



TOWN OF ARLINGTON

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ARLINGTON CONSERVATION COMMISSION

Arlington Conservation Commission
Minutes
November 1, 2018

Mr. Stevens called the meeting to order at 7:34 p.m. in the Mural Room on the ground floor of the Senior Center. Present were Commission Members Nathaniel Stevens, David White, Charles Tirone, Pam Heidell, Susan Chapnick, and Mike Nonni; Associate Commissioner Cathy Garnett; Town Counsel Doug Heim; and Conservation Agent Emily Sullivan. Not present was Commissioner Curt Connors. Also present were Michael Scanlon, Kimberly Carney-Wong, Martha Ingols, Bill Copithorne, Mary Trudeau, Wendy Seltzer, Jan Jeffrelo, Rachel Watsky, Angela Alton, Matthew Watsky, Harold Boucher, Edward Boucher, Karen Grossman, Myra Schwatz, Lisa Fredman, Arm Ramasany, Elizabeth Pyle, Richard Schmerdler, Fiona Howard, Richard Nercres, Lindsay Chrefien, Victoria Ford, Cedrine Bell, Michael Ruderman, Neil Clark, Peter Musial, Ben Ferber, Richard Lacroix, Alice Trexler, and Downing Cless as well as other members of the public who did not sign in.

Administrative

N. Stevens announced that this meeting was being audio recorded.

10/18/2018 Meeting Minutes

Edits to the draft minutes were discussed, S. Chapnick motioned to approve the minutes as edited, C. Tirone seconded, all were in favor, motion approved.

Water Bodies Working Group

S. Chapnick summarized the Water Bodies Working Group meeting on 10/22/2018. The Reeds Brook analysis plan has been revised with a new proposal but still costs more than \$10,000. The Water Bodies Fund has a contingency line item (\$5,000). The Water Bodies Working Group proposed allocating \$3,505 of this contingency line item to the revised Reeds Brook analysis. The analysis project has already been approved for \$10,000 using funds from the Water Bodies Fund; therefore, total approved budget is \$13,505 for additional sampling and analysis

P. Heidell motioned to approve the additional \$3,505, M. Nonni seconded, all were in favor, motioned approved.

Open Space in front of AHS

The Commission recommended sending the Open Space Committee the email received about the open space in front of AHS and how it will be impacted by the proposed school reconstruction.

Signage along Sickle Brook

D. White suggested that E. Sullivan reach out to the Lexington Conservation Commission and Conservation Administrator about the issues of non-compliance along the Sickle Brook.

Mystic Riverfront Restoration

E. Sullivan updated the Commission that the Mystic Riverfront Restoration project has been granted an extension by MassDEP to 5/31/2019 in order to have a successful community planting event with students from Thompson Elementary School in Spring 2019.

Zoning Bylaw Working Group

P. Heidell stated that the Sign Workshop on 10/29/2018 was poorly attended.

Spy Pond Erosion Control and Slope Stabilization Project

E. Sullivan updated the Commission that the Spy Pond Project will be delayed one month, and that a bid package will be produced by early November.

Spy Pond Sand Bar

S. Chapnick updated the Commission that DOT sampling was conducted a few days ago on the Spy Pond sand bar to assess the potential contamination and determine options for removing the accumulated sand bar.

Notice of Intent (continued from 9/20/2018)- 46 Spy Pond Parkway - Attorney Jim Juliano

Documents Reviewed: Revised documents dated 10/23/2018 (existing impervious details, proposed impervious details), planting plan dated 10/20/2018, land plan dated 9/04/2018, drainage calculations dated 9/27/2018, climate change resilience compliance dated 10/22/2018, vegetated buffer plan dated 10/20/2018, NHESP letter dated 10/30/2018

Resource Area: Spy Pond, BVW, 100 Ft Adjacent Upland Wetland Resource Area (AURA) under the Arlington Wetland regulations

N. Stevens reminded the meeting attendees that the meeting was being audio recorded so that Commissioner C. Connors would be eligible to vote on matters presented in this hearing per the Mullin Rule. J. Juliano was pleased to hear this was being done.

J. Juliano presented clarifications and updates from the 9/20/2018 presentation. The proposed Cultec Recharger infiltration system (located in the front yard) will now infiltrate 100% of the proposed roof's runoff. J. Juliano reminded the Commission that the proposed patio, driveway, and pathways will be made of pervious pavers and maintained per the manufacturer's recommended O&M plan and schedule which had been submitted. J. Juliano described the

new 12 foot mitigation vegetated buffer zone which will contain native plantings. The existing vegetated buffer is approximately 6 feet.

J. Juliano summarized that the existing impervious surface in the 100 foot wetlands buffer zone is 626.65 square feet. The proposed impervious surface in the 100 foot wetlands buffer zone is 770.90 square feet. The proposed plan would add 144.25 square feet net increase of impervious surface in the 100 foot wetlands buffer zone. The proposed mitigation vegetated buffer zone will be 890 square feet.

J. Juliano elaborated that the proposed planting plan includes moving existing plants to save any existing vegetation that can be saved. J. Juliano also updated the Commission that NHESP released a letter stating that the project will not disturb any endangered species.

J. Juliano stated that the existing chain link fence will remain, as it is installed above the property's retaining wall. C. Tirone observed that the chain link fence would make the new vegetated buffer zone inaccessible to some wildlife, and suggested moving the fence to the top of the vegetated buffer zone. This would mark the buffer zone and prevent mowing and unnecessary foot traffic. C. Garnett recommended raising the fence or cutting holes in the bottom of the fence to allow for wildlife accessibility while minimizing disturbance in the area.

P. Heidell asked about using a fence or wall to demark the vegetated buffer zone. C. Garnett confirmed that the woody plantings in the vegetated buffer zone would be a natural fence. C. Garnett recommended diversifying the front row of Ink Berry due to the possibility of disease killing the species. M. Nonni confirmed that he has seen some fungus issues with Ink Berry, and also recommended interspersing more species. J. Juliano agreed to make such a change to diversify those plantings.

N. Stevens asked the Commission if they would like to ask for a fence along the vegetated buffer zone. C. Tirone supported the fence while S. Chapnick stated that the natural vegetated fence would be sufficient. D. White suggested installing permanent markers along the vegetated buffer zone to prevent future disturbance.

C. Garnett requested that the Conservation Commission require more detail with planting plans, such as plant sizes, regular plant names, Latin plant names, number of plants, and type of plant (transported in a container or burlap bag). N. Stevens stated that the Commission can ask applicants to provide more detail on submitted planting plans. S. Chapnick and P. Heidell stated that the Commission could add planting plan detail to the Order of Conditions. M. Nonni stated that it is impractical for the Commission to give size suggestions for plants, and that plant sizes depend on plan context. The Commission also reminded the applicant that Commissioners cannot recommend landscapers.

P. Heidell raised concern that the proposed stone terrace is too big with a high intensity of use. P. Heidell requested that the terrace be decreased from 17.8'x25.9" to 18'x18'.

C. Tirone asked if this proposal is compliant in the AURA provisions of the 2018 Town wetland regulations. N. Stevens and S. Chapnick confirmed that the proposal was compliant.

S. Chapnick questioned why the stairs were listed as impervious. M. Scanlon responded that he was still waiting on the structural engineer to see what is feasible, so he conservatively listed the stairs as impervious.

N. Stevens questioned why the impermeable plan has a note reading "revision of October 23, 2018 showing revised 100 foot buffer line from the revised survey document". M. Scanlon responded that the surveyor pushed the 100 foot buffer farther into property since the working session on this project and that the buffer line had not changed since the NOI was filed.

S. Chapnick asked if there was any way to remove or reduce the 144.25 square foot impervious surface increase in the 100 foot buffer zone. M. Scanlon confirmed that it was not possible as the house would be so reduced in size to make rooms unusable.

C. Tirone requested 1 foot of crushed stone in the construction entrance, rather than the listed 2-3 inches. C. Tirone also requested that the driveway be used as the construction entrance and that the street is swept daily. C. Tirone also asked for clarification of pervious paver depth since the plan said "variable". N. Stevens said that the Commission can specify a minimum depth in the Order of Conditions.

D. White suggested a 2 foot minimum which the Applicant agreed to.

Public Comments

No public comments were made in response to the 46 Spy Pond Parkway proposal.

C. Tirone motioned to close the hearing on 46 Spy Pond Parkway, S. Chapnick seconded, all were in favor, motion passed. The Commission agreed to deliberate on the application at the 11/15/2018 Conservation Commission meeting.

Notice of Non-Compliance- 12 Clyde Terrace Planting Plan, Gregory Hochmuth

The applicant requested a continuance to the 11/15/2018 meeting. D. White moved to continue the hearing to the 11/15/2018 Conservation Commission meeting at 9:30 pm, P. Heidell seconded, all were in favor, motion approved.

Notice of Intent (continued from 10/4/2018): Lots 1/A & 2/B, 47 Spy Pond Lane, Scott Seaver

Documents Reviewed:

Revised plans for Lot 1 and Lot 2, dated 8/16/2018; Details from plans dated 10/25/2018; NHESP letter dated 10/29/2018, letter from S. Seaver dated 10/24/2018, letter from Attorney E. Pyle dated 11/1/2018.

Resource Area: Land Under Water Body, BVW, Bordering Land Subject to Flooding (BLSF), Bank, and AURA (Town Bylaw)

N. Stevens reminded the meeting attendees that the meeting was being audio recorded so that Commissioner C. Connors would be eligible to vote on matters presented in this hearing per the Mullin Rule. N. Stevens reviewed the commission meeting and public hearing procedures that would be followed during the hearing. In the interest of making sure all comments could be heard, N. Stevens asked public comments to not repeat the same concerns or comments from the 10/18/2018 hearing.

M. Watsky, the applicant's attorney, began to present the additional information in support of the two NOIs. M. Watsky reminded the Commission that no proposed impervious surfaces are closer to Spy Pond than the existing impervious surfaces. M. Watsky updated the Commission that NHESP reviewed the project and found that there was no concern for endangered species disturbance in this proposal; NHESP letter had been submitted.

M. Watsky stated that it is not reasonable for the Commission to ask the applicant to move the sewer line and go through sewer permitting. M. Watsky also stated that it is not a reasonable and practical alternative for the Commission to ask the applicant to build a new sewer when there is an existing sewer, especially when sewer movement would require excavation closer to the pond shore than the project is proposing. Such a request from the Commission would also require permission from the neighbor to create a new easement.

M. Trudeau responded to public concern about the long term efficacy of the proposed infiltration system. M. Trudeau confirmed that infiltration reduces stormwater impacts during flood events by capturing stormwater that would otherwise flow over land and into the pond.

M. Trudeau reminded the Commission that the proposed project is too small to trigger stormwater permitting through MassDEP, though still includes stormwater management features. M. Trudeau reminded the Commission that the infiltration system was designed to handle the larger homes proposed in the 2016 NOIs and that the calculations to size these units used the Cornell data in the stormwater modeling, as compliant with Town Wetland Regulations and which uses higher stormwater inputs than required to comply with the DEP stormwater management standards. M. Trudeau stated that the proposed stormwater and infiltration systems are oversized for the proposed home sizes. M. Trudeau stated that peak flows for 2, 10, 15, and 100 year flood events would be reduced through these proposed systems per modeling results.

M. Trudeau stated that these proposed systems would prevent polluted and contaminated water from entering Spy Pond. M. Trudeau added that the proposed 25 foot vegetated buffer would help prevent heavy metals from contaminating the pond and BVW.

M. Trudeau responded to public concern about the non-mortared stone wall at the 25 foot vegetated buffer zone not being good for wildlife and blocking turtle movement. M. Trudeau stated that the wall would not impede wildlife accessibility, especially with the proposed 16

foot wide pathway to the dock, as proposed on the property boundaries (8 feet on each side) of the two lots. M. Trudeau stated that the wall would facilitate wildlife habitat, and that, in her experience, turtles will climb over or around many things. Also, the 16-foot gap in the walls and the fact that the wall stops at the property boundaries will further allow wildlife movement.

M. Trudeau responded to public concern about the size of the garage for each proposed house. M. Trudeau stated that the proposed garages are an environmental benefit. Storing cars, lawnmowers, and other things in the garage that might leak will prevent rain from washing oils and other pollutants from those things into the pond. M. Trudeau explained that MassDEP categorizes stormwater runoff from roofs as clean, and stormwater runoff from driveways as dirty. M. Trudeau stated that although the water runoff entering the proposed infiltration system will be from the roof and therefore clean, the infiltration system has been designed for dirty runoff.

S. Chapnick questioned the accuracy of existing and proposed impervious surface numbers in 100 foot buffer zone when compared to the land surveyor-stamped plans submitted with the prior application. S. Chapnick stated that Lot 2's numbers seemed correct, but Lot 1's numbers seemed incorrect. N. Stevens found the same discrepancies as S. Chapnick and also questioned the building coverage numbers for Lot 2. He introduced the final plans from the last filings into the record. The Conservation Commission requested that the plans for Lot 1 and Lot 2 be revised with correct numbers and stamped by a certified surveyor.

P. Heidell inquired about the possible reasonable alternative of parking in front of property or a one car garage, rather than the currently proposed two car garages. P. Heidell stated that a one car garage could reduce impervious surface in the 100 foot AURA by 350 square feet.

C. Garnett stated that talking about market and profits is inappropriate conversation for the Commission, which should only be discussing the Town Bylaws.

C. Tirone questioned the feasible alternative of building one house instead of two. M. Watsky responded that one house outside of the AURA is not feasible.

C. Garnett questioned whether or not American Nurseryman Standards would be used for planting installations. M. Trudeau said she would check with the Wetland regulations on tree specifications and that she would be present during plant installation to guide placement. M. Nonni asked how the plants will be transported to site. M. Trudeau stated that the plants will be containerized but that the trees may be in burlap.

Public Comments

N Stevens requested that no public comments be repeated from last hearing and that comments only focus on wetland regulations and wetland issues.

N. Stevens clarified the misperception that if the Commission chose to proceed with the lawsuit and its decisions on the prior applications was upheld, the applicant could then still submit another proposed project as he is doing now. Unlike zoning law which prohibits an application from refile for two years an application for the same project, the wetlands laws do not have any prohibition, meaning an applicant can file another application right away, or keep filing until he or she gets an approval.

S. Chapnick asked N. Stevens to clarify the misperception that there cannot be any development or building in the 100 foot wetland buffer. N. Stevens confirmed that this is not true, that the wetland regulations allow for some work in the 100 foot area from the pond or wetland, called the Adjacent Upland Resource Area or "AURA".

Attorney E. Pyle stated that she was representing abutters and neighbors. She states that her clients understood that the property would eventually be developed.

E. Pyle cautioned the Commission on resource area loss due to two large houses too far into the AURA. E. Pyle stated that the proposals do not minimize or avoid resource area alteration. E. Pyle suggested reducing the proposed two car garages to one car garages.

E. Pyle stated that the applicant had not met the burden of proof for alternatives. She also reminded the Commission that profit was not under the Commission's jurisdiction.

J. Russosticker expressed concern that the existing condition is being represented as worse than it actually is. J. Russosticker expressed that just because the proposed conditions are better than current condition does not make it a reasonable project.

L. Stowell asked the Commission how it determines what is a reasonable project and reasonable alternative. N. Stevens stated that reasonability is decided during Commission deliberation and discussion.

W. Seltzer expressed gratitude that the Commission will apply the same standards for this proposal as the previously submitted proposals.

K. Carney expressed that it was Seaver's decision to pay as much as he did for the property, and that it is not the Commission's jurisdiction to ensure profit on the property.

H. Boucher expressed that when his father purchased the property, he purchased the property as two lots. H. Boucher asked if this proposal was a variance as defined by the Town Bylaws. N. Stevens stated that any variance request needed to be submitted in writing and that the applicant here had not done so; he asked M. Watsky to confirm. M. Watsky confirmed that the applicant was not seeking any variance.

S. Seaver affirmed that H. Boucher owns the property.

K. Grossman expressed concern with construction within the 100 foot buffer zone and its impact on wildlife. K. Grossman expressed concern that NHESP did not object to the proposal.

M. Nathan expressed concern that the Commission will not be able to maintain protection of the resource areas after it is potentially developed. N. Stevens stated that the possibility of non-compliance is an issue with every project, however that legally the Commission cannot assume an applicant will violate terms of a permit. N. Stevens stated that residents are eyes and ears for the Commission to report issues of non-compliance. N. Stevens stated that the Commission prefers to solve non-compliance with education first, rather than enforcement. S. Chapnick stated that special conditions of properties are recorded with the Registry of Deeds.

L. Gunman expressed that the Conservation Commission has a history of following the Bylaws strictly.

F. Howard asked the Commission what its enforcement capabilities are. N. Stevens stated that to Commission prefers education first, but has many options. Its policy is to first send a Notice of Non-Compliance if an issue is observed and reach out to the alleged violator. The Conservation Agent can perform site visits to clarify any compliance confusion. The Commission can ask residents to attend Conservation meetings to discuss compliance as well. The Commission also has the authority to issue Enforcement Orders and has ticketing authority under G.L. c. 21D. If issues of compliance are particularly egregious, Town Counsel, Land Court, MassDEP, the Environmental Police, or the Attorney General can get involved. Finally, Certificates of Compliance for Conservation Commission permitted projects can restrict a resident's ability to sell a home or get a mortgage.

A. Trexler expressed concern that the plan proposals presented were not the same plans presented at the 10/18/2018 meeting. N. Stevens assured the attendees that the plans were the same plans as presented at 10/18/2018 meeting.

H. Kim expressed concerned protecting the 100 foot wetlands buffer.

I. Kaan expressed concern over the applicant's submittal of reasonable alternatives. N. Stevens stated that the applicant provided a narrative response.

B. Ferber expressed concern about the alternative provided by the applicant and articulated that reasonable alternatives should not be dictated by profit potential. B. Ferber also expressed doubt that the property was intended to be two lots.

L. Fredman questioned whether or not the Arlington Land Trust could purchase the property. N. Stevens stated that that discussion was inappropriate for the hearing as it was not relevant to the Commission's decision criteria and that it would need to be discussed outside of the Conservation Commission forum with the Land Trust.

P. Musial expressed concern over the proposed removal of a sycamore tree onsite and suggested that a smaller home would prevent the tree removal. P. Musial also expressed willingness to discuss the possibility of revising the sewer easement that bisects 47 Spy Pond Lane given that he is the abutting neighbor.

B. Ferber asked whether the Commission could require building on one lot while enacting a conservation restriction on the other. N. Stevens stated that the Commission lacks authority to require that, but could consider it if the applicant had offered it, but this applicant had not.

The Conservation Commission requested three items from the applicant be submitted for the 11/15/2018 meeting:

- 1) Clarification on plan numbers (impervious surface, etc.) in the form of a new plan stamped by a certified surveyor
- 2) Provide details on replacement trees (size, number, type, etc.)
- 3) Feasibility of one car garages

M. Watsky asked if the Commission could close the hearing and the requested information be submitted after. N. Stevens asked if the Commission could close the hearing with the condition of receipt of requested information. E. Pyle stated that she would like to reserve the right to comment on one car garage alternatives if submitted. N. Stevens sought advice of Town Counsel; D. Heim advised against such an approach and said it was best to keep the hearing open. The applicant agreed to continue the hearings.

S. Chapnick moved to continue the hearings to the 11/15/2018 Conservation Commission meeting at 8:15pm, D. White seconded, all were in favor, motion passed.

Administrative Continued

Hazard Mitigation Plan Revision

E. Sullivan updated the Commission on the grant received by MEMA (by way of FEMA) to revise the Hazard Mitigation Plan.

C. Tirone motioned to close the meeting, M. Nonni seconded, all were in favor, motion passed.

Meeting adjourned at 10:20pm.

Respectfully submitted,
Emily Sullivan