



APPROVED MINUTES
CONSERVATION COMMISSION MEETING
DATE: AUGUST 3, 2023 TIME: 6:30 PM
PRESENTED ON A ZOOM PLATFORM

IN ATTENDANCE:

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

ASSOCIATE MEMBERS:

Valerio Romano (VR)

STAFF IN ATTENDANCE:

Charlotte Pechtl (CP), Conservation Agent
Angela Geso, Administrative/Recording Secretary

Call to Order – Roll Call Attendance: C. McIntyre – Aye; K. Berigan – Aye; E. Eisenhauer - Aye; W. Ashton – Aye; C. Macfarlane – Aye; T. Bell – Aye Quorum of Six (6)

Abbreviations Used:

RDA – Request for Determination of Applicability; **LSCSW** – Land Subject to Coastal Storm Flowage; **NOI** – Notice of Intent; **OOC** – Order of Conditions; **BVW** – Bordering Vegetated Wetland; **DEP** – Department of Environmental Protection; **COC**-Certificate of Compliance

Welcome to New Associate Members: Valerio Romano (present) and Sanji Fernando (absent)

PUBLIC HEARINGS:

RDA 23-12:

63 Summer Street – Dead Tree Removal – Fletcher

In attendance: Christine Fletcher (CF)/Owner

Documents : Site Plan showing Wetlands and Tree Being Removed

There is a dead tree on the lawn that needs to be removed. CP said the tree is at the edge of wetlands in the 50-ft. buffer zone and would need a variance. CF said her children play in that area and that large branches have fallen during storms. Bartlett Tree said the tree drowned. TB asked how long the tree has been dead and CF said she moved in last year and is not sure. TB said the tree cannot be removed from the buffer zone and CF would have to file an NOI if she wanted the tree removed. CP said if the tree is removed, standard practice would have it cut into smaller pieces and used as a wildlife habitat at the edge of the yard. CF agreed with this. TB requested a 2-to-1 replacement for the tree being removed.

MOTION:

By Chair Bell to issue a Negative 3 RDA 23-12 at 63 Summer Street with conditions that debris be left within the 50-ft. buffer zone and that plantings from the approved list be added.

SECOND:

Vice Chair McIntyre

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

MOTION PASSES: 6-0-0 Unanimous

MOTION: By Chair Bell to issue a variance for work within the 50-ft. buffer zone with conditions that all work be done by hand, plantings from the approved list be added, and no herbicides or pesticides be used.

SECOND: Member Ashton

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

MOTION PASSES: 6-0-0 Unanimous

RDA 23-11: **80 NICHOLS RD – Rear Additions, Deck – Shrair**

In attendance: Carmen Hudson (CH)/Merrill Engineering; Peter (PS) and Danielle Shrair/Applicants; Can Tiryaki (CT)/Architect

Documents Presented: Site Plan, Construction Plans

The applicants are purchasing a home and want to add a second floor so their parents can also live there. The site is a narrow area with ledge outcroppings throughout, a coastal bank to the rear and property to the left bordering a salt marsh. There will be two (2) new additions to the rear: a 462 sq. ft. addition on one (1) side and a 187 sq. ft. addition on the other side. An open deck will be within the 100 ft. buffer zone. TB asked the size of the deck and CH said around 800 sq. ft. The deck will be on the first floor and some of the patio and walkway will be removed. CP said the applicants want to see if an RDA is acceptable or if they will need to file an NOI. CT said there is no final determination on runoff, but the deck is pervious. CM said when the deck is built the applicants will end up with bare earth or gravel and dumping additional water through the deck could likely erode the area under the deck. It is also a detriment to the 100-ft. buffer zone if the water comes off in a different way. CH said with an RDA they could add drywells to the two (2) additions. PS said they would use drywells to avoid an NOI. CI doesn't think that is satisfactory for additions and a deck totaling over 1,400 sq. ft. TB said what would we require for an NOI or should we just go with the RDA? CM is concerned with erosion under the deck and a covering of gravel, but CH said they are proposing crushed stone. CT said they are adding 12-ft. diameter additions on footings and crawl spaces, and they could pin the serious ledge and cast into a concrete form. TB said to bring it to a vote for an NOI. CP said if the commission requires an NOI the applicants don't have to file but they cannot build. PS said they could keep the RDA but relocate some areas of disturbance. TB said not with the crux of development as described..

MOTION: By Chair Bell to issue a Positive 4 determination for RDA 23-11 and close the public hearing on 80 Nichols Road.

SECOND: By Member Macfarlane

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

MOTION PASSES: 5-1-0 Member Ashton in the minority

SHOW CAUSES:

81 BORDER ST – Float Installation – Gulf River, LLC

In attendance: Joseph Yerardi (JY)/Dock Installer

The dock has been there a while with no NOI or RDA filing and no record of the dock being found. The float was installed last month. JY said the dock was built in 1963 and it's hard to find records on it. The old float was replaced with a new float last month, but the work was done

without a permit. TB said they need to get their permits in order and, in addition, apply for a Chapter 91 filing as well. JY asked what the easiest way is to do the float and TB said to abide by town and state bylaws. CP said DEP looks to see if the local authority issued an OOC from the commission and then applied for modifications of license. She suggested the applicant find the Chapter 91 license which may still be good. If not, they will have to reapply. JY is an applicant but not an owner of the property. CI said to take the float out and file for an NOI. CM asked to issue an Enforcement Order for the site. CP said to give the owner time to remove the float before issuing the order. TB said to deal with the property owner and warned of enforcement if the float is not taken down.

BEECHWOOD STREET – Tree Removal – Iantosca (con't from 7/20/23)

In attendance: Brad Holmes (BH)/Environmental Consulting; Joseph Iantosca (JI)/Owner; Rachel Watsky (RW)/Attorney

BH added 11 trees to the site with a 1-to-1 replacement in general areas and 2-to-1 in the buffer zone. They are working on a fall planting plan. TB asked why some trees are 10-gal. and others are 5-gal. BH said he went with a variety of sizes to go with the natural habitat. The site is infested with boulders so he went with different heights that could be hand-carried and mixed along the area. TB said they are trying to create a canopy and 5-gal. trees will be lagging but BH said his intent was to restore the BVW in the buffer zone. A mix of species allows a variety of more natural looks. He is also putting in 25 native shrubs, a seeded area and erosion controls.;

MOTION: By Chair Bell to amend the existing enforcement order for Beechwood Street with the following conditions:

- Proceed with planting plan as submitted: add standard conditions as proposed.
- Provide a completion report after the first planting and provide yearly monitoring.
- Review yearly for three years (2023-2026) with at least 75% plant survival.
- No mechanical equipment used on the Bordering Vegetated Wetland (BVW).
- No herbicides, fertilizers or chemicals used to maintain plants.
- Invasives to be removed by hand.
- Eleven (11) new trees need 100% survival yearly for three (3) years.

SECOND: Member Macfarlane

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

MOTION PASSES: 6-0-0 Unanimous

MOTION: By Chair Bell to issue a variance for work within the 50-ft. buffer zone at Beechwood Street.

SECOND: Member Macfarlane

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

MOTION PASSES: 6-0-0 Unanimous

NOI 21-10 OCEAN LEDGE DR: Discharging, Erosion, 792 Jerusalem Realty Trust

In attendance: Jed Hannon (JH)/Atlantic Coast Engineering; Adam Brodsky (AB)/Environmental Attorney; Ryan Connelly (RC)/Contractor

A wheelbarrow over landscaping has been shooting dirty water into ground openings. Rosano Davis removed sediment from catch basins and cleaned up the area with a focus on discharging. TB asked if anyone could clarify what was dumped into storm drain and JH said it was just washing out. RC apologized and said it shouldn't have happened or been done and that there is now no concrete showing in the catch basin. TB suggested we video the storm drain as some restricted flow may be involved. AB said there is no evidence that concrete was placed down and that they are not the only ones in the neighborhood that are using the system. CI said work was done with no one knowing and that the commission could ask for photographic evidence. AB said erosion controls were not fixed before the storm and some flowage went down the neighbor's driveway, but they restabilized the slope with blankets and restored all erosion controls. RC put in new sod and a riprap trench along the driveway. Abutting neighbor Josh Macawee said the erosion had water come down the other side of driveway that doesn't go into the catch basin.

CON'T TO 8/24/23 WITH PHOTOGRAPHS

CERTIFICATE OF COMPLIANCE:

SWP 19-29, New Home Construction: 31 Deep Run

In attendance: Deb Keller (DK)/Merrill Engineering

The proposed rain garden is smaller than approved by the commission but will be allowed. The roof drain connections are now piped to the rain garden. CI said the rain garden is in a spot where it hits the ledge so it's small. A portion of the gravel swale is dealing with ledge outcrop and a retained portion of the gravel driveway was moved to crushed stone. TB said test pits may not have been done in 2019 and DK said even with a volume change of 100±-sq. ft. the plans still meets pre-conditions.

MOTION: By Chair Bell to issue a Certificate of Compliance for SWP 19-29 with the condition that the smaller rain garden is acceptable.

SECOND: By Member Macfarlane

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

MOTION PASSES: 6-0-0 Unanimous

Liaison Appointments:

Eric Eisenhower –Community Preservation Committee

Chris McIntyre – Open Space and Recreation Committee

Kathy Berigan - Turkey Hill Management

AGENT UPDATES

48-Hour Updates:

- COC's for 3 and 9 Diab Ln and 258 North Main St. were received and are pending review.
- 80 Howe Road has reinstalled their erosion control barrier in front of the street. The final site stabilization and sod to be installed within the next week.
- 4 Windy Hill erosion control barrier has been reinstalled per the Agent's instructions.
- Agent asked about high priority changes to be made to the Wetlands Rules & Regulations. The commission discussed site plan, tree replacement and stormwater requirements. The agent will add these to the Wetlands Rules & Regulations.

- The state Supreme Court ruled *Sackett vs EPA* has impacts on the state's 401/404 Water Quality Certification Permits issued under the Clean Water Act. The ruling limits the federal protection of surrounding wetlands. The agent confirmed with DEP that this decision has no impact on the Wetlands Protection Act.

Construction Updates:

- 87 and 124 Elm Street: the building was suspected to be closer to the Harbor than approved but a site investigation and review of the foundation As-Built showed that 124 Elm Street #1 was about 1-ft. further from the Harbor than approved and 124 Elm Street #2 was up against where the sidewalks will be built and repaired per plan.
- 85 Jerusalem Road: started deck repair construction with erosion controls inspected and DEP sign is posted.
- 136 Border St: Phragmites and other vegetation removal and clear-cutting was reported to the Agent who confirmed this activity from the water and is sending a Violation Letter.
- 205 Atlantic Ave: the new property owner has submitted new plans; Conservation review is upcoming; there are still pending items from the original OOC. Order needs to be recorded prior to any activity and final landscaping plan was never completed due to discussion about the number of trees to be planted.

Other Updates:

- The OOC Special Conditions Boilerplate discussion was continued to give commissioners more time to review the changes.
- Vice Chair McIntyre relayed a proposal from the Open Space Committee about potentially putting a ban on plastic water bottles. This would apply only to plastic water bottles and not soda or nips. Members Macfarlane and Ashton expressed concerns about banning just water bottles and not soda bottles as well. Chair Bell has concerns about not banning the nip alcohol bottles. Vice Chair McIntyre will relay this information to the Open Space Committee. The commission decided not to vote on supporting or not supporting this issue.

With no further business to discuss a motion was made to close the hearing for 8/3/23.

MOTION: By Chair Bell to adjourn the Conservation Commission meeting of 8/3/23.

SECOND: By Member Macfarlane

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

MOTION PASSES: 6-0-0 Unanimous

Meeting adjourned at 10:30 PM