

CONSERVATION COMMISSION

LOWELL, MASSACHUSETTS

January 11, 2023

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 both in person and virtually using Zoom.

Members Present: Chairwoman Varnum, Brad Buitenhuys, Kevin Dillon, Perry Downs, Stephen Laput

Members Absent: None

Others Present: Francesca Cigliano, Senior Planner

CALL TO ORDER

A quorum of members was present, and L. Varnum called the meeting to order at 7:00pm.

ORDER OF BUSINESS

CONTINUED BUSINESS

Notice of Intent

Jeremy McSorely

LMP-Bolt, LLC

123 Bolt Street

Lowell, MA 01852

DEP #206-0820

Project Location: 123 Bolt Street 01852

LMP-Bolt, LLC has filed a Notice of Intent (DEP #206-0820) for the property located at 123 Bolt Street.

The applicant proposes to construct a new contractor garage, relocate a salt storage building, and make improvements to the access drive and parking area. The site is within 100-ft. of a Bordering Vegetated Wetland and the FEMA 100-year flood plain.

On Behalf:

Catherine Flood, Applicant's Attorney

Matt Hamor, Applicant's Engineer

C. Flood said that they are trying to enhance the functionality of the wetlands. Move salt storage away from wetlands, remove pavement, and work with planning department to install new trees to make the wetlands function better. Install retaining wall to prevent slope toward the wetlands. Area is previously disturbed and plans to mitigate future disturbance by installing hay bales. Has invested in this property and would like to do future work to enhance the property. Open to comments and discussion.

M. Hamor walked the Commission through the site plan. L. Varnum said that the wall would help delineate from the wetland. M. Hamor confirmed that drainage structures would continue taking care of runoff.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

B. Buitenhuys said at the last meeting they discussed the no build zone. It seems Landplex has taken steps to protect the wetland. L. Varnum said that this site is preexisting non-conforming. Came before us before that zone was developed 20+ years ago. Approving this I don't think means that we are granting an exception, we are recognizing that in this case there is grandfathering. What they are proposing won't affect the wetland. It is well-delineated.

B. Buitenhuys agrees that the salt storage is grandfathering. I would say garage is not grandfathered.

P. Downs added that the wall is probably the best case scenario we have to delineate wetland from the job site to keep it as unaffected as possible. Best solution at this point if the garage stays in this spot.

L. Varnum said there is a proposal of planting new trees close to the wetland area. All in favor. Anything that will delineate and enhance the wetland is something that we should encourage and I'm glad the applicant mentioned it in their plan.

M. Hamor said that he would work with DPD for plans on restoration. It will be all vegetated on the embankment. S. Laput said he appreciated that addition. M. Hamor said wetland wildflower seed mix and bushes. L. Varnum said native plantings are preferred.

Motion:

P. Downs motioned to close the public hearing, seconded by S. Laput, passed unanimously, (5-0).

P. Downs motioned to issue a standard OOC with the special condition that the applicant work with DPD on completing a landscaping plan, seconded by S. Laput, passed unanimously, (5-0).

Request for Certificate of Compliance

Benjamin and Jennifer Rivera

172 Eighteenth Street

Lowell, MA 01850

DEP #206-0542

DEP #206-0795

Project Location: 172 Eighteenth Street 01850

The applicant has filed two (2) Requests for Certificate of Compliance for the property located at 172 Eighteenth Street (DEP #206-0542 and DEP #206-0795).

On Behalf:

Benjamin Rivera, the Applicant

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

None

Motion:

P. Downs motioned to issue OOCs for #206-0542 and #206-0795. The motion was seconded by S. Laput and passed unanimously, (5-0).

NEW BUSINESS

Request for Determination of Applicability

Stephen Pilioglos
1449 Middlesex Street
Lowell, MA 01851

Project Location: 1449 Middlesex Street 01851

A Request for Determination of Applicability has been filed by Stephen Pilioglos to install a generator and dumpster pad at 1449 Middlesex Street. The proposed work is located in the 100-year floodplain and within 100-ft. of a protected wetland.

On Behalf:

Stephen Pilioglos, the Applicant

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

B. Buitenhuys explained the need for compensatory storage. Need to take away fill at the same elevation to make up for the new structure.

L. Varnum said that it looks like mathematical computation is needed to show that it comes out even. Possibility for offsetting fill with compensation somewhere else on the large property.

The Commission requested:

1. A cut fill analysis in the flood zone; and
2. Foot by foot compensation, existing and proposed conditions.

Motion:

P. Downs motioned to continue this item to the 1/25 Conservation Commission meeting, seconded by S. Laput, (5-0).

Partial Request for Certificate of Compliance/Request for OOC Extension

City of Lowell
375 Merrimack Street
Lowell MA 01852
DEP #206-0771

Project Location: Concord River Greenway 01852

On behalf of the City of Lowell, LEC Environmental Consultants, Inc. (LEC) has filed a request for a Partial COC for completion of Phase 2 and 3A (i.e., Bridges 1 and 2 and trail in vicinity of Centennial Island) of the Concord River Greenway (DEP #206-0771) and an extension to the Order of Conditions to accommodate the completion of Phase 3B (i.e., between Rogers Street and Chestnut Street) of the Concord River Greenway.

On Behalf:

Andrea Kendall, LEC
Sarah Brown, City of Lowell

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

L. Varnum asked if the plantings are doing OK. A. Kendall said they are in good condition. L. Varnum said the bridge is beautiful. S. Brown noted that some of the plantings did need to be replaced but now all are doing well. Everything should be established. L. Varnum said that that section is very well constructed.

Motion:

P. Downs motioned to issue the COC, seconded by S. Laput, passed unanimously, (5-0).

Request for Certificate of Compliance

City of Lowell
375 Merrimack Street
Lowell MA 01852
DEP #206-0759

Project Location: Concord River Greenway 01852

On behalf of the City of Lowell, LEC Environmental Consultants, Inc. (LEC) has filed a request for a Certificate of Compliance for completion of the geotechnical exploratory borings in support of the Concord River Greenway design (DEP #206-0759).

On Behalf:

Andrea Kendall, LEC
Sarah Brown, City of Lowell

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

L. Varnum asked whether the borings were exploratory and had been filled in. A. Kendall said correct.

Motion:

P. Downs motioned to issue the COC, seconded by S. Laput, passed unanimously, (5-0).

Notice of Intent

Adam McPhillips
9 Descheneaux Drive
Lowell, MA 01854
DEP # 206-0821

Project Location: 38 & 49 Casco Street 01854

A Notice of Intent has been filed by Adam McPhillips to construct a new single-family home within the 100-year floodplain.

On Behalf:

John Cox, Applicant's Attorney

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

JC slight work would not adversely affect resource area. 25ft buffer consistent with previous rulings of the Commission. Large lot. Hope Commission would grant OOC. Very positive addition to the neighborhood. Neighbors not in opposition.

LV said the 25 ft. setback from the wetland boundary and bank of beaver brook. Essentially the same because it is a rather steep bank. Anything in that area is very susceptible to flooding. Also has question about paper street. My understanding you have to petition for that. You may be able to educate me on that.

JC said that when the same owner owns both sides, owns paper street. Paper street for access to back lots. We would keep open the right side of the paper street and not develop it.

LV said seems like house should be on other side of the property. JC said this plan would work better in this neighborhood. Would free up land on lot 3.

LV said 25 feet is not enough away from wetland. Backyard here is very close to our resource. I for one am concerned about that. This is something we have strongly enforced. JC thought that some projects

are approved within 50 feet. LV said this is a no disturb zone within 50 ft. Putting a house there is a disturbance. This is a permanent fixture. Where you have such a large lot.

BB explained 25 ft no disturb zone. This house is set back 25.1 ft. Certainly .1 foot is not enough to not disturb.

PD said that he is in agreeance with LV and BB.

MH said that you could fit a house behind lot 3 but they chose to site it where it is now.

BB said they have been regular as of late for a 50 ft no disturb zone. BB said not following logic that forces this to be on the left hand side. JC said it would line up better with the neighborhood. JC said happy to look at.

LV said this house belongs in between the two other houses, out of the floodplain entirely. No wetlands situation. This plan as it exists I don't feel is doable. Brad is talking 25 no disturb, we have been working with 50 for at least 10 years possibly much longer. I'm looking for at least 50. We need to talk about compensation as well. I am still concerned about the right to use the paper street, 50ft no disturb setback. Set in precedent by this board. Concerned about putting future homeowners in peril. Don't put a house in a place you know is an active flood zone. I don't see approval in its present form.

JC suggested 2 week extension. LV said expectation that 10ft moving is ok. JC said he heard her loud and clear. 2 weeks is not a lot of time for changes needed. 10 days ahead of time. Two weeks doesn't give you much time to work on this.

Motion:

P. Downs motioned to continue the item to March 8, 2023, seconded by S. Laput, passed unanimously, (5-0).

Request for Certificate of Compliance

City of Lowell
375 Merrimack Street
Lowell, MA 01852
DEP #206-0776

Project Location: 350.4 Dutton Street 01852 (HCID Garage)

On behalf of the City of Lowell, VHB has filed an RCOC following completion of the parking structure on Parcel 14 of the Hamilton Canal Innovation District in accordance with OOC (DEP #206-0776) issued by the Commission.

On Behalf:

Camilo Espitia, Deputy Director DPD, City of Lowell
Justin Mosca, VHB

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

P. Downs said that the project looks substantially complete.

Motion:

P. Downs motioned to issue the COC, seconded by S. Laput, passed unanimously, (5-0).

Enforcement Order

Holy Trinity Cemetery

117 Boston Road

Lowell, MA 01852

Violation Location: 117 Boston Road 01852

On behalf of Holy Trinity Cemetery, DeRosa Environmental Consulting, Inc. has requested to rescind the Enforcement Order at 117 Boston Road. The restoration work was successfully completed, and the plantings are established.

On Behalf:

Even Gudvendiren, DeRosa Environmental Consulting

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

E. Guvendiren said that they were requesting to restore the site to compliance. The EO was issued in 2020. The firm had submitted annual monitoring reports. K. Dillon said that they had done a great job restoring the area.

Motion:

K. Dillon motioned and P. Downs seconded the motion to rescind the EO. The motion passed unanimously, (5-0).

OTHER BUSINESS

Discussion: No-Disturb Zone

The Commissioners shall define “no disturb zone” to inform future permitting discussions and decisions.

L. Varnum said this was discussed this evening. My understanding and what we have been doing for a long time is that after seeing violation after violation, and projects not appropriate for their placement near a wetland resource. Came up with an idea that we have a 100-ft buffer from wetland, but in an urban area we decided that that is unrealistic looking at size of lots. Wetland setback needs to be larger, delicate resource area, families living near resource areas need to have outdoor space. 50ft was minimum we could really count on wetland resources not being encroached on by things in general life (siwngsets, yards, sheds, cutting vegetation). We try to be careful about what we do allow- not permanent structures.

P. Downs said that the Commission had allowed sheds (no permanent structures). 25ft no disturb. 50ft no build (permanent structures). P. Downs noted that DPD is looking for guidance when builders come in for pre-application discussions.

L. Varnum said that they had been pretty successful making our wishes known. K. Dillon said he liked the distinction between no-disturb vs no-build. P. Downs said that they had allowed sheds and pools between 25-50ft.

F. Cigliano summarized that the Commission would consider the 25-ft. buffer zone to be a “no disturb zone” where no development at all would be allowed and the 25-50-ft. buffer zone would be the “no build zone” where permanent structures would not be allowed.

ADJOURNMENT

P. Downs motioned and S. Laput seconded the motion to adjourn the meeting. The time was 9:00PM.