

CONSERVATION COMMISSION

LOWELL, MASSACHUSETTS

June 8, 2022

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, William Lovely (Zoom), Stephen Laput

Members Absent: Kevin Dillon, Perry Downs

Others Present: Dylan Ricker, Associate Planner

CALL TO ORDER

A quorum of members was present, and L. Varnum called the meeting to order at 7:01pm.

ORDER OF BUSINESS

CONTINUED BUSINESS

Notice of Intent

Anka Homes, LLC
34 Arcola Street
Lexington, MA 02420

DEP #: 206-0809

Project Location: 87 Lafayette Street, Lowell, MA 01854

A Notice of Intent has been filed by Anka Homes, LLC to construct a single-family home, and driveway within the 100-year floodplain. **The applicant has requested a continuance to the June 22, 2022 Conservation Commission meeting.**

On Behalf:

None

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

L. Varnum requested that the applicant appear at the next meeting considering the number of times the petition has been continued.

Motion:

B. Buitenhuys motioned, and S. Laput seconded the motion to continue the application to the June 22, 2022 meeting. The motion passed unanimously, (4-0).

Request for Determination of Applicability

Zirlene Santos Correa
534 Wentworth Avenue
Lowell, MA 01852

Project Location: 534 Wentworth Avenue, Lowell, MA 01852

A Request for Determination of Applicability has been filed by Zirlene Santos Correa to repave and expand the driveway at 534 Wentworth Avenue within the 100-year floodplain.

Speaking on Behalf:

None

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

None

Motion:

B. Buitenhuys motioned, and S. Laput seconded the motion to continue the application to the July 13, 2022 Conservation Commission meeting. The motion passed unanimously, (4-0).

NEW BUSINESS

Request for Determination of Applicability

David Ochieng
2 Village Lane
Tyngsborough, MA 01879

Project Location: 66 Berry Road, Lowell, MA 01854

A Request for Determination of Applicability has been filed by David Ochieng to construct a pool and deck within the 100-foot buffer zone of a bordering vegetated wetland.

Speaking on Behalf:

David Ochieng, Applicant

D. Ochieng said he is seeking to put a deck around an existing pool within 100 feet of a protected wetland.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

L. Varnum stated the pool is in place, but the deck is not yet in place. L. Varnum said the property is right along the edge of the wetland, but it is located a couple feet above due to an existing wall made by the original developer. L. Varnum noted there is erosion occurring and stopping the erosion is important. L. Varnum added there are tree branches and dead trees near the edge of the wetlands and said removing these would be beneficial.

B. Buitenhuis asked if the applicant intends to use concrete footings. D. Ochieng confirmed. B. Buitenhuis said the excavation for footings is the only impact and the loose soil should be protected to prevent sediment from entering the wetland. D. Ochieng said he would build a wall to prevent this and said his intention is to smooth the displaced soil out on the property. D. Ochieng said he had planted grass on the site to prevent erosion.

B. Buitenhuis said that if there will be stockpiling on the site it should be surrounded by a silt fence or straw waddle to prevent erosion.

S. Laput said he had no comments. L. Varnum asked if the applicant had a contractor. D. Ochieng confirmed.

Motion:

B. Buitenhuis motioned, and S. Laput seconded the motion to issue a Negative 3 Determination with the following condition:

1. If the applicant stockpiles materials on the site it shall be surrounded with a silt fence or straw waddle to prevent erosion into the wetland.

The motion passed unanimously, (4-0).

Request for Determination of Applicability

Andrew Goddard

327 Davis Street

Northborough, MA 01532

Project Location: 10 Toupi Lane, Lowell, MA 01854

A Request for Determination of Applicability has been filed by Andrew Goddard to determine whether there are resource areas subject to the Wetlands Protection Act on the site.

Speaking on Behalf:

Scott Goddard, Applicant

S. Goddard said the property is approximately 1 acre and is currently vacant. S. Goddard noted there was a past determination there was a wetland on the property. S. Goddard said the middle of the site has a depression, and can be mistaken for a wetland. S. Goddard said there is volumetric criteria a

wetland must meet to be jurisdictional. S. Goddard said he conducted multiple site visits in April after rain storms and flagged the extents of the water, and calculated the volume of the water which is less than 500 cubic feet. S. Goddard stated this is less than half the required volume for the area to an isolated land subject to flooding. S. Goddard said the calculations were completed by a Professional Engineer. S. Goddard said the area cannot flood much more than that amount, and that it would not be possible for the depression to hold enough water to be considered an isolated land subject to flooding. S. Goddard said the water had reduced significantly after a follow up visit. S. Goddard said there were no signs of amphibian life during site visits. S. Goddard said it is a depression area that fills during rain events and is not large enough to be considered an isolated land subject to flooding.

Speaking in Favor:

None

Speaking in Opposition:

Marie Burns, 24 Newbridge Road

M. Burns said her property abuts the subject property. M. Burns said other wetlands scientists have had larger estimates of the wetland, and she believes the area stores more water than the applicant states. M. Burns said water stays and pools on the site, and many animals reside there. M. Burns stated she submitted photos and videos showing water beyond the flagged area.

Mark Burns, 24 Newbridge Road

M. Burns said the property can have up to 1.5 feet of water at some points in the year and said branches out up into their property.

Mikayla Burns

M. Burns said she is active in wildlife ecology and said the decision would have many ecological impacts. M. Burns said there are amphibians on the site and noted her experience finding frogs and amphibians. M. Burns said the land should not be developed due to animal special on the site and said there is an abundance of pond water that can get up to knee deep on the site.

Patricia McKenna, 12 Newbridge Road

P. McKenna said that when there is significant rainfall the wetland floods into what appears to be two different wetland areas. P. McKenna noted that her basement gets wet during rain events and noted it may increase water on her property.

Linda Tardif, Newbridge Road

L. Tardif said there is a large pond on the property she sees frequently. L. Tardif said the area can pond and get icy, and noted there is a bridge abutting the property which shows it is a wetland. L. Tardif noted wildlife on the lot and said developing the land would hurt abutting properties.

Discussion:

L. Varnum said she visited the site today (6/8/2022) and was sinking into the ground and noted the wetness of the ground. L. Varnum said the proposal does not take into account the total area that floods

on the site. L. Varnum said she was on the Board during the initial subdivision application and this site may have been left for water draining. L. Varnum said that homes in the lower part of the subdivision were built on slabs as it was noted then the area had many springs. L. Varnum said she cannot rely on seeing a surface stream to determine whether it is or isn't a wetland. L. Varnum said the lot was never discussed as buildable with the initial developers. L. Varnum explained the history of the lot and area. L. Varnum said the Commission typically requires a 50 foot setback from a resource area and the lot can't accommodate that.

L. Varnum said the Commission did not receive a report on soils or vegetation which is typically submitted with this type of application. L. Varnum said she believes the extent of water is greater and added that the wildlife has not been considered by the applicant. L. Varnum explained the variety of wildlife on the lot and added that a neighbor noted there were frogs and turtles.

B. Buitenhuis noted staff recommended a peer review and asked if Commissioners would like to take that route.

S. Laput agreed and said he did a site walk and found the property wet and noted there was wildlife. S. Laput said it may be a vernal pool as it has many of these characteristics.

S. Goddard said that the Commission is bound by regulations of what defines a resource area. S. Goddard said the observations and survey data prove the area is not jurisdictional. S. Goddard said the site does not hold water long enough to be a vernal pool, and said there can be areas with wetland vegetation that do not meet the criteria for a wetland. S. Goddard said there must be a certain volume of water and that the criteria is not the same as a Bordering Vegetated Wetland. S. Goddard said it cannot be a pond and it does not hold enough temporary water to meet the volumetric criteria for a jurisdictional area. S. Goddard said he is amenable to a peer review, and said the Commission should affirm the request or advance it to peer review.

W. Lovely said the question is whether it meets the criteria as a jurisdictional area, and the best path forward is a peer review to have the materials peer review and be determined as to whether it meets the definition of a jurisdictional area. W. Lovely noted that having characteristics of a wetland is not enough to make the area jurisdictional. W. Lovely said the Commission should get the report peer reviewed.

L. Varnum said the Conservation Commission is not required to take public comment, but they will.

W. Lovely said that the definition of isolated lands subject to flooding includes groundwater and said the difference of opinion right now is the size of the isolate land subject to flooding.

L. Varnum said she believes the wetland area is larger than what was stated and would like to see this investigated further. L. Varnum said she would like to determine if it is a vernal pool. L. Varnum said a few years ago DEP was concerned about delineating wetlands during extreme drought conditions. S. Goddard said the Northern Massachusetts is not in a drought status.

W. Lovely asked why a vernal pool is not considered jurisdictional. S. Goddard said vernal pools are not wetland resource areas under the Wetlands Protection Act. S. Goddard said certified vernal pools are a particular habitat feature. L. Varnum said the Commission has denied proposals because of vernal pools.

S. Goddard said a vernal pool must be within a wetland resource area and can be layered onto a jurisdictional area, but by itself a vernal pool is not jurisdictional.

S. Laput agreed with S. Goddard that a vernal pool on its own is not jurisdictional. S. Laput said a peer review could determine whether the area is jurisdictional and if it is then a vernal pool could be layered in. S. Goddard said a vernal pool is beyond the scope of the request.

W. Lovely said the peer review should determine whether the area is an isolated land subject to flooding, and if so is it a vernal pool. B. Buitenhuis said the volumetric calculations is the only item under consideration. W. Lovely added that inputs should be considered as well.

S. Goddard said he has made direct observations of the site during the ideal time of the year and is familiar with the process.

Motion:

W. Lovely motioned, and S. Laput seconded the motion to have the professional findings that the land does not fall into a jurisdictional area be peer reviewed and corroborated or refuted. The motion passed unanimously, (4-0).

B. Buitenhuis motioned, and W. Lovely seconded the motion to continue the application to the July 13, 2022 Conservation Commission meeting. The motion passed unanimously, (4-0).

Request for Certificate of Compliance

78-90 Lakeview Ave, LLC
36 Parkhurst Road
Dunstable, MA 01827

DEP #: 206-0782

Project Location: 78-90 Lakeview Avenue, Lowell, MA 01850

A Request of Certificate of Compliance has been filed by 78-90 Lakeview Ave, LLC for the construction project at 78-90 Lakeview Avenue.

Speaking on Behalf:

Brian Milisci, Applicant's Engineer

B. Milisci noted the applicant submitted an as built of the site and noted the Engineering Department had no objections. B. Milisci said they had to file because a portion of the property was in the 100 year floodplain. B. Milisci said the City and FEMA have since completed work and a map revision went into effect recently which lowered the flood elevation 1.5 feet and the property is no longer in the floodplain.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

L. Varnum said she had no concerns. B. Buitenhuis agreed.

Motion:

B. Buitenhuis motioned, and S. Laput seconded the motion to grant the Certificate of Compliance. The motion passed unanimously, (4-0).

OTHER BUSINESS

Discussion

51-57 Shirley Avenue Decision

The Conservation Commission will discuss a previous determination for the property. The property was issued a Positive 5 determination at a previous Conservation Commission hearing requiring a Notice of Intent be filed to complete the proposed work. Note a decision cannot be changed at this hearing.

Discussion

L. Varnum noted the Commission issued a Positive 5 Determination for a previous application at 51-57 Shirley Ave. B. Buitenhuis said they intended to allow the proposed work to be completed with conditions. D. Ricker stated that a Positive Determination requires a Notice of Intent be filed. L. Varnum disagreed. B. Buitenhuis requested further clarification on the meaning of each determination associated with a Request for Determination of Applicability.

Minutes

May 25, 2022 Meeting Minutes

W. Lovely motioned, and B. Buitenhuis seconded the motion to approve the May 25, 2022 meeting minutes. The motion passed unanimously, (4-0).

L. Varnum noted that W. Lovely submitted his resignation from the Commission and said he has been asset to the Commission. W. Lovely noted the good work of the Commission and thanked the Commission.

ADJOURNMENT

W. Lovely motioned to adjourn, seconded by B. Buitenhuis, the motion passed unanimously, (4-0). The time was 8:30PM.