

Newbury Conservation Commission - Public Meeting Minutes
October 19, 2021

Members Present:

- ☒ Brian Colleran (Chair)
- ☒ Benjamin Gahagan (Co-Chair)
- ☒ Peter Paicos (Planning Board Liaison)
- ☒ Mary Rimmer (arrived late)
- ☒ Brad Duffin
- ☒ Dan Streeter
- ☐ Frank Wetenkamp
- ☒ Samantha Holt (Agent)

7:04 p.m. Meeting Called to Order

- Opening remarks from Commission Chair Brian Colleran
- Minutes review: June 22, 2021; July 13, 2021; August 3, 2021; September 7, 2021; October 5, 2021; October 19, 2021
 - Minutes from June 1, 2021 and September 21, 2021 are the only ones ready
 - Motion by Brad Duffin to approve the minutes from June 1, 2021 and September 21, 2021; seconded by Peter Paicos; vote 5:0:0

PUBLIC HEARINGS

Nearshore Sand Placement (DEP File #050-1261) Town of Newbury (Applicant)

Geoffrey Walker (representative) presents a request to approve minor modifications to the original issued Order of Conditions to allow for the placement of an additional 100,000 cubic yards of sand. Ben Gahagan requested clarification that the increase in sand volume will not increase the footprint of the sand disposal, and Tracy Blais (Town Administrator) confirmed that is correct. Samantha Holt commented that the original Order of Conditions did not reference a specific amount of sand placement, although the initial proposal noted 150,000 cubic yards. Brian Colleran raised the question of why the additional sand does not increase the footprint, and Mr. Walker explained that the addition of the proposed volume would not affect the footprint considering the originally proposed coverage area. Bob Boeri also commented that the disposal site was approximately 80 acres, and that with the additional proposed volume the disposal would amount to approximately 1.5 feet of depth. Mr. Colleran also raised the question of how this affects the maintenance schedule in the long term, and Mr. Boeri explained the benefits of the project and the additional volume of sand as well as noting how the additional sand became available. Steve Mangion raised the question of where the sand would be deposited, and Leslie Matthews inquired as to the monetary cost to the town. Ms. Blais explained that the cost of the originally proposed project was approximately \$250,000, but that the town was recently notified that the state would be covering the full cost of the project. Motion by Ben Gahagan to approve minor modifications to the original Order of Conditions to include an additional 100,000 cubic yards of sand to be deposited to the nearshore site; seconded by Brad Duffin; vote 5:0:0.

Please note: Mary Rimmer joined the meeting shortly after the following hearing began.

31 Plum Island Boulevard (DEP File #050-1368) Town of Newbury (Applicant)

Tom Hughes (representative) presents a continued Notice of Intent to convert an existing single-family dwelling into a municipal bath house. Mr. Hughes presented site information, and Rachel Harris (Vesta Architecture representative) presented the specifics on how the building will be renovated and the revised plans for the ADA accessible ramp. Mr. Hughes noted that 95 square feet of concrete would be removed and 25 square feet of concrete would be added, thus improving the overall conditions of the area with a net reduction in hardscaping and the removal of the raised garden bed. Mr. Hughes also mentioned that the variance from the BBRS that the Town has requested relates only to improvements being made to the structure that do not constitute alterations to the resource area, and is only relevant to the standards in the Town By-law that require compliance with the building

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code. Ben Gahagan raised questions of what external changes would be made aside from the ramp, and Sean Malone (Oak Consulting Group representative) noted that nothing else would be changed. Dan Streeter raised questions regarding the substantial improvement rule, and Mr. Hughes noted how receiving the BBRS variance would allow for redevelopment that complies with the building code, as well as the fact that even if the variance is denied the ramp is necessary regardless of the end use of the building since it is a public building. Peter Paicos raised a question regarding foot-wash stations on the outside of the building as show on previous plans, and Mr. Hughes noted that they have been removed from the plans and will not be installed. Brian Colleran raised a question regarding Section 95-4B of the Town Wetlands by-law, and Mr. Hughes explained the application of this section to this particular project. Steve Mangion raised concerns for the building not being elevated on pilings and issues regarding the BBRS variance request, noted alternative options for public restrooms, the lack of stormwater management plan, concerns about fuel tanks on the property, and concerns for the proximity to the ACEC area. Jack Rybicki raised the question of what the Notice of Intent covers, and Mr. Hughes explained that the Notice of Intent is for the external alterations, but that it also notes the building renovations to show that there are no dune impacts. Mr. Gahagan raised the question of why the Town decided not to elevate the building, and Mr. Hughes noted that the existing structure allows for easier ADA accessibility and that requesting the BBRS variance is being done because it is not a permanently occupied building/residence. James Sarette (Newbury DPW) commented in response to Mr. Mangion's earlier concerns that there is no oil tank on the property, and that the propane tank that is there will be removed and the building will rely on electricity for heat and A/C. Michael Kennefic (Town Counsel) made additional comments regarding the jurisdiction of the Commission and the BBRS variance. Mr. Mangion spoke again to the lack of alternative analysis completed and made references to the Town Wetlands by-law, Tracy Blais (Town Administrator) noted that alternatives were considered when the discussion of public restrooms came up in 2017 at the Town Meeting, but the ultimate decision fell to converting this building, and noted that the focus should be on the current application rather than alternatives. Mr. Rybicki made similar alternatives analysis comments to Mr. Mangion, and it was noted by Mary Rimmer that the variance is not being requested by the Commission, and therefore that section of the by-law requiring an alternatives analysis does not apply here. Ms. Rimmer also noted that this project does not trigger the stormwater analysis, and questioned whether the Commission should hold off on a decision until the BBRS hearing is finalized. Samantha Holt confirmed with Ms. Blais that the project as proposed would not go forward without the BBRS variance, and Ms. Holt suggested to the Commission to include a condition that no work shall begin on the project without a building permit. There was some final discussion regarding the applicability of certain sections of the by-law between Mr. Mangion, Mr. Hughes, and members of the Commission. Motion by Ben Gahagan to issue an Order of Conditions with the standard conditions for Plum Island work and the additional condition that this work cannot go forward without an approved building permit; seconded by Dan Streeter; vote 6:0:0

55 Pearson Drive (DEP File #050-1355) Susan Finneran & Virginia Sykes (Applicant)

The Applicant has requested a continuance pending a peer review. Motion by Ben Gahagan to continue the hearing until 7:00 pm on 11/2/2021; seconded by Brad Duffin; vote 6:0:0.

5 Melody Lane (RDA) Emily Corbato (Applicant)

The Applicant has requested a continuance. Motion by Ben Gahagan to continue the hearing until 7:00 pm on 11/2/2021; seconded by Brad Duffin; vote 6:0:0.

Parker River Research Station (RDA) Inke Forbrich (Applicant)

Evin Guvendiren (representative) presents a Request for Determination of Applicability on behalf of Marine Biological Laboratories (MBL) for the proposed placement of a temporary research station in the salt marsh by the Parker River. The location for the research station will be on Map R16-7 Lot 26a, and is Town owned land. A similar project received a negative determination in 2016 and was conducted in roughly the same area. The purpose of the research station is to gather data measuring carbon dioxide exchange and methane emissions within the atmosphere of the salt marsh in order to inform future management efforts. Ms. Guvendiren outlined the construction of the research station, duration of the project (5 years), and means of access to the station which includes a boardwalk that will be installed while the project is ongoing. The station will be left in the marsh year-

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round and is not expected to have negative impacts on the marsh. Dan Streeter requested details on the boardwalk structure, Ms. Guvendiren showed photos of the boardwalk from the previous project and stated it would be a similar construction and Mr. Streeter noted the concern that the structures being left in the same location without being moved around occasionally would have some impact on the marsh. Ms. Guvendiren did note that the applicant may be willing to move the station as well as adhere to height-to-width ratios for the boardwalk. Mary Rimmer raised additional concerns about impacts to the marsh as well as with the application being a Request for Determination of Applicability as opposed to a Notice of Intent. Ms. Rimmer also noted that more information is needed regarding construction plans and materials. Ms. Guvendiren mentioned that MBL had agreed to seasonal placement rather than year-round. Brian Collieran requested to see more information on the previous project in this area following its completion. Samantha Holt noted that the negative determination from the original project was included in the application and confirmed that no special conditions were noted in that approval, and also noted that follow up information from the original project may help to inform the Commission's decision. Motion by Ben Gahagan to continue the hearing until 7:00 p.m. on 11/2/21; seconded by Dan Streeter; vote 6:0:0.

7 Hutchins Road (DEP File # unassigned) Gerald Fandetti (Applicant)

Tom Hughes (representative) presents a Notice of Intent to replace an existing single-family home with a new one elevated on pilings. The Applicant is looking to build the home to be more easily accessible by building it lower to the ground with mainly first-floor living. Mr. Hughes outlined the existing conditions including vegetation at the North and West portions of the property. The lot is within the AE-13 floodplain, but is raised on a small hill bringing the work area up just under BFE. Mr. Hughes went on to outline the proposed site improvements which includes a net increase in native vegetation, a new structure raised two (2) feet on pilings. Peter Paicos raised questions regarding the footprint increase for the proposed structure compared to the footprint of the existing one, and requested additional information regarding propane tank and dumpster location. Mary Rimmer raised questions regarding vegetation removal and mitigation and noted specifically vegetation in close proximity to the existing structure, Mr. Hughes explained that the trees located close to the structure are growing out of the foundation and that there are some low shrubs/trees on the North and East sides of the property that would be impacted and stated that a planting plan could be added to the submittal. Ms. Rimmer also inquired about architectural plans and the addition of a note that the two (2) feet of space under the proposed structure would remain open, both of which Mr. Hughes agreed to provide. Dan Streeter also requested to have plans show where the stairs and any other structural touch-downs will be located, Mr. Hughes agreed. Ben Gahagan inquired about plans for an outdoor shower and there are no plans for one to be installed. Brian Collieran raised questions of vegetative species composition which was then outlined by Mr. Hughes. There was brief discussion regarding the driveway and plans for what the cover material will be, which Mr. Hughes agreed to finalize with the Applicant and reflect on the plans. Motion by Peter Paicos to continue the hearing until 7:00 p.m. on 11/2/21; seconded by Mary Rimmer; vote 6:0:0.

8 12th Street (DEP File #050-1369) Michael Kirkpatrick (Applicant)

Samantha Holt explained that the Applicant will need to seek ZBA approval for the lot coverage exceeding 20%, as well as the need to obtain as-built plans to close an existing Order of Conditions from a previous project. Additionally, as per correspondence from DEP, the Applicant has been notified that more substantial site plans are needed for review. In order to allow time for the Applicant to complete those tasks, he has requested an extended continuance. Motion by Mary Rimmer to continue the hearing until 7:00 pm on 1/4/2022; seconded by Ben Gahagan; vote 6:0:0.

COMMISSION DISCUSSION ITEMS

Certificates of Compliance

182 High Road (DEP File #050-1362) Kathryn O'Brien (Applicant)

The Applicant has requested a Complete Certificate of Compliance for an issued Order of Conditions to replace a septic system. Samantha Holt noted that an inspection was completed and recommended the issuance of a

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Complete Certification. Motion by Dan Streeter to issue a Complete Certificate of Compliance; seconded by Brad Duffin; vote 6:0:0

Enforcement Orders

Samantha Holt presented an update on an open Enforcement Order for 21 Cottage Road, issued to Nathan Gray. Ms. Holt noted that following the issuance of a second letter at the request of the Commission on 10/5/2021, she received a call from Mr. Gray stating that all necessary work had been completed with the exception of a summary report on the wetland restoration from a wetland scientist. Mr. Gray was asked to have his wetland scientist, Bill Manuell) issue a letter to the Commission verifying that seeding had been completed properly and state an opinion on whether the wood chips left on the site would have a negative impact on the restoration seeding. Ms. Holt noted that an email to Mr. Manuell was returned with an away message, and that Mr. Gray was notified that this would be relayed to the Commission with a request to continue the discussion to the meeting on 11/2/2021. All members of the Commission were in agreement to table the discussion.

Other Business

At the request of the Finance Department, the Commission has been asked to appoint one member to be responsible for signing payroll and invoices that come out of the Conservation Commission budget. Brian Colleran volunteered for the position, and the Commission unanimously approved.

Meeting adjourned at 9:35 p.m.

Respectfully submitted,
Samantha Holt, Conservation Agent