

# CONSERVATION COMMISSION MINUTES

Date: Tuesday, April 11, 2023

Time: 7:22 - 9:58 pm

Place: This meeting was held as a virtual meeting via Zoom.

**With a quorum present**, the meeting opened at 7:22 pm with Leigh Gilligan presiding as Chair.

**Members Present:** Leigh Gilligan, Kathy Cade, Ellen Katz, Sonya McKnight (Associate Member) deputized to make a quorum and be able to vote, Jeff Zabel joined at 7:25, Susan Lunin (Vice-Chair) joined at 9:12

**Members Absent:** Dan Green (Chair), Judy Hepburn

**Staff present:** Jennifer Steel, Ellen Menounos

**Members of the Public:** not recorded due to remote nature of the meeting

**NOTE:** Technical difficulties with the Zoom link resulted in some Conservation Commission members, applicants, and members of the public being unable to join the Zoom meeting on time. The meeting link was refreshed and new instructions were given to all. As a result, the meeting started 22 minutes late.

## DECISIONS

### A. WETLANDS DECISIONS

#### 1. 70 Kingswood Rd – NOI – Additions and landscaping at a single-family home – DEP #239-952

- Owner/Applicant. Larry Smith
- Representatives. Goddard Consulting, Zoe Krouner
- Proposed Project Summary. Remove the garage and build 2 story addition; build 1 story addition where a patio currently exists; replace the rear deck; add a front porch; replace the 1-car driveway with a 2-car driveway of "California paver strips". Most work will be in the inner riparian zone.
- Request. Issue an OOC
- Documents in packets. Highlighted site plan
- Additional documents presented at meeting. Site photos
  - Jurisdiction. RFA, Bordering Land Subject to Flooding (outside the work zone), Buffer Zone to Bank
- Presentation (Staff) and Discussion. Staff showed highlighted site plans and site photos and summarized the proposed work.
  - Staff showed the revised planting plans had been recently received.
  - Staff noted that the house is small and the footprints of the proposed additions are modest, but there will be significant excavation that would threaten the large mature oak just off the property to the north, the mature pines behind the house, and possibly the mature oaks behind the house.
  - Staff noted that the project must "result in an improvement", but are not convinced that that performance standard has been met.
  - There is no opportunity for "restoration" on the lot and very limited space on the lot for "mitigation". The applicant's proposed mitigation (currently one bounded planting bed in an already mostly natural planting bed totals 414 sf, exactly 2:1) must ultimately result in "no significant adverse impact".
  - Staff asked if there were detailed plans of how the trees could be protected (the applicant suggested asking an arborist).
  - Staff asked if the trees can't be adequately protected, what mitigation would be appropriate given the tight lot (there was no immediate answer).
  - Staff suggested considering driveway redesign or relocation (the applicant noted that that a special permit was required and in that process a shorter driveway could be requested).
  - Staff asked about possible removal of the basement from the plans (the applicant noted that excavation at the rear would be only 4-5 feet deep).
  - Staff noted that no stockpile area was indicated on the plans (the applicant noted that materials could be hauled off site and not stockpiled at all).
  - Kathy Cade noted that she was a neighbor of and personal friends with the applicant, but that she could be impartial.



**Mayor**  
*Ruthanne Fuller*

**Director  
Planning &  
Development**  
*Barney Heath*

**Chief  
Environmental  
Planner**  
*Jennifer Steel*

**Assistant  
Environmental  
Planner**  
*Ellen Menounos*

**Conservation  
Commission  
Members**  
*Kathy Cade  
Dan Green  
Judy Hepburn  
Ellen Katz  
Susan Lunin  
Jeff Zabel  
Leigh Gilligan*

**Associate  
Member**  
*Sonya McKnight*

**Contact  
Information**  
*1000 Comm. Ave.  
Newton, MA 02459*

*T 617/796-1120  
F 617/796-1142*

[www.newtonma.gov](http://www.newtonma.gov)

[jsteel@newtonma.gov](mailto:jsteel@newtonma.gov)

- Vote to continue the hearing to May 25<sup>th</sup> with revised materials due May 15<sup>th</sup> to allow the applicant team to present revised plans that meet the RFA performance standards. [Motion: Zabel, Second: Katz, Roll-call vote: Gilligan (aye), Cade (aye), Katz (aye), McKnight (aye), Zabel (aye). Vote: 5:0:0.]

## **2. 250 Albemarle Rd – informal discussion -- Gath Pool and park area redevelopment**

- Owner/Applicant. City of Newton Parks, Recreation & Culture Department
- Representatives. Josh Morse, Commissioner of Public Buildings, Alex Valcarce, Deputy Commissioner of Public Buildings, Tom Scarlatta, BHPlus,
- Project Summary. New pool complex and associated access reconfiguration.
- Request. The goal is to discuss site plans as they pertain to the Wetlands Protection Act and its regulations, so the Commission can give initial input ahead of the filing to be heard at the May 4th public hearing. Parks and Rec is working “against the clock”, trying to have approved, recorded plans to include in bid specs to be released in May.
- Documents in packets. None
- Additional documents presented at meeting. Applicant’s PowerPoint presentation
- Jurisdiction. RFA, BLSF, Buffer Zone
- Presentation (Staff) and Discussion. The applicant team showed a PowerPoint presentation summarizing the proposed work.
  - The pool is leaking a lot, so they hope to get permits this summer for construction this fall and opening next summer.
  - This project will be coordinated with the field reconfiguration and reconstruction project that is “in the pipeline”.
  - The project team (with Pare Engineering) will work with Conservation staff to ensure that the proposed design meets all RFA, flood zone, and stormwater performance standards.
  - Test borings were conducted yesterday and will inform design details.
  - The pool will be elevated, all pool deck runoff will be treated, and there will be a reduction in asphalt and an increase in trees at the front of the building.
  - The team anticipates submitting materials on May 9<sup>th</sup> for the May 25<sup>th</sup> public hearing.

## **3. 249 Winchester St – NOI continued – installation of a fence in floodplain – DEP #239-950**

- Owner/Applicant. Alexander Murphy, Jr.
- Representatives. None
- Proposed Project Summary. Install a 6-foot privacy fence around property; ex-post-facto mitigation for unpermitted clearing
- Request. Issue an OOC
- Documents in packets. Highlighted site plan, fence design sketch by staff, planting plan sketch by staff
- Additional documents presented at meeting. Site photos
- Jurisdiction. Flood zone
- Presentation (Staff) and Discussion. Staff showed highlighted site plans and site photos and summarized the proposed work.
  - Staff provided a planting plan and flood zone cut and fill calculations.
  - Plans allow for the maintenance of a 15-16’ wide lawn (said lawn was created without permits by the prior owners). Beyond the lawn line, demarcated with 9 shrubs, the area is to be renaturalized.
  - Plans allow for fence in flood zone.
    - The “back/side” fence will stop at the edge of lawn (and not continue into the wooded wetland/buffer zone).
    - The “back/side” and “front/side” fence segments run perpendicular to the site contours and so will not impede the free flow of flood waters.
    - The “front” fence segment (along Winchester Street) is above the flood elevation.
    - No fence may be erected along the rear (wooded) boundary.
    - The fence must be elevated 4-6” to provide passage for wildlife.
  - Applicants and Commissioners expressed their appreciation for staff’s assistance with this project.
- Vote to close the hearing and issue an Order of Conditions with the following special conditions. [Motion: Katz, Second: Zabel, Roll-call vote: Gilligan (aye), Cade (aye), Katz (aye), McKnight (aye), Zabel (aye). Vote: 5:0:0.]
  21. The applicant must schedule and attend a pre-construction site visit with the applicant, construction supervisor and Conservation agent, to review and provide the following:
    - a. A signed Certificate of Understanding (attached to the Order of Conditions cover letter).
    - b. Contact information (for working and non-working hours) for those responsible for site compliance.
    - c. The anticipated timeline.
    - d. Proof of Recording the Order (Note: the proof of recording must be submitted to the Conservation Office through the City’s online permitting system.)
    - e. DEP File number sign (minimum size 2’x2’, clearly visible from the street)

- f. Sedimentation/erosion controls (properly installed in the correct locations)
22. Buffer Zone mitigation planting area(s) must:
- Be installed on or before July 1, 2023.
  - Be installed in compliance with the approved plans (desired changes must be approved by the Conservation office in advance).
  - Be installed and maintained in such a manner as to replicate to the maximum extent practical a diverse ecological system, provide habitat for native species, and keep invasive species in check.
  - Include 9 native shrubs (Sweet pepperbush/*Clethra alnifolia* and/or witch-hazel/*Hamamelis virginiana*, and/or spicebush/*Lindera benzoin*) and have a survival rate of 100% of the total number of shrubs (after 2 growing seasons).
  - Include organic leaf-litter mulch to eradicate lawn and minimize aggressive weed growth but shall not impede the spread of native groundcover. Mulch applications shall diminish over time and eventually cease as ground cover species and shrubs spread.
  - Be managed to control/minimize invasives species. If herbicides are used, manufacturer's recommended directions must be followed.
23. Compensatory flood storage must be provided by removing 24 cubic feet (almost 1 cubic yard) of soil from the fence installation area and mitigation planting area.
24. The applicant must apply for a Certificate of Compliance in accordance with DEP Condition #12, by submitting:
- A completed "Request for Certificate of Compliance (WPA Form 8A)."
25. To protect the water quality of area wetlands, fertilizers shall be of low-nitrogen content and be used in moderation.
26. To protect the suite of benefits of area wetlands, wildlife, and native insects and pollinators, no pesticides shall be used.
27. To protect wetland wildlife, any new exterior lighting shall:
- be "dark sky" compliant -- i.e., shielded to prevent any "up lighting" and "backlighting", focused, and directed so as not to illuminate any part of the wetland.
  - have limited blue content to decrease skyglow and disruption of diurnal animals.
  - be switched off when not in active use.
28. To maintain the flood storage capacity of the site, and to uphold DEP requirements for "unrestricted hydraulic connection", the lower portions of the fence (currently open) may not be paneled or enclosed.

#### 4. 370 Quinobequin Rd – NOI continued – First and second floor additions and new deck – DEP #239-948

- Owner/Applicant. Seth Kosto
- Representatives. Mitch Maslanka, Goddard Consulting; Bruce Bradford from Everett M Brooks
- Proposed Project Summary.
  - First floor addition over existing rear deck
  - Second floor addition over existing house
  - New deck off rear of house
- Request. Continue to May 4th.
- Documents in packets. Locus map, highlighted plans.
- Additional documents presented at meeting. none.
- Jurisdiction. BLSF, Buffer Zone, BVW (no work planned), RFA (no work planned)
- Vote to continue the hearing to May 4th. [Motion: Cade, Second: Zabel, Roll-call vote: Gilligan (aye), Cade (aye), Katz (aye), McKnight (aye), Zabel (aye). Vote: 5:0:0.]

#### 5. 178 Quinobequin Rd – Informal Discussion – Permit requirements for removal of large oak tree in RFA

- Owner/Applicant. David and Avery Price
- Representatives. none
- Proposed Project Summary. Remove large (~48") oak from near the house
- Request. Determine whether this would require an RDA or NOI
- Documents in packets. None
- Additional documents presented at meeting. Locus map, highlighted plans, site photos.
- Jurisdiction. RFA (outer riparian zone)
- Performance Standards. No adverse impact
- Presentation (Staff) and Discussion. Staff showed highlighted site plans and site photos and summarized the proposed work.
  - Leigh Gilligan noted that she was personal friends with the proponents, but that she could still be impartial.

- Staff did not feel that the tree presents an imminent threat, so did not grant Admin. Approval for removal of the tree.
- Staff noted the Commission’s mitigation planting requirement “starting points”:
  - For each 1 inch of tree over 8” DBH removed, ½ caliper inch must be planted. (in this case = 24 inches)
  - Replacement trees must be at least 1-2 caliper inches. (in this case = ~12-18 trees)
  - If the tree being removed is a “legacy tree” (any live native tree greater than or equal to 21” DBH and greater than 150 years old), mitigation requirements may be modified. (Consider reducing the requirement to ~4 trees)
- Staff did not feel that an NOI was warranted, but that an RDA might be appropriate. There are two negative Determination options:
  - Negative 2. The work described in the Request is within an area subject to protection under the Act, but will not remove, fill, dredge, or alter that area. Therefore, said work does not require the filing of a Notice of Intent.
  - Negative 5. The area described in the Request is subject to protection under the Act. Since the work described therein meets the requirements for the following exemption, as specified in the Act and the regulations, no Notice of Intent is required:
    - 10.58(6) Notwithstanding the Provisions of 310 CMR 10.58(1) through (5), Certain Activities or Areas Are Grandfathered or Exempted from Requirements for the Riverfront Area:
      - (a) Any excavation, structure, road, clearing, driveway, landscaping, utility line, rail line, airport owned by a political subdivision, marine cargo terminal owned by a political subdivision, bridge over two miles long, septic system, or parking lot within the riverfront area in existence on August 7, 1996. Maintenance of such structures or areas is allowed (including any activity which maintains a structure, roads (limited to repairs, resurfacing, repaving, but not enlargement), clearing, landscaping, etc. in its existing condition) without the filing of a Notice of Intent for work within the riverfront area, but not when such work is within other resource areas or their buffer zones except as provided in 310 CMR 10.58(6)(b).
- One Commissioner noted that the tree may be nearing the end of its natural life.
- It was noted that copes of canopy trees, understory trees, and shrubs had the most ecological value.
- The owners noted that the tree dropped branches on a regular basis and that one had broken their car window.
- They noted that they had had the tree pruned and fertilized.
- They agreed to have a certified arborist provide a report. Recommendations were given, such as Maltby, Arborway, and TreeTech.
- Staff recommended that the applicants present a mitigation planting plan allowing the Commission to consider a Negative 2 Determination.
- Consensus. The owners will get an arborist’s report and, if the tree is deemed unhealthy, file an RDA with a robust mitigation planting plan.

**6. Dunstan East – OOC extension – 3 mixed-use building 40 B development -- DEP #239-867**

- Owner/Applicant. Robert Korff, Mark Development
- Representatives. Megan Rothwell and Steve Buchbinder, attorney; Scott Lombardi, Mark Development
- Project Summary. The project was approved by the Commission on July 22, 2020 and so is due to expire on July 23, 2023. The project consists of three mixed-use buildings, 3-6 stories [292 housing units (73 affordable units, 10 of which permanently set aside for households earning 50% AMI or less) and approximately 8,000 square feet of retail space], significant riverbank and riverfront area restoration and flood capacity creation.
- Request. Extend OOC 3 years to July 22, 2026 due to the scale of the project, cost-induced delays (interest rates and labor rates), and supply chain issues.
- Documents in packets. None
- Additional documents presented at meeting. Site photos
- Jurisdiction. RFA, BLSF, Bank, Buffer Zone, LUWW
- Staff Presentation. The project has been unfolding according to plan and the site is in good and stable shape.
- Vote to issue a 3-year OOC extension. [Motion: Cade, Second: Zabel, Roll-call vote: Gilligan (aye), Cade (aye), Katz (aye), McKnight (aye), Zabel (aye). Vote: 5:0:0.]

**7. 56 Roosevelt – COC request – sunroom addition -- DEP #239-915**

- Owner/Applicant. Jordan Schwartz
- Representatives. none
- Project Summary. Addition of a sunroom on piers.
- Request. Issue a complete COC.

- Documents in packets. None
- Additional documents presented at meeting. Site photos
- Jurisdiction. BLSF
- Staff Notes. All required paperwork has been received. The project was done in compliance with the approved plans.
- Vote to issue a complete COC. [Motion: Katz, Second: Zabel, Roll-call vote: Gilligan (aye), Cade (aye), Katz (aye), McKnight (aye), Zabel (aye). Vote: 5:0:0.]

## 8. Guidance: Clarifying Minimum Standards for “Mitigation” in Riverfront Area Redevelopment Projects

- Request. Staff would like the Commission to consider developing guidance that clarifies minimum standards for acceptable “mitigation” in Riverfront Area projects to ensure that projects are meeting the regulations and optimizing ecological protection.
- Staff Presentation.
  - **310 CMR 10.58(5). RFA: Redevelopment within Previously Developed Riverfront Areas; Restoration & Mitigation:**
  - Staff noted their concerns that:
    - Applicants rarely prove “improvement”
      - 10.58(5)(a): “work shall result in an improvement over existing conditions of the capacity to protect the interests”
    - Added hardscape is not always at the outer boundary, and is often near the stream/river.
      - 10.58(5)(g): “more alteration at the RFA outer boundary may be allowed if an applicant proposes mitigation ...”
    - Plans often come in with the bare minimum of just 2:1 mitigation.
      - 10.58(5)(g): “at a ratio in square feet of at least 2:1”
    - Converting lawn to a shrub/perennial bed probably doesn’t qualify as “mitigation”.
      - 10.58(5)(g): “Mitigation may include:
        1. off-site restoration of riverfront areas,
        2. CRs to preserve undisturbed riverfront areas that could be otherwise altered under 310 CMR 10.00,
        3. the purchase of development rights within the riverfront area,
        4. the restoration of bordering vegetated wetland,
        5. projects to remedy an existing adverse impact on the interests the applicant is not legally responsible for,
        6. similar activities undertaken voluntarily which will support a “no significant adverse impact” determination”
- Consensus. Commissioners felt that a guidance document would be superfluous and confusing. Staff concurred and asked the Commission to keep the performance standards at the forefront of project reviews.

## B. CONSERVATION AREA DECISIONS

## C. ADMINISTRATIVE DECISIONS

### 9. Minutes to be approved

- Documents in packets. Draft 3/23/2023 minutes.
- Vote to approve the 4/11/2023. [Motion: Gilligan, Second: Lunin, Roll-call vote: Gilligan (aye), Cade (aye), Katz (abstain), McKnight (abstain), Zabel (aye), Lunin (aye). Vote: 4:0:2.]
- Volunteer. Who will volunteer to review the 4/11/2023 minutes? Kathy Cade.

## D. ISSUES AROUND TOWN DECISIONS

## UPDATES

### E. WETLANDS UPDATES

- Staff are continuing to work to close out old projects
- DCR is not responding to Enforcement Orders
- Staff are now requiring detailed “plan change memos” – a huge improvement
- Staff are working with Engineering on plan specifications
- Draft Floodplain Ordinance got the thumbs up from DCR (FEMA liaison)

### F. CONSERVATION AREA UPDATES

- Trailhead signs and maps for the website ... getting closer
- Encroachments that must be addressed
  - Kerry Court
  - Kessler (2)
  - Hahn Brook

- Eagle Scout projects in process
  - Upper Falls Riverwalk steps
  - Webster boardwalks
- Contracted out for this spring
  - Norumbega plantings
  - Norumbega fence to protect the slope
  - Oakdale plantings
  - Old Deer Park fence opening
  - Saw Mill Brook fence
  - Upper Falls Riverwalk Saco Street dense grade
  - Webster Elgin Street dense grade

**G. ADMINISTRATIVE UPDATES.** The right to conduct fully remote meetings has been extended through 3/31/2025.

**H. ISSUES AROUND TOWN UPDATES**

- Community Way – there is an on-line community survey and 4/26/23 6pm meeting via Zoom.
- Christina Street Bridge – there was a recent positive meeting with Barry Price Center and Northland.

***OTHER TOPICS NOT REASONABLY ANTICIPATED BY THE CHAIR 48 HOURS BEFORE THE MEETING***

**10. Unpermitted planting at Dolan Pond**

- Staff Presentation and Discussion.
  - Mark Dugan planted one of his unpermitted mounded tree installations at Dolan Pond near Auburndale Ave.
  - Staff noted that she met Mark Dugan on-site with the Dolan Pond Volunteer Land Steward after the Steward alerted her to the installation. She summarized Mark Dugan’s philosophy about the value of his planting method (more/enhanced soil, protection from mowers, etc.) and his history of activity and legal troubles with the City.
- Consensus. Commissioners noted that the precedent the planting set was unacceptable, that Mr. Dugan had proven himself an unreliable partner, and that the installation should be removed immediately at Mr. Dugan’s expense, if at all possible.

**11. Proposed Fairy House Trail at Upper Falls Riverwalk**

- Staff Presentation and Discussion.
  - Staff noted that Lisa Leavitt had sought permission to install “fairy and gnome houses” along the trail on 1165 Chestnut Street. Staff had pointed out that that was private property and so the Conservation Office could not provide permission. Lisa Leavitt then sought permission to do the installation along the trail at Upper Falls Riverwalk.
  - Ellen Katz offered to keep an eye on the installation.
- Consensus. Staff presented proposed conditions. Commissioners agreed and added one more:
  - On the Upper Falls Riverwalk, just off the trail, but within the open area, between Saco Street and Williams Street.
  - Harvesting of materials must be done “without a trace”.
  - All materials would have to be removed by some date certain.
  - Signs would have to indicate “Conservation Commission permission granted”.
  - Houses shall not exceed 12” x 12” x 12”.

**12. 6 Vaughn Ave. COC request**

- Staff Presentation and Discussion.
  - Staff received a request for a COC after the application deadline, but always try to accommodate such requests.
  - A site visit proved that construction was complete and compliant and required plantings had survived, but many were very poorly installed and might not “thrive” in the long run.
  - Staff noted that in the OOC’s standard language, “survival” was the threshold for a COC. Commissioners felt that should be expanded to “survive and be well-established”. Staff felt that it would be appropriate to add a condition requiring “ground-level plantings” for mitigation planting areas.
- Vote to issue a complete COC, since the letter of the law had been met, but to have staff note their concerns in the cover letter. [Motion: Lunin, Second: Gilligan, Roll-call vote: Gilligan (aye), Cade (aye), Katz (aye), McKnight (aye), Zabel (aye), Lunin (aye). Vote: 6:0:0.]

**ADJOURN** Vote to adjourn at 9:48. [Motion: Gilligan, Second: Lunin, Roll-call vote: Gilligan (aye), Cade (aye), Katz (aye), McKnight (aye), Zabel (aye), Lunin (aye). Vote: 6:0:0.]