

MINUTES

CONSERVATION COMMISSION

**1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE
EILEEN DONDERO FOLEY COUNCIL CHAMBERS**

3:30 p.m.

May 09, 2018

MEMBERS PRESENT: Chairman Steve Miller; Vice Chairman MaryAnn Blanchard;
Members Allison Tanner, Barbara McMillan; Alternates Nathalie
Morison and Ted Jankowski

MEMBERS ABSENT: Adrienne Harrison, Samantha Collins

ALSO PRESENT: Peter Britz, Environmental Planner/Sustainability Coordinator

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I. APPROVAL OF MINUTES

1. April 18, 2018

Ms. Morison had several updates:

- On page 8 it said “Ms. Morison noted this section was new, so it’s not as specific.” Ms. Morison meant that since it was a new sizing of overwater structures it may not have been addressed in as much detail.
- On page 9 on the third paragraph down where it says “there was a requirement to have a property owner acknowledge that if they had to rebuild they would have to rebuild further back or comply more with standards.” Ms. Morison was incorrect in describing that new rule. Ms. Morison clarified that rule was referencing ENV–WT611.14. It basically allows primary non-conforming structures to be rebuilt provided the replacement structure is located further back from the highest observable tide line, and it be built more nearly conforming. Lastly, applicants rebuilding after a storm have to acknowledge continued reconstruction may not be feasible in the future due to sea level rise and retreat may be necessary.
- On Page 11 in the third paragraph where it said “Ms. Morison noted that 2-3 feet is generally what they recommend to build to.” It should be changed to: Ms. Morison noted that 2-3 feet is common practice.
- Then where it said “Durham is encouraging that newer development should be built 2 feet above grade.” It should be changed to: Durham is encouraging that newer development in advisory climate change areas should be built 2 feet above grade.
- The following statement should be revised to say: that it is consistent with the amount of freeboard recommended by the association of State Flood Plain Managers for A Zones without BFE.
- Lastly, on Page 11 in the last paragraph it says that “Ms. Morison noted that the federal recommendation is 2 feet for residential and 3 feet for critical.” That should be revised to say the former Federal Flood Risk Management Standard.
- Also, floodplain should be one word.

Ms. Tanner noted that on the next to last page at the top it should say “100 foot flood area.”

Ms. McMillan moved to approve the April 18, 2018 minutes as amended, seconded by Ms. Tanner. The motion passed with (5) votes in favor, (0) against and (1) abstention.

II. CONDITIONAL USE PERMIT APPLICATIONS

- A. 175 Gosport Road
175 Gosport Road, LLC, owner
Assessor Map 224, Lot 1
(This item was postponed from the April 18, 2018 meeting to the June, 2018 meeting.)

Request to Postpone

Vice Chairman Blanchard moved to postpone the application to the June 13, 2018 Meeting, seconded by Ms. McMillan. The motion passed unanimously in a 6-0 vote.

- B. Martine Cottage Road
Carolyn McCombe Revocable Trust, owner
Assessor Map 202, Lot 14

Mr. Chagnon from Ambit Engineering represented the owners of the lot. Bernie Pelech was also present. Mr. Chagnon had been to the Commission before with this application. They have reviewed a design, been on a site walk and then reviewed a revised design. The motion to approve at the last meeting was voted against. The revised design has a reduced the impact by 9,000 square feet. The proposal is to come in off of Martine Cottage Road. There would be a drive under garage coming in grade at 28.5. There would be a two-story section of the structure attached to that. The house has been reduced in size with a two-story section and a one-story bump out. Some of the Commission’s suggestions were taken to heart. The building was brought closer to the road and the house size was reduced. The previous design had a long driveway impact. The septic system is in the same location. There will be some impact to get out to the septic. That was the best location for the septic. The septic is setback 90-feet from the wetlands. There is plenty of soil before the wetlands. The thought may be that the house could come closer to the road, but that would not improve the impact. It would also result in cutting more trees in the limited cut area. In this design none of the limited cut areas have any trees being removed in them.

Ms. Tanner requested Mr. Chagnon explain the drainage coming across the site. Mr. Chagnon replied that they had to deal with the overflow of the vernal pools. That can continue. The driveway would interrupt it, but it would go to a culvert on the other side of the driveway. This project is not going to have the flow go underneath the house, but the grading has a high point. It would direct the flow into the swale, then it will spread and disperse into the buffer area. The buffers would provide treatment.

Ms. McMillan clarified where the 9,000 square feet reduction was from. Was it from the last plan? Mr. Chagnon responded that the second plan was a reduction from the first plan. Because that plan was generated after the initial application the legal notice was never amended. There was confusion at the Planning Board Meeting about how much impact there was. Chairman Miller added that Alternate Plan 1 had 23,125 square feet, Alternate Plan 2 had 15,421 square

feet and this version had 14,022 square feet of impact. Mr. Chagnon responded that it was a reduction of 900 square feet from the Alternate plan 2 to this one. Ms. Tanner commented that she was confused on the total site impact. Mr. Chagnon responded that in the 100-foot buffer there is 14,022 square feet of disturbance. There are parts of this plan that are not in the buffer. That is the difference between this plan and the last one.

Chairman Miller noted that the Commission has seen the application before and gone on a site walk. Chairman Miller asked Mr. Chagnon if there was anything else to present? Mr. Chagnon responded if the Commission wanted to see why bringing house closer to the road did not work, then he could present that.

Chairman Miller appreciated that the house design took advantage of the land outside the buffer and liked that there was a reduction of impact.

Ms. Morison requested clarification on why the flow through the foundation would not work in the new location. Mr. Chagnon responded that a solid slab would be needed because the garage is under the house. There is also a significant grade change in that area. It would require a deck or another feature to get people up there. As it is there will be a retaining wall.

Ms. McMillan requested clarification on the tree plan. Were the ones to be removed in the site disturbance area? Mr. Chagnon responded that the tree line showed which trees will be removed and which will be saved. Beyond that line on the plans they would not be cut. That can be included in the approval to add a note. Mr. Jankowski clarified that all of the trees in the line would be cut. Mr. Chagnon confirmed that was correct. Some may be able to be saved in one area with the grading. There could be some selective cutting.

Ms. McMillan noted that there was no mention of maintenance of the existing buffer in the maintenance plan. Would there be some sort of marking of the buffer to indicate a do not cut beyond a certain area. Mr. Chagnon confirmed that was correct. They have done placards before.

Ms. McMillan requested clarification about the note on the maintenance plan that stated the stone drip apron may need replacement of stone as needed. Mr. Chagnon responded that the drip apron allows the water to infiltrate below the surface, so over time if the debris is not taken out there may be a clog. If it's not working and clogged then the stone layer can be pulled out and cleaned or replaced to allow for drainage. Ms. McMillan requested that they add a sentence about that in the plan. Mr. Chagnon confirmed that could be updated.

Ms. Morison requested that Mr. Chagnon speak to the vernal pool or the wetlands functions and values assessment that Mr. Riker completed. Mr. Chagnon noted that Mr. Riker had a site walk in Durham, NH and was not able to attend the meeting. Ms. Morison noted that the letter detailing the vernal pool assessment states that both pools are hydrologically supported by a seasonal high water table and surrounding upland runoff. The wetlands functions and values assessment related to ground water recharge and discharge states that wetlands, which are the vernal pools, is not capable of function due to the lack of hydrological connection between the surface waters and the ground waters. How could both statements be true? If the vernal pools in

the assessment are stated as being connected and the wetlands functions assessment says that they are not. Mr. Chagnon responded they are talking about two different connections. The vernal pool talks about VP 1. It says that it's approximately 195 feet in length 90 feet in width and says pool would be characterized as isolated. The other wetland is hydrologically connected to other wetlands. One is a vertical connect and the other is a horizontal connection.

Chairman Miller noted that wetland functions and values evaluation form showed that the production export was yes, and the wildlife habitat was yes, but then all of them were no. Is that because of how it's defined? It would seem wetland A and B would have some flood flow sediment, toxic retention and some nutrient removal. Unless there was a definitional thing in the manual it would be assumed that those other functions would be going on. Mr. Britz clarified that Chairman Miller was talking about the report on the principle functions. Chairman Miller confirmed that was correct. Mr. Britz noted that principle function was different than having any function at all. Chairman Miller responded that's why he was wondering if it was some if the results were defined by something. Mr. Chagnon responded that he would ask Mr. Riker to review it. The vernal pools are upslope and the tree buffers will be maintained. This development would not have an impact on the pools.

Ms. McMillan questioned what the livable square footage was. Mr. Chagnon responded that it was not in the packet. It is a lot smaller than the last design. Based on the floor plan it's roughly 2,900 square feet of livable square footage. Mr. Jankowski questioned how that compared to some of the earlier proposals. Mr. Chagnon responded that the other house was around 5,000 square feet.

Ms. McMillan requested clarification on why the house cannot be located closer to the street. Mr. Chagnon responded that they looked at moving it forward and it doesn't help the impact. They would have to deal with the drainage to make water go around the structure. That would mean cutting trees. Mr. Chagnon handed out an exhibit to show that.

Mr. Britz requested clarification on the driveway location in the exhibit. Mr. Chagnon showed where it would be and how cutting trees would be necessary to make grade. Chairman Miller questioned if the septic would stay where it was and that was why there was cutting up there in the exhibit. Mr. Chagnon confirmed that was correct.

Ms. McMillan questioned if the other plan left more trees. Chairman Miller responded that they would be trading cutting areas if the house was moved forward. Mr. Chagnon responded that it was pretty similar. It's better environmentally to go with the proposed plan because moving the house forward would result in cutting in the limited cut area.

Chairman Miller questioned if more trees would be cut in the limited cut area below or above the house. Mr. Chagnon responded that it would be above the house to direct the water. They would have to get it to the swale. Mr. Britz questioned if the elevated house idea was still Mr. Chagnon responded that it was not because it's a sloped area. Mr. Britz questioned if they could make that work somehow. Mr. Chagnon responded that the garage would need a slab. This is a smaller house reduced in size by about 30%.

Ms. McMillan requested clarification on the flexibility of tree cutting on the existing proposal. Ms. McMillan expressed concern about cutting around trees in an established wooded area and leaving them exposed. Mr. Chagnon responded that it would be a decision made on site looking at particular trees. It would not be good to expose a tree in the forest that's been in a wooded area. So far the trees have just been numbered. They did not look at the health of them yet.

Ms. McMillan questioned if the lawn maintenance plan included anything about no pesticides. Mr. Chagnon responded that a note could be added to the plan. The ordinance already has requirements about pesticide use as well. More information can be added to the plan about what is prohibited in the buffer. Ms. McMillan requested they add an explanation that the land is located between wetland and vernal pool.

Vice Chairman Blanchard moved to recommend approval of the application to the Planning Board as presented, seconded by Ms. Tanner.

Vice Chairman Blanchard commented that even though the plan was modified the project significantly impacted the wetland buffers and challenged the natural function of resources on the lot. Vice Chairman Blanchard did not appreciate the loss of trees with regard to impact on water flow, water quality and impact to the watershed. Water doesn't respect political boundaries.

Ms. McMillan also was going to vote against the motion. Ms. McMillan appreciated the smaller size. The wetlands report indicated great functions and values including endangered species habitats. The house could be smaller. There is a comparison of the other buildings in the area. Most were built before the buffers were established.

Ms. Tanner appreciated the reduced size, and agreed with Ms. McMillan about the wetland functions and values. It did not make sense to compare neighboring properties because the site features are unique.

Chairman Miller appreciated improvements that were done and the areas that are outside the setback were included. However, the natural resource impacts are too large, so Chairman Miller would not support the motion.

Mr. Britz noted that the Commission could postpone and set up a work session. Vice Chairman Blanchard requested they act on the motion on the table. Chairman Miller agreed.

The motion failed to pass in a 0-6 vote.

C. 150 Brackett Road
Daniel & Shea N. Cook, owner
Assessor Map 207, Lot 72

Mr. Chagnon from Ambit Engineering represented the homeowners. The project is to remove an existing deck and replace it with a slightly larger one in the same location. There is a freshwater wetland with a 100-foot setback and a tidal wetland with a setback. The proposal is to rework

the deck at the edge. A section of the existing paved area would be changed to be porous pavement. There is some interior construction going on out there under a different permit. This was filed as a minor, but it is adjacent to prime wetland. It is actually a major. They requested that DES not treat it to all of the requirements like a public hearing etc. Mr. Britz clarified that the tidal area was prime. Mr. Chagnon responded that because it's major there are certain requirements of every major that can be asked to be waived because it's a small project. They are asking the state to waive the function and values assessment and public hearing. The applicants are requesting the Commission recommend a CUP approval as well as make a recommendation to DES. Chairman Miller confirmed that there was a CUP and State Wetland Bureau application for this site.

Chairman Miller questioned how the water was being treated under the deck and around the deck. Will there be gravel? Mr. Chagnon responded that there was a stone drip apron constructed at the location. The deck can't be considered porous. Chairman Miller questioned if the house was on septic. Mr. Chagnon responded that was a pump station. Chairman Miller clarified that the breathing tube was for the pump station. Mr. Chagnon confirmed that was correct. Chairman Miller questioned what the orange area meant on the map. Was it showing the temporary impacts? Mr. Chagnon confirmed that was for the construction work. The permanent impact is the deck itself.

Ms. McMillan made the same recommendation about defining what would be needed to maintain the drip line edge in the management plan. Chairman Miller commented that sheet C2 does have fertilizer and pesticide limitation notes. Ms. McMillan added that this is a document that would be given to the homeowner, so that would be good to put in there too. They won't be looking at the plan.

Ms. McMillan questioned if there were any trees or buffer. C2 doesn't show the trees clearly. Mr. Chagnon responded that there are some significant trees that are between the deck and the resource. Mr. Chagnon handed out pictures. Chairman Miller noted that photo 1 looked like it had a raised bed on the waters edge. There are some plantings there, but it's hard to tell all the detail. Mr. Britz added that Mr. Riker spoke about potential tree clearing, but the owner is aware of the no cut buffer. They are also aware of the limited cut area. There may be a couple trees cut like the one that looms over the house. Nothing is confirmed. If they did cut they would be within their right. Mr. Riker wanted to confirm that was true. Mr. Britz confirmed that it was true. Ms. McMillan questioned if there was an opportunity to create more of a buffer on the shore and not cut more trees. The Commission can't really ask for that. Chairman Miller responded that they could make a request to do some plantings down there. Mr. Jankowski pointed out note 10 on second sheet. This was an environmentally sensitive area and the note just specifies low phosphate fertilizer etc. People can overuse them too. They should follow land management practices.

Ms. McMillan moved to recommend approval of the application to the Planning Board, seconded by Ms. Tanner with the following stipulations:

1. The language regarding maintenance of the stone drip edge be amended to include more detail such that it will be maintained when water is ponding or there is other evidence that the stone drip edge is not functioning to drain water from the area.
2. That the City's regulations on fertilizer and pesticides be added to the conditional use plan
3. The Commission recommended the applicant consider adding additional plantings to the tidal wetland buffer to help improve wetland buffer function
4. That Commission recommended that the applicant use certified organic landscaping practices in maintaining their yard.

The Commission voted unanimously (6-0.)

D. 6 Vine Street
Marc Therrien, owner
Assessor Map 233, Lot 107

Marc Therrien had a CUP that has expired and was looking to amend that. The amendment was for an already approved CUP that was expired. The project is to change a pervious paver patio to a deck.

Chairman Miller questioned if this was reducing the impacts from the previous application. Mr. Therrien responded that he was moving it 5 feet further away.

Vice Chairman Blanchard questioned if there was an existing patio there. Mr. Therrien responded there was not. Vice Chairman Blanchard clarified that they were just going to build up. Mr. Therrien confirmed that was correct. Vice Chairman Blanced questioned what the supports were going to be and how many of them would there be? Mr. Therrien responded that they would be three sonotubes.

Ms. Tanner asked about the drainage from the drip off the roof. Mr. Therrien responded that the original permit required drip aprons, which are there. There is also a gutter on the back. The drip aprons are on all four sides of the house. The gutters run into the apron. Chairman Miller questioned what was there now; is it grass? Mr. Therrien responded that there was a temporary set of steps outside the door then grass. Chairman Miller questioned what the height of deck would be. Mr. Therrien responded that it would be just under 3 feet. Chairman Miller recommended putting gravel under the deck to prevent erosion and give the water a chance to infiltrate. Mr. Therrien confirmed that could be included in the plan.

Vice Chairman Blanchard moved to recommend approval of the application to the Planning Board as presented, seconded by Ms. Tanner. The Commission voted unanimously (6-0.)

III. STATE WETLANDS BUREAU PERMIT APPLICATIONS

1. Standard Dredge and Fill Application
175 Gosport Road
175 Gosport Road, LLC, owner
Assessor Map 224, Lot 1

(This item was postponed at the April 18, 2018 meeting to the June, 2018 meeting.)

Request to Postpone

Vice Chairman Blanchard moved to postpone the application to the June 13, 2018 Meeting, seconded by Ms. McMillan. The motion passed unanimously in a 6-0 vote.

1. 150 Brackett Road
Daniel & Shea N. Cook, owner
Assessor Map 207, Lot 72

Vice Chairman Blanchard moved to recommend approval of the application to the Planning Board, seconded by Ms. McMillan with the following stipulations:

1. The language regarding maintenance of the stone drip edge be amended to include more detail such that it will be maintained when water is ponding or there is other evidence that the stone drip edge is not functioning to drain water from the area.
2. That the City's regulations on fertilizer and pesticides be added to the conditional use plan
3. The Commission recommended the applicant consider adding additional plantings to the tidal wetland buffer to help improve wetland buffer function
4. That Commission recommended that the applicant use certified organic landscaping practices in maintaining their yard.

The Commission voted unanimously (6-0.)

IV. OTHER BUSINESS

1. Minimum Impact Expedited Application
NH Port Authority
Installation of 8 temporary pilings along State Pier for U.S.S. Manchester docking.

Mr. Britz noted that the USS Manchester will have its inaugural launch in Portsmouth, and needs to be able to dock here. The project is pretty minor and straightforward. The applicants are looking for a recommendation to DES.

Ken Anderson spoke to the application. A newly commissioned naval war ship is arriving in Portsmouth on May 21, 2018. The ship has a very unique design with a tri-hull and wings that come off the side of the ship. It is not the traditional ship at NH Port Authority. In order for it to come in it will have to have one wing resting up against the pier. The dock has to have big round fenders called camels to keep the ship off the pier. That way the ship will not get caught underneath. The issue is that there is a gap that forms as the tide drops. A fender is needed to prevent the gap. Temporary pilings are needed to accomplish this. There's currently a bid out to logistics companies to come in and support everything for the ship. They have been asked to help with the tie up of the ship in regards to making the pier accommodate it. The aerial plan depicts the 8 pilings that need to be installed. The temporary impact is 24 square feet. They will only be here while the ship is. They will be installed just like any piling and secured to the pier. Without this the ship can't tie up there.

Mr. Jankowski questioned if the ship was made in Bath, ME. Mr. Anderson responded that it was made in Alabama.

Vice Chairman Blanchard questioned what the function of the ship was. Mr. Anderson responded that it was a warship.

Mr. Anderson noted that part of a wetlands application requires Conservation Commission sign off. They just got the go ahead to seek this permit within past 24 hours. DES talked to Mr. Britz and will expedite the permit. They wanted him to come in and talk about this with the Conservation Commission today because they only meet once a month.

Vice Chairman Blanchard questioned how long the ship was. Mr. Anderson responded that it was 410 feet.

Chairman Miller clarified that the pilings would be temporary. Mr. Anderson confirmed that was correct. They would be in 2 weeks or less. They would be the same pilings as used in the Sarah Long Bridge.

Vice Chairman Blanchard questioned if a motion was needed on this. Mr. Britz responded that a motion wouldn't hurt, but they don't need one. As long as the consensus is that Chairman Miller can sign, then it that's ok. Mr. Anderson clarified that they had the permit application. They still have to finalize the plan and details. They wanted to come in now to present and get the Commission's blessing because they only meet once a month.

Ms. Tanner moved to sign the application as presented, seconded by Vice Chairman Blanchard. The Commission voted unanimously (6-0.)

IV. ADJOURNMENT

At 5:54 p.m., it was moved, seconded, and passed unanimously (6-0) to adjourn the meeting.

Respectfully submitted,
Rebecca Frey, Conservation Commission Recording Secretary