

# CONSERVATION COMMISSION MINUTES

Date: November 20, 2018

Time: 7:00 pm

Place: City Hall, Room 205

**With a quorum present**, the meeting opened with Susan Lunin presiding as Chair

**Members Present:** Judy Hepburn, Norm Richardson, Jeff Zabel, Dan Green (7:08), Ellen Katz (7:25)

**Staff Present:** Jennifer Steel

**Members Absent:** Ira Wallach, Kathy Cade (Associate)

**Members of the Public:** See sign-in sheet

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## DECISIONS

### I. WETLANDS DECISIONS

#### 1. NOI (cont'd) – 33 Wayne Rd – tear-down/re-build -- DEP file #239-811 and Enforcement Order

- **Request:** Demolition and reconstruction of a single-family home with associated restoration planting plan developed in response to the unpermitted tree cutting in RFA.
- **Owner/Applicant:** Carmine Petruziello      **Representative:** John Rockwood (Ecotec, Inc)
- **Documents Presented:** colored site plan      photos, draft OOC, modified EO
- **Jurisdiction:** Riverfront Area
- **Presentation (John Rockwood) and Discussion**
  - The applicant has revised the plans to increase the size of the bounded mitigation planting area (26 native shrubs, now 1,120 sf, almost two times the size of the original proposed restoration area) as requested.
  - A revised Operations and Maintenance Plan has been received and approved by the Engineering Department.
  - The restoration plantings are included on the plan and shall be referenced in this Order of Conditions as well as an amended Enforcement Order.
- **Vote:** to close the hearing and issue an Order of Conditions with the following special conditions (Motion: Norm Richardson, Second: Judy Hepburn, Vote: 5:0:1).
  21. *The applicant must schedule and attend a pre-construction site visit*
  22. *The applicant must provide concrete washout plans for review and approval for any and all concrete work that will occur on the site. Plans must limit and control any effects of concrete washouts on the wetlands resource area.*
  23. *Landscape plantings AND the mitigation plantings required in compensation for the expansion of the impervious footprint must be installed in full compliance with the approved plans (species and sizes must be provided as per the plans). Desired deviations from the approved plans must be approved by the Conservation office in advance:*
    - *All plantings “behind” (i.e., up-gradient of) the stone bounds must be installed on or before June 1, 2019.*
    - *The balance of the plantings must be installed on or before October 15, 2019.*
    - *All plantings must survive over 75% of the planting area for 2 growing seasons.*
  24. *The stormwater infiltration system must be installed as per the plans*
  25. *The Engineering Department must inspect installation of the infiltration system. The applicant must submit proof of inspection to the Conservation office*
  26. *The applicant must submit to the Conservation Commission:*
    - a. *An official request to lift the Enforcement Order issued August 22, 2018.*
    - b. *An as-built plan signed by the engineer certifying compliance with the approved plans and order*
    - c. *An as-built plan of the plantings signed by the landscaper.*
    - d. *A letter from the engineer certifying compliance with the approved plans and*



**Mayor**  
Ruthanne Fuller

**Director  
Planning &  
Development**  
Barney Heath

**Senior  
Environmental  
Planner**  
Jennifer Steel

**Assistant  
Environmental  
Planner**  
Claire Rundelli

**Conservation  
Commission  
Members**  
Dan Green  
Judy Hepburn  
Susan Lunin  
Norm Richardson  
Ira Wallach  
Jeff Zabel  
Ellen Katz

**Conservation  
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Kathy Cade

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order.

- e. *A letter from a landscaper certifying compliance with all approved planting plans. A Certificate of Compliance shall not be issued until after two growing seasons after plantings have been installed and found to be well established. A Certificate of Occupancy shall not be granted until all required plants have been installed*
  27. Operation and Maintenance. *The approved Operations & Maintenance Plan is appended hereto and must be adhered to.*
  28. *The use of herbicides and other pesticides is prohibited and fertilizers shall be limited to slow-release organic fertilizers to protect water quality in the adjacent wetlands and waterways.*
  29. *Required mitigation planting areas shall be maintained in perpetuity in their predominantly natural condition.*
- Request: Amend Enforcement Order to reflect approval of the revised restoration planting plan.
  - Owner/Applicant: Carmine Petruziello      Representative: John Rockwood (Ecotec, Inc)
  - Documents Presented: colored site plan   photos, draft OOC, modified EO
  - Jurisdiction: Riverfront Area
  - Presentation (John Rockwood) and Discussion
    - The planting plan includes full restoration of caliper inches of trees removed without a permit.
    - All trees are native and approved by the ConCom.
    - Most of the restoration trees are “behind” the bounded restoration area line and will be planted by June 1, 2019
    - The balance of the trees are within the construction zone and will be planted by October 15, 2019.
  - Vote: to issue an amended (amendment #2) Enforcement Order referencing the approved plans and timetable. (Motion: Judy Hepburn, Second: Jeff Zabel, Vote: 5:0:1).

## 2. **NOI (cont'd) – 116 Upland Ave – teardown/rebuild single family home – DEP File #239-824**

- Request: Demolish the existing single-family home and associated site features and rebuild a new single-family home with deck and driveway.
- Owner/Applicant: Ilya Zvenigorodskiy   Representative: self
- Documents Presented: revised colored plans   revised plans, photos, draft OOC
- Jurisdiction: Bordering Land Subject to Flooding and City Floodplain
- Presentation (Ilya Zvenigorodskiy) and Discussion
  - Revised materials were received showing elimination of foundation “thresholds”, addition of restoration plantings, and removal of “exterior” deck stairs.
  - The applicant is proposing to remove 3 large mature trees (totaling 101”) and a patch of wild scrub. A more robust restoration planting plan has been submitted, including one weeping willow, one cherry, and a number of native shrubs, in addition to privacy hedges of arborvitae. The applicant will be moving the arborvitae off the property lines by at least 2 feet.
  - Unfortunately, the foundation plans and the fill calculations were not internally consistent.
  - The Commission required that final plans be submitted and reviewed before it would issue a permit for demolition or construction.
- Vote: to accept the applicant’s request to continue the hearing to 12/13/18 to allow the applicant time to submit revised plans (materials due 11/29/18). (Motion: Dan Green, Second: Jeff Zabel, Vote: 6:0:0).

## 3. **NOI – 131 Wallace Street – tear-down/rebuild single-family home – DEP file #239-823**

- Request: Applicant is proposing to demolish an existing single-family home and construct a new single-family home.
- Owner/Applicant: Michael Saris (Wallace Street Realty LLC)      Representative: Verne Porter (engineer) and John Rockwood (EcoTec, Inc)
- Documents Presented: colored plans   plans, photos, draft OOC
- Jurisdiction: Buffer Zone, Riverfront Area, City Floodplain and BLSF
- Presentation (John Rockwood) and Discussion

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- **Project Summary**
  - Applicant is proposing to demolish an existing single-family home with associated driveway, porch, and sheds and construct a new single-family home with associated driveway, patio, and river access pathway.
  - Applicant is proposing two mitigation planting areas totaling 1010 s.f. in land that is currently maintained lawn
- **Impact Summary**
  - The proposed conditions will result in an increase of 502 s.f. regulated, impervious area on the site.
  - The proposed patio is more than 50' from the flagged top of bank and so is exempt from RFA regulations.
  - The applicant is proposing to remove 3 mature trees with diameters of 40", (13" + 19"), and 8".
  - Applicant is proposing to create a 5 foot pathway from the proposed edge of lawn down to the bank of the Charles River. This will require the clearing of shrub vegetation.
  - The applicant is proposing a short retaining wall to ensure coverage of the foundation.
  - The applicant is proposing a fence to demarcate the edge of the landscaped lawn area.
  - The applicant is proposing to remove woody invasive species in the western portion of the rear yard via a cut and blot method.
- **Reasons for Approval:**
  - As mitigation for the removal of the 3 mature trees, the applicant is proposing to plant 18 4" evergreen trees.
  - To make up for the larger footprint of the new house, the applicant is proposing 1010 s.f. of bounded mitigation planting areas, with 41 native shrubs and 8 native saplings, to be installed in land currently maintained as lawn.
  - To define the proposed pathway to the river and to make up for the clearing of that path, the applicant is proposing to plant 10 native shrubs. The proposed pathway does not require any grading changes and will therefore not require any compensatory flood storage.
  - To mitigate the wildlife blocking effect of a retaining wall, the applicant will minimize the length of the wall and use fill to create a 3:1 slope transition from the restoration planting area to the lawn/driveway.
  - The applicant will use a split rail fence along the mitigation planting area to allow wildlife passage.
  - Roof runoff will be captured in underground chambers under the driveway and front yard.
  - Construction of the proposed deck is an exempt activity.
- **Revised plans shall be submitted and shall be the approved plans. Said plans must show:**
  - Removal of the retaining wall along the length of the driveway and a revised grading reflecting a 3:1 slope, a maximum of 10' wide from the proposed edge of lawn into the restoration planting area to accommodate wildlife movement.
  - A revised erosion control line that will allow the revised grading noted above.
  - A split rail fence in lieu of the originally proposed chain link fence parallel to the driveway.
  - A substitution of 5 Atlantic white cedars in lieu of 5 white pines.
  - A 5'-wide pedestrian pathway.
- **Vote:** to close the hearing and issue an Order of Conditions (pending receipt of revised plans) with the following special conditions (Motion: Dan Green, Second: Norm Richardson, Vote: 5:0:1).
  21. *The applicant must schedule and attend a pre-construction site visit*
  22. *The 24" sanitary sewer line that traverses the property must be CCTV'd pre- and post-construction (in the presence of the Engineering Department).*
  23. Contingencies
    - a. Dewatering plans and accommodations: *If dewatering on the project site is required, the Applicant shall provide to the Conservation Commission for review and approval prior to dewatering a dewatering plan designed to limit and control any effects of dewatering on the wetlands resource area adjacent to the project site.*
    - b. Concrete washout plans and accommodations: *The Applicant shall provide to the Conservation Commission for review and approval prior to washouts a concrete washout plan designed to limit and control any effects of concrete washouts on the wetlands resource area adjacent to the project site.*
  24. Landscape plantings within Commission jurisdiction must:

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- Be installed in compliance with the approved plans. Desired deviations from the approved plans must be approved by the Conservation office in advance.
- Occur on or before October 15, 2019.
- Survive over 75% of the planting area for 2 growing seasons for a Certificate of Compliance to be granted

25. The stormwater infiltration system must be installed as per the approved plans.

26. The City Engineer must inspect the infiltration system. The applicant must submit proof of inspection to the Conservation Office.

27. An as-built plan signed by the engineer certifying compliance with the approved plans and order must be submitted.

28. A letter from a landscaper certifying compliance with the approved planting scheme must be submitted. A Certificate of Compliance shall not be issued until after two growing seasons after plantings have been installed and found to be well established.

29. The approved Operations and Maintenance Plan is appended hereto and must be adhered to.

30. The use of herbicides and other pesticides is prohibited and fertilizers shall be limited to slow-release organic fertilizers to improve water quality in the adjacent wetlands and waterways.

31. In order to protect wildlife and/or vernal pool species, artificial lighting shall be designed to prevent lighting of the wetlands. Any outdoor lights within 200 feet of the wetland shall be directed so as not to radiate light towards those areas. Any such lights shall be limited to no more than 1,800 lumens per fixture and the fixture shall not illuminate any part of the wetland more than 0.2 footcandles. Exterior lights shall not be mounted higher than 25 feet above the ground.

32. Required mitigation planting areas shall be maintained in perpetuity in their predominantly natural condition.

#### 4. NOI – 53 Brandeis Road – teardown/rebuild single-family home – **DEP File #239-XXX**

- Request: Applicant is seeking to teardown an existing single-family home and construct a new one.
- Owner/Applicant: Esther Dezube (53 Brandeis Road, LLC)    Applicant/Representatives: Debora J. Anderson (wetland consultant)
- Documents Presented: **colored plan** plans, photos, draft OOC
- Jurisdiction: Buffer Zone
- Presentation (Debora J. Anderson) and Discussion
  - **N.B.**
    - This is a new filing for essentially the same project that the Commission reviewed and approved (239-807) pending Engineering Department approval of the infiltration system, but had to deny when Engineering Department approval was not forthcoming.
    - A DEP file number has not yet been received.
    - A new City tree was planted in the verge between the walkway and utility pole. It must be protected during construction.
    - All calculations are now consistent with one another and all species proposed for the mitigation areas are native.
  - **Project Summary**: Applicant is proposing to demolish an existing single-family home with associated site features including a deck and driveway, and the construction of a new single-family home (on a slab) with a new porch and driveway with a proposed bounded mitigation area.
  - **Impact Summary**:
    - Proposed project will result in a net increase of 580 s.f. of impervious area.
    - Applicant is proposing to remove 2 mature crab apple trees (~12" and 14").
    - The majority of work will occur in the outer 50' of buffer zone to BVW.
    - Applicant is proposing a bounded mitigation area with 2 saplings, 8 shrubs, and 12 herbaceous ground-cover plants. A number of other plantings are proposed for the landscaping around the lot but are not within the bounded mitigation areas.
    - Some of the proposed deck is exempt from the regulations.
    - Applicant is proposing to collect the majority of roof runoff and infiltrate it via a chamber system.

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- **Interest in getting started as soon as possible**
  - Applicant asked if demolition could proceed without a DEP file number or permit. The Commission decided that that was not appropriate
  - Applicant asked if her presence would be necessary at the next hearing. The Commission said “no”.
- Vote: to accept the applicant’s request for a continuation to 12/13/18 hearing to allow a DEP file number to be issued (Motion: Dan Green, Second: Jeff Zabel, Vote: 6:0:0).

**5. Discussion of Enforcement Order – 22 Hollywood Dr – DEP file #239-368**

- Discussion: An old, unresolved enforcement issue was recently brought to the attention of Conservation Staff. Applicant will be putting together materials for a submission accompanying a request for official closure of the Enforcement Orders (3) issued against the property.
- Owner: Amy Carp (present)
- Documents Presented: last approved restoration plan photos, site plans
- Jurisdiction: BVW, Buffer Zone, Riverfront Area, and City Floodplain
- Staff Notes:
  - **Site History**:
    - 1993 RDA – positive DOA
    - 1993 OOC 239-271 SFH – 1994 COC
    - 1995 EO #1 (issued to Stumpo and Boston Edison) for extra decks, drainpipes -> BVW, fill in BVW, natural area alteration, etc.
    - 1999 OOC 239-368 pool with fenced natural area to be maintained in perpetuity
    - 1999 EO #2 (issued to Avi Fogel) for natural area alteration, etc.
    - 1999 Amy Carp bought the house and a plan for compliance was developed
    - 2002 planting plan approved
    - 2003 EO #3 (issued to Bob Carp) fill, planting, fencing, land agreement with Cornerstone
    - ---- Law Department involvement
    - 2013 last record of communication
    - 2017 attorney called, but did not reply to my reply call
    - 2018 (Oct 7) Bob Carp called seeking “expedited” closure of Enforcement Orders (3) and open Orders of Condition (2)
    - 2018 (Oct 13) Mrs. Carp came to the office and conducted a file review and was asked to develop an “application” package documenting site compliance and seeking closure of EOs and OOCs.
- Discussion
  - Staff have not visited the site yet, so there is no first-hand knowledge of the site conditions.
  - What would the Commission like to see in an application for closure?
  - The owner stated that the fence was installed, the plantings were installed, but the land swap was not completed.
  - The Conservation Commission noted that they were told that the land swap had occurred.
  - The Conservation Commission noted that it could not allow a fence to remain on the adjacent land which is now owned by Chestnut Hill Realty and on which there is CR held by the City.
- Consensus: Owner must submit documentation with a request to close out the Enforcement Orders and open OOC 239-368.

**II. CONSERVATION AREA DECISIONS**

- 6. Flowed Meadows: Approve placing a Conservation Restriction on 30 Wabasso St.** draft CR abstract draft CR abstract
- Because this parcel was parcel purchased by the City/Conservation Commission with CPC funds, a CR is required and the Newton Conservators have agreed to hold the CR. CPC will be voting to approve CPC funding for the monitoring of this CR. A CR has been drafted by the Law Department; the abstract is attached; the full draft of the CR is available from the Conservation Office upon request. Does the Commission agree in principle to the granting of a CR on its 30 Wabasso St. parcel?

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- Vote: to agree in principle to the granting of a CR on its 30 Wabasso St. parcel (Motion: Jeff Zabel, Second: Ellen Katz, Vote: 6:0:0).

**7. Kessler Woods: Proposed fence along Lagrange – plan view of proposed fence line plan view of proposed fence line**

- At a recent site visit to the Hancock Estates parcel regarding trail development on the Conservation Restriction/Access Easement, Marc Levin of Chestnut Hill Realty (CHR) noted his interest in constructing a fence along their private frontage on Lagrange St AND along the City’s Kessler Woods frontage on Lagrange St. Staff noted that fencing City land as if it were private property was not appropriate, but that if by placing the fence in such a way as to create a safe walking corridor along Lagrange, connecting Saw Mill Brook Conservation Area to the new trail into Kessler Woods, the Commission might consider it. If the Commission is interested, details would have to be worked out with DPW and the Law Department. Dan Green suggested that it would be more pleasant and more appropriate for CHR to build a trail from Vine Street, across the stream, and to the toe of the slope behind the apartment complex. Staff will follow-up with CHR.

**8. Houghton Garden: 170 Suffolk Encroachment – surveyed plan surveyed plan and clarifying documentation**

- Owner Ken Lyons was present for the discussion
- Following a site visit and meeting with the owners, staff determined that: (1) the small informal trail from Suffolk Road doesn’t appear to cross the Lyons’ land, (2) the fenced encroachment of lawn is not as large as originally thought (due to a large discrepancy between the Assessor’s lot lines and the surveyed plan.
- Consensus: The Commission retains the right to reclaim the encroachment upon any change to the site, but since the encroachment has not changed since the Lyons acquired the property, and since the Lyons do not intend to make any modifications “outside” the fence line, the Commission will not take any action to rectify the encroachment at this point in time. Dan Green suggested that the problem should be rectified for the long-term with a “land swap” so that the Conservation Commission has protective custody of the full acreage it originally acquired. Ken Lyons will consider a land swap and will supply the Conservation office with a proposal by January 30, 2019.

**III. ADMINISTRATIVE DECISIONS**

**9. Fee for Dumping – existing land use regulations existing land use regulations**

- The Commission’s regulations state very low fines for violations of their land use regulations, but the regulations do allow them to impose fines for dumping under MLG Chapter 270 Section 16, which allows a fine of up to \$5,500 for first time offenses and up to \$15,000 for subsequent offenses.
- Consensus: remove the signs that note “\$50 fine” for dumping and develop a list of sites that might benefit from signs that note the higher fine limits of MLG Chapter 270 Section 16.

**10. Changes to the Administrative Approval form – existing Admin. Approval form existing Administrative Approval form**

- Staff would like to be able to administratively approve the removal and replacement of more than 2 hazard trees on larger commercial properties. Staff agree to require replacement saplings and log all administrative approvals. Monitoring of plantings is challenging (as it is with approvals under Determinations of Applicability), but applicants can be asked to send photographic evidence of planting.
- Vote: as a one year trial, to allow staff to approve the removal of up to 2 hazard trees on SR-1, SR-2, SR-3, and MR-2 lots and up to 5 hazard trees on all other lots, in Buffer Zone and outer RFA, with replacement with native saplings (Motion: Dan Green, Second: Jeff Zabel, Vote: 6:0:0).

**11. Minutes of 11/1/18 to be approved.**

- Documents Presented: draft minutes draft minutes
- Vote: to approve the 11/1/18 minutes as edited (Motion: Dan Green, Second: Jeff Zabel, Vote: 6:0:0).

**IV. ISSUES AROUND TOWN DECISIONS – none at this time**

**UPDATES**

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## V. WETLANDS UPDATES

- Hampton Place (Florence Street): Ted Jerdee has asked East Middlesex Mosquito Control to assess the stream and any need for dredging or vegetation removal.
- 1 Wells Ave. bridge was completed by Eagle Scout, Aiden Farrar and written up in the TAB.
- Monthly meetings with Utilities Department scheduled: Jennifer will meet with Ted Jerdee on the 3<sup>rd</sup> Thursday of every month.
- 177 Waban Ave: Revised plan with 3 red maples, 4 American hornbeams, and 5 swamp white oaks and 12 native shrubs was received and the OOC issued.

## VI. CONSERVATION AREA UPDATES

- Norumbega slope restoration. Awaiting estimates from SumCo & Land Stewardship, Inc. for restoration work.
- Norumbega Off-Leash Area: Three responses to the RFP for the Parks and Recreation Off-Leash Dog area are being reviewed. Two seem really good. Parking may be an issue if Comm. Ave is reconfigured and the carriage lane is closed to cars.
- Kessler Woods Steward workday (November): to flag an upland trail in Kessler Woods had no volunteers.
- Land Management: Jennifer Steel is working with Bob DeRubeis to revamp the City's land management model.

## VII. ISSUES AROUND TOWN UPDATES

- Climate Action planning: CCVA draft due shortly. CCVA presentation to ZAP Committee 12/5/18. CAP presentation to Public Facilities Committee meeting 12/ 12/18.
- Webster Woods: Full advisory panel met on November 15. Jennifer Steel is working with the lawyer, appraiser, and engineer.
- MAPC Mini Grants: A climate resource center is being proposed (in partnership with CRWA).
- Zoning Rewrite: Jennifer Steel is working to ensure that sustainability is woven throughout the new ordinance.

## VIII. ADMINISTRATIVE MATTER UPDATES

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

### **ADJOURN**

- Vote: to adjourn at 10:07 (Motion: Dan Green, Second: Jeff Zabel, Vote: 6:0:0).

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