

Conservation Commission Meeting Minutes

Wednesday, April 12, 2023

Town of Kingston
26 Evergreen Street, Room 200
Kingston, MA 02364

Present: Vittorio 'Buz' Artiano, Glen Duffy, Dorothy MacFarlane, Natalie Wiegman, Megan Hickey, Jim Franklin, Kalina Vendetti

Staff: Conservation Agent, Matt Penella

Location: Town Hall Offices, Room 200

Commission Meeting Opened: 6:33 PM

Chairperson Kalina Vendetti opened the meeting at 6:33 PM. The date was April 12, 2023.

VOTE TO OPEN: Passed 7-0-0

BUSINESS:

I. Signing Documents

a) The Commission signed a bill for \$2,846.20 for the construction of four kiosks built by the Silver Lake High School Carpentry Program.

b) Bills already paid as follows:

\$21.13 to W.B. Mason for office supplies

\$323.51 to Lowe's for kiosk materials and other supplies

\$9,968 to Ponte Enterprises for Nekon trail work

\$594.42 to Forestry Suppliers

\$585 to Voss Signs for general rules overview signs

II. Action Items

a) 21 Kennedy Ave

Chairperson opened a hearing for a Request for Applicability (RDA) at 21 Kennedy Ave for the installation of an in-ground pool associated with a single family residence. Representative Sean Green presented the proposal for an in-ground pool approximately 45' off the existing deck. There is a drainage stream that runs down along the edge of the property, the closest the stream edge would be to the pool is 76'. Agent Penella asked if the stakes at the site were marking off what would be the patio surrounding the pool, Mr. Green confirmed yes. Matt said he had spoken to the homeowner about the permitting process and the importance of showing on the plan that the wetlands have been taken into consideration. There is a drainage/swale stream that has been modified over the years and it also runs under the old 11 Kingston Street in a pipe. The section that runs through the applicant's property and that of their neighbor is straight, most likely straightened years ago for mosquito control purposes. Each back yard in the area has a culvert with a pass-over to get to the other side of the stream. At 21 Kennedy Ave. there is lawn going right up to the edge of the stream which isn't ideal for water quality. There is room for mitigation there in terms of having a buffer strip. Matt measured off 35' between the uppermost stake to the edge of the patio that's currently behind the house. Because the yard already has lawn, it is not a natural area and so this pool installation would not be a transition from a natural stream buffer to impervious surface and pool. This makes water quality a concern, if down the line there is an issue with pool water getting into the stream. Matt would like the proposal to show the pool moving closer to the house and/or adding a wild, natural buffer strip on the stream edge that would deal with runoff issues and improve site conditions. Mr. Green asked if they took the 400 square foot pool and added some type of 1-to-1 mitigation, closest to the stream, in the form of a rain garden or wetland plantings, would that be sufficient. Jim asked about the patio. Buz asked why this wasn't being filed as an NOI. Matt replied that the homeowner has the right to file as an RDA, however the Commission does not have to accept the work under an RDA. If the Commission feels that the work being proposed is more than they should be reviewing under RDA then they can require an NOI. Member of the public, Kevin Grady of Ocean Hill Drive, said that his property abuts 21 Kennedy Ave. He is familiar with the stream and said that he believes it is a manmade ditch that was probably dug straight for mosquito control purposes. Jim said that the regulations say that a stream can be manmade or natural. Buz said that if the Commission is going to approve the plan, he wants to see it moved further from the stream/ditch, he wants to see erosion control on the plan, what the plan is for the fill that's excavated on the site, where the staging area is going to be, where the pool equipment is going to be placed, and where the filter will drain. Jim would like to see some form of erosion control to hold any water drain-off, stopping it before it gets to the stream/ditch. Dot asked about the drainage system. Mr. Green said that it is a cartridge system, meaning there is no backwash. At the end of the season, the pool is

turned off and then the water evaporates down to 4 or 5 inches. However, with the saltwater system that would be installed, nothing needs to be drained. Jim asked if once set up, could the pool ever be switched over to another pool system. Mr. Green said yes, at a cost of \$10,000-15,000. Mr. Green explained that the point of access would be coming down through the driveway, the fill will be trucked out to an external source of P.A. Landers. Dot asked Mr. Grady if he knew where the stream/ditch ends or drains. He replied that it drains through a culvert under the lots at 11 Kingston Street and that it goes to another resource area. He said that after reading over the stream definition on the bylaw it does seem to meet the stream definition, but it doesn't meet river protection. Matt said that it is definitely an impacted stream, and as previously discussed during the filing for 11 Kingston Street, that is a corridor that is the low point for the whole area. The pipe underneath 11 Kingston St. comes out between Kingston Street and Mazzilli Avenue into a bordering vegetated wetland (BVW). Buz said that if a more detailed plan showing planting area with plants, the pool equipment location, a note that there is no filter drain, the gas-fired heater shown, a silt sock, a note about the removal of fill, and if the pool is moved closer to the house by at least 10', then he would move to approve it. Matt asked the Commission how they felt about an RDA versus an NOI. Jim had some reservations about it, in that it may set a precedent for pools being filed as RDAs going forward. Matt said that a handful of pools had been done as RDAs in recent years, they had been in an existing landscaped area therefore not complete conversions from a wild, natural state. Homeowner, Tom Laxton spoke to say it is a ditch and the water is 2" deep, and it is a foot wide. And that the home is 65-70' away from the ditch. Jim clarified that for the Commission's regulations, it is a stream and as such it is worthy of a discussion. Buz said that the Commission does not ever discuss filings privately, so the discussions at meetings are live and can be "messy" while the Commission gets all the facts together. Matt said that he didn't think in any situation they would entertain putting a pool within 100' of a stream if there was currently a natural condition. And regardless of whether they deal with the current filing as an RDA or an NOI, there are performance standards that must be followed. He said that the planting strip should be around 15', eventually to be vegetated with established native shrubs. Jim asked that the architect and homeowner review the Commission's regulations prior to coming back with the revised plan. Mr. Green said that he is aware of the regulations, but that the item in question was whether it was a drainage culvert or an actual stream. Matt suggested that they go forward with the understanding that it is a stream and that the regulations be reviewed. The Commission agreed that the filing could go forward under an RDA, after the plan had been revised as requested.

Action items were paused in order to move onto Public Hearings.

III. Public Hearings

a) Cushman Farms LLC.

At 7:04 PM Chairperson Vendetti opened a continued hearing for an NOI for test borings along the unimproved Thomas Street ROW and adjacent parcels, as well as the Cushman Drive ROW. The applicant agreed to continue the hearing to April 26, 2023.

VOTE: Jim made the motion to continue the hearing to April 26, 2023, seconded by Glen.

PASSED 7-0-0

b) 15 Kingston Street, Map 68, Lot 92-93(formerly 11 Kingston Street, Lot 3), NOI for site modifications for a single-family dwelling currently under construction through WPA/KWPR #SE 037-0921.

At 7:06 PM Chairperson Vendetti opened a hearing for an NOI. The applicant is Jay McKinnon and the representative is Grady Consulting, LLC. Commissioner Artiano recused himself as his daughter is a direct abutter to the property. Kevin Grady of Grady Consulting, LLC. said that the applicant would like to add a small pool at the rear of the house, add a retaining wall, and connect the deck to a door in the mudroom. Due to the Commission's regulations on impervious coverage, he explained that the site plan was modified to add porous pavement to the end of the driveway to make the impervious coverage less than 15%. The pool itself has a cartridge system and so there will be no backwash or need to drain the pool after storms etc. A 1.25" drain line was added that discharges to a drywell and the drywell has been relocated outside of the buffer zone. It is a small pool and rarely will there be a need to drain it. Matt asked if the new surface at the end of the driveway will function as impervious. Mr. Grady said that the porous pavement is similar to standard pavement with the exception that it has larger aggregate that has voids, allowing for water to get through, it is 4" of pea stone and 10" of larger aggregate under the driveway as a reservoir.

VOTE: Jim made the motion to approve the modified NOI, seconded by Glen. PASSED 6-0-1

c) 8 Silver Lake Drive, NOI for replacing a retaining wall at single-family dwelling.

At 7:21 PM Chairperson Vendetti opened a continued hearing for an NOI of a retaining wall replacement within 100' of a wetland resource area at 8 Silver Lake Drive. The applicants are Brian and Laura Riordon and the representative is Rick Grady of Grady Consulting, LLC.

Mr. Grady pointed out some photographs on page 3 of the site plan to show existing conditions. There is an existing deck system with 6x6 timber retaining walls that are deteriorating. As a result of settling, some portions of the deck are having structural issues and there is a stairway that collapsed. A modular, ready-block concrete wall has been proposed that would be installed in the same location as the existing timber walls. During the Commission's

site walk, the question had been raised as to whether the existing walls had originally been constructed in accordance with an Order of Conditions and the answer was yes, the file at the Commission Office was reviewed to confirm that, and a Certificate of Compliance had been issued. He acknowledged that it is unusual for the house to have been constructed so close to the wetlands. John Zimmer of South River Environmental flagged the wetlands and the flags are depicted on the site plan. The flags come as close as 3' to the existing timber wall. There is an area of 190 square feet noted on the plan for temporary alteration, and a revised plan was provided that shows swamp mats that will be laid over the sections of temporary alteration. There are notes on the plan to grind down some existing stumps to make them flush with the ground surface, so that the swamp mats can be flush with the ground. The plan is to leave the shrubbery vegetation and root mass in place below the mats. If the mats are not in place for too long a time, it is believed that the vegetation will bounce back and the estimated time of the mats being on top of the vegetation is 30 days. When the mats are removed, they would like the Conservation Agent to conduct an inventory on what vegetation survived and to provide a planting plan as to what plantings should be supplemented. Erosion control will be in place along the perimeter before any of the work begins and will be maintained throughout the duration of construction. Agent Penella noted that holes had been drilled in the stumps to most likely use a stump decay chemical. He asked if there was an idea of when that was done. Dot mentioned that usually nitrates are used to accelerate the growth of bacteria. Matt approved of the idea of the concrete block wall and the idea of seeing if the existing vegetation will rebound before introducing new plantings.

VOTE: Buz made a motion to close the hearing, seconded by Jim. PASSED 7-0-0

VOTE: Buz made a motion to approve the NOI with the conditions outlined by the applicant on the April 12, 2023 revised plan, seconded by Jim. PASSED 7-0-0

Meeting returned to **Action Items**

b) 58 Off Boundary Street

Chairperson Vendetti opened a hearing for an RDA for deck replacement at 58 Off Boundary Street. The applicants were not ready with the revised plan.

VOTE: Buz made a motion to continue the hearing to the next meeting, seconded by Jim. PASSED 7-0-0

c) Final Vote on Tree Clearing By-Law language for Town Meeting Warrant. Agent Penella said that with the edited language that Commissioner Artiano proposed, the language offers more leeway to the average homeowner to clear trees on their property and still provides plenty of protection for conservation concerns. The Planning Board and the Board of Selectmen voted in unanimous support of the plan.

VOTE: Jim made a motion to approve the article as described, seconded by Glen. PASSED 7-0-0

IV. Enforcement

a) 375 Elm Street - Unpermitted work in jurisdiction, certified vernal pool present. Representative was Kevin Grady of Grady Consulting, LLC. Mr. Grady said that they are working on a plot plan for an addition for the homeowner. The wetlands were delineated by John Zimmer and in his report, he noted that there were vernal pools on the site. The site is also mapped as habitat and so they filed with Natural Heritage & Endangered Species Program (NHESP) which determined it as a "no-take". Grady Consulting designed the site to avoid impacts to any resource areas and they did not file with the Conservation Commission. In both the delineation report on the vernal pools and on MassMapper, the locations of the vernal pools are vague. He presented the map of the property and showed where the vernal pools are located. There is a plan from 2012 done by Webby Engineering on file with the Registry of Deeds, which lists three vernal pools and an isolated vegetated wetland area. The applicant had removed some vegetation in the woodland on the understory, but no large trees were removed. Grady Consulting is working with John Zimmer on a restoration plan, then they will file an NOI and work with the Commission. Agent Penella said that when he visited the site it was clear that a woodland road had recently been skidded and it is only 30-40' away from a vernal pool. The actions of doing work on that road would have an impact on vernal pool amphibians. Mr. Grady agreed that some brush had been cleared and it appeared that some work had been done on the wooded road. Buz re-capped saying that the work had come to a stop for the time being and an NOI was going to be filed in the next 30 days. Jim said that it seemed as though things were moving in the right direction. Mr. Grady said that an NOI would be filed and the restoration plan would be submitted to the Commission.

b) 149 Elm Street - Unpermitted work, agricultural exemptions, Priority Habitat. The representative are Mr. and Mrs. Clinton Sullivan. Agent Penella explained that due to the visibility of the property, inquiries had been made as to why removal of trees in a wetland was being allowed. After speaking with the homeowner, it was discovered that essentially what was removed were some trees that had grown up and around an old blueberry patch, which happens to be in a wetland. Matt told the homeowner to stop the work while he looked into the regulations regarding agricultural exemptions. In addition, there is a section at the back of the property that is in Priority Habitat which will be followed up on with Natural Heritage. The local DEP Circuit Rider said that it falls into a grey area but that if possible agricultural exemptions are given and because of that Matt does not think the Commission needs to proceed with enforcement action other than to coordinate with the homeowners on what can and cannot be done on the property going forward. This could

be in the form of some conservation posts on the property marking where wetland begins. The representatives said they would be fine with conservation posts. Buz asked how they would dispose of the brush and cut vegetation laying on the ground, Mr. Sullivan said he would use a wood chipper. Matt said that since the property is being used partially for commercial reasons it falls under the agricultural exemption.

VOTE: Buz made a motion for the homeowner and Agent Penella to meet and set locations for conservation posts and that once the posts are set, that would be the limit of the clearing going forward, seconded by Jim. PASSED 7-0-0

c) 1 Royson Drive - Storm water issue under file #SE 037-0880.

The representative is Larry Demar of Royson Properties, LLC.

Agent Penella reported that there is an open Order of Conditions to build some commercial buildings within the riverfront area of the impounded sections of Smelt Brook. There was an issue with storm water. Matt met with Mr. Demar and his contractors who had suggested ideas to improve erosion control. They have since implemented some of those controls. Buz asked when the site would be finished. Mr. Demar said that is an 18,000 square foot building and so there was a lot of dirt piled around temporarily and two large drainage systems are being installed. Jim asked if there was a schedule that could be shared with the Commission, Mr. Demar said yes. Buz said that in the meantime, implementing dust control, keeping the site watered down and clean and being cognizant of run-off would be standard construction practices and measures, especially since Smelt Brook is across the street. The Commission kept the hearing open until the next meeting and Matt will do another site visit to ensure the practices are being implemented.

V. Meeting Minutes

Megan made a motion to accept the March 8, 2023 minutes, seconded by Dot. PASSED 7-0-0

VI. Updates

a) The portion of trail work at Camp Nekon was wrapped up.

b) The Earth Day Cleanup will be on April 22, 2023. The Commission can decide how they want to participate whether as individuals or as a group.

c) Blackwater Memorial Forest- It is necessary to determine what the right water level is so that when the water control structure is pulled out there will be a log dam behind that will hold a certain amount of water; the idea being to expand the acidic shrub fen habitat and

minimize the pond habitat. This will create cleaner water and better connectivity. Matt will put together a mailing that will go out to residents who live in the vicinity of the project. The engineer is also trying to hold more water in the old agricultural bog in an attempt to kill Eastern White Pine regeneration. Everything with the project is going well, Matt has bi-weekly meeting with engineering. He also has a meeting coming up soon with a restoration specialist to discuss water levels. Glen asked for an update on the plaque. Matt said that Jim worked with the family on what work they would like to see on the plaque in memory of their family, and there will also be a bench in memory of Norm and his wife, Rose. Donations have been made that will be used for split-rail fencing around the parking lot, so very soon it will look like a conservation area.

CLOSING REMARKS

Chairperson Kalina Vendetti started closing remarks at 8:12 PM. The next meeting will be held on April 26, 2023 at 6:30 PM in Room 200.

VOTE: Jim made the motion to adjourn, seconded by Megan. PASSED 7-0-0