

DATE 9/21/10
APPROVED: Ed S.
Jed

CONSERVATION COMMISSION MINUTES FOR JUNE 22, 2010 PAGE 10-21

MEMBERS PRESENT:

Chairman Ed Schwarz, David Rosenberg, Robert Turner, Cathy Minter, Howard Aibel, and Jed Ferdinand

Meeting on tapes dated 6/22/10

Mr. Schwarz opened the June 22 meeting of the Weston Conservation Commission at 7:30 p.m.

WALK DATE

The walk date was set for Saturday, July 17, 2010. The commissioners will meet at Town Hall Annex at 8:00 a.m.

RECEIPT OF APPLICATIONS:

- Adler, 11 November Trail, new house
- Project Adventure Challenge course, between ball field and Weston High School, School Road (Dan Clarke, Director of School Facilities)

Mr. Adler brought it to the attention of the Commission a corrugated pipe on the property.

MOTION FOR RECEIPT

Mr. Schwarz made a motion to receive the Adler application for a new house at 11 November Trail and Mr. Turner seconded. All in favor, the motion carried (6-0).

DISCUSSION OF APPLICATION: MORLEDGE, 44 OLD MILL ROAD, FAILED SEPTIC, EMERGENCY (PAT MILLER, ARCHITECT)

Patricia Miller stepped forward as the representative for Jenine Morledge. She explained that the system failed structurally. Specifically, Ms. Miller read the report from the health department, which said the drywell is filled to capacity and is filling in. The current system is 35 feet from the wetlands and the proposed system will be 70 feet from the wetlands.

MOTION FOR APPROVAL

Mr. Schwarz made a motion to receive & approve the plan of Joseph and Jenine Morledge, dated March 25, 2010, prepared by Bruce G. Root, as submitted, subject to the following conditions. Mr. Ferdinand seconded. All in favor, the motion carried (6-0).

- A. Filing of the contractor's statement.
- B.

MORLEDGE CONT:

- B. Implementation of the erosion and sedimentation control plan prior to any site preparation activity. The plan must meet minimum standards as set forth in Public Act. No. 83-388 (An Act Concerning Soil Erosion & Sediment Control) Effective July 1, 1985.
- C. The following language shall appear on the subdivision or deeds to lots which are to be filed on the Weston Land Records'

“No regulated activity as defined in the Public Inland Wetland Watercourse Act of the State of Connecticut Regulations as well as the Town of Weston’s Regulations as the same and from time to time as may be amended, shall be permitted in those areas designated and shown as wetlands on the aforementioned maps.” The wetland areas as well as any agreed to “buffer zones” designated on the aforementioned maps shall be established as areas whose natural and indigenous character shall be henceforth preserved and not encroached upon for any use that would alter the natural character of the land”.
- D. Upon completion of the work, the developer will submit a certified report from a qualified professional engineer that the property was developed and the work completed as planned.
- E. All applicable conditions of the Conservation Commission shall be recorded on the maps or liens of the Weston Land Records which are filed with the Town Clerk.
- F. The Conservation Commission reviewed the alternatives to the approved action including a consideration of alternatives which might enhance environmental quality or have a less detrimental effect, and which could feasibly attain the basic objectives of the activity proposed in the application.
- G. Per Public Act 93-305, effective 10/1/93, “Any permit issued under this section shall be valid for five years. Any regulated activity approved by the agency shall be completed within one year from the time such activity is commenced provided the agency may establish a specific time period within which any regulated activity shall be conducted and may require that an activity, once commenced, be completed within a time period of less than one year and further provided the agency extend (1) the time period of the original permit provided such period shall not extend beyond ten years from the date such permit was granted, or (2) the time period within which an activity, once commenced, is required to be completed under this section.”
- H. Any changes in approved plans shall require notification to the Commission and may require that a new application be made.
- I. Applicant agrees, represents and warrants that it will obtain all required federal, state and local permits prior to commencing any work on the site.

DISCUSSION OF APPLICATION: TOAD HALL LLC (FAILLACE),
RECONSTRUCTION OF COTTAGE AND NEW SEPTIC SYSTEM, 306 LYONS
PLAIN (FALLON)

John Fallon came forward to present the application. Mr. Fallon discussed the history of Mr. Faillace's residence in Weston as well as the property, which he purchased in 2008. The main house was dilapidated, so Mr. Faillace took out the necessary building permits to do substantial interior and exterior renovations. He also inquired whether he could demolish and rebuild an external porch. Building Inspector Rack Gleason told Mr. Faillace he could do that work provided that he maintained the same footprint and didn't expand the porch. Based on that conversation and because the cottage needed substantial repair, Mr. Faillace believed that he could undertake, under the permit he had already taken out for the main house, the reconstruction of the cottage. Mr. Fallon emphasized that Mr. Faillace was not acting conspiratorially to sidestep regulations.

Mr. Fallon turned to the conservation issues of the application: Mr. Faillace rebuilt the cottage on the same footprint where the preexisting structure was located when he purchased the property. Mr. Schwarz suggested that the Commission approach the application as if the building is not there presently, but consider whether they would have approved the building under normal circumstances. Mr. Fallon emphasized the importance that Mr. Faillace did not expand the original footprint: he didn't have wholesale excavation and disturbance that would otherwise be associated with that kind of work.

Mr. Schwarz said that under present regulations, the Commission would not allow someone to build on the floodplain or within 100 feet. Mr. Fallon acknowledged that the cottage was originally less than 50 feet and so Mr. Faillace rebuilt a nonconforming building.

There was some discussion over whether Mr. Fallon needed Conservation approval or ZBA approval first and Cathy Minter asked whether Conservation usually discusses applications before ZBA. Mr. Fallon clarified that he was presenting his legal analysis of the conservation side of the application and acknowledged that the Commission was looking to ensure that its regulations are enforced so as to avoid any detrimental impacts to regulated areas, which includes the Saugatuck River.

Mr. Fallon said he is not making an argument with regard to preexisting regulations, but making an analysis of impact. Mr. Fallon cited an e-mail Mr. Faillace sent to the previous property owner asking when the owner's family placed an addition on the cottage as well as cited a survey of the property done for the previous owner to prove that Mr. Faillace did not expand upon the original footprint of the cottage. Mr. Fallon said that point was important in ensuring that there was no adverse impact to the regulated area. Mr. Fallon then said that there was a cottage in that location, with a failing septic

TOAD HALL CONT:

system, for 60 years and that the present application didn't change the location and would build a code-compliant system. Mr. Schwarz asked why Mr. Faillace couldn't build the cottage 100 feet back to be in compliance with the present conservation rules and be out of the floodzone, which is what the Commission would have said if there wasn't a building already there.

Mr. Schwarz said that the Commission had had no jurisdiction over the cottage previous because it was preexisting. Mr. Peter Jay Faillace came forward and identified himself and referred to the letter from the previous owner which Mr. Fallon previously cited. Mr. Fallon said that Mr. Faillace was bringing the structure into compliance with Planning & Zoning's Flood Management Regulations, particularly Mr. Faillace was going to elevate the finished floor.

Mr. Fallon urged the Commission to take into consideration the fact that Mr. Faillace did not act maliciously, or in an attempt to avoid regulations, though Mr. Schwarz said that intent has nothing to do with it. He then asked Mr. Fallon what he thought the proper penalty should be since Mr. Faillace did not comply. Mr. Schwarz suggested that the Commission instruct Mr. Faillace to demolish the cottage, re-build it outside the 100 foot line, but as penalty delay the application for a full year. Mr. Fallon said that Mr. Faillace wanted to avoid tearing down the cottage and relocating it. A discussion followed regarding the use of the structure and how that would alter the impact on the environment. Mr. Fallon said that the reconstruction of the cottage was achieved without any disturbance to the foundation, but if the Commission orders Mr. Faillace to demolish it, then there will be disturbance related to the excavation and fill of the foundation as well as further disturbance associated with the new construction. Mr. Fallon argued that if the analysis of the Commission is to be based upon minimization and avoidance of disturbance, then allowing Mr. Faillace to keep the structure, approving it with normal conditions, and imposing some kind of time penalty would be the least environmentally intrusive decision regarding the application.

The members discussed the possible environmental impacts of either tearing down the structure or leaving it where it is. The members then looked at the proposal for the new septic system. Mr. Schwarz emphasized that the Commission does not hear the application unless it has obtained WWHD approval. Mr. Schwarz advised the Commission to adjourn the discussion of this application until the July 20, 2010 meeting, by which point ZBA would have reviewed the application and Mr. Faillace would obtain WWHD approval.

MOTION FOR RECEIPT

Mr. Schwarz made a motion to receive the Project Adventure Challenge Course application and Mr. Rosenberg seconded. All in favor, the motion carried (6-0).

DISCUSSION OF APPLICATION: CUOMO, 47 SALEM ROAD, RENOVATION, ADDITION, PARTIAL DEMOLITION

Mr. Cuomo came forward and said that on the site walk, the Commission had asked him about what the contractor planned to do to protect the wetlands. He said that there would be a silt fence, temporary stockpile, and hay bales on either side of the driveway. Mr. Schwarz asked how machinery would access the property and suggested that Mr. Cuomo put something down to protect his lawn as a tracking pad. The members looked at the construction plans and advised Mr. Cuomo on other locations for hay bales.

MOTION FOR APPROVAL

Mr. Schwarz moved to approve the plan for the renovation, addition, and partial demolition for 47 Salem Road, as shown on plans prepared by Walter Skidd, dated 4/25/06 and revised 04/22/10, with the addition of hay bales; "Specifications for Silt Fence," dated 06/22/10; Construction Sequencing Plan, prepared by Jeffrey Hart, dated 04/25/06; Construction Plan of 6/22/10; and under the Wetland Protection Plan, dated 06/22/10, with provisions for hay bales on both sides to ensure heavy equipment doesn't tear up the lawn during construction, subject to the following conditions:

- A. Filing of the contractor's statement.
- B. Implementation of the erosion and sedimentation control plan prior to any site preparation activity. The plan must meet minimum standards as set forth in Public Act. No. 83-388 (An Act Concerning Soil Erosion & Sediment Control) Effective July 1, 1985.
- C. The following language shall appear on the subdivision or deeds to lots which are to be filed on the Weston Land Records'

"No regulated activity as defined in the Public Inland Wetland Watercourse Act of the State of Connecticut Regulations as well as the Town of Weston's Regulations as the same and from time to time as may be amended, shall be permitted in those areas designated and shown as wetlands on the aforementioned maps." The wetland areas as well as any agreed to "buffer zones" designated on the aforementioned maps shall be established as areas whose natural and indigenous character shall be henceforth preserved and not encroached upon for any use that would alter the natural character of the land"
- D. Upon completion of the work, the developer will submit a certified report from a qualified professional engineer that the property was developed and the work completed as planned.
- E. All applicable conditions of the Conservation Commission shall be recorded on the maps or liens of the Weston Land Records which are filed with the Town Clerk.
- F. The Conservation Commission reviewed the alternatives to the approved action including a consideration of alternatives which might enhance environmental quality or have a less detrimental effect, and which could feasibly attain the basic objectives of the activity proposed in the application.

CUOMO CONT:

- G. Per Public Act 93-305, effective 10/1/93, "Any permit issued under this section shall be valid for five years. Any regulated activity approved by the agency shall be completed within one year from the time such activity is commenced provided the agency may establish a specific time period within which any regulated activity shall be conducted and may require that an activity, once commenced, be completed within a time period of less than one year and further provided the agency extend (1) the time period of the original permit provided such period shall not extend beyond ten years from the date such permit was granted, or (2) the time period within which an activity, once commenced, is required to be completed under this section."
- H. Any changes in approved plans shall require notification to the Commission and may require that a new application be made.
- I. Applicant agrees, represents and warrants that it will obtain all required federal, state and local permits prior to commencing any work on the site.

Cathy Minter seconded the motion. All in favor, the motion carried (6-0).

DISCUSSION OF APPLICATION CONT.: LAVELLE, 9 RIVERFIELD DRIVE, ADDITION AND DRIVEWAY (DEAN MARTIN, GRUMMAN ENGINEERING)

Mr. Martin came forward and said that at the previous discussion of this application, there were issues regarding site coverage. He said that another issue was whether a previous application had been submitted to modify the garage, but there was no formal, previous application. Because of the setback lines and wetlands, Mr. Martin said that adding the 3rd bay to the current garage and placing the driveway which crosses the waterway was the only option other than placing a new garage in the front yard. Mr. Martin discussed the 60 foot radius of a turn around in the driveway, its encroachment in wetlands, and his proposal for a rain garden to collect runoff from the driveway. Mr. Martin clarified that the project would not increase the amount of flow. Mr. Schwarz said that the addition of a 3rd bay with a driveway crossing a waterway is not proof of any hardship, however since the applicant has assured the Commission that the watercourse would continue to flow. Mr. Martin said he had a plan for plantings, though he hadn't yet defined the plants, along the side of the garage.

MOTION FOR APPROVAL

Mr. Schwarz moved to accept the plan dated 5/27/10, prepared by Grumman Engineering, subject to the following conditions:

- A. Filing of the contractor's statement.
- B. Implementation of the erosion and sedimentation control plan prior to any site preparation activity. The plan must meet minimum standards as set forth in Public Act. No. 83-388 (An Act Concerning Soil Erosion & Sediment Control) Effective July 1, 1985.

LAVELLE CONT:

- C. The following language shall appear on the subdivision or deeds to lots which are to be filed on the Weston Land Records'

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- D. Upon completion of the work, the developer will submit a certified report from a qualified professional engineer that the property was developed and the work completed as planned.
- E. All applicable conditions of the Conservation Commission shall be recorded on the maps or linens of the Weston Land Records which are filed with the Town Clerk.
- F. The Conservation Commission reviewed the alternatives to the approved action including a consideration of alternatives which might enhance environmental quality or have a less detrimental effect, and which could feasibly attain the basic objectives of the activity proposed in the application.
- G. Per Public Act 93-305, effective 10/1/93, “Any permit issued under this section shall be valid for five years. Any regulated activity approved by the agency shall be completed within one year from the time such activity is commenced provided the agency may establish a specific time period within which any regulated activity shall be conducted and may require that an activity, once commenced, be completed within a time period of less than one year and further provided the agency extend (1) the time period of the original permit provided such period shall not extend beyond ten years from the date such permit was granted, or (2) the time period within which an activity, once commenced, is required to be completed under this section.”
- H. Any changes in approved plans shall require notification to the Commission and may require that a new application be made.
- I. Applicant agrees, represents and warrants that it will obtain all required federal, state and local permits prior to commencing any work on the site.
- J. The stipulation that the applicant will present a detailed planting plan for along the whole driveway for the Conservation Planner’s review.

Cathy Minter seconded the motion. All in favor, the motion carried (6-0).

DISCUSSION OF APPLICATION; MODIFICATION: TOWN OF WESTON, ARMY CORPS OF ENGINEERS APPROVED CORRECTIVE ACTION PLAN FOR WETLAND MITIGATION AREA 1, WESTON SCHOOL CAMPUS, SCHOOL ROAD
Mr. Christopher Marchesi from Triton Environmental stepped forward. During the construction phase of the schools, they were required to make a wetlands area, but the

WETLAND MITIGATION AREA CONT:

Army Corps of Engineers said they needed to be corrected and have spent the past three years approving a new plan. Mr. Schwarz asked what the difference was between the plans, specifically what the Army Corps of Engineers found incorrect with the original plans. Mr. Marchesi said that there were incorrect grades, soil types, and plants. The Town was required to monitor the success of the wetlands over a five year period and hired Triton Environmental the first year. Mr. Marchesi explained that the new proposal included corrective measures in terms of grading, plants, and hydrology. Mr. Marchesi explained the drainage of the area. Mr. Schwarz asked whether the wetlands would have any effect on Revson field. Mr. Marchesi said he has not studied it, but that he does not think there would be any effect. The members discussed how other watercourses in the area would be affected. Mr. Marchesi discussed precautions taken during construction, such as a mud tracking pad, as well as the use of an outside contractor to monitor the water after the project is completed.

MOTION FOR APPROVAL

Mr. Schwarz moved to accept the plan for wetland mitigation area 1, prepared by Triton Environmental Inc., figures 1 through 7, dated 6/3/10, subject to the following conditions:

- A. Filing of the contractor's statement.
- B. Implementation of the erosion and sedimentation control plan prior to any site preparation activity. The plan must meet minimum standards as set forth in Public Act. No. 83-388 (An Act Concerning Soil Erosion & Sediment Control) Effective July 1, 1985.
- C. The following language shall appear on the subdivision or deeds to lots which are to be filed on the Weston Land Records'

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- D. Upon completion of the work, the developer will submit a certified report from a qualified professional engineer that the property was developed and the work completed as planned.
- E. All applicable conditions of the Conservation Commission shall be recorded on the maps or liens of the Weston Land Records which are filed with the Town Clerk.
- F. The Conservation Commission reviewed the alternatives to the approved action including a consideration of alternatives which might enhance environmental quality or have a less detrimental effect, and which could feasibly attain the basic objectives of the activity proposed in the application.

WETLAND MITIGATION AREA CONT:

- G. Per Public Act 93-305, effective 10/1/93, "Any permit issued under this section shall be valid for five years. Any regulated activity approved by the agency shall be completed within one year from the time such activity is commenced provided the agency may establish a specific time period within which any regulated activity shall be conducted and may require that an activity, once commenced, be completed within a time period of less than one year and further provided the agency extend (1) the time period of the original permit provided such period shall not extend beyond ten years from the date such permit was granted, or (2) the time period within which an activity, once commenced, is required to be completed under this section."
- H. Any changes in approved plans shall require notification to the Commission and may require that a new application be made.
- I. Applicant agrees, represents and warrants that it will obtain all required federal, state and local permits prior to commencing any work on the site.
- J. Triton Environmental will monitor and ensure that the construction as proposed will substantially complies with plans and will coordinate with the Conservation Planner.

Mr. Aibel seconded the motion. All in favor, the motion carried (6-0).

DISCUSSION/DECISION: NOTICE OF VIOLATION AND EXPIRED PERMIT, 167 VALLEY FORGE ROAD AND ADJACENT PROPERTY OWNED BY THE TOWN OF WESTON (MAP 17, BLOCK 3, LOT 2), (CHOMIK)

Mr. Schwarz asked Mr. Chomik whether he had the Notice of Violation from the Code Enforcement Officer as well as the letter written by the First Selectman. Mr. Schwarz said that the Conservation Planner reported that Mr. Chomik was filling in wetlands and a stream. Mr. Chomik denied this and said that there are no wetlands in his area. Mr. Chomik said that below the watercourse, there is new fill, but not where the stream is. He said that while he was building a driveway, he piled up rocks and everything was at a 45 degree pitch. Mr. Schwarz asked if Mr. Chomik had applied to the Conservation Commission, because any work done within 100 feet of a watercourse requires an application. Mr. Chomik said he had a driveway permit, zoning permit, and conservation permit. Mr. Schwarz asked Mr. Chomik whether he had received an administrative approval from the Conservation Planner since he never applied to the Conservation Commission. Mr. Chomik said he saw the Conservation Planner twice while he was applying for his driveway permit. Mr. Turner asked Mr. Chomik whether he was in the process of obtaining a new permit since his old permit had expired. Mr. Schwarz asked Mr. Harper for input. Mr. Harper said he used to own the property and described the location of a pond and the stream. Mr. Harper had met with Mr. Chomik on the site. It was noted that Mr. Chomik had completed some stabilization work that Fred Anderson had reviewed and approved on a site visit.

CHOMIK CON'T

The Commission told Mr. Chomik to meet with Mr. Anderson to discuss all of the items in the June 10, 2010 Notice of Violation. The Commission will discuss this matter again at the July 20, 2010 meeting and will walk the property on July 17, 2010.

DISCUSSION: REVIEW OF ANY ADMINISTRATIVE REVIEW (ADM) PERMITS ISSUED BY CONSERVATION PLANNER AND DRAFT REVISIONS TO INLAND WETLAND REGULATIONS

Tracy Kulikowski said that Fred Anderson has not issued any administrative approvals. She also said that she had heard back from DEP regarding the Inland Wetland Regulations and DEP no longer reviews regulations due to a shortage of staff; they will send a letter acknowledging receipt, at which point the Commission can schedule a Public Hearing. Tracy Kulikowski said that she compared the Commission's regulations next to the DEP model regulations and that there are several sections that Town Council advises the Commission to include, particularly sections in relation to the Avalon Bay v. Wilton litigation. Tracy Kulikowski also said that the Commission needs to decide what they want Section 19 to say.

DISCUSSION/DECISION CON'T: NOTICE OF VIOLATION AND EXPIRED PERMIT, 167 VALLEY FORGE ROAD AND ADJACENT PROPERTY OWNED BY THE TOWN OF WESTON (MAP 17, BLOCK 3, LOT 2), (CHOMIK)

Mr. Schwarz returned to the topic of John Chomik, saying that the Commission should tell him that he has no permit, cannot do any work except for mitigation and that he has to apply in time for the Commission to hear him at the July 20, 2010 meeting. The members discussed the Notice of Violation.

APPROVAL OF MINUTES

Mr. Schwarz moved to approve minutes from the April 13, 2010 meeting and May 18, 2010 meeting. Mr. Aibel seconded the motion. All in favor, the motion carried (6-0).

MOTION TO ADJOURN

Mr. Schwarz made a motion to adjourn the meeting and Mr. Aibel seconded. All in favor, the meeting adjourned.

Respectfully submitted,

Victoria Farr for Delana Lustberg
Recording Secretary