

NEW HAVEN CITY PLAN COMMISSION INLAND WETLANDS REVIEW

RE: 141 OGDEN STREET, Inland Wetlands Application to construct a single-family residence in an RS-1 zone. (Owner: Edith Houghton Chapman; Agent: Stephen Studer, Esq.)

REPORT: 1489-01

INLAND WETLANDS FINDING: Approval with Conditions

CONDITIONS OF APPROVAL

1. Pursuant to State Statute, this Inland Wetland approval is valid for a period of five (5) years after the date of decision, to March 19, 2019. Upon petition of the applicant, the Commission may, at its discretion, grant extensions totaling no more than an additional five (5) years to complete all work connected to the original approval.
2. Signoff on final site plans by the Fire Department, City Engineer, Transportation Department and City Plan Department in that order shall be obtained prior to issuance of building permit or initiation of site work.
3. The applicant shall record on the City land records an original copy of this Inland Wetlands report (to be provided by the City Plan Department) and shall furnish written evidence that the document has been so recorded (showing volume and page number) to the City Plan Department, prior to City Plan signoff on final plans for a building permit or initiation of site work.
4. Any substantive modifications to the site plan including the building design and footprint or site grading and drainage will require City Plan Commission approval.
5. A site restoration bond in an amount of \$5000 will be required as a provision of this permit. Bond, or other such financial instrument, shall be provided to the City Plan Department, with a copy to the City Engineer, prior to City Plan final sign-off on plans for building permit.
6. An individual who will monitor the Soil Erosion and Sediment Control Plan on a day-to-day basis shall be named, and such name and contact information shall be provided to the City Plan Department, prior to City Plan sign off on final plans for a building permit or initiation of site work.
7. Any activity within the public right-of-way will require separate permits.
8. Extreme care shall be taken in the protection and preservation of existing trees on the site.
9. Installation of the drainage system and overall site grading will be supervised and verified by a professional engineer (PE) hired and paid for by the Applicant. Verification will be comprised of a signed, certified letter sent to the Commission at the conclusion of construction stating that site grading and drainage were constructed in accordance with the approved plans and specifications.
10. The applicant will record the Declaration of Conservation Restriction (DCR) as attached to this application and as depicted on the submitted plans.
11. The creation of the wetland mitigation area (WMA) depicted on the submitted plans shall be supervised by either a professional wetland scientist (PWS), a certified professional soil scientist (CPSS) or a professional member of the Soil Scientist of Southern New England (SSSNE), hired and paid for by the Applicant. Qualifications to be reviewed by City staff for compliance. The scientist shall provide a report to the CPC within 30 days of completion of the work which either confirms the WMA was created in accordance with the DCR and approved plans or describes the actions necessary to comply with design intent. If reasonably possible, remedial action must be commenced within the subsequent 30 days, diligently pursued to completion, without interruption, as soon as reasonably possible and confirmed with a similar report. WMA shall be memorialized with permanent markers showing the physical extent of the WMA at the time of its creation. The creation of the WMA in

accordance with the DCR and approved plans must be completed prior to issuance of Certificate of Occupancy.

12. The professional scientist shall visit the site annually in springtime for a period of three years after the creation of the WMA. A report shall be provided to the CPC describing the condition of the WMA, including any action necessary to maintain the remediation area in accordance with the original design intent. If reasonably possible, any corrective action must be commenced within 30 days of the annual report and diligently pursued to completion, without interruption, as soon as reasonably possible.
13. As-built site plan (including verification of the boundaries of the WMA) shall be filed with City Plan Department, with a copy to the City Engineer, prior to issuance of Certificate of Occupancy. Site Plan shall be submitted in both mylar and digital format [.TIFF file based on the State Plane Coordinates (NAD1983)]. Note version of AutoCAD.

Previous CPC Actions:

CPC 1395-12: Inland Wetland application for single family house.

CPC 1449-06: Inland Wetland application to construct 1 family residence approved.

CPC 1480-04: Inland Wetland application to construct 1 family residence; application withdrawn.

Submission: INLAND WETLANDS Application Packet including DATA, WORKSHEET, SITE, SESC, and IW forms, including NARRATIVE. Application fee: \$270 received January 16, 2014. Revised Drawings and application received March 7, 2014.

- Site Development Plan Sheet C-1 dated 6-17-10 (rvsd 2-25-14).
- Sheets C-2 and C-3 dated 6-17-10 (rvsd 10-7-13) and 9-16-13 received March 19, 2014.
- Stipulated Conditions of Approval (by Applicant, THESE ARE NOT CPC Conditions of Approval)
- Declaration of Conservation Restriction (revised received July 11, 2014)
- Forbearance Agreement
- Wetland Watercourses and Soil Report dated September 25, 2009.
- Letter from Soil Science and Environmental Services Inc dated March 19, 2014.

PROJECT SUMMARY:

Project: Construction of 5 BR Residential structure

Address: 141 Ogden Street

Site Size: 15, 770 SF (.36 acres) including 2979 SF (.07 acres) Inland Wetlands

Zone: RS-1

Financing: private

Project Cost: TBD

Parking: on-site, 4 spaces

Land Owner: Edith Houghton Chapman

Phone: 904.874.1078

Applicant: same

Phone: same

Agent: Anthony Avallone

Phone: 203.882.4134

Site Engineer: John Paul Garcia

Phone: 203.393.3306

Soil Scientist: Thomas Peitras

Phone: 203.272.7837

BACKGROUND

Site/Existing Conditions: The existing site is a vacant lot in a residential neighborhood. Existing wetlands cross the site north to south in a strip approximately 30 feet wide.

Proposed activity: Applicant proposes to sell the land to a prospective buyer. Applicant is seeking approval for the building of a proposed 2275 SF house with an attached garage.

SITE PLAN REVIEW

Soil Erosion and Sediment Control Plan: The application states approximately 475 CY of soil will be removed and 12% of the site will be regraded. John Paul Garcia is named as the individual responsible for monitoring the site to assure there is no soil or runoff entering City catch basins or the storm sewer system. Once a contractor is chosen, an individual will be named as the individual responsible for monitoring soil erosion and sediment control measures on a daily basis, and that name provided to the City Plan Department prior to signoff of final plans for permits. This individual will also be responsible for assuring there is no dust gravitation off site by controlling dust generated by vehicles and equipment during construction phases. Soil stockpiles if necessary shall be protected from dust gravitation and soil erosion. All SESC measures are required to be designed and constructed in accordance with the latest Standards and Specifications of the *Connecticut Guidelines for Soil Erosion and Sediment Control*.

John Paul Garcia shall be responsible for determining the appropriate response, should unforeseen erosion or sedimentation problems arise. He is fully responsible for insuring that SESC measures are properly installed, maintained and inspected according to the SESC Plan. Should soil erosion problems develop (either by wind or water) following issuance of permits for site work, John Paul Garcia is responsible for notifying the City Engineer within twenty-four hours of any such situation with a plan for immediate corrective action.

Stormwater Plan/Drainage Report/Compliance with Section 60 Stormwater Management Plans: Applicant is not required to comply with Section 60 due to the residential nature of the development. However, due to negotiations with the adjacent neighbor, a number of stormwater management strategies are proposed.

A swale, berm and associated curtain drain is proposed to be installed along the entire length of the southern property line (the down-gradient side). The drain will tie in to the existing storm sewer located within Ogden Street. Roof leaders along the rear (northeast) side of the house and garage will be connected to the solid 8" pipe in the curtain drain. The roof leader at the left front (southwest) house corner will be connected to a level spreader and will provide recharge to the wetland area. The remainder of the roof will connect around the house corner to the collection pipe picking up the front corners of the garage and will tie into the curtain drain system. The catchment area for the existing and created wetland areas is generally the extent of those areas alone, except for the small addition of water volume from the roof.

Compliance with Section 60.1 (Exterior Lighting): not applicable

Compliance with Section 60.2 (Reflective Heat Impact from hardscape or paved surfaces): not applicable

Site Circulation/Parking: Vehicles will enter the site via a drive off Ogden Street and will park either in the drive or the proposed garage.

Landscape Plan: Wetland mitigation area will be seeded with a wetland seed mix. Otherwise, no landscaping is shown on the plans except for the protection of existing mature trees.

Project Timetable: Construction is expected to commence upon sale of the property.

INLAND WETLANDS REVIEW

Definition of Regulated activity - any operation within or use of a wetland or watercourse involving removal or deposition of material, or any obstruction, construction, alteration, or pollution of such wetlands or watercourses, and any earth moving, filling, construction, or clear-cutting of trees, or any such operation within fifty (50) feet of wetlands or watercourses.

Determination of Classification: The Commission has reviewed the options for classification, as stated in Sections 3, 4 and 5 of the Regulations, and has determined that the wetlands application qualifies as a Class B Application. The activity proposed will not have substantial adverse effect on the regulated area or any other part of the inland wetland and watercourses system. This application was received by the Inland Wetland Commission at its meeting on March 19, 2014.

Proposed Regulated Activity: Applicant proposes activity in both the flagged wetland area and within the 50' wetland setback. Activities within the flagged wetland include the grading and layout of the new driveway and the installation of part of the new curtain drain/berm system (discussed above). Activities within the 50' wetland setback include the establishment of a wetland mitigation area (1010 SF), the remainder of the driveway construction and the construction of the proposed house and garage. Total disturbance of the site includes 720 SF within the flagged wetland, and 6710 SF within the 50' wetland setback (including establishment of the wetland mitigation area).

Soil Science Report: Soil Science and Environmental Services Inc. investigated the property for Inland Wetlands on September 25, 2009. Thomas Pietras, SS&ES Soil Scientist performed the investigation and identified poorly drained Inland Wetland soil in the central portion of the property. The report states that wetland soil has been partially drained due to the surrounding residential development.

The wetland on the property is a very small, relic wetland that formed prior to the residential development in the neighborhood. According to the report, the area now provides very low wetland functions.

Mitigation for wetlands intrusion:

As remediation for the crossing of utilities and a driveway through the eastern portion of the wetlands soils, the applicant has proposed a mitigation area on site. It is proposed that approximately 24" of existing non-wetlands soils be removed from a 1,010 SF area adjacent to the western property line which abuts the wetlands flagged area, and the soils replaced with 8" of relocated wetlands soils being excavated from the area where the utilities and driveway will be located. This area will be topped with a layer (4") of topsoil and planted out with a wetland seed mix ("New England Wetmix"); the area may take on the characteristics of the adjacent wetlands soils, and mitigate any adverse effects the excavation and placement of utilities might conceivably cause. Additionally the area to the northwest of the proposed house will be regraded slightly to direct water to flow to the west of the house towards the mitigation area. A portion of the roof runoff will be directly via splash pad to this area as well.

Conclusion:

Although an area of 141 Ogden Street was identified as containing wetland soil, there is little evidence of the wetland today. The property at 123 Edgehill Road has taken advantage of the seeping water channeling it into a garden pond. Overflow from the pond goes into a yard drain on that property and flows out to the storm sewer in Ogden Street. While a minimal amount of water may flow to a manhole on this property, its outlet to the Ogden Street storm sewer has been plugged with concrete. As a result, the wetlands on the subject property provide minimal functional wetlands value. The value is further diminished by its small size, presence of shallow fill and isolated location within a densely developed residential neighborhood. It is a wetland which pre-existed the residential development uphill of the site between Reservoir Street and Edgehill Road, as well as downhill toward Whitney Avenue, including the site of the house at 123 Ogden Street. If the wetlands boundaries were extended to the east, one likely would find that 123 Ogden and the houses further to the east were constructed within the same wetland soils.

Once it becomes established, the wetland mitigation area could eventually develop the characteristics of wetlands soils and become a flagged wetland itself adding to the remaining wetlands soils on the site.

Application Evaluation Criteria: In reviewing a Class B or C Application, the Commission must consider the following environmental impact criteria in its evaluation, as stated in Sections 7.2 and 7.3 of the City's Inland Wetlands and Watercourses Regulations:

- The ability of the regulated area to continue to absorb, store or purify water or to prevent flooding.
- Increased erosion problems resulting from changes in grades, ground cover, or drainage features.
- The extent of additional siltation or leaching and its effect on water quality and aquatic life.
- Changes in the volume, temperature, or course of a waterway and their resulting effects on plant, animal and aquatic life.
- Natural, historic, or economic features that might be destroyed, rendered inaccessible or otherwise affected by the proposed activity.
- Changes in suitability of the area for recreational and aesthetic enjoyment.
- Existing encroachment lines, flood plain and stream belt zoning and requirements for dam construction.
- Any change in the water effecting aquatic organisms or other wildlife, water supply and quality, or recreational and aesthetic enjoyment.
- The existing and desired quality and use of the water in and near the affected area.
- Reports from other City agencies and commissions not limited to the Environmental Advisory Council, Building Official, and City Engineer.
- The importance of the regulated area as a potential surface or ground water supply, a recharge area or purifier or surface or ground waters, a part of the natural drainage system for the watershed, a natural wildlife feeding or breeding area, its existing and potential use for recreational purposes, existence of rare or unusual concentrations of botanical species, availability of other open spaces in the surrounding area, or its value for flood control.

The Commission must consider the following **additional** criteria:

- Any evidence and testimony presented at a public hearing, should one be held.
- Alternatives which might enhance environmental quality or have a less detrimental effect, without increasing basic project costs.
- Short versus long term impacts.
- Potential loss of irrevocable resources or property impairment.
- Suitability of action for area.
- Mitigation measures which may be imposed as conditions.

Required Findings for a Class B Application:

The Commission must make the following findings for a Class B Application:

1. There is no preferable location on the subject parcel or no other available location could reasonably be required;
2. No further technical improvements in the plan or safeguards for its implementation are possible, or taking into account the resources of the applicant, could reasonably be required; and
3. The activity and its conduct will result in little if any reduction of the natural capacity of the wetlands or watercourses to support desirable biological life, prevent flooding, supply water, facilitate drainage, and provide recreation and open space.

INLAND WETLAND FINDING

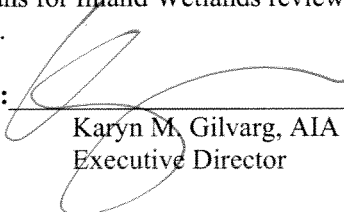
The Commission has reviewed the application in context with the evaluation criteria and Class B required findings and believes that there is no preferable location of the proposed activity on the site, nor are there further technical improvements required in the plans. The applicant has made numerous technical changes to the site plan which have improved drainage, facilitated water absorption, and which may actually increase the size of the inland wetlands on site. Construction of a residential structure in the location where it is proposed on the lot will not interfere with the wetlands soils on the site. The addition of a curtain drain along the east property line should assist in reducing seepage of water through the site and runoff from the additional roof and impervious surface area should be fully captured by the proposed drainage system and remediation area. The wetlands restoration plan of creating a slight depression adjacent to the west property line and adding wetlands soil and seed mix may create additional storage area for overland runoff. The project should result in little if any reduction in the natural capacity of the wetland, such as it is, to support desirable biological life, prevent flooding, supply water, facilitate drainage, and provide recreation and open space.

The Commission believes that the required findings for a Class B application have been satisfied. The Inland Wetland application is hereby approved, in accord with the submitted plans and the Conditions as stated on page 1.

Conditions of approval have been added at the applicant's request; however the Commission will not be responsible for any other agreements between the applicant and other parties.

The City Plan Commission approves the submitted Site Plans for Inland Wetlands review subject to these standards and to the standard conditions on Page 1.

ADOPTED: March 19, 2014
Edward Mattison
Chair

ATTEST: 
Karyn M. Gilvarg, AIA
Executive Director

DECLARATION OF CONSERVATION RESTRICTION

THIS DECLARATION OF CONSERVATION RESTRICTION is made the _____ day of _____, 2014, by Edith Houghton Chapman of 1014 W. Saint George's Road, in the City of Baltimore, State of Maryland ("Owner").

WITNESSETH:

WHEREAS, Owner owns certain unimproved real property situated in the city of New Haven located at 141 Ogden Street (the "Subject Property"); and

WHEREAS, Owner has applied to the New Haven City Plan Commission in its capacity as the inland wetlands and watercourses agency of the City of New Haven ("CPC") for a permit to conduct a regulated activity in connection with development of a single family house on the Subject Property; and

WHEREAS, storm water drainage from the adjoining area and from the Subject Property moves in the direction of the adjacent property located at 123 Ogden Street which is down-gradient; and

WHEREAS, Owner, for herself and for her successors and assigns, agrees to create approximately 1,010 square feet of new inland wetlands on the Subject Property as mitigation, which area is shown as "proposed wetlands mitigation area (1010 SF)" on the "Site Development Plan 141 Ogden Street, New Haven, Connecticut" Drawing No. C-1 dated 6-17-10, last revised 2-25-14, prepared by JPGA, Bethany, CT (the "Map") to be filed in the Office of the New Haven Town Clerk; and

WHEREAS, Owner, for herself and for her successors and assigns, agrees to place a conservation restriction over the proposed wetlands mitigation area ("WMA") and a portion of the existing inland wetlands on the Subject Property (the "Easement Area") as more particularly bounded and described in the table on the Map labeled "Wetland Easement" and in Schedule A attached hereto and made a part hereof.

WHEREAS, those portions of the Subject Premises which are outside of the Easement Area as depicted and described on the Map are not subject to the provisions of this Declaration of Conservation Restriction but remain subject to applicable law and regulation; and

WHEREAS, the creation of the WMA, the execution and recording of the Declaration of Conservation Restriction and the placement of markers by a licensed land surveyor to indicate the physical extent of the Easement Area on the Subject Property shall be conditions of approval for Owner's 2014 Application to Conduct a Regulated Activity and Site Plan Review for the construction of a single family house; and

WHEREAS, it is Owner's intention that enforcement authority for this Declaration of Conservation Restriction shall vest in the CPC.

NOW, THEREFORE, for and in consideration of the foregoing premises and of the covenants, terms, conditions and restrictions herein contained, Owner does hereby declare a perpetual conservation restriction over the Easement Area as more particularly described by metes and bounds on the Map.

1. Purpose. The purpose of this Declaration of Conservation Restriction is to ensure that the Easement Area remains unimproved and to prevent the use or development of the Easement Area in a manner that is inconsistent with any Regulated Activity Approval from the New Haven City Plan Commission, a copy of which is attached hereto as Schedule B(the "Approval").

2. Prohibited Uses. Provided nothing herein shall interfere with the reasonable exercise of the rights reserved in Paragraph 3, below, Owner, for herself and her successors and assigns, agrees to:

- a) refrain from excavating, filling or otherwise altering the topography of the Easement Area and from the dumping of any debris, trash, ash or other waste or discarded materials in the Easement Area; and
- b) refrain from placing or erecting any permanent buildings, structures or improvements on, under or within the Easement Area including, without limitation, paving and;
- c) refrain from the removal or disturbance of any boundary markers identifying the Easement Area; and
- d) refrain from the removal or destruction of trees, shrubs and other vegetation within the Easement Area; and
- e) refrain from the placement or use of any motor vehicle within the Easement Area.

3. Owner's Reserved Rights. Subject to the provisions of applicable law, the Owner, for herself and her successors and assigns, reserves the right to use the Easement Area for normal household recreational and leisure purposes, including, without limitation, the following:

- a) the right to conduct any activity required to comply with the Approval, including, without limitation, the right (i) to construct the WMA and to thereafter maintain it in a safe and attractive condition, and (ii) to construct, repair, maintain and reconstruct utility connections and storm water facilities as shown on the Map; and
- b) the right to maintain, repair and replace the existing improvements (both on and below the surface) within the Easement Area as shown on the Map; and
- c) the right to plant trees, bushes, shrubs and other indigenous vegetation appropriate for the inland wetlands on the Subject Property, and to maintain same in a safe and attractive condition, including activity reasonably designed and intended to avoid, control or eliminate hazards to health or safety, including, without limitation, removal of invasive species and of all or portions of dead or diseased trees, bushes or other vegetation; and
- d) all rights accruing from the ownership of the Premises which are not inconsistent with, and which do not harm, the purposes of this Declaration of Conservation Restriction, including, without limitation, the right to convey fee simple interest in and to the Subject Property.
- e) the right to periodically mow all or portions of the Easement Area but only if (i) a written plan or set of instructions prepared by Grantor's professional wetland scientist (PWS), certified professional soil scientist (CPSS) or professional member of the Soil Scientists of Southern New England (SSSNE) permits mowing; (ii) a copy of such plan or set of instructions (together with any updates) has been delivered to CPC; and (iii) such mowing is done in substantial accordance with the provisions of any such plan or set of instructions.

4. Enforcement Rights.

(a) To accomplish the purposes of this Declaration of Conservation Restriction, the CPC shall have the right to:

- i. enter the Subject Property at all reasonable times to inspect the Easement Area to determine if Owner (or her successors and assigns) is complying with the covenants and purposes of this Declaration of Conservation Restriction and for enforcing the terms of this instrument;
- ii. the right to prevent any activity on or use of the Easement Area that is inconsistent with the provisions of this Declaration of Conservation Restriction or of the Approval and to require the restoration of such area or features of the Easement Area that may be damaged or altered by any prohibited activity or use of Owner, her successors and assigns.

(b) For the purpose of implementing the provisions of Paragraph 4(a)(ii), above, such restoration may include (i) replanting with trees, shrubs, or other vegetation acceptable to the CPC; (ii) removal of debris, trash, ash, or other waste or discarded materials placed within the Easement Area; (iii) removal of buildings, and other structures placed within the Easement Area, (iv) emplacement and maintenance of erosion and sediment controls, as required; and (v) replacement by a land surveyor of boundary identification markers.

5. Enforcement Remedies. In the event the CPC becomes aware of a violation of the terms of this Declaration of Conservation Restriction by Owner, or her successors and assigns, the CPC shall give notice of such violation via certified mail, return receipt requested to the Owner or to the then owner of the Premises, and request corrective action sufficient to abate such violation and restore the Easement Area to its previous condition. Failure by the Owner or the then owner of the Premises to take appropriate corrective action within thirty (30) days after receipt of such notice shall entitle the CPC to petition a court of competent jurisdiction to enforce the terms of this Declaration of Conservation Restriction; including, without limitation, issuance of temporary or permanent injunctive relief. If such court determines that Owner or the then owner of the Premises has failed to comply with this Declaration of Conservation Restriction, such court may order such person to reimburse the CPC for any reasonable costs of enforcement,

including court costs and reasonable attorney's fees, in addition to any other payments ordered by such court. The City may place a lien against the Premises to secure any such payments.

6. Parties Subject to Easement. The covenants agreed to and the terms, conditions and restrictions imposed by this Declaration of Conservation Restriction shall be permanent and shall run with the land in perpetuity and shall be binding upon and inure to the benefit of both the CPC and its agents, successors and assigns and the Owner and her successors and assigns. The parties acknowledge that the Owner intends to convey the Subject Property to a subsequent owner who shall be bound by and be subject to the provisions of this conservation restriction, and that the Owner, after having conveyed all her right, title and interest in and to the Subject Property to such subsequent owner, shall no longer have any obligations or liability hereunder. All covenants contained herein shall run with the land and bind the owners of the Subject Property and inure to the benefit of the CPC, its successors and assigns.

7. Subsequent Transfers. Owner, for herself and her successors and assigns, agrees to refer to this Declaration of Conservation Restriction in any subsequent deed or other legal instrument by which she or they divest her or their interest in and to the Subject Premises.

8. Modification. The provisions of this Declaration of Conservation Restriction may only be modified, amended or released upon the formal written agreement of (i) the City, and (ii) the then record owner of the Subject Property, which formal agreement shall be recorded on the New Haven Land Records. The parties agree that written notice of any proposed modification, amendment or release of this instrument shall be given to the then owner of 123 Ogden Street, New Haven, CT at least 45 days prior to such proposed action. The owner of 123 Ogden Street shall have an opportunity to be heard by the CPC regarding whether or not and why the CPC should, or should not, agree to any such proposed modification, amendment or release.

9. Title. Owner represents (i) that she is the sole owner of the Subject Property in fee simple and has the right to declare this conservation restriction and to enter into this instrument, and (ii) that the Subject Property is free and clear of all liens and encumbrances, except as otherwise set forth on Exhibit B attached hereto, including, but not limited to, any mortgages not subordinated to the Conservation Restriction.

OWNER ACKNOWLEDGES HAVING READ AND UNDERSTOOD ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS DECLARATION OF CONSERVATION RESTRICTION AND FURTHER UNDERSTANDS THAT THE CPC WILL VIGOROUSLY ENFORCE THE CONDITIONS ESTABLISHED HEREIN.

IN WITNESS WHEREOF, the Owner has hereunto set her hand and seal the day and year first mentioned above.

Signed, Sealed and Delivered
In the Presence of:

OWNER

Edith Houghton Chapman