

CONSERVATION COMMISSION MINUTES

Date: Thursday, November 9, 2023

Time: 7:00-9:11pm

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), Leigh Gilligan, Jeff Zabel, Judy Hepburn, and Sonya McKnight (Associate Member) arrived at 7:20 and departed early.

Members Absent: Kathy Cade, Ellen Katz

Staff present: Jennifer Steel, Ellen Menounos

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

DECISIONS

A. WETLANDS DECISIONS

1. 27 Boylston St – RDA – Chestnut Hill Shopping Center Paving Maintenance Project

- Owner/Applicant. Chestnut Hill Shopping Center, LLC
- Representatives. Val Locker, Amanda Houle, Eric Doremus from Tighe & Bond; Amanda Chisholm from WS Development
- Request. Issue negative determination.
- Project Summary.
 - Re-pave existing parking lot. 1.5-2" of pavement will be milled/removed/overlaid. 285 sf of impervious area will be removed within the 100-foot buffer zone by creating stone edge to northeast edge of the parking lot.
 - Undertake maintenance of rain gardens. Exposed impermeable liner will be removed and accumulated mulch will be removed. Riprap drainage channels to the rain gardens will be removed and replaced with river stone aprons.
 - Regrade mulched area and seed with a native, wet meadow seed mix to promote infiltration.
 - Plant 3 canopy trees.
- Documents in packets. Site plans
- Additional documents presented at meeting. Site photos.
- Jurisdiction.
 - **100-ft buffer zone** to Inland Bank & BVW.
 - **FEMA flood Zone A** (~165.4 NAVD88)
- Presentation (Staff) and Discussion.
 - Installation of native vegetation and maintenance of stormwater features are technically exempt if erosion is controlled (10.02(2)(b)2.d. and 10.02(3), respectively.
 - Parking lot repaving is not exempt, but it will not alter the adjacent wetland.
 - Staff asked about the mowing regime for seeded areas. WS Development will create an O&M plan for the property and work with maintenance crews to minimize disturbance.
 - Commissioners asked why an impervious barrier was installed when the rain gardens were installed since it precludes infiltration. D. Green recalled that it might have been to trap oils from the parking lot.
 - The applicant agreed to remove asphalt and install plants in an infiltration feature in the northern tip of the parking lot (a currently striped area of pavement).
 - The applicant agreed to move the silt sock further from the wetland, closer to the actual edge of anticipated disturbance. Staff indicated erosion controls can be minimized from what is on the plan and will conduct a site visit to approve erosion controls prior to start of work.
 - The applicant indicated that bittersweet was the dominant target invasive species along with some Japanese knotweed and glossy buckthorn, and noted that they would focus efforts on mechanical control (and possible cut and blot methods, but no foliar spray) in April-May.
 - Staff asked about augmenting the bare spots of the rain gardens with more native plants. The applicant suggested Joe-Pye weed, arrow-wood viburnum, and red-osier dogwood. Staff asked that the applicant propose a plant list.



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

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- Vote to issue a to issue a Negative 3 and Negative 6 DOA with the following conditions. [Motion: Gilligan. Second: Lunin. Roll-call vote: Green (aye), Lunin (aye), Hepburn (aye), Gilligan (aye), Zabel (aye). Vote: 5:0:0.]
 1. The applicant shall install erosion controls as far from the wetland as possible while still protecting the natural areas.
 2. All exposed portions of the impervious barrier shall be removed.
 3. The applicant shall remove asphalt and install a native tree or shrubs in an infiltration feature in the northern tip of the parking lot (a currently striped area of pavement).
 4. The area to be seeded shall have accumulated mulch removed and shall be scarified prior to seeding.
 5. The applicant may use appropriately formulated herbicides to treat invasives, but not via foliar spray.
 6. Japanese knotweed shall be cut and treated with herbicide per industry standard protocol.
 7. The applicant shall augment the bare spots of the rain gardens with more native plants such as Joe-Pye weed, arrow-wood viburnum, and red-osier dogwood.
 8. WS Development shall ensure that the O&M plan for the property (including routine maintenance of the rain gardens and vegetated buffer) is understood and carried out by maintenance crews.
 9. WS Development shall send annual reports to the Conservation Office summarizing maintenance efforts in the wetland buffer zone.

2. 5 Bound Brook Rd – NOI – SFH addition -- DEP File # 239-964

- Owner/Applicant. Martin Son
- Representatives. Ryan Roseen, Goddard Consulting
- Request. Issue OOC.
- Project Summary.
 - Demolish the existing garage and foyer, construct a larger addition.
 - Area of fill in FZ is only 6 sf.
 - Project will create 0.0025 cy of new flood storage.
 - Garage floor of addition will be built on piles 3' above the flood elevation.
- Documents in packets. Highlighted plans.
- Additional documents presented at meeting.
- Jurisdiction.
 - **FEMA flood Zone AE** (~112.4 NAVD88)
- Presentation (Staff) and Discussion.
 - South Meadow Brook flows 230' north of the site.
 - Staff noted several inconsistencies and omissions on the plans. The applicant team clarified that:
 - the 22' inch tree near the garage had fallen recently, damaging the house and fence.
 - half of the birch tree near the driveway and road had fallen recently.
 - the deck would be rebuilt, likely in-place and in-kind (or the applicant would return to the Conservation Commission for review and approval).
 - stockpiling could take place at the front of the property or in a waiting truck.
 - grading would not change.
 - the garage will not be built on pilings as indicated in the narrative, but on a full foundation.
 - Tree protection would be provided at the drip line of the birch trees.
 - Sediment controls would be pulled in tighter to the construction area.
 - Contractor will provide a dewatering plan and a concrete washout plan prior to start of work.
 - Staff reiterated that the rear yard should not be used to stockpile to avoid the need for new loam to be brought in to the flood zone
 - Dan Green asked for revised plan with tree protection and a clearly marked proposed compensatory storage area.
 - Dennis Tourse, 40-year resident at neighboring 3 Cannon St, spoke in favor of the proposed project and attested to the applicant's good care of the property.
- Vote to issue a to issue an Order of Conditions with the following site-specific conditions. [Motion: Gilligan. Second: Zabel. Roll-call vote: Green (aye), Lunin (aye), Hepburn (aye), Gilligan (aye), Zabel (aye). Vote: 5:0:0.]
 - A dewatering plan designed to limit and control any adverse impact on the wetlands resource area(s) must be presented to the Conservation Commission for review and approval.
 - A concrete washout plan designed to limit and control any adverse on the wetlands resource area(s) must be presented to the Conservation Commission for review and approval.
 - Grades are not proposed to be changed and shall not be raised even if high groundwater is encountered.

- Other than the expanded garage foundation shown on the approved plans, no fill (e.g., loam, stone, or lumber associated with expansion of the existing deck and stairs) may be brought into the flood zone.
- If the deck supports or stairs are revised during reconstruction, plans shall be submitted to the Conservation Office for review and approval prior to said work.
- Compensatory flood storage must be provided in its entirety as per the plans, by removing 0.0275 cubic feet of soil from western landscaped bed.

3. 59 Selwyn Rd – MPC Request – fence, removal of invasives, mitigation plantings -- DEP File # 239-895

- Owner/Applicant. Irina Elkin
- Representatives. Dan Burmenko (applicant)
- Request. Cut vegetation that was outside the original limit of work but within Flood Zone to accommodate a fence around the property to contain dogs.
- Project Summary.
 - Teardown/rebuild with an enhancement planting area
- Documents in packets. Approved plan, administrative approval for fence
- Additional documents presented at meeting. Site photos
- Jurisdiction. FEMA Flood Zone
- Presentation (Staff) and Discussion.
 - The house is complete, the enhancement plantings are in, landscaping is underway.
 - The owner wanted like to install a fence for her dog. There was excess flood storage capacity provided during the house construction work, so the fence, elevated and open and in Commission’s policy for construction in Flood Zone, was granted administrative approval as a minor plan change.
 - The owner then asked to remove some of the vegetation at the rear of the site that had been protected during the construction of the house. The vegetation at the rear of the site is predominantly invasive species, and many originate from the abutting parcel.
 - “Back Left”: Trees: Japanese maple, Norway maples, apple. Sapling: common buckthorn. Shrub: honeysuckle.
 - “Back Right”: Trees: Norway maple, black cherry. Shrub: burning bush, common buckthorn.
 - Staff noted that the wildlife habitat value of the originally protected vegetation should not be lost, and a restoration planting plan should be required (and the plantings protected from trampling). The
 - The abutter recently cut one large, cracked buckthorn shrub.
 - The Commission’s consensus was that the owner may undertake the following removals if the following plantings occur timely thereafter:
 - In the “back left” corner:
 - Keep the Japanese maple and the mature Norway maples
 - Remove the ailing crabapple and the honeysuckle and buckthorn shrubs
 - Install 1 native sapling and 3-4 native shrubs (1-3g size)
 - In the “back right” corner:
 - Keep the black cherry and the mature Norway maple
 - Remove all burning bush and buckthorn
 - Install 3-4 native shrubs (1-3g size)
- Consensus. Issue a Minor Plan Change memo noting planting guidance in rear of property.

4. 149 Pleasant St -- OOC Extension Re-sign – Mason Rice solar array -- DEP #239-844

- Owner/Applicant. City of Newton, Public Buildings Department
- Representatives. Bill Ferguson
- Request. Issue OOC Extension Re-sign (the original was lost)
- Project Summary. At Mason Rice Elementary, install two solar canopies supported by columns, install new electrical conduits to connect the canopies to the grid with associated trenching, remove 2 trees, plant 29 trees in the adjacent Newton Center Playground area.
- Documents in packets. None
- Additional documents presented at meeting. None
- Jurisdiction. RFA, BZ
- Presentation (Staff) and Discussion.
 - This site (one site of many canopy installations) has been postponed due to contract and labor challenges.
 - At 9/7/23 Con Com meeting, a 3-yr OOC extension was issued, to allow the project to proceed if possible.

- The 9/7/23 document was lost.
- Vote to issue a re-signed COC. [Motion: Lunin. Second: Zabel. Roll-call vote: Green (aye), Lunin (aye), Hepburn (aye), Gilligan (aye), Zabel (aye). Vote: 5:0:0.]

B. CONSERVATION AREA DECISIONS – none at this time

C. ADMINISTRATIVE DECISIONS – none at this time

5. Minutes to be approved

- Documents in packets. Draft 10/19/2023 minutes
- Vote to approve the 10/19/2023 minutes reviewed by Susan Lunin. [Motion: Gilligan. Second: Zabel. Roll-call vote: Green (aye), Lunin (aye), Hepburn (abstain), Gilligan (aye), Zabel (aye). Vote: 4:0:1.]
- Volunteer. Dan Green will volunteer to review the 11/9/2023 minutes

D. ISSUES AROUND TOWN DECISIONS – none at this time

UPDATES / DISCUSSION

E. WETLANDS

- **Toll Bros 40B schedule.**
 - At the ZBA’s recent public hearing regarding stormwater and wetlands, ZBA asked (and the applicant team agreed) that the applicants would submit preliminary information to the Conservation Commission so that the Commission could render preliminary and informal feedback to the ZBA prior to them issuing their decision.
 - The formal NOI is likely to be submitted in early spring, so there are no immediate concerns about “Mullin”.
 - The project has Riverfront Area, flood zone, bank, land under waterbodies, BVW, and buffer zone, so a wetlands peer review could be very valuable. The Commission suggested someone who focuses on peer reviews and is not a regular applicant with the City (Patrick Garner; Epsilon, Horsley Witten, Rich Kirby, Matt Burne, etc.). Staff will seek interested peer reviewers.
- **2 Wells Ave beaver dam.** There was a report of the ponding affecting Nahanton Street drainage during a very heavy rain storm. DPW has reached out to Beaver Solutions for an assessment and will likely file to install a pond leveling device. Staff has not heard where that effort stands.
- **Permitting construction of fences, sheds, and driveways in Flood Zone and Riverfront Area and Buffer Zone**
 - To clarify the state regulation language, the Commission has 2 policies for construction in FZ: (1) requires 110% flood storage compensation, (2) fences require an NOI and shall not restrict flow,.
 - Below are the types of smaller projects with which staff struggle – cases where mitigation and compensatory storage are hard to fulfill.

PROJECT	TRIGGER / PERMIT REQUIRED BY OTHERS	REQUIRED DOCUMENTS BY OTHERS	CONCOM PERMIT REQUIRED if in FZ	Example: Fill if in 2’ of Flood Elevation	CONCOM PERMIT REQUIRED if in RFA and/or BZ
Fence, 0-4’	n.a.	n.a.	NOI	0.4 cy	Exempt (AA)
Fence, 4-6’	Zoning Permit	Sketch	NOI	0.4 cy	Exempt (AA)
Fence, >6’	Special Permit	Plans	NOI	0.4 cy	Exempt (AA)
Shed, <200 sf	Zoning Permit	Sketch	NOI	15 cy	Exempt (AA)
Shed, >200 sf	Building Permit	Plans	NOI	15 cy	Exempt (AA)
Driveway, remove/replace	Zoning Permit	Photos	AA	0 cy	Exempt (AA)
Driveway, expand/relocate (22’x25’x2”)	Zoning Permit, Engineering Rev	Stamped plans	NOI	3.4 cy	NOI
Driveway, new (22’x25’x2”)	Zoning Permit, Engineering Rev	Stamped plans	NOI	3.4 cy	NOI

- Staff wonder about:
 - defining a *de minimus* volume of fill for which no compensation would be required, and/or
 - allowing compensatory flood storage to be provided at lower elevations for small projects or where foot-for-foot compensation is not achievable.
- Staff have also considered creating a “template” NOI and OOC for such small projects to facilitate applications and permits.

- Staff are working to improve the City permitting portal to facilitate coordination across departments.
- Consensus: Commissioners wish to continue to review fence-in-floodplain proposals via NOI applications on a case by case basis.

F. CONSERVATION AREAS

- **Newton Stewards walk at Saw Mill Brook took place on Thursday 10/26.** We had a nice turn out of about 10 people on a beautiful afternoon and enjoyed snacks and conversation afterwards.
- **Upper Falls River Walk.** Staff will investigate “rights” over a possibly shared right-of way and then ask our Land Managers to install boundary markers.

G. ADMINISTRATIVE MATTERS – none at this time

H. ISSUES AROUND TOWN

- The new Floodplain Ordinance requires communities to designate a Floodplain Administrator. Jennifer Steel will likely fill that role.

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

ADJOURN at 9:11. [Motion: Lunin. Second: Zabel. Roll-call vote: Green (aye), Lunin (aye), Hepburn (aye), Gilligan (aye), Zabel (aye). Vote: 5:0:0.]