

Findings

**3 Lakeview Road
Application #IWW,WPL/E-10782-19
Public Hearing: May 15, 2019; June 19, 2019; July 22, 2019
Work Session: November 18, 2020**

1. Receipt Date: March 20, 2019

2. Application Classification: Plenary

3. Application Request:

Applicant is proposing to construct a single-family residence, patio, driveway and stormwater improvements on a vacant lot. Work is proposed within the wetlands and the 50' IWW upland review area for residences and 30 ft. upland review area for patios and driveways. The proposed impacts include constructing a residence on a pocket wetland in addition to the upland review area for Pussy Willow Brook. The proposed residence is located outside the Waterway Protection Line (WPL).

4. Plans Reviewed:

- a) "Site Improvements for a Proposed Single Family Residence Site Plan James Franco 3 Lakeview Road Westport, CT", Scale 1" =10', Sheet C-1, Dated April 10, 2018 last revised to June 21, 2019 prepared by Landtech
- b) "Site Improvements for a Proposed Single Family Residence Notes and Details James Franco 3 Lakeview Road Westport, CT", Not to Scale, Sheet C-2, Dated April 10, 2018 last revised to June 12, 2019 prepared by Landtech
- c) "Plot Plan Prepared for Jim Franco 3 Lakeview Road Westport, CT", Scale 1" =20', Dated February 12, 2018, Prepared by Leonard Surveyors LLC
- d) "Franco Residence 3 Lakeview Road Westport, CT, Revised Floor Plan", Scale As-Noted, Sheets A1 and A2, Dated May 12, 2016, Last Revised to June 20, 2019, Prepared by J. V. Franco Associates.
- e) "Stormwater Management Report for 3 Lakeview Road Westport, CT", Dated April 10, 2018, Prepared by Landtech
- f) "Wetland Impact Assessment Proposed Single Family Residence 3 Lakeview Road Westport, CT prepared for James Franco", Dated October 11, 2018, Prepared by Landtech.
- g) "New House Footprint in Front Yard Setback, Sheet A-1" and "New House Footprint Outside Setback, Sheet A-2", Prepared by Landtech, Dated 4/10/18 Last revised to 4/3/19, Submitted at July 22, 2019 Public Hearing

5. Wetland Assessment Report - Reviews, Expert Responses and Staff Reports:

- a) "Review of Application # IWW/WPL/E-10782-19 by James Franco for Construction of a Single-Family Residence at 3 Lakeview Road, Westport, CT", Date May 14, 2019, Prepared by REMA Ecological Services, LLC.
- b) Letter from Landtech to Alicia Mozian, Response to REMA "peer review comments", Dated June 12, 2019.
- c) "Staff Report #1 Application #IWW WPL/E-10782-19 3 Lakeview Road Public Hearing May 15, 2019", Prepared May 6, 2019
- d) "Staff Report #2 Application #IWW WPL/E-10782-19 3 Lakeview Road Public Hearing May 15, 2019", Prepared May 31, 2019, Last revised to June 13, 2019
- e) Letter from Landtech to Alicia Mozian, Response to "comments contained in Staff Report #2" review comments", Dated July 8, 2019.
- f) 3 Lake View Road Memorandum from Michelle Perillie to Alicia Mozian, Dated July 12, 2019.

Background Information:

1. IWW/M 10595-18: amend wetland map D07

2. IWW, WPL 10594-18: for a new single family residence (withdrawn)

WPLO

The WPL is established 15' from the wetland line onsite or 15' from the 25-year flood line associated with Pussy Willow Brook, whichever is greater, as shown on the Site Plan. The proposed house and site improvements are located outside the WPLO boundary.

IWW Defined Resource (wetland or watercourse)

Wetlands and Watercourses occur on the subject property.

Map Amendment #IWW/M 10595-18 describes the wetland soils onsite as:

Ridgebury, Leicester and Whitman: These soils are poorly drained and very poorly drained loamy soils formed in glacial till. They are nearly level to gently sloping soils in depressions in uplands. They also occur in drainageways in uplands, in toeslope positions of hills, drumlins, ground moraines and in till plains.

The Non-wetland soils were identified as Charlton- Chatfield complex (73) and Udorthents-Urban land complex (306). These soils consist of moderately deep and very deep, well drained soils formed in loamy melt-out till. They are nearly level to very steep soils on moraines, hills and ridges. Udorthents are moderately to well drained soils that have been disturbed by cutting or filling.

The Map Amendment included consensus from three soil scientists (Chris Allan of Landtech, Aleksandra Moch, and Jim McManus of JMM Wetland Consulting) for the current flagging as depicted on the plans. The wetlands identified consist of a ~112 sq. ft. "pocket wetland" and a "riparian wetland" associated with and encompassing both sides of Pussy Willow Brook that crosses from the north of the property to the south.

The 100-year flood plain as designated by FEMA occurs on the property with a B.F.E. of 13.3 (FEMA Zone A). The proposed work for this property is located within this flood zone. Only the eastern portions of the site, not accessible due to the crossing of Pussy Willow Brook, lie above the boundary.

The Property does not exist within the Aquifer Protection Overlay Zone or a groundwater recharge area.

Property does not exist within the Coastal Areas Management Zone.

Existing Coverage: 0% (0.0 sq. ft.)

Proposed Total Coverage: 13.2% (1,897 sq. ft.)

Proposed Building Coverage: 8.7% (1,247 sq. ft.)

Proposed Conservation Easement Coverage: ~76.2% (~0.46 Acres)

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:

Discussion:

The Commission finds that the proposed site construction of a ~~[3-bedroom]~~ **4-bedroom** residence would eliminate 112 sq. ft. of wetlands. The Commission finds that the filling of the isolated wetlands cannot be avoided due to the “small size of the property.” Additionally, the proposed house is to be constructed on slab foundation to minimize excavation depth and the need for basement dewatering. The applicant provided testimony that, “The 112 sq. ft. isolated wetland was formed in a slight depression in disturbed soils and has no identified wetland functions or values. The third party reviewer, REMA Ecological Services, agreed with the applicant’s Expert testimony concerning the functions and values of this wetland. Both expert parties’ testimony during the public hearing stated that the isolated wetland is not a significant resource. Additionally, they concur the loss of the isolated wetland, due to the proposed residential construction, “...will not result in a reduction (of) the site’s overall wetland functions or values.” The Wetland Impact Assessment report provided by Landtech supports their conclusion that: “All of the identified functions and values associated with the wetlands will be maintained post development with no alteration to the brook’s water quality.”

The Commission finds that the applicant has submitted ~~[three (3)]~~ **four (4)** design proposals for the development of this parcel. The current proposal for the house footprint is 1,247 sq. ft. for a ~~[3-bedroom]~~ **4-bedroom** residence. This design/configuration represents the minimum house size prudent and practical for the applicant to construct on this property. The Commission gave careful consideration to the previous house designs considered for the parcel (footprints of 1,629 sq. ft. and 1,487 sq. ft.).

The Commission finds that the applicant’s statement of rejecting the consideration of placing the house within the 30’ front yard setback is prudent based on three principles. 1. The movement of the residence into the front setback does not eliminate or avoid the elimination of the isolated wetland. 2. The smaller house footprint increases the size of the buffer provided for the riparian wetland system of Pussy Willow Brook and increases the associated Conservation Easement area. 3. The required stormwater drainage for the house is proposed within the driveway, as the only appropriate location available. Reducing the driveway/drainage size will reduce the ability to store stormwater flows from the residence onsite without allowing discharge to the wetland or riparian area.

The Commission finds that the conservation easement incorporates a significant portion of the parcel (~76.2%) and will be marked in the field by a split-rail fence. The Conservation Easement encompasses the area of the riparian wetlands on the property and areas up to the proposed limit of disturbance onsite. The Commission finds a benefit that the applicant will preserve natural resources onsite by removing invasive plants along the riparian wetland buffer associated with Pussy Willow Brook.

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 Commission finds that it is prudent to limit exterior site construction onsite to the time between June and October. The Commission or Conservation Staff may consider additional times if the applicant can show they will not intercept groundwater or disturb water quality with the specific work.

The Commission finds that the stormwater runoff from the roof leaders will be directed to an underdrain system located within the driveway. The driveway construction is designed as gravel with a crushed stone subbase with a curbed edge. The stone subbase is sized to provide a reservoir for the proposed coverage of the house and driveway and sheetflow runoff from the surrounding lawn areas. The Commission finds the drainages has been sized to capture the water quality volume (WQV) and runoff from a 25-year storm.

The Commission finds that the third party reviewer acknowledged that the wetland and watercourse will be protected by the proposed Conservation Easement and establishment of a planted buffer. The Commission finds that the 3-year monitoring period recommended by the third party reviewer for the buffer plantings and invasive removal will be a benefit. This will reduce the potential for long-term impacts to the wetland and watercourse.

The Commission finds that the planting buffer consists of a mixture of shrubs and trees, showy wildflower seed mix and wetland conservation/wildlife seed mix. The methodology includes establishment of a meadow with site work within the wetland and upland review area to create a vegetated buffer for Pussy Willow Brook. The plantings were selected to be native, non-invasive species. The notes include recommendations for the time/season for seed application. The Commission finds that all planting work be limited within the proposed time limit. The preparation of the buffer area requires some soil work and grading. The Commission finds that this is done with the use of hand tools and limit the use of machinery within the easement. Additionally, the use of mulch should be limited to the time of planting and not be allowed as annual maintenance. The use of leaf mulch or other similar means should be considered.

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 temporary silt fencing backed by compost filled silt socks are proposed on the site plan. An anti-mud tracking pad is proposed in the location of the proposed driveway. A dewatering bag filter and associated materials are depicted on the plans for dewatering any excavations that may be required. A stock pile location is identified on the western portion of the property. The site plans include details for all listed above as well as the "General Erosion and Sediment Control Notes" found on the plan. The size of the site and design of the residence requires a significant amount of construction into the southwestern corner of the lot. The Commission finds that a site monitor is required to provide status reports for the construction onsite. The Commission finds that weekly reports during driveway and foundation installation, then monthly until the construction is completed, and after significant rain events of one inch or more.

The Commission finds that the planted buffer within the Easement, as proposed, will provide long-term erosion control for the property. The dense vegetation and root mass will help attenuate floodwaters through the riparian wetland area and enhance stormwater quality through biofiltration. All stormwater from the proposed impervious areas will be directed to the onsite drainage within the driveway.

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.

Discussion:

The Commission finds the Wetland Impact Assessment prepared by Landtech concluded that the riparian wetland had the primary functions of groundwater recharge/discharge in the northwestern corner as well as acting as a temporary flood storage area. It also provided some degree of sediment/toxicants/pathogen removal to improve water quality. The fish habitat was constrained within the boundary of the brook. Nutrient removal was limited within the riparian wetland. The Commission finds the report also identified that the pocket wetland provided none of these functions.

The Commission finds the planting plan included within the site plan improves upon the existing vegetation along the western side of Pussy Willow Brook. The proposed vegetation will add to the stability of the soils onsite and aide in the improvement of water quality for stormwater runoff treatment. These plantings will be incorporated within the proposed Conservation Easement. This Easement is to be marked in the field with a split-rail fence.

The Commission finds that the Conservation Easement language should be established restricting the uses allowed within the easement as well as any maintenance in the designated area. This should be recorded on the land records with the Town Clerk's office to protect the area. The Commission finds that the language will include the removal of invasive species identified along each side of Pussy Willow Brook and any seasonal maintenance required to ensure they do not return. The Commission finds that a performance bond is required to cover the cost for the plantings and invasive monitoring of the site.

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 Flood & Erosion Control Board approved the project at its May 1, 2019 meeting. The applicant shall conduct test pits within the proposed driveway area under the oversight of the site engineer and Town of Westport Engineering Department.

The proposed activities are within the FEMA 100-year flood plain, with a 100-year flood elevation of 13.3 ft. msl. The proposed house will be constructed with a slab on grade foundation with a first-floor elevation of 15.5 ft. msl. The Commission finds the Wetland Impact Assessment states that the riparian wetland has flood storage and recharge capabilities within the northwest portions of the site. The pocket wetland has been identified as not having these primary functions. The Commission finds that the applicant's expert and the third party reviewer, REMA Ecological Services, LLC., submitted testimony that the drainage patterns will not be impeded by this construction. The proposed site work will "not result in any changes to surface or groundwater drainage patterns." The Commission finds that the third party reviewer acknowledged that the wetland and watercourse will be protected by the proposed Conservation Easement and establishment of a planted buffer. The Commission finds that the 3-year monitoring period recommended by the third party reviewer for the buffer plantings and invasive removal will be a benefit. This will reduce the potential for long-term impacts to the wetland and watercourse.

The Commission finds that the site conditions, supported by test pit data, show saturated site conditions onsite during portions of the year. The Commission finds it prudent to limit the time of year that

foundation work and driveway construction will occur between June to October, unless evidence is provided showing that the work will not intercept groundwater onsite.

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.

In conclusion, based on the evidence in the record and presented at public hearing, the Commission finds that 14,778 sq. ft. of wetland adjacent to Pussy Willow Brook will be protected via a permanent Conservation Easement. Furthermore, the wetland buffer enhancement proposal and Conservation Easement Area will provide long-term protection to the wetland and watercourse onsite. Extensive sediment and erosion controls and site monitoring will provide short-term protection during construction. The Commission finds these provisions will offset the loss of the ~112 sq. ft. wetland pocket onsite. Additionally, the applicant's reduced footprint of the proposed house and resulting increased planted buffer are deemed feasible and prudent alternatives by the Commission. The Commission finds this application acceptable with specific conditions.