

South Portland City Council
Position Paper of the City Manager

Subject:

ORDER #126-15/16 – Appealing the Public Works Director’s denial of a curb cut on Wermuth Road for Yaz Automotive Repair & Towing. Passage requires majority vote.

Position:

This matter initially appeared on the City Council’s April 4, 2016 agenda, but the applicant, Yaz Automotive Repair & Towing, was not present and the matter was postponed to May 2, 2016.

Last winter, Sebago Technics, on behalf of the Yaz Automotive Repair & Towing (“Yaz Towing”), submitted an application to the Public Works Director for a permit to construct a new curb cut on Wermuth Road to serve the company’s new building. The company plans to build a 768 square foot two story building that will house an automotive repair facility on the first floor and an apartment on the second floor.

The only vehicular access to the property is currently through the abutting property. Therefore, a new driveway is proposed from Wermuth Road.

Section 23-37(2)(b) of the Code of Ordinances prohibits a driveway or curb cut from being located within 200 feet of any intersection:

- (b) No such driveway or curb cut shall be located within two hundred (200) feet of any intersection in the city or within a like distance, as measured along a public way from any playground, school, church, hospital or places of public assembly;

The proposed driveway is located with 65 feet of Wermuth Road’s intersection with Westbrook Street.

On January 19, 2016, the Public Works Director denied the permit based on Sec. 23-37(2)(b). Although, by ordinance, the permit must be denied, Public Works Director Doug Howard has no issues with the curb cut request.

I raise a concern about the type of activity proposed for this parcel and whether the distance is an acceptable distance from a very busy Westbrook Street. The property is only 73-feet deep, making a curb cut fall right adjacent to residential dwellings. The use being billed as an automotive repair facility is a special exception use allowed under current zoning; however, the property is also slated to be the home of Yaz's towing company and vehicle impound yard. Both of these uses are again allowed as special exception uses within the zoning district. This facility will be a 24-hour facility, and I question the compatibility of this type of use and these types of

vehicles on this residential side street and whether 65-feet from an intersection is an acceptable distance for this type of an operation.

Police Chief Ed Googins offers the following concerns on the curb cut waiver request:

Jim,

I would like to offer my comments in regards to the curb cut waiver request for the property at 600 Westbrook Street. This property is at the intersection of Westbrook Street and Wermuth Road with the curb cut request being on Wermuth.

Wermuth Road is a narrow residential street with no sidewalks that measures just 21 feet wide from curb to curb. Presently the west side of the street closest to Westbrook Street does not have any curbing. On the other hand, Westbrook Street does have sidewalks which forces pedestrians to leave the sidewalk and walk on the side of the street as they go down Wermuth Road. I am very concerned that this curb cut for commercial purposes, so close to the intersection and on a residential street entering into congested Redbank Village, will create conditions that will be very unsafe for pedestrians.

Redbank Village is an active and very family oriented community with many children that walk and play in the area. Wermuth Road is also an established route to the only neighborhood store within the complex which is right around the corner on Westbrook Street.

I appreciate your advising the City Council of my concerns as they consider this waiver request.

Ed Googins

Procedurally, Sec. 23-39 of the Code of Ordinances (copy attached) provides that the City Council is “to act as administrative hearing tribunal on any such appeal and shall permit the applicant the opportunity to be present and represented at such hearing, to be heard, to present evidence and to cross-examine any witnesses.” Unlike the recent towing business license suspension hearing that the City Council conducted, there has not been any sort of evidentiary hearing held on this matter by the Public Works Director or other City staff person. This means that the City Council is conducting a “de novo” hearing and may receive any oral or documentary evidence, but it may exclude irrelevant or unduly repetitious evidence. The City Council sits in a quasi-judicial capacity in hearing and deciding the appeal.

The Corporation Counsel will be present to assist the City Council with the conduct of the hearing, and she provided an overview of the process as follows:

- (1) Mayor opens hearing.
- (2) Mayor asks Council to waive the 5 minute time limit on speakers to allow Yaz Towing and the Public Works Director to make their presentations and present their witnesses [motion, second, vote required].

- (3) Yaz Towing makes its presentation, including any witnesses or submission of documentary evidence.
- (4) Questions from the City Council of Yaz Towing.
- (5) Public Works Director makes his presentation, including any witnesses or submission of documentary evidence.
- (6) Questions from the City Council of Public Works Director.
- (7) Yaz Towing may cross-examine any Public Works Director witness(es) and may offer rebuttal testimony or documents.
- (8) Public comment allowed unless Council votes to suspend Rule 19(a) by 2/3 vote of the members present.
- (9) Questions from the City Council of any witness.
- (10) Mayor seeks a motion to close the public hearing and to deliberate on the matter [motion, second, vote required]. Once the public hearing is closed, no further questions of any witnesses are allowed without the formality of re-opening the public hearing.
- (11) Councilors deliberate and decide whether there has been “a showing of hardship by the applicant” and whether to grant or deny the curb cut permit.

Again, in deciding whether to grant or deny the permit, Sec. 23-39 simply provides that there must be “a showing of hardship by the applicant.”

The proposed Council order has been drafted in the affirmative, *i.e.*, as if the curb cut permit is granted, but the Corporation Counsel can assist in drafting any necessary amendments to the proposed order if the Council decides, once it has heard all the evidence, that it wants to do something different.

Last week City staff received a petition from the SoPo Westend Neighborhood Association expressing concern with the project. We have included the petition within the packet.

Requested Action:

This item is in order for City Council consideration.


City Manager

SOUTH PORTLAND CODE OF ORDINANCES

Chapter 23

STREETS AND SIDEWALKS*

Sec. 23-39. Appeal of denial to the city council.

The director of public works shall, where applicable, give the permit applicant written notice of denial stating the reasons therefor. Any applicant for a permit required by section 23-35 who is aggrieved by the denial of such permit by the director of public works shall be afforded the right to appeal such denial to the city council. The city council shall act as administrative hearing tribunal on any such appeal and shall permit the applicant the opportunity to be present and represented at such hearing, to be heard, to present evidence and to cross-examine any witnesses. The city council shall, upon a showing of hardship by the applicant, grant such permit or additional permits as they, in their sole discretion, deem just and proper. No such appeal shall be in order for hearing until the applicant shall have provided the council with the following:

- (a) The results of a traffic count measuring the flow of traffic on the street into which access will be gained by means of the entrance or exit driveway or curb cut in question; and
- (b) A plot plan, drawn to scale, showing all of the features enumerated below:
 - (1) Location and boundaries of the land to be served by the proposed entrance or exit,
 - (2) Location and dimensions of all public and private ways (drawn to scale and identified by name) within three hundred (300) feet distance of the land in question,
 - (3) Location and identification of any and all traffic-control signs and devices within three hundred (300) feet of the proposed entrance or exit driveway,
 - (4) Location of all street lights within the area of the plot plan,
 - (5) Indication of slope or grade of all public and private ways included on the plot plan,
 - (6) Location of any bus stops, parking restrictions, driveways, railroad tracks and crossings; location of utility poles; location of sidewalks and pedestrian crosswalks and any traffic channelization,
 - (7) Identification of the land use of all adjacent parcels of land to the land in question, and
 - (8) The applicant shall request of the traffic engineer a statement as to pedestrian traffic in the area of the proposed entrance or exit driveway and also a statement of accident frequency on the public way within three hundred (300) feet of the proposed entrance or exit

driveway. This information shall be written onto the plot plan.

(Ord. No. 2-73, 1-15-73; Ord. No. 20-73, 7-16-73)

SOPO Westend



Neighborhood Association

April 28, 2016

Dear Jim Gailey and Members of
South Portland City Council:

The South Portland West End Neighborhood Association (SPWENA), representing a large number of residents, would like to express our concern over the proposed development of 600 Westbrook Street (corner of Westbrook and Wermuth Streets) by Yaz Automotive and Towing. As you may know, we, in partnership with the City, The Opportunity Alliance, and a number of local businesses and faith communities have been working over the past couple of years to revitalize this great neighborhood – to create a community where everyone who lives and works here feels proud to be a West Ender. The proposal to convert this green space into a tow lot goes directly against the vision for the neighborhood we have been working so hard to develop and implement. We are excited about the development that has started and the direction the neighborhood is moving in. We welcome new businesses coming in. And yet, we all have concerns about this particular proposal and how it will counteract so much of the work that has already taken place.

A number of us attended the Council meeting on Monday evening April 4 to speak about this topic but the agenda item was postponed to another date. We would love to be included in the process moving forward so that we may share the concerns of our neighbors, families and friends in the West End and ensure that they have a voice in throughout this process.

Sincerely,



Jennifer Lessard
On behalf of SPWENA

Enc: Signatures of
Concerned Neighbors

SO PO WEST END SUPPORT SIGNATURE SHEET

FIRST NAME LAST NAME SOPO ADDRESS PHONE Optimal

1. Jennifer Parker 593 Westbrook St 202
2. DEBORAH howell 36 Rollins way
3. Darren wecott 36 Rollins way
4. Phtolly Neang 9. Rollins way
5. Kathleen Parker 593 Westbrook St
6. Theresa Matthew 696 Westbrook St
7. Edoas Trej 18 Rollins ~~Way S. P.~~ ~~207 253 9080~~
8. max Salonen 31 Rollins way
9. Joshua Cutcho 18 Rollins way
10. Jennifer Lessard Berkeley Rd
- Chris Gorman 15 Palmer St.
11. JEANNINE DONOVAN APT B-12
20 Osprey Cir
12. Rosemary Gossam 1337
13. Shelly Cragin 2 Osprey Circle
58 Wermuth Rd
14. Zill
15. Riben Mawaba
16. Marlies Kulleher
17. Loree Mensechen
18. Shelly Mitchell 34 MacArthur St.
19. Jack Doler 36 Townhouse
20. Linda Darling 1 Osprey Cir
21. Jamie Mitchell A34
12 Powers Rd

SO PO	WEST END	SUPPORT	SIGNATURE	SHEET
FIRST NAME	LAST NAME	SOPH	ADDRESS	PHONE <i>optional</i>
1.				
2.				
3.				
4.				
5.				
6.	Tim Deboe			
7.	Deborah Teut			
8.	Paul & Dany			
9.	Quang Nguyen			
10.	Bill Metzler			
11.	Michael Smith			
12.	Marissa Friedel			
13.	Cameron Wilson			
14.	Hannah Just			
15.	Joey Farnier		593 Westbrook St.	
16.	Daniel S Panarese			
17.	Mike Shea		513 Westbrook St.	
18.	V Jake		" "	
19.	David Angotti		593 Westbrook St.	
20.				
21.				
22.				

SO PO	WEST END	SUPPORT	SIGNATURE	SHEET		
FIRST NAME	LAST NAME	SOPO	ADDRESS	PHONE		
1. Carmen ✓	Perez	✓	80 Brickhill Ave			
2. Christine	Kaiser	✓	51 Rollins way			
3. Helen	Pickson	✓	24 Rollin way			
4. Mohammed			505A # We Br. 104A			
5. Steven Petee			89 unit			
6. Dannie	KANGAMBELLA		45 Weymouth			
7. MR. Lynn A. Gurnett			80 BRICK HILL 106			
8. Lilyona	Igola		593 Westbrook str			
9. MARCIA GINETTE	Rasa RZEY		17 Rollem's way 34 Rolling way			
10. Ella	Rudin	✓	96 Deveraux P.R.			
11. Jessica	Small	✓	" "			
12. Christian	R. Simms	✓	92 Col. Kelley Rd			
13. Wiana	Vitale	✓	22 Rollins way			
14.						
15.						
16.						
17.						
18.						
19.						
20.						
21.						
22.						

SO PO	WEST END	SUPPORT	SIGNATURE	SHEET
FIRST NAME	LAST NAME	SOPO	ADDRESS	PHONE
1-	Benjamin	Kennedy	✓ 22 Cannon Rd,	
2-	Ashley	Brown	✓ 22 Cannon Rd,	
3-	Patricia	Brown	22 Cannon Rd,	
4-	FAITH	CLAXTON	220 Allen Pce	
5-	Wendy	Heyworth	12 Cannon Rd.	
6-	Jennifer	Bracer	17 Cannon Rd.	
7-	Rita m	Butler	6 Cannon rd	
8-	Thomas	Fafortas	256 Collin Kelly Ro. S-Portland	
9-	Stephen	Idubari	99 Colin Kelly road	
10-	AXCEL	MIGISHA	71 COLIN KELLY ROAD	
11-	Beth	Davis	64 Colin Kelly Rd	
12-	Dustin	Perrewitt	63 Colin KELLY RD So. Portland	
13-	VET	THACH	79 DEVEREAU CIR. S. Portland	
14-	Jessica	Keezer	51 Collin Kelly Rd	
15-	Ikram	Ali	95 Colin Kelly rd	
16-	Charles	Brown	22 Cannon Rd	
17-	David	Hamm	14 Cannon Rd	
18-	Reachie	Vann	28 Cannon Rd	
19-	MAKARA	Meng	20 Cannon Rd,	

SO PO WEST END SUPPORT SIGNATURE SHEET

FIRST LAST SOPO ADDRESS PHONE
NAME NAME

Carmen Seft
Dey Alonso

28 Matthews
4 Kenneth R

Donald Hamlin

44 MacArthur Circle
West

SO PO WEST END SUPPORT SIGNATURE SHEET

FIRST LAST SOPO ADDRESS PHONE
NAME NAME

JULIO	RODRIGUEZ	10 WAINWRIGHT	CIRCLE WEST	
JILL	RODRIGUEZ	10 WAINWRIGHT	CIRCLE WEST	
EMILIO	RODRIGUEZ	n	n	11 11
Patricia	Whittemore	90 Anthoine St.	S.P.	
Gordon	Whittemore	90 Anthoine St.	S.P.	
Susan	Whittemore	90 Anthoine St.	S.P.	

SO PO WEST END SUPPORT SIGNATURE SHEET

FIRST LAST SOPO ADDRESS PHONE
NAME NAME

Marie	Pirco	1	Townhouse Dr.	
Sabina	Currier	32	Powers Road	
Pat	Currien	32	Powers Road	
ALLEN	BINGHAM	10	LIBERTY LN	
Sody	Bingham	"	"	

SO PO

WEST END

SUPPORT

SIGNATURE

SHEET

FIRST
NAME

LAST
NAME

SOPO

ADDRESS

PHONE

Darren WELCH 36 Rollins way

DEBBIE LOWELL Southportland
36 Rollins way
Southportland
04106

SO PO

WEST END

SUPPORT SIGNATURE

SHEET

FIRST
NAME

LAST
NAME

SOPO

ADDRESS

PHONE

Becky

MORSE

94 Devereaux Circle



January 20, 2016
15461

James Gailey, City Manager
City of South Portland
25 Cottage Road
South Portland, ME 04106

Special Exception & Site Plan Application – Yaz Automotive Repair & Towing
600 Westbrook Street, Tax Map 50, Lot 74-B

Dear Jim:

Sebago Technics, Inc. is currently preparing a Special Exception & Site Plan Application for a proposed 768 square foot building containing two-stories at 600 Westbrook Street. The first floor of the building is proposed as an automotive repair facility and the second floor as an apartment. A fenced, gravel storage area is also proposed behind the building for storing vehicles associated with the applicant's automotive repair and towing business. As shown on the enclosed Existing Conditions Plan, the site is located on the corner of Westbrook Street and Wermuth Road and the only existing vehicular access is through the abutting property. As shown on the enclosed Site Plan, a new driveway is proposed to service the proposed facility from Wermuth Road.

From our conversations with City Staff and in accordance with Ordinance Section 23-37(2), we understand that a request to approve any new driveway serving a commercial use located within 200 feet of a roadway intersection must be submitted to the Public Works Director. Additionally, by Ordinance, the Director must deny this request allowing the applicant to petition the City Council for their approval consideration of the proposed driveway. Enclosed please find the denial of the proposed driveway from the Public Works Director, Doug Howard, dated January 19, 2015. We respectfully request that you review the enclosed information and to please place us on the next available Council agenda for consideration.

Thank you for your attention to this matter. If you have any questions or need additional information, please contact me.

Sincerely,

SEBAGO TECHNICS, INC.

A handwritten signature in black ink that reads "Shawn M. Frank".

Shawn M. Frank, P.E.
Senior Project Manager

SMF/llg
Enc.



Doug Howard
Director of Public Works
Phone: 207-767-7635
Fax: 207-767-7636

To: Shawn Frank, PE Senior Project Manager Sebago Technics
From: Doug Howard, Director of Public Works
Subject: Curb Cut for 600 Westbrook St.
Date: January 19, 2016

Dear Shawn,

I have reviewed the request for a curb cut for the lot at 600 Westbrook St. The curb cut is within 200 feet of an intersecting street. This does not meet the requirement of the ordinance therefore I am denying the application for the curb cut. This denial may be brought forth to the City Council for approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Doug Howard", with a long horizontal flourish extending to the right.

Doug Howard
Director of Public Works



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE
Mayor

JAMES H. GAILEY
City Manager

EMILY F. CARRINGTON
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

IN CITY COUNCIL

ORDER #126-15/16

District One
CLAUDE V. Z. MORGAN

District Two
PATRICIA A. SMITH

District Three
EBEN C. ROSE

District Four
LINDA C. COHEN

District Five
BRAD FOX

At Large
MAXINE R. BEECHER

At Large
THOMAS E. BLAKE

WHEREAS, the South Portland Code of Ordinances Sec. 23-35 provides that no curb cuts may be constructed from private property to any public way without a permit from the Director of Public Works; and

WHEREAS, Code of Ordinances Sec. 23-37(2)(b) prohibits a commercial driveway or curb cut within 200 feet from intersections; and

WHEREAS, Sebago Technics, on behalf of the Yaz Automotive Repair & Towing, has demonstrated that this limitation would result in a hardship pertaining to the proposed improvements to the Yaz Automotive Repair & Towing property.

NOW, THEREFORE, pursuant to Code of Ordinances Sec. 23-39, and based upon the showing of hardship made by Sebago Technics, on behalf of the Yaz Automotive Repair & Towing, the City Council hereby orders that Sebago Technics, on behalf of the Yaz Automotive Repair & Towing, be granted a permit to locate a curb cut on Wermuth Road in conjunction with proposed improvements to the Yaz Automotive Repair & Towing property.

Fiscal Note: Less than \$1,000

Dated: April 4, 2016



