

TOWN OF NEEDHAM CONSERVATION COMMISSION MEETING MINUTES

Thursday, August 8, 2024

Under Governor Healey's Act "Extending Certain COVID-10 Measures Adopted During the State of Emergency", extending the "Executive Order Suspending Certain Provisions of the Open Meeting Law G.L. c. 30A, S20," issued March 2023, meeting of public bodies may be conducted virtually provided that adequate access is provided to the public.

LOCATION: Zoom Virtual Platform – the meeting was held virtually per Governor Baker's Emergency Order.

ATTENDING: Dave Herer (Chair), Sue Barber, Bill Hebard, Fred Moder, Polina Safran, Clary Coutu, Deb Anderson (Director of Conservation), Clay Hutchinson (Conservation Specialist)

D. Herer opened the public meeting at 7:00 p.m. The Commission welcomed its new member, Clary Coutu.

MISCELLANEOUS BUSINESS –

1. Minutes

Motion to accept the meeting minutes of November 18, 2021; July 25, 2024; December 2, 2021; and July 11, 2024, by P. Safran, seconded by F. Moder, approved 5-0-1, with C. Coutu abstaining.

2. Enforcement Orders

None at this time.

HEARINGS/APPOINTMENT

49 GREEN STREET (DEP FILE #234-911) – *continued* NOTICE OF INTENT

Andrew Gorman, Beals and Thomas, explained that the applicant spoke with Staff and Commissioners regarding the proposed revisions to the planting plan. The species have since been significantly expanded. The project will be broken up into phases. There will be a stop gap between the two tree removal phases, in which the applicant will discuss the progress with the Commission and/or Staff.

S. Barber asked how many trees will be removed in Phase 1. A. Gorman stated that 27 trees are proposed to be removed in Phase 1, with an additional removal of 19 species proposed in Phase 2. Phase 1 would likely kick off this fall. The stream work will likely not begin until fall 2025.

D. Herer suggested continuing this hearing in order to close it, and review and issue the Order of Conditions at the next meeting.

There was no public comment at this time.

Motion to continue the hearing for 49 Green Street (DEP File #234-911), to August 22, 2024, by S. Barber, seconded by P. Safran, approved 6-0-0.

17 GEORGE AGGOTT ROAD (DEP FILE #234-930) – NOTICE OF INTENT

Susan McArthur, McArthur Environmental Consulting, explained that the plan has been updated to show the proposed increase in impervious surface within the inner riparian zone. The proposed mitigation area was increased to 374 s.f. and will be planted with a native wildflower seed mix. An additional tree has been added to the plan to mitigate for one proposed to be removed. Additional placards will be added toward the front of the property to show the naturalized area. The waiver request form was updated to show the mitigation area as compensation for work in the buffer zone.

D. Anderson reviewed the comments from DEP. The project does not appear to comply with 10.585.E and possibly A. The narrative notes that proposed roof runoff to a dry well and planting of trees is intended to improve the capacity of the riverfront area to protect the interests of the WPA, as required by 10.585.A. However, the Commission should consider if replacement of trees removed without Commission authorization, as appears to be the case, would meet that requirement. The project does not provide 1:1 restoration or 2:1 mitigation under 10.585.F or G., for increases in degraded area as required by 10.585.E. It appears the applicant wishes to convert previously disturbed areas that are not degraded into degraded areas, as such they must provide 1:1 restoration or 2:1 mitigation per 10.585.E. If the applicant chooses to have the stormwater dry well count as required mitigation some other improvement would be needed to meet 10.585.A. She noted that when this was reviewed by DEP the proposed alteration was 591 s.f. in the riverfront area which may not have included the deck, which the Commission determined would not count towards impervious area. S. McArthur noted that since that time the applicant has proposed the naturalized area. D. Anderson stated that the mitigation area will need to be increased to be 440 s.f. to be at a 2:1 amount.

S. Barber stated that there was no approval given for the propane tank to be placed in the 25' zone and she does not believe it should be allowed there. This would be a bad precedent to set and could impact drainage in the area.

B. Hebard agreed with S. Barber and asked if the propane tank could be moved from this place. He asked about another tree that was removed near where the propane tank was placed. S. McArthur stated that the applicant does not want to move the propane tank from this location. Propane tanks are coated with an anti-corrosive material and should be safe to remain in this area. B. Hebard stated that his concern is that the work was completed against the regulations. The propane tank itself is still an impervious item and disturbs the flow within this area. This should be moved as far as possible from the resource area.

F. Moder stated that, as the disturbance within the 25' zone already occurred, it could potentially be compensated for by adding additional naturalized area to the plan. However, the DEP comments suggest that the naturalized area is already not large enough. S. McArthur stated that

the DEP comment is not accurate, as it should be the percentage above the degraded area. D. Anderson stated that the existing house is more than 10% of the property, so for each square foot of new degraded area above the existing there should be 2:1 mitigation. F. Moder suggested redrawing the mitigation area to include the necessary square footage, and potentially more to mitigate for the propane tank.

P. Safran asked if the tank is located in an area of existing lawn. S. McArthur stated that this is correct. P. Safran noted that an item located underground is not really an impervious surface. The regulations allow for construction within the 25' zone for certain items. Also, this area was previously lawn area.

C. Coutu stated that it might be beneficial to include a table on the plan depicting original conditions and the impacted areas quantified. It would help to know the quantified impacted area of the 25' buffer zone by the propane tank.

D. Herer stated that the underground propane tank is not considered an impervious structure. In terms of the required mitigation for adding impervious area, if the existing impervious area was more than 10% of the property, anything above that must be mitigated at a 2:1 ratio.

B. Hebard stated that the surface of a metal tank is certainly impervious. The groundwater moves through the ground and will have to either move around this or percolate around it. D. Herer stated that the tank is located underground but not within the groundwater. S. Barber stated that the flow of groundwater to this and surrounding properties is still important. D. Herer explained that the Commission can determine how to handle the violation of the tank being installed.

P. Safran stated that everything on this site flows toward the brook. It is unclear if the tank will impede this at all and she does not personally see this as an issue. There is nothing in the regulations that specifically speaks to underground propane tanks, but construction is allowed within the 25' zone if there are new no impervious surfaces included, and an underground tank is not an impervious surface.

C. Coutu agreed that she would like to see compensation for the percentage amount of impact from the tank in the buffer zone.

D. Herer stated that approximately 2'-3' of the tank is likely within the 25' buffer zone. The applicant needs to provide 440 s.f. mitigation area alone to comply with the riverfront regulations. It is unclear where additional compensation could be located. There are approximately five violations on this site that need to be mitigated for either on site or monetarily. The Commission has yet to hear directly from the applicant.

The Commission asked the applicant to propose compensation for the items discussed.

Sandra Walters, neighboring property, stated that the propane tank is approximately 100 yards from her property. The owner of this property has been working on the property every day. She likes the idea of removing the tank. She would like there to be a decision regarding this property, as the hearing has been continued multiple times. D. Herer stated that the Commission is only

discussing moving the tank out of the 25' zone, but not removing it entirely. The applicant has a right to install the tank on the property outside of this 25' zone. The Commission continues to work on how to deal with the violations.

Motion to continue the hearing for 17 George Aggott Road (DEP File #234-930), to August 22, 2024, by P. Safran, seconded by F. Moder, approved 6-0-0.

1659 GREAT PLAIN AVENUE – REQUEST FOR DETERMINATION OF APPLICABILITY

D. Herer explained that this project came before the Commission approximately a year ago for a Determination of Applicability for the teardown and construction of the house. A negative Determination of Applicability was granted at that time. The applicant is now requesting to install a patio and pool between the 50' and 100' buffer zone lines.

Paul Finocchio, PJF & Associates, explained that the current owners are proposing to install an inground pool 16'x32' and new patio, and install a retaining wall and patio stones in the back portion of the house. The pool and patio are within the 100' buffer zone. Prior to installation, erosion controls will be installed. No trees are proposed to be removed for this project. All work will be completed outside of the 50' buffer zone.

C. Coutu asked how the pool will be drained annually. P. Finocchio stated that the pool will not be drained annually as it has a filtration system.

P. Safran suggested that the applicant supply a maintenance plan for the pool.

D. Anderson stated that Reade Everett mentioned that he believes the Commission should require a Notice of Intent due to the amount of work to take place. She stated that the proposal includes an exempt activity under the Wetlands Protection Act due to the distance. C. Hutchinson suggested that a negative determination could be issued due to exempt activities, subject to submission of a maintenance plan. The Commission agreed.

Motion to close the hearing for 1659 Great Plain Avenue, by P. Safran, seconded by F. Moder, approved 6-0-0.

Motion to issue a negative Determination of Applicability for 1659 Great Plain Avenue, by D. Herer, seconded by S. Barber, approved 6-0-0.

OTHER BUSINESS

The Commission discussed potentially incorporating guidance to the regulations regarding proposed underground storage items.

ADJOURN:

Motion to adjourn the meeting, by F. Moder, seconded by P. Safran, approved 6-0-0.

The meeting was adjourned at 8:47 p.m.

NEXT PUBLIC MEETING:

August 22, 2024, at 7:00 p.m. location to be determined.

Respectfully Submitted,
Kristan Patenaude