



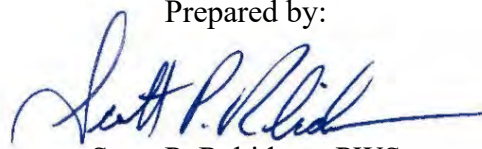
Natural Resource Services, Inc.

Written Narrative in Support of a Request for a  
Freshwater Wetlands Variance

Proposed Construction of a Single Family Dwelling  
Brant Road South (A.P. 90-4, Lot 130)  
South Kingstown, Rhode Island



Prepared for:  
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March 27, 2024



## **Introduction**

Natural Resource Services, Inc. (NRS) has been retained to assist with the preparation and submission of an application for a Freshwater Wetlands Variance to the RI Coastal Resource Management Council (CRMC) to construct a single family home within the subject property. The applicant Bette Gruskey Trustee et als. (hereafter the applicant), has entered a purchase and sales agreement with Jean-Luc Bellefleur for the subject property.

The design plans referenced through this report have been prepared by CJ Doyle, PE referencing survey data by Jeffrey K. Balch, PLS.

This narrative has been prepared pursuant to Section 9.11.2(A)(3) of the Rules and Regulations Governing the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast (hereafter the regulations).

## **Project Scope**

The approximately 0.66 acre property is situated along the eastern side of Brant Road, a thin gravel street. This parcel lies within the town's R-80 zoning district. It is undeveloped and maintains approximately 330 feet of road frontage. The property is surrounded to the north, east and west by single family residential homes. The majority of upland on site is comprised of shrub and vine vegetation. There is a large tree by the roadway along with a small clump within the north-eastern side. Vegetation primarily consists of black cherry, Morrows honeysuckle, wineberry, goldenrod, Asiatic bittersweet, Japanese honeysuckle, barberry and highbush blueberry. The transitional area between wetland and upland has minimal understory. However, further interior in the wetland vegetation thickens with highbush blueberry and sweet coastal pepperbush with an overstory of red maple. The wetland transitions into a phragmites marsh along the edge of the coastal pond.

The coastal feature on the property is the edge of this contiguous freshwater wetland associated with the Type II waters of Green Hill Pond. This wetland was delineated by NRS in November of 2016 and was verified in a CRMC Preliminary Determination #2017-12-055. This area is regulated by the CRMP as a Type 2 Water, areas with high scenic value reserved for low intensity recreational and residential use.

Under the freshwater wetland regulations, the wetlands on site would be considered a deciduous forested swamp and a phragmites dominated marsh. The swamp has a 100-foot jurisdictional area (JA). This JA encompasses the property. Flagging labeled A1 to A14 depicts the northernmost limit of a deciduous forested swamp. The swamp itself appears to be less than one acres in size. This receives a buffer zone of 25 feet. However, the phragmites marsh falls within 50 feet of A1 to A5 and A14. These flags would receive an additional 25 feet of buffer. The freshwater wetlands also apply a 20 foot setback from the edge of the buffer zone for primary structures and a 5 foot setback for secondary structures.

The applicant requests permission to develop a single family home within the property. The proposed two bedroom single family home will be used as a primary residence. The

proposed home shall be 20 feet wide with a variable length ranging from 30 to 35.5 feet with a small open balcony. The development of the home will require the alteration of the 20-foot setback.

The property falls within a VE flood zone with a base flood elevation of 17 feet. To compensate for this, the home shall be placed on a pile foundation with a first floor elevation of 20 feet. The property does not have access to town sewer and thus requires an onsite wastewater treatment system (OWTS). The system proposed is a GST Fujiclean Cen5 septic treatment tank to a Geomatrix GST leach field, an enhanced nitrogen removal system designed for use in nutrient sensitive areas such as the subject lot. The property does have access to town water and shall connect to the existing infrastructure.

Stormwater shall be managed onsite. The proposed driveway shall be constructed to meet a pervious standard. Surface water shall be directed from the roof into a rain garden. Erosion controls shall be utilized throughout the construction process. Silt fencing shall be placed around the limit of disturbance (LOD). The plans depict the proposed residence along with all the infrastructure and required elements.

### **Freshwater Wetlands and Buffer Protection Standards**

#### *9.7.1(A) General Freshwater Wetlands Protection Standard*

This standard shall be met. No alterations are proposed within any freshwater wetlands.

#### *9.7.1(B) Freshwater Wetlands Buffer Standard*

This standard shall be met as the project shall stay outside the 25 to 50 foot variable buffer zone. This lot does not meet the requirements of part 4 of this section requiring the creation of new buffer, nor does it meet the requirements to consider the Residential Infill Buffer Standard.

#### *9.7.1(C) Setback Standards*

This standard cannot be fully met. The proposed home will be constructed within the 20 foot setback applied to the buffer zone. The home has already received a zoning setback variance to place the home further from the wetland. The proposed home cannot be placed the full 20 feet from the buffer. The 10 foot cleared zone required for OWTS systems has been met.

#### *9.7.1(D) Rare or Endangered Species Standard*

This standard has been met. A review of the available Natural Heritage Areas has been done. The Eastern ribbon snake, a species of concern, was documented half a mile from the project site. The eastern ribbon snake is semiaquatic and generally associated with wetlands as they can swim and eat small fish and amphibians. This species is frequently found at the edges of lakes, bogs, and salt marshes (Carpenter 1952).



Due to the availability of aquatic vegetation on site and proximity to Green Pond, there is potential habitat for the species. However, the primary habitat used by this species shall be avoided as all freshwater wetlands and freshwater wetland buffer zones shall be avoided. The species is described as preferring areas with thicker vegetation near the shoreline for concealment (DeGraaf & Mariko 2015). The proposed work on site shall occur entirely within upland, primarily within areas with minimal shrub vegetation, primarily sparse trees, sparse shrubs and wineberry, goldenrod, Asiatic bittersweet and Japanese honeysuckle, likely unsuitable habitat for this species and this species' primary food source, frogs, toads, and salamanders.

The site evaluation also did not reveal any rare freshwater wetland types on site. The project shall not result in the degradation of the natural characteristics of a rare freshwater wetland type or reduce the long-term viability of any rare or endangered animal or plant species.

*9.7.1(E) Flood Protection Standard*

The subject property and proposed infrastructure does fall within a flood zone, however it is a coastal flood zone and does not need to be compensated for. The proposed structure has been designed on a pile foundation.

*9.7.1(F) Surface Water and Groundwater Diversion Standard*

This standard has been met. There shall be no surface or groundwater diverted from the area as a result of the proposed project. Additionally, there are no areas subject to storm flow (ASSF) or areas subject to flooding (ASF) on site.

*9.7.1(G) Stormwater Management Standard*

This standard has been met. The stormwater management plan developed by CJ Doyle meets this standard. A rain garden shall be installed to address stormwater management associated with the proposed dwelling. Additionally, the driveway shall be constructed using crushed stone. This has been designed in accordance with the RI Stormwater Design and Installation Standards Manual (2015) and the State of Rhode Island Stormwater Management Guidance for Individual Single-Family Residential Lot Development (2013).

*9.7.1(H) Erosion and Sedimentation Control Standard*

This standard has been met. Soil erosion and sedimentation control measures shall encircle the LOD. The erosion controls shall be installed prior to construction and be monitored throughout. The design, installation and maintenance of these measures have been configured in accordance with the RI Soil Erosion and Sediment Control Handbook (2016) and the Stormwater Management, Design, and Installation Rules (2022).

*9.7.1(I) Water Quality Standard*



This standard has been met. The engineering documentation including the proposed BMP's and erosion controls should clearly demonstrate that the water quality standard for surface water or groundwater shall be maintained upon completion of the project.

### **Variations from Standards Applicable to Regulated Projects and Activities**

According to Section 9.11.2(A)(7), if a proposed project does not meet all of the standards specified in Section 9.7.1 of this Part, an applicant must provide a narrative description documenting how the proposed project will satisfy the variance criteria specified in § 9.7.3. The applicant requests a variance to Standards B and C of 9.7.1 in order to meet the project's primary purpose.

#### **Avoidance**

*(1) Whether the primary proposed activity is water-dependent or whether it requires access to freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage as a central element of its primary purpose;*

The primary purpose of the project to build a single-family home is not water dependent nor does it require access to freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage as a central element of the primary purpose.

*(2) Whether any areas within the same property or other properties owned or controlled by the applicant could be used to achieve the project purpose without altering the natural character of any freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage;*

There are no other areas which could be used to achieve the project purpose. The subject wetland and applicable 25 to 50 foot freshwater wetland buffer zone shall be avoided by the proposed project. However, the applicant cannot meet the 20 foot primary structure setback applied to the buffer zone. There are no other locations where the home could be placed to achieve this avoidance as the home is placed as close to the northern property edge as possible by a town zoning variance.

*(3) Whether any other properties reasonably available to, but not currently owned or controlled by, the applicant could be used to achieve the project purpose while avoiding freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage alterations. A property is reasonably available if, in whole or in part, it can be acquired without excessive cost, taking individual circumstances into account, or, in the case of property owned or controlled by the same family, entity, group of affiliated entities, or local, State or Federal government, may be obtained without excessive hardship;*

There are no other reasonably available properties which the applicant could utilize to achieve the project purpose. The applicant is requesting to construct a home within the upland of the property in a neighborhood of medium high density developed lots. There are no other reasonably available lots which the applicant could utilize to pursue this purpose.



*(4) Whether alternative designs, layouts or technologies could be used to avoid freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage or impacts on functions and values on the subject property or whether the project purpose could be achieved on other property that is reasonably available and would avoid freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage;*

The design and layout proposed represents the least impact to wetland functions and values while still achieving the primary purpose of the project. All freshwater wetlands shall be avoided by the home along with the 25 to 50 foot buffer zone. This shall avoid significant impacts to the functions and values of the freshwater wetland.

*(5) Whether the applicant has made any attempts (and if so what they were) to avoid alterations to freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage by overcoming or removing constraints imposed by zoning, infrastructure, parcel size or the like;*

The property owner did request and receive a zoning variance to the side yard setback required by the town. This variance allows the applicant to construct a home further north and provide more separation distance between the freshwater wetlands and proposed home.

*(6) Whether the feasible alternatives that would not alter the natural character of any freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage on the subject property or on property that is reasonably available, if incorporated into the proposed project would adversely affect public health, safety or the environment*

There are no feasible alternatives which would negatively impact public health, safety, or the environment.

### Minimization

*(1) Whether the proposed project is necessary at the proposed scale or whether the scale of the alteration could be reduced and still achieve the project purpose;*

This is the minimum scale of alteration necessary to achieve the applicants project purpose. The applicant has reduced the proposed variance to the minimum possible while still achieving the primary purpose of the project. By receiving relief from town zoning standards the applicant was able to avoid wetlands and buffer zones. The impact to freshwater wetlands has been minimized to alteration of the 20 foot setback required for primary structures.

*(2) Whether the proposed project is necessary at the proposed location or whether another location within the site could achieve the project purpose while resulting in less impacts to the freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage;*



As previously stated, there are no other locations which could be utilized on site. This is the only upland available to the applicant and impacts have been minimized to the extent practicable.

*(3) Whether there are feasible alternative designs, layouts, densities or technologies, that would result in less impacts to the freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage while still achieving the project purpose;*

The design as outlined on the plans represents the least impactful layout for freshwater wetland buffers on the property while still achieving the project purpose.

*(4) Whether reduction in the scale or relocation of the proposed project to minimize impact to the freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage would result in adverse consequences to public health, safety or the environment.*

There are no reductions in scale or relocation alternatives which would minimize wetland impacts but negatively affect public health, safety or the environment.

9.7.3(A)(3) - *All applicable review criteria specified in § 9.7.2 of this Part have been satisfied.*

All review criteria in this section has been satisfied as the majority of the wetland standards have been met. This in addition to the avoidance and minimization narrative above exhibits that no significant change shall occur within the buffer zone that will lead to a negative outcome for wildlife, stormwater or water quality.

9.7.3(A)(4) - *Due to the conditions at the project site, the applicable standard(s) cannot be met.*

As the freshwater swamp dominates the majority of the subject property, it is not feasible to avoid all regulated areas on site. The applicant has avoided the wetland itself as well as the required freshwater wetland buffer zones. However, the 20 foot primary structure setback standard applied from the edge of the buffer zone cannot be met while constructing a reasonably sized single family home.

9.7.3(A)(5): *The relief requested by the applicant is the minimum variance to the applicable standard(s) necessary to allow a reasonable alteration or use of the site as required by §§ 9.7.3(A)(2)(a) and (b) of this Part above;*

It is the applicant's position that the relief required to construct this home is the minimum necessary to maintain reasonable use of the property. The home is comparable to the others located in the neighborhood. The development including the home, driveway, OWTS, and rain garden is clustered and allows for very minimal yard space. The relief requested shall allow for the minimum needs required for the applicant to construct a home designed to be a primary residence for the Bellefleurs.

9.7.3(A)(6): *The requested variance to the applicable standard(s) is not due to any*





*prior action of the applicant or the applicant's predecessors in title.*

The requested variance is not due to the applicant or the applicant's predecessor. The requested variance is due to the unique character of the subject lot as it has been platted. The lot as platted is adjacent to Green Pond, and the freshwater wetlands along its edge dominate the majority of the property, leaving a small building envelope available for the project purpose.

*9.7.3(A)(7): Due to the conditions of the project site in question, the standard(s) will cause the applicant an undue hardship. In order to receive relief from an undue hardship an applicant must demonstrate inter alia the nature of the hardship and that the hardship is shown to be unique or particular to the site. Mere economic diminution, economic advantage, or inconvenience does not constitute a showing of undue hardship that will support the granting of a variance.*

The applicant cannot construct a single-family home without a variance to setback standards. The 25 to 50 foot buffer zone and swamp shall be avoided. However, without a variance to the primary structure setback standards, applicant would be severely limited in the development options of the site. Not granting this variance would cause undue hardship as it would preclude the development of a home large enough to feasibly live in as a primary residence, the intended use of the property.

*9.7.3(D): In those instances where a variance would be obviated or reduced if a variance for a setback were acquired from a local municipality, the applicant must first exhaust his or her remedies before the local municipality prior to submitting an application for a permit to the Department.*

As previously stated, the applicant did receive a zoning variance from the town of South Kingstown for a reduction to the required side yard setback, allowing the applicant to avoid the buffer zone and minimize the variance required to the setback standard. There are no other zoning relief requests which would further reduce the requested variance.

## **Conclusion**

As currently proposed, the applicant is requesting to construct a single-family home on A.P. 90, Lot 130 in South Kingstown. The proposed development of a two bedroom, single family home will require the alteration of the 20 foot primary structure setback and JA. The proposed structure has received a town setback variance to reduce the requested variance to the minimum necessary to complete the project. The property has access to town water but not town sewer thus an enhanced nitrogen removal OWTS has been designed to for the property. Stormwater generated from the home shall be managed on site via a rain garden and the driveway has been constructed to meet a pervious standard.

The applicant has demonstrated that complete setback avoidance cannot be achieved in order to fulfill the project purpose. It has been further demonstrated that unavoidable wetland impacts have been reduced to the maximum extent practicable to achieve the development of the property. All of the necessary standards have clearly been met to acquire the proposed variance.





The design plans and supporting documentation submitted with the application should satisfy all of the requirements needed for a Freshwater Wetlands Permit with Variance.



## References

- Carpenter C.C. 1952. Comparative Ecology of the Common Garter Snake (*Thamnophis s. sirtalis*), the Ribbon Snake (*Thamnophis s. sauritus*), and Butler 's Garter Snake (*Thamnophis butleri*) in mixed populations. *Ecological Monographs*. 22:235-258.
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