

## **West Newbury**

### **Conservation Commission Meeting Minutes**

**Meeting date & place: 7:30 pm, April 22, 2019 Conservation Commission Office, 1910 Building**

**Members Present:** Chairman Dawne Fusco (left before close of meeting); Judy Mizner; Wendy Reed, Margaret Hawkins, Tom Atwood (arrived late), Conservation Agent Jay Smith

**Public Hearing --- Request for Determination of Applicability --- Blue Waters Vero LLC for 224 Main St –For grading associated with a septic repair within the buffer zone to a bordering vegetated wetland.**

Mr. Smith reported that he checked the wetlands delineation and moved the wetlands line approximately 40-50 feet upgradient from the delineated line. Using the revised line, the proposed grading remained 50 feet from the wetland resource area. The Commission agreed to issue the previously voted determination contingent upon the installation of erosion control to be inspected and approved by the agent.

#### **Public Hearing --- Notice of Intent – 17 Coffin St**

Mr. Atwood arrived

Thomas Hughes presented for the applicant. This is a septic system previously approved under a superseding order of conditions but not installed. The prior order has expired. The septic system is in the same location on the new plan as it was on the prior plan. The flag locations for the wetlands line flags on the old plan relevant to the septic system will be located by Christianson and Sergei and Mr. Hughes will then go out, hang new flags, and review that line, which was delineated in 2013.

A site walk was scheduled for May 3, 2019 at 8:00 am and the hearing was continued to May 16, 2019

#### **Request to Amend Determination of Applicability - 111 Indian Hill St**

According to DEP, a determination of applicability may be amended.

The proposed amendment would authorize the demolition of the existing garage and shed and the construction of a new garage outside the 25 foot natural vegetation area. This would be further from the wetlands than the existing garage.

Ms. Mizner moved to amend the current determination of applicability to authorize the demolition of the existing garage and shed, with the materials from that demolition to be disposed of outside the buffer zone and with erosion control to be installed by the applicant

and inspected by the conservation agent prior to any demolition, and to authorize the construction of a new garage and shed outside the 25 foot natural vegetation area.

Ms. Reed seconded the motion. The vote in favor was unanimous.

### **Request Concerning APR at Bailey's Lane/Bridg St**

The owner of the farm, Mr. Dunajski, is requesting that the Conservation Commission, as the co-grantee of the Agricultural Preservation Reservation (APR) on the property, sign off on proposed work on the farm under the APR. The Massachusetts Department of Agricultural Resources has asked the Commission review the proposal.

Mr. Dunajski explained that the issue is erosion of the farm road from drainage coming off the barn roof and out of the field. The water flows down the road and then cuts back into the field and goes into a pond. He proposes to replace the drain pipe to the pond and to install a catch basin (6' x 8') to address the water flow. He also proposes to repair and regrade the existing roadway, a length of approximately 1,500 – 2,000 feet extending from the barn.

Mr Dunajski also proposes to create a manure holding area, approximately 100' x 150', on the site of the old barn, using 4' x 8' cement blocks to surround either the existing hard pack or a new cement pad. The area would be sloped so any manure will run onto the field.

Mr. Dunajski's granddaughter has written a grant proposal for funds for the work.

Mr. Dunajski also discussed the cleaning of a stream along Bridge St. No more work will be done along the bank.

Ms. Mizner moved that the Commission approve the proposals to repair the roadway, install a catch basin and drainage pipe, and create a manure holding area and find that the activities do not defeat or derogate from the intent of the APR. Mr. Atwood and Ms. Reed seconded. The vote in favor was unanimous.

Mr Atwood asked whether the stream is on Town property or the landowner's property and whether the DPW has plans for drainage maintenance. Mr. Smith will obtain information.

### **Request for Determination of Applicability (RDA) - 219 River Road**

An RDA was filed in November, 2018 for repaving the driveway and repairing the dock.

The minutes from November reflect that the details for dock repair would be addressed in the spring.

Scott Brown, owner, reported that they currently use planks to access the fixed pier from the roadway. The planks float away. He proposes a 35' ramp made of pressure treated lumber to span the area from the road to the pier, using one diamond pier in the middle of the span for support.

The Commission discussed the need for spacing between planks on the ramp to allow for light to reach vegetation under the ramp.

Ms. Mizner moved to authorize the construction of the ramp shown on the plan of October 31, 2018 conditioned upon  $\frac{3}{4}$  inch spacing between the planks and disposal of any soil removed for construction outside the buffer zone. Mr. Atwood seconded. The vote in favor was unanimous.

### **Discussion – 127 River Rd – enforcement order**

Peter Niehaus, the owner, was present. Mr. Smith reported that he had issued an enforcement order for violation of condition #5 of the order of conditions, proscribing the cutting of vegetation in a resource area without a filing with the Commission.

Mr. Smith reported the cutting of trees on the bank and the trimming of vegetation in the wetlands. A crew was working on the cutting when he arrived.

Mr. Niehaus explained that there was a storm damaged tree by the dock last year and he had it cut down. The arborist, Carpenter Costin from Swampscott, also removed five trees -2-3 Norway maples, 2 locusts and a buckthorn.

Mr. Niehaus wants to cut down additional trees. He would like to put in dogwoods, winterberry, swamp azaleas, native shrubs. The Commission explained he would have to submit a filing for such work and told him to leave the wood where it has fallen.

### **Discussion – John McGrath – Planning Board decision concerning 22 Church St**

The Planning Board had provided the Commission with a copy of an application for modification to a Definitive Plan Approval dated May 3, 2001 to modify the Approval so as to conform to the Variance for insufficient frontage approved by the Zoning Board of Appeals, and requested comments, if any.

Mr McGrath, the owner of the property, was present and explained that he wanted the Conservation Restriction requirement imposed by the Planning Board in 2001 removed. The restriction referred to in the ZBA decision was lower case and did not require the Conservation Restriction imposed by the Planning Board. Mr. McGrath described alternative divisions of the land, one of which would, in his view, leave no land for a Conservation Restriction and one of which would require placing 7  $\frac{1}{2}$  acres into a Conservation Restriction.

Ms. Mizner said that Mr. McGrath's letter to the Planning Board stated that he was asking to modify the Approval to conform to the ZBA variance, but that the specific language Mr. McGrath proposed did not conform to the ZBA decision granting the variance. Mr. McGrath's proposed language would amend the Planning Board chronology to read: "Zoning Board of Appeals issued a favorable decision on a request for a variance for insufficient frontage." However, the ZBA decision stated: "The Board further voted the granting of this Variance is conditioned on that further development of Lot 2 as shown on

said plan is restricted to two additional building lots to front Church Street and one unbuildable lot encompassing the remainder of the property.” To be consistent with the ZBA decision, the amendment to the Planning Board decision should reflect the ZBA’s conditions. At Mr. McGrath’s request Ms. Mizner pointed out the language in Mr. McGrath’s request and in the ZBA’s decision.

Ms. Mizner said this was not taking a position on whether the Planning Board should remove the Conservation Restriction, but was simply pointing out language that should be added to Mr. McGrath’s proposed language to make any amendment consistent with the ZBA decision.

Mr. McGrath made some comments concerning earlier matters. He described the expansion and shrinkage of pressure treated lumber vis-à-vis requiring spacing between planks and the relevance of orientation to access to sunlight. He expressed his views on taking down heavy trees preemptively on the river bank to prevent mudslides. He expressed his view that open ground in certain developments should have been covered.

Ms. Fusco left the meeting for the evening.

Ms. Mizner moved to provide a comment to the Planning Board that in order to make the Planning Board decision consistent with the ZBA variance decision, the Planning Board could consider adding to Mr. McGrath’s proposed amendment to the Chronology the language from the ZBA decision that the variance was conditioned on that further development of Lot 2 as shown on said plan is restricted to two additional building lots to front Church Street and one unbuildable lot encompassing the remainder of the property.

Ms. Hawkins seconded. The vote was 3-1 in favor, with Mr. Atwood voting in the negative and stating that he believed the comment was outside the Commission’s purview.

### **Discussion – letter from Kristi Devine**

The Commission discussed the latest letter from Ms. Devine and whether and how to respond. It discussed a response repeating that the Commission has disagreed with her accounts and characterizations of issues arising during the course of the construction of the premises at 7 Montclair Rd. and would not revisit them. However it would address her statement that the Commission had said work at 97 Moulton St was in the wetlands, as the Commission had stated that the work there was in the buffer zone.

The Commission discussed sending a letter to DEP addressing the absence of a certificate of compliance for Ms. Devine’s property and the continuing violations on that property.

Mr. Atwood moved that the Commission send a 3 sentence response with copies to the Town Manager and Town Counsel. Ms. Reed seconded. The vote in favor was unanimous.

Mr. Atwood moved that the Commission send DEP a registered letter concerning the absence of a certificate of compliance for the property at 7 Montclair Rd and the continuing violations occurring there. Ms. Reed seconded. The vote in favor was unanimous.

The Commission will revisit the issue at the first meeting in June if there is no response.

## **Discussion – Article 29**

The Commission discussed the proposed Zoning By-law amendment concerning erosion control and suggested clarification to require erosion control for any disturbance of more than one acre.

## **Other Business**

Ms. Hawkins raised the question of whether tree cutting on Archelaus Place was appropriate. Mr. Smith will inspect.

The owner of property at 7 Whetstone St will be asked to attend the next Conservation Commission meeting to discuss cutting in a no-disturb area.