

CONSERVATION COMMISSION MINUTES

Date: Thursday, December 9, 2021

Time: 7:00pm

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

With a quorum present, the meeting opened at 7:00pm with Dan Green presiding as Chair.

Members Present: Susan Lunin, Jeff Zabel, Judy Hepburn, Leigh Gilligan, Kathy Cade, Ellen Katz, and Sonya McKnight (associate member)

Members Absent: none

Staff Present: Jennifer Steel

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

DECISIONS

I. WETLANDS DECISIONS

1. (7:00) 100 Boulder Road – NOI (cont'd) – addition, deck, patio to a single-family home – DEP file #239-908

- Owner/Applicant: Amir Nashat
- Representative: Rich Kirby, LEC, Inc.
- Request: Continue to January 6, 2022
- Documents Presented: none
- Jurisdiction: Flood Zone (114' NAVD88), Riverfront Area, Buffer Zone to Bank
- Vote: to accept the request to continue the hearing to January 6, 2022. [Motion: Gilligan; Second: Lunin; Roll-call vote: Green (aye), Lunin (aye), Katz (aye), Zabel (aye); Hepburn (aye), Gilligan (aye), Cade (aye), Vote: 7:0:0]

2. (7:05) 44 Brandeis Road – NOI – addition to a single-family home – DEP file #239-910

- Owner: Michael Landzberg
- Representative: Tim McGuire, Goddard Consulting, Inc.
- Request: Issue OOC for proposed addition.
- Documents Presented: Colored plans, site photos
- Jurisdiction: BLSF (10.57)
- Project Summary:
 - Construct a single-story addition and driveway extension on the southwest side of the existing house.
 - The addition will result in 282 cf of fill. The applicant will grade the site to provide 798 cf of compensatory storage on-site, a surplus of 516 cf storage on-site.
- Presentation (Tim McGuire) and Discussion:
 - The project team revised the plans in response to staff comments. Erosion control was added, care will be taken to preserve the tree on the property line in the front lawn and the mature magnolia shrub in the front lawn.
 - Staff noted that the erosion control line could be revised to limit the amount of compost sock to the actual work areas.
 - The cut and fill table shows a cut from 121-122', but there is not a corresponding grade change line on the plan. Cut and fill calcs will be revised to ensure accuracy.
- Vote: to close the hearing and issue an Order of Conditions with the following special conditions. [Motion: Cade; Second: Gilligan; Roll-call vote: Green (aye), Lunin (aye), Katz (aye), Zabel (aye); Hepburn (aye), Gilligan (aye), Cade (aye), Vote: 7:0:0]
 - No mature trees are allowed to be removed or damaged in the process of this project.
 - A concrete washout plan designed to limit and control any adverse on the wetlands resource area(s) must be presented to the Conservation Office for review and approval.
 - A revised site plan must be submitted to the Conservation Office for review and approval showing a revised (reduced) erosion control line of staked compost sock and revised cut and fill calculations, as appropriate.
 - If any trees within the project area or the mature magnolia shrub in the front yard die within 2 years of the start of construction or have been demonstrably harmed by construction



Mayor
Ruthanne Fuller

**Director
Planning &
Development**
Barney Heath

**Chief
Environmental
Planner**
Jennifer Steel

**Assistant
Environmental
Planner**
TBD

**Conservation
Commission
Members**
Kathy Cade
Dan Green
Judy Hepburn
Ellen Katz
Susan Lunin
Jeff Zabel
Leigh Gilligan

**Associate
Member**
Sonya McKnight

**Contact
Information**
1000 Comm. Ave.
Newton, MA 02459

T 617/796-1120
F 617/796-1142

www.newtonma.gov

jsteel@newtonma.gov

activities, they shall be replaced at a ratio of 1:1 with native canopy or understory saplings (of roughly 2 caliper inches).

- Compensatory flood storage must be provided in its entirety as per the plans.

3. (7:25) 45 Buswell Park – NOI – patio expansion and rain garden – DEP file #239-909

- Owner: Brittany and Dustin Bennett
- Representative: Rob Gemma, MetroWest Engineering, Inc.
- Request: Issue OOC for the proposed hardscape expansion and rain garden installation.
- Documents Presented: Colored plans, site photos
- Jurisdiction: Land Under Water (not to be touched); City Flood Zone; Buffer Zone to Bank of an Intermittent Stream
- Project Summary: The owner would like to: (1) expand an existing patio -- adding 578 sf of impervious area to the Buffer Zone, (2) install a 553 sf (18 cy) rain garden to handle runoff from the rear roof, new synthetic turf, and patio, and (3) install a stone bridge over the stream channel, (4) install native plants along the property line and new hardscape, and (5) remove invasive plantss on the far side of the stream.
- Presentation and Discussion:
 - The project team revised the plans in response to staff comments. A laydown/stockpiling area was identified on the plan, the rain garden was moved to protect the tree on the boundary line, cuts and fills were adjusted, plantings were added on the far side of the stream, and some details were provided regarding invasive control.
 - Engineering has approved the proposed stormwater management system sizing.
 - The Operations and Maintenance Plan submitted with the NOI indicates that all maintenance reports should be submitted annually to the Engineering Division of the Weston Department of Public Works. This must be corrected to Newton.
 - Staff shared the email they solicited from Newton DPW which gave approval for the proposed coring into the wall of Hyde Brook for the overflow drain pipe but which did not support the stone bridge proposal as it would act to confine flow during storm events. DPW cited Newton Ordinances 22-22 and 29-116.
 - Commissioners asked that the applicants double-check the survey locations of all mature trees on the site.
 - Commissioners also felt that some canopy and understory trees should be added to the planting plan as mitigation for the increased hardscape, the loss of the small tree near the patio, and the removal of invasive saplings.
 - Commissioners noted their concerns that there were no shrubs proposed to be planted along the stream. The stream edge was due to have been planted under previous OOCs and should be planted under this filing.
 - Commissioners noted that the “rain garden” was really a stone-lined detention basin and should be redesigned as a rain garden with appropriate vegetation throughout.
 - Intended invasives removal was clarified to some degree with outlines on the plan and protocols as notes.
 - Staff noted that bounds should be included in the revised plans, since ensuring maintenance of the mitigation planting area has been a challenge in years past.
- Vote: to accept the request to continue the hearing to January 6, 2022 (with revised materials due 12/21/21). [Motion: Lunin; Second Hepburn; Roll-call vote: Green (aye), Lunin (aye), Katz (aye), Zabel (aye); Hepburn (aye), Gilligan (aye), Cade (aye), Vote: 7:0:0].

4. (7:50) 40 Albemarle Road – OOC minor plan change request – modify mitigation planting area – DEP #239-880

- Owner: Jeremy Osinski
- Representative: Jeremy Osinski
- Request: Accept proposed changes to the mitigation planting area and landscaping as a minor plan change.
- Documents Presented: Colored plans
- Jurisdiction: Riverfront Area, 100-Foot Buffer Zone to Bank
- Project Summary: The owner would like to: (1) move the shed, (2) install a retaining wall, (3) reconfigure the hardscape (patio and walkway), and (4) reconfigure the mitigation/restoration planting area.
- Presentation (Jeremy Osinski) and Discussion:
 - Staff sent initial comments to the owner noting
 - Concerns about breaking up the continuity of the restoration area
 - Concerns about installing a retaining wall and a shed in what was to have been the restoration area
 - Interest in maximizing the restoration area along the street frontage
 - Interest in providing utilitarian boundaries and pathways
 - Staff reminded the owner about prior obligations of:
 - The patio being “on a fully pervious bed of pea stone with similar (1-2”) spacing between the stones to maximize infiltration.”

- “A swale of at least 6 inches in depth and 1-2’ in width must be installed all along the northern property boundary”
- “The top of mulch within the permanent mitigation landscape planting areas must be and remain in perpetuity at least 6” below the top of the adjacent lawn and sidewalk”
- The owner responded with revised plans reflecting:
 - Some reshaping of the restoration/mitigation planting areas
 - Reversing the swing of the proposed gates to limit impact on plantings
 - Reducing the angle on the retaining wall
- Commissioners were primarily concerned about the division of the restoration area to accommodate the front walkway and expanded rear yard, and the expansion of hardscape shown on the plans (stairs, patio, retaining wall, walkway, etc.) and the precedent that would be set by accepting such changes to approved plans would set. They noted that if there were to be changes, they would have to comport with the Commission’s policy on restoration/mitigation areas and would have to result in an overall ecological improvement to the area.
- Commissioners noted with dismay that necessary site components such as stairs had not been anticipated/depicted on the original plans.
- Commissioners did not feel that such changes could be approved as “minor plan changes”.
- Consensus: The proposed changes cannot be approved as minor plan changes and must be submitted as a request to amend the OOC.

5. (8:10) 22 Hollywood Drive – Request to Close Enforcement Orders – planting plan, bounding – DEP #239-271 & 239-368

- Owner: Jamie Mackay
- Representative: John Rockwood
- Request: Close 3 outstanding Enforcement Orders (EOs)
- Documents Presented: Colored plans, site photos
- Jurisdiction: BVW and 100-Foot Buffer Zone to BVW
- Site History:
 - 1993 RDA → positive DOA → OOC 239-271 SFH → 1994 COC
 - 1995 EO #1 (issued to Stumpo & Boston Edison for extra decks, drainpipes, 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.
 - 2002 remedial planting plan approved
 - 2003 EO #3 (issued to Bob Carp) fill, planting, fencing, land agreement with Cornerstone
 - Law Department involvement
 - 2018 owner Bob Carp sought “expedited” closure of Enforcement Orders and open Orders of Condition
 - 2018 owner Amy Carp conducted a file review and was asked to develop an “application” package documenting site compliance and seeking closure of EO’s and OOC’s.
 - 2019 a ‘friendly’ EO #4 as the mechanism to allow for the conduct of the approved Restoration Plan (“Response to Outstanding Enforcement Orders, 22 Hollywood Drive, Newton, Massachusetts,” prepared by EcoTec, Inc., dated June 17, 2019). The plan called for:
 - Relocation of the chain-link fence;
 - Removal of hazard trees;
 - Placement of logs in the area as habitat;
 - Pruning of maple trees to promote light penetration into the area;
 - Removal and treatment of invasive vines and shrubs; and
 - Planting of 160 understory trees and shrubs within ten habitat areas within the subject area.
 - Fall of 2019 and fall of 2020 works was done according to the approved plan.
 - 2021 owner Jamie Mackay seeks closure of EO’s.
- Presentation (John Rockwood) and Discussion:
 - John Rockwood noted that the first 3 EO’s had been recorded and so needed official documentation to be closed.
 - John Rockwood noted that 239-260 and 239-271 had COC’s, but that 239-368 (pool and fence) may never have been recorded. Jennifer Steel will look for any record of recording in the wetland files.
 - John Rockwood submitted a plan showing a proposed post and rail fence along the alignment originally proposed, with a minor modification at the northern end. The Commission approved the location and nature of such a fence. The representative agreed on behalf of the owner to install the fence as shown on the plan.

- The Commission agreed with staff that there is no need to enforce the old requirement for a deed restriction (cited in older EOs).
 - Staff concurred with the representative that invasive species in the subject area have been dramatically reduced compared to adjacent untreated areas. This has allowed native volunteer species an opportunity ~~to try~~ to become established in the area.
 - Staff applauded the efforts of the owners to remove invasive species and install native species. 96 shrubs (60%) were observed to be alive in Nov. 2021.
 - Staff noted that a few more shrubs should be installed along the lawn-restoration area line, with photographic proof of proper installation, but with no long-term survival requirements. Commissioners concurred and the representative agreed to plant 5 native, deer-resistant shrubs where none existed north of the red maple tree.
 - Staff noted the presence of a tree stump that did not have a permit for removal, but noted that it was likely failing, as was a nearby tree at the headwall.
 - To facilitate tree removal and pruning, the chain-link fence was entirely removed from the site, however staff feels that given the openness of the site, a fence (e.g., split rail) is necessary to define the extent of “lawn” and the edge of the restoration area should still be required.
 - Once EOs are closed, old OOCs must be closed with requests for COCs.
- Staff Recommendations: Discuss and determine whether memo(s) of clarification or closure should be granted.

6. (8:35) 36 Parsons Street – COC Request – SFH teardown/construct duplex – DEP #239-854

- Owner: Arto Dermovsesian Applicant: John Rockwood, EcoTec, Inc. Representative: John Rockwood
- Request: Issue a complete COC.
- Documents Presented: site photos
- Jurisdiction: RFA and Flood Zone
- Staff Notes:
 - The work under 239-854 was permitted to remove unauthorized fill from the 100-year floodplain that occurred during work under 239-728.
 - The plant materials within the enhancement area were removed, the area was re-graded, and the plant materials were replanted or replaced. VTP Associates, Inc. surveyed the area:
 - 41.64 cubic feet (1.54 cy) of excess flood storage at the lower increment 41-42’
 - 20.48 cubic feet (0.76 cy) of shortfall at the higher increment 42-42.5. Staff feels this is close enough.
 - All required COC materials have been received. A staff site visit on 11/24/21 found compliance with the OOC ~~except but~~ for some use of the spaces between the plants for play or storage.
- Vote: to issue a complete Certificate of Compliance. [Motion: Hepburn; Second: Gilligan; Roll-call vote: Green (aye), Lunin (aye), Katz (aye), Zabel (aye); Hepburn (aye), Gilligan (aye), Cade (aye), Vote: 7:0:0].

7. (8:40) 36 Parsons Street – COC Request – excess fill removed – DEP #239-728

- Owner: Arto Dermovsesian Applicant: John Rockwood, EcoTec, Inc. Representative: John Rockwood
- Request: Issue a complete COC.
- Documents Presented: site photos
- Jurisdiction: RFA and Flood Zone
- Staff Notes: All required COC materials have been received. A staff site visit on 11/24/21 found general compliance with the OOC.
- Vote: to issue a complete Certificate of Compliance with the following language. [Motion: Hepburn; Second: Gilligan; Roll-call vote: Green (aye), Lunin (aye), Katz (aye), Zabel (aye); Hepburn (aye), Gilligan (aye), Cade (aye), Vote: 7:0:0]
 - This Certificate of Compliance effectively closes the Enforcement Order issued on October 10, 2019 and amended on October 25, 2019 for unpermitted fill in Bordering Land Subject to Flooding. That enforcement action required remedial work under a new Order of Conditions (DEP File #239-854) which has also been closed out with its own Certificate of Compliance issued today.

8. (8:45) 10 Gambier Street – COC Request – disconnect cesspool, connect to sewer – DEP #239-608

- Owner: Owen Hughes Applicant: Owen Hughes Representative: Verne Porter
- Request: Issue a complete COC.
- Documents Presented: site photos
- Jurisdiction: Buffer Zone

- Staff Notes: All required COC materials have been received. A staff site visit on 8/4/21 found general compliance with the OOC and memorandum regarding cutting back Japanese knotweed, however, the bounds have been set flush with the ground and so are not visible as required.
- Consensus: ~~None~~ commission action until new visible bounds are set.

II. CONSERVATION AREA DECISIONS

9. (8:50) Honeybee data collection.

- Staff Notes: Should we ask Mark Lewis, beekeeper at the Old Deer Park, to purchase a DNA testing kit for his Old Deer Park hives to identify the -what pollen is used by his honeybees.
- Discussion and Consensus: Ellen Katz suggested waiting until she can tell the Commissioner about her experience with the DNA testing kit.

III. ADMINISTRATIVE DECISIONS

10. (9:05) Minutes of 11/18/21 to be approved

- Documents Presented: Draft 11/18/21 minutes as edited by Ellen Katz
- Discussion: Susan Lunin suggested that Commissioners take turns reviewing and editing the minutes so that that burden doesn't always fall on one Commissioner. She offered to review the minutes from this meeting. The Commission suggested an alphabetical rotation: Katz, Lunin, Zabel, Cade, Gilligan, Green, Hepburn.
- Vote: to approve the 11/18/21 minutes as edited by Ellen Katz. [Motion: Gilligan; Second: Cade; Roll-call vote: Green (aye), Lunin (aye), Katz (aye), Zabel (aye); Hepburn (aye), Gilligan (aye), Cade (aye), Vote: 7:0:0]

IV. ISSUES AROUND TOWN DECISIONS

11. (9:10) Discussion of installing signs along South Meadow Brook

- Request: Consider installing identification/educational signage at South Meadow Brook stream crossing to promote understanding & protection.
- Discussion: The Commission felt there would be value in placing signs at all daylighted stream crossings in the City. Jennifer Steel will speak with DPW about sign installation considerations and look for models from other communities. A summer intern could research specific locations where signs might be installed, and signage used by other communities, such as Concord.

UPDATES

V. WETLANDS UPDATES

- Parks and Rec's upcoming projects: PRC staff has met with Jennifer Steel about pending projects at Gath Pool, Crystal Lake accessibility and Left Beach improvements, Warren House fields, and NSHS/Brown/Oak Hill fields. They have offered to present to the full Commission. The Commission agreed that that would be valuable. Jennifer Steel will find a mutually agreeable date.

VI. CONSERVATION AREA UPDATES - none

VII. ISSUES AROUND TOWN UPDATES - none

VIII. ADMINISTRATIVE UPDATES - none

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

ADJOURN at 9:27 [Motion: Gilligan; Second: Zabel; Roll-call vote: Green (aye), Lunin (aye), Katz (aye), Zabel (aye); Hepburn (aye), Gilligan (aye), Cade (aye), Vote: 7:0:0]