

**MINUTES
CONSERVATION COMMISSION
1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE
CONFERENCE ROOM "A"**

3:30 P.M.

JUNE 12, 2013

MEMBERS PRESENT: Chairman Steve Miller; Vice Chairman Mary Ann Blanchard, Allison Tanner, Barbara McMillan, Elissa Hill Stone, Peter Vandermark, Rich DiPentima; Alternate Shelley Saunders

MEMBERS ABSENT: Paul Ambrose

ALSO PRESENT: Peter Britz, Environmental Planner

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I. APPROVAL OF MINUTES

1. Minutes of April 10, 2013

It was moved, seconded, and passed unanimously to approve the minutes as presented.

II. CONDITIONAL USE PERMIT APPLICATIONS

- A. 141 Mill Pond Way
Olde Port Development, owner
Tod O'Dowd, applicant
Assessor Map 140, Lot 24

Mr. John Chagnon of Ambit Engineering and property owner, Mr. Thomas O'Dowd were present to speak to the application. Mr. Chagnon stated that this was a four unit condominium development of which the owner resides in a ground floor unit. He said that Mr. O'Dowd would like to install a patio, in lieu of the decks that were previously approved for the unit. The patio would be just shy of 800 square feet in size and would be made of bluestone with gaps in between to allow for infiltration. Mr. Chagnon explained that the patio would be located out of the 50 foot wetland buffer. He pointed out that the City's department memo recommended a porous pavement or buffer enhancements and added that the owner was open to adding plantings in the buffer and welcomed the Commission's recommendations.

Mr. Vandermark asked if any of the other ground floor owners would want to install patios. Mr. O'Dowd explained that the other two owners did not have ownership or interest in the outdoor space. Mr. Chagnon showed the limited common areas on a display map.

Ms. Stone asked why they had not chosen to go with a porous stone. Mr. O'Dowd said that they looked at porous stone but did not think that it looked very good. He wanted to go with a natural stone that blended well with the surroundings.

Ms. Tanner stated that pervious pavement was much better for the environment. Any additional impervious surface adds to the load of materials that get into the waterways. She said pervious is really important and she did not think that the recommendation was not an either/or but both.

Mr. O'Dowd asked if there was a way to design the bluestone with space in between that would allow water to seep down. Ms. Tanner said no, not if there was compacted stone dust in between. Mr. Chagnon said that he understood that and explained that they looked at the overall pervious area and that it was increasing by 1.3%.

Chairman Miller commented that most of the Commission was familiar with the site and has been from the very beginning of the development. It was a difficult beginning with many difficult stages with the trees. He said that he was upset by the pictures submitted showing the condition of the trees. He pointed out that trees have been removed that they were told would not be removed and that the pictures showed trees that had been "lollipoped" and the buffer underneath them had been removed. He said he was under the impression that when some of the dead material was removed, the natural material would be allowed to grow back. He added that he appreciated the Planning Department's recommendations and the applicant's interest in talking about some buffer enhancements.

Chairman Miller asked where the roofs drained on the units. Mr. Chagnon said that the roofs go north/south and added that there were no gutters but instead had drip edges off of the roofs. Chairman Miller said that he wanted to find some ways to get water into the ground. The lawn would do something but it was not the same. He also talked about the option of some plantings down at the marsh area.

Mr. O'Dowd said that he had originally thought of plantings around the patio edge but had not thought of plantings beyond that. He added that he was not opposed to either option and was open to ideas for the best plantings.

There was considerable discussion regarding what was originally approved with regard to tree removal.

Mr. Vandermark asked as the owner, did he have the right to planting anything in that area. Mr. O'Dowd said that it was his understanding that Unit 1 and Unit 4 were responsible for the maintenance and upkeep of that area.

Ms. Saunders asked Mr. O'Dowd if he was open to different suggestions for the patio. Mr. O'Dowd said that they have looked at a lot of porous material. He thought they could look at a patio with a different base structure. Mr. Chagnon commented that it was not a large area. It would be coming off of the house 18 feet.

Chairman Miller stated that it would be nice to have a plantings plan to review. He asked when construction was expected to begin. Mr. O'Dowd stated they have not set a date. Mr. Chagnon said they could submit a plantings plan for review at the next meeting. Mr. Britz stated that if they brought the plan before the Planning Board without all of the details, it would be difficult for them to approve.

Ms. McMillan said that it appeared that in addition to not having an understory shown in Photo 4, there was an area to the left of it that appeared to be mowed. Mr. O'Dowd explained that there was a silt fence in that location and the grass was green on one side of the silt fence with somewhat dead grass and weeds on the other side of it. Ms. McMillan asked if it was an area that had the potential of being left natural. Mr. O'Dowd replied yes. Chairman Miller informed the applicant that was a good resource put out by UNH Cooperative Extension called "Landscaping to the Water's Edge" that gives good ideas for planting in a natural setting.

Ms. McMillan thought it might be helpful to have a site visit. Chairman Miller said it was always a good idea to do site walks.

Ms. Tanner stated that she could not support the application unless there was some sort of drainage on the outside of the patio with plantings and some plantings out at the base of the trees closer to the periphery of the grassy area. Mr. O'Dowd said that he had no issue with any of Ms. Tanner's suggestions.

Chairman Miller said that it seemed that the applicant was willing to agree to the water quality improvements and planting plan but how could the Commission move the application forward in an appropriate way. Mr. Britz said the Commission could be clear in the stipulations that the Commission would not approve it the way it is but that they would if they met specific requirements. He said that he would review the plans to make sure it had what the Commission stipulated. He also let them know that they could postpone the application to the next meeting also.

Ms. Tanner made a motion to recommend approval of the application to the Planning Board subject to the following conditions:

- 1) That the design of the patio includes drainage into an infiltration area adjacent to the patio.
- 2) That there are plantings in the infiltration area along the edge of the patio.
- 3) That there are new plantings of native herbaceous plants and shrubs in the understory and inside the tree line towards the proposed patio to serve as a wetland buffer.

The motion was seconded by Mr. DiPentima. Chairman Miller asked for discussion.

Ms. McMillan asked if they should specify specific plantings. Mr. Chagnon said that the landscaper could come up with the recommendations. He added that staff could approve the plantings.

Hearing no other discussion, Chairman Miller called for the vote. The motion to recommend approval of the application to the Planning Board subject to the following conditions passed by a unanimous (7-0) vote:

- 1) That the design of the patio includes drainage into an infiltration area adjacent to the patio.
- 2) That there are plantings in the infiltration area along the edge of the patio.
- 3) That there are new plantings of native herbaceous plants and shrubs in the understory and inside the tree line towards the proposed patio to serve as a wetland buffer.

B. 238 Walker Bungalow Road
 David C. and Margaret S. Witham, owners
 Assessor Map 202, Lot 13-04

Mr. David Witham, owner of the property was present to speak to the application. He said that the proposal was in two parts. The first part was to build a small mudroom at the entry area of the house and the second part was to address some foundation issues.

Mr. Witham said that the original part of the house was built as a camp in the 1930's and was built on wood posts. Currently there was plywood around that area of the house. There was no basement but just an 18" crawlspace. He explained that the house was structurally sound but they were having a problem with keeping small animals out of the crawlspace. He said they have housed chipmunks and squirrels over the years but lately they have had a problem with skunks. Mr. Witham explained that what they were proposing to do was to dig down in certain areas and set a small footing and get some cinderblocks up without moving the house. The existing posts and plywood would be replaced with cinder blocks. He added that the existing plantings around the house would be temporarily pulled up but once all of the work was done, the plantings would be put back the way it was.

Mr. Witham explained that the submitted plans showed the areas to be addressed highlighted in yellow. He said they would use a small bobcat and backhoe to do the work.

Ms. Saunders commented that she had the same problem with her house which as on a slab. She said that she placed chicken wire down deep and put gravel rocks on top to solve her problem.

Ms. Tanner asked if the underside of the house was insulated. Mr. Witham said that he put foam insulation between the floor joists but the piping was below and the water lines below that so it gets cold.

Mr. DiPentima asked Mr. Witham if he had any trouble with termites because of the plywood next to the soil. Mr. Witham explained that the wood was pressure treated so they had not had any trouble with termites.

Chairman Miller asked if there were any more questions for the applicant. Hearing none, he asked for a motion.

Ms. Tanner made a motion to recommend approval of the application to the Planning Board as presented. The motion was seconded by Ms. Stone. There was no discussion.

The motion to recommend approval of the application to the Planning Board as presented passed by a unanimous 7-0 vote.

III. WORK SESSION

- 1. 8 Regina Road
John P. Gens, Jr., owner
Assessor Map 225, Map 27

Ms. Adele Fiorillo of Normandeau Associates, Mr. Matt Cardin, wetland scientist, and Dr. John Gens, owner of the property were present to speak to the proposal.

Ms. Fiorillo stated that they were before the Commission because a letter was issued to Dr. Gens from the Planning Department informing him that a violation had occurred on his property by cutting trees in the wetland buffer. The letter stated that a wetland scientist would need to visit the site and a conditional use permit application would need to be submitted. She said that she spoke with Mr. Britz and it was agreed that it might be advantageous to do a work session to gather input in order to come up with a plan that would allow them to get a conditional use permit.

Ms. Fiorillo said trees were cut within the wetland and some of them were very large trees. She explained that Dr. Gens intentions were to protect his property from falling trees. She felt the trees were felled fairly cleanly with minimum disturbance to the wetland. She pointed out that there were no State violations; however, they planned to communicate with the Department of Environmental Services because some of the trees needed to be removed.

Mr. Cardin stated that the hatched area on the submitted plan showed the approximate area where the entire tree cutting took place. He showed the outline of the wetland and explained that it was a deciduous forested area with a lot of surface water. There was quite a bit of diverse species within it. He said that he counted 20 felled trees – 13 in the wetland and 7 in the buffer. Most of them were red maples with a few of them being yellow birches and red oaks. Mr. Cardin told the Commission that there was no evidence of machinery in the wetland and that it was in pretty good shape. The wetland buffer was sparse in some areas and so they showed on their displayed map where they were proposing buffer plantings.

Ms. Fiorillo commented that the first photo in the packet showed an area of wetland that had not been cut and showed a very dense understory that was shaded. The second photo showed where the trees were cut with a dense understory but with a more open canopy. She concluded that when the trees were cut, they did a fairly clean job and did not disturb the understory. She added that based on the species that were found out there; they were going to love the open canopy and would thrive. She said the birch and the maple stumps would remain and they would stump sprout. Ms. Fiorillo

stated that they were recommending that the timber piles be removed and that could be done easily. She also suggested leaving some felled trees in place to get saturated and rot to create a nice habitat for certain bugs and animals.

Ms. Tanner asked if the downed trunks would affect the water flow. Mr. Cardin said no, that it was very slow moving water. Ms. Tanner said that it was her understanding that a lot of the root systems were intertwined. She wondered if there would be disturbance from this plan. Ms. Fiorillo stated that beyond the cutting area it was still mature forest. She said they would know what will happen within the next couple months.

Ms. Tanner commented that anywhere there was disturbance; it becomes a playground for invasive species. She said that she hoped nothing would get in that area. Ms. Fiorillo explained that the area was so well vegetated she did not think it would be a problem.

Chairman Miller asked about the flow of water. Mr. Cardin said there was a storm drain under the road just north of the property. He said that the water flowed onto the property from the north. Chairman Miller asked where the water ended up. Mr. Cardin stated that he did not go too far out to explore so he was not sure. Mr. Vandermark thought it was part of the wetland on the way to Rye.

Chairman Miller commented that the submitted photographs were interesting and he was glad to see that the understory was still there. He wondered how the understory would change now that it had more light. Ms. Fiorillo stated that there was a lot of poison ivy around the edge but she felt they could take care of that when they put in the buffer plantings. Chairman Miller said that he liked the idea of the buffer plantings but he was not sure how they replaced the function of the trees.

Ms. Fiorillo asked the Commission if they would have approved a conditional use permit prior to the trees being cut for the protection of the property. Chairman Miller said that in his ten years on the Commission he could not think of one application that they have had similar to this proposal.

Mr. Britz stated that only two or three trees were a threat to the pool. He said that the cutting extended further than what was being shown and that he had concerns about pulling any trees from the area.

Ms. McMillan asked when the cutting was done. Mr. Britz said three weeks ago. Mr. Cardin added that a letter was sent from the City on May 21. Ms. Fiorillo said that they will document the average tree heights to show that the trees would have caused damage to the house if they had come down in a storm. Mr. Britz disagreed but added that he appreciated their responsiveness to the situation.

Ms. Tanner asked if at any time they called an arborist. Mr. Gens, the homeowner, said that he did not think he was doing anything wrong. He said he was only concerned with burning. Mr. Britz stated that the contractor should have known the rules. He added that they see this type of situation time and time again.

Ms. Saunders asked if there was a rule about trees on someone's property that were in danger of falling and doing damage. Mr. Britz said they did not have a hazard tree rule, but it would require a conditional use permit application. Chairman Miller clarified that the Conservation Commission did not have its own separate set of rules, they are all part of the City's zoning ordinance.

Ms. McMillan asked if there were any invasive species that could cause a problem. Mr. Cardin said that there was minimal glossy buck thorn. Chairman Miller suggested keeping a very watchful eye on invasives. He said it could be catastrophic if they got a foothold and got beyond the point of control. He added that he would like it addressed in a mitigation plan. Mr. Cardin reiterated that it was densely vegetated and he did not see it getting a foothold.

Chairman Miller said that it would be his preference to leave any tree that they can to limit disturbance and perhaps provide habitat for small creatures.

Ms. McMillan asked if the invasives species could be identified and located. Mr. Britz recommended a monitoring plan for the invasives and for the additional plantings. Ms. Fiorillo said the invasives were very minimal so they would eradicate them and put in high bush blueberry bushes.

Ms. Fiorillo stated that they would be back next month to present a formal proposal for restoration.

Chairman Miller commented that they might want to think about amending the ordinance to address what can and cannot be done with trees. Ms. Tanner said that people's feet should be held to the fire when they violate regulations. They should not get off scot free. Mr. Britz said that the State has the same problem. He said the State has fined contractors over and over again but ultimately, it was the homeowners' responsibility.

Ms. Saunders asked if the wetland letter had been sent yet. Mr. Britz said not yet. Ms. Stone asked if violation letters could be sent. Mr. Britz said yes.

IV. OTHER BUSINESS

There was no Other Business requiring action to come before the Commission.

V. ADJOURNMENT

At 5:05 p.m., it was moved, seconded, and passed unanimously to adjourn the meeting.

Respectfully submitted,

Liz Good
Conservation Commission Recording Secretary

These minutes were approved at the Conservation Commission meeting on Feb. 12, 2014.