

Newburyport Conservation Commission
May 19, 2020
Online Meeting
Minutes

1. Call to Order

Chair Joe Teixeira called a meeting of the Newburyport Conservation Commission to order at 6:45 p.m.

2. Roll Call

In attendance were members Steve Moore, Joe Teixeira, David Vine, Dan Warchol and Paul Healy. Conservation Administrator Julia Godtfredsen and Planning Director Andy Port were also in attendance.

3. Minutes

Steve Moore moved to approve the minutes of the May 5, 2020, meeting as amended. David Vine seconded the motion. The motion was approved by a 5-0 vote (Joe Teixeira, yes; Steve Moore, yes; David Vine, yes; Dan Warchol, yes; Paul Healy, yes).

4. Old and New Business

Plum Island Updates

Julia Godtfredsen said there has not been any more damage to the dune along Reservation Terrace since the last meeting. Mayor Holaday is working with DEP to develop a permittable protective measure for the top of the dune.

GBBT Nature Trail Updates

Jerry Mullins described the two major actions he would like to undertake along the trail. He she he would like to be able to do the work under an RDA. He is proposing to remove the unattractive rusted guardrails near the culverts and replace them with a split-rail fence to protect the users of the trail. He is also proposing to place four or six inches of sod along the edge of the pavement of the old roadbed. The resulting berm would be broken along its length to allow stormwater to flow into the existing drainage system. The discussion revealed that what Mr. Mullins is characterizing as sod is instead soil with a seed mix. The Commission members pointed out that the soil could easily wash away before the grass becomes established. The work would require the installation of a significant amount of erosion control to ensure the material does not wash into the streams and storm basins. Some of the proposed work might be within the 25' no-disturb zone. It would be necessary to impose several special conditions and Mr. Mullins was informed that he would be required to file a Notice of Intent.

The Commission members recommended that the existing guardrails be left in place. Their removal could cause more disruption than anticipated. They could serve as a historic reference to the old roadbed and interpretive signage could be installed.

Steve Moore said Mr. Mullins created a mess when he cut birch trees along the trail. He left behind debris and six-foot stumps. Mr. Mullins responded the trees leaned over the path and

were hazardous. He also said he has received grants to perform trail maintenance. The difference between pruning and tree removal was explained. Some of the work was within 100-foot buffer zone and a portion of it might have been within the 25-foot no-disturb zone. He was reminded that no work is to take place in a resource area without Conservation Commission approval.

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

Jeffrey and Donna Sprague

15 63rd Street

Request for Certificate of Compliance

DEP File #051-0945

The applicants requested a Certificate of Compliance at the January 7 meeting. They installed a peastone driveway that is larger than was approved and extends into an area that was to be planted. They were informed at the January 7 meeting that they must plant 50 to 60 square feet of beach grass along the front of the property in compensation. The Request for Certificate of Compliance was continued to tonight's meeting. Mr. Sprague said he intends to install shrubs and ground cover that are native to Plum Island in the planting area but has not been able to do so because of COVID-19. He requested a two-month extension. Paul Healy moved to continue the Request for Certificate of Compliance to the July 21 meeting. Steve Moore seconded the motion. The motion was approved by a 5-0 vote (Joe Teixeira, yes; Steve Moore, yes; David Vine, yes; Dan Warchol, yes; Paul Healy, yes).

Six Perkins Nominee Trust c/o Anthony Barbaris

6 Perkins Way

Request for Minor Modification

DEP File #051-0933

Bill Holt said that while the project was designed with drive-in doors, the applicant would prefer loading docks. This would require the construction of ramps and retaining walls. Mr. Holt reviewed the change to the drainage system and said water would now flow into trench drains rather than catch basins. The amount of impervious surface would not increase and there would be no additional work in the buffer zone. Paul Healy moved to accept the change as a minor modification. Steve Moore seconded the motion. The motion was approved by a 5-0 vote (Joe Teixeira, yes; Steve Moore, yes; David Vine, yes; Dan Warchol, yes; Paul Healy, yes).

Thomas Hughes on behalf of John D. Hartnett

20 Henry Graf Jr. Road

Request for Certificate of Compliance

DEP File #051-0094

Tom Hughes said a permit had been issued for the construction of an industrial building but the work was not done. Paul Healy moved to issue a Certificate of Compliance as an Invalid Order of Conditions. Steve Moore seconded the motion. The motion was approved by a 5-0 vote (Joe Teixeira, yes; Steve Moore, yes; David Vine, yes; Dan Warchol, yes; Paul Healy, yes).

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Thomas Hughes on behalf of John D. Hartnett

20 Henry Graf Jr. Road

Request for Certificate of Compliance

DEP File #051-0406

Tom Hughes said a permit had been issued for the construction of an industrial building but the work was not done. Paul Healy moved to issue a Certificate of Compliance as an Invalid Order of Conditions. Steve Moore seconded the motion. The motion was approved by a 5-0 vote (Joe Teixeira, yes; Steve Moore, yes; David Vine, yes; Dan Warchol, yes; Paul Healy, yes).

Thomas Hughes on behalf of John D. Hartnett

20 Henry Graf Jr. Road

Request for Certificates of Compliance

DEP File #051-0685

Tom Hughes said a permit had been issued for a laydown area but the work was not done. Paul Healy moved to issue a Certificate of Compliance as an Invalid Order of Conditions. Steve Moore seconded the motion. The motion was approved by a 5-0 vote (Joe Teixeira, yes; Steve Moore, yes; David Vine, yes; Dan Warchol, yes; Paul Healy, yes).

Tom Lawrence

18 82nd Street

Request for Extension

DEP File #051-0971

David Vine recused himself from the discussion. The applicant installed a deck below base flood elevation without a permit. An Enforcement Order was issued and the applicant subsequently filed a Notice of Intent for the work. At the June 20, 2017, meeting, the Commission members issued a variance that allowed the applicant to retain the deck. As mitigation, he was to nourish the beach in front of the house, install 437 square feet of native vegetation and remove concrete from the site. The concrete has been removed and the sand has been added, but due to personal reasons, the applicant has not yet been able to install the plant materials. He requested a one-year extension. The Order of Conditions will be extended for two years to allow for the monitoring of the plant material. Paul Healy moved to extend the Order of Conditions for 18 82nd Street to June 20, 2022. Steve Moore seconded the motion. The motion was approved by a 4-0 vote (Joe Teixeira, yes; Steve Moore, yes; David Vine, abstain; Dan Warchol, yes; Paul Healy, yes).

6. Public Hearings

David Vine moved to open the public hearings. Steve Moore seconded the motion. The motion was approved by a 5-0 vote (Joe Teixeira, yes; Steve Moore, yes; David Vine, yes; Dan Warchol, yes; Paul Healy, yes).

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David Daly, The Daly Group

8, 10, 12, & 18 Colby Farm Lane

Notice of Intent

DEP File #051-1031

The applicant made the changes to the configuration of Lot 1 that were requested at the last meeting. The Planning Board has agreed to grant a waiver. The plans for the playground are in flux due to safety concerns. It might be a private play area rather than a public one and the number of parking spaces might be reduced to two. Steve Moore commented that he would like the house on Lot 1 to be moved to this location if the playground were to be omitted from the plans. Attorney Mead responded the applicant is committed to installing the playground and providing a safe street crossing. Trailers near the rear of the site are located in the wetlands and might be on an adjacent property. Attorney Mead said the trailers most likely belong to the current owner of the Colby Farm Lane property and he is responsible for removing all of the trailers. A discussion took place about the future maintenance of the wetland seed mix that is planned for the Lot 1. It was suggested that shrubs could instead be planted near the split-rail fence to provide habitat and a better barrier to the wetlands. Some buffer zone plantings could be added within the lot and the remainder could be lawn. The applicant will provide a final planting plan to the Commission for review and approval prior to the start of work.

The applicant submitted the required variance language. The variance is considered to be approved when an Order of Conditions is issued.

No one from the public spoke in favor of or in opposition to the proposal. Steve Moore moved to close the public hearing. Paul Healy seconded the motion. The motion was approved by a 5-0 vote (Joe Teixeira, yes; Steve Moore, yes; David Vine, yes; Dan Warchol, yes; Paul Healy, yes).

Michael and Kerrin Costello

249-251 Water Street

Notice of Intent

DEP File #051-1033

Lisa Mead, Tom Hughes and Aileen Graf represented the applicant, who is proposing to revert a two-family structure in the VE zone. The applicant is seeking a waiver from FEMA and the Massachusetts Building Code that may be granted when improvements to a historic structure do not detract from its character. The structure was built in 1895 as the South End Gun Club. The applicants intend to revert the structure to a single-family use and retains some of its historic features. The one-story addition on the driveway side of the house would be extended towards the street. A second extension would also take place at the front of the house where the mechanicals are to be located. The house was expanded slightly at the rear some after it was originally constructed. The foundation for this addition is in poor condition and would be replaced. A new frost wall would be added ten feet from the main structure. This would form the edge of a raised patio and would support the cantilevered second-story living space and porch. In the area of the property that is now grass, two patios and a fire pit would be added.

Mr. Hughes said the amount of grading has been minimized and the expansion of the living space is not occurring in the flood zone. He said the 885 square feet of hardscape would be added along with 650 square feet of vegetation for a total alteration that is less than 1,500

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square feet. Buffer plantings would be added that provide habitat value. Filter fabric would be placed on the landward side of the sea wall to keep sediment out of the flats.

David Vine said he is concerned that water would come over the wall and become trapped. Attorney Mead said this is something the applicant has considered and information will be provided on how this might be addressed.

The plans indicate that either pavers or asphalt would be used for the driveway. The Commission member were concerned about the addition of an impervious surface in the VE zone. Mr. Costello said the plans will be amended to show that pavers would be used in place of asphalt. He also said he would be willing to remove the patio and fire pit from the plans if necessary for the approval of the project.

The project would require a variance. The Commission members were concerned the applicant has not adequately addressed the performance standards for Land Subject to Coastal Storm Flowage. Some of the proposed activities would be prohibited unless the applicant were able to prove by a preponderance of credible evidence that they would not have an adverse effect on the interests protected by the ordinance.

Joe Teixeira said he is concerned about the amount of lawn being converted to hardscape. He said in order to approve a variance, he would require documentation from a professional engineer that the flow of water would not be altered. Activities that change the physical characteristics of the land are prohibited under the ordinance. This has not been adequately addressed in the Notice of Intent.

The Commission members found some aspects of the plans confusing. The plans will be revised to be made clearer and the Notice of Intent will be amended. The applicant will stake the elements of the plan for a site visit that will take place on Thursday, May 21 at 3:00 p.m.

No one from the public spoke in favor of or in opposition to the proposal. Paul Healy moved to continue the public hearing to the June 2 meeting. David Vine seconded the motion. The motion was approved by a 5-0 vote (Joe Teixeira, yes; Steve Moore, yes; David Vine, yes; Dan Warchol, yes; Paul Healy, yes).

Holly MacDonald

4 68th Street

Notice of Intent

The applicant requested an extension. Paul Healy moved to continue the public hearing to the June 2 meeting. Steve Moore seconded the motion. The motion was approved by a 5-0 vote (Joe Teixeira, yes; Steve Moore, yes; David Vine, yes; Dan Warchol, yes; Paul Healy, yes).

Roy Catignani, Sports Medicine North Orthopedic Surgery, Inc. c/o ConServ Group, Inc
20 Henry Graf Jr. Road

Notice of Intent

DEP File #051-1034

Tom Hughes and Brad McKenzie of the McKenzie Engineering Group represented the applicant, who is proposing to construct a two-story medical office building. The site is within the 100-foot buffer zone and is completely disturbed. There is very little vegetation on the site, which had been used as a contractor's yard for storage and to stockpile soil.

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Native trees are planned for the islands in the parking lot and the wetland edge. Fescue will be planted around the perimeter of the building and in a five-foot strip along the edge of the parking area. The remainder of the site will be planted with a wildflower mix for pollinator and habitat value and would be mowed once a year.

The water table is shallow. A dense layer of clay is not conducive to infiltration. The applicant is proposing to construct two extended detention basins. A peer review was conducted for the proposed drainage system and minor changes were made as result. The City Engineer has signed off on the plans. The extension of a culvert would cause 150 square feet of impact to the drainage swale along the road. The applicant suggested additional storage could be added in the swale.

The Commissioner members asked for conformation that red maples are appropriate for the parking lot islands. They asked that the limit of mowing be marked, perhaps with shrubs. In addition, the applicant will submit plans for increased storage in the swale and the control of invasive species.

No one from the public spoke in favor of or in opposition to the proposal. Steve Moore moved to continue the public hearing to the June 2 meeting. David Vine seconded the motion. The motion was approved by a 5-0 vote (Joe Teixeira, yes; Steve Moore, yes; David Vine, yes; Dan Warchol, yes; Paul Healy, yes).

Paul Healy moved to close the public hearings. Steve Moore seconded the motion. The motion was approved by a 5-0 vote (Joe Teixeira, yes; Steve Moore, yes; David Vine, yes; Dan Warchol, yes; Paul Healy, yes).

7. Enforcement

None

8. Order of Conditions

David Daly, The Daly Group

8, 10, 12, & 18 Colby Farm Lane

DEP File #051-1031

Steve Moore moved to issue an Order of Conditions for 8, 10, 12, & 18 Colby Farm Lane with the special conditions that 1) a split rail fence shall be constructed to run along the lot line of Lot 1 with a permanent plaque that states that beyond the fence is a conservation area and protected wetlands, 2) the final landscaping plan that shows additional buffer zone plantings at the rear of Lot 1 shall be submitted to the Commission for review and approval prior to the start of work, and 3) the homeowner association document conditions shall ride with the deed for Lot 1 as well the condominium property associated with this project. Paul Healy seconded the motion. The motion was approved by a 5-0 vote (Joe Teixeira, yes; Steve Moore, yes; David Vine, yes; Dan Warchol, yes; Paul Healy, yes).

9. Adjournment

Steve Moore moved to adjourn the meeting at 10:20 p.m. David Vine seconded the motion. The motion was unanimously approved.