

**TOWN OF NEEDHAM
CONSERVATION COMMISSION
MEETING MINUTES
Thursday, January 22, 2009**

LOCATION: Needham Public Library Community Room

ATTENDING: Carl Shapiro, Janet Bernardo, Marsha Salett, Paul Alpert, Sharon Soltzberg, Kristen Phelps (Agent), Amy Holland (Office Administrator)

GUESTS: George Giunta, Jamie Walker, David Volante, Frank Utano

C. Shapiro opened the meeting at 7:30 p.m.

PUBLIC HEARINGS

LOT 1 OFF CAROL ROAD (DEP File # 234-551) – NOTICE OF INTENT

LOT 2 OFF BREWSTER DRIVE (DEP File # 234-550) – NOTICE OF INTENT

C. Shapiro opened the continued public hearings on both applications (abutting lots) at 7:47 p.m., noting that discussion of Lot 1 would proceed first. Property owner Dave Volante was accompanied by George Giunta and Jamie Walker. G. Giunta explained the changes to the site configuration on Lot 1, noting that the house is now outside of the 50-foot buffer area and that the grading has been revised to ensure the required separation between the bottom of the proposed drywells and the seasonal high groundwater elevation. A portion of the driveway and peastone filter trench remains within the 50-foot buffer with the limit of work set at a consistent distance of 10 feet off the driveway. Other elements of the project which remain in the 50-foot buffer area include portions of the proposed grading (with associated lawn and landscaping) and two of the five proposed drywells. G. Giunta noted that a mitigation plan had been developed to offset the disturbance within the 25- to 50-foot buffer zone, and pointed out the general location of mitigation areas. C. Shapiro confirmed that the Commission had asked the applicant to explore alternative configurations that would take the house out of the no-disturb area, but noted that a waiver would still be required for the proposed work in this zone. He asked why the lawn could not be moved out of the 50-foot buffer zone and noted that the draft minutes from the last meeting reflect that the Commission requested further information about the configuration of the houses as well as the proposed lawn/landscaping. G. Giunta stated that it was his understanding that if the houses were moved outside of the 50-foot buffer zone, the associated site work could still occur in this area so long as adequate mitigation was provided. M. Salett explained the process the Commission follows when determining whether to grant a waiver. As an example, she stated that the proposed driveway met the waiver test as denying the proposed driveway would prohibit the use of the lot for a single-family dwelling, thus creating an economic hardship. She added that the Applicant had demonstrated that there were no alternatives for siting the driveway and that the impacts had been minimized. On the other hand, the Commission is not convinced that the proposed site work and landscaping cannot be moved out of the no-disturb portion of the buffer zone. She added that it the Applicant's responsibility to demonstrate how denying these uses in this protected area represents an economic hardship. Discussion about the two-tiered waiver requirements and whether certain aspects of the project were subject to these requirements followed. P. Alpert acknowledged that there may have been some confusion on the Applicant's part based on the discussion at the last meeting as the focus of those hearings was on whether the houses could be located outside of the 50-foot buffer. However, he added that the Commission's regulations (adopted in December of 2005) pertaining to how and when a waiver may be granted are clear: first, any disturbance within the naturally vegetated 50-foot buffer zone requires a waiver; second, in order to be eligible for a waiver the Applicant must demonstrate that they would suffer an economic hardship if they were not allowed to work in this zone.

or that the 50-foot buffer does not protect the interests specified in the bylaw; and third, the Applicant must show that there are no alternatives to the proposed work in the no-disturb zone, that such work has been minimized and that mitigation for the disturbed area is provided.

Jamie Walker of Carr Research stated that the Wildlife Habitat Analysis submitted with the Notice of Intent made the argument that the area to be impacted in the no-disturb portion of the buffer zone was comprised primarily of invasive vegetation and had been degraded by ongoing dumping. Further discussion about the “value” of the 50-foot buffer and the feasibility of making an economic hardship argument followed. C. Shapiro stated that it was his impression that there were three potential paths forward: (1) the Applicant could ask the Commission to act on the applications in their current form with the information submitted to date; (2) the Applicant could evaluate whether the proposed project could be redesigned to remove all work from the 50-foot buffer area; (3) the Applicant could submit a revised request for a waiver that speaks to the first test specified in the regulations. After further clarifying his options, D. Volante stated that he would like the opportunity to take another look at the proposed projects and to talk with his representatives about whether a credible argument in support of a waiver could be made. He then asked for the Commission’s feedback on what might be acceptable in terms of a mitigation plan. M. Salett replied that the Commission had conducted a site visit and had found that the land within 50 feet of the BVW had wildlife habitat value, despite the prevalence of invasive species. She added that a revised mitigation plan should be thorough and specific and should document why any proposed plants would provide higher value than the vegetation currently growing in proposed mitigation areas. She emphasized that the mitigation plan should not just make the area more aesthetically appealing.

The Applicant agreed to continue the public hearing on both applications in order to address the concerns raised at this meeting. **Motion to continue the public hearing for DEP File # 234-551 to 7:45 p.m. on February 12, 2009, by Janet Bernardo, seconded by Marsha Salett, approved 5-0-0. Motion to continue the public hearing for DEP File # 234-550 to 8:00 p.m. on February 12, 2009, by Marsha Salett, seconded by Sharon Soltzberg, approved 5-0-0.**

371 WEST STREET (DEP File # 234-552) – NOTICE OF INTENT

C. Shapiro opened the public hearing at 8:40 p.m. Frank Utano from Pinecone Construction was present. C. Shapiro stated that the hearing had been continued for a DEP File number (since issued) and for information about both the reduction in impervious surface and soil conditions. F. Utano referenced the revised plans which had been provided to the Commission. He noted that there would be a 900 square foot reduction in impervious surface in the post-construction condition and that the soil testing confirmed that conditions were appropriate for the proposed infiltration system. **Motion to close the public hearing for DEP File # 234-552 by Paul Alpert, seconded by Janet Bernardo, approved 5-0-0.** The Commission reviewed the draft Order of Conditions. **Motion to issue the Order of Conditions for DEP File # 234-552 by Marsha Salett, seconded by Janet Bernardo, approved 5-0-0.**

COMMISSION ACTIONS

201 RESERVOIR STREET – Emergency Certification

Kevin Scully of Hydro-Environmental Technologies contacted the Conservation Department on January 22, 2009 to discuss additional work related to the spill of home heating oil at 201 Reservoir Street. It was his understanding that the Conservation Commission had been notified of the original release which occurred on December 28, 2008. There is no record that notification was received by the Commission, nor is there an Emergency Certification on file for the clean up work that was undertaken last month. At this point, the LSP is recommending that additional soil be removed from two areas

shown on the plan provided by K. Scully. The proposed work is expected to take a few days and erosion controls will be installed. The Commission agreed that the remaining work could proceed under an Emergency Certification, however they also concurred that a non-criminal penalty should be imposed for failure to abide by the Emergency Certification procedures under the Wetlands Protection Bylaw. K. Phelps was directed to send the responsible party a letter reminding them of the reporting requirements and explaining the reason for the fine. **Motion to issue an Emergency Certification for clean-up activities at 201 Reservoir Street by Janet Bernardo, seconded by Paul Alpert, approved 5-0-0. Motion to issue a non-criminal penalty in the amount of \$100 for non-compliance with the local Wetland Protection Bylaw by Janet Bernardo, seconded by Paul Alpert, approved 5-0-0.**

1362 GREAT PLAIN AVENUE (DEP File # 234-477) – Request for an Extension

The Applicant, Heritage Builders, Inc. submitted a request for a one-year extension to their Order of Conditions. The permit covers construction and site work (associated with a modular dwelling that will be used as a “model home”) within 100 feet of Sportsman’s Pond. K. Phelps stated that no work had commenced on the site as the Applicant has been working with the Building Department in an effort to design and construct a residential building in compliance with the commercial building code. **Motion to issue a one-year extension to the Order of Conditions for DEP File # 234-477 by Sharon Soltzberg, seconded by Paul Alpert, approved 5-0-0.**

ROUTE 128 SOIL BORINGS / MONITORING WELLS – Request for Exemption

Corporate Environmental Advisors submitted a request for an exemption to advance soil borings and install monitoring wells in the median of Route 128 where the truck explosion occurred in July of last year. **Motion to allow the soil borings and monitoring wells as an exempt minor activity by Janet Bernardo, seconded by Marsha Salett, approved 5-0-0.**

500 DEDHAM AVENUE (DEP File # 234-547) – Request for Minor Modification

The Parks & Forestry Division requested a minor modification to the Order of Conditions to allow them to remove several dead pine trees from within the remaining grove adjacent to the proposed Public Service Administration Building. The Commission discussed the rationale for removing these trees entirely and agreed that a portion of each tree should remain for wildlife habitat purposes. Based on proximity to the proposed building the Commission concurred that a minimum of thirty feet of each stem should remain, though any dead branches on the remaining stem could be removed. **Motion to allow the removal of the dead pine trees per the conditions as discussed as a minor modification to the Order of Conditions for DEP File # 234-547 by Janet Bernardo, seconded by Marsha Salett, approved 5-0-0.**

OTHER BUSINESS

WETLAND PROTECTION BYLAW – Discussion of Potential Bylaw Changes

K. Phelps stated that this matter had been scheduled for discussion in response to issues revolving around abutter notification. In its current form, the bylaw requires that abutters be notified of public hearings by certified mail or hand delivery. There is no requirement to obtain signatures of recipients when using hand-delivery, and the Bylaw does not allow the use of a “certificate of mailing” as permitted under the Wetlands Protection Act. The Commission briefly discussed other modifications that might be included in a bylaw update (e.g. non-criminal penalty amounts), but agreed to postpone further discussion to their next meeting on February 12, 2009.

MGL Chap. 39 Sec. 23D – Discussion of Potential Warrant Article

K. Phelps stated that adoption of this statute would partially overcome the “Mullins Rule” which disqualifies Commission members who do not attend all portions of a hearing on an application from voting on that matter (under the bylaw). The Planning Board is likely to support a warrant article to adopt this statute, and the ZBA will be discussing the issue at their February 19th meeting. The Commission agreed that a formal vote on the matter should be postponed until their February 12, 2009 meeting.

Meeting was adjourned at 9:10 p.m.

Next Meeting: Thursday, February 12, 2009 at the Needham Public Library Community Room

Respectfully submitted,

Kristen Phelps