

Newburyport Conservation Commission
September 1, 2020
Online Meeting
Minutes

1. Call to Order

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

2. Roll Call

In attendance were members Steve Moore, Paul Healy, Jane Sender, Ron DiCola, David Vine, Joe Teixeira and Dan Warchol. Conservation Administrator Julia Godtfredsen was also in attendance.

3. Minutes

Paul Healy moved to approve the minutes of the August 18, 2020, meeting as submitted. Steve Moore seconded the motion. The motion was approved by a 6-0 vote (Steve Moore, yes; Jane Sender, yes; Ron DiCola, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Dan Warchol, absent).

4. Old and New Business

Plum Island Updates

- A meeting of the MRBA is scheduled for September 11 on Zoom.
- The plan to install Super Sacks along the dune on Reservation Terrace is moving forward. DEP has approved the system as a temporary measure. A decision on the final design will be based on cost considerations.

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

Ross Soloman

39 Reservation Terrace

Request for Certificate of Compliance

DEP File #051-0912

Tom Hughes and Julia Godtfredsen met at the site. She reported it is nicely vegetated. The beach grass is healthy and the knotweed near the building has been removed. The structure is at least two feet above grade. Paul Healy moved to issue a Certificate of Compliance for 39 Reservation Terrace. Steve Moore seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Ron DiCola, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Dan Warchol, yes).

The Reserve at Bashaw Farm LLC

3-7 Colby Farm Lane

Request for Minor Modification

DEP File #051-1015

Lisa Mead said the applicant is requesting to move a driveway for one of the structures from the left side of the house to the right. This would be done to accommodate the construction of a

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deck on the neighboring house. The driveway would be located outside of the 25-foot no-disturb zone. The location of the gravel footpath would not change. Steve Moore moved to approve the Minor Modification for 3-7 Colby Farm Lane. Paul Healy seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Ron DiCola, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Dan Warchol, yes).

Walter B. Long

265 Water Street

Request for Determination of Applicability

Tom Hughes represented the applicant, who is proposing to replace the siding, windows and roof of the existing structure and the boards of the deck. The staging would be placed on the deck and the work would not involve any disturbance on the ground. Mr. Hughes believes the supports for the deck are in good condition. The deck sits on the edge of seawall. He will ask the applicant if the condition of the seawall has been evaluated. If any work on the seawall is needed, it will be added to the second phase of the work, in which a roof deck is to be added. A separate application will be submitted for this phase.

Steve Moore moved to issue a Negative 3 Determination with the conditions that any changes to the scope or details of the work to the deck or footprint of the structure shall be presented to the Commission for review and approval and any vegetation impacted during the work shall be replaced. Dan Warchol seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Ron DiCola, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Dan Warchol, yes).

Megan and Terry Ashe

10 Lavalley Lane

Request for Certificates of Compliance

DEP File #051-0175 and 051-0029

Julia Godtfredsen explained the site is within the Kelleher Pines subdivision. The owners of property in the subdivision have been responsible for obtaining Certificates of Compliance for their own properties. The lot in question was left vacant at the time the subdivision was completed. It was purchased in 1994, after subdivision permit had expired, and a house was constructed. The Certificate of Compliance has been issued for this work. The original Order of Conditions for the subdivision and the associated roadwork and utilities are still attached to the deed. Neither are relevant to this site.

Paul Healy moved to issue a Certificate of Compliance for DEP file #051-0175. Steve Moore seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Ron DiCola, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Dan Warchol, yes).

Paul Healy moved to issue a Certificate of Compliance for DEP file #051-0029. Steve Moore seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Ron DiCola, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Dan Warchol, yes).

6. Public Hearings

Paul Healy moved to open the public hearings. Steve Moore seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Ron DiCola, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Dan Warchol, yes).

Holly MacDonald

4 68th Street

Notice of Intent

DEP File #051-1032

Mike Seekamp represented the applicant. The existing conditions plan was separated from the proposed plan, as the Commission members requested at the August 4 meeting, and elevation drawings were provided. The mitigation area was added to the plan. Additional beach grass would be planted to fill in bare spots. An existing eastern red cedar would be move or replaced. The increase in the amount of impervious surface was recalculated and would be 13.2%, below the 20% allowed. The lowest horizontal member of the structure would be 9'-6" above grade. Any skirting that is installed would be 5'-8" above grade.

Paul Healy moved to close the public hearing. Steve Moore seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Ron DiCola, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Dan Warchol, yes).

Christopher Horan, Seacoast Homes, LLC

192 Northern Boulevard

Notice of Intent

DEP File #051-1037

Joe Teixeira distributed the impact analysis he conducted on the property. He documented the existing vegetation and displayed photographs showing where beach grass was growing on the site in October 2019. Current photographs showed tire tracks, construction vehicles and a staging area on 192 Northern Boulevard. He said he has no doubt that significant damage to the vegetation was caused by the activity related to the construction on the adjacent lots. He calculated the impact to the vegetation to be just over 2,000 square feet, which is more 24% of the entire lot. He said that in the dune area, just under 2,800 square feet was denuded by the trucks, which is 31% of the total dune area. He concluded by saying that Chris Horan is a veteran developer on Plum Island and has just completed the construction of two buildings directly abutting 192 Northern Boulevard. He should be aware of the prohibition against the unpermitted alteration of a coastal dune. He used 192 Northern Boulevard as a parking lot for construction vehicles and a staging area for construction materials, resulting in the loss of thousands of square feet of vegetation on this lot and the associated dune. Except for one area along 65th Street on which a neighbor parks, most of these areas have been identified as open sand and gravel on the site plan submitted for the Notice of Intent. Mr. Horan has claimed that the loss of vegetation was caused by neighbors, but the photographs show this not to be the case. He said the Commission should consider issuing an Enforcement Order that requires the lot to be restored to its October 2019 condition. He said Mr. Horan has demonstrated a blatant disregard for the regulations and he recommended that the Commission not issue an Order of Conditions for 192 Northern Boulevard until the site has been restored.

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Lisa Mead said that Tom Hughes has noted there was damage on the site and he did not take these areas into consideration in his calculations. She said some of the vegetation has grown back and the applicant has changed the plans to reduce the amount of impact. She said the site is impacted by seasonal users and fisherman. She said the use of a no-net loss of vegetation calculation is not the standard methodology in the regulations for the amount of impact of the dune. The applicant is working to improve the quality of the resource area rather than providing a one-to-one replication of vegetation.

Tom Hughes said he intends to ask for a continuance in order to continue communications with DEP. He also wants time to review the analysis Joe Teixeira presented. He said the vegetation was originally delineated in June or July of 2019, before the construction on the adjacent lots began. He acknowledged that the construction vehicles have been the cause of some damage. He said he intends to restore some of the vegetation as a part of the Certificate of Compliance process for the other lots. He has reduced the amount of square footage he is claiming as being unvegetated. Changes were also made to the plans. The structure was moved away from the street and its footprint was made smaller. The size of the driveway was reduced and a sprinkler system was added to eliminate the need for a second means of egress. The piles would be outside of the beach plum area. The equipment to drive the piles would not intrude into the beach plums. The decks would be cantilevered. Skirting would be added under the building to prevent people from walking into the beach plum area. A deed restriction would be placed on the beach plum area. A split rail fence would be connected to the building on both ends to separate the vegetated part of the site from the developed area. Twelve beach plums would be added and the two existing beach plum saplings that would be within the footprint of the structure would be transplanted. The density of vegetation in sparse areas would be increased.

The applicant was asked about adding a split rail fence along 65th Street on the adjacent property. Attorney Mead responded the units have been purchased and the condo documents have been approved. Mr. Horan said he would be willing to install a fence to prevent parking on the vegetation provided the owners of the properties would be amenable to it.

One area of concern for the Commission is that the plans do not include a patio or useable outdoor space and there is no place on the site where this would be possible. For the next meeting, the applicant will add the split rail fence to the plans, evaluate the useable outdoor space on the site and contact the buyers of the adjacent property about adding a fence along 65th Street.

Steve Moore moved to continue the public hearing to the September 15 meeting. Paul Healy seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Ron DiCola, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Dan Warchol, yes).

John DiFilippo, Newburyport Yacht Club, Inc.

300-302R Merrimac Street

Notice of Intent

The applicant is proposing to apply a new paving surface to a boat ramp that is in poor condition. The work would be accomplished during one tide cycle. An absorbent boom would be installed at the end of the ramp until no sheen is visible in the water. The handicapped ramp to the

clubhouse is not up to code and would be rebuilt. The utility chase would be reduced in size. The applicant will submit an updated plan that shows the low-water line. A DEP file number has not yet been issued.

Steve Moore moved to continue the public hearing to the September 15 meeting. Paul Healy seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Ron DiCola, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Dan Warchol, yes).

Steve Moore moved to close the public hearings. Paul Healy seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Ron DiCola, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Dan Warchol, yes).

7. Order of Conditions

Holly MacDonald

4 68th Street

DEP File #051-1032

Steve Moore moved to issue an Order of Conditions for 4 68th Street with the special conditions that 1) there shall be no lattice or siding around the open area under the building lower than 5' - 8'' above grade; 2) the existing red cedar shall be replaced or replanted on the site and 3) the mitigation planting area shall be completed in the growing season immediately after the completion of construction and monitored for survival for two years. Dan Warchol seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Ron DiCola, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Dan Warchol, yes).

8. Enforcement

11 76th Street

Tom Hughes reported that the front fence has been removed. The posts were left in place. He was unsure of the progress that has been made on the modification of the back fence.

9. Other Business

- Julia Godtfredsen will check on the status of the plant material that National Grid is to install along the Rail Trail near the yacht club.
- A site visit is scheduled for September 2 at Evergreen Commons.

10. Adjournment

Ron DiCola moved to adjourn the meeting at 9:10 p.m. Steve Moore seconded the motion. The motion was unanimously approved.