

## **Conservation Commission Public Meeting – November 7, 2016 Minutes**

**Time:** 7:30 PM – 9:05 PM

**Location:** Town Hall

**Members Present:** Tom Ruskin; Robert Salter; Monica Tamborini; Jennifer Simon, Tonia Bandrowicz

**Members Absent:** Marc Andler

The Conservation Commission Public Hearing was called to order at 7:45 pm.

### **APPROVAL OF THE OCTOBER 6<sup>th</sup>, 2016 MEETING MINUTES**

The minutes from the previous meeting were reviewed.

MOTION : By M. Tamborini to approve the October 6<sup>th</sup> minutes, seconded by R. Salter, unanimously approved.

### **VOTING OF RULES AND RESPONSIBILITIES**

T. Bandrowicz nominated T. Ruskin to become the chairman of the Conservation Commission.

MOTION : By T. Bandrowicz for T. Ruskin to be Chairman of the Commission, seconded by M. Tamborini, all in favor.

T. Ruskin agrees, and moves from the “Acting Chair” to the official chair of the Conservation Commission.

With the resignation of Nelson Kessler from the Commission, a representative from the Conservation Commission must be chosen to be a member of the Earth Removal Advisory Committee (ERAC).

T. Ruskin stated that he has spoken with J. Simon about the ERAC position and that she is interested in the position, but could not confirm if she would become the representative or not. T. Ruskin mentioned that J. Simon also stated that if T. Bandrowicz wanted to be the member then she can.

Discussion about the resignation of Nelson Kessler and Mark Mahoney then followed and it was decided by the Commission that some token of appreciation for both of their volunteer civil service should be done.

## **86 PHILLIPS BEACH AVE (PROPERTY LOCATION: MAP 30, LOT 26) (MASSDEP FILE 71-304) – NOTICE OF INTENT**

James Emmanuel, landscape architect, was present and presenting on behalf of the applicants for 86 Phillips Beach Ave.

Before the meeting began, T. Ruskin stated that his father is a direct abutter to the property and asked if Mr. Emmanuel would want him to recuse himself from being a voting member of the Commission. Mr. Emmanuel mentioned that he did not see there being a problem with T. Ruskin being a voting member for the hearing.

The hearing began.

The applicants for 86 Phillips Beach Ave are seeking to get the Orders of Conditions to complete the construction of a new stone paver patio and assorted landscaping within 100' of a coastal bank.

Mr. Emmanuel first submitted to the Commission the affidavit confirming the mailing of the legal notice to the abutters, and the tear sheet from the newspaper confirming the legal ad ran.

Mr. Emmanuel began his presentation by explaining the proposed work with the help of a map showing the proposed site plan and the existing site plan of the property.

Mr. Emmanuel explained that the coastal bank is close to the home on the property and the "V-zone", or the flood zone, elevation is 21 feet. Mr. Emmanuel used the map to show that the work will not be in the "V-zone" elevation but only in the buffer zone.

Mr. Emmanuel, using the maps, explained that currently there is a landscaped lawn area, and that the house has a fairly large porch or veranda off of it, and that there are lots of boulders buffering the waterfront. Mr. Emmanuel explained that currently there is terracing down towards the water, with steps through the boulders to the water.

Mr. Emmanuel explained that nothing within the first 70 feet of the buffer zone would be touched. Mr. Emmanuel then moved on to explain the proposed work plans by showing it on the maps provided. The work that is proposed is the resurfacing of the deck/veranda that currently exists on the property. Mr. Emmanuel explained that at the moment the deck/veranda is tile, but the proposal calls for stone. The stone work will be bumped out and the steps will be redone, and there will be a new seating area at a lower part on the deck. The proposal also calls for the construction of a three-foot stone retaining wall which will create a terrace.

On the yard, opposite the side of the terrace, the grade will be brought up slightly to create immersion with the patio. The patio and the lawn will be integrated as well. The landscape layout will use stone and boulders to support and hold the earth in place.

Mr. Emmanuel explained that the project will be an augmentation to the terrace.

T. Ruskin asked how much higher the lawn will be, Mr. Emmanuel explained it will be generally two feet higher.

T. Ruskin asked if concerned about flooding.

Mr. Emmanuel explained that the elevation will allow water to drain off, and that currently the elevation is higher on one side than the other.

T. Ruskin asked if the neighbor on the left, facing the water, if they get more water. Mr. Emmanuel explained that no, the flood water direction will stay the same.

M. Tamborini asked Mr. Emmanuel where the new boulders will go. Mr. Emmanuel explained the boulders will be above the "V-zone" and they will be fairly sizable.

T. Ruskin asked if the boulders were being used as ocean protection, Mr. Emmanuel explained no, the boulders are too high up on the yard. T. Ruskin then asked if they were being used for the retaining wall, Mr. Emmanuel agreed.

T. Ruskin asked, if you were to be standing on the raised area, would you be able to see the boulders? Mr. Emmanuel said that conceptually, no. T. Ruskin then asked if the boulders were decorative? Mr. Emmanuel explained that they are not decorative and that you might be able to slightly see the boulders.

M. Tamborini asked Mr. Emmanuel if the stone work will be pervious. Mr. Emmanuel explained that the deck is impervious currently

T. Bandrowicz asked about erosion control during construction. Mr. Emmanuel explained that haybales and silt stalk will be used, T. Ruskin explained these specifications will be laid out in the Orders of Conditions.

M. Tamborini asked if there will be an issue with trucks operating and taking materials away during the construction. Mr. Emmanuel explained that the construction will probably require more to be brought in than taken out.

T. Ruskin then asked if there any more questions, there were none.

MOTION : By M. Tamborini to approve the Orders of Conditions based on the drawings provided and using the standard special conditions, seconded by R. Salter, unanimously approved.

### **34 BLODGETT AVE (Map 32, Lot 59) MASSDEP 71-305 – NOTICE OF INTENT**

The Applicants are looking to conduct driveway repairs, walkway replacements, repair drainage and irrigation components as needed, structure removal, and other property improvements to be conducted within Land Subject to Coastal Storm Flowage (flood plain) and 100-foot buffer zone to a coastal bank.

T. Ruskin a direct abutter to the property and member of the Conservation Commission asked the representatives for the property owner if they would like him to remove himself as a voting member of the Commission.

Attorney Kenneth Shutzer representing the Applicants of 34 Blodgett Ave, stated that his clients did not have a problem with T. Ruskin being part of the Board if he did not have any financial interest in the hearing. T. Ruskin stated he did not have any financial stake or interest in the decision but that he did not want to get in the middle of hearing do to neighborly concerns. T. Ruskin mentioned that he is worried that his voting, no matter which way, would disappoint either his current or his new neighbors. Attorney Shutzer stated he did not believe there was a problem if T. Ruskin did not have a financial incentive.

T. Bandrowicz mentions that at the last hearing for this property, T. Ruskin was asked to recuse himself.

T. Ruskin, the Commission, and the audience (including T. Ruskin's neighbors) discuss him being a voting member or not.

A commission member mentions that legally, T. Ruskin does not have to recuse himself. M. Tamborini, an indirect abutter to the property wondered if she might have to recuse herself. The Commission agrees that it is "OK" if M. Tamborini remains as a voting member, as she is not direct.

Attorney Shutzer again reiterated that his client and him do not mind if T. Ruskin participates in the vote.

T. Ruskin states that he believes he can make an impartial decision.

An abutter present states that they do not have a problem with T. Ruskin being a voting member if he can be impartial. An abutter present also mentions that she is worried that the abutters on the ocean side perceive the property different than those on the ocean side, such as T. Ruskin.

T. Bandrowicz clarifies that T. Ruskin is not making a decision on a matter of perspective of where he is to lot, but on the law and regulations, and if as an abutter, you feel aggrieved, the you have right to appeal, but cannot appeal on tom voting on a decision as an abutter, only appeal on the grounds of a decision.

Eva Hoppenstein, an abutter to the project asks T. Ruskin to recuse himself as a voting member.

T. Ruskin's recusal as a voting member reduced the Commission voting members below the amount needed for a quorum. Jennifer Simon, a member of the Commission absent at the time, was called and asked to attend.

A short time later J. Simon arrived at the meeting and T. Ruskin updates her on the previous discussion. T. Ruskin then recuses himself and the hearing is opened.

Attorney Shutzer began by stating he is representing the applicant, Sea Lion Realty Trust and that also present is Peter Ogren from Hayes engineering. Attorney Shutzer explains the Notice of Intent narrative was put together by Hayes Engineering and Mr. Ogren will be explaining the plans and can answer questions.

Mr. Ogren then began.

Mr. Ogren explained that the NOI was for a series of activities that are minor and that the applicant might have applied for a Determination of Applicability for these activities are so minor, but because the work will be done in a resource area, they have done a NOI.

Mr. Ogren then mentions that they have received correspondence from the DEP and the project number is 71-305.

Mr. Ogren then handed forward to the Commission copies of the legal notice sent to abutters.

Mr. Ogren then explained to the Commission that the property had originally gone in front of the Commission before with plans to take the house on the property down and build a larger structure. But the owners at the time abandoned that project and sold the property to the current owners, who are being represented in front of the commission today as they wish to do primarily landscape changes, Mr. Ogren explained.

Mr. Ogren then used a map to show the proposed work on the property. Mr. Ogren explained the work will be done on the coastal plain, where there is a "v-zone". The work taking place in the coastal plain is the reasoning behind the filing of the NOI instead of a Determination of Applicability.

Mr. Ogren explained the work being requested is the repairing of existing irrigation in the front lawn. Currently there is a system in place but it is very shallow and has breaks. Mr. Ogren also mentioned there was repairs to be done on the drainage and was unsure of the extent of the repairs. Mr. Ogren explained he is not sure if the retaining wall has drainage, but that there is a parapet on it and there is a buttress wall, which there will be no changes too. Mr. Ogren then explained that the bulkhead and stairway next to it will be removed.

T. Bandrowicz asked why Mr. Ogren did not have the specifics on the work that needs to be done.

Mr. Ogren explained that he has inquired into the repairs that need to be done, but does not know if any of the pipes come out of the sea wall for irrigation.

Mr. Ruskin, now a member of the audience and acting as an abutter mentioned that the pipes in the sea wall are there for irrigation. M. Tamborini then asked if they are "weepholes", T. Ruskin responded that he helped with the building of the sea wall and that the sea wall has filter fabric and stone, and holes every 20 feet down the wall. Mr. Ruskin stated that on the sea side there are pipes that go through the wall and drain.

Mr. Ogren clarified that the “weepholes” are there to take hydrostatic pressure off of the wall. Mr. Ogren then asked Mr. Ruskin if there was one large drain reminiscent of the one at the Beach Club, Mr. Ruskin replied there is not. Mr. Ogren then mentioned that he understands there are drain tiles in the lawn.

Mr. Ruskin stated that there are some things that can be done for back yard drainage, such as putting stones all the way across the back yard and having the water drain into the filter. Mr. Ogren then showed on a map a drain grate he believed the water might drain into, Mr. Ruskin stated the water goes into the filter fabric.

Mr. Ruskin mentions there is a prescribed method where you can put slits in the fabric. Mr. Ogren mentioned that there has been vague specifications on the drainage problems.

Mr. Ogren stated that on the parapet wall there are no scuppers to stop the water from coming back in. Mr. Ruskin then explained to M. Tamborini what the scuppers are.

Mr. Ogren then using a provided map showed the grade of the wall and the current method of drainage. Mr. Ogren hypothesized on what could be the problems with the drainage, and can get more information if needed.

R. Salter asked Mr. Ruskin to clarify the drainage method he has described. Mr. Ruskin stated that there are slits in the drainage fabric just like on his property.

M. Tamborini, who also lives within 100 feet of the water mentioned that she doesn't believe her yard to have the slits. Mr. Ruskin stated that she does, then recommended Mr. Ogren look into the slit drainage technique.

Attorney Shutzer asked that it be put on the Orders of Conditions.

Mr. Ruskin explained that the wall in 1992 was finished but then taken down by the “No-Name Storm”.

Mr. Ogren then continued with his explanation of the proposed work. He mentioned they are looking to put bluestone steps that lead into an alcove between the garage and dwelling. M. Tamborini asked how far out the steps will go, because she mentioned there is a bowl that is created by the grade on the property. Mr. Ogren stated that there is no bowl created on the property. Mr. Ruskin stated that there is a bowl, and M. Tamborini asked Mr. Ruskin to show Mr. Ogren. Mr. Ogren explained that they will have enough room to extend the stairs, Mr. Ruskin clarifies for Mr. Ogren that there needs to be 25 feet of pervious material before the sea wall, which the proposal has.

M. Tamborini asked if the bluestone will be concreted in or sanded in?

Mr. Ruskin explained that either of those decisions does not matter because they have the required 25 feet of space.

Mr. Ogren explained that bluestone laid in sand is not great for permeable areas.

Mr. Ogren continued to explain the repairs being made. The bituminous driveway will be repaired and repaved. An abutter in the audience asked if the drive way will be repaired or repaved? Mr. Ogren mentioned that the application provided to the Commission stated repairs, so he thought it meant repave, as he does not imagine the owners would just patch the driveway.

Mr. Ogren mentioned that there is a stump from a tree that was already taken down that needs to be removed and graded out, and that other plantings need to be set. Mr. Ogren also explained that the owners want to put pillars up in the front and install landscaping in the front as well, including privet hedges and Rosa Rogosas on the property line. Attorney Shutzer asked if the pillars sit outside of the buffer zone, Mr. Ogren replied that they sit right outside of the zone, T. Bandrowicz confirmed.

Mr. Ogren reiterated that a majority of the proposal is just landscaping, but because the landscaping and repairs will be done in the resource area, the NOI was filed.

Attorney Shutzer then mentioned that the owners were previously in front of the Commission on May 24<sup>th</sup>, but because they are doing minor repairs on the property they are back in front of the Commission and they want to discuss the little repairs that need to be addressed.

T. Bandrowicz stated that the previous hearing had decided that if the owners do additional work than they would need to go back. Attorney Shutzer and Mr. Ogren both agreed and mentioned that this is why they are back.

Mr. Ogren explained that they were originally there for an addition, and Attorney Shutzer confirmed this.

T. Bandrowicz then opened up the hearing to questions from the abutters.

Jackie Shanahan, of 37 Blodgett Ave was present.

Ms. Shanahan stated that there were other elements to the plan and does not think that the proposal should be characterized as "small". Ms. Shanahan stated that you cannot see in the maps provided in the application what is actually and currently there. Ms. Shanahan explained that the flood plain extends from the water front to across the street to the sidewalk area, and that the proposed pillars are within a high-velocity flood zone, and is unclear of the drainage. Ms. Shanahan also stated that she has never seen an irrigation system. T. Bandrowicz asked if she had seen the backyard. Mr. Ruskin also mentioned that he did not think there was an irrigation system there, and also agreed with Ms. Shanahan that these proposed work plans and repairs are not minor.

Ms. Shanahan stated that the previous owner of 34 Blodgett Ave filed to take down the home on the property completely, but that the Planning Board denied this, and the owners then sold. Ms. Shanahan mentioned that she had concerns about the rod iron gate, and that currently there is no gate there. Ms. Shanahan also explained that she is nervous that the bluestone pillars could come loose as well as the rod iron gate and is

unsure of the characteristics of them. Ms. Shanahan mentioned that the slate walkway in front of the home is currently 5 feet wide, but that the proposed plans call for it to become 18 feet wide, with a concrete apron.

Ms. Shanahan then continued to state that there is no patio in the back of the property, and that currently that space is grass. Ms. Shanahan then stated that the Commission needs to take into account that the backyard on the property now is approximately 4,000 sf, but with the new work being proposed, a third of back yard would become impervious due to the stone deck. Ms. Shanahan also stated that if using concrete, that is must be laid in sand. Ms. Shanahan also asked that the runoff from the roof coupled with the backyard changes be taken into account.

M. Tamborini asked why there is more runoff then before. Both Mr. Ruskin and Ms. Shanahan explained that the addition made the roof larger, and this added more runoff. M. Tamborini then asked if Ms. Shanahan is worried about the flooding after the proposed work is done? Ms. Shanahan replied that much of the soil disruption has happened already, and is wondering if the owners will be bringing in any more soil and if they are going to re-seed the grass, then Ms. Shanahan stated she believes the plans call for a complete re-do of the backyard. Ms. Shanahan then mentioned that the work being proposed in the front of the home would be unprecedented for the street. R. Salter stated that the work in the front of the home is not for the Commission to decide on because it is out of the Commissions purview.

Ms. Shanahan mentioned that the landscaping proposed for the property was not compatible with the beach, and that debris from the property could wash on to the beach. Ms. Shanahan also mentioned that there would be less of an ability for the backyard to take on water with the impervious additions, and the flooding would spread wider. Mr. Ruskin agrees. The Commission then asked Mr. Ruskin to explain the regulations regarding work on or near the sea wall.

Mr. Ruskin explained that for proposed work to satisfy the sea-wall regulations there must be a 25-and-a-half foot buffer zone back from the wall, and that the slope of the property be appropriate. Mr. Ruskin mentioned that the buffer zone back from the wall must be pervious and be either sand or grass. Mr. Ruskin also mentioned that the slope of the property currently, is correct, and asked Mr. Ogren if the slope will change? Mr. Ogren stated it will not, and Attorney Shutzer agreed. Attorney Shutzer then asked if these sea-wall conditions can be added as a formal condition added on the special conditions for the decision. Mr. Ruskin mentioned that these are already a part of the conditions.

Mr. Ruskin also mentioned that you cannot plant within either two feet or 18 inches of the sea wall, this is done so that the roots of the plantings do not impede on the sea wall. Attorney Shutzer and Mr. Ogren explained only Rosa Rogosa's would be planted, and then Mr. Ogren stated that he had not heard about this rule, but that the plantings



would be going on the property line on the sides of the property. Mr. Ruskin reiterated the plantings being placed either two feet or 18 inches back.

Mr. Ogren explained that the first planting will be almost six feet back from the wall, to which Mr. Ruskin explained is out of the way, and that the stone patio also must be 25-and-a-half feet back from the wall, which is done to allow water to go away from house. Mr. Ruskin reiterated that making the impervious patio closer than 25-and-a-half feet will cause more flooding.

T. Bandrowicz asked the abutters present if they are worried about the flooding in either the front or back of the property? Ms. Shanahan stated that the flooding from the back could flow to the front and reach the street. Mr. Ruskin mentioned that all houses that are on the street now have the 25-and-a-half foot setback from the sea wall and water currently does not flow to the street. Mr. Ruskin stated water will continue not to flow to the street if the pitch of the yard does not change.

Ms. Shanahan mentioned that she does not see how the pitch will remain the same after the proposed work is done. Ms. Shanahan points out that there is a drop from the deck to the back yard. Mr. Ruskin mentioned that there will be steps.

Ms. Shanahan and Mr. Ogren both reviewed the plans and discussed the existing grades and what the owners might do. Mr. Ogren mentioned that there is no change in grade from the house to the patio. Mr. Ruskin clarified that Ms. Shanahan is asking how to get on to the patio if there will be no grade change? Mr. Ogren used the maps to explain the plans.

Mr. Ruskin asked from the sliding glass door on the home to the patio how many steps would there be? Attorney Shutzer mentioned there would be two, ten-foot wide stairs, to which Mr. Ruskin mentioned would be allowed.

Mr. Ruskin then explained to Ms. Shanahan that if they do what was described, then that is ok. Mr. Ruskin continued to explain that they cannot raise the lawn up to the door, and that they over-all cannot change the grade of the lawn, to which Mr. Ogren agreed.

Mr. Ogren then asked the abutters what their objections were with the plans?

Ms. Shanahan stated that she is worried that when it floods, the floodwater will knock the pillars over and they will float across the street and into her home. R. Salter mentioned that the water will not flow that way due to the pitch in the backyard. Mr. Ogren then used a map of the elevations to show the grades and heights to Ms. Shanahan. Ms. Shanahan stated that she is confused, that she originally believed the back of the home to be a sponge, but the proposed plans call for blue stone, and the permeability of the back yard will change.

Mr. Ruskin then clarified that almost everyone on the street has as much impervious material in their back yards as the plans proposed. Ms. Shanahan stated she is worried

that now there is more impervious material being added. Mr. Ruskin explained that the sea wall engineer gave conditions that each backyard to have 25-and-a-half feet of pervious material between the wall and impervious material, which Mr. Ruskin mentioned the proposed plans satisfied these rules. Mr. Ruskin then explained that the backyard was previously reminiscent of a sponge because it did not have proper drainage, and that the owners should do the filter slits like many other properties in the neighborhood. Mr. Ruskin then reiterated that there can be no changes to the pitch, or adding soil to raise the yard, that both of these activities are not allowed.

T. Bandrowicz then asked Mr. Ogren to address Ms. Shanahan's concerns regarding the pillars potentially being moved by water.

Mr. Ogren explained the pillars will be in the "AO-zone" but not the "V-zone", and cannot imagine much force on the pillars. Mr. Ogren stated he did not have much information though on the pillars. Attorney Shutzer's client who was present mentioned the pillars will be paver stone. Mr. Ruskin asked if they will be decorative? Attorney Shutzer's client stated there will be plantings dotting the front property line, to which Mr. Ruskin stated will define the front yard. Mr. Ruskin asked if the pillars will be placed in a footing. The client stated that yes they would be in a footing, and then explained that essentially the pillars will be bluestone and each pillar will be five-feet high and 18-inches square.

Mr. Ogren mentioned that if there is the proper foundation used for the pillars and they are concrete, then he cannot see them being moved or knocked down, even if in the "AO-zone", and continued to mention, that if they are concrete, they will not float. Attorney Shutzer's client stated that the pillars will be used as a front entry.

Ms. Shanahan asked how tall the gate will be in the front, to which Mr. Ruskin stated was out of the Commissions purview, which R. Salter agreed too. Ms. Shanahan then asked if the owners would be able to take down an existing tree, to which Mr. Ruskin replied they can.

Mr. Ruskin stated that the most important part of the proposed plans are the flooding and protection of the sea wall, which Mr. Ruskin mentioned are all located in the backyard of the property.

Mr. Ruskin stated that as long as the plans have 25 and-a-half feet of pervious material, and the grade does not change, then the other plans the owners propose are not in the Commissions purview. Mr. Ruskin mentioned that the Commissions purview is the potential flooding and maintaining the sea wall. Mr. Ruskin mentioned that as a neighbor he needs their wall to be structurally sound, and that Mr. Ruskin likes the plans.

Eva Hoppenstein, an abutter who was also present, asked about the foundation of the plantings? Mr. Ogren explained that the plantings will be put around the foundation, and Attorney Shutzer stated they will act as a screen.

Mr. Ruskin asked if adding an impervious foundation for the plantings, Mr. Ogren and the representatives all replied no.

T. Bandrowicz asked if there were any other issues, to which none were mentioned.

Mr. Ogren asked for the Childs Engineering recommendations for the drainage of the property in regards to the sea wall. Mr. Ogren mentioned the client is willing to construct the drainage according to Childs Engineering.

M. Tamborini asked what kind of drain would be used, Attorney Shutzer mentioned which ever one was mentioned by Childs. Mr. Ogren and Attorney Shutzer reviewed the map to locate the drain in question.

Mr. Ruskin stated that the previous owner who lived there did not know what they were doing and tried to recreate a sponge like backyard, and made a makeshift drain that does not work, and it should be removed. Mr. Ogren mentioned that his client probably did know about this.

Attorney Shutzer summarized that himself and his client have learned that the current drain on the property does nothing and was inadvertently put in, and mentioned that his client will do what the Childs report says.

**MOTION** : By R. Salter to approve the Orders of Conditions for the project at 34 Blodgett Ave and that the Orders require that drainage be done as recommended by Childs Engineering, no change in the grade be done, at-least 25 and-a-half feet of pervious material back from the sea wall, and no plantings within two-feet or 18-inches of the wall, seconded by J. Simon, unanimously approved.

## **ADMINISTRATIVE BUSINESS**

J. Simon and T. Bandrowicz discussed whom will be the new Commission member representative for the Earth Removal Advisory committee. It was decided T. Bandrowicz will be.

MOTION by R. Salter to end the meeting, seconded by J. Simon, meeting closed.

Andrew Levin

*Assistant Town Planner*