

**MINUTES
CONSERVATION COMMISSION**

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

3:30 P.M.

JULY 10, 2013

MEMBERS PRESENT: Chairman Steve Miller; Allison Tanner, Elissa Hill Stone, Peter Vandermark, Rich DiPentima; Alternates Shelley Saunders, Paul Ambrose

MEMBERS ABSENT: Vice Chairman Mary Ann Blanchard, Barbara McMillan

ALSO PRESENT: Peter Britz, Environmental Planner

.....

I. STATE WETLANDS BUREAU PERMIT APPLICATIONS

1. Standard Dredge and Fill Application
238 Walker Bungalow Road
David and Margaret Witham, owners
Assessor Map 202, Lot 13-4

Mr. David Witham, owner of the property was present to speak to the application. He stated that he was before the Commission last month with a conditional use permit application and was now before them with a State application. He explained that nothing has changed with the project since last month. The proposal was to install concrete blocks below the first floor of the house to keep out pests and cold air. On the front of the house, he was proposing a small addition which would cause 85 square feet of increased lot coverage in an area that was previously disturbed.

Because the Commission reviewed the application last month, there were no questions for the applicant.

Mr. DiPentima made a motion to recommend approval of the application to the State Wetlands Bureau. The motion was seconded by Ms. Tanner. There was no additional discussion and the motion passed by unanimous (7-0) vote.

2. Standard Dredge and Fill Application
209 Gosport Road
Christine V. Crockett Revocable Trust, owner
Assessor Map 224, Lot 12

Mr. John Chagnon of Ambit Engineering, Ms. Patty Weathersby of Hoefle, Phoenix, Gormley, and Roberts Law Offices, and Christine Crockett, property owner, were present to speak to the application.

Attorney Weathersby stated that this property was part of the Tuckers Cove subdivision. She said that the lot was just over an acre in size and of that, .19 acres were non tidal wetlands. The lot was an approved building lot, previously approved in 1993. She said that a survey showed that it was intended for a home to be built about 2/3's of the way down on the lot. The owner, who also owns a home on the lot next door and would like to sell the lot but they would need a permit to construct a driveway over the wetlands.

Mr. Chagnon stated that the plans showed 925 square feet of impact that was in a fresh water wetland that was outlined on the plan. He said they were also planning to install two culverts that would allow water to continue to flow through the wetland. The hydrology was a small watershed, approximately six acres and when Gosport Road was constructed, there was wetland filling.

Mr. Chagnon said that the wetlands go up and into the building setback. He pointed out that the usable portion of the property was on the other side of the wetland. They were trying to minimize the impact by putting the crossing at the narrowest part of the wetland. He said that they are staying out of the tidal buffer zone. He also pointed out that he included a Natural Heritage Bureau report showing that there were no potential impacts to rare and endangered species and salt water communities. He also included a report from the soil scientist consulted for the project. Mr. Chagnon stated that the application did qualify for Section 303.04 so they could have applied for a minimum impact expedited application but since they missed the Commission's last meeting, they went ahead and filed it as a regular application to get the clock started at the Department of Environmental Services.

Mr. DiPentima asked for clarification as to where the house was planned. He also asked if the lot was serviced by City water and sewer. Mr. Chagnon replied yes.

Ms. Saunders asked about the memo from Melissa Coppola who recommended certain situations. Mr. Chagnon said that whoever buys the property would need to apply for the various permits.

Chairman Miller asked why it was necessary to construct a driveway before the lot was sold. Attorney Weathersby said that they wanted to get some of the permits in place to increase the marketability of the lot.

Chairman Miller stated that he was unnerved with the submission of a partial plan. He said that he did not know the extent of what he was looking at and what he was trying to evaluate.

Chairman Miller asked that when a subdivision is approved, did that guarantee build-ability of each lot within the subdivision. Attorney Weathersby said yes, those rights were vested when the subdivision was approved and recorded. Mr. Chagnon added that the Tuckers Cove subdivision came on the cusp of the City's adoption of fresh water buffers. He said that the

Conservation Commission at the time put certain conditions on the subdivision such as certain lots had to have setbacks to the wetland. Attorney Weathersby interjected that this lot, lot 15 did not have a wetland setback restriction.

Mr. Chagnon stated that the driveway was the only action that required them to come before the Commission. Chairman Miller asked if the new house would require them to come back. Mr. Chagnon said if they stayed within the building envelope they could pull a building permit and build the house. Mr. Britz said that he was not ready to say whether they did or did not need a conditional use permit but it was something he would need to look into. He added that it would need to be reviewed under the City rules.

Mr. DiPentima commented that the assessed value of the lot was \$442,000. He said that he assumed that the assessed value of the property was based on the fact that it was a buildable lot.

Ms. Christine Crockett stated that she and her husband own lots 15 and 16. She said that they built a house on lot 16 and when they walked lot 16 before building, lot 15 was already flagged out for a house.

Ms. Stone asked what the hatched feature and the dots on the plan represented. Mr. Chagnon said that he did not know what the hatched feature was, perhaps something to do with the soil. The dots showed the soil boundary. Ms. Stone said that she was concerned about the boundary delineation on the back part of the lot. She pointed out that the submitted plan did not have all of the wetlands mapped on it. Mr. Chagnon said that the wetland delineation they did was only in the area of the proposed driveway. He said that they buyer would be well advised to have the back of the lot delineated to make sure they were not building in the 100 foot setback.

Chairman Miller said that if Portsmouth's regulations did not apply, then why not put the driveway between the two drainage easements. He added that he thought the submitted plan was a mess. Mr. Chagnon said that was what they had to work with. Chairman Miller told Mr. Chagnon that he was asking the Commission to evaluate a proposal but he submitted maps that did not show the Commission what they needed to know. Mr. Chagnon said that he had not delineated all of the wetlands on the map because he had just focused on the wetlands where the crossing was going to take place. He passed around a 2005 plan that was done for the lot next door.

Mr. Britz asked Mr. Chagnon why he did not delineate the entire lot as specified on the application form. Mr. Chagnon said that he felt that the definitive subdivision plan spoke to that. Mr. Britz said he was surprised because it made it look like there were no wetlands there. Mr. Chagnon explained that he was trying to keep the cost down for the applicant.

Ms. Saunders asked if the applicant was looking for a blanket approval for the driveway and then a new applicant would come back to the Commission for the house. She said that she would have a hard time saying yes when there were no plans to review for a house. Mr. Chagnon said that it was just an application for a driveway crossing.

Mr. DiPentima asked where the excavation for the City sewer would take place. Mr. Chagnon said it would run along the driveway.

Mr. Vandermark asked what the actual stipulations were on wetland impacts during the transitional period in 1993 and 1996. Attorney Weathersby said that the State and City approved this to be a buildable lot with a driveway going where it was proposed. There was discussion as to what some of the symbols on the original plan indicated.

Ms. Stone asked if they were sure that the approval back then did not stipulate preservation of the wetlands on this lot. Mr. Chagnon said he was not sure but that DES should know. At the time, the City did not have a fresh water wetland ordinance. He offered to follow up on that.

Ms. Stone said that with the driveway crossing the 100 year flood, did that bring any different level of review by DES. Mr. Chagnon said that it did not cross the flood hazard line. There was considerable discussion regarding this.

Mr. Britz asked what the small rectangles on the plan indicated. Mr. Chagnon said he thought it called out erosion control. Mr. Vandermark asked about the ovals on the plan. Mr. Chagnon thought that indicated a stone wall. Chairman Miller stated that they were all guessing because there was no legend on the plan.

Hearing no more questions, Chairman Miller called for a motion.

Ms. Tanner made a motion for the purposes of discussion to recommend approval of the application to State Wetlands Bureau. The motion was seconded by Ms. Stone.

Ms. Tanner stated that she saw a number of problems and it has been a thorn in her side for many years to have these forever grandfathering situations that do not conform to the City's ordinance. She felt if a letter was sent to the wetland board, some of the things they should mention was that they did not know exactly when this approval came about because the City was in flux regarding fresh and salt water wetlands at the time. She felt it should also be pointed out that the intimacy and the connection between this fresh water wetland and the tidal buffer could be damaged with this type of impact. Just because there was a prior approval did not mean they can run rough shot over what the City has in place currently.

Ms. Saunders said that she agreed and without seeing the covenant and the date for the subdivision she would have a hard time approving it. Chairman Miller added that he needed more information. He also said he would want to understand the subdivision approval better and what that means.

Hearing no other discussion, Chairman Miller called for the vote. The motion to recommend approval of the application to the State Wetlands Bureau failed to pass by a vote of 6-1 with Mr. DiPentima voting in favor.

II. CONDITIONAL USE PERMIT APPLICATIONS

- A. 428 Pleasant Street
KHP Properties, LLC, owner
Assessor Map 102, Lot 55

Mr. Brendan McNamara and Mr. Jay Prewitt were present to speak to the application. Mr. McNamara stated that the project was a restoration of an existing historic home where an old addition would be removed and a new addition constructed as well as a complete renovation of the existing house. The project would require that the lot coverage be reduced. He said there were three existing parking spaces in the rear of the property and they would like to make them more legitimate in dimension. They were granted a turning easement which would result in an increase of impervious surface. To mitigate that, they were proposing a rain garden and an infiltration trench along with a walkway. He added that they have already received Board of Adjustment and Historic District Commission approval for the project.

Chairman Miller asked for clarification about what was being demolished. He said it was his understanding that it was just the addition on the back of the structure. Mr. McNamara said that was correct.

Ms. Tanner asked about the drainage of water from the house. Mr. McNamara said that there would be no gutters. The water would flow into an infiltration trench. Ms. Tanner asked if the addition would be handled the same way. Mr. McNamara said yes. He then showed the infiltration trench construction.

Chairman Miller asked if a tree would be removed. Mr. McNamara replied yes and said that it was an ash tree that has been struggling to grow in recent years.

Ms. Saunders asked about the proposed roof deck. Mr. McNamara explained that there would be a roof deck with an internal gutter leading down to the trench.

Ms. McMillan asked if the stone drip edge would run the perimeter of the house. Mr. McNamara replied yes.

Hearing no other questions, Chairman Miller called for a motion. Ms. Stone made a motion to recommend approval of the application to the Planning Board as presented. The motion was seconded by Ms. Saunders. 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.

- B. 8 Regina Road
John P. Jr., and Mary B. Gens, owners
Assessor Map 225, Lot 27

Ms. Adele Fiorillo of Normandeau Associates was present to speak to the Commission. She stated that she had been before the Commission previously about the project. On May 21, 2013 the Commission at a work session.

Ms. Fiorillo explained that they delineated the wetland boundary by using GPS. Everything colored in green on the displayed map was wetlands. She said that they also delineated the 25 foot wetland buffer. The stumps of the cut trees were also indicated on the map.

Ms. Fiorillo said that they looked at the invasive species in the area and located clumps that could be easily removed. She said they were proposing to manage the invasive species and put in some buffer plantings. She added that this wetland was part of the Berrys Brook watershed. Ms. Fiorillo then went through the functions and values assessment for the Commission. She pointed out that twenty one trees were cut resulting in 3,022 square feet of impact.

Ms. Fiorillo closed her presentation by stating that the understory was very dense and that there would be plenty of new growth and vegetation. She explained that some of the trees were cut and laid down carefully and that some of the trees will remain in place. She also said that there were areas where the trunks were piled and they would remove those as well as any brush piles. She added that they would plant two to three foot high bush blueberry bushes as wetland buffer plantings.

Ms. Tanner asked what she was proposing to put under the blueberry bushes. Ms. Fiorillo said nothing. Ms. Tanner suggested mulch and added that there also needed to be some type of monitoring plan.

Chairman Miller asked if any cut trees would be replaced. Ms. Fiorillo replied no and pointed out that it was very well vegetated now. Some of the stumps were sprouting. She explained that the area indicated in red on the displayed map was the area where the blueberry bushes would be planted.

Ms. Saunders commented that the proposal this time around was much more comprehensive. She agreed with Ms. Tanner that there should be some sort of monitoring in place.

Chairman Miller stated that it troubled him that twenty one mature trees were cut and none of them would be replaced. He understood that they did not want to go in and disrupt anything. Ms. Fiorillo responded by pointing out that the trees were not clear cut, but selectively cut. Mr. Vandermark wondered if trees could be planted in another part of the City as mitigation. Chairman Miller said that he was not sure how they could do that but added that there was a lesson here for the Commission. Ms. Fiorillo commented that there was still a lot of tree vegetation on the property.

Hearing no other questions, Chairman Miller asked for a motion.

Ms. Tanner made a motion to recommend approval of the application to the Planning Board as presented with the following stipulations:

- 1) The applicant shall provide a monitoring plan that is approved by the Environmental Planner which includes annual monitoring for at least three years to occur on or within one week of July 15 each year beginning in 2014.
- 2) The plan will include provisions to monitor invasive species and provide specific actions for manual removal and follow-up if invasive species are found in subsequent years.
- 3) The plan shall include a measurement of survival of the wetland buffer plantings (blueberry bushes) and a replanting contingency should the plants not achieve 80% survival.
- 4) The plan shall include a provision for photographs taken each year to document removal of invasive species, survival of buffer plantings and over all site restoration.

The motion was seconded by Ms. Saunders. There was no discussion. The motion passed by a unanimous (7-0) vote.

Chairman Miller stated that they could use this application as an example as a way to enforce violations. Ms. Saunders wondered if penalties could be put in place. Chairman Miller said they could put something in the ordinance. Ms. Tanner wondered if it could be a monetary penalty. Mr. Vandermark suggested a tree fund. Mr. Britz thought that was a good idea.

III. OTHER BUSINESS

There was no other business to come before the Commission requiring action.

IV. ADJOURNMENT

At 5:00 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 March 12, 2014.