

**REGULAR MEETING
CONSERVATION COMMISSION**

**1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE
CONFERENCE ROOM "A"**

3:30 P.M.

JULY 11, 2007

MEMBERS PRESENT: Chairman Steve Miller, Vice Chairman James Horrigan; Members, Allison Tanner, Skye Maher, Barbara McMillan, Brian Wazlaw, Eva Powers; and Alternates Mary Ann Blanchard and Richard Adams

MEMBERS ABSENT:

ALSO PRESENT: Peter Britz, Environmental Planner

I. STATE WETLANDS BUREAU PERMIT APPLICATIONS

Minimum Impact Expedited Application

64 Pleasant Point Drive
Assessor Map 207, Lot 14
Kimberly Waldron Levy, owner

Chairman Miller stated that this was the first minimum impact expedited application that the current Commission has seen and he wanted to familiarize them with past procedure. He explained that this type of application was a way to expedite small projects and had to meet specific DES requirements. He explained that in the past, the Chairman would review the application then call all of the Commissioners to get their approval of the application and would then sign it and send it off to the State. He asked the Commission if this was how they would like to continue to proceed.

Ms. Powers mentioned that she had an issue with this application and so in the future, she would like to have a chance to review the plans before any action is taken. Ms. Blanchard added that it would be helpful to have a list of the minimum criteria that is set by the DES for this type of application.

Ms. Tanner suggested that when this type of application is submitted, Chairman Miller could contact all of the Commissioners by phone to explain the proposal. If one Commissioner is in disagreement, then the application should be heard at the next scheduled Conservation Commission meeting. Chairman Miller was agreeable to that suggestion and stated that the application's plans could be made available for the Commissioners review in the Planning Department before they make their final recommendation, via the phone call. The Commission was in agreement to this plan.

Mr. John Chagnon, of Ambit Engineering, and property owners Kimberly Waldron Levy and John Levy, were present to speak to the application.

Mr. Chagnon explained to the Commission about the DES requirements for this type of application. He said that the conditional use requirements are not invoked with this application because the wetland they would be impacting was less than ½ an acre and so it did not require a recommendation from the Commission.

Mr. Chagnon gave the Commission a handout with the natural heritage data base results that showed that there was nothing of interest on the property. He pointed out that it was a tidal buffer zone and fresh water wetland impact. He said that a small area along the road that is a fresh water wetland is now planted because it was disturbed in with the utility upgrades. He wanted to make it clear that the Levys had nothing to do with that disturbance. He said that there was fresh water along the road and there would be impacts there but the bulk of the impacts would be in the tidal buffer zone. There would 780 square feet of tidal buffer zone impact and 253 sq. feet of wetland impact.

Mr. Chagnon explained that the proposal was to construct a single family residence on the lot. The area on Pleasant Point was subdivided in 1952 and all of the lots have been developed except one, which was tied in with another lot. He said that the bulk of the structure was as far away from the shore as possible. He showed the Commission a keyed site plan and pointed out the areas of impact. He also pointed out the temporary impacts. He explained that the driveway was being squeezed between an existing utility pole and an existing outward water pipe as there was no other place to put it. It extends a little bit into the tidal buffer zone. They are keeping away from the city's 100' setback from salt marsh vegetation.

He said that they have notified the neighbors by certified mail. The Levy's held a meeting with the neighbors to show them the project. Mr. Chagnon told the Commission he would be happy to answer any questions that they had concerning the project.

Ms. Maher had a question for Mr. Britz. She asked if the Commission had any jurisdiction over manmade fresh water wetlands. He replied not with this one because it was less than ½ an acre. He added that they do have jurisdiction over manmade wetlands if they were created as a manmade drainage structure.

Ms. Maher asked Chairman Miller if he would have signed this application because of the minimum impact to the fresh water wetland. Chairman Miller said he would have followed his predecessor's procedures. If Commissioners had concerns then he would have had the Commission review it at an extra meeting. He said that because this application just came in last week, he thought this meeting would be a good opportunity to talk about it and the process.

Ms. Maher said that her problem with this application was that they just had an application a couple month's ago. That application had post construction changes that were very similar to this where there was an intrusion into the highest observable tide line that had changed with different engineering firms. She thought at the time, the Commission was a little disgruntled with the way these homes are being built. She was wondered why this application was okay.

Mr. Chagnon pointed out that with that application, the Garvey residence; there was a significant amount of real estate to deal with than this application. He added that the Garvey residence was built as planned but things were added later.

Chairman Miller explained that this application meets the criteria from the State. He did not have an issue with the driveway; he thought it made perfect sense. He felt that they have done a good job of trying to minimize the impact and it seemed reasonable to him.

Ms. Powers asked why the house had to be in the tidal buffer zone. She thought the house could be smaller. Mr. Chagnon responded that they made the structure fit the line of 100' from the salt marsh. They are honoring the Portsmouth buffer zone. The State line provides for a 50' line.

Mr. Wazlaw asked the size of the pipe that was underneath the driveway. Mr. Chagnon replied that it was an eight inch pipe that was 16 feet in length.

Vice Chairman Horrigan asked if the driveway could be a pervious surface. He said that the city is at a tipping point with too much impervious surface. Mr. Chagnon replied that they would consider it. He said they could use a porous concrete and would consider it if it moved the project along. Mr. Scott Ferantino interjected and said that it was something that they could not say yes or no to until they see what the impacts are. Mr. Chagnon added that the driveway slope is 3% and he was not sure if that was an appropriate slope for porous pavement.

Ms. Maher said that this was a unique and special piece of land. She asked if they could ask for integrated pest management. Mr. Chagnon replied that they were in the Shoreline Protection Zone so there were already protections in place. Ms. Maher said she just wanted to make sure that the homeowners were aware of it.

There being no further questions for the applicant, Chairman Miller asked if the Commission was ready to vote.

Mr. Wazlaw made a motion to recommend approval of the application to DES. The motion was seconded by Ms. Tanner.

Ms. Tanner stated that she would like to amend the motion to include that the applicant use pervious pavement. Ms. Maher added that she would like to include in the motion that the owners be aware of the shoreline protection act.

The motion to recommend approval of the application to DES passed by a unanimous (7-0) vote with the following stipulation:

1. That the applicant uses a pervious pavement for the driveway.
2. That the applicant be aware of the shoreline protection act.

Chairman Miller stated that he would forward a copy of the minimum expedited impact application criteria to the Commission for their review for future applications.

Ms. Tanner said that what this application has brought to the forefront is that they should be able to protect land that is less than ½ acre. Mr. Wazlaw replied that he would like to see that reduced down to 1/3 of an acre.

Wholey Way Landscape Easement

Mr. Britz introduced Ms. Shannon Flaherty, the owner of new property on Wholey Way. He explained that there was a 10 foot landscape easement associated with her parcel. Within that 10 foot landscape easement, the property owner is not allowed to cut trees unless they get permission from the Conservation Commission.

Ms. Flaherty stated that she and her husband bought the property on Wholey Way in 2005. Since then, they have been working on plans to build on the lot. They now have their building permit and driveway permit and an excavation crew ready to go but there is one tree in the way of where they would like to put their driveway.

Ms. Blanchard asked what type of tree it was. Ms. Flaherty did not know but Mr. Britz thought it might be a wild cherry tree. Ms. Flaherty offered to plant another tree on the property to replace the wild cherry tree if they are granted permission to remove it. She suggested planting an ornamental pear tree in addition to other trees within the 10 foot landscape easement.

Ms. Tanner told Ms. Flaherty that ornamental pear trees are very brittle and their branches break easily. Ms. Flaherty replied that she went to a nursery yesterday for advice. The nursery suggested a birch, a maple, or a beech tree. Mr. Adams cautioned to stay away from Bradford pear trees as well as they will split.

Mr. Adams explained that there is a Trees and Greenery Committee that has jurisdiction over tree removal. Mr. Britz said that that committee has jurisdiction in the right of way. This tree is beyond the right of way. He pointed out that the easement specifically states that the Conservation Commission regulates the area. He added that one avenue that the Commission could pursue is to refer the issue to the Trees and Greenery committee. Mr. Adams suggested that this Commission move it along. Ms. Tanner and Mr. Wazlaw agreed.

Chairman Miller asked Ms. Flaherty about the possibility of putting the driveway to the right of the tree. Ms. Flaherty replied that because of the way the neighboring land is graded, it would create a dangerous driveway for them. Mr. Britz added that Dave Desfosses of DPW said the same thing.

Chairman Miller stated that when he drove into the area, the cherry tree was the nicest tree in the area. Ms. Flaherty responded by saying that they are willing to plant a tree of substantial size.

Ms. Maher asked how the Commission would follow up on this. Mr. Britz suggested that they could connect the approval with the easement. Ms. Maher said that that would require filing a suit if it was not adhered to. She wanted to know if there were other options. Mr. Britz said that

he could put it on the calendar for a year from now and go to the location and take a look. He said that they should make sure that the tree that is planted is planted in the landscape easement. He added that a letter should be written stating the stipulations.

There being no further discussion, Chairman Miller called for the vote.

Ms. Maher made a motion to approve the removal of the tree within the 10 foot landscape easement (Map 237, Lot 74) with the following stipulations:

- 1) That a new tree be planted within the City's 10 foot landscape easement.
- 2) That the applicant informs the Commission by August 12, 2007 as to the type of tree they intend to plant.
- 3) That the tree selected be of a native New England hardy variety that provides wildlife value and is as large as is practically possible.
- 4) That the City make a follow up visit to the site on July 12, 2008 to insure that all conditions have been met.

The motion was seconded by Mr. Wazlaw. The motion passed by a unanimous vote. (7-0)

II. WORK SESSION

Continued discussion of potential changes to Article VI of the City's Zoning Ordinance

Chairman Miller asked Ms. Good about possible dates for a work session with Rick Taintor, the Zoning Ordinance Consultant. She replied that the dates of Monday, July 16 and Monday, July 30 were workable for Mr. Taintor. The Commission chose the date of Monday, July 30 at 3:30 p.m. for their next work session regarding Article VI.

Mr. Britz said that at the work session, Mr. Taintor can tell them where he is in the process and will be able answer their questions. The Commission will also be able to discuss their suggestions for possible changes to the ordinance.

Mr. Horrigan had handouts for the Commission regarding possible changes to Article VI. He wanted to include vernal pools and storm water drainage systems. He also included review of lots 5,000 sq. feet in size. In addition, he suggested that there be a buffer surrounding storm water drainage systems to prevent parking lots from being built right up to the edge of the system.

There was extensive discussion about pesticide spraying within the City. Mr. Britz suggested that they could have someone from DPW come to a meeting and explain their spraying practices. The Commission thought that it would be a good idea to start a dialog on the topic. Mr. Britz added that the Commission should think of ways that the spraying affects their Conservation efforts and proceed in that way.

Mr. Wazlaw pointed out that the Dredge and Fill permitting process is not included in Article VI and he thought it should be. He also thought that maybe the Minimum Impact Expedited permitting process should be included as well.

III. OTHER BUSINESS

Set date for next work session with city's Zoning Ordinance Planning
Consultant Monday, July 30 at 3:30 p.m.

The date of Monday, July 30, 2007 was set for the next work session regarding possible changes to Article VI of the Zoning Ordinance.

IV. APPROVAL OF MINUTES

June 13, 2007

It was moved, seconded, and approved unanimously to approve the minutes as presented.

V. ADJOURNMENT

At 5:10 p.m., it was moved, seconded, and passed unanimously to adjourn the meeting.

Respectfully submitted,

Liz Good
Conservation Commission Secretary

These minutes were approved at the Conservation Commission meeting on August 8, 2007.