



APPROVED MINUTES
CONSERVATION COMMISSION MEETING
DATE: THURSDAY, 1/19/23 TIME: 6:30 PM
PRESENTED ON A ZOOM PLATFORM)

IN ATTENDANCE:

Chris Macfarlane (CM), Chair
Tom Bell (TB), Vice Chair
Kathy Berigan (KB), Secretary
Chris McIntyre (CI), Member
Eric Eisenhauer (EE), Member

ABSENT:

Will Ashton, Member

STAFF IN ATTENDANCE:

Charlotte Pechtl (CP), Conservation Agent
Alex Weisheit (AW), KP Law – Town Counsel
Angela Geso, Administrative/Recording Secretary

ABBREVIATIONS USED: NOI – Notice of Intent; SWP – Stormwater Permit; LSCSF – Land Subject to Coastal Storm Flowage; LSF – Land Subject to Flooding; OOC – Order of Conditions
DEP – Department of Environmental Protection; BVW – Bordering Vegetated Wetland

Opening of Meeting

Roll Call Attendance:

Call to Order

T. Bell – Aye; K. Berigan – Aye; C. McIntyre – Aye; E. Eisenhauer – Aye; C. Macfarlane – Aye 5 Voting Members

NOI 23-01, SWP 23-01: 76 Summer Street – Rebuild Driveway, Garage -Santacroce

In attendance: Jeff Hassett (JH)/Morse Engineering, James and Bronwen Santacroce/Applicants

Documents Presented: Construction Plan, Site Plan

The applicants plan to raze and rebuild the existing garage, add a patio to replace a fire pit, and pave and reconfigure the existing driveway. Gutters run towards the garage with a stone trench. The area is designated at LSCSF and there are flood vents in the lower level of the garage. All proposed work is out of the 50-ft. buffer zone, an erosion barrier is on site and there is a stockpile and staging area outside of the resource area. One (1) tree will be removed. TB said the riverfront is not staked on the plan and the edge of the stream itself is not necessarily the mean high water. JH said the record plan shows the property at James Brook and it is mean high water mark. TB suggested adding a jurisdictional line that is well-defined to the plan. CI asked if they are moving away from the wetland and could they move closer to the street. JH said in order for the applicants to configure the driveway they had to plan it out as is. Compacted gravel will be used for paving. CM asked for the amount of impervious surface within the buffer and JH said the total increase is 2,511 sq. ft. but if you look at the degraded areas in the riverfront it works out to 225 sq. ft. of D-graded areas. CI said the garage in the riverfront area is within 200 sq. ft. of the riverfront and having to turn the car around doesn't sit well with him. JH said the driveway is already large and they are adding on to it. CM asked if the gravel is staying in the parking area and JH said it's being loamed and seeded with some water expected to be captured in the trench. TB said there is no buffer to the riverfront which is considered a resource area. CP asked for a specific runoff curb number in hydrocad and JH said there is a running co-efficient of 91. JH said they could pull back somewhat on the driveway. EE would like to see more healthy plantings in certain areas. TB said the applicants need to get out of at least one (1) of two (2) resource areas and draw back enough to get out of the riverfront area.

HEARING CONTINUED TO 2/2/23

RDA 23-01: 31A Mill Lane – Property Side Line - Sargent

In attendance: Kevin Sargent (KS) and Donna Holland (DH) /Applicants; Shannon King (SK)/Abutter; Robert Nelson (RN)/Attorney for Shannon King; Ted Carr (TC)/Affordable Housing Trust

Documents presented: Site Plan (done by applicant)

KS has a right-of-way from Mill Lane that goes across town-owned property at 39 Mill Lane then across his two (2) parcels. He has already installed larger stones along his property line. There are also four (4) shrubs, three (3) of which are blocking the right-of-way. CP said there is a BVW on 31A Mill Lane. CI asked how they access the property on 15 Mill Lane and KS said another piece of land has the right-of-way which is the only one into his home. CM asked if it is town property where it becomes your property and KS said it was. CM asked about resource areas and CP said there is a riverfront area, a BVW on 31A Mill Lane and abutting properties, a right-of-way in the riverfront area and a 50-ft. buffer zone to the BVW. RN asked how SK can get a needed upgrade to her septic system done if she is not allowed access to her own property. CM asked KS if he ever asked the owner of 15 Mill Lane not to use their driveway and KS said he took possession in 2017 and had problems discussing the driveway with SK. CI asked if KS has an existing driveway why is he using this right-of-way and KS said this is the right-of-way to 31 Mill Lane which also belongs to KS. CM said we need a plan that was done in 1990 and also a current site plan signed by a registered engineer that lays out all the parcels properly and legally. TC asked if this work would prohibit Affordable Housing. AW said the commission needs to act within 21 days of filing unless the owner grants us an extension. CM said we need an NOI for this and not an RDA. TB said the failed septic on SK's property is not a good situation and needs to be updated but KS said that's not the issue. He's not saying he wouldn't let SK replace her septic but the real issue is patio furniture on his property. RN questioned the necessity of stones along the right-of-way. He asked who actually does own the 10-ft. strip and was told it belongs to 15 Mill Lane. He said you don't use stones to preserve a right-of-way. CM said to issue a positive determination but AW said, if approved, it would be a positive determination under the bylaw and a negative determination under the wetland's act. SK said what if KS took out the rocks and removed the shrubs blocking the right-of-way and AW asked if the rock placement would result in impacts to the resource area. SK said she moved into 15 Mill Lane in September of 2020 and there was no driveway from KS's property. She saw him constructing something over a stream. She believes the rocks and stones are keeping her from using the existing driveway but KS said it's not her driveway. SK said he came into the yard with a bulldozer without letting anyone know. KS said for snow removal he would plow without sinking due to hard-packed gravel under grass. AW said the standard varies under the bylaw and if it will impact the buffer zone as well as resources then they'd have to come back with an NOI in the future. It was determined that a resource area delineation will be presented at a future meeting.

HEARING CONTINUED TO 2/16/23

NOI 22-21, SWP 22-17: 31 Dolan Lane (con't from 9/8/22)

In attendance: Jeff Hasset (JH)/Morse Engineering

Documents presented: Rain Garden Plan, Site Plan

Previous filings include replication of wetlands, moving driveway entirely outside the 50-ft. buffer zone and resource area. A larger easement was negotiated with the owner. There is a proposed limit of work to be survey staked prior to construction. CM said the applicant will need vegetation facts for the commission. JH said some trees will have to be removed to allow construction of the driveway. Two changes occurred from the last time the commission had a public hearing for this project: The applicant negotiated an easement to work up to the easement line and remove all work out of the wetlands and buffer area. Rather than having a stormwater depression that would be grass, a rain garden will be planted. EE was assured that snow removal will be piled next to the driveway and that sand can be used rather than salt. JH said a berm on the side and a swale will be used to capture runoff. CM asked if the applicant was putting a grate at the base of the driveway and JH said he will look into it. JH said the stormwater will be handled by the rain garden which captures most of the runoff. A smaller portion of the driveway has a stone trench and trench drain. There is a pervious walkway in front.

HEARING CONTINUED TO 2/2/23

SHOW CAUSE: (NOI 20-05): 191 Atlantic Avenue (con't from 12/1/22)

In attendance: Raymond Tehranian (RT)/Applicant; Adam Brodsky (AB)/ Environmental Attorney

Documents Presented: 1/17/23 Stamped and Registered As-Built Plans; Stormwater Procedural
AB is representing new buyers Scott and Allison Wilson. A request for a Certificate of Compliance was issued in March 2022 but there were elements still outstanding. A new as-built plan was submitted and a letter received in December 2022 outlined the new calculations including stormwater requirements. The house and porch were reconstructed, the patio and pool were moved, the front and side walkways were covered and the post-developed imperious area was reduced by over 1,000 sq. ft. None of the work triggered a stormwater permit or stormwater review. RT said the only changes have been outlined and none were substantial. CM asked if there is a wall along the left side of the house and AB said it has been repaired. RT said there is no wall around the driveway. CM mentioned a wall with a metal fence along the east side of the home and RT said the former fence was in terrible shape and was replaced with a new fence. CM said the record that exists from 2020 is not clear and needs documentation. AB said what was done on the site will not come within the 5,000 sq. ft. needed for a stormwater permit. CP said by bylaws state if you are replacing one building with another over 500 sq. ft. total the project needs at least an administrative SWP. AB said there was a different interpretation at the time was submitted in March 2022 and CP asked if we can vote on a Certificate of Compliance if the item is not on the agenda. AW said it can be done at the next meeting.

MOTION: By Chair Macfarlane to close the public hearing for the Show Cause for NOI 20-05 at 191 Atlantic Avenue and confirm that no additional Stormwater permit is required.

SECOND: By Vice Chair Bell

ROLL CALL VOTE: T. Bell – Aye; K. Berigan – Aye; C. McIntyre – Aye; E. Eisenhower – Aye; C. Macfarlane – Aye

MOTION PASSES: 5-0-0 Unanimous

HEARING CONTINUED TO 2/2/23 TO VOTE ON THE CERTIFICATE OF COMPLIANCE ONLY

SHOW CAUSE: (NOI 20-06): 100, 102, 104 Howard Gleason Rd (con't from 12/15/22)

In Attendance: Attorney Jeff DeLisi (JD)/Ohrenberger, DeLisi & Harris/Brendan Sullivan (BS)/ Merrill Engineering and Landscaping

Documents presented: Site Plans

CP said there was machinery being used in the southern-most BVW that was used to remove growth other than phragmites. Also, there was no DEP sign posted on the project. A 'Cease and Desist' order was issued until the violations were corrected. The owner still needs to plant 15 trees to close out the OOC. Phragmites were trimmed with no erosion controls and sedimentation on site. There is a silt sock around the Yacht Club. JD said a consultant had worked with the commission to bring the three (3) lots into compliance with stabilization of hay bales and an OOC issued at the beginning of COVID in 2020. When JD viewed the meeting from 2020 he was told the method of removing phragmites or mowing them down continuously conflicts with the OOC insofar as mentioning a Habitat Management Plan but relying on herbicides to remove phragmites. BS is working with the people on site to cut down on siltation runoff by putting in hay bales and a silt sack. It was noted that the OOC vs. habitat plan vs. site plan all say different things about phragmites removal. However, the workers did not allow herbicides to be used. The area cleared has more phragmites growing but there are three (3) separate areas showing eradication of phragmites. It was suggested to mow or remove them 3 to 5 times a year for 5 years and see if it works. CM said to keep mowing as long as the erosion controls are in place. JD said there are no plans to do additional work until it is discussed and brought back to the commission. He requested that the 'Cease and Desist' be lifted to allow for work to resume.

MOTION: By Chair Macfarlane to close out the Show Cause hearing and lift the 'Cease and Desist' restriction at 100, 102 and 104 Howard Gleason Road.

SECOND: By Secretary Berigan

ROLL CALL VOTE: T. Bell – Aye; K. Berigan – Aye; C. McIntyre – Aye; E. Eisenhower – Aye; C. Macfarlane – Aye

MOTION PASSES: 5-0-0 Unanimous

SHOW CAUSE: 76 Lamberts Lane-Sports Court - Marchetti (con't from 1/5/23)

No one in attendance.

HEARING CONTINUED TO 2/16/23

SHOW CAUSE: 692 Jerusalem Road – Retaining Wall - McClary (con't from 1/5/23)

In attendance: Adam Brodsky (AB)/Environmental Attorney; Peter McLarey (PM)/Applicant

Documents presented: Engineered Site Plan

CP said the owner filed a permit for a screened-in porch that was under 500 sq. ft. and did not need a SWP application. The owner then filed another building permit for a retaining wall that CP is waiting to review an administrative SWP and has concerns with disturbance in front yard. AB said the owner built a retaining wall in a set-back without a permit which is a zoning violation. He spoke with Building Inspector John Hallin and worked out an agreement to reconstruct the retaining wall with the correct permit. The contractor wants to do repair work to reduce the height of the wall followed by an As Built survey. CM asked if the commission could remove the 'Cease and Desist' order but AB said it was issued by the Building Department and John Hallin is handling it. The size of the wall has been reduced. TB said the contractors totally tore out a right-of-way in front of the property and it is town-owned property. CP said the commission needs to see a site plan done by a registered professional engineer. TB asked to stabilize the area with more than silt socks. PM said no fill has been brought in and they are putting up the retaining wall for sediment. The right-of-way needs to be stabilized and regrading is needed. PM said there are no plans to regrade anything under 5,000 sq. ft.

HEARING CONTINUED TO 3/2/23

SWP 22-34: 94 Black Horse Lane - (con't from 1/5/23)

In attendance: Nino DiNunno (ND)/Owner; Carmen Hudson (CH)/Merrill Engineering, Adam Brodsky (AB)/Environmental Attorney; Alex Weishat (AW)/KP Law – Town Counsel

Documents presented: Revised Plans

AB said KD Custom Builders have outstanding issues on their application.

1. There is no buffer zone to the 100 year flood plain under Cohasset bylaws
2. Relevant wetland resources that are on site plans need to be identified
3. The riverfront was delineated for mean high water and the volume of offside vegetated wetlands was calculated but not considered isolated land
4. Gravel to be substituted for the previous driveway

CH said the plans have changed since the last time they were presented. The landscaping provided is now salt-tolerant; the driveway is not gravel but crushed stone; 12-in. caliper trees are being planted and trees in red will be removed. The erosion control will now be 2-in. crushed stone with gravel underneath. An Operations and Maintenance (O&M) plan covers yard maintenance. CP asked AW if he looked at the letter from prior attorney Matthew Watsky and AW said he did and agrees with it. CP said the resource areas are being more normally delineated. CM said there is one definition in the bylaw and one in the current Rules and Regulations. AB doesn't agree that LSF has a 100-ft. buffer to it and that we are dealing with LSCSF and jurisdiction as opposed to LSF. Wetland regulations say the LSF is a BVW and the other is isolated land. Reference to LSF in the bylaw refers to bordering and isolated land but not the coastal floodplain and there is no consistency between the bylaws and the Rules and Regulations. CP said the saltmarsh closest to Black Horse Lane was delineated using MA GIS and that tree removal recommends a condition that trees to be removed must be marked prior to removal to protect remaining trees. All trees proposed to remain shall have some protective barrier to prevent trucks from damaging any trees. All silt sock areas are to be put back at the end of the day with a silt fence to prevent flow into the streets. Barriers were created to delineate the limit of work. A 20-ft. right-of-way exists on the property which should be looked at for applicable stormwater easements. CM asked CH about the amount of asphalt driveway being removed and she said 5,570 sq. ft. The driveway that serves the existing garage is being removed. The area underneath the new driveway is considered woodland and ledge and can be matched without putting in infiltration. CM is concerned that there are no site plans for any of these proposed homes and that in the future when homes change the models will no longer work. A discussion regarding conditions of approval was tabled to another meeting. AB said the commission does not have the authority to replace trees unless the client is willing to do that. CM said our bylaws have a requirement for a landscape plan that works towards

achieving certain standards. CM is willing to change the 1-to-1 tree replacement with plans provided to show the final design. TB feels there is not enough information to make an informed decision. ND said he doesn't intend to do any work until they know what boards they'll be coming in front of, and CM asked why is the commission even here to begin with. AB said it is not unusual to permit a project with the understanding that plan changes will have to be addressed and no land alteration will be done until this happens. AW said the conditions referenced and any changes to the plan will trigger a new filing and those conditions would protect the commission. CM said when properties are collectively permitted and then sold off prior to the Certificate of Compliance that rules change and it creates a problem. TB said once the commission issues this permit they would not be able to come back with an amended filing and would have to start the process all over again. CP said if the applicant is willing, she suggests a continuance so the commission can think about what they want from this permit.

HEARING CONTINUED TO 2/2/23

Construction Updates:

44 Little Harbor Road: The abutter is concerned with regrading, but CP did a site visit and didn't see any obvious regrading.

175 Lamberts Lane: The golf course is being maintained. They have removed trees and started construction. The site is staked and there is an additional silt fence.

10 Parker Avenue: The owner has submitted a revegetation report for the commission. They used native plantings and have to file the next two years' growing reports with the Conservation Agent.

40 Parker Avenue: The boat ramp project hit a slight deviation to the plan when the owner hit some ledge that didn't show up in other places. The coffer dam cannot be totally closed. The owners were asked to bring any other deviations from the plan to the commission.

83 Atlantic Avenue: The house has been demo'd in accordance with a 'raze and rebuild'. Some small trees in the 100 ft. buffer zone need to be removed.

Bylaw Revisions:

The commission and the agent are thinking of adding regulations for 'pervious' and 'impervious' but want to get more guidance. CP couldn't find a definition for 'pervious' in her research. The main edit to the bylaws will contain the following information:

- Be clearer with the stormwater permit process.
- Add proposed expiration date of three (3) years for stormwater permits.
- Stormwater permits will be renewed after three (3) years with one (1) additional year.
- The bylaw for wetlands extensions will be three (3) years with one (1) additional year.
- Permits will be extended no more than one (1) year for a total of four (4) years.
- Permits not completed after four (4) years will require a new permit to be filed.
- Permit extensions will require a hearing and will include all necessary documents.
- Inspectors need permission to enter a home or business.

MOTION: By Vice Chair Bell to accept changes to the bylaws.

SECOND: Member McIntyre

ROLL CALL VOTE: T. Bell – Aye; K. Berigan – Aye; C. McIntyre – Aye; E. Eisenhauer – Aye; C. Macfarlane – Aye

MOTION PASSES: 5-0-0 unanimous

MOTION TO ADJOURN made by Member McIntyre, seconded by Vice Chair Bell and passed 5-0-0 unanimous.

Meeting adjourned at 11 pm.