

# CONSERVATION COMMISSION MINUTES

Date: Thursday, January 11, 2024

Time: 7:02 – 9:51pm

Place: This meeting will be held as a virtual meeting via Zoom.

**With a quorum present**, the meeting opened at 7:02 pm with Dan Green presiding as Chair.

**Members Present:** Dan Green (Chair), Leigh Gilligan, Judy Hepburn, Ellen Katz, Jeff Zabel.

**Members Absent:** Susan Lunin

**Staff present:** Jennifer Steel, Ellen Menounos arrived at 7:20

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

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**PUBLIC COMMENT** on matters not on this agenda - none

## DECISIONS

### A. WETLANDS DECISIONS

#### 1. 97 Bound Brook Rd – Notice of Intent – Single-family home demo and construction -- DEP File # 239-966

- Owner/Applicant. Yuri Kraysberg / Bon Vivant Development LLC
- Representatives. John Rockwood, EcoTec, Inc.
- Request. Issue OOC.
- Project Summary.
  - Demolish the existing house, garage, driveway, etc. Build new single-family house and amenities. This will reduce impervious surface area within RFA by 276 sf.
  - The expansion of the house is away from the stream and further from the stream than existing conditions.
  - Install stormwater infiltration system.
  - Cut 12 trees within Commission jurisdiction close to the existing house.
  - Create a bounded 400 sf re-naturalized enhancement planting area at the rear of the lawn with 2 understory saplings and 24 shrubs to prevent future “lawn creep”.
  - Plant canopy and understory trees: planting native trees in the BVW does not constitute an alteration (it is simply enhancement).
- Documents in packets. Highlighted plans and draft special conditions
- Additional documents presented at meeting. Site visit photos
- Jurisdiction.
  - **Riverfront Area** (covers the rear ¾ of the lot and cuts through the house)
  - **BVW** (covers the rear half of the lot, much is low quality lawn with mature trees)
  - **FEMA flood zone AE** (112.2 NAVD88, 118.73 CNVD) (covers the rear half of the lot)
  - **City flood zone** (118.8 CNVD) (covers the rear half of the lot)
  - **Buffer Zone** (covers the rear yard and most of the house)
- Presentation (staff and John Rockwood) and Discussion.
  - The current 2023 FEMA map and stream profile indicate that the 100-year flood zone is at 112.2' NAVD88 (0.2 feet higher). This should have been noted accurately on the plans but, since the applicant is abiding by the City's current flood zone ordinance, which cites a higher elevation, and is proposing no grade changes within that elevation, staff believe the true FEMA elevation to be inconsequential to the project itself.
  - John Rockwood noted that BLSF only occurs outside of BVW.
  - To compensate for the loss of the row of mature hemlock trees along the side of the house (208 caliper inches), the applicant team added to the original proposal a row of 11 arborvitae (*plicata*, a tall, narrow cultivar) and 3 eastern red cedars. Commissioners noted that arborvitae provide little wildlife habitat value (no berries or pollen). The applicant agreed to plant an additional 5 native trees along the rear retaining wall close to the house. Replanting will now include:
    - 14 native evergreens in the rear lawn area



**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  
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- 11 arborvitae along the side of the house
- 3 eastern red cedar along the side of the house
- 2 oaks, 2 native dogwoods, and 1 red maple along the rear wall behind the house
- 2 dogwoods and 24 shrubs in the bounded planting bed.
- The construction of a new retaining wall immediately adjacent to the silt fence and neighbor's retaining wall will need to be undertaken extremely carefully, teasing out the roots of the mature hemlock from underneath the wall and recompacting the soil/fill, to avoid damage to the neighbor's wall.
- Commissioners noted concerns about the proposed retaining walls as blocking wildlife migration, but John Rockwood noted that wildlife should be encouraged to remain within the green corridor associated with the stream, not encouraged to migrate to the roadway.
- Commissioners reiterated the fact that there was no access to the rear of the site that did not involve going over a retaining wall, but the applicant chose to maintain the proposed design.
- The applicant responded to a question about the maintenance of the new plantings at the rear of the site, noting that mulch would be used around the new trees.
- Abutter, Caryn Broitman, noted that flooding in the area has gotten worse of late and asked if this development would worsen the situation. Staff said that, with the infiltration system required by the City's Stormwater Ordinance, increased flooding as a result of this project was not likely, but that, due to climate change, worse flooding may be expected regionally.
- Vote to issue a to issue an Order of Conditions with the following site-specific conditions. [Motion: Gilligan. Second: Cade. Roll-call vote: Cade (aye), Green (aye), Hepburn (aye), Katz (abstain), Zabel (aye), Gilligan (aye). Vote: 5:1:0.]
  - 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.
  - Riverfront Area and Buffer Zone plantings must:
    - a. Be installed in compliance with the approved plans (desired changes must be approved by the Conservation office in advance) and in such a layout as to fill the designated area.
    - b. Be installed in such a manner as to replicate to the maximum extent practical a diverse ecological system and provide habitat for native species. Plants must be properly installed such that the tops of the root balls are flush with the grade of the native soil.
    - c. Be installed under the direction of a qualified wetland consultant to ensure proper installation, proper placement, and appropriate and even filling of the entire mitigation area.
    - d. Include 38 native trees 90 % of which are well-established and thriving after 2 growing seasons.
    - e. Include 24 native shrubs 85 % of which are well-established and thriving after 2 growing seasons.
    - f. Include organic leaf-litter mulch in the bounded area to minimize erosion and aggressive weed growth but shall not impede the spread of groundcover. Mulch applications shall diminish over time and eventually cease as ground cover species and shrubs spread.
    - g. Stabilize all disturbed areas.
    - h. Be bounded, as shown on the plans, with bounds that: (1) are 4"x4"x36" stone or concrete posts, (2) have instructive language regarding the required protection, (3) have at least 6" maintained above grade, and (4) are placed at every boundary corner and never more than 20 feet apart.
    - i. Be maintained in such a manner as to replicate to the maximum extent practical a diverse ecological system and provide habitat for native species.
    - j. Be managed to control/minimize invasive species for the life of this permit. If herbicides are used, manufacturer's recommended directions must be followed.
    - k. Be monitored for two growing seasons; descriptive season-end monitoring reports (with photographs) must be sent to the Conservation Office.
  - The stormwater infiltration system must be installed as per the approved plans.
  - To protect the water quality of area wetlands, fertilizers shall be of low-nitrogen content and be used in moderation.
  - To protect the full suite of benefits of area wetlands, wildlife, and native insects and pollinators, no pesticides shall be used.
  - 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. 54 Bound Brook Rd – Request for Determination of Applicability – Addition of side entry stairs

- Owner/Applicant. David Kerner
- Representatives. Vincent Bona, Viso
- Request. Issue a negative Determination of Applicability.
- Project Summary. Small cut in lawn to accommodate stairwell to new side entry stairs.
- Documents in packets. Highlighted plans.
- Additional documents presented at meeting. Site photo
- Jurisdiction. **FEMA flood zone AE** (112.4 NAVD88, 118.9 CNVD)
- Presentation (Staff) and Discussion.
  - Staff noted that this is a very small project at the very outer edge of the floodplain. There will be no new fill in floodplain. New flood storage will be created (LxWxH = 10' x 3' x 1.5' = 45 cf). There will be no loss of wildlife habitat or mature vegetation. It required a filing because it is work within a wetland resource area.
  - There was no discussion.
- Vote to issue a negative 2 and negative 6 Determination of Applicability, with the following condition. [Motion: Katz. Second: Gilligan. Roll-call vote: Cade (aye), Green (aye), Hepburn (aye), Katz (aye), Zabel (aye), Gilligan (aye). Vote: 6:0:0.]
  - The driveway may not be repaved without first removing an equal amount of asphalt.

## B. CONSERVATION AREA DECISIONS – none at this time

## C. ADMINISTRATIVE DECISIONS

### 3. Minutes to be approved

- Documents in packets. Draft 12/21/2023 minutes
- By consensus, the 12/21/2023 minutes were approved.
- Volunteer. Ellen Katz volunteered to review the 1/11/2024 minutes.

### 4. DRAFT Riverfront Area Redevelopment Guidance

- Documents in packets. Draft Riverfront Area Redevelopment Guidance
- Staff Presentation. Staff presented a new draft RFA Redevelopment Guidance document, explaining the need to determine whether “full” or “fractional” restoration/mitigation will be required for projects that violate or exceed the performance standards at 310 CMR 10.58(5)(c)/(d) and (e). The draft Guidance is intended to provide a clear, consistent, and defensible interpretation of the state’s performance standards in 310 CMR 10.58(5). The Commission has some big Riverfront Area projects coming soon (e.g., Albemarle Fields and 528 Boylston St.) so it is important that applicants and the Commission understand how the Commission will interpret the confusing 10.58(5) performance standards. Staff will send the latest version to the Commission for review, in anticipation of discussion and decision, at the next meeting.

## D. ISSUES AROUND TOWN DECISIONS – none at this time

### 5. Toll Brothers 40B informal presentation

- Owner/Applicant. Toll 528 Boylston LLC
- Representatives. Kathy Winters and Stephen Buchbinder, Buchbinder and Schlessinger, Attorneys-at-Law; Stephen Martorano and Tim Hayes, Boehler Engineering.
- Request. Provide preliminary feedback on the project proposal
- Project Summary.
  - This applicant team is before the ZBA for a Comprehensive permit for a 6-story apartment building, 3 levels of underground parking, and surface parking. In addition to the proposed apartment building, the project features a paved drive, pocket park, play area, walking paths, and landscaping. The stormwater runoff will be managed using a closed drainage system consisting of area drains, deep sump catch basins, and water quality units which direct stormwater to a rain garden, two subsurface infiltration systems, and a subsurface detention system.
- Staff “teed up” the matter.
  - Although under the Wetland Regulations it is best practice for an applicant to receive its comprehensive (40B) permit from the Zoning Board of Appeals (ZBA) before filing a Notice of Intent with the ConCom, the applicant may, at its own risk, undertake the processes concurrently. That said, the ZBA has asked the ConCom for its preliminary assessment of the project, particularly as pertains to stormwater and flooding. The City’s Planning Department hired Horsley Witten as its peer reviewer of the stormwater and drainage proposals. Conservation staff worked with Horsley Witten on detailed review comments. ConCom has not yet received clear responses to all the concerns raised and questions asked.
- Presentation (Kathy Winters, Stephen Buchbinder, Stephen Martorano and Tim Hayes) and Discussion.
  - It was noted that the project was docketed before the City achieved 40B safe harbor, so it still qualifies under Ch. 40B.

- The Toll Brothers Team presented a PowerPoint presentation of wetland resource areas and impacts, highlighting the modifications made in response to the stormwater peer review memo.
- The team's overall approach is to address stormwater with infiltration systems and a rain garden, provide the requisite compensatory flood storage (200%, actually), and plant trees in the buffer zone and outer riverfront area.
- Staff comments – and Team responses:
  - Stormwater
    - Is stormwater standard #2 (post-construction discharge) being met? – “Yes, rates and velocities will be reduced.”
    - Is stormwater standard #3 (ESHGW) no mottling identified? – “No mottling observed, but that will be clarified.”
    - Could southern connector line be perforated? – “We will look into that.”
    - Could large infiltration system be enlarged? – (not addressed).
    - Could pathway stormwater capture be changed to not allow any flow to Hagen Road? – “We’ll add berms in stone trench.”
  - Flood Zone – 240 cy of new flood storage capacity being provided.
    - The City's current flood ordinance elevation is 1-foot higher than the FEMA 100-year flood elevation, so in regard to compensatory flood storage, these designs, which comply with the City's current flood ordinance are more protective than would be required by the state Wetlands Protection Act alone.
    - Any additional areas considered to provide more protection? – “Yes, but other locations were considered, but there would have been more tree cutting and farther from the brook and most disturbed.”
  - Riverfront Area redevelopment – the Team will have to prove ecological and hydrological improvement
    - Upon questioning, the team noted its willingness to address invasive species.
    - The Commission will require a very detailed construction sequence plans, dewatering plans, over-digging infiltration areas, etc.
  - Tree cutting and tree planting plan has been provided. Lots of trees are proposed to buffer neighbors, but not a lot for the wetland.
  - No indication of work on the interior of the site.
  - Minor plan errors/inconsistencies were pointed out to the Team.
- Commission comments
  - Riverfront has really been improved. Balance removal of invasive species (trees) with planting natives.
  - Has anyone looked at the trash grate? Flooding may be due to poor maintenance of trash grates. DPW is trying to get on top of this.
- Prior to opening the floor for public comment, the Chair emphasized that discussion be limited to stormwater and flooding. The following residents commented:
  - Steve Friedenthal, 329 Parker St – resident for 20 years, his sump pump runs 24/7; “This isn't global warming, this is the city not doing its job”; he noted that flood insurance doesn't pay for this kind of flooding.
  - Wendy Landon, 40 Olde Field Rd – resident for 27 years, direct abutter, “please use more than the 100-year flood elevation”. She also noted a consent decree given to Toll Brothers in 2012 for poor stormwater management.
  - Lucie Chansky, 259 Jackson St (across Rt 9) (upstream) – “Paul Brook flows under my house and I am being flooded.” There's a lot of talk about properties south of Rt 9, the applicants must also consider those north of Rt 9.
  - Alex Pogrebnyak, 96 Olde Field Rd. – he described a “choke point” near 100 Olde Field where a culvert is severely clogged; he has submitted two tickets and it's still not cleaned up.
  - Robert Sellers, 528 Olde Field Rd. – noted current flooding and his concern that tree cutting will reduce stormwater retention and that the underground parking lot would use up stormwater storage capacity
  - Melanie Gerard, 32 Olde Field Rd. – noted that recent storms have caused flooding above the mapped FEMA elevation. She wants to be sure the wetlands are protected from light and noise.
  - Marie Fredrick, 144 Hagen Rd – direct abutter, 24 year resident, recent flooding has been dramatic.
  - Paul Stein, 8 Olde Field, corner of Olde Field and Rt 9, 28 years – water sheets down Rt 9 and floods at the low point.
  - Margaret Zaleski, 11 Marshfield Rd. (across Rt 9) (upstream) – already flooding, sump pumps run 24/7, etc. interested in trash gate improvements.
  - Ann Findeisen, 132 Hagen Rd – concerned about cliff blasting. More and more water has been entering her yard from the high land and flowing out to Hagen Road
  - Janet Sterman, Newton Corner – spoke on behalf of City Councilor Stephen Farrell, who was unable to unmute and comment. He sent written comments. Staff will share them with the Commission.

## **UPDATES / DISCUSSION**

**E. WETLANDS** – none at this time

**F. CONSERVATION AREAS** – Conservation Area trail head sign proofs arrived. Staff are engaged in further edits.

**G. ADMINISTRATIVE MATTERS** – none at this time

### **H. ISSUES AROUND TOWN**

**6. Rodenticide Bill in Mass. Legislature** – Staff reminded the commissioners that they should consider supporting Newton’s home rule petition SB. 2448 to allow Newton to restrict the use of second-generation anticoagulant rodenticides (SGARs) to protect wildlife and residents from these poisons. The full text is:

*SB. 2448. An Act authorizing the City of Newton to prohibit the application of second-generation anti-coagulant rodenticides within its borders*

SECTION 1. Notwithstanding chapter 132B of the general laws or any other general or special law to the contrary, the City of Newton may by ordinance prohibit the application of second generation anti-coagulant rodenticides within the City of Newton, including application of such pesticides by licensed commercial applicators as defined in 333 C.M.R. 10.00.

SECTION 2. This act shall take effect upon its passage.

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

**7. 518 Quinobequin Rd** – Staff related that the unpermitted patio (mentioned at the last meeting) caused the developer to go back to Engineering and install an additional infiltration system. That has been done. The Commission agreed that since the patio is technically exempt and since so many additional trees (arborvitae now surround the site), the slight increase in driveway width is acceptable.

**8. 544 Quinobequin Rd** – Staff noted that the owner has sought administrative approval for the removal of two large oak trees, but staff declined to provide it, preferring to have the matter come before the full Commission as an full application.

**ADJOURN at 9:51.** [Motion: Gilligan. Second: Zabel. Roll-call vote: Cade (aye), Green (aye), Hepburn (aye), Katz (aye), Zabel (aye), Gilligan (aye). Vote: 6:0:0.]