



Diane N. Tradd
Assistant City Manager/Director

R. Eric Slagle
Director of Development Services

CONSERVATION COMMISSION
LOWELL, MASSACHUSETTS
August 12, 2020

Note: These minutes are not completed verbatim. For further detail, video recordings are available at the Pollard Library, second floor reference desk or online at www.LTC.org.

Due to the COVID-19 pandemic, this meeting was held virtually using Zoom.

Members Present: Chairwoman Varnum, Commissioner Lovely, Commissioner Dillon, Commissioner Buitenhuys, Commissioner Downs, and Commissioner Standish

Members Absent: None

Others Present: Fran Cigliano, Associate Planner

CALL TO ORDER

7:00 PM

CONTINUED BUSINESS

Enforcement Order

Leonel Galvez

5 Billings Street

Lowell, MA 01852

Violation Location: 5 Billings Street 01850

Dumping and storing mulch within bordering vegetated wetlands and the 100-ft buffer zone to the bordering vegetated wetlands.

On Behalf:

Leonel Galvez, 5 Billings Street

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

None

Motion:

P. Downs motioned and K. Dillon seconded the motion to rescind the Enforcement Order. The motion passed unanimously, (6-0).

NEW BUSINESS

Request for Determination of Applicability

Leonel Galvez
5 Billings Street
Lowell, MA 01850

Violation Location: 5 Billings Street 01850

Dumping and storing mulch within bordering vegetated wetlands and the 100-ft buffer zone to the bordering vegetated wetlands.

On Behalf:

Leonel Galvez, 5 Billings Street

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

L. Varnum: Tight lot. This property is the first case I was ever involved with on the Commission. I remember going out there; not a good place for a house. Sooner or later all of these sites come back to visit you again. We do have the pool. It's either partially or fully constructed already. I have driven by a couple times and have seen it there. Site itself is such that I wonder if there's any good site for a pool. Strange wetland in that it's not connected to too much. My feeling is ten feet isn't going to make that much of a difference. If a flood happens it could wreck it and wash it away. Not of the opinion that moving it would buy us much.

B. Buitenhuys: Certainly agree with comments from JA that said because of OOC granted in the first place, he doesn't have much in his backyard that is usable for this use. I know it started wrong but this is an unusual site. I would support allowing this to move forward.

W. Standish: I would agree with BB. I don't want to be unfair to this homeowner. I wouldn't worry about the pool being there. I am more concerned with it being drained in the fall.

W. Lovely: I would echo comments that were just made. Argument could be made – unlike a permanent structure – this is as optimal of a location as you can get. Could argue it is a temporary structure. How to reconcile with 25 ft no build zone. If we give exemption, what is the rationale?

B. Buitenhuys: Would support pool if it is outside the 25 foot no build zone. Don't think I can support within the no-build zone.

L. Varnum: The applicant seemed agreeable to moving it.

W. Standish: I would feel better if it was outside of 25 foot no-build zone.

W. Lovely: Could tell applicant what has been submitted would not likely be approved. He could either readjust the pool dimensions or withdraw the application and take the pool down.

L. Galvez: We don't have any other spots we can put the pool. We can't put close to the street because it's not legal either. Only option. We don't want to take our family out with the virus.

B. Buitenhuis: If there's only one spot for the pool, I would support the path we discussed. RDA is unlikely to pass through this board. I would support keeping the pool until the end of the summer and then after that, it is not an acceptable location.

W. Standish: That sounds like a good solution. He's only going to drain it once. He can leave it there for a season, come back in the spring and perhaps we can find another location. Good solution until Mr. Galvez can reevaluate new options.

Motion:

B. Buitenhuis motioned and W. Standish seconded the motion to issue a Positive 2(b) Determination on the basis that:

1. The boundary of the wetland is not confirmed.
2. The pool appears too close to the wetland boundary within the 25-ft. no-build zone.
1. The pool shall be removed no later than October 31, 2020.
2. The applicant shall apply for an RDA if they wish to erect a pool in the future.

The motion passed unanimously, (6-0).

Enforcement Order

Kamlesh Patel
103 Photine Dr
Lowell, MA 01854

Violation Location: 103 Photine Drive 01854

Construction work occurring within the 100-ft buffer zone to bordering vegetated wetlands without permission from the Lowell Conservation Commission.

On Behalf:

Ken Lania, Cornerstone Land Consultants

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

None

Motion:

None

Request for Certificate of Compliance

Kamlesh Patel
103 Photine Dr
Lowell, MA 01854
DEP #206-0692

Project Location: 103 Photine Drive 01854

Request for Certificate of Compliance for a previously issued Order of Conditions. The completed work includes an enclosed rear porch and tree removal.

On Behalf:

Ken Lania, Cornerstone Land Consultants

K. Lania: Kamlesh Patel came before you in 2012. Don't know if I explained that the Order of Conditions was only good for three years. A little confusion there. We had come before you to install an enclosed porch in the rear of structure. Never did a COC for the patio and rear deck. Applicant never completed enclosed open air porch in the front of the house either. We are requesting a couple of as a result of the EO. The first goal is to close out the COC for the Order of Conditions that existed. We are taking the front porch enclosure request off because it would exceed past the maximum allowed FAR according to Fran's comments.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

L. Varnum: I think we can issue a COC.

Motion:

W. Lovely motioned and B. Buitenhuis seconded the motion to issue a Certificate of Compliance. The motion passed unanimously, (6-0).

Request for Determination of Applicability

Kamlesh Patel
103 Photine Dr
Lowell, MA 01854

Project Location: 103 Photine Drive 01854

Request for Determination of Applicability proposing reconstruction/repair of an existing stone and boulder wall with a segmented block wall and an open covered front porch previously approved under an expired Order of Conditions (DEP #206-0692). The work would be occurring within the 100-ft buffer zone to bordering vegetated wetlands.

On Behalf:

None

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

L. Varnum: Where is all that fill going?

K. Lania: Retaining wall in the rear is made of boulders. In prepping the wall, they removed fill, stockpiled in the driveway, needed erosion control around that. Once the segmented wall is constructed, the fill will be put back in.

L. Varnum: So are we increasing the area above the wall by filling?

K. Lania: Will probably go up about a foot. When I got there they had already taken the material out.

L. Varnum: No work proposed above the wall or driveway area?

K. Lania: No.

L. Varnum: Not concerned with the front porch proposal?

K. Lania: After Fran's comments, maybe we will size it down and come back at a later date.

K. Dillon: How far from the wetland is the closest work being done?

K. Lania: 54.4 feet.

W. Lovely: I think this is a project I would feel comfortable issuing a Negative III Determination. No porch is being built, just the retaining wall?

L. Varnum: The patio also.

K. Lania: Wall needed to be redone in order to install the patio. Patios can't be installed on a slope.

B. Buitenhuis: What will the patio surface be?

K. Lania: Stone block. No drainage. Just put gravel behind the wall.

L. Varnum: Pervious drip?

K. Lania: Yes, will go into the garden.

Motion:

W. Lovely motioned and K. Dillon seconded the motion to issue a Negative III Determination. The motion passed unanimously, (6-0).

Enforcement Order

Douglas Quist
1345 Lawrence Street
Lowell, MA 01852

Violation Location: 1345 Lawrence Street 01852

Tree cutting and fill dumping within the 100-ft buffer zone to bordering vegetated wetlands without permission from the Lowell Conservation Commission.

On Behalf:

Douglas Quist, Property Owner

D. Quist: I thought the tree was outside the buffer zone. Wasn't aware land was designated a wetland. One of many trees I've cut over the years. Underestimated size of wetland and where buffer zone was. One tree. No intentions of cutting any more vegetation back there. It was a little crooked and blocking sunlight.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

L. Varnum: What was the nature of the fill?

D. Quist: Bought some dirt to replace some on front lawn. Wanted to make gravel bed next to driveway. I intend to use for gardening in back lawn.

L. Varnum: Has the wetland been delineated?

D. Quist: Fran gave me a plot plan. First time I saw property with the wetland. Would appreciate if someone would mark out where the wetlands are. Would be helpful if I knew what parts of my lawn I am free to maintain without permits and what parts I would need permits if I did want to remove vegetation in the future.

L. Varnum: Sometimes it's easy to tell where the boundary is. The best would be to come in now that you know there's a wetland. Come in with a plan to see if work is going to be affecting the wetland. We listen to what you want to do and determine whether it would affect the wetland.

D. Quist: Next year if I wanted to remove vegetation I would have to apply?

L. Varnum: It's a simple process. You can have a hand drawn plan. A lot of invasive species. Did you finish what you started doing?

D. Quist: Tree is laying out there. Would like to cut stump flush to the ground.

L. Varnum: Should be done now that it's lying on the ground. Don't know where the wetland is.

D. Quist: Once I cut the tree up, should I remove it?

L. Varnum: I'd encourage you to remove anything you are not going to use in the wetland area.

D. Quist: Can probably get that done before the coming fall.

L. Varnum: Would like to see a date where we want work completed. If you have downed logs they should be removed. If that's something that can be done, should start on that.

W. Lovely: We are not wetlands scientists here to delineate boundaries. You can eyeball what's 100-ft. from wetland. Could talk with Conservation staff to have sense of what area is under jurisdiction. With respect to specifics, I'd like to be somewhat flexible on deadline to get logs out of there. Have been there for a while. Tree removal prompted the EO. Can be somewhat flexible to identify place for logs. See if DPW has any stump dumps or solid waste landfill that would take non-hazardous materials.

B. Buitenhuys: To add, we are paying attention to anything within 100-ft. of wetlands. I don't believe DPW offers green disposal but I would try them. It is not a huge soil pile and I feel the same about tree fill but I don't need to set tight timeline on that either.

K. Dillon: How many trees do you have in the back?

D. Quist: Have cut over a dozen trees in the back. About 12.

K. Dillon: As far as how much debris you would have, it would be a dump truck full? I'm not thinking that is too expensive to have done, it won't be that much work. I know they don't run too expensive to take fill. Different companies could use it for mulch.

W. Lovely: Biggest cost would be transportation of the material.

L. Varnum: Pick a future meeting that D. Quist can give us an update on this particular project. Leave EO in place until we hear what results are. Have a meeting on September 9. Back to two a month.

Motion:

W. Lovely motioned and K. Dillon seconded the motion to ratify the Enforcement Order. The motion passed unanimously, (6-0).

P. Downs motioned and W. Lovely seconded the motion to continue the hearing to the September 9 meeting. The motion passed unanimously, (6-0).

Enforcement Order

Jodi Jailett

113 Photine Drive

Lowell, MA 01854

Violation Location: 113 Photine Drive 01854

Driveway paving within the 100-ft buffer zone to bordering vegetated wetlands without permission from the Lowell Conservation Commission.

On Behalf:

L. Varnum: Material not entirely impervious. Millings. Spoke with homeowner and looked at the site. In photos, what's shown as lawn, lowered elevation of extension of driveway about a foot. There is a raw vertical edge of material that is not stabilized. There is a fairly large ridge between the driveway and wetland area. Don't believe anything from new driveway is going to be washing into the wetland. Didn't see an alternative to this as far as needing a bigger driveway. Wouldn't see a big impact as long as it is stabilized.

J. Jailett: There was an equivalent of driveway there. Evened it out. We were parking cars there. There was nothing removed as far as trees. Leveled out so that we could park the car and take care of snow in the winter. In the back, on the other side of the door that goes to the garage is a retaining wall. About 12 feet long. We extended that a little bit longer because we are currently a multigenerational family. We have needed more trash barrels. Had no way of keeping trash barrels. Having a raccoon problem. Wanted to find a way to keep them neat and improve look of the front. We are intending to rebuild retaining wall a little bit longer. If it makes sense to request that we add blocks to the sides in order to stabilize the berm, we would be happy to do that. We hadn't planned to go too far around the corner. The fill you saw that was the fill you use for retaining walls. New to this process, learning, assuming we need RDA for that wall? Or do we not since we have already have a big pile of dirt needing some way to support it?

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

L. Varnum: We do have to determine what type of work will make it so that wetland isn't threatened in the future. There is a drain that takes some runoff from the driveway. Raw edge – I'm thinking the driveway is almost

wide enough for small slope around there. I'm a lover of gravel driveways but that material hardens to become almost impervious.

B. Buitenhuis: I think this needs an RDA.

J. Jaillett: The RDA is regarding the edge of the driveway, not the retaining wall in the back?

L. Varnum: Any additional work you'd like to do should be mentioned in the RDA. Also include work that has been done. Mention it all in the request. Ratify EO, meanwhile work on RDA.

Motion:

B. Buitenhuis motioned and W. Standish seconded the motion to ratify the Enforcement Order. The motion passed unanimously, (6-0).

Request for Determination of Applicability

Kellie Doherty

New England Power Company

40 Sylvan Road

Waltham, MA 02451

Project Location: Bolt Street and Carmine Street Utility Right of Way 01852

The applicant is proposing geotechnical soil borings testing in the utility right-of-way (ROW) within Bordering Land Subject to Flooding (BLSF) and the 25-ft. Riverfront Area.

On Behalf:

Alison Milliman, the Applicant

A. Milliman: Utilizes currently existing access routes. Proposed in BLSF and Riverfront Areas. Asking for permission to conduct exploratory borings under WPA and local bylaw. Temporary hole installed in ground, soil is sampled, existing disturbed soil is used to backfill the hole. Boring activity could take place in 2-3 weeks.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

L. Varnum: The application was quite explanatory.

B. Buitenhuis: More than we probably need for borings.

Motion:

W. Lovely motioned and B. Buitenhuis seconded the motion to issue a Negative III Determination. The motion passed unanimously, (6-0).

Notice of Intent

Ting Chang

City of Lowell

375 Merrimack Street

Lowell, MA 01852

DEP #206-0801

Project Location: Newhall Street Bridge over River Meadow Brook 01852

A Notice of Intent has been filed by the City of Lowell to replace deteriorated sidewalks, repave the roadway, and complete other repairs on the Newhall Street Bridge over River Meadow Brook.

On Behalf:

Bob Niccoli, TEC

B. Niccoli: Bridge in need of repairs. Putting up sidewalk barriers to protect pedestrians. Also scattered curb repairs and basic paving repairs. The first plans, erosion controls may not have been shown. We had compost filtered tubes, silt sacks, will be using shielding under the bridge when we demo existing bridge deck. Catches any big chunks of concrete that may fall. Floating silt fence. No increase to footprint of bridge. DEP reviewed with no comments. Would only be removing vegetation that is overgrowing the bridge. Would be pruned back to allow bridge to be normal size.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

L. Varnum: What is the expected lifespan of bridge?

B. Niccoli: I would think there's still some good lifespan left in this bridge.

L. Varnum: Do you expect to have materials to remove from the site and dispose of?

B. Niccoli: Yes, all construction will be completed in accordance with MassDOT standards.

L. Varnum: Will there be any stockpiling of materials?

B. Niccoli: Yes, there is a parking lot around the corner. We have talked with the DPW Commissioner about possibly using that as laydown yard. Would be stockpiling over there.

L. Varnum: It looks like you won't have any loam. Will you have any other loose materials?

B. Niccoli: No, essentially just the bridge barrier and fence.

Motion:

W. Lovely motioned and B. Buitenhuys seconded the motion to close the hearing. The motion passed unanimously, (6-0).

W. Lovely motioned and W. Standish seconded the motion to issue a standard OOC. The motion passed unanimously, (6-0).

OTHER BUSINESS

Minor Modification Request – 2 Prince Ave, 1 Markley Way 01852

In 2018, the Markey Group, LLC filed a Notice of Intent (DEP #206-0787) to expand a data center, including constructing a 60,500 sq. ft. building, parking lot, perimeter wall, equipment yard, and stormwater management system at 2 Prince Avenue; 1 Markley Way. The proposed activities were within previously developed 25-ft. Riverfront Area, Land Under Waterbodies, Bordering Land Subject to Flooding, and the 100-ft. Buffer Zone to Bank associated with River Meadow Brook. On September 12, 2018, the Conservation Commission voted unanimously

(5-0) to issue an Order of Conditions to complete the work. The applicant is now seeking a minor modification to repair the wall along Hales Brook.

On Behalf:

Jon Spicer, Stantec
Theo Kindermans, Stantec

J. Spicer: Presents proposed changes.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

L. Varnum: Fairly major work but did do similar type of work on wall already. Feeling pretty comfortable that you know what to do on the wall.

T. Kindermans: Breach was worse than it was now. Was an emergency. Since its dry season, want to go in and take advantage while we can.

Motion:

W. Standish motioned and B. Buitenhuis seconded the motion to approve the minor modification. The motion passed unanimously, (6-0).

Modification to Order of Conditions – 350.4 Dutton Street 01852

The applicant is proposing a modification to the Order of Conditions (DEP# 206-0776) issued to construct the municipal garage at 350.4 Dutton Street in the Hamilton Canal Innovation District. The work would be occurring within Bordering Land Subject to Flooding (BLSF) and within 100-ft. of the Bank to the Hamilton Canal.

On Behalf:

Chris Hayes, Neighborhood Planner
Justin Mosca, VHB

C. Hayes: This project allows the City to take advantage of construction already taking place.

J. Mosca: Presents proposed changes.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

L. Varnum: Is this walkway expected to be active or just waiting for some connections to go somewhere?

J. Mosca: The intent is for it to be active. Provides a connection to garage so that it is not dead end. This will allow you to get up into the garage.

Motion:

B. Buitenhuis motioned and W. Standish seconded the motion to approve the minor modification to the existing Order of Conditions. The motion passed unanimously, (6-0).

Minutes

July 8, 2020

W. Lovely alerted staff to a minor error on page 9 of the July 8, 2020 minutes.

K. Dillon motioned and B. Buitenhuis seconded the motion to approve the minutes. The motion passed unanimously, (6-0).

ADJOURNMENT

B. Buitenhuis motioned and W. Lovely seconded the motion to adjourn the meeting. The time was 9:09 PM.