

CONSERVATION COMMISSION MINUTES

Date: January 28, 2021

Time: 7:03pm – 9:30pm

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

<https://us02web.zoom.us/j/8429428454>

With a quorum present, the meeting opened at 7:03pm Dan Green presiding as Chair.

Members Present: Susan Lunin, Leigh Gilligan, Kathy Cade, Judy Hepburn

Members Absent: Jeff Zabel and Ellen Katz

Staff Present: Jennifer Steel and Claire Rundelli

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

DECISIONS

I. WETLANDS DECISIONS

1. 145 Warren Street – cont'd NOI – renovation and additional units onto single-family home – DEP File #239-882

- **Owner/Applicant:** David Oliveri, Norton Point Warren St LLC **Representative:** John Rockwood, EcoTec, Inc.
- **Request:** Continue hearing to 2/18/21.
- **Documents Presented:** Colored plans, site photos, draft OOC
- **Jurisdiction:** Buffer Zone
- **Project Summary**
 - Demolition of existing detached garage, renovation of the existing single-family home and construction of 3 additional units on the lot.
 - Stormwater management includes several infiltration systems, both in and out of Commission jurisdiction. The proposed system also includes an overflow outlet with a flared end within the 25' Buffer Zone.
 - An increase of 5,376 s.f. of impervious area is proposed over existing conditions for the entire lot. This proposal represents a decrease in impervious area of 607s.f. from the currently approved plans. The new total increase of impervious area within Commission jurisdiction is 2,660 s.f.
 - Proposed to be removed within ConCom jurisdiction are 17 of trees (10 of those over 8 caliper inches) totaling 131 caliper inches.
 - Proposed to be removed from the mitigation planting area are invasive Norway maple saplings and bush honeysuckles.
 - The mitigation planting plan within jurisdiction includes 35 saplings (both canopy and understory), 30 shrubs, and 55 1-gallon perennials.
- **Discussion:** No revised materials were received. The applicant has requested a continuation.
- **Vote:** To accept continuation request to the 2/18/21 Conservation Commission meeting. [Motion: Susan Lunin; Second: Leigh Gilligan; Roll-call vote: Gilligan (aye), Green (aye), Lunin (aye), Hepburn (aye), Cade (aye). Vote 5:0:0]

2. 116 Upland Avenue – Compliance Discussion – enclosure of deck – DEP File #239-824

- **Owner/Applicant:** Ilya Zvenigorodskiy
- **Request:** Vote on plan to bring site into compliance.
- **Jurisdiction:** BLSF
- **Presentation (Dan Green, Chair) and Discussion:** The Chair met with the homeowner on site and discussed options. The homeowner is developing a plan, but due to the timing of the meeting with the Chair, he was not prepared for this meeting. The homeowner requests that the conversation be continued at the 2/18/21 meeting.
- **Consensus:** Continue the discussion to the 2/18/21 meeting.

3. 942-944 Watertown Street – Compliance Discussion – new duplex – DEP File #239-427

- **Owner/Applicant:** Janet Edsall Fields **Representative:** Stephen Fields
- **Request:** Determine how unapproved changes made to site should be mitigated in order to bring the site into compliance for a Certificate of Compliance.



Mayor
Ruthanne Fuller

**Director
Planning &
Development**
Barney Heath

**Chief
Environmental
Planner**
Jennifer Steel

**Assistant
Environmental
Planner**
Claire Rundelli

**Conservation
Commission
Members**
Kathy Cade
Dan Green
Judy Hepburn
Ellen Katz
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- Jurisdiction: Buffer Zone, Riverfront Area, BLSF, City Floodplain
- Presentation (Steve Edsall) and Discussion:
 - Staff provided a brief history of the project.
 - The originally approved project involved the demolition of an existing single-family home and the construction of a duplex. There were a number of issues on site, including some that required the issuance of an Enforcement Order, and the permit was never closed out.
 - Below is a timeline of events for filing 239-427.
 - July 1, 2004 – Order of Conditions issued for the demolition of the existing single-family home and construction of 2 townhomes, referencing July 7, 2004 plans.
 - July 13, 2004 – Order of Conditions is recorded at the Registry of Deeds, proof not forwarded to the Conservation Office.
 - January 13, 2005 – Enforcement Order issued for lack of compliance of the following and other issues. (Please see the full list of violations and requirements in packet materials for this agenda item.)
 - Immediately remove the porta-potty from the floodplain.
 - Immediately remove all fill from the floodplain – soil, equipment, materials
 - Immediately construct the compensatory storage and have it certified by an Engineer
 - Unpermitted plan changes (subsequently approved through Minor Plan Change #1)
 - February 12, 2005 – Letter received from Frank Iebba stating that the compensatory storage has been provided per the approved plans (resolving some of the Enforcement Order issues).
 - March 31, 2005 – Revised plans approved by Engineering Department for work.
 - May 6, 2005 – Revised plans (approved by Engineering) approved as a minor plan change by the Commission. (resolving remaining Enforcement Order issues)
 - September 27, 2005 – Reduction in required “native shrubs” from 48 to 25 approved as a minor plan change by the Commission.
 - September 28, 2005 – Date listed on plan that may be equivalent to as-built but is not titled “as-built.”
 - December 20, 2005 – Request to remove all required plantings was denied by the Commission.
 - The current owner and their representative have made it clear that this request for close-out is time sensitive. They submitted a request for Certificate of Compliance. Immediately prior to this meeting they provided an “as-built” showing current site conditions.
 - The letter from the engineer states that the site is in compliance with the approved plans and OOC, even though the as-built clearly shows the site is not in compliance, but staff noted that the as-built, received 1/28/21, shows: (1) the parking area to be larger than what was on the approved plans taking up what was to be lawn in front of the mitigation planting area; (2) an unpermitted ~12’x12’ patio is in what was to be mitigation planting area; (3) absence of all mitigation shrubs; (4) solid panel fence atop railroad ties.
 - Commissioners asked for clarification regarding the jurisdictional area and staff answered that this is all 200’ Riverfront Area and 100-year flood zone.
 - Staff clarified that the OOC did not require perpetual maintenance of the mitigation plantings as it should have.
 - Staff noted that the work done in jurisdictional areas without a permit (i.e., additional paving, patio installation, access stairs, and fence) is itself a violation.
 - Commissioners felt that the site is not in compliance with the OOC and that a COC cannot be issued tonight.
 - The homeowner provided clarification that the parking area was extended to accommodate snowplows and that the change in color in the asphalt is from the replacement area that was chewed up by the plow. She stated that these changes were made in ignorance and only in an effort to improve quality of life for the tenants.
 - Commissioners requested clarification on the planting requirements and whether there is proof they were ever planted. Staff noted that second minor plan change approval indicated that the plantings were installed but not in great health.
 - Staff and the homeowner clarified that the stream corridor behind and to the side of the property is owned by the City of Newton.
 - The Commission stated that mitigation is necessary, though exactly what that mitigation is still to be determined. Discussion centered around removing the patio and requiring plantings.
 - The owner’s representative stated that he would prefer a solution that does not require heavy equipment, but that he understands that he isn’t aware of all the facts that the Commission must address.
 - Staff stated that this is an issue of equity and consistency of standards for all projects. After the fact changes can be fixed with after the fact filings, but the state requirements need to be applied equitably.

- The homeowner stated that she takes responsibility for the actions, but that she was unaware that this filing was still open. There was a safety need for the fence and a quality of life request for the patio. Staff noted that the requirement to submit a Certificate of Compliance request is stated explicitly in the Order of Conditions.
 - The issue of the fence, in regard to wildlife passage and free passage of floodwaters, was discussed at length. The homeowner's representative stated that there is a safety issue at the edge of the stream, so a fence is necessary.
 - Staff stated that it seems appropriate to require a new Notice of Intent filing to review and permit a new plan that addresses the parking area, the patio, the fence, and mitigation. It was noted that plans for the fence should meet the Commission's new Guidelines for Construction in Flood Zone.
 - The homeowner provided further clarification on why the changes were made.
 - The Chair noted that the Commission is here to ensure that the Wetlands Protection Act being complied with.
 - Commissioners felt that, under a new OOC, the extended parking area may be allowed to remain if the patio is removed, the fence is either removed or changed to comply with regulations and policies, and mitigation plantings are installed.
 - The Commission came to consensus that the homeowner should develop a revised and accurate as-built to the relationship between the parking area retaining wall and the property line and fence.
- Consensus: Should the homeowner wish to maintain any of the unpermitted work, a new NOI must be filed and the homeowner should reach out to staff to receive guidance on any new filing materials. A revised as-built will be needed and may be brought before the Commission, one which accurately reflect the site, to be discussed.
- 4. 42 Hyde Avenue – OOC Extension Request – addition onto single-family home – DEP File #239-786**
- Owner/Applicant: Adam Young and Esther Freeman Representative: none
 - Request: Issue an extension for the maximum 3 years.
 - Documents Presented: Site photos
 - Jurisdiction: Buffer Zone
 - Presentation (staff) and Discussion
 - Staff provided clarification on the tolling of permits under the COVID State of Emergency Executive Order by Governor Baker. When the state of emergency ends, the time of a valid permit "lost" to the State of Emergency (3/10/2020) will be added on to after the end of the state of emergency (similar to the Permit Extension Act).
 - The OOC for this project was due to expire on 7/6/20, but because of the Governor's order, all permits active at the start of the state of emergency are automatically extended (as noted above).
 - COVID-19 has delayed the applicant in the work on their home. They are still in the process of construction but are looking for an extension to ensure that the permit does not expire while work is still occurring.
 - There is a 2-year survival requirement for mitigation plantings that needs to be met, so an extension seems appropriate.
 - Vote: To issue an extension for the maximum allowed 3 years. [Motion: Susan Lunin; Second: Leigh Gilligan; Roll-call vote: Gilligan (aye), Green (aye), Lunin (aye), Hepburn (aye), Cade (aye). Vote 5:0:0]
- 5. 73 Beaconwood Road – OOC Extension Request – demo single-family new duplex – DEP File #239-791**
- Owner/Applicant: Matthew Haney, PZ Realty Trust Representative: none
 - Request: Issue an extension for the maximum 3 years.
 - Documents Presented: "consolidated plan"
 - Jurisdiction: Buffer Zone
 - Presentation (Matthew Haney) and Discussion:
 - Staff provided a brief background on the site and the division of work between the two properties.
 - Demolition of the house has occurred, since the work was entirely on one parcel and did not affect the wetland resource area.
 - The OOC is due to expire on April 6, 2021.
 - Commissioners noted the prior discussion on permit tolling and estimated that 11 months would be added on after the state of emergency ends. [N.B. After the meeting, staff did a rough calculation to check the estimate of 11 months and, assuming the Emergency Order is not lifted until after April 6, 2021, determined that the OOC will have been valid under the Emergency Order 3/10/20 - 4/6/21, and so the permit will likely expire 392 days after the state of emergency ends.]
 - Staff stated that in their opinion, both landowners need to be party to the extension request for it to be granted.
 - The applicant described site flooding and zoning review as causing delays and being the reason for this request.

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- The homeowner described stream cleaning proposed by the City in Cold Spring Park. He believes that would lower the groundwater table on his site making the installation of footings easier.
- The Commissioners stated that there is no problem with the reasoning behind the extension request, but that the crux of the issue is that there are two owners' properties encumbered by the OOC and so two owners need to agree to the extension. The homeowner felt otherwise.
- The homeowner requested that the extension be issued tonight and conditioned on receiving approval from Capasso (the other owner). The Commission declined and noting that the permit will not expire for a long time, so Mr. Haney has lots of time to secure Mr. Capasso's approval.
- Consensus: Mr. Haney must get Mr. Capasso to co-sign any request for an extension.

6. 62 Carlton Road – Minor Plan Change Request – new single-family home – DEP File #239-836

- Owner/Applicant: Dainius Kuper, Hillcrest Development Representative: none
- Request: Approve minor plan changes.
- Documents Presented: Colored plans, site photos
- Jurisdiction: Buffer Zone
- Summary of Changes
 - (After-the-fact) The retaining wall on the rear right side of the house was divided into two retaining walls for structural and safety reasons. The total height of both walls stayed the same as in the proposed original wall.
 - (After-the-fact) The grading on the left -rear side of the house was significantly altered with the removal of the proposed and approved "mounding."
 - (Proposed) Applicant is requesting to install 5' high "guard rails" on the left and right-side slopes of the lot for safety. The railing would have 4-5" of space at the bottom to allow for any possible wildlife movement. The proposed location of the guard rail is marked by red lines on each side of the lot on the as built plan in the packet.
- Presentation (Dainius Kuper) and Discussion:
 - The owner/applicant was having computer issues, so initially staff presented the proposed changes.
 - Staff noted poorly constructed stone retaining areas (distinct from the engineered retaining walls).
 - Staff noted that the "wing walls" seen in the field are not shown on the current as-built but that the project is mostly proceeding in compliance with the approved plans, aside from the wall changes seeking approval tonight.
 - Staff noted some instability of vegetation around the ends of some of the retaining walls, but that sod had only recently been installed, so determination of long-term stability is not known. The owner and staff noted that those areas will get torn up when the plants are installed and that the final conditions should be stable.
 - Commissioners asked the homeowner if the walls had been professionally engineered. The owner stated that they were approved by the Engineering Department and that they were included in the building permit submission. Staff stated that they would pull that information for our records.
 - Staff and Commissioners clarified that the slope stability must be ensured before a Certificate of Compliance request is submitted.
 - The tree that has been partially buried with stone and soil must have its root flare re-exposed by hand when ground conditions allow. A photo of this must be submitted to the Conservation Office as proof.
 - All field features must be included on the final as-built submitted for the COC request.
- Vote: To approve the annotated plans (62 Carlton Road – Minor Plan Change Request, received by the Conservation Office 1/20/21) as a minor plan change request. [Motion: Leigh Gilligan; Second: Susan Lunin; Roll-call vote: Gilligan (aye), Green (aye), Lunin (aye), Hepburn (aye), Cade (aye). Vote 5:0:0]

7. 11 Chesley Road – COC – new shed and driveway improvements – DEP File #239-626

- Owner/Applicant: Ellen Silver Representative: none
- Request: Issue COC.
- Jurisdiction: Buffer Zone, Riverfront Area, City Floodplain
- Discussion: All required paperwork has been received. A site visit on 1/22/21 confirmed compliance.
- Vote: To issue a complete Certificate of Compliance. [Motion: Susan Lunin; Second: Judy Hepburn; Roll-call vote: Gilligan (aye), Green (aye), Lunin (aye), Hepburn (aye), Cade (aye). Vote 5:0:0]

8. 326 Fuller Street – COC – footbridges across stream – DEP File #239-857

- Owner: Brae Burn Country Club Applicant: Sean McLaughlin, BBCC Representative: Sarah Stearns, Beals & Thomas
- Request: Issue COC.
- Jurisdiction: Buffer Zone, Riverfront Area, City Floodplain
- Discussion: All required paperwork has been received. A staff site visit on 10/23/20 confirmed compliance.

- Vote: To issue a complete Certificate of Compliance. [Motion: Susan Lunin; Second: Kathy Cade; Roll-call vote: Gilligan (aye), Green (aye), Lunin (aye), Hepburn (aye), Cade (aye). Vote 5:0:0]

II. CONSERVATION AREA DECISIONS

9. Trailhead Signs

- Request: Provide direction on map color palette, map font size, and draft text.
- Documents Presented: Color/font options
- Discussion
 - A sample of existing, pastel, and bright colored maps were provided to spur discussion.
 - Commissioners liked bolder colors, in particular the green color for the conservation area.
 - Commissioners noted that red and green should not be used together due to the issue with color blindness.
 - Staff developed proposed text for trail head signs based on conversations in the previous ConCom meeting.
 - Commissioners agreed that the language for non-trailed parcels is appropriate.
 - Commissioners agreed that the language for trailed parcels is appropriate, but that the language should perhaps be changed from “bicycling” to “cycling”.
 - Commissioners had concerns about icons being vague and harder to understand than words and felt that QR codes could better translate meanings into different languages.
 - There was a discussion of whether the QR code should be a sticker or printed on the sign. Ultimately all agreed that if staff felt stickers were most appropriate, we should go with that choice.
 - It was debated whether the text should be moved below the sign to break up the text, but Commissioners suggested that moving it to the bottom may cause it to be ignored.
 - It was suggested that staff look into having a graphic designer help. The Conservators’ may have a suggestion.
- Consensus: The language presented is appropriate and approved. The bolder color palette is preferred. Staff should continue moving forward with new sign designs.

III. ADMINISTRATIVE DECISIONS

10. Minutes of 1/7/21 to be approved

- Documents Presented: Draft minutes
- Vote: To accept the 1/7/21 minutes as revised. [Motion: Kathy Cade; Second: Leigh Gilligan; Roll-call vote: Gilligan (aye), Green (aye), Lunin (aye), Hepburn (abstain), Cade (aye). Vote 4:0:1]

IV. ISSUES AROUND TOWN DECISIONS – None at this point in time.

UPDATES

V. WETLANDS UPDATES

- Riverwalk: Staff are investigating unpermitted tree cutting in Riverfront Area.

VI. CONSERVATION AREA UPDATES

- Houghton tree cutting: Staff are requesting quotes for removal of 5 hazard trees.

VII. ISSUES AROUND TOWN UPDATES

- Christina Street Bridge Feasibility Study: Conservation staff received 4 proposals and are in the process of reviewing them, along with other City staff.

VIII. ADMINISTRATIVE UPDATES

- Environmental Science Program: This is the last year the Planning Department will provide administrative support. The program will need to find a new home in Parks Rec and Culture or some other organization in the future.

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

ADJOURN at 9:30pm [Motion: Susan Lunin; Second: Kathy Cade; Roll-call vote: Gilligan (aye), Green (aye), Lunin (aye), Hepburn (aye), Cade (aye). Vote 5:0:0]