

**DECISION OF THE ZONING BOARD OF APPEALS
of the
TOWN OF WESTWOOD**

2019 JAN 30 P 1:53

PROPERTY OWNER(S): SLD University Avenue, LLC

PETITIONER(S): Jennifer Luoni, Dacon Corporation
16 Huron Drive
Natick, MA 01760

**TOWN CLERK
TOWN OF WESTWOOD**

LAND AFFECTED: 240 University Avenue
Westwood, Massachusetts 02090
Map 38, Lot 006

HEARING:

The Board of Appeals for the Town of Westwood held a Public Hearing according to the General Laws of the Commonwealth of Massachusetts on Wednesday, January 16, 2019 at 7:00 PM in the Champagne Meeting Room of the Carby Municipal Office Building, 50 Carby Street, Westwood, MA 02090 to consider the Petitioners' request for a Special Permit pursuant to 9.3.5.5 [Special Permit Uses in a Water Resource Protection Overlay District] to construct a drainage structure located within 400 feet of a public water supply well. Property is located in the Industrial District.

BOARD MEMBERS: David W. Krumsiek, Chairman
John F. Lally
Douglas C. Stebbins

APPLICABLE SECTION OF THE WESTWOOD ZONING BYLAW

9.3 WATER RESOURCE PROTECTION OVERLAY DISTRICT (WRPOD)

- 9.3.1 **Purpose.** The purpose of the Water Resource Protection Overlay District (WRPOD) is to protect, preserve and maintain the existing and potential groundwater supply and groundwater recharge areas within the known aquifers of the Town and to protect public health by preventing excessive degradation of the Town's water resources.
- 9.3.2 **Location.** The WRPOD is herein established as an overlay district. The WRPOD shall include the areas as shown on the Zoning Map, around White Lodge Wells 1, 2, 3 and 4; Rockmeadow Well; and Buckmaster Pond.
- 9.3.3 **Definition.** For purposes of this Section, 'dispose' shall be construed consistently with 'disposal' as that term is defined in 310 CMR 30.010; that is, to be on-site disposal, whether planned or accidental, but not such things as are transported from the site subject to Department of Environmental Protection-approved manifests.
- 9.3.4 **Permitted Uses.** Except as otherwise provided herein and subject to the provisions of this Bylaw applicable to the underlying district, land and buildings in the WRPOD may be used for any purpose permitted as of right or by special permit in the underlying district; provided that application for a building or occupancy permit for a nonresidential use within the WRPOD must include documentation

that the proposal has been reviewed for compliance with water resource protection requirements set forth herein, and must include documented assurance that there will be compliance with any conditions to agency approvals. The following uses shall be deemed to be permitted in the WRPOD provided that they meet the hazardous material storage requirements set forth in Subsection 9.3.7.5 herein and may also be subject to regulations as may otherwise be provided herein:

9.3.4.1 Any use of land or buildings which involves the generation, treatment, storage, disposal or other handling of toxic or hazardous materials or wastes, but only in quantities associated with normal household use and only if otherwise allowable at that location;

9.3.4.2 Storage of liquid petroleum products of any kind, but only if incidental to the following:

9.3.4.2.1 normal household use, ordinary maintenance, the heating of a structure and de minimis accessory uses;

9.3.4.2.2 waste oil retention facilities required by M.G.L. Chapter 21, Section 52A;

9.3.4.2.3 treatment works approved under 314 CMR 5.00 for the treatment of contaminated ground or surface waters;

9.3.4.3 Facilities that generate, treat, store or dispose of hazardous waste which is subject to M.G.L. Chapter 21C and 310 CMR 30.00, but only for the following:

9.3.4.3.1 very small quantity generators as defined under 310 CMR 30.00;

9.3.4.3.2 waste oil retention facilities required by M.G.L. Chapter 21, Section 52A;

9.3.4.3.3 treatment works approved under 314 CMR 5.00 for the treatment of contaminated ground or surface waters.

9.3.5 **Special Permit Uses.** The following uses may be authorized in the WRPOD by special permit from the Board of Appeals and may also be subject to regulations as may otherwise be provided herein:

9.3.5.1 Any use of land or buildings which involves the generation, treatment, storage, disposal or other handling of toxic or hazardous materials or wastes in quantities greater than those associated with normal household use and only if otherwise allowable at that location. The storage of hazardous materials shall meet the requirements of Subsection 9.3.7.5 and such storage and transfer safety requirements as the Board of Appeals may require.

9.3.5.2 Storage of liquid petroleum products of any kind for the sole use for emergency or back-up generators only for business, professional or other office uses where the Board of Appeals determines that such generator is required by statute, rule, regulation or operational necessity and where the Board of Appeals determines that the use of alternative fuels such as propane or natural gas is not feasible for the demonstrated need. The storage of liquid petroleum shall meet the hazardous materials storage requirements set forth in Subsection 9.3.7.5 herein and such storage and transfer safety requirements as the Board of Appeals may require.

- 9.3.5.3 Storage of commercial fertilizers and soil conditioners, as defined in M.G.L. Chapter 128, Section 64, but only in a structure with an impermeable cover and impervious surface which the Board of Appeals finds is sufficiently designed to prevent the discharge of contaminated run-off or leachate.
- 9.3.5.4 Stockpiling of animal manures, but only in a structure with an impermeable cover and impervious surface which the Board of Appeals finds is sufficiently designed to prevent the discharge of contaminated run-off or leachate.
- 9.3.5.5 New buildings or structures, parking areas, disposal facilities, point source discharges, or additions to any of those, which are located within four hundred (400) feet of a public water supply well, or change in use within existing buildings or structures to a use prohibited or requiring a special permit hereunder, unless the portion of such development lying within four hundred (400) feet of a public water supply well is essential to the provision of public water supply, but only upon determination by the Board of Appeals that denial of such development would result in a substantial economic loss for the property involved, and that any threat from proposed development to the integrity of water quality has been minimized.

9.3.6 **Prohibited Uses.** The following uses are prohibited in the WRPOD:

- 9.3.6.1 Landfills and open dumps, as defined in 310 CMR 19.006;
- 9.3.6.2 Landfilling of sludge and septage;
- 9.3.6.3 Automobile graveyards and junkyards, as defined in M.G.L. Chapter 140B, Section 1;
- 9.3.6.4 Storage of sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for the removal of snow or ice on roadways;
- 9.3.6.5 Stockpiling and disposal of snow and ice containing sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for the removal of snow or ice which has been removed from roadways located outside of the WRPOD; and
- 9.3.6.6 Removal of soil except for excavations for the construction of building foundations, roadway construction or the installation of utility works, the removal of soil, loam, sand, gravel or any other mineral substances within four (4) feet of the historical high water level, as determined by the Board of Health, unless the substances removed are deposited on site to achieve a final grading greater than four (4) feet above the historical high water mark within forty-five (45) days of removal.

9.3.7 **Requirements.** The following requirements shall apply in the WRPOD:

- 9.3.7.1 **Minimum Lot Area.** The minimum lot area shall be as required in the underlying zoning district.
- 9.3.7.2 **Drainage.** All drainage shall meet the stormwater management standards adopted and as amended from time to time by the Massachusetts Department of Environmental Protection. The WRPOD is a “critical area” under these standards.

-
- 9.3.7.3 **Vegetation.** No less than twenty percent (20%) of that portion of the lot area situated within a WRPOD shall be maintained as a vegetation area. If impervious materials cover more than fifteen percent (15%) of that portion of the lot area situated within a WRPOD, all storm drainage shall be recharged on-site.
- 9.3.7.4 **Split Lots.** Where the premises are partially outside of the WRPOD, site design shall to the degree feasible locate potential pollution sources such as on-site disposal systems outside of the WRPOD.
- 9.3.7.5 **Storage of Hazardous Materials.** Liquid hazardous materials, as defined in M.G.L. Chapter 21E, and also as required herein, shall be stored in the WRPOD only if stored above ground level and on an impervious surface and either in 1) a container or above ground tank within a building, or 2) outdoors in a covered container or above ground tank. All such containers and tanks shall be located in an area that has a containment system designed and operated to hold either ten percent (10%) of the total possible storage capacity of all containers, or one hundred ten percent (110%) of the largest container's storage capacity, whichever is greater. These storage requirements shall not apply to storage of products used for normal household use in quantities associated with normal household use. These storage requirements shall not apply to the replacement of existing tanks or systems for the dispensing or storing of gasoline provided the replacement is performed in a manner consistent with state and local requirements.
- 9.3.7.6 **Public Sewer.** All uses requiring wastewater disposal shall be connected to a public sewerage system if available, and if such system is not available, any on-site disposal system shall be subject to the limitations of 310 CMR 22.21(2)(a) 5 and 6.
- 9.3.8 **Application.** Application for a special permit in a WRPOD shall include the following:
- 9.3.8.1 The written opinion of a Registered Professional Engineer, addressed to the Board of Appeals, as to the impact of the proposed use upon the existing and potential groundwater supply and groundwater recharge areas within the known aquifers of the Town. This opinion shall bear the stamp and signature of the Professional Registered Engineer responsible for its preparation;
- 9.3.8.2 Complete listing of toxic or hazardous materials which are to be:
- 9.3.8.2.1 stored, manufactured or used on or transported over any land in the WRPOD in such a quantity that the use, spilling or discharge thereof might cause a danger to public health or safety; and/or
- 9.3.8.2.2 contained in industrial wastewater or sewage generation in excess of six (6) gallons per day per one thousand (1,000) square feet of lot area or fifteen thousand (15,000) gallons per day total. Such listing shall be accompanied by a description of measures to prevent vandalism, spills, corrosion and leakage and by a spill control plan;
- 9.3.8.3 Description of any hazardous or toxic waste to be generated;

- 9.3.8.4 Such further description of the proposed use and its operation as necessary to demonstrate that the use is not prohibited by this Section and will be in compliance with each of the requirements set forth herein;
- 9.3.8.5 Evidence of conformity with applicable requirements of the Massachusetts Department of Environmental Protection and of Town Bylaws and regulations, such as Article 17, the Hazardous Materials Bylaw;
- 9.3.8.6 Locus plan at an appropriate scale showing the boundaries of the property subject to the application in relation to the WRPOD boundaries; and
- 9.3.8.7 Site plan, if required by the Board of Appeals.
- 9.3.9 **Referral of Application to Other Boards.** Within ten (10) days after receipt of the WRPOD special permit application, the Board of Appeals shall forward a copy thereof to the Building Commissioner, Dedham-Westwood Water District, Planning Board, Conservation Commission, Board of Health and Fire Chief which may, at their discretion, conduct such investigations as they deem to be appropriate and report in writing their recommendations to the Board of Appeals. The Board of Appeals shall not take final action on such application until it has received a report thereon from said review agencies or until thirty-five (35) days has elapsed after receipt of such application without submission of a report. If such report is not received by the Board of Appeals within said thirty-five (35) days, it shall be deemed lack of objection to the issuance of the special permit.
- 9.3.10 **Review Meetings.** The Applicant or any one of the review agencies may request that the Building Commissioner schedule a meeting of said review agencies to perform a preliminary staff review of the proposed application in an effort to identify relevant issues and the regulatory framework applicable to the proposed project during the review period. Any information exchanged as part of this meeting shall be considered as advisory and shall not be binding on the part of the Applicant or Board of Appeals.
- 9.3.11 **Decision.** A special permit required pursuant to this Section shall be granted by the Board of Appeals only upon its written determination of the following:
- 9.3.11.1 the application materials are sufficiently detailed, definite and credible to support positive findings relative to the standards of the Bylaw;
- 9.3.11.2 the proposed use meets the standards of this Section;
- 9.3.11.3 neither during construction nor thereafter will the use have material adverse impact upon the existing or potential quality or quantity of the existing and potential groundwater supply and groundwater recharge areas in the WRPOD; and
- 9.3.11.4 proposed control and response measures adequately and reliably mitigate risks to groundwater quality resulting from accident or system failure.
- 9.3.12 **Reimbursement for Consultants.** It is contemplated that in some cases it will be necessary for the Board of Appeals to hire consultants in connection with the review and evaluation of applications for special permits under this Section. The Board of Appeals will be reimbursed by the Applicant for the reasonable fees and expenses of such consultants, and each application for a special permit hereunder shall contain an agreement by the Applicant to that effect.

FINDINGS

In consideration of all of the testimony and exhibits and documents submitted before the Board, the Board makes the following findings of fact:

1. The Petitioner is proposing construction of exterior site improvements that contain drainage structures within 400 feet of a public water supply well. The project will require a Special Permit pursuant to Section 9.3.5.5. The Board of Appeals is the Special Permit granting authority.
2. The application was submitted to the Board on December 19, 2018 and the filing fee received by the Board on December 20, 2018.
3. On December 27, 2018, the Board of Appeals forwarded a copy of this application and solicited comment from the Building Commissioner, Dedham-Westwood Water District, Planning Board, Conservation Commission, Board of Health and Fire Chief. Comment was received from all entities and reviewed by the Board.
4. The Board finds the application materials to be sufficiently detailed, definite and credible to support positive findings relative to the standards of the Bylaw.
5. The lot size is 130,680 sq. ft. (3 acres) where 40,000 are required in the Industrial zoning district.
6. The Board is in receipt of a opinion from Mark Beaudry, P.E., Registered Professional Engineer of Meridien Associates addressed to the Board detailing the impact of the proposed use upon the existing and potential groundwater supply and groundwater recharge areas within the known aquifers of the Town.
7. No toxic or hazardous materials are proposed to be stored, manufactured, used, transported over, or contained in industrial wastewater from the site.
8. The proposed project is not expected to generate any toxic waste.
9. The proposed project, as well as the proposed use of the site are not prohibited in the Water Resource Protection Overlay District and have met the requirements of the WRPOD Bylaw, Zoning Bylaw and other applicable regulations.
10. Since successful receipt of a Special Permit from the Board would restrict the property's ability to operate under change of use, denial of such development would result in a substantial economic loss for the property involved.
11. The proposed drainage structures and systems may improve the integrity of water quality; any threat from construction has been minimized. Neither during construction nor thereafter will the use have material adverse impact upon the existing or potential quality or quantity of the existing and potential groundwater supply and groundwater recharge areas in the WRPOD.
12. Proposed control and response measures adequately and reliably mitigate risks to groundwater quality resulting from accident or system failure.

-
13. The Board has given full consideration to the local conditions that affect and may be affected by the Petitioner's proposed construction, and having particular expertise in said local conditions, have taken a view that any adverse effects of the Petitioner's proposed construction will not outweigh its beneficial impact to the Town, or the neighborhood, in view of the particular characteristics of the site and the proposal in relation to that site.
 14. The Petitioner's proposed construction will not have a material adverse effect on the value of the land and buildings in the neighborhood, or on the amenities thereof, or be detrimental to the normal use of the adjacent property, and it will not be injurious or dangerous to the public health or hazardous, and any adverse effects of the proposed use do not outweigh its beneficial aspects, all in view of the particular characteristics of the site and of the proposal in relation to that site.
 15. The Petitioner has met all the requirements for a Special Permit pursuant to the Westwood Zoning Bylaw.

DECISION and CONDITIONS

The Board of Appeals voted unanimously to grant the Petitioner's request for a Special Permit pursuant to Section 9.3.5.5 of the Westwood Zoning Bylaw and upon the following conditions:

1. The Project shall be constructed in conformity with the submitted site development plan consisting of three (3) pages, prepared by PDA, Inc, 16 Huron Drive, Natick, MA 01760 and Meridian Associates, 69 Milk Street, Suite 302, Westborough, MA 01581, dated December 24, 2018 and revised on January 9, 2019 and stamped by Jacqueline B. Trainer, R.L.A. and Mark Beaudry, R.P.E. The Applicant shall pursue completion of the Project with reasonable diligence and continuity.
2. This Special Permit shall not take effect until a copy of the Decision, bearing the certification of the Town Clerk that twenty (20) days have elapsed after the filing of the decision and either that no appeal has been filed or that an appeal has been filed within such time period, is recorded in the Registry of Deeds and indexed under the name of the property owner of record and the parcel address. A copy of these recordings shall be provided to the Building Commissioner, Town Clerk and the Board of Appeals.
3. **The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and any construction performed under the permit may be ordered to be undone.**
4. This Special Permit shall lapse within a specified period of time, of not more than two (2) years, which shall not include such time required to pursue or await the determination of the appeal referred to in Chapter 40A, Section 17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause. Prior to the expiration of the Special Permit, the Applicant may apply for an extension of the Special Permit for a period not to exceed one (1) year if the substantial construction or use thereof has not commenced for good cause.

RECORD OF VOTE

The following members of the Board of Appeals voted to grant the Special Permit for the above mentioned project: David W. Krumsiek, John K. Lally, and Douglas C. Stebbins.

The following members of the Board of Appeals voted in opposition to the grant of the Special Permit: None.

2019 JAN 30 PM 1:54
TOWN CLERK
TOWN OF WESTWOOD



WESTWOOD ZONING BOARD OF APPEALS

2019 JAN 30 P 1:58

TOWN CLERK
TOWN OF WESTWOOD

David W. Krumsiek - Chairman

John F. Lally

Douglas C. Stebbins

1/30/19
Date

240 University Ave

