



CONSERVATION COMMISSION MEETING MINUTES – January 25, 2016

Present: Scott Mclsaac- Chair, Eldon Abbott- Vice Chair, Bob Mosher, Laurie Freeman, Frank Gaul, John Morrissey, Loni Fournier- Conservation Officer and Polina Supin- Asst. Conservation Officer

Absent: Michael Ide

Meeting was called to order at 7:03 PM.

Approval of Minutes

Motion: Commissioner Abbott motioned to approve the minutes from the January 11, 2016 Commission meeting.

Second: Commissioner Freeman

In Favor: All

Opposed: None

Abbreviated Notice of Resource Area Delineation

213 Cushing Street – DEP 034-1247

Applicant: Jacqueline Murray

Representative: Brian Taylor

Confirmation of wetland boundaries

Brooke Monroe, Consultant, presented her work on the wetland boundaries at 213 Cushing Street.

Staff visited the site on 1/19/16 and checked the flags that were delineated by Brooke Monroe on 8/13/15. Staff observed the following:

- Flag WF-26 was not found, however there was a flag remnant on a tree limb in the approximate location of WF-26. If this remnant was WF-26, staff recommends moving it up slope approximately two feet.
- Staff could not locate flags WF-41, WF-42 or WF-43. Staff requests that these flags be (re)placed.
- Staff noticed a depression with standing water, resembling a potential vernal pool, at the bottom of a hill west of the old foundation. On the plan, the location is encircled by elevation 90. There were no flags present in this area. Staff recommends the applicant have Pinebrook Consulting, or another environmental consultant, review this area for ecological significance.
- Staff agrees with the other delineation flags.

The Conservation Officer stated that the applicant is also requesting a waiver for a portion of the required application fees. The applicant paid \$2,000.00 in state fees, of which \$1,012.50 was paid to the Town, per the state requirements. However, additional fees are also required, per the Town of Hingham Wetland Regulations. The Town fee is listed as \$3.00 per linear foot, with a note of Category 5. Category 5 is further described as “Docks, piers, revetments dikes, etc. (coastal or inland).” Since this project does not meet that description, the Conservation Officer stated that, in her opinion, it is fair to waive the \$3,000.00 fee required by the Town of Hingham Wetland Regulations, and to work with the Commission at a later date to revise the published fee schedule to be more clear and accurate.

Commissioner Mclsaac agreed that there was some ambiguity in the fee schedule as published, and stated that he supported waiving the \$3,000.00 fee required by the Town.

Commissioner McIsaac also requested that the fee schedule be reviewed and revised, as necessary, this year.

Motion: Commissioner Morrissey motioned to issue an Order of Resource Area Delineation for 213 Cushing Street and adopt the findings of fact a through c and conditions 1-4 of the staff report.

Findings:

- a. This project meets the requirements for issuance of an Order of Resource Area Delineation pursuant to the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations.
- b. Resource areas shown on the ANRAD PLAN dated 1/7/16 and reviewed by staff are confirmed, with slight modification. Modifications suggested by staff are required to be implemented in the final draft of the 213 Cushing Street plans.
- c. The required Town of Hingham Wetland Regulations fee, in the amount of \$3,000.00, is waived.

Conditions:

1. Replace flag WF-26 approximately two feet up slope from where a flag remnant can be found in that location, and submit a revised plan to the Conservation Office.
2. Replace flags WF-41, WF-42 and WF-43, which were not found by staff.
3. Evaluate the depression at elevation 90, west of the old foundation, for the presence of vernal pool obligate species in March through May 2016, and submit a letter to the Conservation Office that describes the findings.
4. If obligate species are found, a 100 foot buffer around the area must be delineated and revised plans need to be submitted to the Conservation Office.

Second: Commissioner Freeman

In Favor: All

Opposed: None

Request for Determination of Applicability

390 East Street

Applicant: Mark Gebhardt Representative: Jeffrey Hassett

Proposed: Garage addition and associated improvements

Steve Hassett of Morse Engineering Company, Inc. presented the plans for an addition to a single family home located at 390 East Street.

The applicant is proposing to construct a 612 ft² attached garage to a single family home. The majority of the proposed garage is located within the 100 foot buffer zone. The nearest point of the addition to the wetland is 76.6 ft. The applicant proposes to expand the driveway to the entrance of the garage. The new driveway will be gravel and will be outside of the 100 foot buffer zone, but within the 200 foot riverfront area. The proposed work will result in an increase of about 600 ft² of impervious area within the riverfront area for a total of approximately 1,700 ft² or 8%. Riverfront regulations allow for up to 10%.

Staff visited the site on 1/12/16. The property is bounded to the south by a perennial stream. Two culverts allow the stream to flow from under East Street towards and under the commuter rail tracks, which run along the northeast side of the property. Natural vegetation provides a small buffer to the stream; the remaining portion of the rear of the property is lawn. The area where the garage is proposed is already disturbed and the construction of the garage should not adversely affect the resource area. The proposed gravel driveway will be an extension of the current circular gravel driveway.

An upgraded septic system is currently being installed in northern portion of the property. This work was approved by the Conservation Department in August 2015 through an Administrative Review. A silt fence has been installed as part of this work, and the location of the proposed garage is marked on the ground for reference and to show the limit of work.

Motion: Commissioner Freeman motioned to issue a Negative Determination of Applicability for the work proposed at 390 East Street and adopt the findings of fact a and b and conditions 1-4 of the staff report.

Findings:

- a. This project meets the requirements of Part 1, Section 7.1 of the Town of Hingham Wetland Regulations governing procedures for a Request for Determination of Applicability.
- b. The work described is within an area subject to protection under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations, and will not alter or adversely affect the area subject to protection under the Act.

Conditions:

1. Prior to the start of construction, erosion controls must be installed and inspected by the Conservation Department; straw wattles and/or hay bales will not be used as a form of erosion control.
2. Erosion controls will remain in place until construction is complete.
3. Any debris that falls into the resource area shall be removed immediately by hand.
4. The Conservation Department shall be notified to any changes in plans prior to proceeding with said changed plans.

Second: Commissioner Gaul

In Favor: All

Opposed: None

Commissioner McIsaac read the Public Hearing Notice of Intent.

Notice of Intent

246 Lazell Street – DEP 034-1245

Applicant: James McGorry and Alicia Secor

Representative: Brad Holmes

Proposed: Driveway and associated improvements

Adam Brodsky, environmental lawyer, introduced himself, Brad Holmes, wetland scientist, Peter Palmieri, engineer, and the property owners, James McGorry and Alicia Secor.

Mr. Brodsky noted that this is the second hearing for the project (it was continued from the 12/14/15 Commission meeting). The applicants have proposed to construct a new driveway within the 50 foot buffer of a wetland on their property. The Town of Hingham Wetland Regulations prohibit the construction of new driveways within the 50 foot buffer zone and the applicants have requested a waiver under the Town's Bylaw. Section 2B of the Bylaw allows the grant of a waiver if the applicants have shown that the work will not adversely affect the wetland values of the Bylaw.

Mr. Holmes submitted a formal waiver request to the Conservation Department on January 22, 2016. Mr. Holmes does not believe this project will have any adverse effect on any of the wetland values protected by the Bylaw, and in fact, concludes that the project will result in an overall improvement, principally from the proposed mitigation area, which has increased since the project was last presented to the Commission.

A rain garden has been added to the mitigation area to treat the small amount of stormwater that will be generated by the driveway. Mr. Palmieri estimates that 0.15 cubic feet per second of runoff will occur during a 10-year storm and 0.22 cubic feet per second during a 100-year storm. The grass swales on either side of the proposed driveway, as originally proposed, remain as a part of the project.

Mr. Brodsky reviewed the plans for the proposed driveway and noted that any modifications to the stone wall on the property, which are proposed, or the trees along Lazell Street requires approval from the Town's Planning Board due to the fact that Lazell Street is a scenic road. Approximately 10 feet of stone wall will have to be removed as part of the project (three feet on the south side and seven feet on the north side). The stones will be reused on site. No trees have been proposed to be removed.

The project is altering 1,505 ft² within the 50 foot buffer zone and 3,163 ft² of vegetated mitigation has been proposed at (a 2.1 to 1 mitigation ratio). With the addition of the rain garden (430 ft²), the mitigation ratio increases to 2.39 to 1.

Mr. Brodsky referenced two driveway projects within the 50 foot buffer zone that have been approved by the Commission in the past: 135 Hersey Street, which was a gravel driveway, and 141 Derby Street, which was a second driveway. The first project was held to a 2 to 1 mitigation area and the second project did not have a specific mitigation requirement, although extensive wetland replication was completed as a result of the project.

Mr. Brodsky described the alternative locations that were considered for the proposed driveway, at the request of the Commission. The first alternative involved crossing the wetland and intermittent stream on the property and connecting to South Pleasant Street. This was not considered to be viable due to the alterations that would need to take place within the resource areas. The second alternative involved locating the driveway outside of the 50 foot buffer zone, connecting to Lazell Street. This was also not considered viable due to the steepness of the slope and presence of rock ledge at the location. The third and final alternative involved locating the driveway outside of the 100 foot buffer zone, connecting to Lazell Street. This alternative was not considered viable for the same reasons as second alternative.

Mr. Brodsky stated that the applicants considered moving the driveway just slightly north of the proposed location, however doing so would impact the root system of a mature oak tree on Lazell Street.

Mr. Brodsky suggested conditions that may be appropriate for the project, such as the use of environmentally friendly de-icing materials, removing snow to the north side of the driveway, and the annual maintenance of the rain garden.

Commissioner Morrissey asked about the applicant's plans for their existing driveway. Mr. Brodsky replied that the applicants are uncertain of the plans at the present time.

Mr. Holmes presented a series of photos of the proposed driveway location and the alternative locations. Mr. Holmes noted that a naturalized buffer is absent from the proposed location (the area is maintained as landscaping and lawn) and the proposed mitigation area would establish such a buffer. Mr. Holmes summarized his analysis of the project's impacts on Hingham's wetland values, e.g. the protection of public and private water supplies and groundwater, flood control, erosion control, protection of wildlife and wildlife habitat, etc., and concluded that there would be no adverse impacts.

Commissioner Morrissey asked if the alternatives are just more expensive or simply impossible. Mr. Holmes responded that the alternatives would involve significantly more site disturbance. Mr. Palmieri indicated that the second alternative has too great of a slope, removes a "landing area" for vehicles, and requires a large retaining wall, suggesting it would not be feasible for safety and cost considerations. The third alternative is less restricted by slope, but would involve removing trees and perhaps be restricted by rock ledge. The first alternative would not be practical.

Commissioner Morrissey asked whether ledge has been confirmed on the site. Mr. Palmieri replied that borings have not been conducted, but given the presence of exposed ledge on the site, he anticipates that ledge will be found in the location of the third alternative.

The Conservation Officer clarified that no new materials were submitted to the Conservation Office before the staff report was distributed, therefore the report does not reflect any of the changes discussed at this hearing. The Conservation Officer went on to state that it is clear that the applicants have investigated the alternatives and made an effort to improve the mitigation. However, the Bylaws state that no new driveways should be constructed in the 50 foot buffer and she is concerned that approving this project would set a precedent.

Commissioner Freeman asked if there is any precedent for denying driveways within the 50 foot buffer. Mr. Brodsky indicated that he looked for any driveway projects in recent history and only found two, both of which were approved.

Commissioner McIsaac stated that all of the positives with the project are there, however he keeps coming back to the fact that the Commission is charged to protect the 50 foot buffer. If this project is approved, it opens up the opportunity for anyone to do work within the buffer and then the buffer does not have any holding. Commissioner McIsaac went on to state that the wetland area and stream on the property is not insignificant and that it is exactly the type of resource

that we are supposed to stay 50 feet from. In the last few years, the Commission has become more open-minded and would make an exception for a driveway if it was the only access and the only location for that access. The Commission also looks for alternatives that are less potentially harmful on a wetland or resource value. However, this property has access and it works, although it may not be what the applicants prefer or want.

Mr. Brodsky noted that a high burden of proof exists for approving waivers. The applicants must prove, with clear and convincing evidence, that the project will not have an adverse effect on the wetland. None of the professionals are saying that the project will result in a detriment to the wetland.

Commissioner Morrissey stated that he was struck by the precedent argument and wondered if the Commission would be barred from prohibiting future driveway projects in the 50 foot buffer, if it approved this project. Mr. Brodsky responded "absolutely not" and explained that the projects were brought forward as examples of other parties asking for the same relief as the applicants, and meeting the burden of proof, and the Commission granted them the relief.

Commissioner Morrissey stated that people should be able to do whatever they want on their property, so long as it does not impact the wetlands, and that is what the Commission is here to protect. In terms of this particular property, there are other alternatives. Some may be more expensive or not preferred by the homeowners, but there are alternatives to putting the driveway in the 50 foot buffer. There will be impacts to the wetland and that is why the applicants have proposed mitigation areas. The driveway is also paved and may have more impacts than a gravel driveway, for example.

Mr. Brodsky explained that the alternatives would require greater alteration to the stone wall and the removal of mature trees, which he did not feel as though the Planning Board would approve.

Mr. Holmes argued that this project is more like a redevelopment project, where the un-naturalized buffer area would become naturalized through the mitigation plantings.

Commissioner McIsaac stated that he feels as though the mitigation would be an improvement to the site, in terms of protecting the resources and the aesthetics, however the regulations do not state that the 50 foot buffer must be naturally vegetated. It is simply a 50 foot buffer.

Commissioner Freeman asked the Conservation Officer if the proposed mitigation area, rain garden and grass swales were sufficient to prevent adverse impacts on the resource areas. The Conservation Officer replied that the solutions are the best available for the site and if the project was approved, there should be further restrictions placed on the applicants, such as the type of chemicals that can be used in the winter.

Commissioner Freeman asked if there would be any additional runoff that would impact the stream. The Conservation Officer stated that Mr. Palmieri calculated minimal additional runoff.

Commissioner Morrissey asked if the Conservation Officer agreed with the applicant's presentation and that there would be no adverse impacts on the wetlands as a result of this project. The Conservation Officer stated that the best solutions were in place in order to prevent negative impacts, but she was hesitant to guarantee that they would be successful.

Commissioner Abbott asked if the mitigation areas would be an improvement over the existing lawn area. The Conservation Officer stated that the mitigation areas were not an improvement over the lawn and that the existing vegetation on the site is doing the job of filtering and directing the water, etc. The mitigation areas are only necessary because of the driveway impacts.

Mr. Brodsky noted that runoff from Lazell Street is currently entering the wetland and stream, and one of the purposes of the proposed rain garden is to collect and treat the runoff from Lazell Street. Mr. Palmieri further described the

purpose of the rain garden as threefold: it slows down and detains runoff, and the plants and a sand/soil mixture at the bottom of the rain garden remove pollutants from the water.

Commissioner Morrissey stated that there is some disagreement between the Conservation Officer and the applicants regarding whether or not this is an improvement. Commissioner Morrissey asked the Conservation Officer if there was clear and convincing evidence that the project will not adversely affect the wetlands. The Conservation Officer stated that it is possible to improve the buffer without constructing the driveway, but she feels as though the system is managing as landscaping and lawn. The plantings would not be necessary without the driveway.

The Conservation Officer stated that she feels as though the applicants have done the best that they can to try and mitigate any impacts on the wetland resources, given that the driveway would go in that location. She feels as though they have used the best available science, done all of their research and calculated the numbers, and is unsure of anything more that she would ask for in terms of mitigation. However, without the driveway, there is no soil disturbance, no erosion controls, no disruption and no additional impervious surface.

Alicia Secor stated that, as homeowners, all they want is direct access off their property. They thought they would have had it through 120 South Pleasant Street, but that matter is in a lawsuit now. To go outside the 50 foot buffer is not something they would want to undertake, for the sake of the trees, which provide privacy and scenic value, and the challenges associated with navigating the driveway in those locations. The proposed plan is very expensive and well thought out, and will mitigate damage and offer improvements to the property. As 12-13 year residents of the Town, they love it and pay a lot of money in taxes and are just looking for a way to have a driveway that is theirs.

James McGorry stated that that the property does not have a 50 foot buffer, but a 50 foot line that is not grass, but just a large area that slopes down into a natural swale, and anything is allowed to go into the stream. By putting in the driveway, a mitigation area is established and it is a "win win." As homeowners, they are trying to be fair and work it out with a thoughtful, scientific, engineering approach that shows no burden at all.

Mr. Brodsky pointed out that the Bylaw prohibits breezeways, porches, decks, structures used for living quarters, garages and swimming pools, all within the 50 foot buffer. However, the Commission has allowed those activities, provided that the applicants meet their burden of proof.

Mr. Holmes referenced 54 Cushing Street, which had lawn right up to the edge of the wetland. The Commission allowed expanding the footprint with additions and decks as long as there was a 2 to 1 mitigation, which was planted and will turn out great.

Commissioner Freeman asked for clarification on the extent of the shared portion of the current driveway. Mr. Brodsky noted that a portion of the current driveway is on the neighbor's property (244 Lazell Street). Commissioner Freeman stated that the current driveway was more like a shared entry than a shared driveway, because as soon as the applicants enter the driveway, they turn right and are soon onto their own property. Mr. Brodsky noted that the driveway is considered to be a common driveway, a zoning term.

Commissioner Morrissey asked for clarification as to whether there was anything wrong with the current access, or whether it just a matter of being more convenient for the applicants. Mr. Brodsky responded that the proposed driveway gives the applicants access to their property over their own frontage and without having to deal with any neighbor-related issues.

Commissioner Mosher clarified that the proposed location is the best location for the driveway, and that the applicants currently have access to their property. Mr. Brodsky confirmed those facts.

Mr. Brodsky stated that the Commission's charge is to protect wetlands, and that there is no evidence that the project will adversely affect wetlands. He also stated that the DEP would allow the applicants to build the driveway right next to the wetland, because under the Wetlands Protection Act, it would not have an impact.

Mr. McGorry asked for any evidence that there would be a negative impact on the wetlands. The Conservation Officer stated the change in surface from a natural surface on the slope, currently, to an impervious surface.

Mr. Palmieri described how the driveway would be constructed. The first phase would remove all of the soil and sub soil, approximately 12 inches deep, and stockpile it in an appropriate location. Then gravel would be brought in for the sub-base of the driveway and compacted. Next, the swales would be created. There would not be a lot of erosion or siltation that would not be captured by the erosion controls. The mitigation area and the rain garden would also act as safeguards during construction.

Commissioner Morrissey asked if there are any other opportunities for mitigation on the site. Mr. Holmes indicated that, within the 50 foot buffer, the applicants could add more plantings to make the mitigation area denser and add other species.

Commissioner Freeman stated that the current hillside is very beautiful and contributes to the scenic quality of the road. Although the aesthetics of the project are not the number one concern of the Commission, she feels as though it is an important consideration.

The Conservation Officer clarified that if the Bylaws did not include a statement about no new driveways within the 50 foot buffer, it would be a totally different conversation surrounding the project.

Commissioner Morrissey suggested continuing the hearing to allow staff and the Commission to review the latest proposal. Mr. Brodsky indicated that he would be happy with that option, or to have the Commission approve the project subject to conditions that would be drafted in time for the next meeting.

Commissioner Abbott asked about the driveway drainage, specifically related to the crowning of the driveway and the cobblestones at the end of the driveway, which appear to be flat. Mr. Palmieri indicated that the driveway was designed to drain into the grass swales, and that a drain line under the cobblestones would direct runoff into the rain garden.

Commissioner Abbott asked how water would be prevented from running onto Lazell Street. Mr. Palmieri indicated that the mortar in between the cobblestones would be recessed and allow water to drain to either side of the driveway, into the swale on Lazell Street and the rain garden.

Commissioner Abbott asked about the size of the pipe under the driveway, near Lazell Street. Mr. Palmieri responded 12 inches, and verified that it, as well as the rain garden, is sized appropriately to handle the runoff from Lazell Street and the driveway.

Commissioner Abbott asked for confirmation that sediment will settle in the rain garden and that salt will be absorbed by the plants. Mr. Palmieri confirmed those facts. Commissioner Abbott questioned whether the runoff would be detained in the rain garden for long enough to allow the plants to absorb the salt. Mr. Palmieri stated that he did not know how long it took for the plants to absorb salt, but that rain gardens are an accepted best management practice for stormwater runoff.

Commissioner Abbott asked if the applicants considered using more porous pavement to mitigate the stormwater runoff. Mr. Palmieri stated that he is not convinced that porous pavement is a good solution. Mr. Brodsky stated that DEP does not recommend porous pavement for slopes greater than 5%.

The Conservation Officer presented the Commission with draft conditions for approving the project.

Commissioner Morrissey stated that he would like to continue the hearing in order to have the conditions in place before the Commission votes on the project.

The Assistant Conservation Officer asked about the depth of the rain garden. Mr. Holmes stated 1.5 feet.

Commissioner Abbott asked if a deeper rain garden would slow the water down and provide more time for treatment. Mr. Palmieri indicated that it would not necessarily provide better treatment, but it would hold the water longer. Commissioner Abbott stated that it would be worthwhile to look at making the rain garden deeper.

Motion: Commissioner Morrissey motioned to continue the hearing to the February 8, 2016 Commission meeting.

Second: Commissioner Abbott **In Favor:** All **Opposed:** None

Certificate of Compliance

55 Industrial Park Road – DEP 034-1157

Order of Conditions was issued in September 2013 for the construction of a storage building as well as a new paved access area, stormwater management facilities and associated site improvements. Staff visited the site on 1/12/16. Construction adheres to the as-built plans. Staff recommends issuance of a Certificate of Compliance.

Motion: Commissioner Gaul motioned to issue a Certificate of Compliance for 55 Industrial Park Road.

Second: Commissioner Mosher **In favor:** All **Opposed:** None

Other Business

Commissioner Abbott asked about the status of the Scotland Street property, where Mr. Hornsta proposed to hay the fields. Commissioner McIsaac thought that, given the public's reaction, the proposal was not moving forward, although it might be in the Commission's best interest to reach out to Mr. Hornstra to confirm that understanding.

Commissioner Abbott asked whether the recommendations from the Town's climate change vulnerability study would be incorporated into the wetland regulations. The Conservation Officer stated that the changes should be incorporated, but must go through Town Meeting first. The deadline for getting items on the warrant for the 2016 Town Meeting had passed, so the Commission has the rest of the year to draft changes to the regulations for the next Town Meeting.

Meeting adjourned at 9:45 PM.

Submitted,

Elizabeth Berry, Administrative Assistant

Approved as amended on: 2/22/2016