

**MINUTES
WESTPORT CONSERVATION COMMISSION
JUNE 10, 2010**

The June 10, 2019 Special Meeting of the Westport Conservation Commission was called to order at 7:00 p.m. in Room 201/201A of the Westport Town Hall.

ATTENDANCE

Commission Members:

Anna Rycenga, Chair
Paul Davis, Vice-Chair
Donald Bancroft, Secretary
Tom Carey
Paul Lobdell
Mark Perlman
Stephen Cowherd, Alternate

Staff Members:

Alicia Mozian, Conservation Department Director
Colin Kelly, Conservation Analyst

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

Alicia Mozian
Conservation Department Director

All Commissioners visited the sites in preparation for the meeting.

Public Meeting:

1. **22 Evergreen Avenue:** Appeal of Permit #AA,WPL/E-10793-19 issued to Marian Byrne for a fence by Cynthia Hamer of 24 Evergreen Avenue.

Chris Hamer of 24 Evergreen Avenue presented the case for why the decision to issue a fence permit should be rejected. He noted all the plantings he has installed on his property. The fence blocks the afternoon sun on the vegetation adjacent to the wetland. The Commission should consider the objective of the fence and that there were other alternative objectives would that serve the same purpose. Keeping out deer and dogs was the original purpose but now it is to keep the Hamer's off the property at 22 Evergreen Avenue. This could be achieved by invoking the trespassing laws. The true purpose of the fence is for spite. The fence does not meet its intended goal. He noted Section 5.0 of the IWW regulations referencing "Criteria and noted that it could be 3 feet in height. In Section 6.0, the objective is to be minimal to meet the goal. In Section 9.0, the public hearing process was not considered. He discussed Section 4.2.1(c) removal of vegetation and Section 4.2.1(d) alteration of light source. He noted this is a regulated activity. The fence is not in compliance. It is not on the property line. There is no 8-inch gap provided. The fence is over 8 feet tall.

Ms. Rycenga asked why Mr. Hamer believes the purpose of the fence installation was not truthful.

Mr. Hamer indicated that there were people and dogs coming onto the property at one time. That is not the case now.

Ms. Rycenga asked about the height of the fence.

Mr. Hamer stated it is an 8-foot fence but with the gap at the bottom, it is higher.

Ms. Rycenga questioned the section of the fence at the end.

Mr. Hamer stated the fence is not on his property but over the driveway easement.

Ms. Rycenga asked if he has a survey.

Mr. Hamer indicated that this is not what was asked for in the application and he has an issue with the height of the fence.

Mr. Perlman wanted clarification of where the fence is. He also asked if they reached out to the owner as to why.

Mr. Hamer explained the location.

Mr. Davis asked for the permit language to be read.

Mr. Kelly read the permit language into the record.

Mr. Lobdell asked when the fence was installed.

Mr. Hamer indicated it was installed in the last month since the appeal was filed.

Mr. Bancroft asked if he feels the fence is in the wetland.

Mr. Hamer stated he believes that half is within the 25-foot upland review area and not within the wetland itself.

Public Hearing: Room 201/201A.

1. **46 Woodside Avenue:** Application #IWW,WPL/E-10827-19 by Don White, CT Home LLC on behalf of Uri & Christine Failla for a first floor kitchen/family room addition, breakfast area banquette bump-out, second floor master bedroom and bathroom additions and expansion of portico. Portion of the work is within the upland review area setback.

Don White, CT Home, presented the application on behalf of the property owner. He noted the property owner was also present. He stated these are new owners. The house is a modular and they want to expand the kitchen and dining area and the master bedroom and bathroom. The addition will be 47 feet from the wetland. They are also expanding the front portico. He noted that the slab behind the garage has been removed.

Ms. Mozian noted the wetland area is lawn.

Ms. Rycenga stated that it was noted during the field trip that dumping is taking place behind the fence. It is not on their property.

Mr. White stated that whatever practices were in place from the prior owner have been carried over to this owner.

Ms. Rycenga suggested his client contact the neighbors for permission to remove the debris.

Mr. White noted the patio behind the house was slightly enlarged.

Mr. Kelly confirmed the patio did expand within a portion of the wetland setback and noted that it and the knee wall would be legalized. When the house was built in 2004, no wetlands were cleared. A house was there before but the wetland was still maintained as lawn.

The Commission felt that given the history, it would be too much to delineate the wetland in the middle of the yard. Instead, the owner should have a landscape architect or similarly qualified professional design something but confine it to the rear of the property.

Mr. Kelly indicated that removing the patio behind the garage proactively is a benefit as well as a portion of the driveway to achieve coverage compliance. The drainage will go into cul-tec units. The yard is flat, so there are no sediment and erosion problems.

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

Motion:	Rycenga	Second:	Bancroft
Ayes:	Rycenga, Bancroft, Carey, Davis, Lobdell, Cowherd		
Nayes:	None	Abstentions:	None
		Vote:	6:0:0

FINDINGS
46 Woodside Avenue
Application # IWW, WPL/E-10827-19
Public Hearing June 10, 2019

1. **Application Request:** Applicant is proposing to construct a first and second floor addition, new front entry and interior renovation, legalization of patio and surrounding sitting wall and underground propane tank. Portions of the addition and patio are within the 50' and 30' upland review area from wetlands.
2. **Plans Reviewed:**

- a. "Proposed Renovation & Addition Failla Residence Uri & Christine Failla 46 Woodside Avenue Westport, CT" Sheets A100-S104 (17 pgs), Scale Varies, Drawn by Connecticut Home, LLC, Dated 5/8/19.
 - b. "Proposed Residential Addition Erosion Control Plan Uriel and Christine Faila 46 Woodside Ave Westport, CT" Scale 1"=20', Drawn by Peak Engineers, LLC, Dated 5/10/19.
 - c. "Plot Plan Prepared for Uriel & Christine Faila 46 Woodside Ave Westport, CT" Scale 1"=20', Drawn by Leonard Surveyors, LLC, Dated 3/29/2004 last revised to 5/13/19.
3. **Previous Permits/Applications filed:**
- a. IWW/M-7025-03: Wetland Boundary Map Amendment: Map B09
 - b. AA-WPL/E-7243-04: New Single Family Residence
4. **WPLO** – WPLO is established 15' from wetland line. The Leonard Survey of 5/13/19 and the site plan by Peak Engineers labels the WPLO incorrectly.
5. IWW Defined Resource (wetland or watercourse) – Wetlands occur on the subject property as identified in the 2003 Map Amendment noted above.
6. **Property Description**
- a. 100-year flood plain as designated by FEMA does occur in the vicinity of this property. The flood plain is associated with Stony Brook.
 - b. **Wetland Soils:** *Soil Report Summary- prepared by Otto Theall of Soil & Wetland Science, LLC dated May 30, 2002 describes the following wetland soil occurring on the property.*

Adrian muck (Aa): This nearly level, very poorly drained soil is found on plains and terraces. It has a water table at the surface most of the year, and water is commonly ponded on the surface from fall to early summer. The permeability of the soil is rapid in the surface layer and substratum. Runoff is very slow, and available water capacity is high. Most areas of this soil are wooded or covered by marshgrasses and sedges. A few small scattered areas have been filled and are used for community development. The major limitations of this soil for community development are the high water table, ponding and the instability of the organic layer. Most areas require drainage, but the organic layer shrinks and subsides when drained and many areas don't have drainage outlets. The use of on-site septic systems in this soil requires extensive filling and special design and installation. Wetness and ponding make it unsuitable for cultivated crops and poorly suited to commercial timber production.

- c. There are approximately 7,415 sq. ft. of wetlands which is approximately 32% of the total lot area of 23,148 sq. ft. for the property.
- d. Property does not exist within the Aquifer Protection Overlay Zone or a groundwater recharge area.
- e. Property does not exist within the Coastal Areas Management Zone.
- f. The property is served by sewer.

7. **Conformance to Section 6 of the Inland Wetlands and Watercourses Regulations**
6.1 GENERAL STANDARDS

- 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

Discussion:

The Commission finds that portions of the existing residence lie within the 50' IWW upland review area. The proposal is for a breakfast area (1st floor) and bath addition (2nd floor) to be constructed within the 50' upland review area. The addition to the kitchen (1st floor) and master bedroom (2nd floor) lie beyond the 50' review area setback. This addition is in the area of the existing patio constructed as slab on grade with pergola above. The proposed changes to the front entry are outside the 50' upland review area onsite.

A patio was built behind the garage at some point in time after the Conservation Certificate of Compliance was issued for the house construction on October 17, 2006. The patio to the rear of the garage has been removed recently. The Commission finds that the patio leading from the walkthrough of the house and garage appears to be slightly larger than what appeared in the as-built survey from 2006 and it has a formalized edge with walls. Part of this lies within the 30-foot upland review area.

The existing building coverage is listed as 2,963 sq. ft., and the driveway is listed as 1,588 sq. ft. for a lot coverage of 26.43%. The proposed building coverage with additions is proposed to be 3,005 sq. ft., and the driveway is proposed to be 1,225 sq. ft., for a **proposed lot coverage of 24.57%**. Storm water runoff from the new additions and a portion of the existing house have been proposed to be retained within the existing drainage system.

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

Discussion:

The applicant is proposing to discharge the roof leader runoff from the addition into 5 Cultec units which will be added to the existing drainage system to comply with the Town of Westport drainage standards. The Commission finds that this will capture storm water runoff from the new impervious coverage. It should be noted that portions of the proposed additions are being constructed in areas of the existing patio.

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.

Discussion:

The Commission finds that all wetland areas will be protected by a silt fence as shown on the Erosion Control Plan. In addition, the plans provide an anti-mud tracking plan and notes detailing sediment and erosion control required maintenance. All sediment and erosion controls shall remain in place and in good working condition until the sitework is completed and the bare soils have fully stabilized.

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.
- g) *Planting plan included with application as mitigation for the proposed activities*

Discussion:

The Commission finds that this proposal will not have an adverse impact on the existing natural habitat. The existing yard (including flagged wetland areas) has been historically maintained as lawn. Mature trees cover the northeastern boundary of the of the property line. A large patio has been removed from the rear of the garage and restored to lawn. The drainage from the additions will be captured into additional Cultec units in the rear yard. The Commission finds there is an opportunity for wetland enhancement by allowing the lawn area to be left undisturbed by creating a no mow zone area, pollinator meadow, or planting with natives. The Commission finds that the wetlands should be delineated in the field.

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

Discussion:

The Commission finds that the overall impervious area proposed for this parcel is to slightly decrease from existing total coverage of 26.43% (4,551 sq. ft.) to proposed coverage of 24.57% (4,230 sq.ft.), which represents a 321 s.f. (1.86% change) decrease. The building area coverage changes from 2,963 sq. ft. to 3,005 sq. ft. for total of 42 sq. ft. The partial driveway removal accounts for the overall decrease in coverage. Subsurface drainage system is being provided for the additions.

The rear yard (portion of which designated as wetlands) is relatively level (from elevation 63.1' rear of the house to 61.2' rear yard near wall) with a ~2' elevation change over ~100' (2%). The Commission finds that erosion will not pose a problem here.

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.

Discussion:

The Commission finds that the current application will not have a significant impact on recreational and public uses.

Conservation Commission
TOWN OF WESTPORT
Conditions of Approval
Application # IWW, WPL/E-10827-19
Street Address: 46 Woodside Avenue
Assessor's: Map B09 Lot 094
Date of Resolution: June 10, 2019

Project Description: To construct a first and second floor addition, new front entry and interior renovation. Portions of the addition are within 50' upland review area from wetlands. Approval includes legalization of patio and surrounding sitting wall and underground propane tank.

Owner of Record: Uri & Christine Failla
Applicant: Don White, CT Home LLC.

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 #**IWW, WPL-10827-19** 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. A final inspection and submittal of an "as built" survey is required prior to the issuance of a Certificate of Compliance.
16. Any on-site dumpster shall be covered at the end of each workday to prevent debris/litter from inadvertently entering surrounding wetlands and/or watercourses.

SPECIAL CONDITIONS OF APPROVAL

17. Conformance to the plans entitled:
 - a) "Proposed Renovation & Addition Failla Residence Uri & Christine Failla 46 Woodside Avenue Westport, CT" Sheets A100-S104 (17 pgs), Scale Varies, Drawn by Connecticut Home, LLC, Dated 5/8/19.
 - b) "Proposed Residential Addition Erosion Control Plan Uriel and Christine Faila 46 Woodside Ave Westport, CT" Scale 1"=20', Drawn by Peak Engineers, LLC, Dated 5/10/19.
 - c) "Plot Plan Prepared for Uriel & Christine Faila 46 Woodside Ave Westport, CT" Scale 1"=20', Drawn by Leonard Surveyors, LLC, Dated 3/29/2004 last revised to 5/13/19.
18. Submission of a "Wetland Buffer Plan" prepared by a landscape architect or similarly qualified person shall be submitted to Conservation Staff. Said plan will include a minimum of five feet wide planting along the rear property line. The plan shall show types of planting and the annual maintenance required. Submittal and approval required before the issuance of a Zoning permit.
19. Install planting according to the "Wetland Buffer Plan" prior to the issuance of a Conservation Certificate of Compliance.
20. Final as-built survey required prior to the issuance of a Conservation Certificate of Compliance. Survey shall reflect accurate depiction of WPLO boundary, which is 15 feet from the wetland boundary
21. A bond to cover the cost of plantings shall be submitted prior to the issuance of a Zoning Permit.
22. Permission to remove brush and lawn clippings shall be pursued from the abutting property owner. Once permission secured, brush and lawn clippings shall be removed prior to issuance of 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: Carey

Second: Lobdell

Ayes: Carey, Lobdell, Cowherd, Davis, Rycenga, Bancroft

Nays: 0

Abstentions: 0

Vote:6:0:0

8. **280 Compo Road South:** Continuation of Application #WPL-10800-19 by Richard Bennett on behalf of Simple Plan One, LLC for a new single family residence with crawl space, driveways, patios and walks, a/c units and generator. Work is proposed within the WPLO area of Gray's Creek. – **APPLICATION WITHDRAWN.**

9. **135 Harbor Road:** Application #WPL-10826-19 by Joseph DeJesus on behalf of RVR Realty LLC for demolition of existing house and construction of a new single-family residence, pool, pool fence and associated drainage appurtenances. Work is proposed within the WPLO area of the Saugatuck River.

Dan Conlon, AIA, presented the application on behalf of the property owner. Joe DeJesus was also present.

Mr. Conlon noted the entire property is within the WPLO. There are no inland wetlands on the property but tidal wetlands were flagged by Otto Theall. They are also applying for a ZBA variance and CAM Site Plan approval. They will be seeking approval for a dock at a later date. They propose to demolish the existing house and build a new single family residence. The existing shed will be removed. The new house will be at 18.1 msl with the exception of a powder room at 14 msl. The garage will be below but will have flood openings. They are reducing coverage by 800 s.f. They will be replacing the asphalt driveway with pervious pavers. The sediment and erosion controls include silt fence and a dewatering plan. There is a planting plan proposed next to a rock revetment and a raingarden in the front yard. The Flood and Erosion Control Board meeting held on June 5, 2019 identified issues having to do with quantity of stormwater. They have revised plans to include more drainage galleries. Also the FECB was concerned that the wall might be regulated by the DEEP as an erosion control structure and needed confirmation. He reported that the DEEP found that the wall was not within its jurisdiction. They are also applying for a waiver of the driveway ordinance to keep the 12% existing driveway grade.

Mr. Carey asked about the elevator in the flood zone.

Mr. Conlon stated the elevator pit will meet FEMA regulations. The "home" base for the elevator will be the first floor. All mechanicals will be above the bfe. The heat source is radiant heat in the floor. The yellow groove bamboo will be removed but it will take a few years to get rid of especially the plants growing in the revetment. The driveway will be pavers, not gravel. He noted the wall existed prior to 1980 and is grandfathered even if it is considered a sediment and erosion shoreline protection measure. It would still not need DEEP approval.

Ms. Rycenga noted the picture she took at the June 7, 2019 field trip. She asked what happens if the raingardens are washed out during a flood.

Joe DeJesus, owner, stated the raingarden is not required but they will be replanted.

Ms. Mozian clarified that they may not be required per the drainage standards but they are addressing water quality, which is required under the WPLO.

Mr. Kelly stated it is a low impact development function. It will be incumbent on the owner to maintain the raingarden.

Mr. Bancroft asked about the pool and excavation and wall thickness.

Mr. Conlon stated the silt fence and safety fence will be located downhill of the wall.

Ms. Rycenga asked about the presence of asbestos in the existing house.

Mr. DeJesus stated he will not be demolishing the existing structure until he at least gets through ZBA. There was some asbestos found.

Ms. Rycenga noted there should be a dumpster cover at the end of the day.

Mr. DeJesus stated he lives next door and does not want garbage all over.

Ms. Rycenga asked about the pool.

