

Arlington Conservation Commission
Minutes
October 20 2016

Mr. Stevens called the meeting to order at 7:30 p.m. in the Second Floor Conference Room of the Town Hall Annex. Present were Chair Nathaniel Stevens, Mike Nonni, Charles Tirone, Curt Connors, David White, Susan Chapnick, Janine White, and Associate Member Catherine Garnett. Associate member Eileen Coleman and Conservation Administrator Cori Beckwith were not present. Also present were Catherine Chiu, Bill Kaplan, Aimee D'Onofrio, Ben Ferber, Daniel Klevanov, Heijung Kim, Mary Trudeau, Pasi Miethnen, Jennifer Roderick, Lauren Kopans, Melanie Cameron, Patricia Worden, John Worden, Alice Trexler, Monika Musial-Siwiek, Peter Musial, Downing Cless, Colin Blair, and Harold Boucher.

7:30pm – Commission Business:

Mr. Stevens discussed the process for interviewing applicants for the Conservation Administrator position as Ms. Beckwith is resigning. The 23-h per week position has been advertised and applications are due by November 1, 2016.

12 Clyde Terrace – the site walk for the appeal was performed on October 14 and attended by Mr. White of the Commission, DEP, Ms. Trudeau, and Mr. Seaver (applicant). Mr. Tirone followed up with a phone call to DEP, as well. DEP will issue a superseding Order of Conditions under the state Wetlands Protection Act and Wetlands Regulations, possibly within a few weeks.

7:45pm – Notice of Intent – 88 Coolidge Rd

The applicant has requested to continue this hearing to November 3, 2016 at 8:15pm. Rich Kirby plans to submit additional materials in advance of the November 3 hearing. DWhite/Nonni motioned to continue the hearing per this request; motion passed unanimously.

7:50pm – Enforcements

15 Laurel – Notice of Intent received and hearing set for November 3, 2016 at 8:00pm.

41 Park Ave – Arlington Coal & Lumber: The Commission needs to write a letter with the terms of maintenance approved at the last hearing on October 6, 2016.

Certificate of Compliance (COC)

4 Mystic Bank – permit for wall and dock on Mystic Lake. Mr. Tirone will follow up with the applicant to explain the process to obtain a COC.

71 Dothan St – Invasive plant management started in July 2016

Mr. White reported on the draft Master Plan for the Reservoir and requested comments on the plan.

8pm – Notice of Intent – 47 Spy Pond Lane, Lots A and B – Deliberation and Vote

The Commission made it clear prior to deliberations that it closed the hearing at its October 6, 2016 meeting, and therefore no further information or public comment would be accepted after that date and no further information could be presented this evening to the Commission. The Commission then deliberated on the information presented at past hearings concerning these two NOIs. Mr. Connors distributed to the Commission a draft of proposed findings. The Commission reviewed these findings, edited and added findings, and discussed the applicable regulatory references from the Arlington Bylaws, the Town Wetlands Regulations, and the state Wetlands Regulations (Act).

The main findings discussed included the requirements for work in Adjacent Upland Resource Area (AURA) under the Bylaw and Town Regulations. The finding proposed was that the Applicant failed to establish reasonable alternatives to the proposal of building houses on these proposed lots within the AURA. Reasonable alternatives that would not have the same impact on the resource areas included building 1 house outside of the AURA on the existing property or building 2 smaller houses both outside the AURA on proposed Lot A and Lot B. The Commission discussed the Applicant's cost analysis previously presented and comparisons to other properties around Spy Pond. The Commission discussed that the Applicant's cost analysis of "alternatives" was not credible since the high cost of the property was predicated on assuming that two large houses could be built within the AURA.

Mr. Boucher, the owner of 47 Spy Pond Lane, came into the meeting and delivered a letter to the Commission. Mr. Stevens again explained that the hearing was already closed and that the Commission could not accept any further information, so the Commission could not and would not consider his letter. Mr. Boucher threatened litigation then left quite agitated.

The Commission continued to discuss the findings under both the Bylaw and the State Wetlands Act. The Commission agreed that the stormwater mitigation system proposed was acceptable; however, there was concern voiced by some members that the system may not be maintained in the future with transfer of the property or that the maintenance program was not realistic or feasible.

The Commission discussed the information presented at the last hearing that a review by Mr. Nonni and Ms. Beckwith of work allowed on properties around Spy Pond and Mystic Lakes showed that the Commission has not previously approved construction of a new home (as opposed to a rebuild consistent with existing footprint or conditions, or a renovation/addition, small deck, etc.) within the AURA (100' Buffer Zone under the Wetlands Protection Act) to Spy Pond and the Mystic Lakes. In 14 past decisions

reviewed, the existing house was in or partially within the AURA, whereas for 47 Spy Pond Lane the existing house is outside of the AURA.

The Commission reviewed the increase in impervious surface in the resource areas (AURA) for Lot A and Lot B. The Commission finds that the proposed development on Lot 1 would increase the impervious surface on the lot within the 50-100 foot portion of AURA from 491 sq. ft. by 857 square feet, or 175%, to a total of 1,348 square feet of impervious surface. The Commission finds that the proposed development on Lot 2 would increase the impervious surface on the lot within the 50-100 foot portion of AURA from 298 sq. ft. by 121 square feet, or 40%, to a total of 419 square feet of impervious surface. The combined increase in impervious surface on both lots within the AURA is 978 square feet, or 124%, over existing conditions.

The Commission considered the argument by the Applicant of the existing lawn as a "Permanent Disturbance Area." Because the Applicant did not establish "that reasonable alternatives are not available or practicable" under Section 25.D of the Town Wetland Regulations, the Regulations do not require the Commission to designate areas of the AURA's Restricted Zone as no, temporary, limited, or permanent disturbance areas. Therefore, the argument that the lawn is a permanent disturbance zone is not applicable and a misreading of the Regulations.

The Commission gave little weight to the Applicant's wildlife habitat analysis, as it is contradicted by other evidence in the record. Testimony and photographs presented by neighbors and abutters at prior hearings showed wildlife directly observed at 47 Spy Pond Lane including painted turtles, water fowl, and small mammals including muskrat and rabbits, cardinals, robins, and other native birds feeding on mulberries in the yard.

The Commission found that the proposed work on each Lot is likely to individually significantly harm and/or cumulatively harm the resource areas values protected by the Bylaw.

Mr. Connors motioned to deny the permit for Lot A (Lot 1) under the Arlington Town Bylaw for reasons discussed and listed in his draft findings as amended during discussion. . Mr. White seconded the motion. The motion passed unanimously.

Mr. Connors motioned to deny the permit for Lot B (Lot 2) under the Arlington Town Bylaw for reasons discussed and listed in his draft findings as amended during discussion. Mr. White seconded the motion. The motion passed unanimously.

The Commission then considered these NOIs under the Act.

Mr. Tirone cited Wetland Regulations Section 310 CMR 10.53(1) to discuss the extent to which adverse impacts are mitigated. He maintained that the Applicant did not propose mitigation that meets the requirements of the Regulations for the size of the impact in the buffer zone. The Commission reviewed the performance standards for Bordering Vegetated Wetland 10.55, Bank 10.54, Land Under Water 10.56, especially

the level of protection needed within the 100-foot setback to protect the interests identified in M.G.L. c. 131, § 40.

Mr. Tirone motioned to deny the permit for Lot A (Lot 1) under the Act for reasons discussed and listed above. Mr. Connors seconded the motion. The motion passed with a majority of 5 voting in favor of the motion (Mr. Tirone, Mr. Connors, Mr. Nonni, Mr. White, and Ms. Chapnick) and 2 voting in opposition to the motion (Mr. Stevens and Ms. White).

Mr. Tirone motioned to deny the permit for Lot B (Lot 2) under the Act for reasons discussed and listed above. Mr. Connors seconded the motion. The motion passed with a majority of 5 voting in favor of the motion (Mr. Tirone, Mr. Connors, Mr. Nonni, Mr. White, and Ms. Chapnick) and 2 voting in opposition to the motion (Mr. Stevens and Ms. White).

[Mr. Connors left the meeting at this point.]

9:30pm Notice of Intent – 18 Nourse St

The applicant has requested to continue this hearing to November 3, 2016 at 8:30pm. DWhite/Chapnick motioned to continue the hearing at the applicant's request; motion passed unanimously.

Spy Pond Shoreline CPA project – updates

1st Public Meeting scheduled for Monday, October 24, 2016 at 7pm

2nd Public Meeting scheduled for Thursday, November 17, 2016 from 7:30-8:30pm (the first hour of the regularly scheduled Conservation Commission meeting)

3rd Public Meeting proposed for December 1, 2016, again for the first hour of the Conservation Commission Meeting – to be confirmed.

Meeting adjourned at 10:10pm.

Respectfully submitted,
Susan D. Chapnick
Conservation Commissioner