

**Hamilton Conservation Commission
Minutes of Meeting of April 8, 2015
Meeting held at Hamilton Town Hall**

Commissioners present:

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

Staff present:

Jim Hankin, Conservation Agent

Richard Luongo opened the meeting at 7:00 p.m. The May site walk has been moved to May 2.

Notice of Intent (Public Hearing Continued from March 11, 2015)

470 Essex Street

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

Roger LeBlanc Applicant, Bill Manuell rep.

Mr. Luongo reopened the public hearing.

A site visit was conducted on April 4, 2015 with Richard Luongo, George Tarr, Virginia Cookson, Jim Hankin, Roger LeBlanc and Bill Manuell. All walked the site for half an hour and Mr. Tarr and Ms. Cookson walked the resource area. The site was staked and visitors observed proposed house corners, location of relocated ditch as shown on the filed plan and erosion control line.

Discussions ensued about wetland delineation and section A flags where there was fill near boulders, mature cherry trees on the banking and knotweed on neighboring property. The Commission confirmed that the wetland flags were accurate. Mr. Manuell concurred with the Commission that there was fill on the land surface, and noted that septic system/Title V soil tests were conducted with three test pits dug. The test pit closest to the street had 12" to 18" of fill over native, glacial outwash soil. For the other two test pits there was a veneer of fill in soil profile. He surmised that fill material was brought in several years ago (i.e., brick piles in center and obvious piles of fill), although boundary was natural.

Mr. Hankin said the Conservation Commission file goes back to 1999 and 2003 for the site. The Commission had issued some Enforcement Orders to the property's former owner relative to dumping on the property (cease and desist). The Commission granted Mr. Liporto permission to burn some of the material on the property, and anything other than that would require a Notice of Intent. The last official action by the Commission was the Enforcement Order. Mr. Hankin described how he and John Hamilton, Chair of the Conservation Commission at the time, met with Mr. Liporto and a letter was sent to the property owner about the meeting. At that time Mr. Hamilton referenced what was considered by the abutters the prevalent zoning decision for the lot which was that it did not have enough square footage of upland to build. Roger LeBlanc has presented a different argument to the Planning Director allowing this to go forward on M.G.L. Chapter 40A, Section 6 statutory language.

Mr. Luongo expressed his concern about the proposed house being almost entirely located in the No Build Zone (“NBZ”). Mr. Manuell referred to his written narrative that spoke to geography of site and location of wetlands that prevents, in his view, compliance and he noted that the site complies with 50’ No Build Zone and 25’ No Disturb Zone (NDZ) that would be applied if this were a developed lot.

Discussion ensued about how there would be a small 10’ to 15’ back yard behind the house and intention is to leave an area in the rear, beyond the erosion control line, as NDZ. Mr. Manuell reiterated that he is requesting a waiver from the 75’NBZ and 50’ NDZ. Discussion addressed how the lot was in place before the Town had a Conservation by-law. The by-law has now imposed setbacks that create constraints on the lot which were not present when the lot was created. Mr. Luongo referred to a letter from June 1998 from Town Counsel which states that the lot must conform to existing laws. Mr. Manuell said this document not a formal decision. He stated that the applicant’s counsel has opined that the lot is in fact grandfathered for zoning purposes. Mr. Hankin explained that any dispute about whether or not this lot should be grandfathered under zoning cannot be resolved by the Commission. .

In reference to the NDZ in the neighborhood, Mr. Manuell noted that the lot directly to the east has cleared undergrowth to the wetlands and house to the west has lawn maintained directly to the edge of the wetland. The lots to the rear are maintained directly to the wetland.

The Commission read excerpts from the Conservation bylaw regulations on waivers, consideration of alternatives and the Commission’s for the imposition of the setback zones. Mr. Manuell spoke to the unique circumstances of the property with a wide expanse of area proposed between limit of work and the wetland. He reiterated the presence of Hinckley soils at the site that are sandy, gravely and not conducive to erosion.

Discussion ensued about the size of the proposed house as 70’ long and 26’ deep and 30’ deep on another side. A deck is proposed off to the side. There is a 26’ setback from the front property line (stonewall). The closest point of any structure to wetlands is 52’. Mr. Manuell stated that potential mitigation for the site could be creating settling basin and runoff with perforated pipe to stop erosion and sedimentation in wetland, also removal of invasive species such as bittersweet.

Mr. Hankin asked if there would be any response to the consideration of alternatives regulation (i.e., relocation of the house, smaller house) for the written record. Mr. Manuell referred to his written narrative in the NOI and a discussion of three alternatives. With the present geometry and geography of the site there is no way for the applicant to comply with a reasonable sized home on a residential lot so the location on the site identified for the house is up to the front yard setback. He added that they tried to comply with “fall back” position at 50’ NBZ and 25’ NDZ. He agreed to provide more documentation describing how the house is pushed as far as it could be towards the road and minimized back yard to maximize undisturbed area. There was a suggestion to put a post and rail fence along edge of erosion control obstructing any possible use of a lawn tractor or wheel barrow and some form of signage describing wetland restrictions.

Discussion ensued about how the Commission is rarely presented with new construction going into wetlands. Mr. Manuell stated that this is a unique site with the lot created years ago and regulations imposed restrictions on the lot that today make it unbuildable. He explained that the hardship is the environmental constraints of the wetland on the site limiting where a house can be located and comply with 75’ No Build Zone. Mr. Manuell added that compliance with 75’ NBZ makes the lot unbuildable.

Mr. Hankin then stated that no filing for new house construction has ever been approved without the final septic design included as part of the site plan. This filing has no septic plan as yet. Mr. Manuell explained that the septic design will have to be finalized on the plan which will come back to the Commission.

Discussion was with Mr. Manuell about the uniqueness of the grandfathered, legal building lot that was created with the subdivision. He noted that it became more difficult to build on once the Town's wetland by-law was imposed and it was a buildable lot at time of creation in 1974. Of the 12 lots in the subdivision this is the only one that has not been built.

Discussion ensued about buildable lots and if grandfathering is applicable. Mr. Hankin explained again that Mr. LeBlanc's position is that state law allows development of this lot regardless of zoning changes that have occurred. He further explained that Mr. LeBlanc is asking for a waiver from wetland regulations. The waiver from wetlands regulations request is before the Commission. Mr. LeBlanc has provided documentation to Building Inspector Charlie Brett and Patrick Reffett, Director of Planning and Inspections who have determined that the development application for this lot could go forward for Conservation Commission and Board of Health review.

Mr. Hankin explained how the Conservation Bylaw requires that an applicant obtain all necessary approvals from other Boards before filing an NOI. The Planning Director's decision means, in the context of the Commission's review, that the NOI is properly before them. Mr. Hankin described how the applicant is seeking an Order of Conditions for the Commission to allow the house to be constructed, the public hearing would be continued for the Commission to review the septic information, and Attorney John Hamilton has filed paperwork that the Commission will consider before closing the hearing.

Attorney John Hamilton spoke to the Commission about his filed material that includes information from then Town Counsel Bill Shields from 1996 who had opined to former property owner Mr. Liporto saying that a building permit could not be issued for this lot. Attorney Hamilton also stated his position that this lot is an "ANR" lot rather than subdivision lot which, in his view, negates the grandfathering argument. He also provided background on regulations that addressed upland resource area, and the extended NBZ and NDZ. Also, he said that the Conservation bylaw regulations include a grandfathering provision, preserving the 50' NBZ and 25' NDZ setbacks for any lot in use as residential lot and a building permit had been issued or there has been a filing with the Commission prior to a certain date (2007). He opined that issuance of waivers in rare and unusual circumstances might occur where violation of NBZ and NDZ setbacks would not hurt the wetlands but in this case that danger is terrific in this case (i.e., flooding and siltation in area with culvert maintained by Town on property) with nearly the entire structure proposed in the NBZ.

Discussion addressed impervious surface from the proposed house and driveway and storm water runoff into infiltration basin at back of structure for mitigation. Also revisited was how the lot was created either by subdivision or ANR, is grandfathered, and whether or not it is unbuildable.

The Commission asked for more information including septic system plan and approval by the Board of Health. Mr. Manuell noted that the NOI addresses mitigation of setbacks as part of the waiver request. With the applicant's consent, the Commission continued the public hearing until April 29, 2015 at 7 p.m. at Town Hall.

Certificate of Compliance

37 Beech Street

DEP file number 172-0552; OOC recorded Book 31030, page 404

Re-construction of wall along Chebacco Lake shore

The project consisted of re-constructing a wall at the edge of Chebacco Lake as well as mitigation plantings in land under water and in buffer zone. Mr. Hankin noted that the wall has been in place since 2012 and is stable. The applicant's consultant described in his report how the buffer zone plants are fully established and have survived a couple of growing seasons as confirmed by Mr. Hankin. Action from motorboats using the lake did not allow the plants under water to establish themselves after two growing seasons.

George Tarr moved to issue a Certificate of Compliance. Keith Glidden seconded the motion. The Commission voted unanimously in favor of the motion.

Discussion – List of Topics for April 29, 2015 meeting

The Commission will address the Community Preservation Plan and election of officers.

Vote to approve minutes of December 14, 2014 and March 11, 2015

Mr. Tarr moved to accept the minutes of December 14, 2014. Mr. Glidden seconded the motion. The Commission voted unanimously in favor of the motion.

Virginia Cookson moved to accept the minutes of March 11, 2015. Mr. Tarr seconded the motion. The Commission voted unanimously in favor of the motion.

Bob Cronin moved to adjourn. Ms. Cookson seconded the motion. The Commission voted unanimously in favor of the motion. Commission adjourned at 8:31 p.m.

Minutes submitted April 28, 2015 by Jane Dooley