

NATURAL RESOURCES COMMISSION
Meeting Minutes
March 6, 2019

Pursuant to the notice filed with the Town Clerk, the meeting of the Natural Resources Commission was held at 141 Keyes Road, first floor conference room, Concord, MA at 7:00 p.m. on Wednesday, March 6, 2019. The following Commissioners were present: Greg Higgins, Chair, Judy Zaunbrecher, Lynn Huggins, Jeff Adams, and Ed Nardi. Delia Kaye, Natural Resources Director, and Natural Resources Administrative Assistant Karen Bockoven were also present.

Chair Higgins opened the meeting at 7:00 p.m. in accordance with the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and the Concord Wetlands Bylaw.

APPROVE MEETING MINUTES
DIRECTOR'S REPORT
TO BE CONTINUED TO APRIL 3, 2019 <ul style="list-style-type: none">• WESTCHESTER COMPANY, INC., Lot 2A Keuka Road, NOI
TO BE CONTINUED TO MARCH 20, 2019 <ul style="list-style-type: none">• CONCORD CULINARY, 430 Old Bedford Road, NOI
NEW APPLICATIONS <ul style="list-style-type: none">• FABIO'S CONSTRUCTION, 70 Elm Street / New Public Meeting, Amended OOC• YAROV, 90 Whittemore Street / New Public Meeting, NOI• ANTHONY, 72 Walden Terrace / New Public Meeting, NOI
MINOR MODIFICATION <ul style="list-style-type: none">• MIDDLESEX SCHOOL, 1400 Lowell Road

APPROVE MEETING MINUTES

The February 20, 2019 minutes were tabled to the March 20, 2019 NRC Meeting.

DIRECTOR'S REPORT

- The Natural Resources office has temporarily moved upstairs to the 2nd floor conference room for the next several months while renovations are being done to the first floor offices.
- The Commission reviewed the letter of support regarding the Town Forest Restoration Project and it was signed by Chair Higgins.
- The drainage modification at Concord/Carlisle High School was approved under an RDA last year. The school has hired a contractor but has been unable to do the work yet because of the weather. They are requesting an extension until June 10th after graduation and when any sports are done for the school year. It will take approximately one week to complete the work. The NRC approved.
- The annual Concord Cleanup will be held from Saturday, March 30th until Sunday, April 7th. The signup sheets and bags will be in the hallway upstairs in the next several days.

- Director Kaye would like to conduct a pilot program to pull garlic mustard this year similar to the Concord Cleanup. Compost bags will be provided to residents. She would like to encourage residents to pull garlic mustard from Town conservation lands, public lands, and along the sides of roads in the middle of May and the Conservation Crew can pick up bags when they start working towards the end of May. The bags will be brought to the invasives bin at the landfill site. Director Kaye will update the newspaper article published a few years ago and provide pictures and training to people. Director Kaye said that the boy scouts pull garlic mustard at Old Calf Picnic Area and Mill Brook. She asked the NRC to let her know of other areas with high concentrations of garlic mustard. She noted that Punkatasset and the Town Forest are two key areas. Commissioner Zaunbrecher said she pulled garlic mustard at Second Division Brook last year. Director Kaye asked Commissioner Zaunbrecher to sketch the area on a map. Commissioner Zaunbrecher suggested contacting Janet Rothrock who has organized garlic mustard pulling in the past.

TO BE CONTINUED TO APRIL 3, 2019

Notice of Intent Application, Steve Marsh, Westchester Company, Inc., Lot 2A Keuka Road, DEP File #137-1461

Chair Higgins opened the hearing seeking approval to construct a single-family home with an associated garage, patio, driveway, grading, and utilities within the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

At the request of the Applicant, Commissioner Zaunbrecher moved to continue the hearing until March 20, 2019. Commissioner Adams seconded. All so voted.

TO BE CONTINUED TO MARCH 20, 2019

Notice of Intent Application, Zur Attias, Concord Culinary, 430 Old Bedford Road, DEP File #137-1436

Chair Higgins reopened the hearing seeking approval to construct a seven-unit Planned Residential Development with associated driveway, soil absorption system, grading, utilities, and community gardens within the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

At the request of the Applicant, Commissioner Zaunbrecher moved to continue the hearing until March 20, 2019. Commissioner Adams seconded. All so voted.

NEW APPLICATIONS

Request for Amended Order of Conditions, Fabio Andrade, Fabio's Construction, 70 Elm Street, DEP File #137-1454

Chair Higgins opened the hearing seeking approval for an Amendment to the Order of Conditions for after-the fact construction of a wall within Bordering Land Subject to Flooding, the 200-foot Riverfront Area to the Sudbury River, and the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

List of plans and documents discussed at this meeting:

- Wetland Permitting Plan prepared by Stamski and McNary, Inc. revised on March 1, 2019.

David Crossman of B&C Associates attended tonight's meeting. Mr. Crossman said that the Applicant, Fabio Andrade, constructed another wall on the property on the 100-year floodplain line without permission. He explained that the wall filled in 9.86 cubic feet of floodplain and the area

between the two walls had originally sloped up a few feet. The area is now completely flat. They are proposing to provide an additional 200 cubic feet of flood storage in that area. They are taking out the stone dust and will loam and seed. They will do the same for the other side. There will not be any impervious areas on either side of the wall.

Commissioner Adams asked about the previous submittal. It was his recollection that a trench was dug but no wall was constructed and that the trench was supposed to be filled in. Mr. Crossman confirmed that that trench was filled in and no wall was constructed. Commissioner Adams asked how another wall was built. Mr. Crossman explained that Mr. Andrade was originally going to build a firepit but that plan was eliminated because it would have been within the floodplain. Apparently, Mr. Andrade decided to build a wall without getting the NRC's approval. Commissioner Adams was surprised that given the circumstances that Mr. Andrade would build another wall. Mr. Crossman said Mr. Andrade provided compensatory storage in that area by leveling out the area between the walls. He explained that there was an existing wall prior to October 1st and that was shown on the original plan. A new wall was rebuilt in the same spot and a second wall above that.

Director Kaye asked that the plan be revised to show that the existing stone dust below the retaining wall will be removed prior to loaming and seeding. Mr. Crossman agreed.

Commissioner Huggins said this is the second after-the-fact filing this contractor has submitted. This is not how a project should proceed. Commissioner Huggins said a message needs to be given to the contractor that this is becoming a pattern and the NRC is taking notice. Mr. Crossman said that he only became aware of this situation afterwards as well. Commissioner Huggins said that Mr. Andrade needs to realize that the NRC may require him to remove the wall if it doesn't meet regulatory standards.

Commissioner Adams said that the Commission often looks at projects to see if there is an overall improvement to the site and what changes to the site might help compensate for work done without approval. He asked if Mr. Crossman could provide any changes to the site that might help compensate for the work done without approval. Mr. Crossman replied that there are not many invasives on the site. Under the first approval, they proposed to install native plantings in the 25-foot No Disturb Zone. Commissioner Adams asked if a more robust mitigation plan could be provided. Mr. Crossman said they could provide more plantings above what was previously submitted.

Commissioner Adams asked if the property floods in the spring. Mr. Crossman indicated on the plan where it does flood.

Julia Yoshida of 78 Elm Street said she knew the previous owner and was in the backyard numerous times. She explained that the backyard used to have a tiered garden and there was no stone wall. She said originally the small flat area was garden. Ms. Yoshida believes the upper retaining wall is higher. Since 1987 they have witnessed flooding in the spring up to the 121-foot level. Ms. Yoshida said that last fall there was a good amount of flooding. She said that global warming also needs to be considered.

Brian Rosborough of 56 Elm Street asked if anyone could put a wall in the floodplain based upon the NRC's decision and the regulations. He said that the contractor has been on notice and the

Commission is aware of this fact and questioned whether it is better to ask for forgiveness rather than permission.

Jane Deering of 94 Elm Street said that her property is very flat. For the 30 years that they have owned their property they have had water from the river come up to their house. The water comes up through the basement floor. She is concerned that if soil and earth are removed as well as impervious materials this will cause the water to shift and more water will travel towards her property. Ms. Deering agrees with Mr. Rosborough's comment that it is not preferred to be in a situation where someone is asking for forgiveness all the time without asking for permission. She does not believe it would be a bad decision if the Commission decided to have the contractor remove the wall.

Commissioner Adams asked Mr. Crossman to explain the compensatory storage chart that Stamski and McNary prepared. Mr. Crossman said the engineers calculated how much flood volume would be lost by building the wall. The total disturbance calculated was 9.86 cubic feet of water would be displaced by building a new wall. Mr. Crossman said that under the wetland regulations they cannot fill floodplain without providing compensatory storage somewhere else on the site. They have provided an additional 240 cubic feet of flood storage. Mr. Crossman said that the wall will not displace water from the property.

Mr. Rosborough asked if that was the contractor's generous intent why did he not put it in his original proposal and why is he not in attendance tonight to explain his generosity. Mr. Crossman said he cannot answer that question.

Commissioner Zaunbrecher asked for clarification on whether the new wall was built in the exact footprint as the original wall. Mr. Crossman confirmed that the lower wall was rebuilt in the same footprint.

Chair Higgins asked what the purpose was of a third wall. Commissioner Nardi said it looks like a landscape feature or bench. Commissioner Adams explained that a structural wall would have been needed without the stepped wall because of its height.

Commissioner Huggins said that although the compensatory numbers work, the process has been unfortunate and is not appreciated. Commissioner Adams said that under the circumstances to offset the unauthorized work that took place, the property could be improved by providing a more robust planting plan. Commissioner Huggins said the Commission would like to accept an offer of additional plantings and to also be sensitive as to what will survive near the water. Staff is very knowledgeable about that and can advise what plantings would be best.

Claudio Topolcic of 78 Elm Street said he believes that loam and grass is better than compacted stone dust. He is concerned about what will happen on the property after it is sold and subsequent homeowners decide to build a patio. Chair Higgins said that other than the vigilance of the homeowners or the neighbors, he cannot say what might happen in the future. Mr. Topolcic said that the backyard at 70 Elm Street is an inviting space because it has a nice flat area with bench seating all around unlike his property. Chair Higgins said it could be noted on the final plan that it be grass only. Director Kaye said that anything in the area in question is in the floodplain and Riverfront Area and any other work would need NRC approval.

Mr. Rosborough asked if anyone could build a barbeque area in the floodplain. This project is setting a precedent. The NRC has the right to reject this application or at least require the owner/contractor to attend the hearing and explain his intent. He said for the Commission to just put the owner/contractor on notice in his view is not enough.

Chair Higgins said for the next scheduled meeting, all principals of this project should be in attendance.

Commissioner Adams asked if the construction of this wall was filed with the original application would the NRC have approved it. He noted that the wall was built outside 50-foot No Disturb Zone (NDZ). Commissioner Huggins felt if mitigation was provided and there was no loss in flood storage, the Commission would have approved the wall.

Ms. Rosborough said there is a house four doors up from where he lives that had a tennis court when he moved to Elm Street. If he wanted to put a tennis court in the floodplain on his property and/or a beautiful stone wall would he be allowed to if he was able to say that the amount of water captured would be greater than before. Mr. Rosborough believes that what the contractor has done in the backyard with the retaining walls is clearly a selling feature for the contractor. Commissioner Huggins replied that everything is case specific, property by property and by calculations. There is no generic answer. Commissioner Huggins believes that the tennis court that Mr. Rosborough is referring to probably was there long before any regulations were in place.

Chair Higgins thanked the public for their comments. He said that the contractor needs to come to the next meeting and provide some type of mitigation. The contractor may have pushed the limit of abuse in terms of what he should have done without permission. It is very unfortunate that this project has come before the Commission again.

Lucy Rosborough of 56 Elm Street said she is concerned about developers or new homeowners that are unaware of what they can or cannot do in relation to properties that contain wetlands. In this case she does not think this was innocent. She is concerned that plans were not given in advance. The developer did not attend tonight's meeting because he was worried about how the NRC would react.

Director Kaye said it is understandable that everyone is concerned about after-the-fact work. In reviewing the project in accordance with the Wetlands Protection Act this project more than exceeds the flood storage offset. Director Kaye said she does not see an issue from the Commission's standpoint that if a seating area was proposed along with appropriate mitigation and any floodplain fill is compensated for, then it would be permissible.

Director Kaye said there is 48-inch beech tree on the western side of the property that the contractor's equipment has been driving around to access work in the back of the house and the soil may be compacted which would affect the health of the tree. Director Kaye suggested there be a condition in the Order that a qualified landscape professional aerate the soil around the roots and submit a report to the Commission. Mr. Topolcic said that prior to the workers driving over the roots of the beech tree, they added soil. He is not sure if that is a problem and regrading may be needed. Director Kaye said that if fill was put in that area it should have been shown on the plan.

The NRC asked Mr. Crossman to inform Mr. Andrade that he needs to attend the next meeting.

The Applicant agreed to continue the hearing until April 3, 2019.

Notice of Intent Application, Alex Yarov, 90 Whittemore Street, DEP File #137-1465

Chair Higgins opened the hearing seeking approval to relocate an existing dwelling, construct an addition and new driveway, and restore an existing barn within the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

List of plans and documents discussed at this meeting:

- Notice of Intent Application; and
- Site Plan prepared by Sullivan, Connors and Associates dated February 12, 2019.

Homeowner Alex Yarov and Daniel Wells of Goddard Consulting attended tonight's meeting. Mr. Yarov said the existing house was built in 1945 and faces Route 2. They are proposing to move the house away from Route 2 and move it closer to an existing barn. They would also like to construct an addition to the house. The existing house is within the 50-foot No Build Zone (NBZ). They will be moving the house so it will be outside of the 50-foot NBZ. They will also be removing the existing concrete sidewalk, foundation, and retaining walls that are crumbling. Mr. Yarov said they would like to have a berm as a barrier for the property from the noise of Route 2. The berm would also be outside of the 50-foot NBZ. Mr. Yarov explained that they are proposing a new crushed stone driveway and a few walls that will be made out of natural stone. The house will remain as a two-family house. Mr. Yarov believes they are improving the site. Mr. Yarov said the house will have a basement and the grading will be three feet higher. In response to Commissioner Zaunbrecher's question regarding the barn, Mr. Yarov replied that the barn will remain a barn but split in half to provide storage. Mr. Yarov explained that the septic system is grandfathered in and as long as they clean out the lines. The septic has passed Title 5.

Commissioner Adams asked if there was going to be any other tree removal. Mr. Yarov replied that there is one oak tree near the driveway they would like to try and save. There is also a pine tree that they would like to replant somewhere else on the property.

Mr. Wells said there will be a reduction of 249 s.f. of impervious surfaces within the 50-foot NBZ and a reduction of 987 s.f. within the outer Buffer Zone. Mr. Wells said there will be a new pipe within the Buffer Zone to connect the existing septic tank to the house. They have submitted a separate waiver for the underground pipe.

There were no public comments.

Commissioner Huggins moved to close the hearing and issue an Order of Conditions for Alex Yarov, 90 Whittemore Street, DEP File #137-1465 with Finding A, Standard Conditions 1-19 and Special Conditions 20-46. Commissioner Adams seconded. All so voted.

Notice of Intent Application, Bryan Anthony, 72 Walden Terrace, DEP File #137-1466

Chair Higgins opened the hearing seeking approval to demolish and reconstruct a single-family house within the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

List of plans and documents discussed at this meeting:

- Notice of Intent Application; and
- Wetland Permitting Plan prepared by Stamski and McNary, Inc. dated January 25, 2019.

Homeowner Bryan Anthony and Daniel Carr from Stamski and McNary attended tonight's meeting. Mr. Carr explained that currently the property consists of an existing single-family house with attached garage, paved driveway and paved walkway. They are proposing to replace the existing house with a new house. The existing house has a full basement and a sump pump that discharges to the wetlands nine months out of the year. The new house will only have a crawl space rather than a full basement which will eliminate the need for a sump pump. A roof drywell is being proposed to collect all roof runoff and will infiltrate into the ground and not into the wetlands.

Chair Higgins asked if Mr. Carr could provide any information regarding the elevation of the groundwater. Mr. Carr replied that they have elevations of the wetland flags and can interpolate where the groundwater is based on the wetlands. The floor of the crawl space is about a foot higher than the wetlands. The separation from the bottom of the stone to the groundwater is about two feet. That is why they need fill. The bottom of the stone of the roof drywell is actually at the existing surface so it is a little higher. They chose low profile chambers for that reason. The proposed house will be constructed four feet further from the wetlands. Mr. Carr said they are proposing a new walkway to the road and additional pavement for the driveway to get to the garage. The pavement will be pervious and will have different layers of stone underneath for stormwater storage. It will also infiltrate any stormwater that flows from the walkway and driveway. The existing house, pathway, and driveway will all be removed.

Chair Higgins stated that the proposed house is substantially larger. He asked why the house was not moved closer to the street. Mr. Carr replied that was because of setback requirements.

Commissioner Adams said he would look more favorably on the increase of the size of the new home if the additional 445 s.f. was outside of the 50-foot NBZ which would comply with the NRC's No Build Policy. Mr. Carr said that is why they are proposing a drywell. Currently the roof runoff goes directly into the wetlands. Mr. Carr said the roof runoff will infiltrate through the drywell before going into the wetlands. There will also be less erosion. Commissioner Zaunbrecher is still concerned about the increase in square footage. Commissioner Adams said that the infiltration area is a good idea. However, he asked if the covered porch could be relocated outside the 50-foot NBZ. Architecturally that may not be desirable but the increase for the amount of impervious surface is a concern to him.

Chair Higgins asked what the plan was for the rear yard. Mr. Carr said they will be keeping three trees and they would like lawn to remain up to the wetlands. Chair Higgins asked if the mitigation for the house doubling in size are the roof drains. Mr. Carr replied yes. They are also eliminating the basement which currently is pumped nine months out of the year. Mr. Carr said overall they are improving the site.

Commissioner Adams said he is concerned about the net increase of over 1,100 s.f. increase in the Buffer Zone which is a big change from the existing house. Commissioner Zaunbrecher said she is not convinced a drywell is an improvement over a much larger house. She does not see a reason to support a larger footprint.

Dean Banfield of 73 Walden Terrace said he lives across the street from the Applicant's house. He also has a crawl space and his pump runs six to nine months during the year. His yard is more level. It might drop off two to three inches before the wetlands. He has a neighbor who has a crawl space and they are pumping all year. Mr. Banfield believes the design could be pulled forward if the

wraparound porch is not a component. The porch as proposed is right up to the 25-foot No Disturb Zone (NDZ). If the porch was not there the design could be pulled forward more.

Mr. Anthony said the porch could be moved forward to address that concern but he is not sure how that would work at this moment. He believes that one thing that is important about the project is the fact that the house currently pumps about 17,000 gallons of subsurface water per day into woods creating a marsh. Anything that can be done to reduce that would be good. A half horse powered pump is being used in the cellar. It runs approximately four hours a day. The rainwater that is currently coming off the roof of the existing house is going right into the woods. Mr. Anthony believes the pooling water in the woods is a problem. It is also a health issue. There are a lot of mosquitoes. When changes were made to the high school his house went from pumping from seven to nine months a year to 10 months out of the year. Mr. Anthony said he could possibly make changes to the plan to move the porch forward to the 50-foot NBZ. The majority of the new proposed house will be in the same location as the existing house.

Commissioner Zaunbrecher said it is still not clear to her how a substantially larger roof, even though it is going into a drywell, is better. Mr. Carr said currently the existing house roof water flows over the grass into the wetlands. Mr. Carr said when they are preparing a stormwater report they try to reduce the rate of the runoff. The rate of the runoff determines how much scouring and how much silt and everything else that enters the wetlands. When the water is funneled into a drywell it filters the runoff and then the cleaner water enters the groundwater before entering the wetland system. The roof runoff is still entering the wetlands but it is slowing it down and decreasing the direct effect of the wetland. Commissioner Zaunbrecher asked if the volume will affect the rate. Mr. Carr explained that the chambers have been sized to hold the volume of stormwater and then it will slowly infiltrate into the ground. It is sized for a 50-year storm rather than the usual 10-year storm.

Chair Higgins asked why the roof drywells were kitty corner to the lot. Mr. Carr replied that it is because of a grading issue. They like to keep drywells 10 feet away from property lines and 10 feet from foundations as well.

Commissioner Zaunbrecher said because the lawn goes right up to the wetlands and there is concern about water going into the wetlands has there been any consideration given to putting in trees in the back of the house. The trees would help pull water out of the wetlands. This would provide mitigation that would come from the increase of proposed impervious areas within the 50-foot NBZ. Mr. Carr believes that the Applicant is open to the idea of planting some trees. Chair Higgins said the Applicant can offset some of the size of the house with some mitigation in addition to pulling the lawn back.

Commissioner Adams asked that they review the architectural plans to to shift impervious surfaces out of the 50-foot NBZ.

The Applicant agreed to continue the hearing until April 3, 2019.

MINOR MODIFICATION

Middlesex School, 1400 Lowell Road, DEP File #137-1464: Drainage Modification

Director Kaye said that the Middlesex School has requested a Minor Modification for the Order that was just issued for the new faculty housing. CPW has asked that they modify their drainage to use above ground infiltration basins instead of subsurface systems. The pipe will be upsized from an 8-inch pipe to a 10-inch pipe..

There were no public comments.

Commissioner Huggins moved to issue a Minor Modification for Middlesex School, 1400 Lowell Road, DEP File #137-1464 to redesign the stormwater management system from two subsurface chamber systems to two surface infiltration/detention systems, as shown on the Middlesex School Oates Lane Faculty Residence Plans and Stormwater Report last revised February 22, 2019. Commissioner Nardi seconded. All so voted.

Other Business

Chair Higgins inquired about the status of the parking at Punkatasset. Director Kaye said that she received an email from a resident asking whether the parking at Punkatasset was temporary and what the plan was for the parking along the road. Jane Hotchkiss (Select Board) said the parking on Monument Street is not temporary and is at the maximum amount of spaces. This was a first step to address the parking. Ms. Hotchkiss said she does not think the conversation about what more needs to be done about the parking was ever finished. Chair Higgins asked who is responsible for plowing. Director Kaye said that Public Works has asked Natural Resources staff to plow the spaces on the road but she has had difficulty finding someone to do this and requested that it be done by CPW. Commissioner Adams said that not so long ago there were 11-13 parking spaces along the road. Now there are only six. He does not understand the Town's perspective on the benefit to the community by reducing the access to Town conservation land and cutting the parking spaces in half. Ms. Hotchkiss replied that she cannot explain that because she was not part of that discussion. Ms. Hotchkiss said that trying to get 13 spaces along Monument Street would have required moving stone walls and removing trees. It would have been very expensive. The discussion about getting parking at the trailhead or other spots was never resolved. Commissioner Adams said he has been approached about the parking at Punkatasset. He was on both of the committees that discussed parking issues. Feedback has never been given by the Select Board on why they moved forward without considering two committees' reports and recommendations. Both the Estabrook Woods Access Study Committee and the Natural Resources Commission recommended 12 or more spaces. The Select Board then moved forward and built six parking spaces. Ms. Hotchkiss said she would be happy to bring this up with the Select Board. Commissioner Adams said that he appreciated that and said if the six spaces is a first step at least the NRC will know how to respond to the community. Chair Higgins asked if six spaces is not enough does the burden then fall back onto the NRC. He asked if 12 was the total number of spaces or is 12 the number of parking spaces the NRC will put in. Commissioner Adams said there was a discussion that if appropriate parking could not be developed at Punkatasset then the possibility of additional parking at Estabrook would be revisited. Ms. Hotchkiss is aware of that and has brought it up at Select Board meetings. She will discuss with the Select Board and get an answer for the NRC.

Commissioner Adams moved to adjourn. Commissioner Zaunbrecher seconded. All so voted. This meeting adjourned at 8:31 p.m.

Respectfully submitted,

Karen Bockoven
Administrative Assistant