

# CONSERVATION COMMISSION AGENDA

## 56 FARWELL STREET ENTRY ONLY

Date: November 9, 2017  
Time: 7:00 pm  
Place: City Hall, Room 204

### DECISIONS

#### I. WETLANDS

##### 1. NOI (continued) – 56 Farwell Street – DEP File #239-793

- Request: Construct six single family homes & driveways. Construct private road. Increase flood storage capacity. Implement restoration planting plan along river.
- Owner: Turtle Lane, LLC Applicant: Stephen Vona (Turtle Lane, LLC) Rep.: Brian Nelson (MetroWest Engineering, Inc.)
- Documents Presented: draft scope for peer review, Alternatives Analysis draft scope for peer review
- Jurisdiction: Riverfront Area, Flood Zone, Bordering Vegetated Wetlands
- Performance Standards

##### 10.58(5) RFA: Redevelopment within Previously Developed Riverfront Areas; Restoration & Mitigation

- ... work improves existing conditions.
- Redevelopment means ... reuse of degraded or previously developed areas.
- A previously developed riverfront area contains areas degraded prior to August 7, 1996....
- Work to redevelop previously developed riverfront areas shall ...:
  - (a) At a minimum, work shall result in an improvement ...
  - (b) Stormwater management is provided according to standards
  - (c) Proposed work shall not be closer to the river than existing conditions or 100', whichever is less
  - (d) Proposed work...shall be located... away from the river, except in accordance w/ 10.58(5)(f) or (g).
  - (e) ... proposed work shall not exceed ... degraded area ... except in accordance w/ 10.58(5)(f) or (g).
  - (f) despite what it says in 310 CMR 10.58(5)(c), (d), and (e), more alteration at the RFA outer boundary may be allowed if an applicant proposes restoration ... of at least 1:1 ...
  - (g) despite what it says in 310 CMR 10.58(5)(c), (d), or (e), more alteration at the RFA outer boundary may be allowed if an applicant proposes mitigation ... of at least 2:1
  - (h) ... a continuing condition in the COC ... under 10.58(5)(f) or (g) prohibiting further alteration within the restoration or mitigation area....

##### 10.58(4) Riverfront Area

- (c) Practicable and Substantially Equivalent Economic Alternatives.
- (d) No Significant Adverse Impact.

1. Within 200 foot riverfront areas, the issuing authority may allow the alteration of up to 5000 square feet or 10% of the riverfront area within the lot, whichever is greater ..., provided that:
  - a. At a minimum, a 100' wide area of undisturbed vegetation is provided... preserved or extended to the max. extent feasible....
  - b. Stormwater is managed ...
  - c. Proposed work does not impair the capacity of the riverfront area to provide important wildlife habitat functions. ...



Mayor  
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Director  
Planning &  
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Barney Heath

Senior  
Environmental  
Planner  
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- d. ... incorporating erosion and sedimentation controls and other measures to attenuate nonpoint source pollution.

#### **Bordering Land Subject to Flooding (10.57)**

1. Compensatory storage shall be provided for all flood storage volume that will be lost when in the judgment of the issuing authority said loss will cause an increase or will contribute incrementally to an increase in the horizontal extent and level of flood waters during peak flows. Compensatory storage shall be incrementally equal to the theoretical volume of flood water at each elevation, up to and including the 100-year flood elevation, which would be displaced by the proposed project. Such compensatory volume shall have an unrestricted hydraulic connection to the same waterway or water body.
2. Work shall not restrict flows so as to cause an increase in flood stage or velocity.
3. Work in those portions of bordering land subject to flooding found to be significant to the protection of wildlife habitat shall not impair its capacity to provide important wildlife habitat functions. Except for work which would adversely affect vernal pool habitat, a project or projects on a single lot, for which Notice(s) of Intent is filed on or after November 1, 1987, that (cumulatively) alter(s) up to 10% or 5,000 square feet (whichever is less) of land in this resource area found to be significant to the protection of wildlife habitat, shall not be deemed to impair its capacity to provide important wildlife habitat functions. Additional alterations beyond the above threshold, or altering vernal pool habitat, may be permitted if they will have no adverse effects on wildlife habitat, as determined by procedures contained in 310 CMR 10.60.

#### **Stormwater Standards 10.05 (6) Orders of Conditions Regulating Work and Orders of Resource Area Delineation (k)**

1. No new untreated discharges (treat to the level required in other stds)
2. No increase in peak discharges (store and gradually release)
3. Recharge / Infiltrate
4. 80% annual TSS must be removed - Long term pollution prevention plan. Structural BMPs (consistent with TMDL), pre-treatment per the handbook.
5. LUHPPLs
6. In sensitive receiving water areas .... Pretreat
7. Redevelopment projects
8. Construction Period Controls (and SWPP if over an acre)
9. Long-Term O&M Plan
10. No illicit discharges

#### o Updates

- A DEP file number has been issued (along with comments)
- No new plans have been received, so all “issues” and “concerns” (below) remain
- Jennifer Steel met with Joe Porter and agreed on flood elevations for the site:
  - o City Flood Ordinance: 27.7'-24.7' CNVD
  - o Convert City Flood Ordinance to NAVD88: 21.17'-18.17' NAVD88 – may be made site-specific
  - o FEMA Flood Profiles 280-820' from Cheesecake Brook: 21.3' – 21.6' NGVD29
  - o FEMA Flood map: 21.5' NGVD29
  - o Convert FEMA Flood Profile elevations to NAVD88: 20.5'- 20.8' NAVD88 (average 20.65' NAVD88)
- Jennifer Steel sent concerns about “legally degraded” areas to Metrowest Eng. – no response yet.
- The standard peer review process (under MGL Ch 44 Sec 53G) should be initiated and followed:
  - (1) Con Com informs applicant of need for outside consultant. (done)
  - (2) Con Com develops clear scope for consultant.
  - (3) Con Com seeks bids from a minimum of 3 qualified firms.
  - (4) Con Com selects low responsive and qualified bid.
  - (5) Con Com apprises applicant of amount needed.
  - (6) Applicant has 10 days to deliver check to City Treasurer.

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- (7) Con Com initiates contact with selected consultant.
- (8) Consultant executes scope/contract.
- (9) Additional fees (if any) are sought or excess fees plus interest (if any) are returned to applicant.
- Issues to be Addressed
  - **Performance standards**
    - RFA Regs
      - Note that permits under 10.58(4) are discretionary (“the issuing authority may... allow 5000 sf or 10%”) and permits under 10.58(5) redevelopment “the issuing authority may” allow new development of the same scale as existing but pulled back, unless mitigation or restoration are proposed and accepted as substantive. The project may need to be scaled back to meet these performance standards.
      - The regs state that the owner could redevelop the prior developed area (under 10.58(5)) – i.e., 22,019 sf if the new development is pulled back, etc.
      - If there are opportunities for restoration (1:1), you could expand beyond the 22,019. If there are opportunities to mitigate (2:1), you could expand beyond the 22,019. We need to see those areas on the plans and the calculations.
      - The expansion of degraded by 4341sf would require 8682sf of mitigation.
        - Lawn>woods= mitigation;
        - Improved woods≠mitigation, 4341sf would require 4341sf of restoration (to woods, not lawn).
      - The expansion of degraded by 4341sf would require 4341sf of restoration.
        - Parking lot to woods (not lawn)= restoration.
      - Jennifer created this table from the original NOI.

		Existing (s.f.)	Proposed (s.f.)	Difference (s.f.)	Total Difference
<b>Degraded – absence of topsoil</b>	Inner 100’	12129	9304	-2825	
	Outer 100’	9890	17056	7166	<b>4341</b>
<b>Disturbed – lawn, landscaping</b>	Inner 100’	31649	29258	-2391	
	Outer 100’	31943	24777	-7166	<b>-9557</b>
<b>Natural - wooded</b>	Inner 100’	11303	16509	5206	
	Outer 100’	1033	1033	0	<b>5206</b>
<b>Total</b>		97947	97937	-10	

- Jennifer tried to created this table from the graphical assessment shown on Metrowest’s graphical depiction dated Oct. 18, 2017.

\*Jennifer disagrees with the assessment shown on Metrowest’s graphical depiction.

[\*Chart should distinguish between inner and outer riparian zones]

		Existing (s.f.)	Proposed (s.f.)	Difference (s.f.)
<b>Degraded – absence of topsoil</b>	Inner 100’	[32,500*]	[26,360]	[-6,140]
	Outer 100’			
<b>Disturbed – lawn, landscaping</b>	Inner 100’	[53,110*]	?	?
	Outer 100’			
<b>Natural - wooded</b>	Inner 100’	[12,335]	?	?
	Outer 100’			
<b>Total</b>		[97947]		

- DEP has rendered a decision that you get only “one bite at the apple”—i.e., no further development will be allowed on these lots.
- Floodplain Regs
  - State and federal floodplain regulations are not met.
  - The current proposal shows buildings, filled lawns, and infiltration systems within the flood elevation.
    - The NFIP Floodplain Management Requirements and the Newton Floodplain Ordinance (see the excerpts below) state that basements must be above the BFE (see below) or flood-proofed.

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- If a basement is built below the BFE and flood-proofed, it cannot be providing the requisite flood storage.
  - Jennifer’s concerns about using basements as compensatory flood storage were confirmed by Maria Rose.
  - The current proposal shows basements with louvers “to provide compensatory flood storage”.
    - FEMA considers louvers appropriate to alleviate hydrostatic pressure, not provide flood storage.
    - I don’t consider louvered basements to provide unrestricted hydraulic connections to the river, as required by the Wetlands Protection Act Regulations (310 CMR 10.57(4)(a)):
 

“Compensatory storage shall mean a volume not previously used for flood storage and shall be incrementally equal to the theoretical volume of flood water at each elevation, up to and including the 100-year flood elevation, which would be displaced by the proposed project. Such compensatory volume shall have an unrestricted hydraulic connection to the same waterway or water body. Further, with respect to waterways, such compensatory volume shall be provided within the same reach of the river, stream or creek.”
  - DEP issued the following comment: “Project does not meet the performance standards under 310 CMR 10.57(4) which requires an unrestricted hydraulic connection to the existing waterway. Louvre doors in the basements or any kind of vent to funnel flood waters is considered a restriction. Please review performance standards under 10.57(4)”
  - FEMA’s language support’s Jennifer’s concerns.
- **Stormwater Regs**
  - This is not a redevelopment project under SW Standards so it must meet all standards fully.
  - I haven’t reviewed the stormwater report in detail, yet, because the plans will change. Initial analysis indicates compliance, but the infiltration chambers are in the flood zone, so are suspect.
- **Process Concerns**
  - Before anything can be approved, the Commission needs to see written permission from (and ultimately a signed license agreement with) MWRA for the road way, otherwise this whole discussion is moot. Board of Survey asked for that this spring, but we haven’t received anything yet.
  - There is just one NOI for the whole project, so the Commission will have to amend the NOI for any site changes, and issue partial releases for every lot as it is finished. Is that ok with the Commission and applicant?
  - The Board of Survey has not approved the subdivision application.
- **Additional Concerns with the Current Proposal**
  - What is agreed “existing degraded”?
    - Historically, the site was altered (fill, walls, etc.) without permits; all violations were closed.
    - 2007: driveway was gravel up front; unpermitted fill was ordered removed (and was); large yard and small garage area filled with trucks
    - 2008: lawn regrowing
    - 2010/2011: unpermitted wall was ordered removed (and was)
    - 2011 (Oct 12) As built shows gravel driveway
    - 2011 (?Oct 20?) Bing Maps shows paved (w/out a permit) driveway, no nursery operation yet
    - 2011 Oct (?30?) Google Maps Oct 2011 shows paved driveway and a nursery area near road
    - 2015 Nursery area still just up near road
    - 2017: lower yard stable & naturalized; upper yard disturbed; large nursery area clear/graded
  - The alternatives analysis states that eliminating a lot would not be economically feasible (see packet). Have the peer consultant weigh in on the need for a more robust consideration of a less intensive development, pulling the houses out of the floodplain, eliminating the “sea wall” effect in the inner riparian zone, and restoring a broader swath along the river.
  - Test pits must be done within 25’ of each infiltration system (per engineering).

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- Proposal will cause removal of huge oaks. There should be a chart of trees to be removed (size and species) – and a comparison of trees and shrubs to be planted.
- Snow storage must be appropriately designed into the plans.
- Construction Management plan is needed (phasing, site controls, stockpiling, tree protection, concrete washout, dewatering, etc.)
- A SWPPP will be needed.
- Street lighting will likely be required and should be shown on the plans.
- I didn't see any reference to the seed mix on the plans (area, application rate, etc.)
- O&M? Who will be responsible for street sweeping, snow removal, and inspection/maintenance of the infiltration systems?
- The vegetated buffer is extremely narrow near lots 1 and 2.
- The vegetated buffer could easily be widened near lots 3, 4 and 5.
- The continuous retaining wall bars access from front yards to back yards – completely impractical.
- The grading doesn't create usable yards. The lack of lawn will cause owners to tend to encroach on buffer and/or fill (in flood zone) to expand their yards.
- Any restored RFA should be bounded or visibly "fenced" to preclude encroachment.
- Any 6' or 8' wide deck will not be satisfactory to the owners and will likely be expanded.
- The opportunity for public access easement along the river is now or never.
- Potential for a future public pathway along the river will disappear under this current proposal.
- Staff recommendations:
  - Vote to initiate peer review with the attached scope of services (as amended, if needed)
  - Vote to accept applicant's request to continue the hearing (to Dec. 21, 2017 or Jan. 11, 2018?)

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