

**Hamilton Conservation Commission
Minutes of Meeting of January 13, 2016
Meeting held at Hamilton Town Hall**

Commissioners present:

Richard Luongo, Chair, Virginia Cookson, Chris Currier, Bob Cronin, Keith Glidden,
George Tarr

Staff present:

Jim Hankin, Conservation Agent
Donna Brewer, Town Counsel

Others present:

Attorney Richard Nysten
Richard Burke
Michele Stecyk
Attorney John Hamilton
Roger LeBlanc
Bill Nolan
Camilla Rich
Ed Dick

Richard Luongo opened the meeting at 7:00 p.m. and mentioned that the meeting was being recorded.

Notice of Intent

470 Essex Street (Public Hearing continued from March 11, 2015, April 8, 2015, May 13, 2015, June 24, 2015, August 12, 2015, September 23, 2015, October 21, 2015, November 4, 2015 and December 16, 2015)

Construct single family house, septic system and associated activity in No Build and No Disturb Zones

Roger LeBlanc Applicant, Bill Manuell rep, Richard Nysten, counsel for applicant

The Chair opened the public hearing had been opened and continued for many meetings. Bill Manuell explained how the proposal is for the single family home and septic system in the buffer zone under the state Wetlands Protection Act and AURA under the Conservation Bylaw. The project will require a waiver to the No Disturb and No Build Zones under the Bylaw. Manuell described projects he has been involved in that required similar relief. One project was located at 90 Moulton Street where the Commission for driveway improvement in the No Disturb Zone and No Build Zone. A second project was at 247 Forest Street where the Commission allowed a 24' by 40' three-car garage in No Build Zone, 25' away from the edge of wetland. He submitted two local by-law permits for the record to the Commission.

Mr. Manuell explained how the Board of Health had approved the perc test for the land relative to proposed septic system design that was approved without waivers by the BOH. The location of the septic system will be 65' away from the edge of the wetland. A smaller house footprint is proposed that is compliant with 50' NBZ, and 25' NDZ, however, Mr. Manuell noted that the lot

was not occupied as of 2007 so the Commission's regulations are that the 50' NDZ and 75' NBZ apply to this property. The locations for the house and septic system are proposed as far away from wetlands as possible to the front of the lot.

Mr. Manuell prepared project alternatives analysis, dated January 5, 2016 and submitted to the Commission and for the record of the public hearing, which concluded that the project improves function of area. The purpose of the project is to develop the lot with a single family home. Mr. Manuell's alternatives analyze a similar purpose and the footprint of the house cannot be located any further away from NBZ and NDZ and remain economically viable in the applicant's opinion. Mr. Manuell concluded further that an alternative for a small shed structure on the lot is not sufficiently relevant to the purpose so it was discarded. Another alternative is to make the house footprint smaller but this does not get the structure entirely out of the 75' NBZ. Mr. Manuell stated that a reasonable size house on the lot would require a waiver to the by-law's NBZ and NDZ. The house is sized consistent to those in the abutting neighborhood and this is the last remaining lot of the Whipple Road subdivision consistent with the original development.

Mr. Manuell reported that the wetland is functioning but there is small invasive species incursion due to other development in the area. The AURA has been developed on adjacent properties around the entire lot. Mr. Manuell stated that the proposed erosion controls will function as limit of work.

Mitigation proposed in the January 5 letter from Mr. Manuell addresses removal of invasive species (i.e., bittersweet, Norway maple trees), by removal of biomass. In addition, there is uncontrolled roadway runoff from Essex Street which is running into wetland and a vegetated treatment swale is proposed, and a sediment sump could be created. Mr. Manuell suggested this could improve function of area, and notes that the project is consistent with other waivers given in Town for 75' NBZ. (Noted for the record here is that no waivers have been given by the Commission for the 75' NBZ.)

Discussion ensued about waivers given before by the Commission that involved pre-existing dwellings with similar functioning wetlands. There is no dwelling at 470 Essex Street and the property was purchased by the new owner after the 75' NBZ was changed in the law. Mr. Manuell stated that the lot complied with environmental regulations at the time when it was created decades ago. Mr. Manuell stated that a regulation imposed after the lot was created is stopping the construction of a reasonable size home on the lot. Mr. Luongo stated that the new owner must abide by the rules that exist today and noted that there is no grandfathering of local wetlands regulations including the 75' NBZ.

Richard Nylen, attorney representing applicant Roger LeBlanc, spoke to the waiver provision in the Town's by-law and noted how at times strict compliance to the by-law does not work. He described how a waiver could be issued if two requirements are met: hardship accompanied with demonstration that purposes of WPA are protected, and alternative analysis. He noted that the area abutters are a fully developed subdivision, and horse farm, which include pollutants that could endanger the red maple swamp but have not. The project is the last undeveloped piece in the neighborhood and the proposed use is less intense than many in the area. In addition, mitigation is being proposed to address storm-water road runoff getting into the wetland.

Mr. Luongo opined about how the waiver request is relative to NBZ and NDZ and the Commission has never used the waiver on a property that was not occupied. Mr. Nylen described how the waiver was written for properties that are occupied or not occupied. The Commission has

allowed a waiver for two properties with existing occupancy within 20' of wetland. Mr. Nylen opined that the Commission cannot be arbitrary and capricious meaning that wetland should be treated consistently when waivers are granted, not on an ad hoc basis. Keith Glidden stated that the Commission should look at this particular situation relative to NBZ and NDZ since those zones have functions and that they remain untouched and unbuilt to protect wetlands. He added that residential homes decimate wetlands, and invasive species can often not be successfully eradicated.

Mr. Nylen opined how the red maple swamp is affected by surrounding area. The small lot is in the buffer zone/ AURA and not the wetland itself and that no work is proposed in the wetland. He added how pesticides and herbicides could be restricted at the site relative to the single family house. Also, taking storm-water off of Essex Street is more beneficial than detriment of putting a single family house on the site.

Mr. Glidden stated that the purpose of the waiver provision includes allowing argument for a property owner in "rare and unusual" circumstances and to prevent a taking. Mr. Glidden further opined that purpose of NBZ and NDZ is grossly violated in this proposal, and if a waiver is granted in this situation then when would there be a future situation where a waiver would not be granted. Mr. Nylen replied that the project proposed is as small as possible in an allowable use in residentially zoned district. Discussion addressed impact to wetland relative to its current state and proposed use.

Virginia Cookson commented that this is the first undeveloped parcel that has requested waivers. George Tarr noted that he understands the land development proposal but he stated that he did not think it was reasonable for the applicant to define putting the house in the middle of the property as the purpose for the Commission to grant a waiver. In addition, he responded to the argument that surrounding properties that the wetland by indicating that he believed information submitted at the hearings, un-rebutted information, that this parcel was an important wildlife corridor from Essex Street. Mr. Nylen opined that the red maple swamp has not been altered; it is resilient since there is not distressed vegetation and that a waiver is appropriate relative to last parcel in a developed area. Mr. Glidden noted that a peer review has not been done and evidence is not in the record that wetland had been adequately studied. Mr. Manuell noted that less than 10,000 square feet would be impacted and 30,000 square feet not impacted at the site.

Discussion was on how the existing subdivision was built before 50' NBZ and 75' NBZ rules. Mr. Luongo stated that a precedent would be set if the waivers were granted. Mr. Nylen opined how the case would be analyzed relative to the waiver requirement. He stated how the waiver language does not distinguish between occupied and vacant lots, and this property is a rare circumstance with an entirely developed area surrounding the site that has a functioning wetland. He reiterated that the proposal offers mitigation and will improve AURA function by removing invasive species as well as handling storm-water. Mr. Manuell noted that ditches currently exist on the site where storm-water flows off of Essex Street and is directed into the wetland. Conservation Agent Jim Hankin clarified that 50'NDZ and 75' NBZ apply to certain residential lots based on occupancy dates and the zones apply to all non-residential lots in Town in regardless of occupancy dates.

Mr. Glidden inquired about flow calculations on the site and suggested details are needed for the property relative to potential impact to the wetland. Mr. Nylen reiterated concept that mediating invasive species and controlling storm-water runoff would be a positive impact on the wetland.

Also, that a Title 5 permit meets the interests of the Act. Mr. Nysten suggested a fence could be conditioned to restrict activity near wetland.

Mr. Richard Burke, abutter 494 Essex Street, spoke to how the parcel is a natural wildlife habitat corridor and house on the property would eradicate this corridor, and that precedent is created if this house was allowed to be built in the NBZ on future projects. Mr. Glidden noted that it is not the Commission's jurisdiction to maintain wildlife corridors but it does try to protect no build and no disturb zones. Michele Stecyk, abutter 494 Essex Street, noted how the wetlands at issue here is part of a large resource area that eventually leads to the Miles River and expressed concern about precedent that could be set if waiver is granted. John Hamilton, attorney representing Ms. Stecyk, opined that Title 5 presumption is not a consideration until land would be disturbed by building the house. He spoke to activity in buffer zone has been demonstrated through the years to adversely impact wetlands. Mr. Hamilton noted the bylaw waiver provision is to be applied waiver only in rare and unusual circumstances. Mr. Hamilton opined that the construction of a single family house is not rare or unusual. Mr. Glidden clarified that he thought the application was deficient in proof and detail on claims that there would be no impact to the wetland from the project for the Commission to close the hearing. Ms. Stecyk spoke to the storm-water running off of Essex Street onto the property and into the wetland comes from Whipple Road as well as Essex Street. Walter Meibaum, Whipple Road, did not concur about drainage from his street. Mr. Manuell addressed possibility for the Commission to condition a fence on the property to reduce activity near wetland.

Ms. Cookson moved to close the public hearing on 470 Essex Street. Mr. Tarr seconded the motion. The Commission voted unanimously in favor of the motion (Mr. Currier recused).

Mr. Hankin clarified that once the hearing is closed the Commission has 21 days from hearing closure to issue an Order of Conditions. Ms. Cookson moved to issue an Order of Conditions to deny the proposed project at 470 Essex Street. Mr. Tarr seconded the motion.

Mr. Glidden stated that the application as filed and information and arguments presented in previous hearings and in tonight's hearing have not provided sufficient factual evidence on the factors that the applicant has wanted the Commission to consider for the purposes of granting the waiver. Specifically, proof is deficient, for granting of waiver, that there are no adverse effects to the wetlands. Mr. Luongo said the 75' No Build Zone and 50' No Disturb Zone apply to this project are being impacted negatively by the project.

Mr. Hankin stated what he believed to be the Commission consensus conclusion, which is that the applicant has presented information and argument at the hearings concerning the waiver provision; that the Commission has considered the all the information and arguments made during the hearings on this issue, they find that the project does not meets the waiver requirements. Mr. Hankin then asked for comment or clarification from the Commission. There was none.

The Commission voted by roll call on a motion to deny the project under the Wetlands Act and local Bylaw: Mr. Luongo, yes, Mr. Tarr, yes, Robert Cronin, yes, Ms. Virginia Cookson, yes, Mr. Glidden, yes. Chris Currier recused himself since he was not an appointed member at the commencement of the public hearing process on this application. VOTE 5-0 to DENY permits for this project.

Notice of Intent

135 Lake Shore Ave
Reconstruction of dwelling and associated site work
Bill Nolan Rep., Thomas Fleming owner

The Commission waived its policy on filing of supplemental material because the applicant supplemental material is limited to that specifically requested by the Commission. A DEP number has been issued. Bill Nolan described how the footprint of the project has not changed with the exception of minimal square footage on the west side of the property which is required to meet building code for stairs. This increase is outside the NBZ. The square footage of roof will be used to determine drainage calculations not including pitch. A hip roof will be added to a section near the resource area. Aluminum gutters with downspouts to splash blocks are being proposed. The dumpster and staging area are in same location as shown on the plan off of the street out of No Build and No Disturb Zones. Erosion control barrier has been installed as part of the emergency work on collapsed structure.

There is no change of ownership for the property. Thomas Fleming, owner, will file a new NOI if septic system work is required in jurisdiction. There will be four downspouts in the No Build Zone and discharge will be sent to outside of this area, similar to the pre-existing situation. The small deck will be replaced in the same footprint and if footings have to be replaced they will not be placed any closer to the resource area. Discussion was with James Spittle, 1 Birch Road, who inquired about dock in the area related to the property. If the dock is a permanent fixture there is a lengthy process for permitting. Seasonal docks are removed and permit under the Act is required.

Mr. Glidden moved to close the public hearing on 135 Lake Shore Avenue. Mr. Currier seconded the motion. The Commission voted unanimously in favor of the motion. Mr. Glidden moved to issue an Order of Conditions for 135 Lake Shore Avenue with the revised plan dated January 13, 2015 Mr. Tarr seconded the motion. The Commission voted unanimously in favor of the motion.

Request for Determination

159 Asbury Street
Demolish Existing Structure
John Cornish Trustee Applicant, Alle Cutler Rep.

Mr. Hankin noted that permits were obtained from the Town and work begun to demolish structures including the main house. A RDA filing was not done with the Commission. Most of the work that occurred was outside of the Commission's jurisdiction. The RDA is to allow demolition of the carriage house and after the fact to allow the demolition of other structures at the site. Erosion control was installed on the property. All of the demolished material will be put into dumpsters and taken off site.

Mr. Glidden moved to issue a Negative Determination with the condition that all material be removed including the block foundation and any other unnatural material and replaced with clean fill at 159 Asbury Street. Ms. Cookson seconded the motion. The Commission voted unanimously in favor of the motion.

Discussion

- Discuss and approve OSC Mission Statement

The Open Space Committee has not yet provided a mission statement to the Commission. Mr. Tarr has resigned from the OSC. Rosemary Kennedy has asked to be appointed to the sub-committee to replace Mr. Tarr.

- MACC Registrations Selections: MACC Annual Conference on Saturday March 5, 2016, Holy Cross College, Worcester, MA

Mr. Cronin moved to adjourn. Ms. Cookson seconded the motion. The Commission voted unanimously in favor of the motion. Commission adjourned at 8:55 p.m.

Minutes submitted January 19, 2016 by Jane Dooley