

Denied Plans:

**PROPOSED SITE PLAN OF LAND LOT 2B – MILL STREET WESTWOOD,
MASSACHUSETTS sheets 1 - 3**

Date: November 2, 2018 rev. July 3, 2021

Hearing closed: November 10, 2021

Date Issued: November 18, 2021

FINDINGS:

The Commission has reviewed the Notice of Intent plans and has held three public hearing on the project with 16 continuances (not continued to consecutive meetings). On March 10, 2021 the applicant was required to re-notify the abutters due to the number of requested continuations. Based on the information available, the Commission has determined that the area on which the proposed work is to be done is significant to the following values set forth in Massachusetts Wetland Protection Act and Westwood Wetlands Protection Bylaw, chapter 392:

<input checked="" type="checkbox"/> Public water supply	<input checked="" type="checkbox"/> Flood control	<input type="checkbox"/> Fisheries
<input checked="" type="checkbox"/> Private water supply	<input checked="" type="checkbox"/> Storm damage prevention	<input checked="" type="checkbox"/> Wildlife habitat
<input checked="" type="checkbox"/> Groundwater supply and quality	<input checked="" type="checkbox"/> Prevention of pollution	<input checked="" type="checkbox"/> Erosion and sediment control

Furthermore, this Commission finds that the project is denied and that:

1. The Applicant (Ms. Joanne Delapa) has proposed to construct a single family dwelling and appurtenant structures on the Applicant's +/- 4-acre lot at 42 Mill Street, Westwood, MA. The Applicant has characterized the lot as a "forested lot that is undeveloped" and has described the dwelling to be constructed thereon as a single family home.
2. The +/- 4-acre lot on which the Applicant proposes construction contains Bordering Vegetated Wetland, Bank of Pond, Riverfront Area and Bordering Land Subject to Flooding. The lot is currently completely undeveloped. The area in which the Applicant proposes to construct the principal dwelling is in the front portion of the lot. Most of the house, driveway and clearing are proposed to be constructed within the inner riparian zone. A shared common driveway located on the adjacent property will serve as the primary access to the proposed residence with an individual driveway constructed off of that right of way to service the proposed residence, which is required to access the property. Filling of 550 sq. ft. of wetland is required to construct the individual driveway. The applicant is proposing 700 sq. ft. of replication, which is proposed immediately adjacent to the crossing causing most of the driveway construction within the 10 foot no disturb zone. Directional drilling is proposed along the south side of the driveway to supply the residence with water and sewer. An existing deed agreement prevents the applicant from installing these utilities within the easement. This work is proposed within the wetland and the 10 foot no disturb zone. In total the project would irrevocably alter, by means of occupation of portions of the house, driveway and clearing approximately 26,638 square feet of resource area of which 1,836 is within the 10-foot no-disturb zone.
3. On November 10, 2014 the applicant submitted an Abbreviated Notice of Resource Area Delineation, DEP file #338-0594. The application was reviewed by Brian Donahoe of Goldman Environmental. (See SUMMARY REPORT OF WETLAND EVALUATION & REQUEST

FOR DETERMINATION OF APPLICABILITY 42 MILL STREET, WESTWOOD MASSACHUSETTS dated January 27, 2016. (Attachment A)) In this report Mr. Donahoe sites several inaccuracies with the delineation of the property. On October 28, 2015 the Westwood Conservation Commission denied the Order of Resource Area Delineation on the basis of "inaccurate delineation and incorrect stream determination. The applicant appealed this decision to the Department of Environmental Protection (DEP). On August 25, 2016, DEP issued a Superseding Order of Resource Area Delineation. Within this Order, DEP states the following regarding the impoundment on the property (See Attachment B):

"It is also MassDEP's contention that the impoundment at 42 Mill Street is a run-of-the-river impoundment and has primarily riverine characteristics based on its extremely shallow depth (estimated average depth of about 2 feet), small impoundment size compared with its watershed (341 times smaller than the watershed), the short distance between the brook inlet and the dam outlet (approximately 400 feet) which effectively short-circuits the impoundment; and the 1941 USGS quad shows a channel through a wetland area with no impoundment on the site. Therefore, it is MassDEP's opinion that the impoundment is subject to the riverfront regulations at 310 CMR 10.58."

The plan submitted by the applicant (PROPOSED SITE PLAN OF LAND LOT 2B- MILL STREET WESTWOOD, MASSACHUSETTS dated November 2, 2018, revised March 10 2021 does not reflect this determination from DEP (which was not contested or challenged by the applicant). Applying DEP's determination to this plan, much of the development is within the 100-foot inner riparian zone and all of the proposed development is within the 200-foot Riverfront Area. (See Attachment C and D)

4. See attached letter from Kerry Snyder of Neponset River Water shed Association, in which she states that Mill Brook is identified by the Division of Fisheries and Wildlife and therefore, is a critical area for preservation. Ms. Snyder states she has several concerns with the project including the possible significant impact to Mill Brook, the sewer line impacts and environmental and public safety hazards regarding floodplain. (See Attachment E)

5. The Westwood Planning Board agent has given the following comment to the work required on the shared driveway:

The Westwood Town Planner indicated that a Definitive Subdivision was granted in 1969 by the Planning Board but the road and subdivision was never constructed. To develop this lot a new Definitive Subdivision Approval and Shared Driveway Special Permit from the Planning Board is required. However, the Planning Board's Subdivision Regulations were updated in 2016 to include Section 4.4.7 that says no new ways can be created closer than 40 ft. to any lot line of any lot situated outside the subdivision. This lot cannot meet this requirement due to its shape which narrows where it meets Mill Street. (See Attachment F)

7. This property is currently classified as "unbuildable" and assessed at a value of \$16,000.00 by the Westwood Assessor's Office due to the wetlands on the site, and has been since its purchase for \$1.00 in April of 2020. (See Attachment G and H)

6. This project was formally heard at the July 8, 2020, October 28, 2020, March 24, 2021, May 5, 2021 and November 10, 2021 Westwood Conservation Commission meetings. The applicant's representatives, Tim McQuire of Goddard Consulting, LLC was present.

Presentations were made by Mr. McQuire. During the course of the hearing, the primary focus of discussion was the amount of impact to the resource area. The Commission believes the extensive work within the resource area will have a direct impact on the surrounding resource areas. Also discussed were the replication area, the directional drilling, the driveway and the infiltration system. The proposed location of the replication area is a mature wooded area. The Commission believes the infiltration systems may not be effective given the high ground water throughout the site. The Applicant requested that the Commission consider hiring a second peer review consultant to review the project, but the Commission felt this would not change these conclusions, and would therefore be a waste of money for the applicant, and the time of the Commission.

CONCLUSIONS:

Based upon the foregoing findings, the Commission reaches the following conclusions:

1. The Commission has determined that the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations, specifically 310 CMR 10.55 and 310 CMR 10.58. Therefore, work on this project may not go forward unless or until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. The Commission believes the proposed plan is too aggressive and will cause direct impact to the surrounding wetland, buffer zone and wildlife habitat. The Westwood Wetland Bylaw requires, at a minimum, a ten foot continuous naturally vegetated buffer strip within the Upland Buffer Zone Resource Area with the aim of minimizing adverse impact to the Resource Area.
2. The Commission concludes the proposed wetlands replication area, standing alone, is not a sufficient basis to permit the proposed alteration and occupation of 550 square feet of wetlands and 26,638 sq. ft. of Resource Area, including portions within 10 and also 35 feet, which receive special protection and consideration under the Town's wetlands by-law. The Commission concludes that replication can appropriately serve in mitigation of wetland impacts that are otherwise being authorized for good and sufficient reasons, however there is always a risk that replication will not be successful and there will be a loss of wetland area and function. In this case the Applicant's proposed replication plans appear to be acceptable mitigation for impacts within the wetland and buffer zone, were the Commission to conclude that such wetland alteration was absolutely necessary in the first place in order to permit a fully described and evaluated activity and to avoid hardship to an applicant that would otherwise be prevented from undertaking such activity. The owner and previous owners have received an very low assessment from the Westwood Assessor's Office due to wetland on this lot. Accordingly, the subject application is denied under both the authority of the Wetlands Protection Act and under the Westwood Wetlands By-law.

NOTE: The Westwood Conservation Commission has denied this project, however the STANDARD CONDITIONS below have been included. In the event there is a Superceding Order issued by the Department of Environmental Protection we would like the following conditions to be considered.

STANDARD CONDITIONS

1. This Order of Conditions applies to the applicant, the owner of the lot described in the Notice of Intent, and the successors and assigns of each. The Conservation Commission shall be notified in writing of any transfer in title to the Land or any change in contractor or developers before the Certificate of Compliance is issued. The notice shall include the name, address, and telephone numbers of the new owner or new contractor or developer, as well as a statement made under the penalties of perjury that the new owner or new contractor or developer has been provided with a copy of this order.
2. This Order shall be included in all construction contracts with contractors and subcontractors dealing with the work proposed and shall supersede all conflicting contract requirements.
3. A copy of this Order of Conditions and applicable plans shall be provided to each company doing work on the site and shall be available on the site at all times during construction.
4. Members of the Westwood Conservation Commission, and/or their designated representatives, shall, at reasonable times, have the right to enter upon and inspect the premises to evaluate compliance with this Order of Conditions.
5. The Applicant or owner shall be liable for any non-compliance with the Conditions of this Order or with any Condition that may survive the issuance of a Certificate of Compliance. The Conservation Commission may assess appropriate penalties for non-compliance with the Order and surviving conditions. This may include a \$300.00 per violation/per day non-criminal penalty issued under the Westwood Wetlands Protection Bylaw, Article 18.
6. A foundation plan shall be submitted **prior** to the start of framing activities on any structure. The plan shall include the location of the resource areas and show the distance between the foundation and the resource areas on site.

Pre-Construction Requirements

7. All work shall conform to the plans referenced above, specifications, and special conditions defined in this Order of Conditions.
8. No work shall commence on site until the following conditions are met.
 - a) All appeal periods have elapsed.
 - b) The applicant records the approved plan and the Order of Conditions at the Registry of Deeds and provides a copy of the recorded plan and Order of Conditions, stamped by the Norfolk County Registry of Deeds to the Conservation Commission.
 - c) The D.E.P. sign is to be placed in a visible location on the site in accordance with State General Condition 10 and remain visible until the Commission issues a Certificate of Compliance. The sign shall be weather proof, no less than Two square feet or greater than Three square feet in size with language as described in Condition. The sign shall be mounted on a wooden or metal post acceptable to the commission.

- d) The Applicant informs the Conservation Commission, in writing, of the names, addresses, and business telephone numbers of each person responsible for supervising the project and for onsite compliance with this Order and his/her alternate.
- e) The Applicant installs erosion control measures at the locations shown on the plan referenced in the Order of Conditions or as directed by the Agent in the field. Only vegetation directly in the path of the erosion control works shall be removed at this time.
- f) Where silt fence and hay bales are used as erosion control measures, the placement of hay bales upon the silt fence flap as a method of backfill or entrenchment is not acceptable. Fifteen covered hay bales shall be kept in reserve on site at all times.
- g) A limit of work line shall be staked in the field by means of a four-foot high fluorescent orange snow fencing supported eight foot on center with standard weight metal agricultural fence posts. The limit of work shall be placed immediately to the rear of the hay bale check dam as indicated on the approved plan or as may be determined by the Commission or their agent in the field. Workers shall be informed that no construction activity beyond that conditioned herein is to occur beyond this line at any time.
- h) The Applicant shall notify the Conservation Commission **in writing** of the Applicant's desire to have the erosion control works and limit of work flagging inspected by the Commission or their Agent.
- i) The applicant shall receive **written approval** of the erosion control installation from the Commission or their Agent.
- j) The applicant shall arrange a pre-construction meeting between the applicant, the General Contractor's site superintendent, and the Conservation Commission. The purpose of this meeting is to review all aspects of the Order, in detail. The Project Supervisor in charge of day-to-day operations on site shall read and sign each page of a copy of the recorded Order. The purpose of this exercise is to insure that each and every Condition has been read and is understood. Questions relative to the meaning or intent of any Condition shall be clarified during the pre-construction meeting.
- k) The applicant shall post an assurance bond by submitting a check to the Conservation Commission made out to the Town of Westwood, in the amount of \$1,000.00. The purpose of the bond is to ensure that the Certificate of Compliance is issued prior to the expiration date of the Order of Conditions. The funds are returned to the applicant when the Certificate is issued. In the event that a Certificate of Compliance is not issued in the prescribed time, the Commission may use the funds to complete the unfinished work.

Only after the Applicant has satisfied the procedural requirements above shall the Applicant be allowed to begin construction.

Erosion Control and Pollution Prevention Measures

9. All erosion control measures shall be maintained in good condition at all times. Deteriorated erosion control measures shall be replaced as required, to maintain effectiveness for sediment interception. The Conservation Commission or their agent reserve the right to require additional erosion and/or damage prevention control at any time they are deemed appropriate. **At no time shall any sediment be deposited in the wetland.**
10. During all phases of construction, disturbed or exposed soil surfaces shall be brought to final finished grade and immediately stabilized. Bare ground that cannot be permanently stabilized within 30 days shall be loamed and seeded or stabilized with mulch.
11. Standard Condition 6 of the State General Order of Conditions relating to the use of clean fill is modified to prohibit the presence of asphalt in any fill used on site.
12. No erosion control measures shall be removed until such removal is allowed by the Commission, or their agent, in writing, or if a Certificate of Compliance issues for the work conditioned herein, whichever comes first.
13. Dewatering of excavation shall be accomplished in the manner described by the attached sedimentation basin design to preclude the discharge of turbid water or sediment into any wetland or undisturbed buffer. The Commission and /or their Agent **must** inspect the sedimentation basin prior to use on site to insure compliance with this condition.
14. There shall be no stockpiling of soil, erodible materials and other debris within 50 feet of any Resource Area without the permission of the Conservation Commission.
15. No materials excavated from any area on the site shall be dumped into any Resource Area or Buffer Zone thereto.
16. During construction of the project, there shall be no discharge of fuel, oil, or other pollutants onto any part of the site. The Applicant shall take all reasonable precautions to prevent the release of pollutants by ignorance, accident, or vandalism. In the event there is a spill on the site, the Applicant shall immediately notify the Conservation Commission and the Board of Health.
17. Equipment fuel storage and refueling operations shall be situated in an upland area at a horizontal distance greater than 100 feet from the boundaries of the wetlands.

Changes in Plans

18. Changes to the approved plans require formal action by the Conservation Commission allowing the change. The Applicant must submit a written request for the Commission to amend the Order of Conditions and a revised plan outlining the changes. If the Commission determines by a majority vote that the changes are significant, the Commission may require a new public hearing, at the expense of the Applicant, to amend the Order of Conditions, or if necessary, issue a new Order.

Denial

19. No work involving the change(s) shall be done until a new or amended Order of Conditions has been issued and all appeal periods have expired. It is the responsibility of the Applicant to make sure that all changes accepted by, or required by, the Conservation Commission are reflected in the plans held by other Town departments.
20. Errors found in the plans or information submitted to other Boards or Departments in the Town of Westwood by the Applicant that differs from the plan of record for this Order shall be considered changes and the above procedures shall be followed.
21. Modifications to the plan of record for this Order required by any Town of Westwood Board or Department shall be considered changes and procedures outlined for changes shall be followed.
22. Plans submitted to any Town of Westwood Board or Town Department for work on this site that differ from the plan of record for this Order shall be considered changes and the procedures outlined for changes shall be followed.

Requirements for a Certificate of Compliance

23. Upon completion of work covered by this Order, the Applicant shall request in writing that a Certificate of Compliance be issued. The written request shall be accompanied by a statement from a Professional Engineer registered in the State of Massachusetts that all work allowed or required by this Order has been satisfactorily completed. Such request shall also be accompanied by an as-built plan prepared, stamped and signed, by a registered P.E. and Land Surveyor
24. A Certificate of Compliance will not be issued for *new* housing construction until the prospective lot buyer signs and delivers a statement to the Conservation Commission indicating that they are aware that:
 - a. They have received a copy of the approved plans.
 - b. The Commission has determined that the lot contains wetlands.
 - c. Modifications or changes to the approved plan may require a new Notice of Intent.
 - d. An Article 18 Order of Conditions exists upon the property and that certain Conditions, forever binding upon the lot, will survive the issuance of the Certificate of Compliance.
 - e. That the buyer/owner of the property is responsible for compliance with all conditions that survive the issuance of a Certificate of Compliance.
 - f. The buyer/owner is liable for non-compliance with any continuing conditions and may be assessed appropriate penalties by the Conservation Commission, as applicable.
 - g. There is a no disturbance setback surrounding the wetlands on site for future planning.
 - h. Dumping grass clippings, brush, leaves or other yard waste into the resource areas or the no disturb buffer will alter the resource area and shall be considered a violation of the Wetlands Protection Act and the local bylaw.

Continuing Conditions

25. As a continuing order of these conditions, even after a Certificate of Compliance is issued, no activity is permitted within the no-disturb buffer to the existing wetland including, but not limited to, the removal or cutting of vegetation.
26. As a continuing order of these conditions, if within two (2) years from the issuance of a Certificate of Compliance, erosion is evident on any slopes mitigating measures satisfactory to the Westwood Conservation Commission shall be taken.
27. As a continuing order of these conditions, even after a Certificate of Compliance is issued, no by-products of landscaping may be placed within the no disturbance buffer zone, in the wetland area or flood plain.

Site Specific Conditions for 42 Mill Street:

1. Compost sock or similar (straw wattles are NOT to be used unless approved by the Commission) and orange construction fence are to be installed and inspected prior to start of work.
2. All paved surfaces associated with this project must be kept clean at all times. All silt and debris should be swept up at the end of each work day throughout the duration of the project.
3. Organic fertilizer must be used on the lawn in perpetuity.
4. The first phase of invasive plant removal shall be performed prior to start of construction, then at least twice a year for three years. After the first phase of removal has been completed the area shall be either seeded with an approved seed mix, or revegetated with approved plants and covered with 3 inches of shredded bark mulch, to minimize the regrowth of the invasive plants. A monitoring report must be submitted to the Commission twice a year (before June 1 and November 1) describing the health of the new plantings and the status of the invasive removal plan.