

Newburyport Conservation Commission
August 20, 2019
Senior Community Center, 331 High Street
Minutes

1. Call to Order

Vice Chair Steve Moore called a meeting of the Newburyport Conservation Commission to order at 6:45 p.m.

2. Roll Call

In attendance were members Doug Muir, David Vine, Paul Healy, Dan Warchol, Dan Bourdeau and Steve Moore. Joe Teixeira was absent. Conservation Administrator Julia Godtfredsen was also in attendance.

3. Minutes

Paul Healy moved to approve the minutes of the July 16, 2019, meeting as amended. Dan Bourdeau seconded the motion. The motion was approved.

4. Plum Island Updates

In the spring the Commission members had signed an undated emergency certification for the nourishment of the dune on Reservation Terrace with sand from the Charos beach and parking lot. The work was postponed and will now commence sometime after August 31.

5. Certificates of Compliance, Requests for Determinations, Requests for Minor Modifications

Jill Haley Murphy and Michael Murphy

15 Plum Island Turnpike

Request for Certificate of Compliance

DEP File #051-0525

An Order of Conditions was issued in 2000 for the construction of a deck but a Certificate of Compliance was never requested. The builder submitted a letter and photographs demonstrating that the work was completed according to the approved plans. Dan Bourdeau moved to issue a Certificate of Compliance. Doug Muir seconded the motion. The motion was unanimously approved.

Massachusetts Electric Company

95 Water Street

Request for Certificate of Compliance

DEP File #051-0927

In 2015, the Commission issued an Order of Conditions for the installation of Hesco bags to protect the substation from flood events. The applicant did not proceed with the installation of the bags and does not intend to install them in the future. The Commission issued a permit at a later date for the replacement of a breached timber bulkhead, a project that included the construction of a berm that would place the substation outside of the floodplain. The vegetation that was to screen the Hesco bags has been planted. Dan Warchol moved to issue a Certificate of

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Compliance indicating the Order of Conditions is invalid. Doug Muir seconded the motion. The motion was unanimously approved.

Massachusetts Electric Company

95 Water Street

Request for Minor Amendment

DEP File #051-0964

In 2017, the Commission issued an Order of Conditions for the replacement of a timber bulkhead with a stone revetment. The vegetation in one area behind the wall did not become established and was replaced with rip rap without Commission approval. The applicant was not able to provide sufficient information on the reason for the failure of the vegetation and must provide alternatives for the enhancement of the area with plantings.

The applicant also requested permission to fill a depression in the parking lot that creates a safety hazard. The Commission members gave permission for this portion of the work. No vote was taken.

Estate of William Ring Jr.

9 78th Street

Request for Certificate of Compliance

DEP File #051-0903

An Order of Conditions was issued in 2013 for the removal of two sheds and the installation of a combination garage and shed. The required 64 square feet of beach grass was planted, but was done in an area alongside the house rather than in the location of the old sheds, as had been indicated on the approved plans. Stairs were installed on the new shed in place of the ramp that had been approved. The applicant submitted an as-built plan. Paul Healy moved to issue a Certificate of Compliance. Dan Bourdeau seconded the motion. The motion was unanimously approved.

John R. Woelfel, Esq.

3 Boston Way

Request for Certificate of Compliance

DEP File #051-0156

An Order of Conditions was issued in 1987 for the construction of two structures and associated parking. Julia Godtfredsen reviewed the wetland delineation for the site in June 2019, when an ANRAD was requested. Paul Healy moved to issue a Certificate of Compliance. Dan Bourdeau seconded the motion. The motion was unanimously approved.

Innocor Foam Technology

108 Parker Street

Request for Determination of Applicability

The applicant is requesting to repair an outlet pipe from a catch basin in the parking lot of an industrial building. The pipe is within the 100-foot buffer zone of a constructed wetland. Doug Muir moved to issue a Negative 3 Determination with the conditions that rip rap or a similar energy dissipator shall be installed at the end of the pipe to prevent erosion and the Commission shall review any work other than that presented in the RDA or any unforeseen issues that would

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result in impacts to the resource area. Paul Healy seconded the motion. The motion was unanimously approved.

James Heiss, University of Massachusetts

244 Merrimac Street (Cashman Park)

Request for Determination of Applicability

The applicant is requesting to install monitoring wells in the river near Cashman Park in order to study the interaction between ground water and surface water. The Commission members had too many questions about the proposal to permit the issuance of an RDA at this time. It is not known if the data loggers would impact navigation. The approval of the Harbormaster must be received, along with that of the Parks Department if the data loggers were to be located on shore instead of in the water. DEP and Natural Heritage should be contacted about time of year restrictions. Dan Bourdeau moved to continue the request to the September 3 meeting. Dan Warchol seconded the motion. The motion was unanimously approved.

Doug Robie

1 Marshview Way

Request for Determination of Applicability

The applicant is proposing to construct two small additions and make other improvements to a single-family home near the river. The ordinance provides exemptions for accessory structures to a single-family home in the outer 50 feet of the buffer zone. Paul Healy moved issue a Negative 2 Determination. Dan Warchol seconded the motion. The motion was unanimously approved.

6. Public Hearings

Paul Healy moved to open the public hearings. Doug Muir seconded the motion. The motion was unanimously approved.

Nicole Young Nadeau

6 Bayne Lane

Notice of Intent

DEP File #051-1011

The applicant requested an extension. Dan Bourdeau moved to continue the public hearing to the September 17 meeting. David Vine seconded the motion. The motion was unanimously approved.

3 Stanley Tucker Drive, LLC c/o Zampell Refractories, Inc.

3 Stanley Tucker Drive

Notice of Intent

DEP File #051-1014

The plans for the expansion of the building were previously revised based on comments made at a site visit and the applicant presented no new material. The Planning Board's peer reviewer submitted a letter stating his concerns have been addressed. Doug Muir moved to close the public hearing. Dan Bourdeau seconded the motion. The motion was unanimously approved.

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K & B Zampell Realty, Inc.

17 Malcolm Hoyt Road

Notice of Intent

DEP File #051-1012

The plans for the expansion of the building were previously revised based on comments made at a site visit and the applicant presented no new material. The Planning Board's peer reviewer submitted a letter stating his concerns have been addressed. Dan Bourdeau moved to close the public hearing. Dan Warchol seconded the motion. The motion was unanimously approved.

5 Stanley Tucker Drive, LLC

5 Stanley Tucker Drive

Notice of Intent

DEP File #051-1016

The applicant wishes to focus on the building expansions at 17 Malcolm Hoyt Road and 3 Stanley Tucker Drive at this time and has not yet submitted findings for a variance. Dan Bourdeau moved to continue the public hearing to the September 3 meeting. Dan Warchol seconded the motion. The motion was unanimously approved.

Ben Legere, Downeast Building and Development, LLC

3-7 Colby Farm Lane and 181-183 Low Street

Notice of Intent

DEP File #051-1015

The applicant reviewed the revisions to the narrative and plans based on comments made at the July 16 meeting. The property lines were changed for two lots to reduce their proximity to the 25-foot no-disturb zone. A pollinator meadow management plan was submitted. A snow storage area was identified on the plan. The path was relocated to accommodate the snow storage area and a break will be placed in the fence to allow for plowing. The monitoring reports for the stormwater pollution protection plan will be submitted to the Conservation Agent on a regular basis. The portion of the lots where the infiltrator basins are located will be seeded with a pollinator mix and maintained to appear as a natural slope and to hide the infiltrators. A split-rail fence will be placed at the top of the slope and signs will be added to indicate the area is restricted. A description of the boundaries of the usable portions of the lots will be included on the deeds. Fencing and silt socks were added to the erosion control plan. The applicant is working with the City to develop a plan for on-street parking for the path between the horse trail and the development. The Conservation Commission and DPS shall approve of the material to be used for the path.

Frederick Habeeb

5 75th Street

Notice of Intent

DEP File #051-1020

The applicant requested an extension. Dan Bourdeau moved to continue the public hearing to the September 3 meeting. David Vine seconded the motion. The motion was unanimously approved.

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Christopher Horan, Murphy House Realty Trust

3 63rd Street

Notice of Intent

DEP File #051-1018

Tom Hughes represented the applicant, who is proposing to demolish an existing single-family home on a solid foundation and replace it with a new home elevated on pilings. Parking for two cars would be located under the structure. The footprint of the new structure would be smaller than that of the existing. Beach grass would be planted in any undeveloped area of the site and the project would result in a net gain in the amount of vegetation on the site. The plan does not show the areas on the site that are to be planted, but this information is contained in the narrative. The elevation above grade is also mentioned in the narrative but must be labeled on a drawing, as well as the elevation of the lowest horizontal structural member. Doug Muir moved to close the public hearing. Dan Bourdeau seconded the motion. The motion was unanimously approved.

Christopher Horan, Seacoast Homes, LLC

5 63rd Street

Notice of Intent

DEP File #051-1017

Tom Hughes represented the applicant, who is proposing to demolish an existing five-unit structure with a solid foundation and replace it with a five-unit structure on pilings with an increased number of bedrooms. Parking would be located under the structure and the size of the driveway would be reduced. The reduction of impervious surfaces would result in an additional 1,500 square feet of vegetation on the site. All undeveloped areas will be planted with beach grass or other native dune species. Perpetual conditions for the site shall be included in the condo documents. David Vine moved to close the public hearing. Dan Bourdeau seconded the motion. The motion was unanimously approved.

Ron Guertin

1 Spofford Street

Notice of Intent

DEP File #051-1019

Tom Hughes represented the applicant, who is proposing to remove three mature trees that were deemed by an arborist to be hazardous. Other trees would be pruned to maintain their health. Dan Bourdeau moved to close the public hearing. Doug Muir seconded the motion. The motion was unanimously approved.

Doug Muir moved to close the public hearings. Dan Bourdeau seconded the motion. The motion was unanimously approved.

7. Enforcement

9 Doe Run Drive

At the previous meeting an Enforcement Order was issued for the installation of an above-ground swimming pool in a wetland restoration area. The property owner contacted Julia Godtfredsen after a constable delivered the Enforcement Order and stated the pool would be removed immediately. The property owner was asked to provide photographs showing the area

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from which the pool was removed and to attend the September 3 meeting to present a restoration plan for the wetland area.

229 Northern Blvd.

The property owner contacted Julia Godtfredsen after receiving a Notice of Violation for a pool, shed and deck that were installed without a permit. He stated he would remove the pool and file a Notice of Intent for the deck and shed.

8. Orders of Conditions

3 Stanley Tucker Drive, LLC c/o Zampell Refractories, Inc.

3 Stanley Tucker Drive

DEP File #051-1014

Doug Muir moved to issue an Order of Conditions. Dan Bourdeau seconded the motion. The motion was unanimously approved.

K & B Zampell Realty, Inc.

17 Malcolm Hoyt Road

Notice of Intent

DEP File #051-1012

Dan Warchol moved to issue an Order of Conditions. Dan Bourdeau seconded the motion. The motion was unanimously approved.

Christopher Horan, Murphy House Realty Trust

3 63rd Street

DEP File #051-1018

David Vine moved to approve an Order of Conditions with the standard Plum Island special conditions and the additional special conditions that: 1) the Order of Conditions shall not be issued until the Conservation Commission has received an architectural drawing that shows the elevation of the lowest horizontal structural member; 2) no additional cut grass or mowed lawn shall be permitted on the site; 3) the space below the skirting around the parking area shall not be blocked in a way that prevents the movement of windblown sand; 4) American beach grass shall be planted in any area in which the existing vegetation is disturbed and 5) the applicant may submit for review and approval an additional landscape plan in which other native dune species may be substituted for American beach grass. Doug Muir seconded the motion. The motion was unanimously approved.

Christopher Horan, Seacoast Homes, LLC

5 63rd Street

Notice of Intent

DEP File #051-1017

Doug Muir moved to approve an Order of Conditions with the standard Plum Island special conditions and the additional special conditions that: 1) the Order of Conditions shall include a finding that the permitting decision is based strictly on compliance with the performance standards of the Wetlands Protection Act and the number of bedrooms permitted is an issue for the Zoning Board and outside of the jurisdiction of the Conservation Commission; 2) the Order

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of Conditions shall not be issued until a letter is received from the Water Department and Sewer Department giving approval for the proposed number of bedrooms; 3) the Order of Conditions shall not be issued until the applicant has submitted an architectural drawing showing the elevation of the lowest horizontal structural member; 4) no additional cut or turf grass shall be permitted on the site; 5) American beach grass shall be planted in any area in which the existing vegetation is disturbed or where an additional footprint is removed; 6) the applicant may submit for review and approval an additional landscape plan in which other native dune species may be substituted for American beach grass and 7) prior to the issuance of a Certificate of Occupancy the applicant must submit to the Conservation Commission for review and approval the condominium association document that includes the Order of Conditions and lists the perpetual conditions that the open space shall not be used for the parking of cars, boats, trailers, recreational vehicles, etc.; there shall be no mowing of the beach grass; no mulch or soil shall be added to the site and only beach grade sand shall be used for any planting areas; no fencing shall be installed without prior review and approval from the Conservation Commission and the space below the skirting around the parking area shall not be blocked in a way that prevents the movement of windblown sand. Dan Bourdeau seconded the motion. The motion was approved with Paul Healy abstaining.

Ron Guertin

1 Spofford Street

DEP File #051-1019

Paul Healy moved to issue an Order of Conditions with the special conditions that: 1) the tree stumps shall be left in place or ground and the roots shall not be disturbed so as to prevent erosion and 2) three pine trees or other native conifers shall be planted to replace those that are being removed and the Conservation Administrator shall review and approve the location and species of these trees prior to planting. Doug Muir seconded the motion. The motion was unanimously approved.

Ben Legere, Downeast Building and Development, LLC

3-7 Colby Farm Lane and 181-183 Low Street

DEP File #051-1015

Dan Warchol moved to approve an Order of Conditions with the special conditions that: 1) prior to the issuance of the Order of Conditions, the applicant shall provide a cross section of and specifications for the unpaved public use path; 2) the applicant and/or homeowners' association shall be responsible for the ongoing maintenance of the proposed pollinator meadow at the rear of the development adjacent to the infiltration tanks and the City's open space; 3) the applicant and/or homeowners' association shall be responsible for the ongoing maintenance of the proposed stormwater management system including the underground infiltration tanks now and into the future; 4) the Conservation Commission shall review and approve the homeowners' document before any certificates of occupancy are issued; 5) permanent placards shall be placed on the split-rail fence that identifies the adjacent area as restricted land and the draft design of the placards shall be submitted to the Conservation Commission for review and approval; 6) the applicant shall install additional planting as necessary if the City decides the stone drainage swales at rear of the structure are not adequately screened; 7) the applicant shall submit a NPDES general permit and a stormwater pollution prevention plan to the City Engineer and the

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Conservation Commission prior to the start of work and 8) the applicant shall provide prior to the issuance of any certificates of occupancy proof of the recording of the deed that transfers open space within the OSRD to the City as proposed by the applicant. Dan Bourdeau seconded the motion. The motion was unanimously approved.

9. Adjournment

Dan Bourdeau moved to adjourn the meeting at 11:10 p.m. Doug Muir seconded the motion. The motion was unanimously approved.