



Waltham Conservation Commission
March 21, 2024
Meeting Minutes

Meeting took place via public Zoom call with participation information posted at City Hall, Government Center, and on the Commission's page of the city web site. Zoom information was circulated directly to all applicants and others on the public agenda.

Meeting called to order at 7:01 PM.

Attendees: Chair Philip Moser, Vice Chair Bill Doyle, Gerard Dufromont, Michael Donovan, Alexander Sbordone, Gloria Champion. Conservation Agent Meghan Sullivan.

Absent: Louis Andrews.

Mr. Doyle led the meeting.

Development Prospectus

- 221-219 Bear Hill Road. Attorney Joseph Connors present for the applicant. The applicant requires a special permit from City Council. Part of that requires merging these parcels. There are no issues for the commission, it is only a required sign-off. The commission has previously voted to authorized the conservation agent to sign-off administratively on development prospectuses. This was presented for confirmation. Ms. Sullivan will sign off.
- 195 Bear Hill Road. Attorney Michael Connors present for the applicant. The applicant is adding 56,682 sq.ft. to its 96,000 sq.ft. facility through a special permit through city council and requires commission sign-off. There are no jurisdictional issues for the commission. Mr. Connors requested a full commission vote on this prospectus. Roll call vote on sign-off. Aye: Moser, Doyle, Donovan, Sbordone, Dufromont. Nay: Champion. Motion passed. Ms. Sullivan will sign-off.

Public Hearing

Notice of Intent (DEP File # 316-0825)

Applicant: Gail Jordan

Property Location: 44 Lauricella Lane

Project Description: Construction of a pool and patio in the rear yard. Work includes demolition of existing shed, construction of retaining wall, and removal of 3 trees.

Mr. Dufromont recused, as he is a personal friend of the family. Paul Finger presented for the applicant. Mr. Finger presented illustrations showing existing conditions and planned work. He noted changes and clarifications requested at the previous appearance. The plans are essentially the same as seen previously. [This item appeared before the commission at the 2-15-2024 meeting as a Request for Determination. It received a positive determination and returns as a Notice of Intent.] Drainage conditions and jurisdictional areas were noted. He noted the construction of the retaining wall without footing, for less impact. He presented photos to show the wetland area and site conditions. Mr. Finger noted the comments received from DEP NERO and his response. He stated that no work will be done in a resource area and that the site currently drains into the resource area.

Approved: 4 April 2024

He asserted that in the planned configuration, due to removing a shed and infiltration through the new retaining wall by, there will be no new flow and no erosion (although erosion controls will be used).

Ms. Sullivan said that overall this is a reasonable project. She thanked the applicant for agreeing to plant new trees. She agreed with DEP's suggestion that the pool be rotated, but accepted Mr. Finger's argument that the existing headwall and city easement prevent this.

Ms. Champion asked the applicant to confirm that the pool backwash filter does not drain to the wetlands. Mr. Finger confirmed. He also noted that this pool will not be drained. In winter the level will be lowered. Mr. Donovan asked for details regarding stumps of removed trees, which appear to be left inside the retaining wall. Mr. Finger confirmed this. The style of wall construction will allow grinding the stumps and backfilling over them. Discussion of location of replacement trees and city easement location. Recommendation to try to plant all trees outside the easement if possible.

Motion to close the public hearing by Mr. Donovan, seconded by Mr. Sbordone. In favor: Sbordone, Champion, Moser, Donovan, Doyle. Motion passed.

Motion to issue an order of conditions by Mr. Sbordone, with the standard special conditions, as well as four special conditions:

1. Stumps will only be removed where necessary for new construction, otherwise stumps may be grinded to grade level.
2. 3 new trees will be added to the site planting plan.
3. The pool will not be backwashed / drained to the wetlands.
4. No other trees will be removed from the site.

Seconded by Mr. Donovan. In favor: Doyle, Moser, Sbordone, Donovan, Champion. **Motion passed.**

Public Hearing

Notice of Intent (DEP File # 316-0826)

Applicant: Chapel Hill-Chauncy Hall School

Property Location: 399 Lexington Street

Project Description: Redevelopment of existing academic building with site improvements including the widening of campus driveway for improved Fire Department/Emergency access, improvements to stormwater management system, utilities and plantings. Portions of the work are proposed within the 100-foot buffer zone of a BVW and the 200-foot Riverfront Area of Chester Brook.

Al Trakimas, Al Umina, and Gwen Pojasek present for applicant. Ms. Sullivan has visited the site. Mr. Trakimas described site conditions and the proposed work. The existing Atwood building will be demolished and replaced with a slightly larger structure. He noted that the area has been previously developed and disrupted, including a filled-in concrete pool from years ago and an existing 18" city sewer line through the site. They will add minor new impervious area in the form of an elevated boardwalk. The driveway will be widened from approximately 10' to 20', which will add significant impervious area. The Waltham Fire Department typically requires 24' fire access, but has agreed to accept 20'. They propose 2 new infiltration units to mitigate. Discussed existing stormwater runoff problem coming from the condo development to the east, which results in flooding in Atwood. This project is planned to also correct much of that.

Ms. Sullivan asked that the submission's narrative be revised to define how the project meets riverfront performance standards and the interests of the WPA. The project lists 18 trees to be removed, 15 in riverfront. She asked that the applicant make an effort to retain these or justify their removal and explain mitigation. The closest point of disturbance to the resource area needs to be given as well as confirmation of erosion controls on the plans. She would like a definition of the boardwalk, which seems to have been addressed in Mr. Trakimas' presentation. She noted in-place but compromised erosion controls (straw wattles) during the site visit and would like the applicant to

use additional protection. Discussion. Mr. Trakimas noted drawbacks to using a silt fence in this location and agreed to double-up the straw wattles for the new project.

Ms. Champion asked for more detail on the stormwater issue from the condos. Mr. Trakimas explained that the problem is a detention basin which overflows during heavy rain events. It floods into the CHCH property because the existing 8" outflow pipe does not have enough capacity. The current plan will replace this with an 18" pipe. Mr. Dufromont recommended a site inspection by the commission to better understand the conditions and proposal. Ms. Sullivan requested that the trees planned for removal be marked prior to this visit. Mr. Donovan referenced other recent work at or near this location. Mr. Trakimas noted a propane tank from the long-ago filled pool's heating system which was removed. [This applicant also received an NDA in August 2023 for the removal of a septic tank and connection to a city sewer line at or near this location.] Mr. Doyle asked, and Mr. Trakimas clarified, that their infiltration strategy will compensate for the roof area and expanded roadway. Mr. Doyle explained that the commission needs to be strict about applying stormwater standards in this situation. He confirmed with Mr. Trakimas that this plan will be submitted to the city engineer for approval.

A visit was scheduled for 9AM 3/26. Mr. Trakimas will confirm a meeting and parking location with the commission office.

Motion to continue by Mr. Sbordone, seconded by Mr. Donovan. **Motion passed.**

Public Meeting

Enforcement Order

Property Owner: Brian McNamara and Nicole O'Callaghan

Property Location: 265 Totten Pond Road

Description: Alteration of Bordering Land Subject to Flooding, intermittent stream Bank, and associated buffer zone.

Mr. McNamara and Ms. O'Callaghan present. They updated the commission on their efforts to find an appropriate contractor and will forward a proposal they have received to the commission for approval. They have done some work on their own: the bridge and shed have been removed. Ms. Sullivan thanked them for taking action and appearing tonight. Mr. Dufromont asked if the Building Department had inspected the deck. The resident replied that this is scheduled for March 28. Mr. Dufromont asked if the stairway in the driveway had been removed. It has not, but the resident is working on this. Mr. Dufromont thanked them for taking action. Mr. Doyle told the resident that they should act on the proposal and not wait for final approval from ConCom. Ms. Sullivan will review the proposal once received.

Commission Business

- Approval of meeting minutes from 03-07-2024. Motion to approve by Mr. Donovan, seconded by Mr. Dufromont. **Minutes approved.**

Correspondence

- INFORMATIONAL: Receipt of Keolis/MBTA 2024 Yearly Operational Plan for Integrated Vegetation Management noted.

Old Business

- Tree cutting at Lyman Estate. Mr. Dufromont received a call from a resident (Ms. King) recently of tree cutting close to Chester Brook. Ms. Sullivan had been notified by the owner and recently visited the site. The removals were previously permitted [316-0734] and include Norway maples and Ailanthus. Erosion controls are in place. No action is necessary. The commission

appreciates and encourages reports of this kind by residents: Permitted work can be confirmed to be following orders of conditions and non-permitted work can be investigated.

Site Visit Reports

- Wyman Street stream. Ms. Sullivan recently noticed an erosion issue on the west side of the road at 404 Wyman Street and reported it to CPW. CPW found that the drain inlet was blocked. They removed the blockage and piled material on the bank. She requested that erosion controls be put in place until the material could be removed. CPW expects this to be an area of ongoing maintenance. CPW brought Ms. Sullivan along to visit several areas of concern and ongoing maintenance along West Chester Brook, so that she will be aware of anticipated activity. [The 404 Wyman location is not on West Chester Brook; it is an unnamed intermittent stream that flows into the Hobbs Brook Reservoir.] Mr. Donovan had recently reported a concern in one of these other areas and it was discovered to be partially obstructed by debris, which CPW will address. Mr. Moser asked for clarification on the state of debris on the bank at the 404 Wyman location. Discussion of best practices for debris removal, bank stabilization, and erosion control. Mr. Moser noted that the issue at this specific location is due to poor historical stormwater design in the Hobbs Brook office park parking lots, leading to flash flood-like conditions and scouring during rain events. It was noted that Hobbs Brook has been more responsible in recent years. The city CPW was complimented on the quality of work they do. Ms. Champion asked about the sandy nature of the soil in the 404 Wyman photos. Ms. Sullivan believes the area is not as sandy as it appears, but there were dry conditions on that day.

Committee Reports

- **CPC:** Meeting took place on March 19. Mr. Doyle noted approval of grants for the Parmenter Home building.

New Business

- Fernald Property Violation (Mr. Moser). Mr. Dufromont noted that he has also driven past the reported violation (190 Trapelo Road). Mr. Moser presented general information regarding wetlands delineations and specific information for this site. [Mr. Moser's presentation has been uploaded separately to the commission web site: <https://www.city.waltham.ma.us/conservation-commission/files/fernal-potential-violation-presentation-21-march-2024>.]

He explained that he became aware of the current potential violation when a city resident brought it to his attention. He visited the site and noted construction work in an area that had been previously highlighted to the applicants as a potential wetland (BVW and intermittent stream). He contacted the responsible city department and their contractor as well as the law department. He noted that the commission had asserted to the applicant on at least 3 occasions that this is a jurisdictional area and this was not disputed by the applicant. He summarized recent correspondence, which has been copied to the rest of the commission. He presented photos to describe the site and explain the conditions and the concerns. He pointed out wetlands flagging on the site by the applicant, as well as relevant features. Resident concerns include wildlife access problems caused by fencing, some of which he observed on this visit. He summarized the history of state regulation and conservation commission jurisdiction and presented several exhibits, both as samples and specific to the site, noting jurisdictional areas. These include the 1975 wetland maps, the 2016 Fernald Wetland Study Report, iterations of the city GIS maps, and others. He noted that the applicant has defended work in the disputed area by asserting that there are no wetlands at this location on a DEP map. Mr. Moser stressed that this is not appropriate as, to note one example, the recently daylighted stream nearby [316-0748] also does not appear on that same map as a

jurisdictional area, but its status would not be in dispute. He referenced past communications with the applicant and their engineer regarding this area. On 12 March 2024, their wetlands scientist sent a report to the commission asserting this is not a jurisdictional area, but an “isolated linear drainage feature,” based on a site visit in February 2023. Methodology for how this conclusion was reached, for example based on vegetation or hydric soil, was not included in the report. Mr. Moser pointed out that, in contradiction of this, the applicant’s own civil engineer’s plan of the site includes wetlands flags in this area. Mr. Dufromont noted that work appears to be continuing, and highlighted recent excavation in the area of concern. Mr. Moser has asked the applicant’s wetland scientist to appear at the next commission meeting (4/4/24), but they will not be available. Questions to them will be submitted in writing, and it is hoped that they will appear at the following meeting (5/2/24). Mr. Moser shared the report findings. He compared language in the report to definitions in the Act and highlighted circumstances under which the area in question might, or might not be, jurisdictional. The report does not provide clarity because of the lack of evidence. He will request more information.

Mr. Moser stressed that, regardless of any interpretation of the present situation, as a regulatory matter, it is not up to an applicant to determine that an area is or is not jurisdictional: The commission makes this determination, based on the RDA, ANRAD, or NOI provided by an applicant. If an applicant disagrees with the commission, they have the right to appeal to DEP. In the present case, the commission will need to determine if this area is jurisdictional, to impose enforcement on the applicant, or that it is not jurisdictional, to allow them to continue work. This applicant has been asked to stop work but has not done so. The commission needs to quickly make a clear determination to resolve the situation. He recommends that the commission hire a peer reviewer to make this determination. It was noted that if jurisdictional, this would be one of the smaller such areas in the city. Discussion. Mr. Dufromont asked if the commission could issue a cease and desist. Mr. Moser felt this would be a questionable action without first clearly determining the jurisdictional status of the area. Discussion of alternatives and time frames. Mr. Moser stated his preference to step back from the issue to allow a third-party with no interest in the outcome to provide a neutral determination. He suggested this be paid for out of filing fees. Ms. Sullivan summarized the proposal received from an outside consultant. The fee (\$5,500) is similar to a previous similar outside determination, made at the new high school site several years ago. Ms. Champion commented on the tone of inter-departmental relationships and was supportive of the proposal. Mr. Moser conceded that some of the interactions had been heated but noted what he considers extremely unprofessional and unethical actions by some of those involved. He expressed a willingness to apologize as needed. He raised questions about the dating of the applicant’s wetland scientist’s report and the methodology, and also about the existing wetlands flags on plans and in an area that their report denies is a wetland. He noted that allowing this type of assertion by an applicant sets a precedent that could allow any applicant to arbitrarily deny the existence of any jurisdictional wetland. Ms. Champion was satisfied with this explanation. Mr. Moser added that he has developed more sympathy for the applicant since this situation first came to light, as it may in part have resulted from the applicant, who is less technical, receiving bad advice from their engineer. Ms. Champion again noted the benefit of maintaining good relations with other city departments. Mr. Moser noted his decision to step down as Chair, which will be the next item on the agenda.

Mr. Moser moved that the commission hire a wetland scientist based on the proposal on hand. Seconded by Mr. Dufromont. In favor: Moser, Doyle, Donovan, Sbordone, Champion, Dufromont. **Motion passed.**

- Mr. Moser stepped down as commission Chair, effective immediately. Discussion. Mr. Moser moved to nominate the slate of officers suggested at a previous meeting (Chair: Sbordone, Vice

Chair: Doyle, Secretary: Dufromont). Mr. Donovan seconded. In favor: Moser, Doyle, Donovan, Sbordone, Champion, Dufromont. **Motion passed.**

- Discussion of FY 2025 Budget. Mr. Doyle raised this in light of the transfer of responsibility from Mr. Moser to Mr. Sbordone for deadlines and meeting with City Council and the Mayor. Mr. Moser noted that most of the work has been done. He gave a brief summary of new and expanded requests. Discussion. The current draft was shown and commented on. It will be circulated to all commission members. Ms. Champion moved for the commission to accept this budget. Mr. Moser seconded. In favor: Moser, Doyle, Donovan, Sbordone, Champion, Dufromont. **Motion passed.**

Motion to adjourn by Mr. Moser, seconded by Mr. Dufromont. All present in favor. **Motion passed.**

Meeting adjourned at 9:26 PM.