

CONSERVATION COMMISSION MINUTES

Date: Thursday, July 27, 2023

Time: 7:00pm

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

With a quorum present, the meeting opened at 7:00 pm with Dan Green presiding as Chair.

Members Present: Dan Green (Chair), Susan Lunin (Vice-Chair), Kathy Cade, Judy Hepburn, Leigh Gilligan, Jeff Zabel

Members Absent: Ellen Katz, Sonya McKnight (Associate Member)

Staff present: Jennifer Steel, Ellen Menounos

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

DECISIONS

A. WETLANDS DECISIONS

1. (7:00) 19 Staniford St – NOI – two-lot rear subdivision – DEP #239-0960

- Owner/Applicant. Roger Kane, Kane Built Inc
- Representatives. John Rockwood, Eco-Tec Inc; Bob Bibbo, Michael Quinn
- Request and Project Summary:
 - Issue an OOC for the rear house.
 - The existing perimeter construction fence and erosion controls will be removed and relocated as shown on the Site Plan.
 - The proposed project results in increased impervious surfaces on the site and in the 100' Buffer Zone
 - Roof and patio runoff will be collected and directed to infiltration systems
 - Remove two trees totaling 33 caliper inches within the 100' Buffer Zone
 - Plant 13 saplings (of 5 native deciduous and evergreen species) totaling 38 caliper inches and monitor them for 2 growing seasons.
 - Remove debris on slope by hand.
 - 6 stone bounds at the 50-foot buffer to make owners aware of the wetland below.
- Documents in packets. Highlighted plans
- Additional documents presented at meeting. Site photos
- Jurisdiction. Buffer Zone [FEMA Flood Zone and City Flood Zone well outside the limit of work]
- Presentation (Staff) and Discussion (John Rockwood).
 - The proposed house is within the Buffer Zone, but is 61 feet from the wetland on what is now lawn. The wetland will not be adversely affected by the construction.
 - The 2 trees to be removed are 100-feet from the wetland. They will plant 13 saplings (of 5 native deciduous and evergreen species) totaling 38 caliper inches and monitor them for 2 growing seasons.
 - Removal of all the debris from the slope will improve the health of the area. The contractor should be asked to remove debris from beyond the property lines while on the slope removing debris from the subject property.
 - The applicant will place 6 informational bounds along the 50-foot buffer line to indicate "native habitat, do not disturb" beyond the bounds.
- Vote to close the hearing and issue an Order of Conditions with Findings and General Conditions and the following Site-Specific Conditions. [Motion: Lunin, Second: Gilligan, Roll-call vote: Green (aye), Lunin (aye), Zabel (aye), Hepburn (aye), Gilligan (aye), Cade (aye). Vote: 6:0:0.]
 - 28. All trash and debris from the slope behind the fence shall be removed by hand.
 - 29. 6 stone bounds shall be installed and have instructive medallions (provided by the Newton Conservation Office) permanently affixed to the top, as per the plans.
 - 30. The plantings (13 saplings of 5 native deciduous and evergreen species totaling 38 caliper inches) must be installed as per the plans, monitored for 2 growing seasons, with a 100% survival rate after 2 growing seasons.
 - 33. To protect the water quality of area wetlands, fertilizers shall be of low-nitrogen content and



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
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Sonya McKnight

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be used in moderation

34. To protect the full suite of benefits of area wetlands, wildlife, and native insects and pollinators, no pesticides shall be used.
35. To protect wetland wildlife, exterior lighting shall:
 - a. 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.
 - b. have limited blue content to decrease skyglow and disruption of diurnal animals
 - c. be switched off when not in active use
 - d. not exceed the illumination shown on the approved photometric plan sheet

2. (7:20) 53 Roosevelt Rd – RDA – install vertical loop geothermal heat pump

- Owner/Applicant. Satya Keerthi Kota, Savithri B Kota
- Representatives. Martin Orio, Massachusetts Geothermal
- Request and Project Summary:
 - Issue a negative Determination for the installation of the geothermal well.
 - Two 6” vertical geothermal boreholes at about 375’ each separated by 20’ horizontally.
 - Steel casing is hammered into the “competent bedrock” to keep surface water from intruding and to keep the well from caving in on itself on the way down to bedrock.
 - There will be a pit dug around the borehole so water and drilling mud can be held. This seals the overburden so the well remains open as they drill. That pit would lead (via a 1’ deep by 1’ wide trench) to an infiltration pit where the clean water would percolate into the soil and the drilling mud would be scooped out. The owners understand that the solids, 2-3 cubic yards of mostly ground bedrock, must be removed from the site with a backhoe and dump truck.
 - If water is encountered, it will be removed from the hole and percolated back into the ground via the same perc pit.
 - After boreholes are in and 1.25” HDPE pipes are installed with U-bend in the bottom the void around the pipes in the bore hole is back filled with bentonite grout.
 - There will be 2 6” pipes sticking up out of the ground with two 1.25” pipes extending above. Then a tremie rig arrives and backfills the void in the 6” borehole to complete the loop and make a conductive connection from the loop pipes to the earth. This also seals off the loop and so no other liquid or material can enter or exit the well area. Any mixed grout that overflows would also be scooped up and removed.
 - The final step is for a backhoe to dig a 2’ wide by 4’ deep trench to marry the two boreholes together. That trench would then be continued to the basement entry point to the equipment room. All trenching material would be backfilled into the trenches it came out of, so no net gain or loss of material on the property.
- Documents in packets. Highlighted plans, narrative summary
- Additional documents presented at meeting. Site photos
- Jurisdiction. FEMA Flood Zone, City Flood Zone
- Presentation (Staff) and Discussion (Marty Orio).
 - This seems like a simple project with little chance of fundamentally altering the flood zone.
 - Grades and lawn will be restored.
 - Given the detailed plans, staff’s only concern is ensuring the health of the trees close to the point of entry for the drill rig and the location of the dumpster.
 - The infiltration area will be lined with a sediment fabric to facilitate removal of the mud and debris that will be pumped from the well. The area will be expanded if/as needed to accommodate excess groundwater.
- Vote to close the hearing and issue a negative 2 Determination with the following conditions listed in the cover letter.
[Motion: Zabel, Second: Lunin, Roll-call vote: Green (aye), Lunin (aye), Zabel (aye), Hepburn (aye), Gilligan (aye), Cade (aye).
Vote: 6:0:0.]
 - Erosion controls and other site controls must keep all water and spoils on the subject property.
 - All solid spoils must be removed from the property.
 - There may be no net addition of fill to the property.

3. (7:35) 145 Warren – OOC resign request – renovations to existing SFH and 3 additional units -- DEP #239-0882

- Owner/Applicant. David Oliveri, Warren St LLC/Civico Development
- Representatives. Stephanie Seeley, Sustainable Comfort
- Request and Project Summary. Resign the OOC so that a request for an extension can be presented.
- Documents in packets. Site plan.
- Additional documents presented at meeting. Site photos
- Jurisdiction. BZ
- Presentation (Staff) and Discussion.

- Staff recently discovered that the original OOC was never recorded, so prior to any further permit action, a resigned OOC should be provided and recorded.
- Revised plans reflect 5 units (instead of the original 4), but the footprint of the building has not changed at all.
- Site visits performed on 6/23/23 and 6/26/23 noted that erosion controls were not installed properly and that unpermitted tree removal had occurred.
- The applicant has corrected the erosion controls and has documented the unpermitted tree removal: one 20" and one 7" deciduous tree at the rear of the site. The 7" tree was approved to be removed by the Tree Warden, the 20" was not.
- The Commission discussed the need to plant additional trees as mitigation, but felt that the OOC could be re-signed prior to the installation of the plantings.
- Staff's concerns about the excess material (over-dig from the infiltration system), poor quality of material and compaction within the planting area will be addressed with removal of inappropriate soils, addition of good soil, and rototilling of the site prior to planting.
- Vote to resign the original OOC for recording, with a cover letter that indicates the need to grub the new stumps, add 2 native canopy saplings to the planting area, and restore the soils prior to plant installation. [Motion: Lunin, Second: Gilligan, Roll-call vote: Green (aye), Lunin (aye), Zabel (aye), Hepburn (aye), Gilligan (aye), Cade (aye). Vote: 6:0:0.]

4. (7:50) 12 Lake Terrace – COC request – hardscaping, planting strip – DEP #239-0395

- Owner/Applicant. Joseph and Kelly Rogers
- Representatives. Contractors seeking permission to install dormers
- Request and Project Summary.
 - Close out the old OOC with a COC. Allow staff to issue Administrative Approval for the dormers.
 - The 2000 OOC had condition #26. "The property owner shall present to the Commission for its review and approval a plan for a planting strip at the end of the lawn/top of bank of Crystal Lake. The strip should be a minimum of 5 feet on average and contain a predominance of native species for wildlife enhancement. The strip is intended to serve as a filter for lawn runoff and a deterrent to Canada geese."
- Documents in packets. None.
- Additional documents presented at meeting. Site photos.
- Jurisdiction. Buffer Zone to Crystal Lake, FEMA Flood Zone, City Flood Zone
- Presentation (Staff) and Discussion.
 - The open OOC came to staff's attention via a building permit application (for dormers) from the new owners.
 - A site visit on 7/20/2023 confirmed that there is a narrow line of shrubs along the top of the bank and fence line. This seems to have been the condition for many, many years.
 - The Commission felt that despite the hedge not being of a native species, given the age of the OOC and the stability of the site, that a COC was appropriate.
- Vote to issue a complete COC. [Motion: Cade, Second: Gilligan, Roll-call vote: Green (aye), Lunin (aye), Zabel (aye), Hepburn (aye), Gilligan (aye), Cade (aye). Vote: 6:0:0.]

5. (8:00) 3, 5, 9, 11 Farwell Cir. – NOI – complete 6-lot subdivision by building 4 single-family houses – DEP #239-0961

- Owner/Applicant. Scott Tellier, Farwell on the Charles
- Representatives. Joe Porter, Steve Vona
- Request and Project Summary:
 - Issue an OOC
 - The applicant seeks permission to complete the 6-lot subdivision that was started in 2018.
 - 2 houses have been more or less completed. 2 foundations have been installed. 2 lots remain mostly unchanged.
- Documents in packets. Highlighted plans
- Additional documents presented at meeting. Site photos
- Presentation (Staff) and Discussion (Stephen Vona).
 - Staff presented the site's permitting history and showed current site photos.
 - The current application has been filed to complete the 6-lot subdivision that the Commission permitted on 4/27/2018 (#239-793). That permit was appealed by abutters and so DEP issued a superseding OOC on 9/6/2018 (#239-793). That superseding OOC expired on 12/11/2022. So, the applicant is applying *de novo* for a permit to complete a 6-lot subdivision (#239-961).
 - Staff accepted this application as complete despite its short-comings, because DEP issued a file number and because staff wanted the Commission to weigh in on what information it feels will be necessary to render a decision and conditions. The applicant wanted the "old" (2018) plans "re-approved", but staff noted that the Commission should consider this application like any other, with fresh eyes and not be bound by the old plans or Order of Conditions.

- The current/existing conditions are in a state of partial completion.
 - #1 has been completed and DEP has, we are told, issued a Partial COC.
 - #3 has final grading, a foundation, and utilities. It awaits a modular house.
 - #5 has final grading, a foundation, and utilities. It awaits a modular house.
 - #7 has been completed and DEP has, we are told, issued a Partial COC.
 - #9 has not had work done on it. Only the original 2018 plans have been provided.
 - #11 has not had work done on it. Only the original 2018 plans have been provided.
- There are numerous legal questions that must be addressed.
 - Ownership is not clear, as deed references haven't been provided.
 - #1 and #7 received Partial COCs from DEP
 - The entire subdivision (roadway, utilities, plantings, etc. filed under the now-expired OOC) must be closed out, yet:
 - Some portion of the parcel is due to be auctioned on 7/27/2023.
 - #1 has been sold and released by DEP.
 - An additional lot (#7) has been released by DEP.
 - The City's water easement hasn't been recorded and is tied up in legal actions.
- A site visit on 7-20-2023 found the following:
 - Weeds and invasives have overtaken the planting area. Many trees have died.
 - Current grading creates ponding at the rear of #1, #3, #5, and #7.
 - As-built plans have been received for #1 and #7, but:
 - #1 is anticipating the need for additional retaining walls to address structural concerns.
 - #7 actually has a berm behind it that causes ponding, but this is not reflected on the as-built.
- Staff noted the many deficiencies of the application.
 - Deed book and page information. The NOI listed the recorded OOC book and page, not the deed book and page. Staff requested deed book and page information, but nothing was been submitted.
 - Signature of the applicant appeared to be not authentic.
 - The additional \$512.50 state filing fee required for a project in BLSF and RFA was not submitted.
 - Clarity on the scope of the project. The whole subdivision must be completed and approved through an OOC and COC, but the applicant is applying only for work on #3, #5, #9, and #11. The original permit covered the entire subdivision, so in addition to these four lots (#3, #5, #9, and #11), the Commission should review and approve the roadway, drainage, utilities, and RFA plantings for the whole subdivision under this application and a new OOC.
 - Recorded partial COCs. DEP has, reportedly, issued partial COCs for #1 and #7 Farwell Circle, but neither are recorded and only that for #7 has been submitted to the Conservation Office.
 - A copy of the abutter notification was not provided.
 - The monthly Environmental Monitor reports from MetroWest Engineering's on the RFA mitigation efforts that were never sent to the Commission, per condition #30.
 - As-built plans for #1 and #7 that show the landscaping, per condition #44 were never sent to the Commission.
 - A new stormwater analysis that proves that the proposed systems will satisfy not only the state stormwater standards, but the City's stormwater ordinance was missing.
 - A new stand-alone stormwater O&M plan may be required.
 - A statement from DEP how it intends to close out or enforce their Superseding OOC (#239-793) was requested but not received.
 - New/different details for any work proposed for #9 and #11 that reflect DEP's current requirement for construction in flood zone to be on pilings will likely be necessary.
 - One comprehensive plan set with one final revision date should be filed.
 - Revisions to the Riverfront Area mitigation planting plan, if any are required by the Commission, will be required.
- Staff noted that DEP's superseding OOC did not include:
 - Perpetual conditions (and required bounds) for the RFA mitigation planting area as required in 310 CMR 10.58(5)(h).
 - A requirement for a public access easement and pathway as was initially included in the Commission's OOC.
- Abutter Sonia Lun (31 Anthony Rd) spoke about her concern about weeds from the Farwell property encroaching on her property. Her property is outside the Commission's jurisdiction, but Steve Vona agreed to meet her on site and address the issue.
- Commissioners noted that:
 - The NOI was not "ripe" for consideration.

- A clear legal strategy, remedying some of the issues of ownership and the old OOC, was needed for a new filing to proceed, and suggested to the applicant that he contact an attorney.
- A new wetland delineation may be necessary.
- It would be best if the applicant withdrew the application and squared away all the short-comings prior to refiling.
- The applicant noted that:
 - The site was not in as bad shape as the photos and descriptions indicated, and
 - There had not been flooding during the recent heavy rains, but
 - He would request a withdrawal.
- Vote to accept the request to withdraw. [Motion: Gilligan, Second: Zabel, Roll-call vote: Green (aye), Lunin (aye), Zabel (aye), Hepburn (aye), Gilligan (aye), Cade (aye). Vote: 6:0:0.]

6. (8:45) 288 Mill St – COC Extension Request – additions, retaining walls, mitigation plantings – DEP #239-0888

- Owner/Applicant. Catherine Wells (now deceased)
- Representatives. Alison Andrews, Personal Representative
- Request and Project Summary:
 - Issue an extension for the OOC
 - The addition has been completed, but the mitigation plantings have not been installed.
- Documents in packets. Status letter.
- Additional documents presented at meeting. Site photos.
- Jurisdiction. RFA, BZ
- Presentation (Staff) and Discussion.
 - The house is being sold, so the current owner asked for a status letter.
 - The OOC is due to expire on 4/28/24 and will need to be extended.
 - A site visit on 7/13/23 found that the construction has been completed but the required 740 sf of mitigation plantings have not been installed and that there has been recent fill or grading along the rear fence line.
 - A recent status letter provided to the representative noted the need for the installation of the 740 sf planting area and rectification of the unpermitted grading to ensure slope stability.
 - A Commissioner discovered that the property sold on July 19th, just 8 days ago.
- Consensus. Issue a memo to the new owners apprising them of the need for them to seek an extension to allow for establishment of the planting area and regrading along the rear fence.

7. (8:55) 44 Brandeis – COC Request – addition and grading -- DEP #239-0910

- Owner/Applicant. Michael Lanzberg
- Representatives. Jimmy Caouette, contractor
- Request and Project Summary:
 - Issue a complete COC
 - The addition and grading have been completed.
- Documents in packets. None.
- Additional documents presented at meeting. None.
- Jurisdiction. FEMA Flood Zone, City Flood Zone
- Presentation (Staff). A site visit on 7/13/23 found the site to be in substantial compliance with the approved plans and OOC. All required paperwork has been received.
- Vote to issue a complete COC. [Motion: Lunin, Second: Hepburn, Roll-call vote: Green (aye), Lunin (aye), Zabel (aye), Hepburn (aye), Gilligan (aye), Cade (aye). Vote: 6:0:0.]

8. (9:00) 190 Sumner St – COC Request -- ex post facto OOC for an addition and driveway -- DEP #239-806

- Owner/Applicant. Sam Roth.
- Representatives. None.
- Request and Project Summary:
 - Issue a complete COC
 - The project involved an addition, driveway expansion, and removal of a garage, and a mitigation planting area.
 - On 5/18/2018 an ex post facto OOC was issued for an addition, driveway expansion, and removal of a garage.
 - On 8/21/2022 that OOC was due to expire. When preparing to seek an extension, the owner's engineer identified non-compliant grading.
 - The OOC was extended for an additional 6 months to 2/17/2023.

- The owner has been very responsible. Most of the required plantings were installed and timely memos have been received for extension requests.
- A site visit on 1/11/2023 found that the site was in substantial compliance with the approved plans, but for inconsequential non-compliant grading (the site is within outer RFA and outer buffer zone to Hammond Brook and the excess fill is of no adverse ecological consequence to the RFA or BZ) and a lack of some plantings behind the garage.
- Jurisdiction. RFA, BZ
- Documents in packets. None
- Additional documents presented at meeting. None
- Presentation (Staff).
 - Applicant has added plants, provided a landscape as-built diagram, provided photos, and provided a COC Request form.
- Vote to issue a complete COC. [Motion: Cade, Second: Gilligan, Roll-call vote: Green (aye), Lunin (aye), Zabel (aye), Hepburn (aye), Gilligan (aye), Cade (aye). Vote: 6:0:0.]

B. CONSERVATION AREA DECISIONS - none

C. ADMINISTRATIVE DECISIONS - none

9. Minutes to be approved

- Documents in packets. Draft 7/7/2023 minutes
- Vote to approve the 7/7/2023 minutes reviewed by Dan Green and Ellen Menounos. [Motion: Lunin, Second: Gilligan, Roll-call vote: Green (aye), Lunin (aye), Zabel (abstain), Hepburn (aye), Gilligan (aye), Cade (aye). Vote: 5:0:1.]
- Volunteer. We neglected to solicit a Commissioner to volunteer to review the 7/27/2023 minutes.

D. ISSUES AROUND TOWN DECISIONS - none

UPDATES

E. WETLANDS UPDATES

- Regulating toxicants under the Wetlands Protection Act.
- Commissioners discussed Boston’s proposed moratorium on artificial turf
- Staff noted communications from Nathaniel Stevens re regulating toxicants (e.g., Second Generation Anti-Coagulant Rodenticides (SGARs) and/or PFAS from turf fields)
 - Arlington had been addressing rodenticides through its Wetland Bylaw which protects wildlife, not just wildlife habitat.
 - The Wetland regulation stormwater standards are silent on toxicants.
 - PFAS is most likely to affect groundwater. Groundwater is not a jurisdictional wetland resource area. The Regs (10.03(1)(a)) state that the applicant has the burden of demonstrating to the Commission that the proposed work within a resource area will “contribute to the protection of the interests identified in M.G.L. c. 131, § 40 by complying with the general performance standards established by 310 CMR 10.00 for that area.”
 - SGARs affect wildlife, yet the Act and Regs only address wildlife habitat. And placing a rodenticide trap in Riverfront Area, for example, might not qualify as regulatable/conditionable "work".
 - Other realms of law address toxicants and that the Conservation Commission should not exceed its authority.
 - Notes
 - **The Act** lists “significances” (not “interests”) yet requires the Commission to “impose such conditions as will contribute to the protection of the interests described herein”.
 - **The Act** defines it purposes: "to protect the private or public water supply; to protect the ground water; to provide flood control; to prevent storm damage; to prevent pollution; to protect land containing shellfish; to protect wildlife habitat; and to protect the fisheries."
 - **The Regs** (10.04) define “interests” synonymously as the “significances” listed in the Act: “Interests Identified in M.G.L. c. 131, § 40 means public or private water supply, ground water supply, flood control, storm damage prevention, prevention of pollution, protection of land containing shellfish, protection of fisheries, and protection of wildlife habitat.
 - **Wildlife Habitat** 10.60(2)(e) = “... topography, soil structure, plant community composition and structure, and hydrologic regime...”
 - **Wildlife Habitat Functions** 10.60(2)(e) = Food, shelter, overwintering and breeding areas and migratory areas
- Staff noted that they are working on a document to clarify Calculating Riverfront Area Mitigation and Restoration: colleagues agree with Jennifer’s assessment. They will share clarifying materials shortly.

F. CONSERVATION AREA UPDATES - none

G. ADMINISTRATIVE UPDATES

- Committee Liaison Updates:
 - Zabel noted that the Farm Commission was due to meet shortly.
 - Green noted that he missed the last Newton Commonwealth Golf Course meeting.
 - Lunin noted that no new applications or projects had been received.

H. ISSUES AROUND TOWN UPDATES - none

OTHER TOPICS NOT REASONABLY ANTICIPATED BY THE CHAIR 48 HOURS BEFORE THE MEETING - none

ADJOURN

- Vote to adjourn at 8:53. [Motion: Zabel, Second: Hepburn, Roll-call vote: Green (aye), Lunin (aye), Zabel (aye), Hepburn (aye), Gilligan (aye), Cade (aye). Vote: 6:0:0.]