

81 RIVER STREET - Lot 2F - LOTHROP MILL LLC

DECISION

On September 17, 2008, the Acton Conservation Commission voted unanimously to issue an Order of Conditions approving the Notice of Intent filing under the Massachusetts Wetlands Protection Act, G.L. Chapter 131, Section 40 and the Town of Acton Wetland Protection Bylaw.

The Commission bases its decision upon the Findings of Fact and Conclusions set forth below.

FINDINGS OF FACT:

- 1) The parcel on which the Applicant proposes to locate Lot 2F borders Fort Pond Brook and encompasses riverfront as well as bordering vegetated wetlands protected under the Massachusetts Wetlands Protection Act ("Act") and Town of Acton Bylaw ("Bylaw"). The wetlands are located along the bank of Fort Pond Brook and in the westerly portion of the parcel, on Lot 2A. The 200-foot riverfront area is some 68,000 square feet in area and overlaps with the 100-foot buffer zones of the wetlands.
- 2) The property is a previously developed, degraded site and currently includes a condemned, historic mill building, stockpiles of materials, areas of heavily compacted gravel that have served as parking and storage space, assorted debris, and extensive areas devoid of topsoil. The existing structure extends to the edge of Fort Pond Brook and the riverfront wetlands and includes support piers located in Fort Pond Brook. The previously disturbed and degraded area extends to within five feet of the wetland on Lot 2A. The Lot 2A wetland, as well as the associated buffer zone, contains debris from the historical activities on the site.
- 3) The Applicant originally planned to remove approximately two-thirds of the deteriorated mill building and rehabilitate the remaining portion closest to Fort Pond Brook; the Commission approved the proposed mill-building renovation in an Order of Conditions (OOC) dated May 21, 2008 (DEP File No. 85-996). In August 13, 2008, however, the Town of Acton Building Commissioner condemned the mill building. As a result, the Applicant now is proposing to remove the existing mill building and foundation, and construct a new foundation and building in the same footprint as the existing structure. Repair or reconstruction of the existing stone retaining wall also may be necessary; the Applicant will evaluate the need for such work after the removal of the mill building. To the extent that work on the new foundation and retaining wall requires dewatering, the Applicant proposes to divert the water to an temporary collection area on the southwesterly side of the proposed parking garages for the new building, and from that point direct the water to the bio-retention area on Lot 2E, which abuts Lot 2F.
- 4) The remainder of the Lot 2F project essentially will be the same as the work that the Commission approved in the May 21, 2008 OOC. The Applicant will remove the debris and stockpiles from the parcel, re-grade the site and provide best-management-practices stormwater management where none currently exists. The new structure replacing the mill building will be in the same close proximity to Fort Pond Brook and the riverfront wetlands as the original building. New structures elsewhere on the parcel, however, including a proposed carport on Lot 2F, will be farther from the edge of Fort Pond Brook and the riverfront wetlands. In addition, the Applicant will restore the inner 50 feet of the riverfront-wetlands-buffer-zone with vegetative filter strips and bio-retention areas with naturalized, indigenous vegetation that in the future should serve as a wildlife corridor and habitat area. Finally, the Applicant will clean out and restore the Lot 2A wetland and associated buffer zone. Aside from the bio-retention outfalls, all proposed activity will occur within already disturbed, degraded areas.
- 5) The Applicant has requested with respect to Lot 2F a waiver of strict compliance with the setback requirements set forth in Section F8.3 of the Bylaw and Section 3.2 of the Acton Wetland Protection Bylaw Rules and Regulations ("Bylaw Rules"), specifically:
 - a) for the construction of the new building and new foundation in the footprint of the existing non-conforming mill building, performance of any necessary repair or reconstruction of the existing retaining wall, and construction of the temporary dewatering system, a waiver of the requirement in Section F8.3(2) of the Bylaw and Section 3.2(2) of the Bylaw Rules, requiring a minimum, 50-foot setback of undisturbed vegetation from wetlands.
 - b) for the construction of the new building and new foundation in the footprint of the existing nonconforming mill building, a waiver of the requirement in Section F8.3(3) of the Bylaw and Section

3.2(3) of the Bylaw Rules, requiring a minimum, 75-foot setback from wetlands to the edge of driveways, roadways and structures.

CONCLUSIONS

The Commission approves the Applicant's project because (1) the proposed work satisfies the requirements of the Act, including the requirements set forth in 310 C.M.R. 10.58(5) of the Act regulations with respect to the redevelopment of previously developed riverfront; (2) the proposed work satisfies the requirements for a waiver under Section F4.6 of the Bylaw and Section 1.5 of the Bylaw Rules because the new structure and activity, will have less of an adverse effect on the interests of the Bylaw than the existing structure and historical activity; and, by improving stormwater management and other currently degraded conditions, will enhance the public interest and serve the intent and purpose of the Bylaw; (3) except as specified above, the work satisfies the requirements of the Bylaw and Bylaw Rules.

SPECIAL CONDITION:

- 1) The Applicant shall submit a detailed planting plan that uses wildlife beneficial, native/indigenous species for the proposed bio-retention areas. The Applicant also shall provide a long-term management plan for the wetland area on Lot 2A and the bio-retention areas on all lots to ensure the success of native species and control of non-native species. The Applicant shall present the planting plan and long-term management plans to the Commission for approval prior to the commencement of work on the site.