

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

3:30 P.M.

JANUARY 8, 2014

MEMBERS PRESENT: Chairman Steve Miller; Vice Chairman Mary Ann Blanchard;
Members Allison Tanner, Barbara McMillan; Elissa Hill Stone,

MEMBERS ABSENT: Peter Vandermark, Alternates Shelley Saunders, Paul Ambrose

ALSO PRESENT: Peter Britz, Environmental Planner

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I. ELECTION OF OFFICERS

Chairman Miller requested that the election of officers be postponed to February.

Ms. Tanner made a motion to postpone the election of officers to the February meeting. The motion was seconded by Ms. McMillan. The motion passed by unanimous (5-0) vote.

II. APPROVAL OF MINUTES

1. May 8, 2013

Ms. McMillan moved to approve the May 8, 2013 minutes. The motion was seconded by Ms. Stone. The motion passed by unanimous (5-0) vote.

III. CONDITIONAL USE PERMIT APPLICATIONS (OLD BUSINESS)

A. Off Spinney Road and Middle Road
Frances T. Sanderson Revocable Trust and Lynn J. Sanderson Revocable Trust, owners
Spinney Road Land Holding, Applicant
Assessor Map 167-17-A, Lots 5 & 24
(This item was postponed from the November 13, 2013 and December 11, 2013 meetings)

Ms. Tanner moved to postpone the application to the February 12, 2014 meeting. The motion was seconded by Ms. Stone. The motion passed by unanimous (5-0) vote.

IV. CONDITIONAL USE PERMIT APPLICATIONS (NEW BUSINESS)

1. 319 Vaughan Street
North Mill Realty Trust, owner
3S Artspace, applicant
Assessor Map 124, Lot 9

Mr. John Chagnon of Ambit Engineering was present to speak to the application. He stated that he was requesting an extension for the Conditional Use Permit and that nothing had really changed since the previous meeting. They had applied for the Shoreline Permit Application on which they noted that there was open space on the property where they would plant switch grass. It was a small area on the northeast corner of the lot, between the walkway and the lot line.

Ms. Tanner asked if anything else had changed, and Mr. Chagnon told her no. They wanted to rearrange the entrance forward of the 100-foot buffer. The ramp coming up from the street would be moved to the other side, and there would be a patio seating area in the front. They kept the same coverage amount, and nothing had changed in the 100-foot buffer itself. Chairman Miller asked if it had changed during the first extension, and Mr. Chagnon replied that it was a new June revision. The final approved plans did not show the back walkway as porous pavement because it was a primary egress, but they could make that change. Mr. Britz stated that the Planning Board approved it as porous pavement and asked if it was a problem. Mr. Chagnon didn't think it would be unless there was an egress problem.

Chairman Miller asked if there were more questions or discussion. Hearing none, he asked for a motion.

Ms. Tanner made a motion to recommend approval of a one-year extension of the Planning Board approval granted on February 16, 2012 with the following stipulation:

- 1) That the plans are revised to show that the proposed sidewalk at the rear of the building will be pervious pavement, as stipulated in the original approval dated February 16, 2012.

The motion was seconded by Ms. Stone. There was no discussion. The motion passed by a unanimous (5-0) vote.

2. 219 Gosport Road
Pine Siskin LLC, owner
Assessor Map 224, Lot 10-11

Mr. Steve Riker of Sandpiper Environmental Services representing the owner was present to speak to the application. He stated that he had reduced the size of the pool and its location was in a similar area. One of the reasons for the Planning Board's denial had been the location of the pool. Nothing had changed other than the size of the pool, which was smaller. The buffer enhancement area was the same size, and all the other additions and stipulations remained the same. The project would need a State DES permit because it was within 100' of a prime wetland. The impervious on the site was 1.2% and was located near some water bodies. The

storm water running off from the pool would be a small amount. The buffer planting area was large, and he realized there was a lot of concern about its functions and values. The owner was willing to put in a large buffer area and give up a lot of lawn in exchange for a pool.

The alternative location was highlighted, and he said he split the distance between the side of the garage and the abutting parcel, which was about 5' on each side. The proposal was the alternative with the least adverse impact. There was no alternative outside of the wetland buffer that was feasible and reasonable. The underground propane tank would be moved. He asked if it was reasonable to put a pool in a side yard/front yard location in an upscale neighborhood. It was also a privacy issue because the abutter and neighbors would see it.

Ms. Stone asked if, when the house was built, they had been allowed to put the backyard and lawn that close to Sagamore Creek. Mr. Britz stated that he wasn't sure of the progression of it, but the subdivision had been approved for four houses within the wetland buffer, which at the time was 75 feet. There had not been an Ordinance standard about vegetation clearing then. Mr. Riker stated that he wasn't sure as well and that the house was right at the edge of the 100-foot buffer. Chairman Miller asked what year the house was built. Mr. Riker did not know. Mr. Britz said it was built before the changes to the Ordinance.

Ms. McMillan asked if the only change was the size of the pool, with no changes in the buffer plantings. Mr. Riker agreed and stated that some of the calculations had changed because of the change in pool size, so the distance from the tidal wetland area was not 74.2 feet. Chairman Miller asked if Photo 4 was the bedrock outcrop. Mr. Riker agreed. Chairman Miller verified that the pool was in the lawn area closer to the house, with no trees removed. Mr. Riker said that the pool was not closer to the house but that the trees had been relocated.

Mr. Britz stated that the house was bought in 2001, so it had been built on or before 2001. Ms. McMillan referenced the letter from the City and asked if any ledge would be blasted to install the pool. Mr. Riker said that the owner of Custom Pool and Spa had stated at the previous meeting that the ledge would not need to be blasted. Ms. Stone remembered him saying it would just come out with an excavator and there was no need for blasting. Mr. Riker stated that the pool was not as deep as previously designed because the diving board had been eliminated, which meant the pool would be less than 8' deep. Ms. McMillan wondered if the *rosa rugosa* was invasive. Ms. Tanner said it was not invasive but could spread.

Vice-Chair Blanchard asked how adverse impact to the wetland during construction would be handled, given the proximity to the prime wetland. Mr. Riker replied that there would be a 5-foot envelope around the pool during construction that would prevent encroachment on the wetland. He showed where the equipment would access the site and said the lawn would be restored, the fence would be installed, and erosion control measures would be taken, but he did not anticipate erosion issues.

Ms. Tanner asked about alternative locations for the pool. He showed different areas outside of the buffer for alternate areas, including an area where it would be within 2-3 feet of the neighbor's property. Mr. Britz stated that there were no setbacks. Ms. Tanner commented that one location seemed to put it further back from the road and it would have to be screened.

Chairman Miller thought the landscaped area near the deck would be lost as a result. Mr. Riker stated that they would flatten the grade, causing a 6'+ grade change, and he wasn't sure if it would approach the neighbor's property.

Ms. McMillan made a motion for the purposes of discussion to recommend approval of the application as presented. The motion was seconded by Ms. Tanner.

Ms. McMillan thought it would be nice to have the additional buffer plantings, but the need was not justified if there was another location on the site. People might see the screening and not the pool, and she wasn't sure about the elevation changes. Having a pool 100% in the buffer with a house so close to the buffer defeated the purpose of the buffer. Ms. Tanner and Ms. Stone thought it was a bad idea and thought it could be designed another way.

Chairman Miller understood the buffer Ordinance but didn't think the loss of the lawn next to the house was a big issue. He preferred the plantings to the lawn. He felt that it was a gray area, but he noted that relative to function, they had made great improvements with the updates. The small percentage change and the previous coverage of 1.2% on the lot seemed reasonable to him. He understood the buffer issue. He could be concerned about precedence, given the previous meeting's public comments about the Commission applying their regulations the same to small as well as large applicants, which he thought was ill-informed because the Commission did a good job of evaluating each petition on its own basis. He thought the request was reasonable and would not affect the buffer function adversely.

Vice-Chair Blanchard regretted that the land compromised the owner's options but did not think there were good solutions. She respected all the work they put in, but the proximity of the salt marsh and the prime wetland were a major consideration. She would have liked the buffer planting but did not think the tradeoff was to put the pool in that location. Science in practical experience led the Commission to make the changes to the Ordinance they had made in the last ten years, and they needed to respect that they were made on the basis of that practical experience as to how land functions, especially when it was developed next to wetland and wetland buffers. She stated that she would not support it.

The motion to recommend approval of the application as presented failed to pass by a 4-1 vote with Chairman Miller being the only vote in favor. Ms. Stone, Ms. McMillan, Vice-Chair Blanchard and Ms. Tanner voted in opposition.

3. 292 Lang Road
Ertugrol Yurtseven Revocable Trust of 2010, F.Yurtseven, owner
Lang Road Land Holdings, LLC, Assessor Map 287, Proposed Lot 4-4)

Ms. Tanner made a motion to postpone the application to the February 12, 2014 meeting. The motion was seconded by Ms. Stone. The motion passed by unanimous (5-0) vote.

V. WORK SESSION

1. Brackett Road (No Number Assigned)
Ann Coffey, Janice Stanley, Carolyn Wiggin & Sandra Chaisson, owners
Assessor Map 206, Lot 17

Mr. Steve Riker and Mr. Fran Sullivan, who had a P&S Agreement with the property owner, were present to speak to the application. Mr. Riker stated that Mr. Sullivan wanted to build a home on the lot. The site was located at the end of Brackett Road and was the last lot on the paved portion of the road. There was another road that met up with Brackett Road. Chairman Miller asked if the roads connected. Mr. Riker stated that it was New Castle Avenue, which was a gravel path and a recreational walking path. Mr. Britz stated that there was frontage on the lot on Brackett Road and on the paved walkway, and it was an interesting site. The wetland buffer was a small portion on the back of the lot.

Mr. Riker stated that the lot had been surveyed so the plans were accurate. A portion of the lot was partially developed, but the rest of the lot was forested. He did not think there had ever been a house on it. Mr. Sullivan added that the people who lived next door bought the lot for privacy. Vice-Chair Blanchard asked where the school was. Mr. Riker explained that there was an access going to Little Harbor School through the backyards of several houses.

Mr. Riker showed an alternative location that could have side yard setbacks, and another location would require a 210-foot driveway that one would have to go through the buffer to get to. Mr. Sullivan was willing to convert the impervious asphalt driveway to a pervious driveway pad and also wanted a patio that would be pervious but would be in the buffer. Mr. Riker said they were open to mitigation options and doing anything to help the lot, like a drip edge around the house to control the storm water.

Chairman Miller asked what the water flow was and how big the wetland was. Mr. Riker showed the flow and how it sloped, and he stated that he did not know how big the wetland was but knew it was fairly large and almost went up to the abutting lot. Ms. Stone asked if it ran under the path. Mr. Riker agreed and mentioned a culvert that went underneath New Castle Avenue. Chairman Miller noted that there was a house on one of the lots, and Mr. Riker agreed. They discussed paper streets that were analyzed and reviewed case-by-case and the City preserved its right to ownership. Ms. McMillan remembered that the walkway was wet on both sides when she went on it previously, and the neighbors had ditched their lawn to drain. Mr. Britz stated that he had not noticed it because it was back quite a ways and was part of the salt marsh. Ms. McMillan asked if it was a buildable lot. Mr. Britz replied that when they went out to look at the site, his impression was that the wetland did not extend on the property.

Vice-Chair Blanchard left at this point in the meeting.

Ms. Stone felt that it was not a buildable lot, based on the requirement from 1995 of a house having to be a minimum of 75 feet away from the wetland. She did not think it would work on that lot. Ms. McMillan said there was talk of building a house, garage and driveway in the wetland buffer. Chairman Miller stated that it would be difficult to find a spot for the house and

make it work. Mr. Britz stated that if an owner said a lot was not buildable, they gave up their right to build. The City would assess the lot. There was further discussion of high water tables and vegetation. Mr. Sullivan stated that the house would be 2,000 square feet or less. Mr. Riker stated that the alternative location was a tricky area with more impact to the buffer. There was discussion about adjacent lots and the few houses that were around.

Mr. Riker asked if there would be a work session process with the Planning Board. Mr. Britz replied that the idea was to get the feedback from the Conservation Commission to know where Mr. Sullivan stood. Chairman Miller stated that Mr. Sullivan was at the point where he either spent more money or walked away, and he needed to know if he could build on the site. Mr. Britz thought an easement to access the lot further back would be necessary. There was further discussion about a driveway and tradeoffs, driveway surface area versus the house surface area, and cutting down trees in the buffer.

Chairman Miller sensed some encouragement. He did not know if it would pass or not, but the buffer was there. He did not think there would be a lot of support from the Commission, and he could not think of a lot of good ideas to mitigate the buffer and the wetland. He told Mr. Sullivan there were good books about how to mitigate structures and maintain proper buffers and pathways to minimize impact to the wetland. The main issue was water and runoff and trying to get it purified before it reached the wetland.

Mr. Britz stated that he would not recommend mitigation because it might set a precedent. The wetland would be very close to the house. They discussed the tradeoff of lawn versus house and Mr. Sullivan thought it may not be economical. He had a lot of money already invested in the property, and if the house were relocated to another spot on the site, there would probably be no water view.

V. OTHER BUSINESS

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

VI. ADJOURNMENT

At 5:00 p.m., it was moved, seconded, and passed unanimously to adjourn the meeting.

Respectfully submitted,

Joann Breault
Acting Conservation Commission Recording Secretary

These minutes were approved at the Conservation Commission meeting on August 13, 2014.