

NATURAL RESOURCES COMMISSION
Meeting Minutes
June 5, 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, June 5, 2019. The following Commissioners were present: Lynn Huggins, Acting Chair, Judy Zaunbrecher, Ed Nardi, and Nick Pappas. Delia Kaye, Natural Resources Director, and Natural Resources Administrative Assistant Karen Bockoven were also present.

Chair Huggins 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 <ul style="list-style-type: none">• April 9, 2019 and April 17, 2019
DIRECTOR'S REPORT
TO BE CONTINUED TO JULY 10, 2019 <ul style="list-style-type: none">• CONCORD CULINARY, 430 Old Bedford Road, NOI
CONTINUANCES <ul style="list-style-type: none">• WESTCHESTER COMPANY, INC., Lot 2A Keuka, NOI
NEW APPLICATIONS <ul style="list-style-type: none">• 1150 MAIN STREET CONDOMINIUM, 1150 Main Street / New Public Meeting, RDA• BENTLEY BUILDING CORPORATION, 1709 Monument Street / New Public Meeting, NOI• DAVID REILLY, 148 Minot Road / New Public Meeting, RDA
CLOSE and ISSUE <ul style="list-style-type: none">• CONCORD GREENE CONDOMINIUM ASSOCIATION, 1024 Main Street• FRITZ, 353 AND 33A Elm Street
CERTIFICATES OF COMPLIANCE <ul style="list-style-type: none">• CHEEK, 111 Pilgrim Road
EMERGENCY CERTIFICATION RATIFICATION <ul style="list-style-type: none">• TOWN OF CONCORD, Baker Avenue Right-of-Way
OTHER BUSINESS <ul style="list-style-type: none">• Nominate Judith Zaunbrecher as NRC Representative to the Community Preservation Committee• 47 Warner Street, Easement Acceptance
ADMINISTRATIVE APPROVALS <ul style="list-style-type: none">• WOOD, 40 Spencer Brook Road, Tree Removal• PIASECKI, 28 Shore Drive, Tree Removal• HUYETT, 1123 Monument Street, Driveway Paving• TOWN OF CONCORD, 15B Virginia Road, Tree Removal• ORVEDAL, 76 Upland Road, Fence Replacement

Acting Chair Huggins welcomed Commissioner Nick Pappas to the Commission. She also thanked former Commissioner Jeff Adams for his service, stepping in when another Commissioner had to resign in 2011 and then serving until 2019. The NRC appreciates Commissioner Adams' terrific skillset, professionalism, and leadership.

APPROVE MEETING MINUTES

Due to a lack of a quorum of voting members, the April 9, 2019 minutes were tabled to the July 10, 2019 NRC meeting.

Commissioner Zaunbrecher moved to approve the April 17, 2019 NRC meeting minutes, as written. Commissioner Nardi seconded. All so voted.

DIRECTOR'S REPORT

- In April, the NRC received a right of first refusal notice for property at 68A Monument Street. However, a plan showing what portion of the lot would be subdivided and sold was not provided. Planning & Land Management Director Marcia Rasmussen said that a special permit was issued for a residential compound and included a condition that the property cannot be subdivided without an amendment. The Select Board has discussed this and decided that it was unlikely that anyone would have an interest in the parcel and voted not to act on the right of first refusal.
- Director Kaye advised the Commission on staffing updates. Assistant Director Lori Capone will be leaving after nine years. She has taken a position with the Town of Sudbury as their Conservation Coordinator. This is a step up and a great opportunity for Lori. Director Kaye said she will miss working with Lori who has brought a lot to the Natural Resources office and the Commission. Her last day will be June 21st and Director Kaye will organize an event to honor Lori's years of service.

One summer Conservation Crew member has started as well as both summer Rangers. The second Conservation Crew member will start tomorrow.

- The Town Forest Restoration Project at the Hugh Cargill Tributary to Mill Brook that was scheduled in May has been postponed because the rainy spring created unfavorable conditions along the access path. The project has been moved to August for the excavation to begin. Planting will commence in September.
- The Phase 1 Environmental Site Assessment is underway for the Ralph Waldo Emerson Memorial Association 6.4-acre portion of land at 18 Cambridge Turnpike to be acquired by the NRC. The contract for this work will be executed in the next few days. The work should be completed by the end of June. A closing date of July 15th is scheduled. In response to Commissioner Zaunbrecher's inquiry about a Conservation Restriction, Director Kaye said that CPA funds require a CR which will be held by the Concord Land Conservation Trust (CLCT).
- A group of fifth grade students from the Thoreau School volunteered time to begin weeding the 700-square foot pollinator meadow at Heywood Meadow, which will be planted in the fall. Marcia Schloss has offered to weed over the summer and Director Kaye will meet with her on Monday to discuss.

- The new tenants at the Harrington House would like to do some work outside the building envelope, requiring NRC approval. They would like to have some chickens and have received approval from the Board of Health. They will install mobile fencing and a chicken coop. Director Kaye explained that the former tenants put in a lot of berries and fruit trees. The current tenants would like to maintain them which means cutting down the canes in the spring and harvesting the berries and fruits. Director Kaye also said that within the building envelope, there are two areas that are currently flower beds. The new tenants would like to replace the flower beds with a stone patio with stone dust underneath allowing moss to grow. In response to Commissioner Zaunbrecher's inquiry about the Airstream on the property, Director Kaye stated that the tenants will remove it by the middle of June.
- Work at the National Park Foundation funded Baker Avenue boat launch is progressing well. A gravel parking area at the trail will be installed soon as well as rollaway ramps for access for kayaks and canoes. Approximately 90 trees, 200 shrubs, and herbaceous plants will be planted. There is a lot of poison ivy on the site that will have to be managed. Director Kaye thanked Assistant Director Lori Capone for her work on this project.

TO BE CONTINUED TO JULY 10, 2019 (NO DISCUSSION)

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

Acting Chair Huggins 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 July 10, 2019. Commissioner Nardi seconded. All so voted.

CONTINUANCES

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

Acting Chair Huggins reopened 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.

List of plans and documents discussed at this meeting:

- Letter from Westchester Co. Inc. dated May 9, 2019 with attached exhibits.

Acting Chair Huggins stated that at the December 19, 2018 NRC meeting the Commission requested that the Applicant provide a legal opinion why a project that lacks frontage should be under Commission review. The letter from the Building Division submitted by the Applicant did not meet this requirement. Further, the Building Division's letter confirms the Commission's position that the lot is not buildable until a street improvement plan is approved, or the Special Permit amended to include a fifth lot. Acting Chair Huggins noted that the four-lot subdivision remains under appeal. Even if the subdivision approval is upheld, the subdivision would have to be amended because currently it is limited to four lots. This was discussed in December in 2018 and no new information

has been provided. She recommended withdrawing or continuing the application until November so that frontage could be obtained. The NRC agreed.

Applicant Steve Marsh of the Westchester Company, and Valovia Costa of Goddard Consulting attended tonight's meeting. Mr. Marsh stated that they took the direction of the Planning Board which advised them to get their other permits. Mr. Marsh said they have demonstrated that they have requisite frontage and a buildable lot. Mr. Marsh said if the Commission decides not to move forward with approving their request tonight, he is asking that the NRC vote to deny it. Mr. Marsh spoke to DEP and the wetland regulations do not have anything to do with what the NRC is requesting. Mr. Marsh stated that they are looking for an approval on a buildable lot.

Director Kaye said she discussed the project with Town Planner Elizabeth Hughes who said that the Planning Board did not give any direction for the Applicant to file with the NRC before they received approval regarding frontage. Director Kaye noted that the NRC had also requested that the plan be redesigned so all elements were outside the 50-foot NBZ. Mr. Marsh stated that he has been to court for other situations similar to this one and he has prevailed because a denial has nothing to do with the Wetlands Protection Act. The lot exists. Mr. Costa said they would like to continue the hearing so they can revise the plans with regard to the changes requested by the Commission specifically moving the patio and staircase out of the 50-foot NBZ. Mr. Marsh said that Town Counsel has already rendered an opinion on the subdivision and determined that the subdivision is pre-existing. Director Kaye replied that this does not include subject Lot 2A. Mr. Marsh said the NRC should consider checking with Town Counsel. Mr. Marsh asked if the Commission would like his lawyer to write a letter to the NRC which could be forwarded to Town Counsel. Mr. Marsh explained that the subdivision was approved in 1913 which was long before subdivision control laws which means they are exempt. Mr. Costa stated if the Commission is going to deny their application it should be based on the Wetland Protection Act and the Town's Bylaw. Director Kaye replied that it would require the Applicant obtain all other permits prior to receiving an Order of Conditions.

Acting Chair Huggins wanted to confirm that the Applicant is requesting that the hearing be continued and that they will revise the plans to move everything that was discussed this evening out of the 50-foot NBZ.

Mr. Marsh said he needed to know the legal question that the NRC would like answered. Director Kaye said that the legal issue is inadequate frontage to build on the lot. In order to achieve frontage, the Applicant must provide a street improvement plan for Keuka or they must amend the special permit that allows four lots because they are trying to create a fifth lot. Mr. Marsh respectfully disagreed.

In response to a discussion about an invasives management plan, Director Kaye confirmed that a plan was submitted in November 2018.

There were no public comments.

The Applicant agreed to continue the hearing until July 10, 2019.

NEW APPLICATIONS

Request for Determination of Applicability Application, Schuyler Lance, Trustee, 1150 Main Street Condominium, 1150 Main Street, RDA File #19-5

Acting Chair Huggins opened the hearing seeking permission to install an 8-foot by 12-foot shed within Bordering Land Subject to Flooding, the 200-foot Riverfront Area to the Assabet River, and within the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

List of plans and documents discussed at this meeting:

- Request for Determination of Applicability Application; and
- GIS map received on May 16, 2019.

The Applicant, Schuyler Lance, attended tonight's meeting. He explained that they would like to purchase a shed to store snow shovels, buckets, hoses, and signs. Mr. Lance described the property and where the shed will be placed. It will be installed between two windows at the back of the building.

There were no public comments.

Commissioner Zaunbrecher moved to issue a Negative Determination of Applicability #3 with the condition that after the project has been completed, the Applicant shall submit a letter to the NRC stating that all work has been conducted in accordance with all conditions of this Determination of Applicability. Any changes from the RDA shall be described. Commissioner Nardi seconded. All so voted.

Notice of Intent Application, Mark White, Bentley Building Corporation, 1709 Monument Street, DEP File #137-1476

Acting Chair Huggins opened the hearing seeking approval to install a sprinkler system, foundation drain, and grading associated with the construction of a new dwelling within the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

List of plans and documents discussed at this meeting:

- Notice of Intent Application; and
- Sewage Disposal Plan prepared by Stamski and McNary, Inc. revised on May 15, 2019.

Mark White and Mike Paratore of Bentley Building Corporation, and Molly Obendorf of Stamski and McNary, attended tonight's meeting. Ms. Obendorf explained that the proposed work involves grading just beyond 75 feet of the Buffer Zone. Sprinkler heads will be installed outside of the 50-foot NBZ and will connect by pipes underground. The foundation drain will extend into the 50-foot NBZ in order to daylight. Director Kaye noted that one of the sprinkler heads needs to be moved so that the irrigation system is outside the 50-foot NBZ.

Acting Chair Huggins asked about the possibility of a sump pump in the basement to avoid work in the 50-foot NBZ. Ms. Obendorf said the preferred method is to drain to daylight. A sump pump would discharge the flow in a concentrated area and would discharge more. Commissioner Zaunbrecher asked if a drywell could be installed rather than draining to daylight and pull back out of the 50-foot NBZ. Ms. Obendorf replied that could be a possibility but their current proposal is less invasive and does not involve subsurface structures or chambers. There would also be less maintenance. Acting Chair Huggins said the Commission would like to see that all options are considered for keeping everything out of the 50-foot NBZ unless there are no other alternatives.

Director Kaye said that the basement elevation is a foot and a half above the seasonal high groundwater and there is no demonstrated need for a foundation drain. Mr. Paratore said that he has been monitoring the site and what they are proposing is more of a precautionary measure. Acting Chair Huggins explained that if the drainage pipe extends into the 50-foot NBZ and the NRC will be looking for substantial mitigation. Mr. White asked about pulling the drain back to 60 feet keeping the drain out of the 50-foot NBZ, with only grading in the 50-foot NBZ. Acting Mr. Paratore said they could put the outlet and a raingarden at the 50-foot NBZ similar to what a neighbor has done. Acting Chair Huggins requested that this be shown on a revised plan.

There were no public comments.

The Applicant agreed to continue the hearing until to June 19, 2019 to allow for DEP to issue a file number and revised plans to be submitted.

Request for Determination of Applicability Application, David Reilly, 148 Minot Road, RDA File #19-4

Acting Chair Huggins opened the hearing seeking approval to replace the existing septic system within the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

List of plans and documents discussed at this meeting:

- Request for Determination of Applicability Application; and
- Sewage Disposal System Upgrade Design Plan prepared by Doucette Engineering revised May 31, 2019.

Ted Doucette of Doucette Engineering attended tonight's meeting. Mr. Doucette explained that the existing septic system on the site has failed. They have received Board of Health approval for a new system. They will keep the tank and pump out of the 50-foot NBZ and will be install a Presby System which requires less fill. The old tank will be punctured and filled. Commissioner Zaunbrecher noted the site is tight and asked about access. Mr. Doucette said that the only access to the site is using the driveway. They will protect the trees and roots by putting up fencing as a visual for the contractor. They may need to trim one or two tree limbs. Director Kaye recommended a condition for an arborist to aerate the roots following completion of work. Commissioner Pappas asked if the septic could be installed on the other side of the house. Mr. Doucette replied it could not because of ledge.

There were no public comments.

Commissioner Zaunbrecher moved to issue a Negative Determination of Applicability #3 with the following conditions: 1) A preconstruction site visit shall be held to review erosion controls and the limit of work; 2) Following completion of work, a certified arborist shall aerate compacted soils under trees affected by the construction equipment; and 3) After the project has been completed, the Applicant shall submit a letter to the NRC stating that all work has been conducted in accordance with all conditions of this Determination of Applicability. Any changes from the RDA shall be described. Commissioner Nardi seconded. All so voted.

CLOSE AND ISSUE PERMITS

Concord Greene Condominium Association, 1024 Main Street, DEP File #137-1475

Acting Chair Huggins reopened the hearing seeking approval to remove dead and dying trees and replant trees and shrubs within Bordering Land Subject to Flooding, the 200-foot Riverfront Area of a tributary to the Assabet River and the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands.

Commissioner Nardi moved to close the hearing and issue an Order of Conditions for Concord Greene Condominium Association, 1024 Main Street, DEP File #137-1475 with Findings A, B, C, and D, Standard Conditions 1-19 and Special Conditions 20-43. Commissioner Zaunbrecher seconded. All so voted.

Matthew and Chandler Fritz, 353 and 33A Elm Street, DEP File #137-1473

Acting Chair Huggins reopened the hearing seeking approval to approval to reconfigure the existing driveway and implement a master landscape plan, including drainage improvements, within the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

Commissioner Nardi moved to close the hearing and issue an Order of Conditions for Matthew and Chandler Fritz, 353 and 33A Elm Street, DEP File #137-1473 with Finding A, Standard Conditions 1-19 and Special Conditions 20-43. Commissioner Zaunbrecher seconded. All so voted.

CERTIFICATES OF COMPLIANCE

Cheek, 111 Pilgrim Road, DEP File #137-1223

Commissioner Zaunbrecher moved to issue a Certificate of Compliance for Cheek, 111 Pilgrim Road, DEP File #137-1223. Commissioner Nardi seconded. All so voted.

EMERGENCY CERTIFICATION RATIFICATION

Town of Concord, Baker Avenue Right-of-Way, Culvert Repair

Commissioner Nardi moved to approve the Emergency Certification for Town of Concord, Baker Avenue Right-of-Way, Culvert Repair. Commissioner Zaunbrecher seconded. All so voted.

OTHER BUSINESS

Nominate Judith Zaunbrecher as NRC Representative to the Community Preservation Committee

Commissioner Pappas moved to nominate Judith Zaunbrecher to continue as the NRC Representative to the Community Preservation Committee. Commissioner Nardi seconded. All so voted.

47 Warner Street, Easement Acceptance

Director Kaye explained that as part of the demolition and rebuild for the property, the homeowners offered a public easement to view Warner's Pond. Access to the pond would not be permitted for liability reasons. The homeowners had a few benches made from fallen trees on the property. The easement is 20 feet wide but does not extend all the way down to the pond. Director Kaye provided the draft easement for review and advised the Commission that this will be on the June 19 agenda.

Administrative Approvals:

- **Wood, 40 Spencer Brook Road, Tree Removal**
Director Kaye said there are four red maples in wetlands that are damaged and dying. They pose a threat to the homeowner's fence and a trail. The trees would be cut and the stumps will remain. Commissioner Pappas commented that it is natural for trees to die. The Commission agreed to let the homeowner cut the trees leaving a snag or cut the trees and drop in place.
- **Piasecki, 28 Shore Drive, Tree Removal**
The homeowner requested permission to remove a dead red oak and dead birch tree both of which are close to the house and within 100 feet of wetlands. They will keep the birch because it is providing nesting habitat for a red-bellied woodpecker family. Approval was granted.
- **Huyett, 1123 Monument Street, Driveway Paving**
The homeowners would like to pave a portion of the gravel driveway in the outer Buffer Zone because of pitting and potholes. Acting Chair Huggins noted that driveway could be shifted to be outside the Buffer Zone but added that she was comfortable with the paving. Approval was granted.
- **Town of Concord, 15B Virginia Road, Tree Removal**
Director Kaye said there are five dead pine trees on the property line in the Buffer Zone which an abutter is concerned about trees falling and hitting cars and their house. Concord Public Works will flush cut the trees and take them off site. Approval was granted.
- **Orvedal, 76 Upland Road, Fence Replacement**
Director Kaye said that the new owners of the property would like to replace an existing chain link fence with a wood picket fence in the Riverfront Area. Approval was granted.

Commissioner Zaunbrecher moved to adjourn. Commissioner Nardi seconded. All so voted. This meeting adjourned at 8:23 p.m.

Respectfully submitted,

Karen Bockoven
Administrative Assistant