



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Fire Prevention Regulations Appeals Board
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CHAIRMAN

Docket # 2016-02
0 Charlotte White Road / Proposed Black Oak Circle
Westport, Massachusetts

FIRE PREVENTION REGULATIONS APPEALS BOARD

A) Statutory and Regulatory Framework

This matter relates to an application for an administrative appeal filed in accordance with Massachusetts General Laws Chapter 22D, section 5. The Appellant is seeking this Board's review of a determination of the Westport Fire Department, in the form of a recommendation to the Town's Planning Board. That recommendation relates to a proposed residential subdivision project consisting of 4 residential lots to be located on the northerly side of Charlotte White Road, Westport, Massachusetts and known as the Black Oak Circle. The owner/developer is Black Oak Hill, LLC (hereinafter referred to as the Appellant).

B) Procedural History

By a written document dated April 20, 2016 and forwarded to the Appellant's attorney, Lt. Ledoux of the Westport Fire Department provided a written reply to Attorney Corey's request for the Department's reasons for requiring certain minimum dimensions for a fire apparatus turning radius at Appellant's planned development project located on a cul-de-sac. Said letter relates back to the original written recommendation by the Westport Fire Department submitted to the Town of Westport's Planning Board on or about February 8, 2016.

On May 12, 2016, the Appellant filed an appeal with the Fire Prevention Regulations Appeals Board based upon the Westport Fire Department's April 20, 2016 written reply stating the reasons for the turning radius requirement. The Board held a hearing on July 14, 2016, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was: Attorney Brian R. Corey, Jr. and Matthew Pike, Engineer. Appearing on behalf of the Westport Fire Department was Lieutenant Daniel Ledoux.

Present for the Board were: Anthony P. Caputo, Presiding Panel Member, John J. Clancy and Chief Michael Hazel. Peter A. Senopoulos, Esq., was the Attorney for the Board.

C) Issue(s) to be Decided

1. Whether the Appeals Board has jurisdiction to hear this appeal and render a binding decision; and
2. If the Board does have jurisdiction to hear this appeal and render a decision, should the Board affirm, reverse or modify the decision of the Westport Fire Department regarding the turn-around radius within the cul-de-sac in question.

D) Evidence Received

1. Application for Appeal filed by Appellant
2. Affidavit from Managing Partner, Black Oak Hill, LLC
3. Letter/Statement in Support of Appeal
4. Road Design and Drainage plan (dated 1/6/16, revised 4/9/16)
5. Definitive Plan (dated 1/6/16, revised 4/9/16)
6. Road Design and Drainage plan (Dated 1/6/16, revised 3/16/16)
7. Turning Maneuver Analysis – Black Oak Circle, Westport, MA from Southcoast Engineering (dated 4/5/16)
8. Correspondence from Appellant’s Attorney to Westport Fire Chief (dated 4/6/16)
9. Correspondence from Westport Fire Chief to Appellant’s Attorney (dated 4/13/16)
10. E-Mail from Appellant to his Counsel with a copy of a series of determinations from the Westport Fire Department (dated 4/6/16)
- 10A. Memorandum from Lt. Ledoux, Westport Fire Dept. to Planning Board (dated 1/26/16)
- 10B. Memorandum from Westport Fire Dept “Re: Basis of Cul-de-Sac dimension” (dated 2/25/16)
- 10C. Memorandum from Lt. Ledoux, Westport Fire Dept. to Fire Chief Legendre, the Appellant, Planning Board, and Chris Gonsalves, Highway Department (dated 4/4/16)
- 10D. Memorandum from Lt. Ledoux, Westport Fire Dept. to Appellant’s Attorney, Fire Chief Legendre and Select Office (dated 4/20/16)
11. Notice of Hearing to Appellant (dated 6/13/16)
12. Notice of Hearing to Westport Fire Department (dated 6/13/16)
13. Copy of Guidance Document that accompanies Hearing Notices
14. Plan review form containing the recommendation of the Westport Fire Department to the Westport Planning Board (dated 2/8/16) together with memorandum to planning board (dated 1/26/16) containing additional details about said recommendation.
15. NFPA 1141-8 Fire Protection Infrastructure for Land Development in Wildland, Rural and Suburban Areas (2012 Edition)
16. Swept Path Analysis (enlarged copy) submitted by Appellant

E) Subsidiary Findings of Fact

1. By a written document dated April 20, 2016 and forwarded to the Appellant’s attorney, Lt. Ledoux of the Westport Fire Department provided a written reply to the attorney’s request for the Department’s reasons for requiring certain minimum dimensions for a fire apparatus turning radius on a cul-de-sac at the Appellants’ planned development project. Said letter relates back to the original written recommendation by the fire department submitted to the Town of Westport’s Planning Board on or about February 8, 2016. This

recommendation involved the proposed residential subdivision project consisting of 4 residential lots to be located on the northerly side of Charlotte White Road, Westport, Massachusetts and known as the Black Oak Circle.

2. On May 12, 2016, the Appellant filed an appeal with this Board of the Westport Fire Department's April 20, 2016 statement of reasons for the recommendations to the Westport Planning Board. The Fire Prevention Regulations Appeals Board held a hearing on July 14, 2016 at the Department of Fire Services, Stow, Massachusetts.
3. The Appellant is seeking this Board's review of the Westport Fire Department's recommendation under the provisions of M.G.L. c. 22D, s. 5. At the hearing, the Appellant's attorney argued that the fire department access requirement was in error since, in their opinion, it exceeded the minimum turning radius specifications of the Massachusetts Comprehensive Fire Safety Code, 527 CMR 1.00, chapter 18 et seq. The Appellant referenced the turning radius formula of said code which is, in part, based upon the length/size of the particular fire department's fire apparatus (see 18.1.1.3 and 18.2.3.4.3.1)
4. Lt. Ledoux of the Westport Fire Department argued that in determining the Fire Department's recommended access road the code allows the fire department to take into consideration other factors, such as parked cars and snow banks in determining the minimum turning radius. For example 18.2.2.1.1.1, 18.2.3.4.2, 18.2.3.1 was referenced. The Board also noted provisions/comments in the NFPA, 1 (2012 Handbook).
5. Upon close review of the testimony and the multiple documents in the record and the applicable statute, the Board finds that the Westport Fire Department's determination relative to fire department access was in the nature of a recommendation to the Town of Westport's Planning Board who, pursuant to the provisions of M.G.L. c.41, s. 81M, has the specific statutory authority to make the ultimate determination with respect to the matter before this Board.¹

¹M.G.L. c. 41, s. 81M – "*The subdivision control law has been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of the cities and towns in which it is, or may hereafter be, put in effect by regulating the laying out and construction of ways in subdivisions providing access to the several lots therein, but which have not become public ways, and ensuring sanitary conditions in subdivisions and in proper cases parks and open areas. The powers of a planning board and of a board of appeal under the subdivision control law shall be exercised with due regard for the provision of adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel; for lessening congestion in such ways and in the adjacent public ways; for reducing danger to life and limb in the operation of motor vehicles; for securing safety in the case of fire, flood, panic and other emergencies; for insuring compliance with the applicable zoning ordinances or by-laws; for securing adequate provision for water, sewerage, drainage, underground utility services, fire, police, and other similar municipal equipment, and street lighting and other requirements where necessary in a subdivision; and for coordinating the ways in a subdivision with each other and with the public ways in the city or town in which it is located and with the ways in neighboring subdivisions. Such powers may also be exercised with due regard for the policy of the commonwealth to encourage the use of solar energy and protect the access to direct sunlight of solar energy systems. It is the intent of the subdivision control law that any subdivision plan filed with the planning board shall receive the approval of such board if said plan conforms to the recommendation of the board of health and to the reasonable rules and regulations of the planning board pertaining to subdivisions of land; provided, however, that such board may, when appropriate, waive, as provided for in section eighty-one R, such portions of the rules and regulations as is deemed advisable*".

6. Section 81M establishes the purpose of the Commonwealth's subdivision control law and, states that "The subdivision control law has been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of the cities and towns in which it is, or may hereafter be, put in effect by regulating the laying out and construction of ways in subdivisions providing access to the several lots therein..."

In establishing the role of a local planning board the statute clearly states in relevant part: "The powers of a planning board and of a board of appeal under the subdivision control law shall be **exercised with due regard for the provision of adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel; for lessening congestion in such ways and in the adjacent public ways; for reducing danger to life and limb in the operation of motor vehicles; for securing safety in the case of fire, flood, panic and other emergencies" (emphasis added).**

7. The Plan Review Form that was completed by the Westport Fire Department dated February 8, 2016 clearly states that form is used to accept "Comments and recommendations regarding the subdivision plan entitled "Black Oak Circle..." The bottom notation on the form states: "The planning board will take into consideration any recommendations made hereon before taking **final action** on the definitive subdivision plan (emphasis added). Lack of a timely report by any officer, agency or board will be so noted in the minutes of the planning board."

F) Ultimate Findings of Fact and Conclusions of Law

1. The letter dated April 20, 2016 and forwarded to the Appellant's attorney from Lt. Ledoux of the Westport Fire Department, provided a written reply to the attorney request for the Department's reasons for recommending certain minimum dimensions for a fire apparatus turning radius at Appellant's planned development project located on a cul-de-sac.
2. Said letter relates back to the original written recommendation by the fire department submitted to the Town of Westport's Planning Board on or about February 8, 2016.
3. The provisions of the Massachusetts Subdivision Control Act, M.G.L. c. 41, s. 81M, *et seq.* vests the ultimate jurisdiction and authority to establish conditions relating to adequate and safe access to subdivision lots in the event of fire or other emergencies with the local Planning Board. The statutory scheme also provides for specific methods and procedures to modify or appeal such planning board determinations.

G) Decision and Order

Based upon the forgoing reasons, this Board is without jurisdiction to hear this appeal and issue a binding decision since the ultimate jurisdiction and authority to establish the requirements and conditions relating to adequate and safe access to the subdivision lots currently at issue in this appeal vests with the local Planning Board. Accordingly, the appeal is dismissed for lack of jurisdiction.

H) Vote of the Board

Anthony P. Caputo, Presiding Panel Member

In Favor

John J. Clancy

In Favor

Chief Michael Hazel

In Favor

I) Right of Appeal

You are hereby advised you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



Anthony P. Caputo, Presiding Panel Member
Fire Prevention Regulations Appeals Board

Dated: August 22, 2016

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO:

Brian R. Corey, Jr., Esq.
1041 Main Road
Westport, Massachusetts 02790

Lt. Daniel Ledoux
Westport Fire Department
P.O. Box 3470
Westport, Massachusetts 02790