

Date: April 4, 2025

To: TOW Planning Board

Cc: Aaron Werner, AKRF; Steve Marino, Town Wetland Consultant

From: TOW Conservation Advisory Commission

Re: Application for Wetlands and Watercourse Permit, 443 Valley Farm Road

The Town of Washington (TOW) Conservation Advisory Commission (CAC) is responding to your request for comment on the above referenced permit application. We have reviewed the documents submitted as part of the application as well as the application for zoning variance submitted to the ZBA in January 2025 and the memo to the Planning Board from AKRF dated February 28, 2025. We also participated in a site visit on March 20, 2025, and we reviewed information available to the public on the NYDEC Environmental Resources Mapper. We understand that the Planning Board is seeking advice from its wetlands consultant as well.

Based on the above, we have the following questions and comments:

- New York State has issued new regulations affecting freshwater wetlands, effective January 1, 2025. Before proceeding any further with the project, the applicant and the Planning Board should consider whether the new regulations have any impact on the project and whether, under the new regulations, a state wetlands permit is required to proceed with the project. We believe that the new regulations require the applicant to ask the NYDEC whether it has jurisdiction over the wetlands within 100 feet of the project; the new regulations give the state jurisdiction over wetlands of any size if certain criteria are met, and it is quite possible that the wetlands within 100 feet of the project meet some of the criteria. Accordingly, we think that it is likely or quite possible that the state will say that a state permit is required. There is a process for jurisdictional determination on the NYDEC website that the applicant can and should pursue.
- The wetlands on the property appear to have special sensitivity, based on the data from the NYDEC Environmental Resources Mapper. The wetlands on the property (including the pond) are part of a designated cold water trout stream (designated as C(T)), with any special requirements associated with that designation. The wetlands downstream from the pond are federally designated wetlands and include a "Significant Natural Community" as designated by New York State. In addition, as noted above, wetlands on the property appear to be state-designated wetlands and include a "Significant Natural Community," which is a location of rare or high-quality wetlands, forests, grasslands, ponds, streams, and other types of habitats, ecosystems, and ecological areas. Considering the special quality of these wetlands, the Planning Board should consider proceeding even more cautiously than usual given the potential for irreparable harm.

- Section 165-97.D of the TOW Code provides that “no permit approval shall be considered ... by the Planning Board unless and until the applicant has demonstrated, through the preponderance of evidence, through the submission of data, analysis and other support, (1) that there is no reasonable alternative to the proposed activity...” The permit application does not provide any information on alternatives to the proposed project, which would result in an expanded footprint in the wetlands buffer. It would appear that there are at least three reasonable alternatives to the proposed project: 1) expanding the home primarily outside the wetlands buffer through the construction of a hallway near the kitchen connecting the new portion to the old, and 2) building out the second story, and 3) not proceeding at all, given the environmental sensitivities of the property. During the site visit, we observed the pleasant rural view that would be visible if alternative #1 were pursued. Taking into account these viable options, the Planning Board should request more information on alternatives before moving forward with the permit process.
- Section 165-97.D(2) of the TOW Code also requires that the applicant demonstrates by the preponderance of evidence that the environmental impact of the proposed activity has been minimized to the extent feasible. The permit application states that there is no expected disturbance to the wetlands due to the proposed construction but does not provide any information on how this would be achieved, or what remedies would be available if the construction nonetheless disturbs the wetlands. Given that the entire project is in the wetlands buffer, it is possible that the construction could result in wetlands disturbance with irreparable harm unless the applicant can present detailed contractual commitments to the contrary.
- We note that the application does not provide any information on septic systems or wells/water usage. As the proposed project includes a new bathroom and laundry, it would be important to provide information on whether there would be any water taken from the wetlands because of the proposed project and information on drainage.

We appreciate the opportunity to provide these comments, and we hope they have been helpful.