board approve a subdivision with gravel or stone coming out to the edge of the road. The plan shows paved driveways. It doesn't say go change the rules after. This is just crazy.

Chairman Jones asked if anyone had anymore questions. Fish moved to close the public hearing. Breene seconded. All in favor. Aye 5-0

Town Solicitor Michael Ursillo said under your zoning ordinance you have the right to reverse, affirm or modify the decision.

Board Member Fish stated if you look at the plan that went to the building inspector it doesn't say gravel driveway or paved driveway it says proposed driveway. Which if you go back to the plan that the Planning Board approved it shows a paved driveway. So the building inspector approved the proposed driveway which in the master plan was a paved driveway.

Chairman Jones said I agree entirely with your comments. In my experience it's relatively standard in this industry to go to a board like the Planning Board with a site plan. Many times the architect or the engineers draw individual plans for where you're going to build a structure. They don't necessarily pick up all the little detail of that approval. But when you get the final signoff you have to meet the rules of both. I come from this industry, I deal with this everyday. If I was building this development we would have paved the driveways. In my opinion if the administrator is going to accept doing aprons paved up to the property line then you better take that and be very thankful. We can continue to discuss this but my vote is going to be to fully affirm the decision of the Planning Board.

Fish said I would agree 100 percent. Chairman Jones said do we need more discussion or are we ready to vote?

Ursillo said all you can rule on is the appeal of the aprons.

Fish makes a motion to uphold the decision of the Planning Board based on the testimony that we've heard tonight as well as findings of fact.

Ursillo says you are upholding the decision of the administrator not the Planning Board and you need to list your findings of fact.

Fish states the findings of fact 1. the original site plan as presented to Planning Board shows paved driveways. 2. The plan that was set forth that the building inspector approved only states a proposed driveway not a gravel driveway as our appellant testified. 3. Note 21 states the location size shape of house and driveways are shown to demonstrate conformance but does not state what material the driveway will be made out of.

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Chairman Jones adds is it your interpretation that the note on the plan allows the people to locate the house within the lot and the driveway location within the lot but not necessarily the type of the driveway. Chairman Jones asked if we have a second to the motion. Breene seconds the motion. Chairman Jones asked if anyone has anything to add before voting.

Ursillo added that Charlotte Jolls, being an alternate will not be voting.

Chairman Jones called for a vote. All in favor. Aye 5-0. Vote: Ken Jones (aye), Gregory Breene (aye), Raymond Stewart (aye), Gilbert Rathbun (aye), Clyde Fish (aye)

Chairman Jones adjourns as Board of Appeals and convenes as West Greenwich Zoning Board. Chairman Jones then reads the next petition.

Petition of Dupuis Oil: 746 Victory Hwy., Plat 14, Lot 13. Applying for a Special Use Permit for the storage of petroleum bulk storage under Zoning Ordinance Article 1, Section 7 (c) (2).

Attorney Thomas Cronin was present representing Mark Dupuis, President of Dupuis Oil. Tim Behan from Commonwealth Engineering was also present.

Attorney Cronin stated we are here for a Special Use Permit on 746 Victory Hwy. It is a 7 and 1/3 acre parcel of land where land development is in process. This is one step among many to turn a residential lot with a single family home on it into a fuel oil delivery operation. We've been to the Planning Board for pre application and they have made their recommendation to the Zoning Board and the Town Council that this plan be considered and approved. The conservation commission has approved it as well. The town council will hear it on March 9, 2016 for the change of zone. The bulk storage of fuel is allowed under the zoning matrix in a Highway Business zone with a special use permit which brings us here tonight. Any decision that you do make tonight would be contingent on the town councils approval on a change of zone from residential to a highway business zone that has been requested. The operation itself is an expansion of an existing business from Pawtucket, RI down into the southern portion of the state. The proposal is to have 2 storage tanks on site. One large tank for fuel oil and one large tank for propane storage and to maintain the residence on the site for use as an office. There are a couple of out buildings that will be brought down and the septic system will have to be upgraded. The other areas of the development are a large area to be paved for home delivery trucks that will fill up at this site and travel throughout the southern portion of the state to deliver fuel oil or propane. There's a portico, a covering without sides to store these trucks and keep them out of the weather. In addition there's a garage for the maintenance of the vehicles in addition to the structure of the 2 tanks. About once a week a tractor trailer tanker will come filled with fuel oil. It will pull into the site fill up the tanks and if we do it right pull out without having to back up. Then it will return back onto 95 and back up to Allens Avenue. And from those tanks, local fuel oil delivery trucks will fill up and service the homeowners. So there's 2 pieces to the trucking element here. The tanks themselves are designed for this specific purpose. Mr. Behan will go over that. He has photos of the tanks to be installed. The lot itself is fairly large. We are only developing a piece of it, but we are going to keep the surrounding trees and foliage there to the best of our ability. I'm going to turn it over now to Mr. Behan.

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Mr. Behan from Commonwealth Engineers began by showing location on map. He described surrounding area. He stated that the plan shows the existing driveway being reutilized off 102. The existing dwelling will remain as the office area and it would have some office parking adjacent to that with some additional parking just to the south and east of that building. There would be two structures constructed, a garage and an open sided structure to park some vehicles. There would be 2 tanks, 30,000 gallons each. One would be a propane tank and a heating oil tank. The site would be serviced with a septic system. A new well will be installed on site to provide water. The driveway will be designed to enable large vehicles to turn around as well as fire rescue vehicles. We do have a 100 foot buffer proposed as an existing 2 acre residential zone on the north side and the east side. This is a highway business industrial zone across the street. The 100 foot buffer will be maintained and undisturbed for construction purposes and to keep the trees up as a buffer.

Board Member Breene inquired what is between that 100 foot buffer and to the right. Mr. Behan replied that's just a dimension just saying an offset right now. It just has some swing ties here, this is the concept plan. Our goal is to keep 100 feet of trees around it. Conversation ensued about how many trees are there and what's going to be done with the buffer.

Mr. Behan handed out some plans showing the tanks. Mr. Behan mentioned the questions from the Conservation Commission. He said there are no endangered animals or plants on the property. There are also no historical cemeteries on the property. There is a permit process through the state for this. The tank needs to be registered and as part of that registration with DEM the local fire marshal has to sign off on the systems there. There are monthly inspections required as well as an annual filing of the inspection forms with DEM.

Board Member Fish asked about the wells, particularly the well on Lot 21. Mr. Behan answered before the tanks go in a ground water monitoring system needs to be installed at the site and monitored and results go to DEM.

Board Member Stewart questioned about hours of operation. Mr. Dupuis answered 7-5 Monday through Friday and 7-1 on Saturday is our normal hours. Board Member Breene asked about lighting. Mr. Behan answered the exact locations aren't known yet but usually we do dark sky compliant lighting. Through the planning process we work out the details.

Board Member Fish asked about tank leakage. Mr. Behan answered that the tank itself requires a secondary containment system so if the main system leaks there is a backup system. DEM will be looking at the system to meet standards.

Board Member Breene asked how the propane truck is filled. Mr. Dupuis answered that a tanker trunk pumps it in. Board Member Stewart asked how you are going to set up for spillage of the fuel oil. Mr. Behan answered that there is a concrete pad and it's a big impervious area there if there was a spill. Typically the concrete pad around the edges they put in grooves which have volume. Mr. Dupuis commented that they also need a spill prevention plan in place.

Chairman Jones asked the Town Planner Jenny Paquet what the general consensus of the Planning Board was on this. Jenny answered that the Planning Board recommended approval on this special use permit. I don't have any details on that because I wasn't at the meeting. I understand that's what the motion was.

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Chairman Jones asked more about the hours of operation. He stated that in applications like this it's fairly common that we put some restrictions on hours of operation. Mr. Dupuis commented that the office is open 24 hours but everyone is out at houses. They are not concentrated at the site. So when I say open there might be 1 person at the office dispatching. There wouldn't be a lot of activity in and out.

Chairman Jones asked about the sound level of the equipment. Mr. Dupuis replied that the loading of the oil truck would be no different than a truck running. The loading of the propane is a higher pitched pump sound. Chairman Jones asked if the noise from filling the propane truck is similar to sound of high pressure gas locations. Mr. Dupuis replied no it's not that high pitched.

Chairman Jones revisited the hours of operation. Discussion ensued about operation hours.

Chairman Jones wanted to discuss the buffer. You have 100 foot buffer plus another 185 feet that you are leaving in its natural state. Would you be willing to have on the left hand side of your property a 200 foot buffer and if that buffer were to be reduced you would need to come back to Planning and Zoning Boards. Attorney Cronin said we don't have any immediate plans as long as there is a relief valve. Chairman Jones said any board that puts a restriction can remove it. I'm just trying to think of some things. We have a letter from your neighbor asking us not to approve this tonight. I'm trying to look to see if we can modify some things on your plan to try to help you and be reasonable. Attorney Cronin replied I appreciate what you're saying but I'm not sure we can make that big of a concession right now with where we are with the engineering. Probably the number one thing in the configuration is the turning radius for a 58 foot tractor trailer truck because we don't want those backing up. Chairman Jones said but you have 285 feet and I'm asking you if you think you could live with a buffer of 200 feet. I'm trying to have you avoid noise complaints from the neighbors. I think it's a reasonable request. Discussion ensues about the buffer.

Chairman Jones brought up the spill containment around the tanks. That is usually open. Mr. Dupuis said that these tanks have a rain shield over it. Mr. Dupuis describes the tank and rain shield and how it works.

Chairman Jones asks the public if anyone wanted to speak.

Justin Vail stood and said he was there representing Marcia and Ray Mann, who own the property directly adjacent to the site. First of all, are there any questions as to where the well is located on this property? Chairman Jones said you can confirm what Mr. Behan showed us on the map. Justin Vail confirmed that the map was correct. The second point I'd like to make is that we are talking about 100 foot buffer between the property line and where they could be expanding in the future. 100 feet is not a whole lot of a buffer. A big concern I have is noise pollution. I have heard propane tanks filled up before. Also, the trucks themselves coming in and out of the property and filling up. The other concern I have is, say something catastrophic does happen. This community is based on wells. They all run off the same veins. In the past there have been issues with water being short, wells needed to be drilled deeper. The wells that are in the back I believe feed the Blueberry Heights Mobile Park. I'm not sure if they are or are not functioning. What happens if the water does get contaminated? I feel the sight of a distribution facility like this is going to take away the appeal of West Greenwich. Granted every community has their level of business and industrial but you're talking about taking land that is zoned Residential and changing it to Industrial Use. That's going to have a big affect on the area with noise, smell, constant traffic. This will

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take away from the property value of the property. Has any environmental studies been done on wind direction? The smell of oil will carry over to other properties. I don't know of any industrial properties from my parents' property to the town line. I feel there are better options in town where this facility could go. I appreciate you hearing our position.

Town Administrator Kevin Breene believed Justin brought up good points. Mr. Breene stated that on the other side of the road there is commercial 850 feet deep. Mr. Breene gave a little history on the property. Then said this will probably be one of the least intrusive businesses that could put there. I think it's reasonable to assume that as time goes on that it's going to be some kind of general business other than residential.

Justin Vail replied to Mr. Breenes' comments that it may be less intrusive than some other businesses, but you have to look at it from a safety, health and irritant standpoint.

Chairman Jones responded to the public comments. Further discussion ensued about the hours of operation and the buffer.

Chairman Jones moved to close the public hearing. Board Member Stewart seconded.

Chairman Jones made a motion to approve the request for a Special Use Permit. I believe the applicant has met the criteria for a special use permit according to the town of West Greenwich Zoning Ordinance. This will be a conditional approval based on:

- 1) Large truck traffic limited to the hours of 7-5, Monday through Friday and 7-1 on Saturday with exception of emergencies or deliveries beyond the applicants control. Owner will endeavor not to schedule deliveries beyond these hours.
- 2) The buffer as shown on the plan remain at 100 feet, but there will be an additional 100 foot buffer on northern side of the property that there be no construction other than wells, DEM required drainage features or as directed and approved by the Planning Board. Within the buffer areas, the two 100 foot strips, the applicant agree to add sound barriers, such as white pines, to screen the applicant immediately to north of his property.
- 3) There is no natural heritage or historical sites within radius of the property which conforms to section 3B on the standards.

All of this is subject to the Town Council changing the zoning on the property to Highway Business.

Chairman Jones made motion to Approve. Board Member Breene seconded. All in favor. 5-0
Vote: Ken Jones (aye), Gregory Breene (aye), Raymond Stewart (aye), Gilbert Rathbun (aye), Clyde Fish (aye)

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December 15, 2015 ~ Amended minutes~APPROVED

Chairman Jones: made Motion to approve minutes from the previous meeting.

Seconded by Board Member Breene

Vote: Ken Jones (aye), Gregory Breene (aye), Raymond Stewart (aye), Gilbert Rathbun (aye), Charlotte Jolls (aye)

Chairman Jones: made Motion to adjourn.

Board Member Fish Seconded

Vote: Ken Jones (aye), Gregory Breene (aye), Raymond Stewart (aye), Gilbert Rathbun (aye), Clyde Fish (aye)

Meeting Adjourned: 9:25 P.M.

Barbara Sweet, Clerk
West Greenwich Zoning Board of Review