



WESTPORT CONNECTICUT

PLANNING & ZONING
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Hearing: June 7 & 21, 2018 (#18-011) and
September 6 & 27, 2018 (#18-011A)
Decision: October 11, 2018

John F. Fallon, Esq.
53 Sherman Street
Fairfield, CT 06024

**RE: 57, 79 & 85 Post Road West and 1, 19 & 37 Lincoln Street;
CAM SITE PLAN APPLICATION #18-011A**

Dear Mr. Fallon:

RESOLUTION #18-011A

WHEREAS, THE PLANNING AND ZONING COMMISSION met on October 11, 2018 and made the following findings:

I. FINDINGS

A. Background/Application

1. The applicant requested Coastal Area Management (CAM) site plan approval to construct a multi-family housing project pursuant to C.G.S. § 8-30g for an 81 unit housing project of which 25 are proposed as affordable housing units with 153 parking spaces on 3.15 acres.
2. The site is comprised of six parcels (57, 79 & 85 Post Road West and 1, 19 & 37 Lincoln Street) located on the eastern side of Post Road West (aka State Route 1) between Lincoln Street and Cross Street, both local roads. The site is located within the CAM overlay zone.
3. The parcels are located in two zoning districts; the vast majority of the area (94%) is in the Restricted Office-Retail District #1 zone (RORD#1) and the remainder (6%) in the Residence A zone. Within the immediate vicinity of the proposed project there are two elementary schools, two religious institutions and two day care or pre-school facilities.
4. The site has a significant change in elevation as it slopes from the northwest at elevation 68 feet to the southeast at elevation 35 feet. The existing structures are located close to Post Road West and Lincoln Street with the remainder of the site being wooded and containing mature trees.
5. The parcels currently contain six structures, four of which are proposed to be demolished. The structures proposed for demolition are as follows: 85 Post Road West (a synagogue constructed in 2001 and a residence constructed in 1920), 57 Post Road West (single family residence constructed in 1920), and 37 Lincoln Street (single family residence constructed in 1860). The proposal includes the retention of the following structures: 1 Lincoln Street (single family residence constructed in 2001) and 19 Lincoln Street (two family residence constructed in 1891). The above information is based on the Westport Assessor's field cards.

6. The Westport Historic District Commission is considering a request by property owners along Lincoln Street and Riverside Avenue to support a proposed local historic district designation. With the support of eighteen Lincoln Street residents, neighborhood representatives applied to the local Historic District Commission for the establishment of the Lincoln Street - Riverside Avenue Historic District that would include the following addresses which are part of the subject site: 1, 19 and 37 Lincoln Street. A study report entitled "Lincoln Street – Riverside Avenue Local Historic District Westport, Connecticut," dated June 25, 2018 and prepared by architectural historian Tod Bryant as support for the establishment of the local historic district, was submitted to the record of the subject application. Referring to the homes on Lincoln Street, the report states that "*Today, they are the only surviving example of an intact nineteenth century planned streetscape on the west side of the Saugatuck River. The west end of the street has changed very little since 1899.*" The study report was unanimously approved by the local Historic District Commission at its July 10, 2018 meeting. Minutes of the meeting are part of the record for the subject application. Support for the establishment of the district from the State Historic Preservation Office dated August 3, 2018 is also included in the record for the subject property.
7. The applicant initially submitted a CAM Site Plan proposal (Application #18-011) received March 15, 2018 with the following elements:
 - A new 6 story, 72 foot tall building containing 104,625 square feet of floor area containing 81 dwelling units (27 one bedroom and 54 two bedroom units). Twenty-five of the units will be affordable dwelling units (13 units affordable at 60% of State Median Income and 12 units affordable at 80% of State Median Income).
 - Retention and inclusion in the project of two existing residences comprising three additional dwelling units (1 Lincoln Street, a single family residence, and 19 Lincoln Street, a two-family residence).
 - 153 parking spaces mostly located in 1 ½ floors of parking garage space below the proposed new building;
 - An entrance only driveway on Lincoln Street;
 - Any entrance/right turn only exit driveway on Post Road West;
 - The plans also include landscaping and lighting;
 - Connection to water and public sewer.
8. The submitted application included a traffic access and impact study, drainage report, coastal area management report, site plan, landscape plan, sedimentation & erosion control plan, architectural plans and an affordability plan. A sewer report dated April 5, 2018 was also provided, but had not been finalized for submission to the Water Pollution Control Authority as of the final public hearing for the subject application.
9. The applicant's traffic consultant was Michael Galante. The applicant's fire code expert was Joseph H. Versteeg, whose CV is available in the record.
10. The Town of Westport engaged two peer reviewers: Sharat Kalluri, P.E. P.T.O.E of CDM Smith, to review the Traffic Impact Study, and Mr. Andrew Kingsbury, former Westport Fire Chief recently retired after 30 years, also Adjunct Instructor for Connecticut Fire Academy specializing in Officer & Instructor Program, Technical Rescue, and Building Construction, and

currently serving as Fire Chief for Nichols Fire District in Trumbull, to review the fire operations plan for the proposal.

B. Review of initial application (#18-011)

Traffic Safety

11. On March 12, 2018, the applicant submitted an initial application (#18-011). Comments were received from Westport Police Staff Corporal Alan D'Amura dated June 18, 2018, who wrote: *"Site access is proposed via a right turn in and right turn out drive along Post Road West and an entrance only drive along Lincoln Street. If approximately 60% of the proposed development traffic is anticipated to turn [right on Post Road West and then] right from Cross Street to the south onto this section of Riverside Avenue, this means that traffic will only get worse on Riverside Avenue and Cross Street. Cross Street is already [a] very narrow, inclined roadway with "No Parking" and "No Thru Trucks" signs along the roadway. In today's modern age a GPS system (such as Waze) will advise drivers to make a turn onto Cross Street from Post Road West, causing additional traffic flow problems."*
12. Mr. Kalluri was engaged to review the Traffic Impact Study supplied by the applicant, assess the planned site access and on-site circulation and to provide the Town of Westport technical assistance to enable the Town to respond to the developer's application. In his June 13, 2018 letter, Mr. Kalluri reviewed the Traffic Impact Study and analyzed the traffic flow from the single point of egress on Post Road West to determine the impact to traffic volumes on adjacent streets. In his letter, Mr. Kalluri makes three observations under the following topics:
 - a. Crash Data on Riverside Avenue North and South of Cross Street: *"Based on our field visit, Cross Street is a narrow street and is approximately 18-21 feet in width. In addition to its width, the street profile (i.e. vertical grade) makes it difficult to traverse this street and be aware of opposing traffic. In our opinion, introducing additional vehicles would be a significant concern relative to safety and traffic flow on Cross Street....The proposed project is anticipated to increase traffic volumes on Cross Street by about 67 percent in the A.M. peak hour period and about 75 percent in the P.M. peak hour period. In our opinion this increase is significant given the roadway condition of Cross Street. Further, the intersection site distance on Cross Street at the Riverside [Avenue] intersection is very limited due to line of sight obstructions. Introduction of additional traffic on Cross Street would potentially exasperate the current condition. The applicant should investigate alternative access options into the project site based on the current condition of Cross Street."* (emphasis in original)
 - b. Traffic Operations: *"Based on our field visit, we noted that the eastbound traffic queue on U.S. Route 1 (Post Road West) at the U.S. Route 1/Route 33 intersection backs up close to the Lincoln Street intersection during the P.M. peak hour. This condition occurs every signal cycle at the U.S. Route 1/Route 33 intersection. The level of service analysis presented in the traffic study does not consider the traffic queue spilling over towards the Lincoln Street intersection. Our concern is that the traffic queue on Post Road West would have an impact on the exiting traffic from the driveway on Post Road West. Please explain."* (emphasis in original)

c. Site Access and Circulation: *“The applicant should provide an explanation if there was any consideration of a full access (enter/exit) driveway on Lincoln Street.”* (emphasis in original)

13. The applicant’s traffic consultant, Mr. Michael Galante, responded in a letter dated June 21, 2018 that the number of vehicles added during peak hours is *“not significant increase in volume other than it is a lightly traveled street and therefore, the percent increase is high”*. Addressing the traffic congestion on Post Road West and resulting back up in the right lane past the proposed site driveway, Mr. Galante wrote that *“the left lane, which becomes a left turn lane only at the signalized intersection (Route 1/Route 33) generally has little or no vehicle queuing on it during peak hours... that exiting traffic from a residential development during the afternoon peak hour is very low”* and those vehicles exiting would *“wait for a motorist to permit this exiting vehicle to enter the street from the driveway.”* This claim was strongly disputed by public testimony and formed the basis for substantial questioning of Mr. Galante by the Commission. Regarding consideration of a full access driveway on Lincoln Street, Mr. Galante writes that *“many options were explored and that the sole reason for not permitting an exit drive from the site to Lincoln Street was due to limited sight distance to the left towards Riverside Avenue.”*

Fire Operational Safety

14. Mr. Andrew Kingsbury, former Westport Fire Chief and peer fire operational safety reviewer, reviewed the materials submitted, including Site Plan set titled “Westport Residences” prepared by McLaren Technical Services and Perkins Eastman for Cross Street LLC, dated February 2, 2018, and Architectural Plan set titled “Westport Residences” prepared by Perkins Eastman for Cross Street LLC, dated February 28, 2018, and assumed that the access drive shown along the south side of the building connecting the two driveways was intended for access by fire trucks. Mr. Kingsbury drew the following conclusions regarding exterior access: *“The single access road is of insufficient width, has excessive slope, and tight turning radiuses. Much of the building is out of reach of fire department ladders making rescue and exterior fire suppression operations impossible.”*

15. Mr. Kingsbury also drew conclusions regarding interior access: *“Interior access to the fourth floor is inadequate for occupant evacuation and firefighting operations, as it is served by only one stairwell. Additionally, standpipes and other fire protection features are not indicated on the plans and would be recommended, a full NFPA 13 sprinkler system is indicated in the application package is also recommended.”*

16. Lacking explanatory information in the original submission, the Westport Fire Department and the peer fire safety reviewer, Andrew Kingsbury, assumed that the drive on the south side of the proposed structure was a fire access drive. At the site visit on June 5, 2018, the applicant’s representatives informed the attending Commission members that this access way was not meant for fire access, but for delivery trucks.

17. The applicant submitted revised Sheets C-101, C-503 dated June 4, 2018 to the Site Plan set, revised Sheets Cover sheet, A-100 and A-105 dated June 4, 2018 to the Architectural Plan set,

and a new plan sheet (C-803 Fire Access Plan) dated June 4, 2018 to address building design issues related to safe evacuation of the proposed building.

18. The applicant's fire code expert, Joseph Versteeg, in his letter dated June 7, 2018 cited sections of the 2015 Connecticut State Fire Prevention Code (CSFPC), Connecticut State Building Code and the Connecticut State Fire Safety Code to justify the building design as safe. Among the code sections he cited is CSFPC Section 18.2.2.3.2.1, which requires "*firefighters on foot to be able to reach any portion of the building by walking no more than 450-feet around the perimeter of the building when measured from fire department vehicles,*" and about which he opined that: "*Additionally, there is no such mandate or authority to require fire vehicle access roads to extend to all sides of the building.*"
19. Supplemental review of the revised plans by Andrew Kingsbury noted several inconsistencies with respect to the termination of exits and inadequate access for fire fighters from an operational perspective. He summarized his comments dated June 18, 2018: "*Access roads are inadequate, of unacceptable slope, and have been further restricted by the elimination of an access road around the southwestern portion of the project. A fire department access roadway, or an appropriately graded and compacted surface, with compliant slope and width, should be provided so access is available to all portions of the building for Westport's Aerial Device... Without an access road for emergency vehicles around the perimeter of the building, rescue and fire suppression operations are severely hampered; much of the exterior will be out of reach of fire department ladders.*" Mr. Kingsbury concluded, "*It remains my professional opinion that the project, as proposed, significantly hampers fire department access, creating an unreasonable risk to occupants and first responders attempting to protect them.*"
20. In comments dated June 18, 2018, Mr. Kingsbury, who held intimate knowledge of the policies and practices of the Westport Fire Department due to his role as Fire Chief in Westport for 30 years and taught Technical Rescue to officers and instructors at the Connecticut Fire Academy, justified his repeated emphasis on fire fighting operations by stating that: "*Mr. Versteeg cites several sections from the Connecticut Fire Prevention Code regarding access, he neglects to mention the requirement for multiple access roads when the Authority Having Jurisdiction determines they are necessary.*"
21. Based on testimony by peer fire safety reviewer, Andrew Kingsbury, and Westport Fire Marshal Nathaniel Gibbons on June 21, 2018, the Authority Having Jurisdiction in Westport is the Westport Fire Marshal, Nathaniel Gibbons.
22. Westport Fire Chief Robert Yost and Westport Fire Marshal Nathaniel Gibbons testified to and provided written comments dated June 18, 2018 that support the analysis by Mr. Kingsbury, stating that "*fire department operations are not addressed by the codes except in the area of building and site access, yet it is operations that are paramount when fires occur and lives are at risk*". Fire Marshal Gibbons supported this statement with the following from his June 18, 2018 review comments: "*Fire apparatus access has been diminished further by restricting access to the Lincoln Ave. and Post Road West sides of the building....Rescue access to bedroom windows remains minimal leaving occupants to rely on a single means of protection – the fire sprinklers. Exterior pumper/aerial extinguishment tactics have been virtually eliminated by severely restricting access to the two sides of the building with pavement access*". He

summarized as follows: *“Additional submissions by the applicant have made a problematic plan worse. Site elevation changes and structure location still prevent exterior window rescue from large portions of the building by ground ladder. Site access for fire apparatus is dramatically reduced by the “service road” restrictions imposed. Efficacy of Westport’s aerial apparatus for rescue and/or extinguishment has been virtually eliminated.”*

23. Testimony provided by Westport Fire Chief Robert Yost during the public hearing on June 21, 2018 described a fire that occurred that evening as a point of comparison on this point: *“We had a structure fire on Wedgewood Road, it was a 6,800 square foot home which we in Westport would refer to as our bread and butter operation, our everyday fire, although nobody should go through that. The poor family is devastated with the damage done to their house, but from a fire fighting stand point, it is what we are used to and we still had to bring in four additional towns for that size of fire. Two were on the scene and two were covering the rest of the town, God forbid another incident happens. I’m being told this [proposed building] is 120,000 square feet. If this building was in the middle of a flat area and I had full 360 degree access, I would call this a challenge. The way this is right now, I’m going to call it a nightmare from a fire fighting perspective....It’s important to have a ladder truck access and it’s the reason why now every municipality pretty much spends the three quarter, now \$1,000,000 is because of buildings that are out of reach of our ground ladders...And Mr. Versteeg said code allows [the proposal] but it’s been my experience is that all it takes is the occupant of the apartment on fire to leave their door open. All that smoke and heat goes out into hallway and now all those occupants are in a sense trapped, and are going to be at those windows expecting the fire department to be at their windows, expecting the Fire Department to come to their rescue, and I can’t do that in this area.”*

24. Westport Fire Chief Robert Yost testified on June 21, 2018 that the current water supply to the proposed project area would be insufficient for fire suppression purposes, particularly in the summer months when the existing water tanks are drawn down to almost empty.

25. The initial application (#18-011) presented clear traffic and fire operational safety issues as demonstrated by Findings 11 through 24, as supported by testimony from Westport’s Fire Chief and Fire Marshal, the peer fire operational safety reviewer, Mr. Andrew Kingsbury, Staff Corporal Alan D’Amura of the Westport Police Department, and the peer traffic reviewer, Mr. Sharat Kalluri.

C. Withdrawal of Application #18-011 and review of resubmitted Application #18-011A

26. As a result of these reports and testimony, the applicant, in an effort to address these issues, withdrew Application #18-011 on July 12, 2018 and resubmitted the application with revised plans as Application #18-011A on July 16, 2018 with a receipt date of July 19, 2018. The applicant requested that all the documents and testimony forming the record of the previous application be incorporated by reference. The applicant, through counsel, confirmed that the revised plans (Civil Engineering Plans entitled “Westport Residences, Post Road West” Prepared by Perkins-Eastman, dated July 16, 2018, prepared for Cross Street, LLC and Architectural Plans entitled “Westport Residences, Post Road West” Prepared by Perkins-Eastman, dated July 28, 2018, prepared for Cross Street, LLC) in this new application (#18-001A), were now the operative plans before the commission.

27. The revised plans added a full-movement access from Lincoln Street, as well as the previously proposed right turn in/right turn out access onto Post Road West. Sheet C-804 of the plan set, entitled "Lincoln Street Sight Distance Plan," showed sight lines measured at 10' from the curb.

Traffic safety

28. The applicant submitted a report dated July 9, 2018 entitled Traffic Access & Impact Study prepared by Michael Galante that assessed the revised site access and on-site circulation. Mr. Kalluri was again engaged by the Commission to review the submissions by the applicant regarding traffic impact. Mr. Kalluri was engaged to review these aspects of the report and to provide the Town of Westport with technical assistance to enable the Town to respond to the developer's application. In his August 20, 2018 letter, Mr. Kalluri reviewed the submissions and analyzed the traffic flow making the following comments relevant to this decision under the following headings:

- a. Level of Service Analysis: *"The new site plan proposes a full access on Lincoln Street which reduces the number of site vehicle trips (about 70 percent reduction) exiting the Post Road West driveway in comparison to the earlier Site Plan application. Further, those site trips oriented towards Route 33 (south) now are anticipated to use Lincoln Street/Riverside Avenue. This would reduce the concern of queuing on the driveway on Post Road West. However, the applicant's traffic consultant should provide a statement regarding the anticipated traffic impact of the proposed development at the U.S. Route 1/Route 33 intersection. This issue was raised several times by the Westport Planning and Zoning Commission and residents in the area."* (emphasis in original)
 - b. Intersection Sight Distance: *"The Lincoln Street Sight Distance Plan (Sheet C-804) indicates that approximately 120 feet...west of the property line is proposed as "No Parking" and approximately 225 feet ...east of the property line is proposed as "No Parking". The anticipated impact for residents who park on the street should be determined relative to the availability of parking. Parking utilization along Lincoln Street should be documented in support of such change."* (emphasis in original)
29. The applicant's traffic consultant, Mr. Michael Galante, responded in comments dated August 30, 2018 regarding the Level of Service issue raised again by Mr. Kalluri (See Finding 12, subsection b.) by stating that the *"estimated increase in site traffic to the signalized intersection of U.S. Route 1 at State Route 33 will have a minimal, if any, measurable impact to the overall operation of the signalized intersection during the two peak hours."*
30. Regarding concerns about Intersection Sight Distance, the applicant agreed to have Mr. Galante make a parking study to determine whether the necessary removal of parking spaces would affect current use of on-street parking by the residents of Lincoln Street.
31. Mr. Kingsbury was also retained again to review the fire operational safety plan of the applicant. The provision of safe access for aerial fire apparatus formed part of his concerns about this proposal. His review comments dated September 4, 2018 stated that *"an additional no parking zone will need to extend from the curb cut at 26 Lincoln Street [south side] for approximately 270 feet south along Lincoln Street...A no parking zone needs to be established...to allow access for emergency vehicles."*
32. The parking study was conducted on a single day, September 13, 2018, as discussed in Mr. Galante's report dated September 21, 2018. He stated that there are 31 available on-street

parking spaces. He concluded that removal of 14 spaces (11 on the north side and 3 on the south side of Lincoln) would be necessary to accommodate the sight lines for egress and the turning radius of the Westport fire apparatus.

33. Staff comments by Katherine Daniel dated September 21, 2018 recounted discussions and consultations with traffic peer reviewer Kalluri who concluded in an email dated September 21, 2018 that: *“Relative to the parking on the south side, I agree that the parking loss does not account for the requirements of the fire department’s needs to keep 270 feet clear of any parked vehicles.”* Ms. Daniel, therefore, concluded that at least 17 spaces (11 on the north side and 6 on the south side) would need to be removed to accommodate both intersection site distances set 10’ from the curb and fire department access for the aerial apparatus to enter the Lincoln Street driveway.
34. While it is recognized that the Traffic Authority is the independent body authorized to approve or deny the proposed elimination of on-street parking on Lincoln Street, and that the applicant has the opportunity to apply to the Traffic Authority at a later date, the Commission notes that such potential elimination presents both safety and practical problems for the residents who rely upon on-street parking in this neighborhood of older historic homes.
35. In response to these concerns, the applicant presented testimony shortly before the close of the public hearing on September 27, 2018, stating that the applicant could provide 14 parking spaces in the proposed development’s parking garage. No details were provided by the applicant concerning how the loss of 14 spaces on site would affect the residents of the proposed building. No evidence was introduced regarding whether this arrangement would be as safe or convenient as the existing on-street parking, or how these spaces would be assigned and enforced. Particular areas of concern that were not addressed included the potential hazards and inconveniences to residents during inclement weather when sidewalks must be cleared of snow or ice, in instances when the proposed garage spaces are not available, when unloading items such as groceries, when arranging for guest to visit, and generally at any time due to the longer distances residents would have to travel to their homes when parking in the garage.
36. The neighborhood group Westport Neighbors United (WNU) was formed to respond to this application. Apart from the affront to the historic nature of the neighborhood that this incongruous brick façade would impose on their historic streetscape, WNU hired an attorney, Joel Green, and a traffic consultant, David Spear, P.E. Mr. Spear provided a report dated September 4, 2018 in which he detailed his conclusions that the development depends on inadequate site distances, provides unsafe pedestrian access, unsafe service vehicle access, unsafe emergency vehicle access, inadequate site drive geometry/grades for design vehicle access, and unsafe turning through a standing queue on Post Road West.
37. Mr. Spear’s analysis of Intersection Sight Distance (ISD) from the proposed Lincoln Street driveway showed that the AASHTO and ConnDOT design criteria upon which Westport relies for ISD analysis on Town roads includes the a 15-foot off-set from the curb to establish the ISD. Mr. Spear’s analysis demonstrated that the 10’ off-set used by the applicant is insufficient. Mr. Spear’s analysis used a 15’ off-set, a design speed of 30 miles per hour adjusted for the grade of Lincoln Street. With these parameters, he concluded that the ISD as proposed by the applicant is inadequate.

38. David Spear's testimony at the September 6, 2018 public hearing supported these conclusions: *"One key thing is the Intersection Sight Distance and particularly the Intersection Sight Distance on Lincoln."* Referencing Figure #5 in his report dated September 6, 2018 and the methodology for developing sight lines, he stated: *"The sight line is taken from 15' off the edge of road or 15' off the edge of traveled way as defined by the DOT."* He further described the industry method for developing sight lines: *"So the applicant claims they have 300 feet in each direction, so this layout shows where 300' falls and there's a significant triangle on the adjacent properties that the sight line goes over private property of the abutting properties, so in order for them to maintain that sight line and to provide sight line they need an easement from the adjacent property owners to be able to guarantee in perpetuity that that sight distance will be clear in the sight triangle. I mean a neighbor can put up a fence, they can do a lot of things they can put up shrubs whatever they want on their property in the sight triangle, so the applicant doesn't control the area they're claiming they have 300 feet in each direction. The other issue with the sight line is the grade. Now I just wrote what the applicant should have shown to demonstrate the sight line which they didn't do."*
39. Following a discussion of the speed cars travel on Lincoln and the effect of grade on stopping distances, Mr. Spear made further observations about the inadequacy of the applicant's proposed sight lines. *"According to AASHTO when you're coming down the hill you have to multiply by 1.1 to account for the grade for extra stopping because of the hill. When you're going up the hill you multiply by 0.9 because you can stop quicker going up the hill. So if you look at the actual sight distance adjusted for grade, let me just give you the numbers. I think we came up with 370 feet you need looking right up the hill and you need 300 feet looking left down the hill, so in total you need 670'. And the sight triangle and the encroachment is actually bigger looking up the hill than what the applicant is claiming because they're saying 300 each way so you really want to have 370 looking up the hill because of the grade. So that sight triangle, that encroachment is even bigger looking to the right. And there's nowhere on their frontage they can move that drive way to get the sight lines where they're not encroaching on the neighbors. It can't be done."*

Fire Operational Safety

40. Westport Fire Marshal Nathaniel Gibbons provided comments dated August 21, 2018 to review the revised Application #18-011A wherein he concluded: *"While the Lincoln St. driveway slope has been improved, multiple other fire operational issues remain unaddressed. These issues pose specific public safety risks to the occupants of the proposed structure and to first responders. These risks are detailed in the review letter of June 18, 2018 and will not be repeated here. This office again recommends rejection of the proposed application."*
41. Noting the single modification to the proposed site plan that shifts the driveway on Lincoln Street approximately 15 feet to the north and provides both ingress and egress, Mr. Kingsbury, providing the peer review of fire operational safety for the Town of Westport, added the following continuing concern in comments dated September 4, 2018: *"As the single and only point of access to the southernmost portion of the complex, with this full movement change, emergency vehicles will now be faced with occupants fleeing the parking garage into their path and potentially gridlock. The single point of access to the southernmost portion of the development from Lincoln Street is inadequate, an access road allowing access to all parts of the development should be provided". (emphasis in original)*

42. Westport Fire Chief Yost in comments dated September 6, 2018 reiterated concerns regarding the following deficiencies of this revised application:
- a. Lack of full access for aerial devices for rescue of all proposed apartments
 - b. Inability of ladders to reach top floor apartments, therefore the need for full aerial device access
 - c. Staffing to effectively fight a fire in such a large building
 - d. Fire hydrant flow and pressure as restricted by water company storage capacity
 - e. Distance to adjacent structures and risk of a conflagration problem from a fire in such a large wood framed building
 - f. Tendency of fires to develop rapidly in wood framed/light framed/Type V low to mid-rise buildings. He cited three recent local examples.
 - g. Concerns regarding providing emergency shelter for such a large number of residents should the structure be damaged by fire.
43. With regard to Finding 41, subsections e and f, several of the historic structures referenced in the study report and testimony cited below (68, 76 and 82 Riverside Avenue) are within the collapse zone of the proposed building. Westport Fire Marshal Nathaniel Gibbons, Westport Fire Chief Robert Yost and fire operational peer reviewer Andrew Kingsbury defined the collapse zone in their testimony on June 21, 2018 and September 27, 2018 as 150% of the height of the building. The proposed building is 72 feet tall adjacent to these properties and the historic structures are 20 to 30 feet from the proposed building.

Historic Preservation

44. The study report entitled “Lincoln Street – Riverside Avenue Local Historic District Westport, Connecticut,” prepared for the Westport Historic District Commission and submitted into the record of the subject application, included the State of Connecticut Historic Resources Inventory forms for three of the structures located within the site of the proposed housing development. The Inventory entries emphasized the historic significance of each property as follows:
- a. 1 Lincoln Street (to be retained): *“Originally, this house was the first in the row of four identical, gable-ended homes at 1, 5, 7 and 9 Lincoln Street built for Edward Hawks Nash in 1899.”*
 - b. 19 Lincoln Street (to be retained): *“The row of four End Gable New England Worker houses in the north side of Lincoln Street was built c.1899 as income housing by Edward Hawks Nash (1809-1900) for his children. Nash was well known for his ice cutting and cider mill business on Kings Highway. His family had large land holdings in the area. He was the son of Westport founder Daniel Nash, Jr. who was a staunch Republican and strong supporter of President Lincoln, so it is likely that he renamed Cottage Street to Lincoln Street (or Lincoln Avenue, depending on the source) when he built houses on both sides of the north end of the street. These houses along with those built at the same time on the south side of Lincoln Street are the only known intact late nineteenth century development on the west side of the Saugatuck River and they are significant as a complete period streetscape.”*
 - c. 37 Lincoln Street (to be demolished): *“This house was built for Erazlamon Anderson Williams in about 1870 on a lot he purchased from William Burr Wright . Williams was a shoemaker who owned a shoe sales store on State Street that carried boots, shoes, hats*

and caps. Beginning the in early 1840s, he began buying property in and around 'Westport Village', specifically in the area now known as Lincoln Street and Riverside Avenue. By the 1860s, he had amassed a considerable amount of land, including the four acres upon which he built this house and a house for his son. The 1878 birdseye map of Westport shows this house on open land between Riverside Avenue and State Street. The street now known as Lincoln Street first appears on a map in 1893 as Cottage Street and by 1910, it has been renamed Lincoln Avenue. This house is a reminder of the post-Civil War prosperity of Westport's merchants."

45. In his letter dated September 27, 2018, Francis Henkels, Chairman of the Westport Historic District Commission ("HDC"), informed the Commission that the HDC supported the creation of a historic district in the area where the proposed housing development is located, to *"preserve the historical integrity of this mid-nineteenth to early twentieth century residential neighborhood."*
46. Chairman Henkels concluded the letter as follows: *"The HDC views the potential Lincoln Street-Riverside Avenue Historic District as a remarkably intact neighborhood that embodies the character of an important period in the development of the Town of Westport. I personally believe that development of this project, as designed, will do irreparable damage to the integrity of this historic single-family residential neighborhood. I urge you to vote to deny this application."*
47. Tod Bryant, architectural historian and preservation consultant, testified at the public hearing on September 27, 2018 in support of the historical significance of the neighborhood as follows:
 - a. *"This is a group of 19 homes which essentially tells the story of Westport's development between 1851 and 1923."*
 - b. *"You have a connection to Westport's mid-nineteenth century mercantile class and the rise of that class and you have a direct connection to the founder of the Town on [Lincoln] Street."*
 - c. *"Taken as a group, [the houses] tell a significant story about the founding of Westport...they give depth to the experience of living here...the loss of any of that...is a serious impact on the historic integrity of the [Town] and the life of its residents."*
 - d. *"The scale of this development would totally destroy the scale of the houses in the district."*

General Findings

48. The development of multi-family affordable housing is permitted under existing Westport Zoning regulations. Staff comments prepared by Katherine Daniel, AICP, Deputy Planning and Zoning Director, dated June 2, 2018 provided an analysis of the existing regulations under which a multifamily project containing up to 63 dwelling units while only being required to devote 20% of those units to deed restrictions for affordability. Section 32-12 of the Westport Zoning Regulations allows the construction of two-family and multi-family dwellings in the RORD #1 zone with buildings limited in footprint to 2,500 square feet and not to exceed two and one half stories and 30 feet measured from the average grade to the midpoint of a pitched roof. Ninety-four percent (94%) of the site is located in the RORD #1 zone. The affordability

plan under these regulations requires restriction to 80% of State Median Income only, potentially a more advantageous requirement than that required by CGS 8-30g.

49. Westport is within weeks of making an application to the Connecticut Department of Housing for a moratorium on CGS 8-30g applications. Westport has made consistent and steady progress in approving appropriate affordable housing applications. Staff comments prepared by Katherine Daniel, dated June 6, 2018, document these efforts and concluded that of the 208 Housing Unit Equivalent (HUE) points required for a moratorium, approximately 163.5 HUE points can currently be documented. Upon the issuance of a Certificate of Occupancy for the project pending at 1177 Post Road East, which is anticipated to occur before the end of October 2018, Westport will gain 67.25 HUE points in excess of the amount required by statute to apply for a moratorium on affordable housing.
50. A field trip was conducted to the site consisting of six parcels (57, 79 & 85 Post Road West and 1, 19 & 37 Lincoln Street) on June 5, 2018. The field trip was attended by Westport Planning and Zoning Commission members, Planning and Zoning Director Mary Young and Deputy Director Katherine Daniel along with the applicant's representatives and area neighbors.
51. Public hearings were held on June 7 & 21, 2018 (#18-011) and September 6 & 27, 2018 (#18-011A) to accept testimony and evidence and to receive comments from the public.

II. REASONS FOR DENIAL

A. Defect in Application

1. The record contains substantial evidence that the revised application does not comply with the requirements of C.G.S. § 8-30g to provide deed restrictions for 30% of the project dwelling units.
2. The following testimony and evidence supports this conclusion:
 - a. Finding 5, 7 and 24 above demonstrate that the applicant's proposal consists of 81 new apartments and 3 existing residences for a total of 84 dwelling units. Thirty percent (30%) of 84 equals 25.2. The applicant proposes only 25 affordable units, whereas the statute requires at least thirty percent of the units to be affordable. To comply with the statute twenty-six (26) units would have to be deed restricted for affordability.
 - b. Finding 48 above demonstrates that the applicant can develop affordable multifamily housing using the existing Westport Zoning Regulations.
 - c. Finding 49 above demonstrates that Westport has made substantial progress in the provision of affordable housing a fact that outweighs the need to approve this project.
3. Based upon the evidence and testimony presented to it, the Commission finds that the application does not comply with CGS 8-30g. Because the revised application does not comply with the requirements of C.G.S. § 8-30g, it must be considered under the existing Westport Zoning Regulations, and the revised application does not conform to Regulations §22 Restricted Office-Retail Districts #1, 2 & 3, §32-12 Inclusionary Two-family and Multi-Family Dwellings, and §13 Residence A District.

4. The Commission further finds that the applicant does have the option, as noted in the record and discussed in Finding #48, of submitting a development plan under existing regulations that would allow for approximately 63 units as of right.

B. Substantial Public Interests Outweighing the Need for Affordable Housing

1. Fire Safety

- a. Fire Safety is a substantial public interest. The record contains substantial evidence that the affordable housing project design will not adequately protect the residents, structures or property of the development from the dangers caused by fire. The following testimony and evidence was presented to the Commission:
 - i. Findings 14, 19, 21, 22, 23, 24, 40, 41, 42 and 43 above provide substantial and specific evidence in the record that fire apparatus access is insufficient to the point of “virtually eliminating” the efficacy of Westport’s aerial apparatus for rescue and or extinguishment of a fire, the inability of ladders carried by fire fighters to areas inaccessible by aerial devices to rescue occupants in all apartments, and reliance on a single means of protection (the sprinkler system), for those apartments inaccessible to ladders or aerial apparatus.
 - ii. Findings 9, 10, 20, 21 and 24 above provide substantial and specific evidence in the record that the applicant has not adequately addressed fire operational safety concerns. The applicant’s fire code expert Mr. Versteeg does not have the fire operations background to comment authoritatively on the need for full access to all portions of the building. The town’s fire operational safety peer reviewer has an extensive background in this area and provides credible evidence and testimony to support the conclusion that as proposed, the development is unsafe from the perspective of a fire fighter. There is a significant difference between code compliance and operational aspects of fire fighting.
 - iii. Findings 19, 28, 33 and 36 above provide substantial and specific evidence in the record that the proposal provides inadequate access to the site for emergency vehicles such as ambulances because the driveway is to be occupied by the fire aerial apparatus during a fire emergency.
 - iv. Finding 19 above provides substantial and specific evidence that the grade hampers the use of fire department apparatus (aerial platform). Further testimony was given in support of this concern by Chief Yost.
- b. Based upon the evidence and testimony, and due to the direct operational experience of the Westport Fire Chief, Fire Marshal, and outside consultant Andrew Kingsbury, the Commission finds that there is a substantial public interest in the preservation of life and property by minimizing the threat from fire and similar catastrophes. The Commission finds that the most persuasive and accurate testimony was presented by the Westport Fire Chief, Fire Marshal, and outside consultant Andrew Kingsbury. The Commission finds that municipal fire protection capabilities and operational decisions in Connecticut

are determined individually at the local government level and that it is the Fire Chief's and Fire Marshal's duty to make such determinations.

- c. The Commission further finds that the need to protect the lives and property of the residents of the Town of Westport and the requirement to provide adequate means to accomplish such need clearly outweighs the need for affordable housing. The Commission finds that based on the substantial evidence in the record, including but not limited to, the evidence cited above, the proposed housing development plan will result in significant and serious threats to the lives and safety of the residents and property of the proposed development. Such risk clearly outweighs the need for the additional affordable units.
- d. The Commission further finds that there are no modifications that can reasonably be made to this revised application that would fully address these fire safety concerns. It is not the Commission's function to completely redesign the project. The applicant does have the option, as noted in the record and discussed in Finding # 48, of submitting a modified housing plan under existing regulations that would allow for approximately 63 units.

2. Traffic Safety

- a. Traffic Safety is a substantial public interest. The record contains substantial evidence that the affordable housing project design will not adequately protect the public from the dangers caused by traffic hazards. The following testimony and evidence was presented to the Commission:
 - i. Findings 27, 37, 38 and 39 above provide substantial and specific evidence in the record that the calculation of sight distances from the Lincoln Street driveway are inadequate as proposed.
 - ii. Findings 28, 30, 31, 32, 33, 34 and 35 above provide substantial and specific evidence in the record that the requirement for removal of on-street parking will pose public safety concerns for current residents of Lincoln Street.
- b. Based upon the evidence and testimony presented to it, the Commission finds that there is a substantial public interest in the preservation of life and property by minimizing the threat from hazardous traffic conditions. The Commission finds that the most persuasive and accurate testimony was presented by David Spear, P.E. and Sharat Kalluri, P.E., P.T.O.E. both of whom hold engineering credentials.
- c. The Commission further finds that the need to protect the lives and property of the residents of the Town of Westport and the requirement to provide adequate means to accomplish such need clearly outweighs the need for affordable housing. The Commission finds that based on the substantial evidence in the record, including but not limited to the evidence cited above, the proposed housing development plan will result in significant and serious threats to the lives and safety of the residents and property of the proposed development. Such risk clearly outweighs the need for the additional affordable units.

- d. The Commission further finds that there are no modifications that can reasonably be made to this application that would fully address these traffic safety concerns. It is not the Commission's function to completely redesign the project. The applicant does have the option, as noted in the record and discussed in Finding # 48, of submitting a modified housing plan under existing regulations that would allow for approximately 63 units.

3. Protection and Preservation of Historic Resources

- a. Protection and preservation of historic resources in the Town of Westport is a substantial public interest. The record contains substantial evidence that the affordable housing project will not adequately protect and preserve the historic structures located within the project site, nor will it protect and preserve the historic character of the area. The following testimony and evidence was presented to the Commission:
 - i. Findings 6, 44, 45, 46, and 47 above provide substantial and specific evidence in the record that the site of the proposed housing development and the existing structures located within the site are historically significant to the Town of Westport.
 - ii. Finding 5 provides substantial and specific evidence in the record that the proposed housing development will result in the demolition of at least three structures constructed during or before 1920.
 - iii. Findings 5, 6, 44, 45, 46, and 47 provide substantial and specific evidence in the record that the construction of the proposed housing development will negatively impact the historic character of the area.
- b. On the basis of the substantial evidence in the record, including but not limited to the evidence cited above, the Commission finds that the existing structures located within the site of the proposed housing development and the area surrounding the location of the proposed housing development are historically significant resources to the Town of Westport.
- c. On the basis of Connecticut law and the substantial evidence in the record, including but not limited to the evidence cited above, the Commission finds that there is a substantial public interest in the protection and preservation of the historically significant resources in and around the location of the proposed housing development.
- d. On the basis of the substantial evidence in the record, including but not limited to the evidence cited above, the Commission finds that the substantial public interest in the protection and preservation of the historically significant resources clearly outweighs the need for 25 new affordable housing units. The Commission finds that the proposed housing development will result in the destruction of at least three structures that are historically significant to the Town of Westport. In addition, the Commission finds that the design and construction of the proposed housing development will irreversibly alter the fundamental historic character of the area. These reasons outweigh the need for 25 additional affordable housing units.

- e. The Commission further finds that there are no modifications that can reasonably be made to this revised application that would fully address these historic protection and preservation concerns. It is not the Commission’s function to completely redesign the project. The applicant does have the option, as noted in the record and discussed in Finding # 48, of submitting a modified housing plan under existing regulations that would allow for approximately 63 units.

For the reasons stated above, which the Commission adopts as a collective basis for its action, the Commission adopts the following Resolution (moved by Mr. Stephens and seconded by Mr. Lebowitz):

RESOLVED: That the application of Cross Street LLC for approval of a 81-unit multi-family affordable housing development filed in accordance with Section 8-30g of the Connecticut General Statutes and located at 57, 79 & 85 Post Road West and 1, 19 & 37 Lincoln Street is hereby DENIED.

VOTE:

AYES	- 7 -	Lebowitz, Dobin, Stephens, Gratrix , Walsh, Cammeyer, Rutstein
NAYS	- 0 -	
ABSTENTIONS	- 0 -	

Westport Planning and Zoning Commission

By *Paul Lebowitz* *nc*
Paul Lebowitz, Its Chairman

- CC: First Selectman Marpe
Town Attorney Bloom
Mr. Sharat Kalluri
Mr. Andrew Kingsbury
RTM P&Z subcommittee chairman
DPW Director Ratkiewich
Fire Marshal Gibbons
Fire Chief Yost
Police Department Director Koskinas
Attorney Joel Green