

**TOWN OF NEEDHAM
CONSERVATION COMMISSION
MEETING MINUTES
Thursday, May 14, 2009**

LOCATION: Needham Public Library Community Room

ATTENDING: Lisa Standley, Carl Shapiro, Janet Bernardo, Marsha Salett, Paul Alpert, Dawn Stolfi Stalenhoef, Kristen Phelps (Agent), Amy Holland (Administrator)

GUESTS: Tony DelGaizo, Leo Gerweck, Steve Cobb, John Rockwood, Milton Schafer, Roy Cramer, Jonah White, David Kelly, Jerry Grimm, Rami Abirshamian, John Haslip, Paul Aswald

L. Standley opened the meeting at 7:33 p.m.

PUBLIC HEARINGS

21 ROLLING LANE – REQUEST FOR DETERMINATION OF APPLICABILITY

L. Standley opened the public hearing at 8:00 p.m. Property owner Leo Gerweck was present. He explained the proposed project which involves constructing an 8' x 10' shed on concrete blocks within existing lawn area approximately 80 feet from the edge of the intermittent stream to the rear of his property. K. Phelps conducted a site visit and confirmed the location of the resource area relative to the proposed shed. **Motion to issue a negative Determination of Applicability for the proposed shed at 21 Rolling Lane by Paul Alpert, seconded by Marsha Salett, approved 6-0-0.**

0 CENTRAL AVENUE / HEMLOCK GORGE (DEP File # 234-55X) – ABBREVIATED NOTICE OF INTENT

L. Standley opened the continued public hearing at 8:05. She noted that hearing had been continued for issuance of a DEP File number which has yet to be assigned. **Motion to continue the public hearing for the project at 0 Central Avenue (for issuance of a DEP File #) to May 28, 2009 at 7:45 p.m. by Carl Shapiro, seconded by Janet Bernardo, approved 6-0-0.**

449 SOUTH STREET (DEP File # 234-55X) – NOTICE OF INTENT

L. Standley opened the continued public hearing at 8:06 p.m. She noted that a DEP file number had not been issued for this project as of yet. Steve Cobb was present on behalf of the property owners. He reviewed the proposed project which involves constructing a sunroom, installing a patio and walkway, changing the configuration of the driveway and adding trees and other landscape features. All proposed work will occur upgradient of the existing retaining wall, within existing lawn or disturbed area. He provided a written description of how each aspect of the project would be constructed, noting that most work – with the exception of the driveway relocation – would be done by hand. J. Bernardo asked for clarification of the proposed grade changes in the area where the driveway is being relocated. S. Cobb explained that material was being removed to flatten out the slope next the house; however, no fill was being brought in. **Motion to continue the public hearing for the project 449 South Street (for issuance of a DEP File # and closure of the open permit on this site) to May 28, 2009 at 7:45 p.m. by Marsha Salett, seconded by Janet Bernardo, approved 6-0-0.**

28 MARR ROAD (DEP File # 234-554) – NOTICE OF INTENT

L. Standley opened the continued public hearing at 8:16 p.m. She stated that the Commission had conducted a follow up site visit on May 11th to review the trees proposed for removal, pruning or other treatment. **Motion to close the hearing for DEP File # 234-554 by Paul Alpert, seconded by Marsha**

Salett, approved 6-0-0. The Commission reviewed the draft Order of Conditions. **Motion to issue the Order of Conditions for DEP File # 234-554 (as modified) by Carl Shapiro, seconded by Marsha Salett, approved 6-0-0.**

182 EDGEWATER DRIVE (DEP File # 234-555) – NOTICE OF INTENT

L. Standley opened the continued public hearing at 8:19 p.m. She stated that the Commission had conducted a site visit on May 11th. Property owner Steven Rhodes was accompanied by David Kelly of Kelly Engineering and John Rockwood of EcoTec. D. Kelly stated that NHESP had issued their finding of “no impact” from the proposed project. He presented revised plans and an associated narrative addressing the issue of compensatory storage. As originally proposed, the compensatory storage area would result in the removal of several large trees and other mature vegetation. D. Kelly noted that compensatory storage is discretionary and that the Commission has the authority to permit this project without compensatory storage if they find that the loss of flood storage will not cause an increase in the horizontal extent and level of flood waters during peak flows.

L. Standley asked why the small compensatory storage area that had been proposed behind the existing shed had been removed from the plan and whether the Applicant intended to submit a mitigation planting plan to enhance the Riverfront Area. D. Kelly stated that the Applicant would be amenable to a condition requiring a landscape plan, and he agreed to revisit the secondary storage area. **Motion to continue the public hearing for DEP File # 234-554 (to permit time to review materials submitted at meeting) to May 28, 2009 at 8:15 p.m. by Carl Shapiro, seconded by Paul Alpert, approved 6-0-0.**

0 CHARLES RIVER STREET (BYLAW ONLY) – NOTICE OF INTENT

L. Standley opened the public hearing at 8:30 p.m. She noted that this application was being heard under the Needham Wetlands Protection Bylaw only. D. Kelly of Kelly Engineering was present on behalf of the Applicant and was accompanied by attorney Roy Cramer and John Rockwood of EcoTec. He submitted green cards and explained the authorization letter from the realty trust which owns the subject property. D. Kelly reviewed existing conditions on the property, noting the parcel is 30 acres in total with a Conservation Restriction (running to the Trustees of Reservations) on 18 acres. The site is crossed by a 50-foot wide easement owned and maintained by Algonquin. A certified vernal pool is located at the northerly edge of the site adjacent to Charles River Street and directly to the east of the 50-foot cleared easement. D. Kelly noted that the boundaries of the vernal pool were confirmed under a recent Order of Conditions obtained by Algonquin which permitted work on and around their existing metering station within the 100-foot buffer zone to the vernal pool. He added that J. Rockwood reviewed the delineation and did not propose any changes.

D. Kelly explained the proposed project which involves constructing a 20-foot roadway with cape cod berm curbing. He noted that the road is located as far as possible from the vernal pool and is separated from this resource area by the 50-foot mowed easement. The proposed site plan has been reviewed by Algonquin; however, the Applicant is waiting on the Commission’s action before submitting to the Planning Board. D. Kelly reviewed the drainage report which concludes that there will be no change to the volume or peak rates of runoff to the vernal pool as a result of the proposed project. He stated that erosion controls would be installed in an overlapping manner that would leave gaps for the passage of wildlife and he presented the proposed mitigation plan.

D. Kelly acknowledged that the proposed project would require a waiver from strict compliance with the Bylaw performance standards which prohibits disturbance within 100 feet of a vernal pool. He submitted two letters outlining their arguments as to why they felt they met the criteria for issuance of a

waiver. He argued that in the absence of a waiver, access to the site would need to come off of Whitman Road and would require that one of the existing homes abutting the right-of-way to this parcel be demolished, thus creating an economic hardship. He added that access off of Whitman Road would result in fewer lots being created. He concluded by saying that the Applicant would likely be required to provide emergency access to the site by the Planning Board/Fire Department, and would they would therefore need to work in the protected area regardless of where the main entrance to the proposed subdivision was located.

L. Standley stated that the information provided to date did not demonstrate how the proposed project met the criteria for a waiver. She noted that the Applicant did not provide an economic analysis and added that a decrease in the number of proposed lots does not necessarily constitute an economic hardship. She requested that the Applicant provide a plan of the entire proposed subdivision as it is difficult to understand and evaluate alternatives without a more plan of the entire area. She informed the applicant that potential alternatives may require acquisition of abutting property.

M. Salett asked whether any emergency access to the site would need to be paved. R. Cramer explained that in order to allow for fire equipment, any emergency access would need to have an appropriate base. Discussion about Planning Board requirements followed.

L. Standley opened the proceedings to questions from the audience. Mr. Rami Abirshamian of 534 Charles River Street stated that he had spent a great deal of time and effort to keep all aspects of his house project (demolition and new construction) out of the 100-foot buffer zone. He argued that the Commission should consider the cumulative impacts of a nine-lot subdivision, and observed that what remains of the buffer around the pool is critically important given the existing development (Charles River Street and the easement) that abut this area. He also questioned the meaningfulness of the proposed mitigation plan and whether it would be adequate to sustain the vernal pool species using the pool. Mr. John Haslip of Whitman Road raised questions as to the safety of a subdivision roadway running between two metering stations. He reiterated Mr. Abirshamian's concerns about the size of the mitigation area. Mr. Paul Aswald of Whitman Road stated that he had been provided with only a partial copy of the NOI, and requested a complete copy of the application as well as a copy of the entire subdivision plan. Mr. Jerry Grimm of Charles River Street questioned why the Applicant was proposing to take down all of the trees and the berm rather than taking the road in along the existing 50-foot mowed easement.

The Commission agreed that they would like to conduct a site visit and requested that the Applicant stake the centerline of the proposed roadway. L. Standley added that the Commission would like something in writing from the Planning Board documenting that they would require a second means of access to the proposed subdivision. **Motion to continue the public hearing (for site visit and supplemental information) for 0 Charles River Street to May 28, 2009 at 8:30 p.m. by Carl Shapiro, seconded by Paul Alpert, approved 6-0-0.**

COMMISSION ACTIONS

380 DEDHAM AVENUE / DEFAZIO FIELD (DEP File # 234-522) – Discussion

T. DelGaizo was present on behalf of the Town to discuss the status of the wetland violation at this site. He explained that the Department of Public Works had compiled the inspection reports written at the time the HDPE pipe was installed and had reviewed the condition of the pipe subsequent to the unauthorized placement of fill over the section of drain pipe which had "floated". He clarified that while the Engineering Division had required that the new pipe match existing inverts, the pipe replacement had been designed by Gale Associates. He reiterated that the violation was an independent

action of the site contractor, RAD Corporation, and that RAD had been notified that they would need to repair the violation in accordance with the direction from the Conservation Commission. He then presented three options for resolving the violation: (1) leave the fill in place and replicate; (2) remove the fill and the pipe and create a swale to the stream; and (3) remove the fill and replace the pipe with sections of HDPE pipe with partial couplings over the top of the pipe. T. DelGaizo stated that the latter design would allow water to enter the pipe and prevent it from floating.

L. Standley stated that given the extent of build-out on this site there are no viable replication locations, thus the first option is not feasible. J. Bernardo recalled that a large volume of water was directed to this pipe and stated that open flow would likely result in erosion of any swale and the downgradient stream. L. Standley questioned why the joints in the new pipe (in option 3) would be left open, noting that this configuration would allow groundwater to enter and result in draining of the wetland. T. DelGaizo responded that the original pipe effectively operated this way due to breaks and cracks caused by age and tree roots. J. Bernardo asked whether a concrete pipe would be a more appropriate solution.

The Commission agreed that the only viable option was to remove the fill and replace the pipe in accordance with the original approval, and to subsequently restore the wetland. C. Shapiro requested that there be professional oversight of the pipe replacement and wetland restoration work. The Commission directed K. Phelps to draft a letter outlining the actions required to remediate the wetland violation.

245 STRATFORD ROAD – Request for exemption for tree removal

K. Phelps stated that she had conducted a site visit and confirmed that the tree was dead. It is located on the border between the existing lawn and the wetland resource area. L. Standley suggested that removal should be permitted, however a 10' to 12' snag should be left for wildlife habitat purposes. **Motion to allow the tree removal at 245 Stratford Road (as discussed) as an exempt minor activity by Marsha Salett, seconded by Janet Bernardo, approved 6-0-0.**

608 CHESTNUT STREET (DEP File # 234-537) – Request for minor modification

The Applicant is seeking permission to install plantings within the rip rap slope extending off the approved driveway (in lieu of a guardrail). **Motion to approve the requested plan change as a minor modification to the Order of Conditions for DEP File # 234-537 by Carl Shapiro, seconded by Paul Alpert, approved 6-0-0.**

112 EDGEWATER DRIVE (DEP File # 234-534) – Request for Amendment

L. Standley stated that several Commission members had been out to the site earlier in the week in response to a call from a concerned abutter about trash and debris in the wetland. While no trash was visible beyond the limit of work area, the erosion controls had been breached and there was no DEP File number posted. The Commission directed K. Phelps to follow up with property owner and to issue non-criminal penalties in the amount of \$200/day if the non-compliance issues were not resolved. The Commission reviewed the proposed changes to the approved plan, noting that with the exception of the proposed change in grade, that most of the changes resulted in fewer impacts. **Motion to review the proposed plan changes to DEP File # 234-534 under an Amendment to the Order of Conditions (rather than a new NOI) by Carl Shapiro, seconded by Janet Bernardo, approved 6-0-0.**

1968 CENTRAL AVENUE / WALKER SCHOOL (DEP File # 234-380) – Request for Certificate of Compliance

K. Phelps stated that the Applicant had recorded the plan showing the location of the no-disturb markers and that there were no other outstanding issues associated with this project. **Motion to issue a**

Certificate of Compliance for DEP File # 234 380 by Marsha Salett, seconded by Paul Alpert, approved 6-0-0.

OTHER BUSINESS

449 SOUTH STREET (DEP File # 234-543) – Request for Certificate of Compliance

The as-built plan for this project confirmed that two additional trees (beyond those approved for removal) had been cut. The current property owners submitted a letter noting that these trees were cut prior to their purchase of the property; however they were willing to provide replacement trees. S. Cobb stated that the owners would like to plant a maple and two dogwoods to replace the maple and the yew that were removed without permission. The Commission agreed that the proposed replacement trees were adequate. The other outstanding issue on this project is the required Conservation Restriction. P. Alpert is working with the former property owner's attorney to finalize the Conservation Restriction language prior to the Commission's review. The Commission agreed to postpone consideration of the Request for Certificate of Compliance until they have had an opportunity to review the Conservation Restriction.

449 SOUTH STREET (DEP File # 234-543) – Review of proposed restriction

P. Alpert stated that revised restriction language was sent to the Applicant's attorney. He questioned whether the Commission intended to seek a permanent Conservation Restriction through the Executive Office of Energy and Environmental Affairs. The Commission agreed to postpone this discussion until the next meeting.

Meeting was adjourned at 9:18 p.m.

Next Meeting: Thursday, May 28, 2009 at the Needham Public Library Community Room

Respectfully submitted,

Kristen Phelps