



# Town of Duxbury Conservation Commission

Minutes of April 25, 2017

Approved 6/6/2017

TOWN CLERK

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DUXBURY, MASS.

The Conservation Commission met on Tuesday, April 25, 2017 at 7:00 PM in the Mural Room at the Duxbury Town Hall.

**Members Present:** Chairman Corey Wisneski; Sam Butcher; Robb D'Ambruoso; Tom Gill; Mickey McGonagle; Holly Morris; Scott Zoltowski

**Members Absent:** none

**Staff Present:** Joe Grady, Conservation Administrator; Susan Ossoff, Administrative Assistant

The meeting was called to order at 7:00 pm.

## **PUBLIC HEARING; SOUTH SHORE HABITAT; 0 LAKE SHORE DRIVE; SINGLE FAMILY HOME SE18-1762**

Rick Grady of Grady Consulting described the project which is a single family home that extends into the 100-foot buffer and at its closest point is 86 feet from the resource area. The elevation at the street is 92 and it is 70 at the pond so it is a sloped lot and the house will have a walkout in the back to minimize grading. The septic system is outside the 100' buffer and the limit of work line is 55' from the resource area. The coverage in the buffer is 3.7%.

Joe Grady said the application is not signed and the owner of the property is the Town. The land is being deeded to Habitat for Humanity subject to their getting a building permit. This project is going through as a LIP (Local Initiative Program) project because the septic system does not meet the Duxbury regulations. It is a single lot 40B application and through that process the ZBA can grant relief to the bylaws; in this case the relief being sought is the Board of Health requirement for a 150' setback (it is 118'). Under the bylaws, 10,000 square feet of upland makes a buildable lot with a special permit; this is a 28,000 square foot lot.

Corey Wisneski asked about grading; Rick Grady said they are minimizing grading; in front the grade will be cut 1 foot outside the 100' buffer and there will be no grading in back. Scott Zoltowski asked about vegetation on the slope and Rick Grady said the limit of work line on the plan is the limit of landscaping. Sam Butcher asked Rick Grady to confirm that no work is proposed in the 50' buffer; Rick Grady confirmed that. Holly Morris expressed her concern at the idea of using substandard lots for affordable housing and setting a precedent of allowing development on substandard sized lots. Rick Grady said that is a zoning issue and not a Conservation Commission issue. Scott Zoltowski asked why the project is before the Conservation Commission before it goes before the Planning Board; Rick Grady said it is being built under Chapter 40B; that Habitat for Humanity talked to Joe Grady who suggested they file with Conservation. Joe Grady replied that Habitat for Humanity called and said they wanted to file a Notice of Intent and there was no discussion about where it should be filed first. Joe Grady said the project meets the Commission's Rules and Regulations but he does not think the septic setbacks should be waived. Several members expressed concern with approving this project before other boards have approved it. Sam Butcher said the application before the Commission

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meets the criteria of the Commission and that is all that is within the Commission's jurisdiction; the application as presented can be approved with conditions.

Kevin Lydon of 51 Lake Shore Drive is concerned about the grading and impacts on the pond and opposes this project. He is also concerned with the precedent being set and asked how many lots are like this in Town.

Mickey McGonagle said the project meets the Commission's rules and regulations, but suggests they be required to obtain legal title to the property.

Rick Grady said the initial approach was to submit this to the Planning Board for a Special Permit. The Board of Health would not waive the 150' setback requirements so they changed to filling a LIP and seek approval through the ZBA. The 150' setback exceeds what the State requires.

Joe Grady said there is a weed problem in Lower Chandler Mill Pond. He has obtained grants, and now treats the pond every 6 years because of nutrients. Freshwater ponds have phosphorus problems and it is directly related to the distance the water body is from the septic system. The 150' setback required by the Board of Health protects freshwater ponds.

Mickey McGonagle said the Commission can either determine the project meets the rules and regulations or can table a decision until other boards express their views. Robb D'Ambruso suggested the Commission vote on the application to avoid jurisdictional creep, regardless of their views of the project. Holly Morris felt it should go to the Planning Board first; Tom Gill agreed with Holly as did Scott Zoltowski.

On a motion by Sam Butcher, seconded by Corey Wisneski, it was voted 4-3-0 to write Orders of Conditions for SE18-1762, contingent on the appropriate signatures on the application and with the condition that Habitat for Humanity must own the property before the work can proceed.

#### **PUBLIC HEARING; HABEL; 106 KING PHILLIPS PATH; GARAGE SE18-1764**

Chris Habel, the property owner, described the project and provided coverage calculations. The project is a 28' x 30' garage with a staircase and overhang. The coverage will be 7.78%. Joe Grady asked about decks on the existing structures not being included in the coverage calculations; Mr. Habel said 1 deck had already been removed at 106B King Phillips Path and the deck at 106A is going to be removed.

On a motion by Corey Wisneski, seconded by Scott Zoltowski, it was voted 7-0-0 to write Orders of Conditions for SE18-1764, 106 King Phillips Path.

#### **PUBLIC HEARING; NORTH STREET & KEENE STREET; SINGLE FAMILY HOME SE18-1763**

Rick Grady of Grady Engineering and John Baldwin, property owner, were present to describe the project. Rick Grady described this project as a single family home. The wetland resource areas on the property include a perennial stream (unnamed) and bordering vegetated wetlands. All of the work is outside of the 100' buffer zone; it is in the Riverfront area only. The deck is 150' from the resource area and the limit of work line is about 135' away at its closest point. A silt sack will be used at the limit of work line. They are proposing 7,743 square feet of clearing in the Riverfront area for the house and lawn (9.9%). This is a Natural Heritage area and this

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project has been submitted to them; 83% of the area has been left as undeveloped land. Natural Heritage normally uses 70% as their criteria for 'no-take' decision. The septic system is 170' from the resource area and minor grading is proposed with 6 inches of fill at the rear at the foundation. Buffer zone coverage is not an issue because this is outside of the 100' buffer zone.

Joe Grady said he had a phone message from Natural Heritage looking for a revised plan. Joe Grady suggested hiring a consultant for a peer review of the project, and suggested Nover-Armstrong be hired. The Commission has limited experience with the Riverfront area and the required alternatives analysis. He obtained a proposal from Nover Armstrong for \$1750 for this review.

Rick Grady requested that their wetlands scientist be on site when Nover-Armstrong reviews the site.

Sam Butcher said that it is his understanding that for lots created after 1996, the alternatives analysis is not limited to the newly created lot. The alternatives analysis can be extended beyond the limit of the lot. Rick Grady said this lot was originally a single lot that was subdivided by the Ness family in 2014. They looked at further subdivision of the lot but it is not feasible. Sam Butcher said the alternatives analysis should include the abutting lots present prior to the subdivision of the land. Rick Grady said there is a section in the Regulations for lots prior to August 1, 1996, the area necessary for the project can be altered even if it exceeds 10%; no more than 10% of a lot formed after 1996 can be altered. Sam Butcher said the greater than 10% provision is for lots prior to the regulations but in this case a lot was created after the regulations and the restraints of the regulations were in place and therefore the Commission is not obligated to allow more than 10% alteration.

Rick Grady agrees with Sam Butcher's interpretation that you must include whatever was there before the division of land in 2014; you can't carve off a lot and insist on building on it. Sam Butcher said 9.9% coverage is proposed; this is very close to the limit of 10% and he encouraged the applicant to create a little more flexibility to ensure compliance. Rick Grady said the area would be staked prior to any work being done.

Joe Grady said the proposal should be realistic. This project proposes an extremely small yard, and it will be difficult to constantly monitor to ensure no further cutting occurs. The house should be sited so as to allow for a reasonably sized yard which is not the case with the house as it is sited now. Robb D'Ambruoso said there is 15' from the deck to the trees.

Joe Grady said a project was previously proposed on this lot and the application was withdrawn because there was not enough upland outside the wetlands and watershed zoning district. Mr. Baldwin is going to the ZBA for a special permit. The ZBA will ask the Conservation Commission for input; right now only the Riverfront area is being looked at but there will be other opportunities for the public to weigh in on this project.

Kim Abplanalp of 120 Myrtle Street asked for a clarification of why the previous project proposed at this site required a vote of Town Meeting but this one will not. Joe Grady said the wetlands and watershed zoning district references elevation 40 mean sea level; the previous application did not have the required 40,000 square feet above this elevation so they went to Town Meeting to change the zoning district; when that was not successful the application was withdrawn. Because this is a building permit and zoning issue, it is out of the jurisdiction of the Conservation Commission. Mr. Abplanalp asked about segmentation of the project under Natural Heritage; he believes the submission must include the whole property before subdivision.

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Joe Grady said that Natural Heritage is not administered by the Conservation Commission and the Commission does not review those applications.

Deborah Frangesh of 399 North Street said this entire property was deeded to Mr. Baldwin and under 321 CMR 10.16, a whole project should be considered and not just pieces; segmentation is not allowed. There are endangered species on this land.

John Baldwin, the applicant, said the people speaking about this project are not abutters and have no standing. There are 8 acres of upland; the Town's regulations are stricter than the Department of Environmental Protection. He said he wants 'fair play' and said that inaccurate information is being stated and he is trying to abide by the rules and regulations. He is shy of the 40,000 square feet required for the lot so will go to the ZBA for a special permit.

Tom Gill said the board treats everybody equally and wants to avoid acrimonious discussion. Corey Wisneski suggested this hearing be continued and a Riverfront analysis be obtained.

Mr. Abplanalp said they have been abutters to this property for more than 38 years and rather than an 'agenda' they have concerns about zoning and impacts on the environment. There are many factors involved and it requires a great deal of consideration; they recognize construction will occur but want to make sure the regulations are adhered to.

Michael Divirgilio of 270 North Street said the water from Hemlock Estates caused water to drain down North Street and he has had to install sumps and catch drains. He thinks drainage should be considered when building occurs and does not agree with Mr. Baldwin's suggestion that they have no standing. The various boards have the responsibility to protect people and the Commission needs to ensure that builders do what they are supposed to do.

Corey Wisneski said the reason to hire a consultant is to have additional expertise with the Riverfront Area. On a motion by Corey Wisneski, seconded by Sam Butcher, it was voted 7-0-0 to hire Nover-Armstrong as a consultant as outlined in the proposal letter dated 4/24/17 for \$1750 and that the consultant should meet on site with the applicant's wetlands scientist.

Robb D'Ambruoso pointed out that the application says some of the work will be within the 100' buffer zone which is not shown on the plans; Rick Grady said he will correct that error in the application.

On a motion by Scott Zoltowski, seconded by Mickey McGonagle, it was voted 7-0-0 to continue the hearing for SE18-1763 until May 23 at 7:05 pm pending receipt of the Riverfront alternatives analysis.

## **ADMINISTRATIVE MATTERS**

### **REQUESTED REVISION TO PLANS: 287 Powder Point Ave.; SE18-1732**

Joe Grady explained that since the original Orders were written the applicant now wishes to construct a bluestone patio that extends 91 square feet into the buffer zone, and also extend the length of the trench drain that can then pick up some extra flow. These changes meet the rules and regulations of the Conservation Commission. On a motion by Holly Morris, seconded by Tom Gill, it was voted 7-0-0 to accept the revised plan and to issue a letter to the applicant stating the plan of record has changed.

### **0 St. George St. Float:**

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Joe Grady said the float had been approved by the Commission through an RDA. For situations where there is no walkway, just a gangway and float, the Commission has historically allowed placement of these through an RDA. The downside of this approach is that there is no abutter notification. The RDA at this float at 0 St. George Street on the Bluefish River was appealed; DEP issued a superceding negative Determination that was further appealed; that further appeal has been closed but no decision has been rendered.

An appeal by neighbors was also filed with the ZBA because there was no building permit; the ZBA said no permit was needed. This decision was also appealed.

Corey Wisneski and Sam Butcher met with the abutters. Sherm Hoyt is concerned with the deterioration of the marsh due to the float rubbing the side of the marsh, and also that the float did not have skids as was proposed. Joe Grady said the plan is not clear about skids being proposed on the float.

Sam Butcher said if the float is not built as was proposed, the Commission can address that issue. Corey Wisneski suggested they take a look at the float. The consensus was to write a letter asking to inspect the float, and also perhaps to move the anchor chains so that the float does not rub the marsh.

#### **Selectmen Meeting about Dog Issues**

There has been an ongoing issue with dog waste at Town-owned land; people either not using the Mutt Mitt disposal bags or using them and throwing them into the woods. The dog officer is proposing new signage at East Street Bogs and Bay Farm outlining the rules. Fines are possible. Joe Grady mentioned that it may be necessary to have some areas with no dogs allowed. The Commission has the authority to make rules and regulations on the Conservation Land. Corey Wisneski said the signs are a good first step to raise public awareness.

#### **EXECUTIVE SESSION:**

Robb D'Ambruoso made the following motion: I move we go into Executive Session to discuss strategy with respect to litigation where an open meeting may have a detrimental effect on the litigating position of the governmental body and to reconvene in open session in accordance with MGL C.39, Section 23B, Subsection 3 to adjourn. The motion was seconded by Sam Butcher. Roll call vote: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gill, yes; Mickey McGonagle, yes; Holly Morris, yes; Scott Zoltowski, yes. The motion passed by a vote of 6-0-0.

**Adjournment:** On a motion by Sam Butcher, seconded by Robb D'Ambruoso, it was voted 7-0-0 to adjourn the meeting at 8:48 p.m.

#### **MATERIALS REVIEWED AT THE MEETING**

NOI application materials for Se18-1762; Se18-1763, and SE18-1764  
Revised plans for SE18-1732