

**MINUTES
WESTPORT CONSERVATION COMMISSION
MAY 16, 2018**

The May 16, 2018 of the Westport Conservation Commission was called to order at 7:00 p.m. in the Auditorium of the Westport Town Hall.

ATTENDANCE

Commission Members:

Pat Shea, Esq., Chair
Anna Rycenga, Vice-Chair
Paul Davis, Secretary
Donald Bancroft
Robert Corroon
Paul Lobdell, Alternate
Mark Perlman

Staff Members:

Alicia Mozian, Conservation Department Director
Lynne Krynicky, Conservation Analyst
Pete Gelderman, Atty., Town Atty.'s Office

This is to certify that these minutes and resolutions were filed with the Westport Town Clerk within 7 days of the May 16, 2018 Public Hearing of the Westport Conservation Commission pursuant to Section 1-225 of the Freedom of Information Act.

Alicia Mozian
Conservation Department Director

Findings
Application # AA, WPL 10586-18
7 Belaire Drive

1. **Receipt Date:** **April 18, 2018**
2. **Application Classification:** **Declaratory**
3. **Application Request:** The applicant proposes to construct a new six-bedroom residence with a septic system, drainage appurtenances and a new circular drive. The pool and patio as shown on the site plan are not part of this application review.

The total impervious surface proposed is 8,312 s.f.

All site improvements are outside the IWW upland review areas. Portions of the work are within the WPLO of Indian Creek.

Proposed activities occur within the 25-year flood plain boundary and within the 100-year flood plain boundary.

4. **Plans Reviewed:**
 - a. "Site Development Plan, 7 Belaire Drive, Westport, CT, Prepared for Doug & Liz Pardon", Scale: 1"= 20', dated January 16, 2018 and last revised to March 23, 2018, prepared by Kousidis Engineering, LLC
 - b. "Zoning Map of Property Prepared for Doug & Liz Pardon, 7 Belaire Drive, Westport, CT", Scale: 1" = 20', dated October 3, 2017, prepared by Dennis A. Deilus- Land Surveyors
 - c. Architectural Plans entitled: "Belaire Residence, 7 Belaire: Westport, CT" (& sheets) dated February 22, 2018, prepared by Kathleen Poirier Architects, LLC
5. **Permits/Applications filed:** No previous permits issued for this property
6. **WPLO** - Waterway Protection Line is located 15' from the twenty-five year flood line associated with Indian River.
7. **IWW Defined Resource (wetland or watercourse)**
Wetlands and Watercourses occur on the subject property. The wetlands on site were flagged by Scott Stevens of Soil Science and Environmental Services, Inc. on August 21, 2017. No tidal wetlands were found on the parcel. Off-site wetlands exist just west/southwest of Belaire Drive.
8. **Wetland Soils**

Raypol silt loam (Rb): This soil type is nearly level, poorly drained soil found in depressions, on plains and terraces. Included in this unit are small areas of moderately well drained Ninigret soils, poorly drained Walpole soils, and very poorly drained Saco and Scarborough soils. The Raypol soil has a seasonal high water table at a depth of 6 inches from fall until late spring. The permeability of the soil is moderate in the surface layer and subsoil, and rapid or very rapid in the substratum. Runoff is slow, and available water capacity is moderate. The soil dries and warms up slowly in spring. Most areas of this soil type are wooded. The seasonal high water table and rapid permeability in the substratum limit this soil for community development. Groundwater pollution is a hazard in areas used for on-site septic systems. Excavations in the soil area commonly filled with water, and many areas do not have drainage outlets. Quickly establishing plant cover and using siltation basins help to control erosion and sedimentation during construction. The soil is poorly suited for trees due to the high water table which restricts root growth. As a result, many trees are uprooted during windy periods.

Scarboro muck (Histic Humaquepts)- This is a deep, very poorly drained soil with a thin mucky surface that is underlain by sandy and gravelly, glacial outwash. The outwash was derived from schist, gneiss and granite. Outwash soils occur in valleys, outwash plains and terraces.
9. **Non-Wetland Soils**

Agawam fine sandy loam (Afb): This gently sloping, well drained soil is on plains and terraces in stream valleys.
Runoff is medium, and available water capacity is moderate. The soil dries out and warms up early in spring. Most Areas of this soil is used for community and industrial development, and a few are used for corn, vegetable, and nursery crops. Some small scattered areas are wooded. **The rapid**

permeability of the soil causes a hazard of ground-water pollution in areas used for on-site septic systems. The soil is unstable and thus is limited for excavations. Quickly establishing plant cover, mulching, and using siltation basins help to control erosion and sedimentation during construction. The soil is well suited to cultivated crops and trees. The hazard of erosion is moderate.

Udorthents, smoothed (UD): This unit consists of areas that have been altered by cutting or filling. The areas are commonly rectangular and mostly range from 5 to 100 acres. Slopes are mainly 0 to 25 percent. The materials in these areas are mostly loamy, and in the filled areas it is more than 20 inches thick. Some of the filled areas are on floodplains, in tidal marshes, and on areas of poorly drained and very poorly drained soils. Included in this unit in mapping are small areas of soils that have not been cut or filled. Also included are a few larger urbanized areas and a few small areas containing material such as logs, tree stumps, concrete, and industrial waste. A few areas have exposed bedrock. Included areas make up about 30 percent of this map unit. The properties and characteristic of this unit are variable, and the unit requires on-site soil investigation and evaluation for most uses.

Ninigret and Tisbury soils (Aquic Dystrudepts)- These are deep, moderately well drained, friable, coarse-loamy and loamy textured soils that developed over sandy and gravelly, glacial outwash derived from schist, gneiss and granite.

Udorthents, smoothed This is a well drained to moderately well drained soil area that has had two or more feet of the original soil surface altered by filling, excavation or grading activities. Udorthents, smoothed soils commonly occur on leveled land and fill landforms.

10. Property Description and Facts Relative to the Application

The Westport Wetlands Inventory, prepared by Flaherty Giavara Associates, P.C., dated June 1983 describes this wetland as a "streamside, floodplain, shrub and wooded swamp." This wetland is part of the floodplain that is adjacent to New Creek. The general description is a wooded swamp with a pocket of shrub swamp.

1. The 100 year floodplain AE 13.0 as designated by FEMA occurs on this parcel.
2. The WPLO boundary is 15' from 9' contour.
3. IWW defined resource occurring on this property is wetland/wooded swamp complex.
4. Property does not exist within the Aquifer Protection Overlay Zone.
5. Property does not occur within an aquifer recharge area.
6. Property does not exist within the Coastal Areas Management Zone.
7. Health Department approved a plan for a new six bedroom residence on April 3, 2018.
8. The tax assessor card indicates a home was originally built on this parcel in 1907. A demolition permit was issued in January of 2018.
9. There are 3,211 s.f. of wetlands on the subject property located in the southeast corner.

11. Vegetation Description

The property mainly supports perimeter trees on the eastern part of the property. The wetlands remain vegetated.

Conformance to Section 6 of the Inland Wetlands and Watercourses Regulations

12. 6.1 GENERAL STANDARD

- a) disturbance and pollution are minimized;
- b) minimize height, width, length of structures are limited to the minimum; dimension to accomplish the intended function;
- c) loss of fish, other beneficial organisms, wildlife and vegetation are prevented;
- d) potable fresh water supplies are protected from dangers of drought, overdraft, pollution, misuse and mismanagement;
- e) maintain conservation, economic, recreational and aesthetic qualities;
- f) consider historical sites

The Commission finds all site development will take place outside the IWW upland review areas and in the same general location as the existing dwelling was located since 1907. Vegetation removal will be necessary to install the new code compliant septic system as approved by the Health Department.

13. 6.2 WATER QUALITY

- a) flushing rates, freshwater sources, existing basin characteristics and channel contours will not be adversely altered;
- b) water stagnation will neither be contributed nor caused;
- c) water pollution will not affect fauna, flora, physical or chemical nature of a regulated area, or the propagation and habitats of fish and wildlife, will not result;
- d) pollution of groundwater or a significant aquifer will not result (*groundwater recharge area or Aquifer Protection Overlay Zone*);
- e) all applicable state and local health codes shall be met;
- f) water quality will be maintained or improved in accordance with the standards set by federal, state, and local authority including section 25-54(e) of the Connecticut General Statutes
- g) prevents pollution of surface water

A new code compliant septic system will be installed. The Commission finds the grading for the development appears minimal and therefore the surface runoff patterns to the wetlands will remain relatively unchanged.

A 20' non-disturbance buffer will be established on the property through the use of demarcating the non-disturbance line with large boulders.

All mechanicals will be FEMA compliant and above the 100 year floodplain elevation.

14. 6.3 EROSION AND SEDIMENT

- a) temporary erosion control measures shall be utilized during construction and for the stabilization period following construction;
- b) permanent erosion control measures shall be utilized using nonstructural alternatives whenever possible and structural alternatives when avoidable;
- c) existing circulation patterns, water velocity, or exposure to storm and flood conditions shall not be adversely altered;
- d) formation of deposits harmful to aquatic life and or wetlands habitat will not occur;
- e) applicable state, federal and local guidelines shall be met.

The Commission finds the applicant has provided silt fence around the exterior limits of disturbance as the erosion and sediment controls for this project. Site grading and grade change are both minimal and will provide adequate protection.

15. 6.4 NATURAL HABITAT STANDARDS

- a) critical habitats areas,
- b) the existing biological productivity of any Wetland and Watercourse shall be maintained or improved;
- c) breeding, nesting and or feeding habitats of wildlife will not be significantly altered;
- d) movements and lifestyles of fish and wildlife (plant and aquatic life) will not be significantly affected;
- e) periods of seasonal fish runs and bird migrations shall not be impeded;
- f) conservation or open space easements will be deeded whenever appropriate to protect these natural habitats.

The proposed residential alterations are to be within the existing lawn area. The Commission finds the construction activity proposed will not impact the existing species or habitat area. It is likely that

mammals such as deer, raccoons, squirrels, and some bird species will remain and contribute to the suburban species that exist in residential neighborhoods.

16. 6.5 DISCHARGE AND RUNOFF

- a) the potential for flood damage on adjacent or adjoining properties will not be increased;
- b) the velocity or volume of flood waters both into and out of Wetlands and Watercourses will not be adversely altered;
- c) the capacity of any wetland or watercourse to transmit or absorb flood waters will not be significantly reduced;
- d) flooding upstream or downstream of the location site will not be significantly increased;
- e) the activity is acceptable to the Flood & Erosion Control Board and or the Town Engineer of the municipality of Westport

The existing residence did not provide for any stormwater mitigation. The applicant is proposing a subsurface infiltration system that will handle the increase runoff and infiltrate the runoff from a 25 year storm even while also providing water quality treatment for the first inch of runoff.

The Commission finds biofiltration from the driveway runoff will be provided, or the driveway should be pervious.

The Flood and Erosion Control Board approved this project subject to Conditions on May 2, 2018.

17. 6.6 RECREATIONAL AND PUBLIC USES

- a) access to and use of public recreational and open space facilities, both existing and planned, will not be prevented;
- b) navigable channels and or small craft navigation will not be obstructed;
- c) open space, recreational or other easements will be deeded whenever appropriate to protect these existing or potential recreational or public uses;
- d) wetlands and watercourses held in public trust will not be adversely affected.

The Commission finds the current application will have no significant impact on recreational and public uses.

18. Waterway Protection Line Ordinance

Section 30-93 of the WPLO ordinance states the following: An applicant shall submit information to the Conservation Commission showing that such activity will not cause water pollution, erosion and or environmentally related hazards to life and property and will not have an adverse impact on the preservation of the natural resources and ecosystems of the waterway, including but not limited to, impact on ground and surface waters, aquifers, plant and aquatic life, nutrient exchange and supply, thermal energy flow, natural pollution filtration and decomposition, habitat diversity, viability and productivity and the natural rates and processes of erosion and sedimentation.

The Waterway Protection Line boundary exists 15' from the 25 year floodplain. The Flood & Erosion Control Board approved this application on May 2, 2018.

The proposed residence will be FEMA compliant.

Provided proper erosion controls are used during construction activity, bioretention is utilized for impervious surfaces and FEMA compliance is met, the Commission finds that this application does not significantly impact natural resources as they are protected by the Waterway Protection Line Ordinance.

Conservation Commission
TOWN OF WESTPORT
Conditions of Approval
Application # AA, WPL 10586-18
Street Address: 7 Belaire Drive
Assessor's: Map A04 Lot 03
Date of Resolution: May 16, 2018

Project Description: Construction of a new dwelling and associated site appurtenances. Work is outside the IWW upland review areas but a portion of the work is within the WPLO of the Saugatuck River .

Owner of Record: 7 Belaire Drive LLC

Applicant: Chris O'Dell

In accordance with Section 6 of the *Regulations for the Protection and Preservation of Wetlands and Watercourses of Westport* and Section 30-93 of the *Waterway Protection Line Ordinance* and on the basis of the evidence of record, the Conservation Commission resolves to **APPROVE** Application #**AA, WPL 10586-18** with the following conditions:

1. Completion of the regulated activity shall be within FIVE (5) years following the date of approval. Any application to renew a permit shall be granted upon request of the permit holder unless the Commission finds there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued provided no permit may be valid for more than TEN (10) years.
2. Permits are not transferable without the prior written consent of the Conservation Commission.
3. It is the responsibility of the applicant to obtain any other assent, permit or license required by law or regulation of the Government of the United States, State of Connecticut, or of any political subdivision thereof.
4. If an activity also requires zoning or subdivision approval, special permit or special exception under section 8.3(g), 8-3c, or 8-26 of the Connecticut General Statutes, no work pursuant to the wetland permit shall commence until such approval is obtained.
5. If an approval or permit is granted by another Agency and contains conditions affecting wetlands and/or watercourses, the applicant must resubmit the application for further consideration by the Commission for a decision before work on the activity is to take place.
6. The Conservation Department shall be notified at least forty-eight (48) hours in advance of the initiation of the regulated activity for inspection of the erosion and sediment controls.
7. All activities for the prevention of erosion, such as silt fences and hay bales shall be under the direct supervision of the site contractor who shall employ the best management practices to control storm water discharges and to prevent erosion and sedimentation to otherwise prevent pollution, impairment, or destruction of wetlands or watercourses. Erosion controls are to be inspected by the applicant or agent weekly and after rains and all deficiencies must be remediated with twenty-four hours of finding them.
8. The applicant shall take all necessary steps to control storm water discharges to prevent erosion and sedimentation, and to otherwise prevent pollution of wetlands and watercourse.
9. Organic Landscaping practices are recommended as described by the Northeast Organic Farming Association.
10. All plants proposed in regulated areas must be non-invasive and native to North America.
11. Trees to remain are to be protected with tree protection fencing prior to construction commencement.
12. The bottom of all storm water retention structures shall be placed no less than 1 foot above seasonal high groundwater elevation.
13. The applicant shall immediately inform the Conservation Department of problems involving sedimentation, erosion, downstream siltation or any unexpected adverse impacts, which development in the course or are caused by the work.
14. Any material, man-made or natural which is in any way disturbed and/or utilized during the work shall not be deposited in any wetlands or watercourse unless authorized by this permit.

15. Conformance to the Conditions of Approval of the Flood and Erosion Control Board hearing of May 4, 2018.

SPECIAL CONDITIONS OF APPROVAL

16. Conformance to the plans entitled:
 - a. "Site Development Plan, 7 Belaire Drive, Westport, CT, Prepared for Doug & Liz Pardon", Scale: 1"= 20', dated January 16, 2018 and last revised to March 23, 2018, prepared by Kousidis Engineering, LLC
 - b. "Zoning Map of Property Prepared for Doug & Liz Pardon, 7 Belaire Drive, Westport, CT", Scale: 1" = 20', dated October 3, 2017, prepared by Dennis A. Deilus- Land Surveyors
 - c. Architectural Plans entitled: "Belaire Residence, 7 Belaire: Westport, CT" (& sheets) dated February 22, 2018, prepared by Kathleen Poirier Architects, LLC
17. Submission of a landscape plan for plantings for the biofiltration stormwater treatment shall be submitted to the Conservation Department for review and approval prior to the issuance of a Zoning permit. Plantings shall be installed prior to the issuance of a Conservation Certificate of Compliance.
18. Revision to the site plan to include a soil stockpile area with appropriate soil and erosion controls measures shall be submitted to the Conservation Department for review and approval prior to the issuance of a Zoning permit.
19. Boulders for the demarcation of the 20' non-disturbance buffer shall be installed prior to the issuance of a Conservation Certificate of Compliance.

This is a conditional approval. Each and every condition is an integral part of the Commission decision. Should any of the conditions, on appeal from this decision, be found to be void or of no legal effect, then this conditional approval is likewise void. The applicant may refile another application for review.

This approval may be revoked or suspended if the applicant exceeds the conditions or limitations of this approval, or has secured this application through inaccurate information.

Motion: Rycenga **Second:** Shea
Ayes: Rycenga, Perlman, Davis, Shea, Lobdell, Bancroft, Corroon
Nays: 0 **Abstentions:** 0 **Vote:** 7:0:0

3. **9 Beachside Common:** Application #WPL-10591-18 by Artemis Landscape Architects on behalf of Margaret & Michael Shwabe to rebuild an existing stone wall and replace a fence. The proposed activity is within the WPLO area of both New Creek and Mill Creek.

Tara Visenta, LA with Artemis Landscapes, presented the proposal on behalf of the property owners. She denoted the WPLO boundary on the plan. The Flood and Erosion Control Board approved the project at its May 2, 2018 meeting. She reviewed the details of the rebuilt wall. All work will be done by hand. Sediment and erosion controls will be installed. The current fence is chain link. The proposed fence will be galvanized posts with wire mesh. The new driveway is proposed as Flexy Stone "Perma-Drive", which is completely permeable. The process uses natural stone embedded in an epoxy. The driveway should be vacuumed once a year.

Ms. Krynicki noted there are several items that are eligible for a WPL/E but more detail is needed for staff to approve. She suggests they seek a separate approval for those. She gave examples such as the driveway and the potting shed.

Mr. Bancroft asked if the existing well is adequately separated from the septic system.

Ms. Visenta stated this is beyond the scope of her work. She stated that work would be done at low tide.

With no comment from the public, the hearing was closed.

6. Waterway Protection Line Ordinance

Section 30- 93 of the Waterway Protection Line Ordinance states that the applicant shall submit information to the Conservation Commission showing that **such activity will not cause water pollution**, erosion and/or environmentally related hazards to life and property and **will not have an adverse impact on the preservation of the natural resources and ecosystem of the waterway**, including but not limited to **impact on ground and surface water, aquifers**, plant and aquatic life, nutrient exchange and supply, thermal energy flow, natural pollution filtration and decomposition, habitat diversity, viability and productivity and the natural rates and processes of erosion and sedimentation.

The Flood & Erosion Control Board (F&ECB) reviewed and approved this application on May 4, 2018 with conditions.

The project includes the replacement of an existing cement block wall with a dry laid stone wall at the same height and in the same location. The existing wall has been used to prevent erosion of the lawn area. The dry laid stone wall will perform the same function and provide a stable area for the pool fence. It follows existing grade. It will not impact flood heights or water flow within the cove.

The low stone wall is made of natural, native stone to be hand stacked without mortar joints. All work associated with the wall/fence replacement is to be done by hand. A line of haybales for erosion and sediment control will be installed approximately 12" waterward of the stone wall replacement. The Commission finds a new planting bed will be installed landward of the fence and wall which will remove invasive plants as well as a section of manicured lawn.

The tidal wetland line is depicted on the site plan at approximately elevation 4.0' NGVD. The replacement fence and wall are depicted at approximately at elevation 9.0' NGVD which is also simultaneous with the 25 year floodplain elevation. The meandering planting bed ranges from between 5' wide and 10' wide across the rear of the property. The Commission finds the applicant will specify the number and type of plantings proposed for this large bed.

The Commission finds the wall and fence project will be hand excavated.

The existing stone wall within the lawn area will be removed and reconfigured with a wall segmented into three sections with a peastone walkway between them. All work is taking place within an existing lawn area and no grading is proposed. The Commission finds the new configuration of wall provides a better scenario for flood waters to pass through.

The Commission finds the wall/fence project will be implemented at low tide. A line of haybales will be installed waterward of the project area prior to the initiation of any activity. A substantial planting buffer will be installed north of the proposed fence/wall.

The Commission finds the plan shows numerous additional landscape projects throughout the site. These projects are outside the WPLO boundary and are eligible for staff approval with additional information provided to the Conservation Department. These activities will be handled through an additional staff level approval with all the necessary construction details and specific landscape planting material identified.

Conservation Commission
TOWN OF WESTPORT
Conditions of Approval
Application # WPL 10591-18
Street Address: 9 Beachside Common
Assessor's: Map G 05 Lot 009
Date of Resolution: May 16, 2018

Project Description: To rebuild an existing stone wall and replace a fence. The proposed activity is within the WPLO area of both New Creek and Mill Creek.

Owner of Record: Margaret & Michael Shwabe

Applicant: Artemis Landscape Architects

In accordance with Section 30-93 of the *Waterway Protection Line Ordinance* and on the basis of the evidence of record, the Conservation Commission resolves to **APPROVE** Application #**WPL 10591-18** with the following conditions:

1. It is the responsibility of the applicant to obtain any other assent, permit or license required by law or regulation of the Government of the United States, State of Connecticut, or of any political subdivision thereof.
2. If an activity also requires zoning or subdivision approval, special permit or special exception under section 8.3(g), 8-3c, or 8-26 of the Connecticut General Statutes, no work pursuant to the wetland permit shall commence until such approval is obtained.
3. If an approval or permit is granted by another Agency and contains conditions affecting wetlands and/or watercourses, the applicant must resubmit the application for further consideration by the Commission for a decision before work on the activity is to take place.
4. The Conservation Department shall be notified at least forty-eight (48) hours in advance of the initiation of the regulated activity for inspection of the erosion and sediment controls.
5. All activities for the prevention of erosion, such as silt fences and hay bales shall be under the direct supervision of the site contractor who shall employ the best management practices to control storm water discharges and to prevent erosion and sedimentation to otherwise prevent pollution, impairment, or destruction of wetlands or watercourses. Erosion controls are to be inspected by the applicant or agent weekly and after rains and all deficiencies must be remediated with twenty-four hours of finding them.
6. The applicant shall take all necessary steps to control storm water discharges to prevent erosion and sedimentation, and to otherwise prevent pollution of wetlands and watercourse.
7. Organic Landscaping practices are recommended as described by the Northeast Organic Farming Association.
8. All plants proposed in regulated areas must be non-invasive and native to North America.
9. Trees to remain are to be protected with tree protection fencing prior to construction commencement.
10. The bottom of all storm water retention structures shall be placed no less than 1 foot above seasonal high groundwater elevation and any ledge encountered.
11. The applicant shall immediately inform the Conservation Department of problems involving sedimentation, erosion, downstream siltation or any unexpected adverse impacts, which development in the course or are caused by the work.
12. Any material, man-made or natural which is in any way disturbed and/or utilized during the work shall not be deposited in any wetlands or watercourse unless authorized by this permit.
13. A final inspection and submittal of an "as built" survey is required prior to the issuance of a Certificate of Compliance.
14. Conformance to the Flood and Erosion Control Board Conditions of Approval of May 2, 2018.

SPECIAL CONDITIONS OF APPROVAL

15. Conformance to the plans entitled:
 - a. "Site Development Plan, Private Residence, 9 Beachside Common, Westport, CT (Sheet L-100.00), Scale: 1"= 20', dated May 8, 2018, prepared by Artemis Landscape Architects, Inc.
 - b. "Wire Mesh Fence & Galvanized Steel Gate Details, Private Residence, 9 Beachside Common, Westport, CT (Sheet L-802.00), Scale: 1"= 20', dated May 4, 2018, prepared by Artemis Landscape Architects, Inc.
 - c. Fencing & Dry-Set Retaining Wall Layout Plan, Private Residence, 9 Beachside Common, Westport, CT (Sheet L-800.00), Scale: 1"= 10.0', dated May 8, 2018, prepared by Artemis Landscape Architects, Inc.

- d. Rear Property Planting Plan, Private Residence, 9 Beachside Common, Westport, CT (Sheet L-401.00), Scale: 1"= 10', dated April 27, 2018, prepared by Artemis Landscape Architects, Inc.
 - e. "Existing Conditions Plot Plan Prepared for Margaret Schwabe, 9 Beachside Common, Westport, Connecticut", Scale: 1" = 30', dated November 13, 2012 and last revised to December 3, 2013, prepared by Leonard Surveyors LLC
16. All work is to be done by hand and all excess soil from hand excavation shall be removed from the site.
17. Haybales are to be installed immediately waterward of the proposed stone wall installation area prior to any activity.
18. Submission of a performance bond estimate in the amount of the cost of plants, erosion control materials and labor for the fence/wall and planting buffer shall be submitted to the Conservation Department prior to the issuance of a zoning permit.
19. This permit authorizes the fence/wall replacement activities and the stone wall rebuild and stone path east of the existing pool and terrace only. All other proposed activities as shown of the "Site Development Plan" are eligible for a staff level approval. The Conservation Department staff will review the proposed activities and issue permits accordingly which will include all requested details and architectural plans as needed.

This is a conditional approval. Each and every condition is an integral part of the Commission decision. Should any of the conditions, on appeal from this decision, be found to be void or of no legal effect, then this conditional approval is likewise void. The applicant may refile another application for review.

This approval may be revoked or suspended if the applicant exceeds the conditions or limitations of this approval, or has secured this application through inaccurate information.

Motion: Shea

Second: Davis

Ayes: Shea, Davis, Rycenga, Perlman, Bancroft, Lobdell, Corroon

Nays: 0

Abstentions: 0

Votes: 7:0:0

4. **28 Owenoke Park:** Application #WPL-10593-18 by Julian Robins for the installation of a fixed pier, ramp and floating dock. The proposed activity is within the WPLO area of Gray's Creek.

Jeff Westermeyer, PE with RACE, presented the application on behalf of the property owners. The dock has been approved by the DEEP and the ACOE.

Ms. Shea asked if they had considered a shorter dock.

Mr. Westermeyer stated anything shorter would cause an unacceptable impact to the tidal wetlands. The dock is just long enough to bypass the tidal wetland.

Ms. Rycenga asked if it has been contemplated to repair the bulkhead. She noted it looks like it may need to be.

Mr. Westermeyer stated permission was received in 2009 for some repair to the bulkhead. He was not hired to do that but the dock was specifically designed so the bulkhead repair work could be done without impedence by the dock.

Ms. Krynicki asked for clarification of what "wharf out" means.

Mr. Westermeyer stated that anyone has the right to a dock.

Ms. Krynicki noted that Grey's Creek is a mudflat half the day. The dock is proposed for a motorized boat.

Mr. Westermeyer explained the owners have a boat slip at Compo Marina. This dock is contemplated for a small power boat. He added that no owner would want their boat sitting in the mud.

Ms. Krynicki highlighted that DEEP noted Terrapins are in the area. She asked how they will be protected.

Mr. Westermeyer explained the means to protect Terrapin during construction.

Ms. Krynicki noted there are lots of shellfish in this area. She asked how they will be protected.

Mr. Westermeyer stated float stops will prevent the float from sitting on the mud. The only impact will be the pile driving itself. He estimates 8 s.f. of total impact to the shellfish. There is no turbidity expected as they pile drive. The ramp and float will be removed in the winter so the shellfish will be protected in the winter.

Ms. Krynicki asked for an explanation of the DEEP and ACOE requirements to protect the spartina growth.

Mr. Westermeyer stated the dock will be 1-foot above the spartina at full growth. It will also have spacing between the deck boards so the spartina gets sunlight.

Mr. Corroon asked how the ramp and float will be brought in.

Mr. Westermeyer stated all work will be done at high tide.

Mr. Lobdell asked how long the piles will be.

Mr. Westermeyer stated he is unsure. They will not know until they get out there and hit refusal.

Ms. Mozian asked how can we prevent future owners from permanently docking a boat at this site who may not have a boat slip elsewhere as these owners do.

Mr. Westermeyer stated the DEEP permit conditions prevent boat from sitting on the mudflat. The owners intend to have it be transient. If a boat were permanently docked at the site, a complaint could be filed with DEEP as it would be in violation of their permit.

Mr. Lobdell asked what would be a non-significant impact.

Mr. Westermeyer indicated that significant shading is an example. A quantifiable impact in this application is the pile driving.

With no comment from the public, the hearing was closed.

Motion:	Shea	Second:	Bancroft
Ayes:	Shea, Bancroft, Corroon, Davis, Lobdell, Perlman, Rycenga		
Nays:	None	Abstentions:	None
		Vote:	7:0:0

Findings
28 Owenoke Park
Application # WPL 10593-18

- 1. Application Request:** Applicant is requesting to install a 4' x 37' fixed pier with hand railings supported by ten timber piles, a 4' x 20' ramp and an 8' x 12.5' float with float stops anchored by two anchor posts and cross- brace ropes. The proposed work is located in Gray's Creek.

The applicant proposes to use the facility as a private recreational small docking facility.

Work is within the WPLO boundary of the Saugatuck River.

2. Plans reviewed for this application:

- a. "Site Location Map Dock Project (Sheet 1 of 6), Robins Property, 28 Owenoke Park, Westport, Connecticut", dated April 26, 2017, prepared by Coastline Consulting & Development
- b. "Geographic Information System Map (Sheet 2 of 6), Robins Property, 28 Owenoke Park, Westport, Connecticut", dated April 26, 2017, prepared by Coastline Consulting & Development
- c. "Existing Conditions Plan Dock Project (Sheet 3 of 6), Robins Property, 28 Owenoke Park, Westport, Connecticut", Scale: 1"= 50', dated April 26, 2017 and revised to April 10, 2018, prepared by Coastline Consulting & Development
- d. "Proposed Conditions Plan Dock Project (Sheet 4 of 6), Robins Property, 28 Owenoke Park, Westport, Connecticut", Scale: 1"= 50', dated April 26, 2017 and last revised to April 10, 2018, prepared by Coastline Consulting & Development
- e. "Proposed Elevations & Details Dock Project (Sheet 5 of 6), Robins Property, 28 Owenoke Park, Westport, Connecticut", dated April 26, 2017, prepared by Coastline Consulting & Development
- f. "Application Drawing Notes Dock Project (Sheet 6 of 6), Robins Property, 28 Owenoke Park, Westport, Connecticut", dated April 26, 2017, prepared by Coastline Consulting & Development
- g. Topographic Survey Existing Conditions, Robins Property, 28 Owenoke Park, Westport, Connecticut", Scale: 1"= 20' dated October 31, 2016 and last revised to April 10, 2018, Scale: 1" = 20', prepared by Coastline Consulting & Development
- h. "Plot Plan Prepared for Jonathan R. and Judi Lake, 28 Owenoke Park, Westport, Connecticut", dated February 11, 2008 and last revised to March 20, 2008, Scale: 1" = 20', prepared by Leonard Surveyors, LLC

3. Background Information:

- a. State of Connecticut DEEP issued a License for this activity on April 20, 2018, #201704826-SDFRTW
- b. Army Corps of Engineer issued an approval for the activity: #NAE- 2009-00055 on June 7, 2017
- c. Water Classification per Bureau of Aquaculture is "Prohibited" in this area.

WPLO

The Waterway Protection Line is located 15' from the 9' contour in this area. The entire property falls within this jurisdiction. Tidal wetlands occur on this property. The Coastal Jurisdiction Line is set at elevation 5.3 NGVD.

Permits/Applications filed:

1. WPL/E 7165-03 Garage expansion and addition
2. WPL/E 6875-02 Expansion of second floor bathroom

IWW Defined Resource (wetland or watercourse)

Wetlands and Watercourses as defined by the Inland Wetlands and Watercourses Regulations do not occur on this property.

Vegetation Description

Tidal wetland vegetation spans the entire shoreline of the property. The vast majority of the vegetation consists of *Spartina alterniflora* with a narrow band of high marsh tidal wetland vegetation growing near the timber bulkhead. A gap in the vegetation is present in the approximate center of the shoreline.

Though this area is currently devoid of vegetation, the conditions are conducive for the recolonization of tidal wetlands.

Facts Relative to this application:

1. WPLO: All proposed activity is located below elevation 9.0 NGVD and therefore is within the WPLO.
2. Inland Wetlands and Watercourses: No inland wetlands or watercourses are located at the site.
3. Tidal Wetlands: Property does contain tidal wetlands
4. 100-Year Floodplain: The entire property is located within Zone AE 13' NGVD

5. Aquifer and Primary Recharge Area: The property is located within the Aquifer recharge area identified as coarse-grained stratified drift.
6. Coastal Area Management Zone: The project is located within the Coastal Area Management Zone. The coastal resources are "Coastal Flood Hazard Area", "Near Shore Waters" per the Coastal Resources Map of the Connecticut Department of Environmental Protection.
7. There is spartina growth in the area of the proposed activity. The dock is to be located within the narrowest expanse of tidal vegetation on site, if practical.
8. Grays Creek is a mudflat at low tide.
9. Grey's Creek is a Prohibited shellfish area.

Waterway Protection Line Ordinance

Section 30-93 of the Waterway Protection Line Ordinance states that the applicant shall submit information to the Conservation Commission showing that such activity will not cause water pollution, erosion and/or environmentally related hazards to life and property and will not have an adverse impact on the preservation of the natural resources and ecosystem of the waterway, including but not limited to impact on ground and surface water, aquifers, plant and aquatic life, nutrient exchange and supply, thermal energy flow, natural pollution filtration and decomposition, habitat diversity, viability and productivity and the natural rates and processes of erosion and sedimentation.

The applicant permanently berths their powerboat at Compo Marina and will continue to do so even after construction of the dock. The power boat will only access the dock at high tide and berth temporarily to load/unload people or supplies.

The applicant states in his narrative to the CT DEEP Office of Long Island Sound Program that "Potential impacts to water quality and benthic habitat will be experienced from the hydraulic pumping by the float/boat and propeller dredging. By utilizing a float pad system, the float will maintain a minimum clearance of 18" above the substrate as the tide is falling. No vessels will be berthed at the dock during low tide, therefore, it is not anticipated that the float and/or boat dock will cause significant hydraulic pumping.

Propeller action has the potential to suspend sediments. The potential impacts to water quality could not be entirely eliminated due to the existing water depths at the site. The only ways to eliminate the potential impacts to water quality from the proposed project would be to either conduct dredging to increase water depths, or to entirely disallow floats and vessels from the waterway. Coastal management policies discourage new dredging for residential sites. In addition, disallowing floats and vessels entirely would be contrary to the established common law practice of the "right to wharf out", which asserts that riparian/littoral property owners have a right to reasonable structural boating access from their property provided that adverse impacts to coastal resources and navigation are minimized.

Impacts have been minimized by ensuring that the float will remain elevated above the substrate at low tide with the use of float stop pads. The use of a power boat during periods of high water only prevents vessel grounding and minimizes the potential for sediment suspension. The proposed pier has been designed to facilitate sustained growth of the underlying tidal wetland vegetation and located within the narrowest expanse of such vegetation.

The DEEP Permit conditions as granted :

- a. Install a temporary turtle exclusion device such as fencing or corrugated tubing, as shown on the attached plans, if needed.
- b. Installation of a 4' x 37' fixed pier with hand railings supported by ten timber piles or timber piles anchored to precast concrete footings, if needed, a 4' x 20' ramp, and an 8' x 12.5' float with float stops anchored by two anchor posts and cross-brace ropes
- c. Remove the temporary turtle exclusion device upon work completion.

The license is subject to the following Terms and Conditions:

- a. Work shall be conducted between November 1st and April 1st of any year in order to minimize impacts to the State Special Concern Species *Malaclemys t. terrpain* (northern diamondback

terrapin). If work has to be conducted outside this time frame, special conditions shall be required as spelled out in the license conditions.

- b.** Any turtle exclusion device shall be installed prior to construction if work is conducted during the active turtle period and must be removed upon work completion.
- c.** Float stops shall be installed to prevent the entire float surface from resting on the bottom of low water. Such float stops shall be maintained in optimal operating condition for the life of the structure.
- d.** At no time shall heavy equipment enter or be stored in tidal wetlands.

Intertidal flats are present waterward of the *Spartina alterniflora* along the entire shoreline of the property. The Commission finds potential adverse impacts to this resource have been minimized by eliminating the use of a barge and by installing stop pads on the float to prevent the entirety of the structure from contacting the bottom at low tide.

Tidal wetland vegetation spans the entire shoreline of the property. The vast majority of the vegetation consists of *Spartina alterniflora* with a narrow band of high marsh tidal wetland growing near the timber bulkhead. A gap in the vegetation is present in the approximate center of the shoreline. Though this area is currently devoid of vegetation, the conditions are conducive for the recolonization of tidal wetlands. A dock in this location may eventually span as much as 56 linear feet of tidal wetland. The proposed dock on the western side of the shoreline will span only 44 feet of tidal wetlands. In addition, the proposed fixed pier will be elevated such that the bottom stringers are elevated a minimum of 1' above the height of the vegetation during the peak of the growing season in order to maximize sunlight penetration to the underlying vegetation, which is consistent with DEEP guidelines to minimize shading impacts to tidal wetland vegetation. The Commission finds this minimizes impact from the dock construction.

The project was also reviewed by the Town of Westport Shellfish Commission. In their evaluation, they concluded that the proposed dock would cause adverse impacts to shellfish concentration areas. This determination was based on the use of kayaks only. The concerns included that:

- a.** The construction and use of the dock will disturb the underlying *Spartina alterniflora*
- b.** Construction will disturb the shellfish beds. The proposed work will need to be conducted by hand, small work boat, or from land

The applicant has addressed the concerns of the Shellfish Commission. They state:

- a.** Long term impacts to shellfish beds are expected to be minimal, as areas of direct impacts are limited to the points of pile installation for the pier and float stops.
- b.** Shellfish will still be able to colonize around the pier piles and underneath the floating dock. As such, the proposed dock does not result in any appreciable reduction in shellfish habitat-on-site.
- c.** The open-pile nature of the dock prevents scour along the face of the bulkhead and within the tidal wetlands from refraction, as the dock will not have reflective capacity. This prevents undermining of the existing timber bulkhead and subsequent erosion from bulkhead failure, as well as sedimentation from scoured substrate.
- d.** The proposed dock will be of open-pile construction and will not include the construction of any impervious surfaces on-site. This ensures that flood waters can pass underneath and over the structure and maintains the natural pattern of water circulation. As such, the dock will not cause the redirection of flood water onto adjacent properties through the constriction of flow. Furthermore, as no solid fill is proposed, the dock will not reduce the flood storage capacity of the tidal wetlands located along the shoreline of the property or of that of the vegetated upland.
- e.** The open-pile nature of the dock also prevents scour along the face of the bulkhead and within the tidal wetlands from refraction, as the dock will not have such reflective capacity. This prevents undermining of the existing timber bulkhead, which protects the upland property from damage from erosion.
- f.** In addition, the proposed dock will not have a physical connection to the existing bulkhead. This will eliminate stress on the bulkhead, as the dock loads, and tidal forces on the dock, will not affect the bulkhead. The lack of a physical connection also allows for contractor access in the event that repairs to the timber bulkhead are necessary.

The Commission finds the proposed activity has been sited so as to be 2' above growths of spartina intertidal vegetation, 5' above the mud flat and 4' above the mean high water line.

The proposed dock installation will be conducted as follows:

- a. The contractor will set and level the fixed pier foundations by hand and drive the associated steel anchor pipes with a hand held sledge hammer and/or small pneumatic hammer during periods of low water. The anchor pipes will be driven through pre-cast holes in the foundation.
- b. Any riprap displaced by the landward most pier foundations will be disposed of appropriately on the land.
- c. The contractor will set and level the float stop pad footings by hand and drive the associated steel anchor pipes with a hand held sledge hammer and/or small pneumatic hammer during periods of low water or from a small workboat during periods of high water. The anchor pipes will be driven through pre-cast holes in the foundations.
- d. The proposed ramp and float stop pads, will be manufactured off-site and towed by boat to the project site during periods of high water. The ramp and float will be manipulated into place by hand. The ramp will be affixed to the pier using hand tools.

The Commission finds adverse impacts to tidal wetland vegetation will be prevented by prohibiting the use of heavy equipment within the vegetation and by ensuring that construction materials and equipment will be stored outside of tidal wetland vegetation.

The Flood and Erosion Control Board approved the application at its May 2, 2018 hearing.

Due to the Conditions of Approval as directed by the CT DEEP for turtle construction precautions, time of year for construction activity, height of dock above tidal wetland vegetation, minimal intrusion of wetland through the use of piles, benthic habitat protection with the use of power boats at high tide only, protection with the use of float stops and the span of the least amount of tidal vegetation, the Commission finds that this application does not significantly impact natural resources as they are protected by the Waterway Protection Line Ordinance.

Conservation Commission
TOWN OF WESTPORT
Conditions of Approval
Application # WPL 10593-18
Street Address: 28 Owenoke Park
Assessor's: Map C 03 Lot 21
Date of Resolution: May 16, 2018

Project Description: Installation of a 4' x 37' fixed pier with handrailings supported by ten timber piles, a 4' x 20' ramp and an 8' x 12.5' float with float stops anchored by two anchor posts and cross-brace ropes. Work is within the WPLO area of Gray's Creek.

Owner of Record: Julian Robins

Applicant: Julian Robins

In accordance with Section 30-93 of the *Waterway Protection Line Ordinance* and on the basis of the evidence of record, the Conservation Commission resolves to **APPROVE** Application #**WPL 10593-18** with the following conditions:

1. It is the responsibility of the applicant to obtain any other assent, permit or license required by law or regulation of the Government of the United States, State of Connecticut, or of any political subdivision thereof.

2. If an activity also requires zoning or subdivision approval, special permit or special exception under section 8.3(g), 8-3c, or 8-26 of the Connecticut General Statutes, no work pursuant to the wetland permit shall commence until such approval is obtained.
3. If an approval or permit is granted by another Agency and contains conditions affecting wetlands and/or watercourses, the applicant must resubmit the application for further consideration by the Commission for a decision before work on the activity is to take place.
4. The Conservation Department shall be notified at least forty-eight (48) hours in advance of the initiation of the regulated activity for inspection of the erosion and sediment controls.
5. All activities for the prevention of erosion, such as silt fences and hay bales shall be under the direct supervision of the site contractor who shall employ the best management practices to control storm water discharges and to prevent erosion and sedimentation to otherwise prevent pollution, impairment, or destruction of wetlands or watercourses. Erosion controls are to be inspected by the applicant or agent weekly and after rains and all deficiencies must be remediated with twenty-four hours of finding them.
6. The applicant shall take all necessary steps to control storm water discharges to prevent erosion and sedimentation, and to otherwise prevent pollution of wetlands and watercourse.
7. Organic Landscaping practices are recommended as described by the Northeast Organic Farming Association.
8. All plants proposed in regulated areas must be non-invasive and native to North America.
9. Trees to remain are to be protected with tree protection fencing prior to construction commencement.
10. The bottom of all storm water retention structures shall be placed no less than 1 foot above seasonal high groundwater elevation.
11. All proposed decks shall be provided with a 6" gravel bed beneath.
12. The applicant shall immediately inform the Conservation Department of problems involving sedimentation, erosion, downstream siltation or any unexpected adverse impacts, which development in the course or are caused by the work.
13. Any material, man-made or natural which is in any way disturbed and/or utilized during the work shall not be deposited in any wetlands or watercourse unless authorized by this permit.
14. A final inspection and submittal of an "as built" survey is required prior to the issuance of a Certificate of Compliance.
15. Conformance to the conditions of the Flood and Erosion Control Board of May 2, 2018.
16. When a Contractor Compliance Agreement is enclosed with a permit, the agreement must be appropriately executed and returned to the Conservation Department staff prior to the issuance of a zoning permit.

SPECIAL CONDITIONS OF APPROVAL

17. Conformance to the plans entitled:
 - a. "Site Location Map Dock Project (Sheet 1 of 6), Robins Property, 28 Owenoke Park, Westport, Connecticut", dated April 26, 2017, prepared by Coastline Consulting & Development
 - b. "Geographic Information System Map (Sheet 2 of 6), Robins Property, 28 Owenoke Park, Westport, Connecticut", dated April 26, 2017, prepared by Coastline Consulting & Development
 - c. "Existing Conditions Plan Dock Project (Sheet 3 of 6), Robins Property, 28 Owenoke Park, Westport, Connecticut", Scale: 1"= 50', dated April 26, 2017 and revised to April 10, 2018, prepared by Coastline Consulting & Development
 - d. "Proposed Conditions Plan Dock Project (Sheet 4 of 6), Robins Property, 28 Owenoke Park, Westport, Connecticut", Scale: 1"= 50', dated April 26, 2017 and last revised to April 10, 2018, prepared by Coastline Consulting & Development
 - e. "Proposed Elevations & Details Dock Project (Sheet 5 of 6), Robins Property, 28 Owenoke Park, Westport, Connecticut", dated April 26, 2017, prepared by Coastline Consulting & Development
 - f. "Application Drawing Notes Dock Project (Sheet 6 of 6), Robins Property, 28 Owenoke Park, Westport, Connecticut", dated April 26, 2017, prepared by Coastline Consulting & Development
 - g. Topographic Survey Existing Conditions, Robins Property, 28 Owenoke Park, Westport, Connecticut", Scale: 1"= 20' dated October 31, 2016 and last revised to April 10, 2018, Scale: 1" = 20', prepared by Coastline Consulting & Development

