

# TOWN OF WESTWOOD

Commonwealth of Massachusetts

Joseph E. Previtera, Chairman  
Leo J. Crowe  
Eugene E. Elmes  
Barry D. Hoffman  
John C. Masterson



Christopher Poreda  
Richard P. Thompson  
Suzanne R. Wall, Associate  
Anne T. Cadigan, Associate

## CONSERVATION COMMISSION

### MEMORANDUM

TO: Westwood Conservation Commission

FROM: Alice P. Smith

SUBJECT: DEP 338-0303 – Review Lot 2B Mill Street  
Plan: Proposed Site Plan of Land, Lot 2B Mill Street in Westwood, MA:  
Dated: March 9, 2001

DATE: April 23, 2001

---

### Executive Summary

#### *Recommendations*

The site is an interesting one from a regulatory perspective. There are several resource areas including Land Subject to Flooding, Riverfront area, 100 foot buffer to bordering vegetated wetlands, Restricted Wetlands, and 10 foot no disturb buffer. The proposal currently before the commission is for a single family residence on a small rise of land surrounded by wetlands. Access to the house is via a proposed driveway requiring a wetland crossing.

The plan and Notice of Intent filing lacks sufficient information for the Commission to be able to make a decision concerning the impacts related to this development. I have requested several modifications to the NOI and revisions to the plan submitted with the NOI. I recommend that the Commission vote to request that the applicant provide the information detailed in the Plan Review and that the public hearing be continued to a date which allows sufficient time for the applicant to make the revisions.

## **Plan Review**

The plan does not show either the 100' buffer to BVW or the 10' no disturb buffer around any wetlands, streams, etc.

The driveway access requires a wetland crossing. No information is provided in the NOI filing to address the 10' no disturb issues.

The plan indicates that the proposed utilities are brought to the house via a right of way on the adjacent lot. The Notice of Intent does not indicate that work is proposed on another map and parcel. This may influence the abutter list and subsequently the proper notification of abutters for a public hearing.

The proposed utilities and work in the driveway require a stream crossing of Mill Brook. No detail is provided as to how the stream crossing is to be undertaken. No detail is provided concerning the work required to install the utilities, (i.e. trenching, bedding to be used, size and type of pipe, ground water elevations, plans for dewatering etc.)

Flood Control and Storm Damage Prevention: This site is extremely susceptible to flooding. The proposed house is on a very small island and the foundation takes up most of the square footage of the land above the 100 year floodplain. The basement may be below the annual high groundwater elevation. I have asked the engineer to provide a soil profile at the location of the proposed house.

This should give the Commission some indication of the annual high groundwater elevation

*NOTIFICATION of Abutters  
NCT filed under*

### ***Wetland Delineation***

I conducted a review of the wetland flagging on April 10, 2001. The site was not flagged. The applicant's representative was notified immediately after my site visit and again on April 23, 2001. To date nothing has been done to address the flagging situation and the wetlands cannot be verified until the flags are in the field.

### ***Restricted Wetlands***

**310 CMR 10.53(2) General Provisions:** provides that "When the site of a proposed project is subject to a Restriction Order which has been duly recorded under the provisions of M.G.L. c. 131 §40A, such a project shall conform to both the provisions contained in that Order and 310 CMR 10.51 thru 10.60."

On April 24, 1974 the State recorded a Restriction Order on several wetlands in the Town of Westwood (See Book 5033, Page 256 at the Norfolk Registry of Deeds). The Order Under M.G.L. c. 131 § 40A regulates and restricts the inland wetlands for the purpose of preserving flood plain areas, water resources, wildlife, etc. Under the Restriction Order, few uses are permitted on land affected by the order. With respect to roadways to be constructed after 1974, the Order permits only

"the construction and maintenance of a driveway of minimum legal and practical width where alternative means of access from a public way to unrestricted land of the same owner is unavailable."

Little written information concerning the minimum legal and practical width of a private driveway is available. However, the Town Engineer has indicated that the minimum legal and practical width of a private driveway is 12 feet. Typically, driveways run 12 to 14 feet. This is distinct from the minimum width of 18 feet for a *fire lane* as described by Chief Scoble defined.

Lot 2B contains Restricted Wetland #44 on site. A copy of the Order is attached to this report. The plan does not reflect the location of the Restricted Wetland. The NOI page 5 of 8, question number 3 asks whether there are restricted wetlands on the site. The applicant has answered that no to this question. This needs to be changed to reflect the existence of restricted wetlands on the site. I have asked the engineer for a copy of the plan filed at the registry of deeds showing the restricted wetland. I have also asked the engineer to revise the plan and provide an overlay of the restricted wetland boundary on the wetlands as they are flagged in the field.

#### *Riverfront Area*

A large portion of the lot is in riverfront area. Riverfront area regulations, like regulations related to limited status projects, require the commission to investigate reasonable, equivalent alternatives that minimize impacts to the resource areas. The alternative of using the 20' wide driveway and utilities easement as the driveway access to the house presents a design that significantly reduces the impacts to *all* resource areas.

**310 CMR 10.58(3) Riverfront Area: Presumption**. states that where a proposed activity involves work within the riverfront area, the Commission *shall* presume that the riverfront area is significant to protect the interests under the Act. “This presumption is rebuttable and may be overcome by a clear showing that the riverfront area does not play a role in the protection of one or more of these interests.”

This is the first thing that needs to be decided in reviewing projects within the riverfront area. Has the applicant proven that the riverfront area does not play a role in the protection of the interests stated M.G.L. c. 131, § 40 and 310 CMR 10.58(3)?

If the answer is yes, then the Commission is charged with writing an Order of Conditions in which the grounds for its determination are documented. If the answer is no, then the commission must proceed through the performance standards to find a substantially equivalent economic alternative to the proposed work that minimizes impacts to the resource areas.

**310 CMR 10.58(4) Riverfront Area: General Performance Standard**. Where the presumption is not overcome, the applicant is required to prove that “there are no practicable and substantially equivalent economic alternatives to the proposed project with less adverse effects on the interests identified in M.G.L. c. 131 §40 and that the work, including proposed mitigation, will have no significant adverse impact on the riverfront area to protect the interests identified in” the Act.

***Westwood Wetland Protection Bylaw, Article 18, 10 Foot No Disturb Buffer***

Members of the Commission are urged to re/read Article 18, Section 2, 3, (paragraph 3) and section 8k concerning the 10' no disturb zone as it applies to this filing. The Commission will need a vote to issue a decision on work in the buffer.

The applicant has not provided information showing how the work proposed in the 10 foot buffer will "materially benefit" the wetland as required by Article 18, section 8k. The applicant has yet to present information to overcome the presumption under Article 18, section 3, paragraph 3 that work within the no disturb zone will alter the wetland.

***Comments***

The Commission may wish to request that the applicant continue the public hearing until the requested information is provided and the plans are revised.

