



TOWN of WILMINGTON

DEPARTMENT OF PLANNING & CONSERVATION

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CONSERVATION COMMISSION MINUTES

September 19, 2018

Sharon Kelley-Parrella, Co-Chair, called the meeting to order at 7:01 p.m. Theron Bradley, Laurie Finne, Vincent Licciardi, Donald Pearson, and Michael McInnis were present. Julie Flynn was absent. Valerie Gingrich, Director of Planning & Conservation, Ryan Hale, Conservation Agent, and Catherine Pepe, Senior Clerk of Planning & Conservation were also present.

PUBLIC HEARING – NOTICE OF INTENT – Marion Street Rear, Wilmington, (14 Michael Drive, Burlington) – Map 5 Parcel 8 – DEP File #344-????

Documents: Plot Plan, dated August 27, 2018
Letter from Norse Environmental Services, Inc., dated September 11, 2108
Email from William Holt, Town of Wilmington, Engineering Division, dated September 19, 2018

Present in Interest: Steve Eriksen, Norse Environmental Services, Inc.
Elizabeth Monaco, homeowner
Keith Saxon, Andover, MA

S. Eriksen distributed color coded plans for the construction of an in-ground swimming pool, grading, utilities, loaming, seeding of the lawn area, and the planting of shrubs. This is a buffer zone project with no work being done in the resource area. The riverfront area in the back was shown as a perennial river on the USGS map. The applicant observed that the stream was dry for four days and submitted photographs and documentation so the stream is now considered intermittent and does not have Riverfront Area.

R. Hale questioned why the proposed 94' & existing 92' elevations overlap. S. Eriksen stated the elevation is 93' in between the 2 elevations, and there should be another contour to properly connect them.

D. Pearson asked what the wetland elevation is. S. Eriksen stated about 92'. S. Kelly-Parrella asked if a bathroom is planned inside the cabana. S. Eriksen said there might be, but they won't know until dig safe marks the utilities and sees where they are in relationship to the cabana.

S. Eriksen reviewed the restoration plan that was submitted prior to the Notice of Intent (NOI) and re-submitted with the NOI. S. Eriksen stated that the restoration plan complies with 310 CMR 10.00 and the Enforcement Order. The homeowner does not want to plant trees due to the expense. They will plant some, but they don't know what will be gained by planting them, how many trees to plant, or where to plant them. They will plant some trees if they have to.

V. Gingrich, Planning Director, acknowledged that there are two (2) pieces to consider: the Enforcement Order (EO) that requires restoration and the NOI for the pool and cabana. The resource areas changed from the first EO to the second because of the Riverfront Area being removed and the larger extent of the wetland and 100-foot buffer zone following delineation than expected. V. Gingrich advised that the Commission's goal is to protect the wetlands and then reviewed some major points of concern:

- The Bordering Vegetated Wetlands (BVWs) are significant to the protection of public water supply, groundwater supply, flood control, storm damage prevention, prevention of pollution, and the protection of fisheries and wildlife habitat
- A vegetated setback will protect wetland vegetation and wetland hydrology, which in turn protects the interests of the Wetlands Protection Act
- Existing vegetation, remaining after unauthorized clearing does not adequately protect the BVWs alone. Prior existing vegetation provided shade for the wetland vegetation from the spring through fall, slowed surface runoff to create specific hydrological conditions, provided wind protection during storm events, and provided a physical barrier to prevent the spread of non-native and/or invasive species that impact the function of the BVWs and alter habitat
- Re-establishment of a vegetated buffer with tree canopy is required to protect the interests of the Wetlands Protection Act.

V. Gingrich then read draft language for a talking point and potential compromise. This included planting six (6) – ten (10) trees (depending on size) to eventually replace the canopy that was removed, planting 12-15 shrubs, and seeding with upland seed mix. This would be done in a staggered fashion from the area from the edge of the disturbance as close as 10' to the BVWs and out to about 25' of the BVWs. These plantings would restore the function of the buffer zone as much as possible to protect the BVWs and address the Enforcement Order issued September 5, 2018.

V. Licciardi agrees with what the commission proposes and no less. T. Bradley agrees with recommendations. L. Finne asked for clarification of where the plantings would go. V. Gingrich clarified that the recommendation would be to plant the trees in the 10' – 25' buffer zone, in a staggered fashion, depending on the size tree and its required spacing. S. Kelley-Parrella asked if larger or smaller trees are recommended. R. Hale advised that the Tree Removal Policy states 1"-2" caliper trees. S. Eriksen offered 1.25" tree and that their restoration plan meets the Wetlands Protection Act.

S. Eriksen stated that the violation was the failure to get a permit to cut the trees, not for actually cutting the trees. S. Eriksen also stated that the previous conservation agent told them they didn't need approval for their project as long as they stayed away from the back left corner. The problem is procedural and has nothing to do with the cutting of the trees or anything else.

D. Pearson asked if S. Eriksen is presuming that if the applicant had submitted a Request for Determination (RDA) or an NOI, that the Conservation Commission would have approved the cutting of the trees to the extent that they have been cut. S. S. Eriksen stated that by removing the shade, the vegetated growth in the wetland may increase, which would be a benefit, not a harm. S. Eriksen stated there is no proof that the vegetation removal will actually impact the wetlands until the work is actually done. Until then, it is all conjecture.

T. Bradley asked if S. Eriksen is suggesting that the Commission should allow trees be cut because the impact won't be known until after they area cut. S. Eriksen feels that the Commission does not have jurisdiction until after the tree(s) is cut.

E. Monaco stated that the end of the vegetated wetland comes to about 10' from the property line and the Riverfront area, which is now considered an intermittent stream, is about 200' away. In between those is a very large, flat, heavily vegetated thick wetland with a significant tree canopy. The idea that removing three (3) to five (5) trees dried up the stream does not make sense. A lot of saplings and brush were cut, not many large trees.

S. Kelley-Parrella stated that the Commission is looking for a compromise. S. Eriksen offered cutting the bushes by half and add a few trees. E. Monaco state the rock wall is the property line and the wetland is between the wall and the forest. If you measure from the demarcation line and go 5' – 10' is Wilmington Conservation Land that was never touched and fully forested. E. Monaco stated that the 15' no-disturb area is probably less than 5' of their property inside the rock wall. They prefer planting shrubs because they do not want to shade the prosed pool and lawn and they do not want trees from a cost consideration. They do not want trees. She proposes planting three (3) trees and five (5) to eight (8) shrubs.

L. Finne advised that the homeowner is not limited to planting in the 15' no-disturb area and that if the applicant had come before the Commission prior to cutting all the trees, the Commission would probably not have approved cutting up to the 15' no-disturb. E. Monaco stated that the goal is to use the entire yard and only wants to repair the 15' no-disturb area. L. Finne stated that there were three (3) trees in the 15' no-disturb cut and what appears to be a lot of vegetation. E. Monaco state that it looked like a lot because of the large tree canopy and that it was a lot of undergrowth that was cleared.

S. Kelley-Parrella would like to see more than three (3) trees and proposes six (6) trees. V. Licciardi would like to see more trees for the larger diameter trees.

V. Gingrich asked if the homeowner wants the shrubs. E. Monaco said she would rather lawn, but yes, shrubs are preferred over trees. E. Monaco advised that aesthetics, shading of the pool, and cost are her concerns. She is ok with six (6) trees and zero (0) shrubs. M. McInnis agrees with the trees that the Commission proposes and it is their obligation to do what is best for the environment. M. McInnis stated that the applicant should have submitted an application prior to cutting the trees and then appealed the Commission's decision if the applicant did not agree with the decision. It is M. McInnis opinion that the Commission is now in the position to determine what will be best for the environment without seeing what was there.

S. Kelley-Parrella asked R. Hale's opinion of increasing the trees and decreasing the shrubs. R. Hale offered that the trees provide more of a benefit to the wetlands. E. Monaco asked if there is data to support that trees are better for the wetland. R. Hale stated that trees offered more shade and protection than shrubs. E. Monaco asked if shade is of more significance to the wetlands. R. Hale said yes. L. Finne added that the trees support more wildlife habitat. E. Monaco stated that according to our policy, a 15' no-disturb zone is standard. R. Hale advised that the 15' no-disturb area is a policy, not a by-law. It is a guideline, a measure for applicants and the Commission to start a conversation. L. Finne advised that it is the bare minimum if someone is proposing a project and that an

applicant cannot do whatever they want in the buffer zone, that they must come in front of the Commission.

M. McInnis asked why the applicant is asking about the 15' no-disturb. E. Monaco re-stated that she wants the rest to be lawn. M. McInnis asked where the new trees will be planted and that the Commission is not restricted to the 15' no-disturb area. R. Hale stated that no data has been submitted for that.

L. Finne suggested six (6) trees and then shrubs in front of that to catch water run-off. R. Hale offered a 25' no-disturb vs the 50' that was proposed in the Enforcement Order. E. Monaco said it would be too expensive and they have already spent enough money.

S. Kelley-Parrella asked if the applicant is willing to plant shrubs. E. Monaco asked about spacing for the trees. S. Eriksen offered 35-40' apart. V. Gingrich advised that spacing will depend on what type of tree. E. Monaco suggested placing five (5) trees 20' apart. S. Eriksen thought it would be tight and E. Monaco did not think there is enough room to plant trees and shrubs. L. Finne offered the trees in the 15' no-disturb and then a native ornamental grass between the trees and the lawn. E. Monaco re-stated that she should not have to give up more than the 15' no-disturb. L. Finne advised that had the Commission known beforehand, they would have looked at the existing buffer zone and come to a decision. That is difficult to do now because they did not see the original buffer zone.

K. Saxon, an environmental consultant from Andover and former Conservation Commission member in Ayer, MA, offered that the six (6) trees in the 15' no-disturb and the native seed mix would suffice. K. Saxon offered amending the Enforcement Order to coordinate the construction schedule with the tree plantings.

S. Kelly-Parrella summarized that six (6) 1" – 2" caliper native trees in the 15' no-disturb area with 1' – 2' of a wetland seed mix for lawn beyond that. R. Hale suggested native trees to plant are red oak, white oak, & red maple. M. McInnis asked if the Commission wanted shrubs and the Commission agreed to no shrubs. D. Pearson is ok with no shrubs and asked how the homeowner will keep the 15' no-disturb line.

S. Eriksen does not want to do perform the two (2) year inspection reports and suggested that R. Hale should do the inspections. V. Gingrich suggested the homeowner provide pictures as proof to the Commission as a form of updates on the newly planted trees.

E. Monaco stated that the October 31, 2018 deadline is unrealistic as the yard will be disturbed when the pool will be construction. She is concerned with cost and feels it will be more practical to do it in the spring when the landscaping is done for the pool. V. Gingrich advised that the timing is set to clear up the enforcement issue first, then start the project. Fall is a good time to plant trees, so timing is good. L. Finne asked how stable the area will be through the winter. L. Finne's concern is if constructing the pool this fall and not planting until the spring will cause additional damage to the wetlands, especially during the construction. S. Eriksen advised that it is a flat area and erosion would be minimal and R. Hale confirmed this. L. Finne asked that the homeowner keep erosion controls in place during the winter.

Upon motion duly made and seconded, it was unanimously

VOTED: To close the public hearing for Marion Street Rear, Wilmington (14 Michael Drive, Burlington) – Map 5 Parcel 8 – DEP File #344-????
and a draft Order of Conditions be ready for the October 3, 2018 meeting

ADJOURN

There being no additional business to come before the Conservation Commission, it was

VOTED: To adjourn the meeting at 8:12 pm.

Respectfully submitted,

Catherine A. Pepe
Senior Clerk

