

WATERWAY PROTECTION LINES

Chapter 148

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[HISTORY: Adopted by the Representative Town Meeting of the Town of Westport 12-6-88. Amendments noted where applicable.]

148-1. Purpose

This chapter is hereby adopted by the Representative Town Meeting of the Town of Westport in order to protect all waterways of the Town of Westport from activities that would cause hazards to life and property and/or activities having adverse impact upon the flood-carrying and water-storage capacity of the waterways and flood-plains, the flood heights and the natural resources and ecosystems of the Town of Westport, including but not limited to ground- and surface water, animal, plant and aquatic life, nutrient exchange and energy flow, with due consideration given to the results of similar encroachments constructed along the reach of the waterway.

148-2. Definitions

As used in this chapter, the following terms shall have the meanings indicated:

PERMITTED USE-Any use of a waterway which does not disturb the natural and indigenous character of the waterway and is for the purpose of maintenance, conservation or restoration of property and drainage of soil, vegetation, water, fish, shellfish and wildlife, gardening or landscaping and does not involve disposition of material or fill.

WATERWAY-Any river, stream, brook, watercourse or tributary, both fluvial and tidal, including any contiguous backwater, pond or other body of water or any floodplain, swamp, marsh, bog or other wetlands.

WATERWAY PROTECTION LINES-Those lines defining the limits of a waterway between which no person, firm or corporation shall carry on or permit to be carried on an activity except as may be permitted by this chapter.

148-3. Establishment and determination

A. Waterway protection lines are hereby established on both sides of all waterways in the Town of Westport and are set at the twenty-five-year-storm flood elevation (mean sea level datum) along each edge of the waterway, except that the clear horizontal distance from the twenty-five-year-storm flood elevation of any such waterway shall be fifteen (15) additional feet on each side of the following waterways:

- (1) Saugatuck River
- (2) West branch of the Saugatuck River

- (3) Aspetuck River
- (4) Stony Brook
- (5) Muddy Brook
- (6) Deadman's Brook
- (7) Sasco Brook
- (8) Indian River
- (9) Poplar Plains Brook
- (10) Pussy Willow Brook
- (11) Silver Brook
- (12) Willow Brook
- (13) New Creek

- B. The determination of the elevation of the twenty-five-year-storm shall take into consideration the effects of probable future developments.
- C. The position of the lines may vary from the twenty-five-year-storm elevation so as to minimize the area of land to be regulated when a portion of the inundated area below said elevation does not contribute to the flood-carrying capacity of the waterway.
- D. When the existing waterway, because of natural or man-made constrictions, is such that such lines cannot be established by standard engineering methods, a channel may be adopted, whereby the removal of such constrictions may be anticipated so that a reasonable delineation of the twenty-five-year-storm elevation may be established.
- E. When the twenty-five-year-flood boundary falls along the channel banks, the lines shall be placed at the top of each bank along the waterway.
- F. In no case shall a waterway protection line be less than fifteen (15) horizontal feet from each edge of the waterway or top of bank, whichever is greater.

148-4. Stream improvement projects.

Notwithstanding the provisions of 148-3 above, in areas in which Muddy Brook or West Parish tributary are improved under a stream-improvement project to hold a twenty-five-year-storm within its banks, the waterway protection lines shall be set at three (3) horizontal feet from the top of the bank of the improved waterway.

148-5. Regulated activities.

The following activities are regulated within said waterway protection lines: dumping, filling and transferring of any materials and the encroachment by any construction, building or portion of a building or other permanent structure(s) within said waterway protection lines.

148-6. Permitted activities.

- A. If the Town Engineer finds that the proposed use, activity or project does not have adverse impact on flooding, drainage, erosion or the natural carrying and water-storage capacity of the waterway and involves only a permitted use as defined herein, then a recommendation for administrative approval subject to the appropriate conditions, shall be made by the Town Engineer and forwarded to the Conservation Director. If the Conservation Director finds that the proposed use, activity or project does not have adverse impact on the natural resources and ecosystems of the waterway and the project involves only a permitted use as defined herein, then an administrative approval shall be issued by the Conservation Director, subject to the appropriate conditions.
- B. Replacement or repair of any previously existing buildings or structures which do not conform to this chapter which are subsequently damaged or destroyed due to natural causes shall be permitted, provided that the replacement or repair of any such nonconforming building or structure shall be commenced within nine (9) months after the damage or destruction. In addition, the plans for such replacement or repair must be approved by the Conservation Director and the Town Engineer. Such nonconforming buildings or structures shall not be extended or expanded, except to raise the finished floor elevations to conform to the requirements of the federal government which are imposed as conditions for the construction of flood control projects.
- C. Projects involving maintenance of existing structures(s) or restoration of natural resources which are approved by the Conservation Director and the Town Engineer shall be permitted within said waterway protection lines, provided that they are in compliance with current laws and regulations. Such nonconforming building or structure shall not be extended or expanded, except to raise the finished floor elevations to conform to the requirements of the federal government which are imposed as conditions for the construction of flood control projects.

148-7. Approval required for conduct of regulated activities.

Written applications to conduct a regulated activity shall be filed with the Conservation Department. Applications for regulated activities that are not permitted pursuant to 148-6 shall be considered by the Flood and Erosion Control Board and the Conservation Commission. Only those regulated activities that are not permitted pursuant to 148-6 will require the approval by both the Flood and Erosion Control Board and the Conservation Commission. Only completed applications, on the form supplied by the town, shall be considered by the Flood and Erosion Control Board and the Conservation Commission. Failure of an applicant or his representative to sufficiently answer inquiries at a meeting of either the Flood and Erosion Control Board or Conservation Commission may be sufficient grounds for denial of an application. Each body shall render a written decision to the Representative Town Meeting Moderator within fifteen (15) days after the second

regularly scheduled meeting following the date the application is filed. Each body shall notify the applicant by certified mail of its decision within fifteen (15) days from the date of the decision. Failure of either body to act within the prescribed time period shall be deemed an approval of the application by that body.

148-8. Information to be submitted to Flood and Erosion Control Board.

An applicant shall submit information to the Flood and Erosion Control Board showing that such activity will not cause flooding, drainage, erosion and/or related conditions hazardous to life and property and will not have an adverse impact upon the flood-carrying and water-storage capacity of the town's waterways, including but not limited to the impact upon flood heights, hydrological energy flow, maintenance of essential and natural patterns of water circulation, drainage and basin configuration and maintenance of fresh and saltwater exchange through the placement of culverts, tide gates or other drainage or flood-control structures.

148-9. Information to be submitted to Conservation Commission.

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 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.

148-10. Final decision; commencement of activity.

- A. The Conservation Commission may grant or deny permission to conduct a regulated activity based on a finding of the effect of the obstruction or encroachment on the flood-carrying and water-storage capacity of the waterways and floodplains, flood heights, hazards to life and property, the protection and preservation of the natural resources and ecosystems of the municipality, including but not limited to ground- and surface waters, animal, plant and aquatic life, nutrient exchange and energy flow, with due consideration given to the results of similar encroachments constructed along the reach of the waterway.
- B. The applicant may commence any permitted activity no earlier than thirty (30) days after receipt of the final decision of the Conservation Commission.

148-11. Review of decisions by Representative Town Meeting.

The Representative Town Meeting shall have the right to review any decision(s) of the Flood and Erosion Control Board and/or the Conservation Commission. Said right of review shall include the ability to reverse any decision of either or both reviewing bodies.

Such right of review shall be exercised only upon the written petition for review submitted by two (2) members of the Representative Town Meeting or twenty (20) electors of the Town of Westport, which petition must be received by the Representative Town Meeting Moderator or Town Clerk within thirty (30) days from the date a decision is rendered by the latter of the two (2) reviewing bodies. The receipt of such a petition for review shall prohibit any applicant from commencing the proposed activity until receipt of the Representative Town Meeting decision. The right to review of the Representative Town Meeting must be exercised within (90) days after receipt of the petition for review. The Town Clerk shall give written notice of the decision of the Representative Town Meeting by certified mail to the applicant within fifteen (15) days of the Representative Town meeting action. If the Representative Town fails to act on the petition for review within the prescribed time period, the application shall be deemed approved.

148-12. Submission of applications for final approval.

All applications submitted by the Town of Westport or by any board, commission, department or other subdivision of the Town of Westport shall be submitted to the Representative Town Meeting for final approval. However, such applications must first be filed with the Conservation Department. The Conservation Department will submit the application to the Flood and Erosion Control Board and the Town Engineer for comments and recommendations. Each reviewing body shall submit its written decision and recommendations to the Moderator of the Representative Town Meeting within fifteen (15) days after the Representative Town Meeting's second regularly scheduled meeting following the date the application is filed with the Town Engineer. Failure of either body to submit such written decision and recommendations within the prescribed period shall be deemed an approval. In the event that one (1) or both of the bodies fails to act within the prescribed time period, that body shall give notice to the Moderator of the Representative Town Meeting that the applicant has been deemed approved by that nonreviewing body. The Representative Town Meeting shall then give final approval or denial to the application within ninety (90) days from the date of receipt by the Moderator of the later of the written decision or notice by each body. Failure of the Representative Town Meeting to act within the prescribed time period shall constitute an approval of the application.

148-13. Notification of applicant and adjacent property owners required.
[Amended 10-2-1990, effective 10-12-1990]

An applicant shall be given written notice by certified mail at least fourteen (14) days prior to the date on which his/her initial application shall be reviewed by a municipal board or commission acting under this chapter. If the board of commission extends review of the initial application, the applicant shall be given written notice by certified mail at least seven (7) days prior to the date on which his/her initial application shall be given continued review; and further, such seven-day notice shall be required for every continuance thereafter. In addition, the applicant shall submit the names and addresses of

all property owners adjacent to the applicant's property. Said adjacent property owners shall also be given written notice at least fourteen (14) days prior to the date the initial application is scheduled to be reviewed by a municipal board or commission acting under this chapter. If the board or commission extends review of the initial application, any adjacent property owners shall also be given written notice at least seven (7) days prior to the date on which the initial application is scheduled for continued review; and further, such seven-day notice shall be required to be provided for said adjacent property owners for every continuance thereafter.

148-14. Appeals

Any person, firm or corporation aggrieved by a final decision of the Flood and Erosion Control Board, Conservation Commission or the Representative Town Meeting made in accordance with this chapter may, within thirty (30) days from receiving notice of its decision, appeal from such decision in the manner provided by Section 8-8 of the Connecticut General Statutes for appeals from decisions of a municipal Zoning Board of Appeals.

148-15. Enforcement

The First Selectman shall designate agent(s) who are members of the Conservation Department to enforce the provisions of this chapter. The enforcement agent(s) may seek such injunctive relief as may be necessary to halt any violation of this chapter by any person, firm or corporation.

148-16. Notice of violation; time limit for corrections; extensions.

Any violator of this chapter shall be given written notice of the violation by the Conservation Department. This notice shall be sent by certified mail, return receipt requested, and the violator shall have fourteen (14) days from receipt of the notice in which to correct the violation before action is taken to enjoin the violation or to fine the violator in accordance with the provisions of 148-17 of this chapter. A further extension of time may be granted by the enforcement agent(s) for good cause shown by the violator. When a violation has been corrected, the enforcement agent(s) shall so certify in writing to the property owner and shall so note in his records.

148-17. Authority of other bodies.

- A. Nothing in this chapter shall limit or restrict the State of Connecticut Commissioner of Transportation in exercising his authority over the harbors and navigable waters of the state, nor apply to dams, bridges, pipelines or other similar structures and appurtenances thereto, extending across any waterway, which otherwise comply with current laws and regulations.
- B. The provisions of this section shall not be construed to limit or alter the authority of the State of Connecticut Commissioner of Environmental Protection over the

tidal, coastal and navigable waters of the state and within stream channel encroachment lines established by said Commissioner pursuant to Section 22a-343 of the Regulations of the Department of Environmental Protection.

148-18. Violations and penalties.

Whoever violates any provisions of this chapter shall be punished by a fine of not more than ninety dollars (\$90.) and shall be liable to the town for the cost of restoring the affected area as closely as possible to its condition prior to the violation. For the purposes of the fine provisions of this section, every day after the violator has received written notice that he is in violation of the chapter shall constitute a separate violation.