

**Town of Newbury**

**Conservation Commission Meeting Minutes – 9/7/21**

**Location: Newbury Town Hall Offices, 12 Kent Way, Byfield, MA**

**Roll Call:** Chairman Brian Colleran; Co-Chair Ben Gahagan; Members Mary Rimmer, Brad Duffin, Frank Wetenkamp, Dan Streeter, Conservation Agent Samantha Holt

**Next Regularly Scheduled Meeting Dates:** 9/21/21; 10/5/21; 10/19/21

**Minutes Approved:**

February 16, 2021; February 23, 2021; March 23, 2021; March 30, 2021; April 20, 2021; May 11, 2021;

Meeting opened at 7:09 pm;

Member Streeter made the motion to approve the meeting minutes February 16<sup>th</sup> thru May 11<sup>th</sup>, 2021. Seconded by Member Gahagan, 5 Yea / 1 Abstain / 0 Nay.

**Public Hearings:**

**Town of Newbury (31 Plum Island Boulevard) DEP File#: 050-1368** – an NOI to convert an existing single-family dwelling into a Municipal Bathhouse, with interior improvements, including the removal and re-installation of the concrete entry to meet ADA access requirements, creating an ADA-accessible ramp to the Town Bathhouse.

Conservation Agent Samantha Holt is presenting on behalf of the Town Administrator, Tracy Blais along with DPW Director James Surette. The plan is to convert the existing single-family house into bathrooms – inside of structure gutted, turned into bathrooms; outside, we propose to construct an ADA accessible ramp; new siding; deck and concrete ramp will be installed along road going into the building; the only exterior work will be a ramp and a deck and new siding. Deck proposed to be TrexDeck on sonotubes; ramp is concrete; two foot washing stations.

Open to public comment:

Steve Mangion – Concerns that application is incomplete as well as concerns for increased footprint of the structure, a possible oil tank on the property, proximity to the ACEC area, foot wash stations and water runoff, and the need for the structure to be put up on pilings.

Cory Matthews – concerned about the fact it is being proposed in a flood zone and the coordination between Conservation and the Building Inspector.

James Surette – DPW Director – Noted that there is no oil tank on property, it is currently heated by propane. For this project the propane tank will be removed and the building will be powered by electricity.

Member Streeter: Reiterated a few points of concern; issue needs to be resolved - question on the 50% value rule and possible waiver; we have the responsibility of the bylaw and building code to answer these questions. The Building Commissioner is responsible for the variance application for the State Building Commission.

Member Rimmer made Motion to continue the hearing until the next meeting, 9/21; Member Wetenkamp seconded, 6 Yea / 0 Nay.

**CJ Doherty (3 35<sup>th</sup> Street) DEP File#: 050-1222** – minor modifications request to an existing approved OOC issued August 1, 2019 to previous owners of the property.

Charles Doherty is present representing himself. Modifications will stick to existing footprint that had been approved; change from a pitched roof to a flat roof to create some green space on the roof, eliminated the front porch, reduced lot coverage by 148 square feet; only additional coverage added was to the rear porches, which were slightly enlarged to allow them to be cantilevered rather than placed on pilings. There is a net reduction in dune impact by 139'. Beyond that the plans are the same. Additional straw wattles added to erosion control.

Chairman Colleran: Raised question regarding changes on the ground (additional piles?) and height of the house.

CJ: Everything is about the same. By getting rid of the pitched roof and going to a flat roof with a parapet the overall height of the building is reduced, still staying at least 2' above the sand.

Member Rimmer made the Motion to accept these changes as a minor modification to the Order of Conditions issued under DEP File #: 050-1222. Member Streeter seconded; 6 Yea / 0 Nay.

**Don Johnson (156 Boston Road) DEP File#: 050-1365** – an NOI to replace the septic tank.

Michael Seekamp with Seekamp Environmental is representing the applicant. This is for the removal of an existing septic system to be replaced with a Presby system, and a microbionics fast system. The proposed system is close to wetland, however the leaching field will be built further away from wetland than currently is. A well in the front of the house eliminates the opportunity to move the septic system further away from the wetlands. Plenty of access on either side of the house; septic system will have a retaining wall around it as opposed to a hump with a raised system.

Member Rimmer: Question regarding proximity of the system to the wetland edge – shortest distance between the retaining wall and the wetland

Michael Seekamp: The edge of the system to the wetland line at the closest is 20'.

Member Streeter: Question regarding the retaining wall – is it new?

Michael Seekamp: The retaining wall between the new septic system and the wetland will be new. There is a retaining wall at the end of the driveway that will be removed to provide access, but there is access on the east side of the house, so there is access from either side without an incursion into the wetlands.

Member Gahagan: Concerns for how the retaining wall will be constructed and erosion control maintained in such a tight space.

Michael Seekamp: Believes there is permission to work minimally on the neighbors property for the purpose of installing erosion controls.

Member Streeter: Is the erosion control clearly shown?

Michael Seekamp: Described in the project narrative, suggested a condition that it be located between the proposed retaining wall and the post and rail fence in the lawn area.

Member Streeter: Noted importance of a pre-construction meeting to inspect the erosion control as that is the limit of work.

Member Rimmer: Suggested conditions - erosion control barrier consists of something that is at least 12" in height, work doesn't start until the Board of Health has given approval, and pre-construction meeting after erosion control has been installed and reviewed.

Member Rimmer made the motion to approve the project with the conditions mentioned.  
Member Gahagan seconded; 6 Yea / 0 Nay;

**Sean Kevlahan w/Kevlahan Maritime (53 Northern Blvd.) DEP File#: 050-1363** – an NOI for the demolition of the existing single-family residential structure and the construction of a new single-family residential structure on piles and associated site improvements.

Philip Schreffler, Associate with Finneran & Nicholson, P.C., and TJ Melvin, Project Engineer from Millennium Engineering are present representing Kevlahan Maritime.

Philip Schreffler: Proposal to demolish the existing single-family home and rebuild it elevated on pilings. Impacted areas include barrier beach, coastal dunes, and storm flowage area. Believes project as proposed will not be detrimental to the preservation of resources in the area, but will provide cumulative benefits including a roughly 62% increase in vegetative cover (all plantings will be native species).

TJ Melvin: Proposing gravel parking surface underneath the building and in front, and plantings along the left side and rear.

Member Rimmer: Request to describe the existing conditions on the site.

TJ Melvin: There is an existing single-family dwelling in the center of the site, thick scrubby brush that encompasses the rear of the house, gravel along both the left and the right side of the dwelling that currently serves as the parking, and everything outside that area is vegetated.

Member Rimmer: Are you looking to reducing the extent of gravel coverage?

TJ Melvin: On the left hand side we are cutting it back closer to the road and on the right hand side we plan to continue using the existing gravel parking.

Member Streeter: Questions regarding the propane tank in the V-Zone floodplain.

TJ Melvin: Proposing sub-surface, bottom steel surfaces.

Philip Schreffler: It's intended to be both weighted and armored.

Member Gahagan: Plan states it will be tied down on a platform and then buried. Also noted the need to know locations for materials and dumpster staging.

TJ Melvin: Everything will be staged on the gravel parking areas.

Chairman Colleran: Suggested a special condition for limiting impact to resources during deconstruction of existing structure, setting a limit of work line.

Member Rimmer: Confirmed that concrete from the existing foundation will be removed and back filled with compatible sand.

TJ Melvin: Sand back fill will occur after new structure is installed.

Chairman Colleran: Requested to have the special conditions reflect sand back fill sequencing, concrete removal, need for compatible sand, and limit of work requirements during demolition.

Member Duffin made motion to approve the project with the conditions mentioned; Member Rimmer seconded, with the conditions as discussed. 6 Yea / 0 Nay

**Cricket Lane, LLC (55 Pearson Dr.) DEP File#: 050-1355** – a continued NOI to construct 24 single-family homes with 800 feet of roadway, common septic system, water lines, sewer lines, and stormwater management system. Roadway includes limited crossing wetland filling and

replacement with work in the buffer zone. Continued from August 3<sup>rd</sup> meeting. Member Rimmer recused herself.

Philip Schreffler, Associate with Finneran & Nicholson, P.C. is representing the applicant., Walter Erickson, the Developer of Cricket Lane, LLC., along with Benjamin Osgood, Engineer, with Ranger Engineering Group, Inc both also present. Noted that the Commission agreed to review Ann Marton's peer review and determine additional questions or need for supplemental information.

Agent Holt: Noted that Ms. Marton was invited to the meeting tonight, unable to attend. List of Commission questions specifically for Ms. Marton will be compiled into one document to be sent to her in an email.

Member Gahagan: Has questions about recommendations from Ms. Marton's memo that don't appear to have been addressed. One specific concern was with work in close proximity to the BVW and lack of preservation of the Buffer Zone. Also raised concerns about wetlands replication numbers not adding up correctly, as well as a request to maintain the full 100' Buffer Zone to the Certified Vernal Pool with no work in that Buffer Zone.

Chairman Colleran: Requested that Agent Holt report on correspondence from NHESP regarding the uncertified Vernal Pool.

Agent Holt: Reached out to Jacob Kubel at NHESP with regards to why NHESP wouldn't verify the Vernal Pool in the ILSF area that is shown on the plans. His response was that they reviewed multiple applications to certify the ILSF area as a vernal pool habitat since 2017 and 2018, they requested that the observers provided additional information about the wetlands hydroperiod due to conflicting data about whether the ILSF sustains a viable vernal pool environment during the amphibian breeding season, based on the available data we have not been able to conclude or presume with confidence that the ILSF has an adequate hydro period at least not in most years but they are open to reviewing additional data in consideration of possible certification. At this time however there is too much uncertainty about the hydroperiod and therefore its habitat function to approve certification.

Member Gahagan: Noted questions about potential discharge to the certified vernal pool from houses in the northern corner.

WE: The reason for the retaining wall is to direct the stormwater away from the vernal pool. The houses have gutters and downspouts and they go into subsurface infiltration located in the front yards more than 100' from the vernal pool. There's a swale that directs water down and around into a detention pond so there is no stormwater going into that vernal pool.

Member Gahagan: Noted that, when looking at the project as a whole, he believes there's a viable project here, but that it is currently maximizing the amount of lots that you can put on

this parcel at the expense of the resource and doing more harm to the resource than needs to be done. Requested that the Applicant look for places to scale back and protect the resource.

Member Streeter: Requested information on what percentage of the Buffer Zone is being left undisturbed. Applicant unsure if those calculations were ever made. Noted that the plans don't appear to reflect the Buffer Zone plantings in enough detail to determine if the plantings mitigate Buffer Zone disturbance.

WE: It says on the plan we are putting we are putting 15 trees and 45 shrubs in those areas that are close to the C wetland.

Member Streeter: Requested additional plantings to create somewhat of an undisturbed vegetated area adjacent to the resources.

WE: Stated there was a detailed planting plan, as well as a replication plan.

Member Streeter: We have not seen that.

WE: Thought it was submitted, Ann Marton in one of her comments thought it was originally too small, ended up accommodating her wishes and proposed tens of thousands of dollars-worth of plants in the wetlands replication area and along the edge of those buffer zones. Planting plan was done by Norse Environmental Services and approved by Ann Marton. Agreed to submit the plan to the Commission.

Member Streeter: Saw that plan, doesn't reflect much, there is a note about the number of shrubs and trees but no concept of how wide or how big of an area will be planted or how much that planting area going to be mowed.

WE: Agreed to submit information to the Commission.

Member Streeter: Located a response to a request for comments from Town boards from March 2020. Former Agent Doug Packer expressed concerns about work in the buffer zones, he didn't feel comfortable with the setbacks. Noted a question for Ann Marton: what happened to his comments, were they addressed? What conditions could be added to offer further protections to the existing habitat? Also requested further information on wetlands replication, specifically a different view other than that shown on current plans.

WE: Agreed to provide information requested.

Member Wetenkamp: Noted concerns regarding the vernal pool issue. Shared a July 10, 2021 memo from NHESP saying that it has been determined that there still is a need for additional information about pool function. It is up to you to supply the information that they can say yes it is, or absolutely it isn't. Concerned because there may be a certifiable vernal pool there and Applicant is saying it isn't there because it's not certified. NHESP is asking for additional

information, it's incumbent upon this process that that information be supplied so that a determination can be made.

WE: Information has been submitted to NHESP three times, they have been on site on a number of occasions. The information provided was not enough to certify that as a vernal pool. We've met the standard of the Act, and with all due respect we are not going to wait another year.

Member Wetenkamp: This letter is from July of this year where they are asking for additional information.

WE: What they are saying is they still need information about the hydro period and that pond has been documented as being dry in June in multiple years. The only way they are going to certify it is if it shows that it doesn't dry up, and if it dries up every year, you are never going to have that information.

Member Wetenkamp: In the July 2021 memo, that is not what he is saying.

Chairman Colleran: The burden of proof is on the applicant, and this body is not convinced that the applicant has taken the burden of proof. At this point, there are enough open questions that the burden of proof is on you to prove the negative. It's not on us to disprove the positive, it's on you to prove the negative.

Member Wetenkamp: It is the job of the applicant to satisfy the board.

WE: It's been done three times, if we do it ten times over ten years, maybe one of those years it will show up, we don't know, but, we have done it three times, and we've met the standards of the Wetlands Protection Act.

Meeting opened to the public:

Dan Linden, resident of Pearson Drive: Made several comments regarding the uncertified vernal pool and the standards for certification, including the presence of obligate species.

Melissa Goldner, 19 Pearson Drive: Noted concerns for impacts on the environment.

Brad Bartrack, 69 Pearson Drive: Noted that, while he and several others believe that it shouldn't, they are aware this project is likely going to happen no matter what. Expressed concerns for the amount of work and development being squeezed into an area that is too small.

Public input closed.

Member Streeter: Referenced comments from former Agent Packer regarding a recommendation that the active and the reserve septic areas be swapped to move the primary septic system further from the area of the certified vernal pool. Also noted that these comments had been made by Mary Rimmer.

WE: Argued that the reserve area construction is more work and more intrusive, and that as proposed the system does meet all requirements of the WPA and Title V regulations. Also made comments that they are not touching or impacting the ILSF area with the potential vernal pool.

Member Gahagan: Argued that the entire Buffer Zone on the property is being substantially impacted.

Meeting opened back up to the public.

Steve, 7 Pearson Drive: Disagreed that the project just needs to be downsized. Believes that if this many things need to be changed to protect resources then the project is no good.

Member Gahagan made motion to continue the hearing until the 9/21/21 meeting; Member Streeter seconded; remainder in favor; (Member Rimmer recused herself; Member Duffin recused himself, not a member prior to July 1<sup>st</sup> when project was previously heard); 4 Yea / 0 Nay / 2 Recused

**Coughlin Shea Builders (7 Larkin Rd.) DEP File#: 050-1360** – a continued ANRAD to determine if areas within a resource area can be classified as Isolated Land Subject to Flooding; continued from August 3<sup>rd</sup> meeting.

TJ Melvin, Engineer with Millennium Engineering, is representing the applicant: Additional wetland flagging added from the site walk since the last meeting – wetland flags Z-1 through Z-7 have been added; D-20 A has been added and flag D-17 has been removed. Contours added to the site plan as requested to further analyze the isolated wetland. Also added the 100-year flood plain elevation.

Member Rimmer: Are the Buffer Zone and riverfront area offset shown on the plan?

TJ Melvin: Bank is shown, doesn't show any of the buffers.

Member Rimmer: Typically want those shown on the plan, only new comment. All previous comments and concerns have been addressed. Question regarding the flood storage volume.

TJ Melvin: It is about 3.6 acres that ultimately drain to it, doesn't really pocket and is a little flat in spots.



Member Gahagan: It's large enough to potentially hold a quarter acre volume but based on the elevation of the contours and spot grades provided the wetland does not have the capacity to hold water to an average depth of 6" but has the apron and everything else.

Member Rimmer: Request to have Buffer Zones and the riverfront area shown on the plan.

Public Comment:

Steve St Arnault, 54R Central: Questions regarding the purpose of this process, confirmed that part of it is to determine if wetland areas are connected. Discussed what different delineations and connectivity means.

Member Rimmer made motion to continue to the 9/21/21 meeting; Member Gahagan seconded that motion. All in favor, except Duffin abstained (5 Yea / 0 Nay, 1 Abstained).

**Steve DeSalvo (16 & 20 Northern Blvd) DEP File#: 050-1364** – an NOI to nourish the dune in low areas with compatible sand estimated to fill an area 130 ft by 50 ft and 1.5 feet deep to ensure existing dune grass will grow, to plant additional dune grass, and to install sand fencing to encourage dune growth and stability. Continued from August 3<sup>rd</sup> meeting.

Jody Latimer, 20 Northern Boulevard: NOI submitted in April, site visit conducted on May 20<sup>th</sup>, responded to DEP comments on July 26<sup>th</sup>, no further comments issued from DEP.

Member Streeter: Noted concerns about methodology and bringing all proposed sand in at once. Specific methodology concerns included means of bringing sand in and potential negative impacts.

Jody Latimer: Equipment concerns were addressed in response to DEP comments.

Member Rimmer: Noted concerns for the existing vegetation getting buried too deep and not being able to survive the process (related to Member Streeter's concern for bringing all proposed sand in at once).

Jody Latimer: Outlined proposed plan to ensure sand is spread out in order to not accumulate more than one foot depth in any area. Also addressed plan to replant any vegetation that may be damaged or disturbed. Discussed timing of the project with Member Rimmer.

Member Rimmer suggested condition to conduct planting between March 1<sup>st</sup> and April 1<sup>st</sup>. Also suggested condition to conduct monitoring with photos at certain points.

Member Streeter suggested a condition that Agent Holt be present for the first sand deposit to ensure that the loaded machine can make it on the mats.

Chairman Colleran suggested that the Agent inspect the project regularly, multiple times per year, to ensure success.

Member Rimmer reiterated and adjusted suggested conditions - 400 cubic yards of sand maximum over 6500 square feet to no more than 1' depth; limiting work to occur from December 1<sup>st</sup> to March 30<sup>th</sup>; submission of monitoring reports with photos, December 1<sup>st</sup> following the first year and March 30<sup>th</sup> of the second year; establish the limit of work prior to construction; and supervision by the Conservation Agent at the start of construction.

Member Streeter added a condition that snow fencing be put up immediately.

Member Rimmer made the motion to approve the project with the conditions referenced. Member Gahagan seconded. 5 Yea, 0 Nay, Member Duffin recused himself.

**David Manty (0 Pine Island Road – Map R30, Lot5) DEP#: 050-1330** – an NOI to construct a dock/pier, ramp, and floating dock within salt marsh resource area and ACEC. Continued from August 3<sup>rd</sup> meeting.

Tom Hughes has requested a continuance.

Member Streeter made motion to continue the hearing until September 21<sup>st</sup>; Member Duffin seconded; all in favor; 6 Yea / 0 Nay.

**Dale Myers & Alliance Newbury 1, LLC (75 Boston Road) DEP File#: 050-1339** – request to re-open public comments on project for installing solar panels at the landfill – the issues with DEP have been resolved. Continued from June 1<sup>st</sup> meeting.

Agent Holt: Noted that correspondence was received requesting to re-open the public hearing, no representatives present.

Member Streeter suggested Agent Holt reach out to Applicant to see what they want to do, and if they need the hearing re-opened.

Member Streeter made motion to continue to the October 5<sup>th</sup> meeting; Member Rimmer seconded, all in favor; 6 Yea / 0 Nay.

**Michael Kirkpatrick (8 12<sup>th</sup> Street) DEP File#: 050-XXXX** – an NOI to build a 9'x15' shed on property. Pilings will be required to raise the shed 2' off the lowest elevation; Continued from August 3<sup>rd</sup> meeting.

Michael Kirkpatrick is present to represent himself. Additional plans were requested by DEP, company has been hired but plans are not complete yet. Chairman Colleran suggested continuing to the 10/5 meeting.

Member Duffin made motion to continue the hearing until October 5<sup>th</sup>; Member Streeter seconded. 6 Yea / 0 Nay

**Nathan Gray (21 Cottage Road) DEP File#: 050-XXXX** – a continued NOI to remove wood shed, fabric-covered steel frame structure, and located within the wetland resource and restore wetland. In addition, construct a new shed and greenhouse in 100-foot buffer and remodel existing shed located partially within wetlands. Continued from the August 3<sup>rd</sup> meeting.

Nathan Gray present representing himself. Noted that the structures had been removed as required by the Enforcement Order. Agent Holt confirmed this had been completed. Wood chips in the area have not been removed, but the area has been seeded for restoration. Mr. Gray is looking to withdraw his NOI at the request of the Commission.

Chairman Colleran: Raised questions regarding the previously discussed septic system replacement. Discussion on plans to replace the system and withdraw the reference NOI application.

Member Rimmer: Requested Agent Holt provide a report at the next meeting on the condition of the site and compliance with the Enforcement Order.

Member Rimmer: I make a motion to accept the applicant's request to withdraw the Notice of Intent at the recommendation of the Commission. Member Wetenkamp seconded. 5 Yea / 0 Nay, Member Duffin recused.

### **COMMISSION DISCUSSION:**

#### **Certificates of Compliance:**

**Don Johnson (156 Boston Road) DEP File#: 050-0595** – request for a CoC for an open Order of Conditions.

Agent Holt: This is a very old open Order. No record of anything except the OOC issued in July of 2001 to the former property owner, nothing to indicate what the proposed work was. Based on located building permits from that time, most likely reason the OOC was issued was to build a shed. Spoke with Alicia Geilen at DEP, she suggested to go off the building permits since no one has any record of what the work was. She suggested to inspect the property and make a best educated guess of what the OOC was issued for, and make sure nothing raises any red flags. Based on building permits and inspection, the shed was the most likely project and there are no notable issues or outstanding issues anywhere else on the property.

Member Gahagan: I make a motion to issue the Certificate of Compliance; Member Duffin seconded, all in favor; 6 Yea / 0 Nay.

**Nathan Ketchel (7 Morgan Avenue) DEP File #: 050-1297** – CoC request for the construction of the new Police Station

Member Duffin made the motion to approve the request for a Certificate of Compliance.  
Member Streeter seconded, all in favor. 6 Yea / 0 Nay

**Lafayette Woodlawn, LLC (104 Pine Island Road) DEP File#: 050-1026** – CoC request for the removal of existing single-family home and construction of new home on pilings.

Member Duffin made motion to approve the COC and issue a complete COC, specifying that some of the work was done, some wasn't done. Member Streeter seconded motion. All in favor. 6 Yea / 0 Nay.

**Julie Siemasko (104 Pine Island Road) DEP File#: 050-1108** – CoC request for the removal of the existing garage and build a new one on pilings; to re-side and re-roof the existing shed, and the only work that was done was the re-roofing of the existing shed.

Member Duffin made motion to approve the COC listing that the re-roofing was completed.  
Member Streeter seconded. 6 Yea / 0 Nay

**Julie Siemasko (104 & 105 Pine Island Road) DEP File#: 050-1145** – CoC request for burial of all the utilities. Work never completed, this an expired OOC.

Member Duffin made motion to approve the COC with the note that the work was never completed; Member Streeter seconded. 6 Yea / 0 Nay

#### **Other Business:**

**Board Re-organization/Vote:** All the boards are required to do this at the beginning of the fiscal year, Conservation never did it and the Town Administrator requested that it be done.

Member Rimmer made motion to vote Brian Colleran as Chair and Ben Gahagan as Vice-Chair;  
Member Gahagan seconded; 5 Yea / 1 Nay

**Return to Zoom meetings:** Member Gahagan brought up the discussion about going back to the Zoom platform; all members in favor of returning to meetings via Zoom.

Agent Holt will submit a letter on behalf of the Commission to the Selectboard with the request.

**Filing submission deadlines:** Member Rimmer brought up the request for deadlines to submit applications.

Agent Holt: Unsure if a vote was ever taken, but the current deadline is noon, two weeks prior to a hearing date. Also requiring electronic copies of all submittals, especially large plans, and two sets of hard copies of all documents. A checklist that includes submittal deadlines will be developed and posted on the Town website, as well as a "Current Projects" page that links public record information for each submittal.

Member Duffin made Motion to close the public hearing. Seconded by Member Streeter. 6 Yea / 0 Nay.

Meeting adjourned 10:35 pm.