

Newbury Conservation Commission - Public Meeting Minutes
April 18, 2023

Members Present:

- ☒ Bob Connors (Chair)
- ☒ Mary Rimmer (Vice Chair)
- ☒ Peter Paicos (Planning Board Liaison)
- ☒ Brad Duffin
- ☒ Dianne O'Brien
- ☒ TJ Conte
- ☒ Samantha Holt (Agent)

7:00 p.m. Meeting Called to Order

- Opening remarks from Conservation Agent Samantha Holt
- Minutes Review: There are no minutes prepared for review.

ENFORCEMENT ORDERS

22 Annapolis Way (File #NCC-411)

Bruce Stott (Applicant)

- Exhibits: Negative Determination of Applicability for 22 Annapolis Way, Enforcement Order for 22 Annapolis Way
Samantha Holt presents an EO issued to the contractor on-site for a violation of the NDA issued for work to construct an upward expansion on the existing first-floor entryway. A report was received that the entire entryway had been removed and was being reconstructed to match the approved plan. Following an inspection, Ms. Holt determined that there was no significant resource or ground disturbance aside from some tire marks from cars parked in the sand across the street, but the construction work did violate the NDA. Colleen Hayes (representative, Finneran & Nicholson) requested to table the discussion until additional representation was available. Commission members agreed, discussion tabled.

18 Fordham Way (Blue Inn)

Ryan Guthrie (Owner)

- Exhibits: Notice of Violation for 18 Fordham Way with attachments
Samantha Holt presents a Notice of Violation issued for unpermitted work to replace a set of stairs on the beach. A report was received from MassAudubon shorebird monitors first for tire marks observed in priority habitat for endangered species, and another report a few days later for the construction work in the same area. During a site visit, Ms. Holt spoke with hotel employees who confirmed the construction work was ongoing, as well as Mr. Guthrie who stated one staircase is almost complete, a second still needs to be replaced, and that machinery was used to remove the first existing staircase. A NoV was issued serving as a cease-and-desist pending Commission discussion. Ms. Holt also noted that, had this work been appropriately permitted, typically construction work in priority habitat areas is not allowed between April 1 and August 31 to accommodate the shorebird nesting season. Rob Ciampitti (representative, Liberty Law) provided some additional information on the stair replacement and need for it. Commission members had an opportunity to discuss the work. A recommendation was made to grant an Emergency Certificate to replace the second set of stairs with conditions that the Owner would need to contract a shorebird monitor to oversee the work, work shall be completed within 7 days of issuance, post-construction photos and a report shall be submitted to the NCC within 30 days of completion, and an after-the-fact permit filing shall be submitted within 60 days of completion. It was agreed that the EC shall not be issued until Mr. Guthrie confirmed had coordinated a shorebird monitor and his contractors.

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Picking up on the previous discussion, Atty Douglas Deschenes (representative, Finneran & Nicholson) presents additional information regarding the NDA violation. Commission members has an opportunity to discuss the work. Questions were raised regarding whether there were any needed changes to the plans of record (no changes

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needed). A request was made to include a condition that a post-construction inspection shall be scheduled with the Agend within 30 days of the completion of the work to determine if any resoration work will be require, and if restoration is required a restoration plan shall be submitted subject to final review and approval by the NCC.

Motion by Dianne O'Brien to ratify the Enforcement Order with the condition as discussed; seconded by Mary Rimmer; vote 5:0:0.

ADMINISTRATION

Middle Road (DEP File #050-1401)

The Governor's Academy c/o Tom Woodruff (Applicant)

- Exhibits: Notice of Intent for Middle Road/TGA with attachments; Order of Conditions draft for Middle Rd/TGA

Samantha Holt noted that the public hearing for this project was closed at the 3/21/2023 meeting and this discussion was to go over the drafted OOC and special conditions. Some minor revisions were made to the draft special conditions after the last discussion on 4/4/2023. The findings section of the special conditions has been revised to address the comments received from DEP. Mark Beaudry (representative, CivilWorks NE) outlined discussions held with the DEP analyst who reviewed the NOI, Ms. Holt also outlined her discussions with the analyst. ***Motion by Mary Rimmer to issue the Order of Conditions approval with the conditions as drafted and revised; seconded by Brad Duffin; vote 5:0:0.***

REQUEST FOR DETERMINATION OF APPLICABILITY

Salt Marsh, townwide (File #NCC-421)

USFWS/MassAudubon (Applicant)

- Exhibits: Request for Determination of Applicability for invasive species management with attachments

NOTE: Mary Rimmer abstained from this discussion and vote. Samantha Holt presents an RDA for work to conduct invasive species management (Perennial Pepperweed and Phragmites) in the salt marsh. This RDA is being submitted to renew the management work that has been previously covered under a Negative Determination of Applicability which is set to expire this year. Liana DiNunzio (representative, USFWS & MassAudubon) presents additional information on previous work to date, the current status of the management, and the proposed work for this round of permitting. Commission members had an opportunity to discuss the project. ***Motion by Brad Duffin to issue a Negative Determination of Applicability; seconded by Dianne O'Brien; vote 4:0:1.***

PUBLIC HEARINGS

6 Olga Way (DEP File #050-1402)

Ellen Daly (Applicant)

- Exhibits: Notice of Intent for 6 Olga Way with attachments

Matt Steinel (representative, Millennium Engineering, Inc) presents an NOI for work to raze and rebuild a single-family dwelling on pilings. Commission members had an opportunity to discuss the project. Questions were raised regarding the elevation height of the structure, amount of footprint increase, and proposal for buried propane tanks. Steve Mangion (14th Street resident) shared concerns regarding buried propane tanks. Mr. Steinel requested a continuance pending further investigation into the buried propane tank questions. ***Motion by Brad Duffin to continue the hearing to 7:00 PM on 5/2/2023; seconded by Dianne O'Brien; vote 5:0:0.***

3 Newburyport Turnpike (DEP File #050-1336)

Bavaro Family Realty Two, LLC (Applicant)

- Exhibits: Request to Amend the Order of Conditions for 3 Newburyport Turnpike with attachments

NOTE: Mary Rimmer abstained from this discussion and vote. Samantha Holt presents a request to amend the OOC issued 3/3/2021to include a revised bio-retention area and installation of a new water main across Route 1. TJ Melvin (representative, Millennium Engineering, Inc) presents additional information on the proposed amendment. Commission members had an opportunity to discuss the project, no questions were raised. ***Motion by Brad Duffin to approve the amended OOC; seconded by Dianne O'Brien; vote 4:0:1.***

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170 Orchard Street (DEP File #050-1403)

Diane Yurkavich (Applicant)

- Exhibits: Notice of Intent for 170 Orchard Street with attachments

Samantha Holt presents an NOI for work to construct a four-lot, single-family residential subdivision with a 500-foot roadway, utilities, stormwater management features, and a common driveway. The location is on a lot historically used as agricultural land and is still currently being farmed. Bob Griffin (Representative, Griffin Engineering Group, LLC) presents additional information about the project. Ms. Holt outlined the DEP comment that were received mentioning restoration of agricultural land in BVW and Buffer Zone, and noted that there is currently no plan to restore those areas as the land will continue to be farmed. A condition was proposed to permanently delineate the Limit of Work on Lot 4, as well as one that states if the farming use stops in the future, then the right to agricultural exemptions will be lost and the area would be stabilized/restored. Questions were also raised regarding the stormwater management and whether consideration had been made to reduce the number of lots from 4 to 3 to remove the driveway from the Buffer Zone. A request was made to hold a site visit, and was scheduled for 5/1/2023 at 8:30 AM. Mr. Griffin agreed to continue the hearing pending the site visit. ***Motion by Brad Duffin to continue the hearing to 7:00 PM on 5/2/2023; seconded by Mary Rimmer; vote 5:0:0.***

ADMINISTRATION

Bob Connors requested to table the discussion regarding the installation of signage and fencing related to shorebird protection by MassAudubon until such time that we are able to connect directly with representatives from the program to discuss it first.

Samantha Holt noted that a seasonal report was received related to the Parker River Research Station (File #NCC-386) as required under the special conditions. Ms. Holt stated that the report shows all good things, the area appears to be in great shape and the boardwalk accessing the station withstood the winter with no damage.

Meeting adjourned at 9:26 p.m.

Respectfully submitted,

Samantha Holt, Conservation Agent