



## CONSERVATION COMMISSION MEETING MINUTES – June 7, 2021

**Present:** Laurie Freeman-Chair, Thomas Roby, Bob Hidell, Crystal Kelly, and Bob Mosher-Commissioners, Loni Fournier-Conservation Officer and Heather Charles-Lis-Assistant Conservation Officer

**Absent:** John Mooney

The remote meeting was held via Zoom with Dial in #929-205-6099, Meeting ID # 857-0404-9204

### **The meeting was called to order at 7:00 PM.**

Chair Freeman began the meeting with a statement that the Conservation Commission meeting was being held remotely via the Zoom app in accordance with the Governor's order Suspending Certain Provisions of the Open Meeting Law for purposes of social distancing. The information for joining the meeting by audio/video was posted with the Commission's agenda on the website along with web links for accessing any plans or other materials relevant to the items scheduled on the agenda. She advised that, in accordance with the Open Meeting Law, the meeting was being recorded by the town and if any participant wished to record the meeting, to notify her so that she may inform all other participants. No participants expressed a wish to record the meeting.

### **Approval of Minutes**

**Motion:** Chair Freeman moved to approve the draft minutes from the May 17, 2021 meeting.

**Second:** Comm'r Mosher

**Roll Call:** Comm'r Kelly: aye and Comm'r Roby: aye

### **Certificates of Compliance**

**236 Ward Street** – DEP 034 1352

Applicant: McKenzie Engineering Group, Inc.

**Meeting Documents & Exhibits:** none

Prior to the meeting the applicant had requested to continue to August 23, 2021.

**Motion:** Chair Freeman moved to continue consideration of 236 Ward Street to August 23, 2021.

**Second:** Comm'r Mosher

**Roll Call:** Comm'r Hidell: aye, Comm'r Kelly: aye, and Comm'r Roby: aye

### **Requests for Determination of Applicability**

#### **5 Knoll Road**

Applicant: Andrea Liu

Proposed: Installation of a patio, fence, fire pit, walkway, and landscaping

**Meeting Documents & Exhibits:** Staff memo, Revised Submitted Plan [submitted 5/28/21], Paver Specifications [submitted 5/28/21], and Revised Submitted Plan [submitted 6/7/21]

**Excerpts from the staff memo:** This hearing is continued from the 5/17/21 Commission meeting. Since that time, the applicant has submitted a revised patio plan, reducing the size from approximately 895sqft to approximately 734sqft. A permeable paver has also been selected. Staff relayed the expectation for a minimum of 734sqft of mitigation to the applicant and as of 6/2/21, the applicant was working with their contractor to fulfill this requirement.

Chair Freeman summarized the resource areas and aspects of the proposal. Andrea Liu was present on the call. She explained that she'd selected a permeable paver and reduced the patio in size to 734 sf. She detailed where the patio dimensions had been reduced and also the resulting dimensions of the mitigation planting areas. The CO confirmed that by using a permeable paver, the expected mitigation was at a 1:1 ratio, and that the combined square footage of the mitigation planting areas exactly matched the size of the reduced patio. Responding to a question, A. Liu stated that she would not be installing the fence panels. The Chair expressed her appreciation for the applicant's effort to accommodate

the Commission's requests. Brief discussion followed about wetland flagging, with the proximity of the wetland being noted as well as acknowledgement that the entire area is within the 50 ft buffer. The CO briefly spoke of the draft conditions and mitigation native plant resources.

**Motion:** Chair Freeman moved to issue a Negative Determination of Applicability for the proposed work at 5 Knoll Road, as shown on the submitted plans, and adopt the findings of fact a through c, and conditions 1 through 11 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 or the Regulations.
- c. For the purpose of this filing, the Commission makes no finding as to the exact boundaries of wetland resource areas.

Conditions:

1. Prior to the start of work, a mitigation planting plan shall be submitted to the Commission for review and approval. The planting plan shall include a minimum of 734 square feet of plantings, including a mix of shrubs and herbaceous species. Locations closest to the resource areas shall be prioritized for planting. All mitigation plantings shall be native species; no cultivars, non-native species, or invasive species shall be allowed.
2. Prior to the start of work, the existing silt fence shall be repaired to ensure that each section of fabric is fully upright and supported by the wooden stakes. Portions of the silt fence that are difficult or impossible to repair shall be replaced in kind.
3. Erosion and sediment controls shall remain in place until all disturbed or exposed areas have been stabilized with a final vegetative cover or the Commission has authorized their removal.
4. Any debris, which falls into any resource area, shall be removed immediately by hand and properly disposed of at an off-site location.
5. All lawn waste, brush, leaves, or other materials dumped in any resource area, including the buffer zone, shall be removed by hand and properly disposed of at an off-site location, and the practice discontinued, in accordance with Section 23.6 of the Hingham Wetland Regulations.
6. All tree debris shall be properly disposed of at an off-site location; no chipped or mulched material shall remain on the property.
7. There shall be no stockpiling of soil or other materials within 20 feet any resource area.
8. No vehicle or other machinery, refueling, lubrication or maintenance, including concrete washout, shall take place within 20 feet of any resource area.
9. The approved patio shall be constructed to be permeable, with permeable joints and an appropriate permeable subbase. Documentation shall be submitted from the contractor or installer confirming that the patio has been installed to be permeable in accordance with the manufacturer specifications.
10. Mitigation plantings shall be installed, and seeding completed, in accordance with the final approved mitigation planting plan.
11. The Conservation Department shall be notified to any changes in plans prior to proceeding with said changed plans.

**Second:** Comm'r Mosher

**Roll Call:** Comm'r Hidell: aye, Comm'r Kelly: aye, and Comm'r Roby: aye

## **2 Queen Anne Lane**

Applicant: James & Lauren O'Neill

Proposed: Hardscaping and grading improvements

*Meeting Documents & Exhibits: Staff memo, Narrative and Original Submitted Plans, Response to Comments 6/3/21, and Revised Submitted Plan [submitted 6/3/21]*

*Excerpts from the staff memo: The purpose of this Request for Determination of Applicability is to evaluate the potential impacts of completing hardscaping and landscaping improvements at a single-family house. Work would include filling and grading the side and rear lawn to allow for better drainage, replacing an existing brick patio with a slightly larger patio (possibly granite or bluestone), replacing an area of landscaping with lawn near the patio, updating an existing gravel driveway with a permeable pavers and grading it slightly, installing a fence around the lawn, adding a brick walkway from the front door to the driveway, updating a walkway to the side door from stepping stones to masonry*

(possibly granite or bluestone), and repairing an existing brick front walkway. Most of the work would be within the 50ft buffer to a Bordering Vegetated Wetland. Some work is also in the buffer to Inland Bank to an intermittent stream within the wetland. The front walkways would be mostly in the 100ft buffer.

Chair Freeman summarized the resource area. Applicant James O'Neill was present on the call and described the property and the various aspects of the proposal. He stated there are a number of spots where flooding forms pools in the back yard; they would like to grade the land towards the wetland to alleviate this. He noted that the driveway is gravel and does not absorb water, it just runs off into the yard and they would like to redo the driveway using permeable pavers due to it being in the 50 ft buffer. He described the existing patio as a tripping hazard and explained they would like to redo that and expand it to have an outdoor area. They also propose to clear out some pachysandra and small nonnative bushes in some small landscape beds and replace with grass. Although less urgent, they would be interested in putting a fence along the back of the yard. He added that there is a walkway from the street to the front of the house and yet the garage is under the house and they'd like to connect the driveway to the front entrance with a new 3 ft wide brick walkway through the front lawn.

Discussion followed with the Chair stating that it is a small project and that she felt comfortable to proceed without having the buffer zone lines on the plan. She noted the Commission's regulation regarding no new lawn in the 50 ft buffer but added that there is already lawn between the landscape beds and the wetland. Responding to a question regarding patio material, J. O'Neill stated that he'd looked into Belgard and Truegrid that allow water to seep back into the soil. The Commission was in agreement that replacing the pachysandra with lawn was not a concern as the small areas of pachysandra were closer to the house and already had lawn between them and the wetland. The Commission also agreed that it was comfortable with the delineation, and that the project was small and the lack of buffers on the plan was not an issue in this case. The ACO stated that responses and calculations had been submitted, however, they came in after the staff memo was written, and so there were no draft conditions prepared.

Discussion followed about mitigation with the applicant noting that 1:1 mitigation had been suggested as he was using permeable materials. The ACO stated that she could do another site visit, recalculate conservatively the mitigation required, and, if the applicant would stake out the proposed fence line, she could suggest potential mitigation areas.

**Motion:** Chair Freeman moved to continue consideration of 2 Queen Anne Lane to June 21, 2021.

**Second:** Comm'r Mosher

**Roll Call:** Comm'r Hidell: aye, Comm'r Kelly and Comm'r Roby: aye

**Chair Freeman read the Public Hearing Notice of Intent.**

### **Notices of Intent**

#### **36 Canterbury Street** – DEP 034-1409

Applicant: David Westervelt

Representative: Paul Mirabito, Ross Engineering Co., Inc.

Proposed: Construction of a deck, pool, spa and patio

*Meeting Documents & Exhibits: Proposed Mitigation Plan 6/2/21 and Revised Site Plan 4/30/21*

*Excerpts from the staff memo: no staff memo prepared*

Chair Freeman summarized the wetland resource areas and the proposal. Representative Paul Mirabito was present on the call along with Brad Holmes, Environmental Consulting and Restoration, LLC., and homeowner David Westervelt. P. Mirabito described the property locus, noting that the rear of the property is currently landscaping and patio. They propose to remove the existing patio and install a swimming pool, spa and concrete retaining wall within 100 ft of the wetland. Six to seven existing evergreens and saplings would need to be removed. They propose a concrete retaining wall that would encapsulate the area, preventing any human use of the land outside of the wall. P. Mirabito added that, within the 50 ft buffer where there are some plantings and a fence, there is some work proposed. P. Mirabito explained that B. Holmes had prepared a mitigation plan; the few shrubs and trees being removed will be replaced with 16 trees and 36 shrubs.

The mitigation plan was shared to the screen and B. Holmes pointed out to the Commission the mitigation areas on the plan and explained the various color-coding. He noted that they had not included the retaining wall as an alteration. He stated that he had calculated that there would be 1980 sf of required mitigation. Within the proposed 1980 sf mitigation area, lawn and any nonnative existing plantings would be removed and a selection of native shrubs & trees planted and native wildflower & grass seed mix sown in between, complying with the 1:1 ratio in the 100ft buffer and 1:2 ratio in the 50 ft buffer.

Chair Freeman noted the concern mentioned in the staff memo regarding potential impacts to a naturally vegetated area in the NE corner. Brief discussion followed. B. Holmes pointed out the tree line on the plan and affirmed their intent to leave undisturbed areas undisturbed.

The ACO contributed some comments. One, in the recent past the Commission had been seeking mitigation for retaining walls, two, it would be helpful to have the species placement on the plan, once known, and three, the edge of the woods as shown on the plan may not be correct. She pointed out on the plan where she believed there to be a small area of undisturbed vegetation. B.Holmes stated that he could adjust the mitigation area accordingly. Brief discussion followed regarding the fence line. P. Mirabito explained the proposed location of the wall in relation to a gas line. Responding to a question, P. Mirabito stated that the retaining wall will contain soil for the plantings & pool, has a top elevation of 51.5 and the ground elevation is 48-50, and the height of the wall is about 3.5 ft.

Brief discussion followed regarding continuing the hearing, the need for draft conditions and the timing of permit issuance.

Chair Freeman invited any comments from the public.

Timothy White spoke up about 'wet' signatures and the Registry of Deeds. The CO explained the Conservation Commission's procedure. Brief discussion followed.

There were no further comments from the public.

**Motion:** Chair Freeman moved to continue the hearing for 36 Canterbury Street to June 21, 20121

**Second:** Comm'r Hidell

**Roll Call:** Comm'r Kelly: aye, Comm'r Roby: aye and Comm'r Mosher: aye

**304 Whiting Street** – DEP 034-1408, cont'd from 5/17/21

Applicant: Noreen Browne, South Shore Habitat for Humanity

Representative: Gary James, James Engineering, Inc.

Proposed: Demolition of a house and construction of two houses and a common drive

*Meeting Documents & Exhibits: Staff memo, Response to Comments [submitted 6/3/21] and Revised Plan Set 5/29/21 Excerpts from the staff memo: The 5/17/21 staff memo included a list of outstanding items that warranted additional review/and or discussion. In response, staff received a letter and revised plans on 6/3/21, both of which are posted on the Pending Applications website, under the 6/7/21 Commission meeting. Staff recommends that the Bamboo, Demolition, Grading, and Landscaping/Inner Riparian Restoration topics be discussed at the hearing, and any additional comments from abutters be addressed, before voting on the project.*

Chair Freeman summarized the wetland resource area and the project. Gary James, James Engineering Inc, was present on the call along with Noreen Browne for South Shore Habitat for Humanity. G.James gave a brief overview of the project.

Responding to the concern about removal of the demolition material from the house in the inner riparian, G.James stated that all C & D (Construction and Demolition debris) will go. Due to the age of the house he stated there was likely no rebar or steel. The intent is to break up the concrete, which is inert, and leave it in the ground, but if there is any rebar or steel, it will go offsite. Noting that it was in the comprehensive permit to demolish and remove, the Commission stated that it should all be removed as the comprehensive permit dictates.

The CO raised the subject of the cut and fill on site, noting that 1900 yards of material is proposed to be exported off the site and that the ZBA had stated they would like the site more balanced. Responding to a question as to why there was so much removal proposed and hadn't been adjusted, G.James explained that the reason was to try to reduce the overall grade with the driveway and they'll be cutting deep into the existing grade. He stated that the whole area was formerly an exposed gravel surface A and B horizon. They will need to bring back quite a bit of topsoil for the future homeowner to have a yard; the existing coarse grain sands drains too quickly.

The Commission, CO and applicants discussed the bamboo onsite. Issues such as the extent of the bamboo spread, the difficulty to control it, the neighbor who likes it as a screen, and the challenges and costs for a future homeowner to control it were extensively discussed. The CO stated that she'd originally identified the bamboo as an opportunity, but having gathered information regarding how big of a challenge it would be, the Commission may decide that maybe it's not worthwhile to pursue the management of the bamboo. The Commission agreed that eradication of the bamboo would not be productive; Chair Freeman noted that she could understand some bamboo control for keeping it out of the restoration area.

Returning to the subject of the grading and removal of 1900 yards of material, and the peer review engineer comment and preference to see the site more balanced, the CO explained that in this case it would mean the applicant could choose to remove less material offsite. The CO added that the comprehensive permit approved the 1900 yards of material to be exported but suggested the Commission discuss it. G. James stated that all of the concrete from the foundation could go, but that most of the removal will be from the driveway itself and some from around the first dwelling. The existing grade is approximately 151/152 and they've got it down to 149. He noted that the house in the back is proposed to be at 150 which is very close to the existing grade of the house right now. Brief discussion followed. The CO summarized a suggestion from Comm'r Hidell that instead of crushing the foundation of the house and putting it in the hole to fill the hole, that all manmade material associated with the house be removed from site, and then, instead of exporting all 1900 yards of whatever material is not wanted out front, maybe some of that can be used in the hole instead of any portion of the foundation or pieces of that house. G. James agreed and the Commission felt it a good solution.

Chair Freeman invited any comments from the public.

Timothy White asked what percentage of the bamboo is on the neighbor's property versus the Habitat for Humanity's property. The answer was that it's unknown, and T. White stated that if most of it's on the neighbor's side, then it would be a futile effort on the Habitat for Humanity side.

Abutter Michael Fisher, 20 Derby Brook Way, was present on the call and commented that they've got bamboo too and would also like to get rid of it. He explained that their concern has been the risk to Derby Brook, the wetlands and the wildlife habitat on their property. He stated that they want the conditions of the comprehensive permit abided by and wanted to know, should there be a problem with it all, who do they call, what do they do and who is responsible to remediate and pay for the remediation.

The Commission responded to M. Fisher's concerns, pointing out that the purpose of the application and the conditions imposed are for the protection of the brook. Brief discussion followed regarding property rights, responsibilities, baseline testing and followup testing. M. Fisher stated they intend to get a baseline test and asked what happens if they get a different material in a subsequent test. The CO stated that if it's a contamination, then it might depend on the type of material whether it would be a Board of Health issue or a Department of Environmental Protection issue.

Richard Halverson, part of the Habitat for Humanity team, was present on the call, however his audio was not working.

There were no further comments from the public.

**Motion:** Chair Freeman moved to continue consideration of 304 Whiting Street to July 12, 2021.

**Second:** Comm'r Mosher

**Roll Call:** Comm'r Kelly: aye, Comm'r Hidell: aye, and Comm'r Roby: aye

**17 West Street** – DEP 034-1414

Applicant: Jennifer Suisman

Representative: Brad Holmes, Environmental Restoration & Consulting, LLC

Proposed: Demolition and reconstruction of a single family house

*Meeting Documents & Exhibits: Staff memo, Narrative and Original Plan of Land 4/30/21*

*Excerpts from the staff memo: Land Subject to Coastal Storm Flowage was determined by elevation and site specific topography, and is located on property. The area where work is proposed is mostly previously developed, as described above, and is relatively flat. A lawn area and a stockade or wire fence separates the work area from the wetland. Staff also observed a large lawn area to the north and northwest of the existing house, and smaller gravel area where an elevated boat and elevated small trailer are currently being stored. This lawn is located off property and is within the 50 and 100ft buffer zones, extending to the wetland edge along a portion of the lawn, however based on aerial imagery it appears it has been maintained in a similar manner for many years.*

Chair Freeman summarized the resource areas and the project. The representative, Cameron Larson, from ECR was present on the call with the homeowner Jennifer Suisman. C. Larson described the locus in further detail. Addressing comments in the staff memo, C. Larson stated there would only be 14 sf of additional impervious, all outside the 50 ft buffer and therefore no mitigation proposed. He also explained that they had coordinated with the architect and will be adding a third flood vent on the southeast portion of the addition. The Commission expressed their preference to not make

exceptions to the standard mitigation expectations. The ACO had no additional comments and suggested additional conditions regarding the additional flood vent and mitigation.

Chair Freeman invited any comments from the public. With no comments from the public, she closed the hearing to the public.

**Motion:** Chair Freeman moved to issue an Order of Conditions for the proposed work at 17 West Street (DEP 034-1414), as shown on the submitted plans, and adopt the findings of fact a through c, and special conditions 21 through 47 of the staff report and as amended.

**Second:** Comm'r Mosher

**Roll Call:** Comm'r Hidell: aye, Comm'r Kelly: aye and Comm'r Roby: aye

**15 Ocean View Drive** – DEP 034-1415

Applicant: Carolyn & Patrick Malone

Representative: Patricia Van Buskirk, Patricia Van Buskirk Landscape Architecture, LLC

Proposed: Construction of a deck and 'mini pool'

*Meeting Documents & Exhibits: Staff memo, Narrative, Existing Conditions Survey 10/22/13, and Original Master Plan 5/7/21*

*Excerpts from the staff memo: The area where work is proposed currently consists of an existing deck on three sonotubes with crushed stone beneath, a staircase with concrete slab footing, and lawn. The area is relatively flat by the house, then slopes gradually to the wetland. A Negative Determination of Applicability was issued in June 2020 for an extended deck (versus the existing deck), small concrete paver patio, and fire pit. This work has not commenced, and the current application was submitted due to the scope of the proposed changes, in particular the addition of a small pool, as well as a larger deck, in the 50ft buffer.*

*Staff has indicated to the representative and applicant that the Hingham Wetlands Protection Bylaw and associated regulations prohibit pools in the 50ft buffer zone. Although a "mini" pool, aka plunge or Soake pool, is proposed, there is no distinction in the regulations between different sizes or types of pools, besides treating below and above ground pools the same. Staff has not yet provided other comments on the proposed work in case plans change based on the Commission's input on the proposed pool.*

Chair Freeman summarized the resource areas and the aspects of the project. The representative, Tricia Van Buskirk, was present on the call along with homeowner Patrick Malone. T. Van Buskirk shared the survey plan as well as photos, pointing out the resource areas and noting that the entire back yard is in the 50 ft buffer. She explained that backyard renovations had been approved as an RDA previously but the work had not commenced and the applicant would now like to rebuild the existing deck, and install a 6' x 10' pool that can be hot or cool. She pointed out and described the proposed mitigation planting areas. T. Van Buskirk gave further details on the proposal. The existing deck is on 3 sonotubes and a concrete pad and the new deck would likely need 3 more sonotubes. The proposed pool and an 18 inch stone wall around it would amount to 134 sf impervious, an equipment pad would add 21 sf, amounting to 155 sf of total impervious. The total disturbance, including grading, would be 1000 sf. The driveway would be modestly altered to allow for more backyard.

The Commission pointed out that there is a hard and fast rule regarding no pools allowed within the 50 ft buffer.

P. Malone explained that they were aware that a conventional inground pool was prohibited and described details of the proposed Soake pool. He explained that it is a newer concept, more like a hot tub or spa, comes prefabricated, does not have to be submerged, would use salt water, no chemicals, and is 10' by 6'. He explained that it is branded as a Soake pool but asked what is the line between a hot tub versus a pool. Chair Freeman thanked him for the context and for the compromise proposal but pointed out that even with some of the characteristics he's described, the Commission has had to reject pools in the past. The CO stated that the Commission has been very strict and consistent with things labeled 'pool', as this proposal is; there have been hot tubs permitted in the 50 ft buffer, sometimes now called 'spa', but for pools, the Commission has even gone to court over a portion of a pool proposed in the 50 ft buffer and the court upheld the Commission's denial. She noted that use and maintenance of a hot tub is different than that of a pool.

Discussion followed regarding the regulation and the Commission's application of the regulation, the term 'pool', and differences of use and maintenance between pools and hot tubs. Responding to comments from the Commission regarding the prior approvals of hot tubs, the CO stated that it's unlikely to be found that any were approved solely because they were called 'hot tubs' versus a 'pool', and that it is her understanding that there is a difference in use and maintenance; hot tubs are self-contained year round, pools drawdown in the fall and the treated water needs to not go towards the wetlands, volume in a hot tub is different than in a pool and is in a static state year round. Further discussion

followed with P. Malone asking if revising the proposal to change the pool to a hot tub would be worthy of their time to submit. The Commission and applicant also discussed the property to try to determine if another location, outside the 50 ft buffer, would be suitable. Abutter Julie Polmonari, 17 Ocean View Drive, spoke up in support of the proposal.

Discussion continued and included two suggestions from the Commission; one, that the applicant could petition the Commission to change the regulations and include more specificity in the regulation and two, that the applicant could try to redesign the application to fit with the regulation. Discussion concluded with the Commission reiterating the 50 ft prohibition on pools and its commitment to consistency, and the CO stating that, before the next meeting, she would provide the Commission with more details of the two coastal hot tubs applications that were permitted.

Chair Freeman invited any comments from the public. There were no comments from the public.

**Motion:** Chair Freeman moved to continue consideration of 15 Ocean View Drive to June 21, 2021.

**Second:** Comm'r Hidell

**Roll Call:** Comm'r Kelly: aye and Comm'r Roby: aye

*(Note: Comm'r Mosher was present for the entire hearing; only at the moment of the vote did he have internet issues and did not participate in the vote)*

**Other Business:**

a. Discussion of draft Mitigation Policy

Staff had distributed a draft Mitigation Policy to the Commission prior to the meeting. The Commission expressed their appreciation for it and requested more time to examine the document before discussing or offering comments.

b. Discussion of future Commission meetings: remote vs. in-person

The CO and Commission briefly discussed the expiration of the State of Emergency and the potential for meeting remotely.

Chair Freeman adjourned the meeting at 9:38 pm.

Submitted, \_\_\_\_\_  
Sylvia Schuler, Administrative Secretary

Approved on June 21, 2021

*This meeting was recorded. To obtain a copy of the recording please contact the Conservation office.*