



PLANNING BOARD MEMO • AFTER-THE-FACT • MINOR SUBDIVISION • FINAL PLAN REVIEW

DATE: February 20, 2025

TO: Windham Planning Board
FROM: Steve Puleo, Planning Director; Amanda Lessard, Senior Planner/Project Manager
Cc: Aaron Hunter, P.E., Sebago Technics, Inc.; Agent
Robert Cloutier, Applicant

RE: #24-26 – Minor Subdivision – After-the-Fact – Monique Drive Subdivision – Final Plan Review – Robert Cloutier

Planning Board Meeting: February 24, 2025

Overview:

The application is for an approval of an After-the-fact Subdivision of three (3) lots minor subdivision, including minor upgrades to Lisa and Jules Drives. The street improvements will establish the required road frontage for Lot 3 (11-49-D5) and by recording the approved subdivision will create a legal lot of record. The subject properties are identified as Tax Map: 11; Lot: 49D, 49D-4, 49D-5, found in the Village Residential (VR) zoning district, and located in the Presumpscot River via Otter Brook watershed.



Figure 1. Aerial view of the subject parcel relative to surrounding properties and street network.

Background:

The history of the lot conveyances indicates a violation of the State's Subdivision Law. Lot 1 (Tax Map: 11; Lot: 49-D03) was a gift from the applicant to his daughter in 2013, and it was then

conveyed to a third party in 2018. The remaining land, Lot 2 (Tax Map: 11; Lot: 49-D), which is still owned by the applicant, was divided in 2022 into a third lot (Tax Map: 11; Lot: 49-D05) that was also conveyed to a third party before the mandatory five-year period expired, resulting in the creation of an illegal lot. The owner of Lot 3 is restricted from obtaining a building permit for the construction of a single-family home until the applicant receives approval from the Planning Board for the subdivision and records the subdivision plan in the Cumberland County Registry of Deeds.

Review History:

A Development Review Team meeting was not required because the applicant had submitted a minor subdivision application. The Planning Board conducted a sitewalk with the applicants on January 11, 2025. The planning board held a public hearing on January 13, 2024. At that meeting the Board discussed the existing road maintenance agreement and the need for revisions to include all users of the road. The Board found the application complete and approved the waiver request from the road standards for pavement width and had a tie vote on the waiver request from the road standards for right-of-way width, postponing the application until the next meeting.

The applicant has submitted a revised plan set, a draft road maintenance agreement that proposes cost sharing responsibilities for all users of the road and a boundary line agreement with the abutter (Tax Map: 11; Lot: 49), that would make the right-of-way width waiver request moot. Abutter Langerman (Lot 49) provided comments to the draft and stated he is willing to agree to the proposal pending revisions.

AFTER-THE-FACT MINOR SUBDIVISION REVIEW

PLEASE NOTE: The staff memo is a reference guidance document, and suggested topics for board discussion are listed; ~~the strikethrough text is items for the final review;~~ ***bold and italic text represent unaddressed existing and/or new staff comments;*** or plain underlined text are items that have been addressed by the applicant; and *italic text is for information or previously reviewed and/or approved items.*

Staff Comments:

1. Complete Application:

MOTION: ~~[I move] the After-the-Fact Minor Subdivision application for project #24-26 Monique Drive Subdivision project is found complete in regard to the submission requirements based on the application checklist, but the Planning Board retains the right to request more information where review criteria are not fully addressed.~~

The Board found the application complete at the January 13, 2025 meeting by a vote of 6-0 (Yost absent).

2. Waivers:

Limitation of Waivers. The granting of a submission requirement waiver or site waiver may not conflict with, nor negate, any State Statutory requirements for the subdivision of land. Per [§120-908B\(2\)](#). The Board is not required to use any criteria in making its determination on the granting of a waiver of the submission requirements. Per [§120-908C](#). The Planning Board may waive the

requirements of [§120-911](#) Performance and Design Standards when the applicants demonstrates that the performance standards of these regulations and the criteria of the subdivision statute have been or will be met, and the public health, safety, and welfare are protected and provided the waivers do not have the effect of nullifying the intent and purpose of the land use ordinance. In granting site waivers, the Planning Board shall utilize the criteria in [§120-908C\(2\)](#).

a) [120-911-M\(5\)\(a\)\[1\]](#) and [§120-2 Attachment 2 - Appendix B: Street Design and Construction Standards for Minor Private Street](#).

The applicant states that widening Lisa and Jules Drives is not possible at this time due to location of the existing private streets are located in easements encumbering the abutting lot owners and the applicant does not have sufficient right, title, and interest. The two street have surface pavement, maintained via Road Maintenance agreement within the property owners' deeds. An access easement is proposed on Lot 3 as the existing road encroaches on the property and is located outside of the right of way. This will improve the existing access along the road.

Staff support the waiver request because the minor private streets, Lisa and Jules Drives is primarily an access easement serving the three existing residences with various ROW and pavement widths, asphalt the surface treatment, and unknown street profile. Moreover, the applicant does not have adequate Right, Title, and Interest to modify the street to meet the Town minor private street construction standards.

~~**MOTION:** [I] move to approve the waiver request of [120-911M\(5\)\(a\)\[1\]](#) not change the existing pavement widths, which is between 17 and 20 feet, of the existing minor private streets, Lisa Drive and Jules Drive, which provide street frontage for Lot 3 of the After the Fact Moniques Drive Subdivision.~~

The Board approved the waiver request at the January 13, 2025 meeting by a vote of 6-0 (Yost absent).

MOTION: [I] move to approve the waiver request of [§120-911M\(5\)\(b\)\[8\]](#), not to modify the existing and proposed right-of-way widths and construction elements the existing minor private streets, Lisa and Jules Drives, serving Lot 3 of the After-the-Fact Moniques Drive Subdivision.

At the January 13, 2025 meeting by a vote of 3-3 (Yost absent), in which the Rules of the Planning Board dated July 24, 2023 Section 6 states "A tie vote results in postponement of the motion to the next meeting, not a failure of the motion. Only one (1) postponement for a motion is allowed. If the vote remains tied at the second vote, the motion fails.

Pending evidence of sufficient right, title and interest that the abutter agrees to the new description of the right of way know as Lisa Drive and Jules Drive, this waiver may be withdrawn.

3. Public Hearing: The Board held a public hearing on January 13, 2025.
4. Site Walk: The Board conducted a site walk January 11, 2025.

Findings of Fact, Conclusions, and Conditions of Approval for the Windham Planning Board:

MOTION: [I move] the After-the Fact Minor Subdivision application for project #24-26 Monique Drive Subdivision project identified on Tax Map: 11; Lot: 49D, 49D-4, 49D-5; Zone: Village Residential (VR) and located in the Presumpscot River via Otter Brook watershed is to be **(approved with conditions/denied)** with the following Findings of Fact, Conclusions, and Conditions of Approval.

FINDINGS OF FACT

Jurisdiction: The Monique Drive Subdivision project is classified as a Minor Subdivision, which the Planning Board is authorized to review and act on by [§120-905A\(1\)](#) of the Town of Windham Land Use Ordinance.

Title, Right, or Interest: The applicant has submitted a copy of the Warranty Deed from George L. Chamard and Jennifer Chamard to Robert R. Cloutier and Monique A. Cloutier dated October 25, 1999, and recorded on October 26, 1999, at the Cumberland County Registry of Deeds in Book 15127 and Page 250 (Lot 2). A copy of a Warranty Deed between Lisa Cloutier and Laurea Torrey Everett and Travis Joel dated July 17, 2018 and recorded on July 31, 2018, at the Cumberland County Registry of Deeds in Book 35031 and Page 198 (Lot 1). The applicant also has submitted a copy of a Warranty Deed (Corrective) between Robert R. Cloutier and Cathleen Manchester and Ruth Summers, dated April 4, 2022 and recorded on June 1, 2022, at the Cumberland County Registry of Deeds in Book 39463 and Page 84 (Lot 3)

ARTICLE 4 ZONING DISTRICTS

- As shown on the Town of Windham [Land Use Map](#) approved by the Town Council, date April 9, 2024, Tax Map: 11; Lot: 49D, 49D-4, 49D-5.
- The property is located in Village Residential (VR) zoning district.

§120-911 - SUBDIVISION PERFORMANCE STANDARDS

§120-911A – Basic Subdivision layout

- (1) The property has a total size of 32.83 acres (1,430,237 SF).
 - (a) The calculations of density have not been provided.
- (2) The applicant identified where the existing utilities are located see sheet 3 of 5.

§120-911B – Sufficient water; water supply.

- (3) The applicant **has not** shown the private drinking well locations on the subdivision recording plan.
 - Per [§120-911B\(3\)\(a\)\(3\)](#), “[W]ells shall not be constructed within 100 feet of the traveled way of any street if located downhill from the street, or within 50 feet of the traveled way of any street if located uphill of the street. This restriction shall be included as a deed restriction to the affected lots.”

§120-911C - Erosion Control and sedimentation control

- The applicant is not proposing any site work or preparation. The future property owners or builders will be required to receive a Soil and Erosion Control permit at the time of applying for a building permit.

§120-911D – Sewage disposal

- (2) The proposed lots will be serviced by a subsurface sewage disposal system and test pits have been provided to identify areas of acceptable soils on the lots for individual systems.

§120-911E – Impact Natural Beauty, Aesthetics, Historic Sites, Wildlife Habit, Rare Natural Areas, or Public Access to the Shoreline

- (1) The three (3) existing lots will consist of the eventual construction of one (1) single family homes.

§120-911F – Conformance with Land Use Ordinances

Comprehensive Plan:

- The plan does meet the goals of the 2017 Comprehensive Plan.

Subdivision Ordinance:

- Standard notes, the standard conditions of approval, and approved waivers must be shown on the plans.
- **The applicant has not provided a** digital transfer of the subdivision plan data must be submitted for inclusion with the Town's GIS.

§120-911G – Financial and Technical Capacity

- (1) The applicant has estimated the cost of development between \$10,000 and \$15,000 and has provided a Business Access Line of Credit statement from M&T Bank April 7, 2024, with available credit of \$800,000.
- (2) The applicant has provided technical capacity with development experience as custom house builder in Windham and other communities in southern Maine. The applicant's project team is comprised of Sebago Technics, a multi-disciplinary engineering firm with 40 years of experience. They offer a wide range of services, including land development design, landscape architecture, planning, engineering, permitting, land surveying, traffic analysis, environmental consulting, construction management, and soil science.

§120-911H – Impact on Ground Water Quality or Quantity

- (2) The applicant does not anticipate the development will result in contamination of groundwater table from three additional single-family homes.

§120-911I – Floodplain Management

- The plan shall meet the requirements of [Chapter 82](#), Floodplain Management.

§120-911J – Stormwater

- The applicant is not proposing any site work or preparation. The future property owners or builders will be required to receive a Soil and Erosion Control permit from the Code

Department and will address the stormwater needs at the time of applying for a building permit.

- MeDEP does not require the construction of a single-family home to apply for a Stormwater Management permit.

§120-911M – Traffic Conditions and Street

- The applicant is requesting a waiver for §120-911-M(5)(a)[1]: Street Design and Construction Standards for Minor Private Street, and §120-911-M(5)(a)[5][f]: Road Maintenance Agreement. The applicant has provided Road Agreement with the property owner's deed and waiver for this performance standard is not necessary.
- The applicant stated that traffic increase for the after-the-fact subdivision request will be minor and will not adversely impacts the private streets.
- Access to Lot 3, identified as Lot 49 D-5 on Tax Map 11, will be provided through Lisa Drive and Jules Drive by easements retained on Lot 49 B and Lot 49 D as depicted on the enclosed Plan of a private streets. Lisa and Jules Drives are paved streets exceeding the minor private street requirement of gravel. The travel way varies in width from approximately 17 feet to 20 feet.
- An easement is proposed on Lot 3 as the existing road encroaches on the property and for the construction of a hammerhead turnaround to meet local access and frontage requirements.
- Lots 1 and 2 exist via the Monique Drive right of way and an access easement extending from the southwesterly side of Monique Drive ROW and the fee of the ROW is retained across the applicant's land as shown on the Minor Subdivision Plan in order to avoid impacts to natural resources. Monique Drive is an existing gravel road with a paved entrance apron that is approximately 18 feet in width or greater.

§120-911N – Maintenance of common elements.

- The applicant's request for "After-the-Fact" minor subdivision approval does not include the construction of a street for road frontage, or a stormwater management system, which require the formation of a Homeowners Association.
- The applicant has provided an existing Road Maintenance Agreement for Lot 3 to access and contribute to the maintenance of Lisa and Jules Drives as recorded in Cumberland County Registry of Deeds Book 21296, Page 175.
- Lots 1 and 2 are legal lots of records that are accessed by Moniques Drive and were permitted Code Enforcement Department. The applicant provided a Road Maintenance Agreement for Moniques Drive, which is recorded in Cumberland County Registry of Deeds Book 27596, Page 91.
- The applicant has provided a draft Boundary Line Agreement & Maintenance Agreement that proposes cost sharing responsibilities for all users of the road.

CONCLUSIONS (*Final Plan Review*)

1. The development plan **reflects** the natural capacities of the site to support development.
2. Buildings, lots, and support facilities **will** be clustered in those portions of the site that have the most suitable conditions for development.
3. Environmentally sensitive areas, including but not limited to wetlands; steep slopes; flood plains; significant wildlife habitats, fisheries, and scenic areas; habitat for rare and

- endangered plants and animals; unique natural communities and natural areas; and sand and gravel aquifers **will** be maintained and protected to the maximum extent.
4. The proposed subdivision **has** sufficient water available for the reasonably foreseeable needs of the site plan.
 5. The proposed subdivision **will not** cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
 6. The proposed use and layout **will not** be of such a nature that it will make vehicular or pedestrian traffic no more hazardous than is normal for the area involved.
 7. The proposed subdivision **will** provide adequate sewage waste disposal.
 8. The proposed subdivision **conforms** to a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan.
 9. The developer **has** the adequate financial capacity to meet the standards of this section.
 10. The proposed subdivision **will not** alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.
 11. The proposed subdivision **will** provide for adequate stormwater management.
 - ~~12. The proposed location and height of buildings or structure walls and fences, parking, loading, and landscaping shall be such that it **will/will not** interfere or discourage the appropriate development in the use of land adjacent to the proposed site or unreasonable affect its value.~~
 13. On-site landscaping **does** provide adequate protection to neighboring properties from detrimental features of the development that could be avoided by adequate landscaping.
 14. All freshwater wetlands within the proposed subdivision **have** been identified on the plan.
 15. Any river, stream, or brook within or abutting the subdivision **has** been identified on any maps submitted as part of the application.
 16. The proposed subdivision **will** provide for adequate stormwater management.
 - ~~17. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, or great pond as these features are defined in [Title 38, §480-B](#), none of the lots created within the subdivision **has/does not have** a lot depth to shore frontage ratio greater than 5 to 1.~~
 - ~~18. The long term cumulative effects of the proposed subdivision **will/will not** unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.~~
 - ~~19. For any proposed subdivision that crosses municipal boundaries, the proposed subdivision **will/will not** cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.~~
 - ~~20. The timber on the parcel being subdivided **has/has not** been harvested in violation of rules adopted pursuant to [Title 12, §8869, sub§14](#).~~

CONDITIONS OF APPROVAL (REQUIRED)

1. Approval is dependent upon and limited to the proposals and plans contained in the application dated September 3, 2024, December 23, 2025, as amended February 18, 2025 and supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board. Any variation from such plans, proposals, supporting documents, and representations is subject to review and

approval by the Planning Board or the Town Planner in accordance with [§120-912](#) of the Land Use Ordinance.

2. In accordance with [§120-914B\(5\)](#) of the Land Use Ordinance, the Construction of improvements covered by any subdivision plan approval shall be completed within two years of the date upon which the performance guarantee is accepted by the Town Manager. The developer may request a one-year extension of the construction completion deadline prior to the expiration of the period. Such request shall be in writing and shall be made to the Planner. The Town Manager may require an update to the schedule of values and the amount of the guarantee when accepting an extension of the construction period. If construction has not been completed within the specified period, the Town shall, at the Town Manger's discretion, use the performance guarantee to either reclaim and stabilize or to complete the improvements as shown on the approved plan.
3. Prior to issuance of a building permit on, the [Recreation Impact Fee](#), [Open Space Impact Fee](#), [Public Safety Impact Fee](#); and [Municipal Office Impact Fee](#). All fees will be determined and collected for any building, or any other permits necessary for the development of Lot 3 (Tax Map:11 Lot: 49-D05), [§120-1201C](#).
4. Prior to issuance of a building permit on Lot 3 (Tax Map:11 Lot: 49-D05), the applicant shall provide to the Planning Director a recorded Access Easement Exhibit A "Right of Way" pullout location on Lot 3.
5. Prior to any land use activity, such as the construction of the turnaround are on Lot 3, the applicant shall provide to the Planning Director and review and approved by the Town Attorney, at the applicant's expense and recorded in the Cumberland County Registry of Deeds, a Road Maintenance Association for Lisa Drive and Jules Drive.