

## Waiver request

### Application by Watrous Properties, LLC

The applicant discusses the following issues and makes the following requests for waivers that are contained in the discussions:

1. Section 5.5(b) provides that "The deed for any lot, which utilizes a shared driveway, \* \* \* shall contain the provision that the access driveway shall not be used for access to any other property except for agricultural purposes \* \* \*." It is clear that the intent here is to restrain the *lot owner* from expanding the future use of the driveway. It does not prevent the Commission from approving a conservation subdivision design that uses existing driveways.

From earlier conversations with the Commission and with staff, it appears that this language may be being construed to mean that a common driveway in a conservation subdivision may serve only the lots within that conservation subdivision. However, this is not what the language says. The applicant believes that the intent is something different, which is to preclude new lot owners ("The *deed for any lot*") from extending the use to other lands except for "agricultural purposes." The applicant will comply with this section by being sure that all deeds to all lots in this subdivision contain that very provision.

Under this interpretation, the regulation was drafted to control the use of the driveway among the new lot owners, not to prevent existing uses of a present driveway. This is supported by reference to the entire set of regulations for conservation subdivisions. Section 4.8.9 provides clearly that common driveways are encouraged. One may presume that it will serve this purpose that a subdivision design will utilize existing driveways to *reduce* the number of driveways and the number of curb cuts. The alternative, which would be odd and inconsistent with the regulations, would be that an applicant dividing land that contains existing driveways would have only one option, and that is to build more of them. This would not be consistent with the environmentally-sensitive purposes behind Ledyard's conservation subdivision regulations.

However, should the Commission determine that a waiver be needed, the applicant respectfully requests that the Commission grant a waiver of Section 5.5 so that the parcel known as 126R may continue to use the existing driveway. The applicant will submit evidence that Lot 126R is a legal lot within the meaning of the Town's ordinances, and that therefore the matter is a question of convenience and necessity. These properties here are very unique, and the applicant believes that the inability to use the present driveway for the new lots would be a hardship. The easement or driveway that is existing is old, and has been a matter referenced on the land records for more than 67 years (deed from Maxine Watrous to Wilhelmina Fox et al, dated March 3, 1943 and recorded in Volume 18, Page 76).

2. Section 4.8.9 provides that “Common driveways may serve up to five (5) dwelling units *in a Conservation subdivision \* \* \**.”

Here, the land being divided is unique in that it fronts on three roads, contains historical values and contains land within the Haley Brook area. The applicant will submit, or has submitted, alternative plans to deal with the driveways and the lots appurtenant to them. One plan, which is the design that was filed with the application, shows three driveways, two of which each serve five lots. One of these five-lot driveways comes off Lambtown Road, and the other off Haley Road. At the end of the driveway off Haley Road one will see that, to construct the driveway, it will require filling, grading, deforesting of about one acre, the destruction of about 300 feet of old stone walls, and landscape scarring. It also constrains the lot designs. The alternative plan, in contrast, shows the same driveway off Haley Road serving three lots, and the one off Lambtown Road serving seven. The driveway off Lambtown Road is pre-existing, as we note above, and the degradation of environmental and cultural resources that would occur with the first design will be avoided with the second design. As well, the lots in the alternative design can take a more typical shape, and thus afford the lot owners more flexibility in considering their home designs, including the consideration of better solar opportunities.

The applicant therefore respectfully requests that the Commission waive the requirements of Section 4.8.9 to permit the applicant to use the Lambtown Road driveway for seven homes.

3. Section 4.3.5 provides that “In no case shall interior lots be “stacked” or “nested” one behind another.” However, “if necessary to meet 4.8.9 (five lots on a common driveway) no more than one interior lot may be stacked behind another interior lot.”

It is not clear what the difference is between lots that are “stacked” and those that are “nested,” but the applicant believes it means that a third lot should not be insulated by more than two lots from a public road. The applicant therefore believes that the zoning enforcement officer correctly noted that in view of the unique layout of the subdivision, in that it has frontage on three streets in four places and contains one legal back parcel (126R), the issue will come down to Commission discretion. In other words, the challenge in this design is to determine the various points from which the regulation’s constraints may be measured. For example, Lots 9 and 7 are interior lots to Lot 6, which fronts on Lambtown Road. That means that Lot 11 is a valid “stacked” lot behind Lot 7, and Lot 10 a valid lot behind Lot 9. In addition, Lot 12 is also a stacked lot behind Lot 9, unless it is considered to be interior to property of the Allens or the open space lot, being deeded to the town, off Lambtown Road. If the open space parcel is considered the front parcel, then Lot 13 is also interior, not stacked – or stacked vis-à-vis the Allen property.

To complicate it further, Lot 4, which fronts on Colonel Ledyard Highway, makes Lots 3, 6 and 7 interior lots, which can extend to Lots 11 and 10 as “stacked.” However, Lot 6 may be considered to be stacked also behind Lot 5 and 2, which may be considered to be interior to Lot 1.

Hence, it appears that there is one lot that may be considered to be "stacked" in all senses, and that is Lot 11. However, depending upon how the Commission views the open space land, Lot 13 could also be a stacked lot.

As the Commission is aware, land use regulations are in derogation of the common law and ambiguities must be resolved in favor of the owner's use of the land.

The applicant therefore respectfully requests that the Commission grant it a waiver of Section 4.3.5 to accommodate the design that is presented in either alternative.