

TO: Conservation Commission

FROM: Alicia Mozian, Conservation Director

DATE: April 3, 2020

**RE: 222 Wilton Rd. Application #IWW, WPL/E-10978-20  
Request to Legalize Patio and Fill Placed within 100 ft. Upland Review  
Area**

On January 15, 2014 the Conservation Commission approved application #AA, WPL/E-9639-13 for a 2-lot subdivision of the land located at 5 River Lane. Two of the conditions of approval read as follows:

Condition 16. "An individual permit review will be required for any future activity on Lot "B." A 100 ft. setback from the wetlands will be requested for the placement of any new structure. Failure to meet the 100 ft. setback will require a review of the proposal by the Conservation Commission."

Condition 17. "The existing stonewall on Proposed Lot "B" shall serve as the limit of disturbance for site development. No activity is to be conducted on the steep slope area without review and approval by the Conservation Commission. A note to reflect this condition shall be placed on a revised site plan to be reviewed and approved by the Conservation Department prior to the issuance of a zoning permit."

Lot "B" referenced above is 222 Wilton Road.

At the time of review, an existing house with a walk-out basement was present on the property which lent itself well to the sloping nature of the property. The address of the house at the time was 5 River Lane. Its address has since changed to 222 Wilton Rd. It was presented to the Boards and Commissions at the time that this house would remain.

Section 7.4 of Westport's Inland Wetland and Watercourse Regulations allows for the Commission to impose a 100 ft. upland review area on properties with steep slopes as a measure to further protect an adjoining wetland or watercourse. On this property, the wetland soils are confined to a narrow strip that straddles an

unnamed watercourse which flows from the other side of Wilton Rd., behind this lot and across River Lane and eventually into the Saugatuck River. The Commission chose to impose the 100 ft. upland review area for development of the lot so that it could have a say in proposed activity in this area as a means of adding further protection to the slope and the watercourse.

Furthermore, a long-standing stonewall existed on the property directly behind the house. That was to serve as the limit of disturbance for construction activity.

In 2016, after an initial attempt to demolish the existing house and build a new one within the 100 ft. upland review area failed, the builder amended his plan and eventually secured a permit for a house with an elevated deck that honored the 100 ft. upland review area setback. The new septic system, drainage galleries and grading were all outside the 100 ft. setback. A silt fence was shown in that location as well.

Fast forward to the present day, the property has been taken over by the bank and a contractor purchaser is ready to move in. However, upon inspection numerous deviations from the approved plans were cited. Of relevance to the Conservation Commission is the fact that a great deal of filling took place in the backyard which resulted in a flat, rather than sloping, backyard, an on-grade patio instead of an elevated deck and septic and drainage appurtenances not installed in the approved locations, including approximately 35 sq.ft. of the drainage system being placed on the abutting property to the east.

The bank has retained a new builder and engineer to resolve these issues so that the sale can go forward with the new buyer. The Commission is being asked to legalize the patio and fill that were installed within the established 100 ft. upland review area. The applicant today is planning on relocating the drainage and septic system out of this area. A plan for relocating the septic system has already been approved by the Health District. The Engineering Department has reviewed the plans and has submitted comments. As of this writing, the applicant is working to address those and amended plans will be submitted shortly. Engineering will respond before our meeting with follow-up comments.

Should the Commission approve the request for legalization, the next stop will be the Zoning Board of Appeals and the Planning and Zoning Commission. The reason why these approvals are needed is because the fill that was brought in

exceeds the amount that is allowed and it created a steep slope on the property greater than the 25% that is permitted. Unfortunately, the septic system cannot be relocated until all three of these reviewing bodies have granted legalization of what was done without approval.

Perhaps the best way to consider this request is to ask whether if the builder had come and sought permission in the first place for what he did, would the Commission have approved it? Will encroachment within the 100 ft. upland review area cause impact to the adjacent wetland and watercourse?

Staff believes the patio does not pose a concern to the wetland and watercourse and should be allowed to remain.

With regard to the fill, that becomes a bit more complicated. Both the septic work and the drainage work will require the back yard to be dug up. Land Tech has submitted plans to stabilize the slope with a meadow mix secured with a geotextile mat that will disintegrate overtime once the seeds germinate and take hold of the area.

Staff also recommends that, because of the drop off, that a planted barrier or fence be installed at the top of the slope to act as a deterrent from using the sloped area as a place to discard brush and leaves. The placement of this can be field located with staff.

At this point, having heavy machinery working in that area, other than to relocate the septic and drainage, may result in more harm. Instead, adding additional plantings such as the meadow mix and perhaps plantings on top of the slope may be sufficient mitigation.

In addition, the applicant was charged double the application fee as allowed for since it is a request to legalize an activity that was done without proper authority.