

TOWN OF GROTON

Conservation Commission

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### 

### **Conservation Commission Meeting**

#### **Tuesday, November 23 2021 at 6:30 PM**

**Victual Meeting – Zoom**

## **Present:** Larry Hurley, Chair; Olin Lathrop; John Smigelski; Eileen McHugh; B. Easom, Vice-Chair; Peter Morrison (arrived at 6:55).

## **Absent:** Alison Hamilton, Clerk

**Others Present:** Nikolis Gualco, Conservation Administrator

6:30 PM L. Hurley called the meeting to order.

**1. APPOINTMENTS AND HEARINGS\***

6:30 PM – NOI (MassDEP#169-12\*\*), (Parcel 216-31) Gratuity Road, construction of a driveway to service a new two-family dwelling ***(cont.)***

**Applicant:** Brian Stanton; Engineer: Jack Visniewski

Jack Visniewski was present for the applicant and discussed the following comments provided by the DEP. The numbers regarding filling the floodplain and the replication area did not match the form provided. Those numbers have been matched up and revised. The DEP recommended a silt fence to be installed to limit the construction across the floodplain and that has been installed along the entire floodplain line. A Commissioner commented at the last meeting that the trees should be preserved and the total amount of trees being removed has been decreased.

Upon a motion by B. Easom, seconded by J. Smigelski, it was:

Voted to close the public hearing.

**The motion passed by a roll call vote. (Yes: OL, BE, EM, JS, LH)**

6:35 PM – NOI (MassDEP#169-12\*\*), 267 Whiley Road, for repairs/improvements to retaining walls, landscaping, and drainage ***(cont.)***

**Applicant:** Mark Walker; Representative: Ryan Proctor of Dillis & Roy

Ryan Proctor was present for the applicant and stated that the revised plan and response letter has been submitted. At the last meeting a commissioner requested for notation of the proposed pervious patios, that detail has been added to the plans. There was a question presented regarding the preservation of trees being removed. R. Proctor listed the following vegetation that would be used around the site and planted on the backside of the retaining wall to provide stabilization after the construction was complete: Rhododendron, Creeping Juniper, Cherry Trees, Dogwood, and Weeping Redbuds. To ensure that the proposed retaining wall is installed in the exact footprint of the existing one, dimensions have been provided including the variance from the existing foundation to the existing wall. Regarding stockpiling material, an existing stockpile would be used and after the completion of the improvements the pile would be removed offsite.

E. McHugh questioned if Dillis & Roy have construction oversight contracted with the homeowner for the sake of staking out the wall prior to any construction. R. Proctor was unsure due to not writing the formal proposal and stated as soon as the wall is removed it would be staked out. E. McHugh requested that a note be added stating that the contractors need to allow for Dillis & Roy to stakeout the existing retaining wall before any construction. R. Proctor stated that he would notify the contractors of the request and add it on the plan.

N. Gualco suggested that the ConCom tailor a condition to require a certified plot plan of the retaining wall verifying distancing before any other work takes place.

B. Easom commented on the proposed drainage and questioned the flow and how the infiltration has been sized. R. Proctor explained that the infiltration area would be a stone rip rap to prevent erosion at the outfall of the pipe. The 4” pipe is encased in ¾” stone and intending that the surface water will continue into the lake.

L. Hurley requested that the retaining wall be staked on the site plan prior to removal and recommended offsets. R. Proctor ensured that he would look into offsets and stake the wall prior to removal.

Upon a motion by E. McHugh, seconded by B. Easom, it was:

Voted to continue the hearing to the next scheduled meeting on December 14, 2021.

**The motion passed by a roll call vote. (Yes: JS, EM, BE, OL, LH)**

6:40 PM – NOI (MassDEP#169-12\*\*), 8-10 Hollis Street, for alterations to an existing drainage system **(cont.).**

**Applicant:** Stoney Brook LLC; **Engineer**: Stan Dillis; Attorney: Robert Collins

Attorney Collins discussed the problematic submission that occurred on August 23, 2021. A NOI was filed which addressed issues that had been previously submitted on a prior filing on an OOC that had never been closed due to the State of Emergency that was declared. The filing requested two minor changes that were previously approved. A drainage retention area needed adjustments to allow for outflow; currently it is causing flooding to the driveway. A slight depression was proposed to provide a natural outflow. A retaining wall located against the building is directing surface runoff into the cellar. By reducing the height of the wall to 1 foot it would rectify the issue. Attorney Collins questioned if an amendment to MassDEP#169-1153 which had been approved by the ConCom a few years ago would be the best solution to approve the minor changes. The NOI has been missing for the last three months. Attorney Collins stated that the approved field changes would be attached to the document generated by the ConCom to the unreported OOC and then recorded. This would allow for his clients to address the issues prior to spring.

B. Easom questioned the plan to remedy the unrecorded MassDEP#169-1153. Attorney Collins reiterated that once the changes are approved and the document is provided by the ConCom, he would attach it to the copy of the OOC and then it would be recorded as an exhibit to the document. He explained that it can be registered at any time with the Registry of Deeds. B. Easom then questioned if there are any gutters on the side of the structure where the retaining wall is located. S. Dillis replied the elevation drop is at the gable end of the building. B. Easom supported the paperwork that Attorney Collins suggested.

O. Lathrop was in favor of the administrative procedure that was outlined. He noted that there are two changes, one where a riprap was added so the rain garden can drain out. S. Dillis commented that the overflow will remain at the same elevation of the parking lot however; the rain garden will provide infiltration and not allow for undermining the parking lot. The outflow will proceed towards the resource area. Attorney Collins stated that the existing retaining wall directs the runoff from the side of the building into the cellar; the grade and the location of a window also contribute to the issue. By bringing down the elevation and removing the current wall with a smaller one it would remedy the issue.

E. McHugh questioned if Stan Dillis would be taking over as the engineer and if an extension is necessary. S. Dillis replied yes and he would be submitting the As-Built Plan for the driveway. Attorney Collins stated a 12-month extension on MassDEP#169-1153 would be sufficient along with the approval of the minor field changes. N. Gualco commented that the Orders of Condition runs with the property and not the homeowner.

Upon a motion by E. McHugh, seconded by B. Easom, it was:

Voted to provide a 12-month extension to MassDEP#169-1153.

E. McHugh made an amendment to her original motion after B. Easom requested that the exact extension date be included.

Upon a motion by E. McHugh, seconded by B. Easom, it was:

Voted to provide an extension of the OOC to November 22, 2022, MassDEP#169-1153.

**The motion passed by a roll call vote: (Yes: PM, JS, EM, BE, OL, LH).**

Upon a motion by E. McHugh, seconded by B. Easom it was

Voted to accept the plan submitted by Dillis & Roy as a minor field change to MassDEP#169-1153.

**The motion passed by a roll call vote: (Yes: BE, OL, EM, PM, JS, LH)**

6:45 PM – NOI (MassDEP#169-1219), 330 Old Dunstable Road, for the upgrade to an existing sewage disposal system ***(cont.)***

**Applicant:** Richard Lewis Attorney: Robert Collins

Attorney Collins presented for his client Richard Lewis discussing that the project has been held up by Natural Heritage while they reviewed the submission. Those issues have been resolved and the plan provided to the Board incorporates the remedies. The area displayed in red on the plan requires a restriction which Attorney Collins will be composing. Natural Heritage recommended the installation of fencing, signage, and bounding and those will be clearly delineated. Attorney Collins suggested when the ConCom acts to include a provision that requires compliance to the conditions that Natural Heritage promulgates. Attorney Collins discussed the two items that need to be addressed which include, the upgrade to a septic system to one of the oldest homes in Groton that his applicant currently lives in and a shared driveway that was approved last year.

E. McHugh questioned if the turtle barrier is new. S. Dillis stated yes and there would be a condition written by Natural Heritage enforcing a turtle barrier to be installed during construction between March 15 and October 15. Once the construction is complete the barrier can be removed. E. McHugh questioned if the State had signed off on the plans provided to the ConCom. S. Dillis stated that he had forwarded an email from Rebecca from Natural Heritage and it indicates that once the deed restrictions have been received, they will approve the plans.

B. Easom stated that his concern for the sediment forebay in the 100-foot buffer zone has been eliminated with the requests made from Natural Heritage. He then requested information regarding the deed. Attorney Collins replied that the deed restriction would be in perpetuity and Natural Heritage would be the holder.

O. Lathrop questioned how the deed restriction is different from the CR. Attorney Collins explained that a conservation restriction is built into the deed and incorporates language that is very similar to a permanent CR. The use is being restricted along Bridge Street and Old Dunstable Road; there cannot be any removal of existing woodland vegetation except for the maintenance of the hedgerow. There is a resource area in the center of the site and in the back portion there is a field and no structures are allowed, except for the maintenance of the field to prevent reverting back into a forest. O. Lathrop clarified that there would be no structures and no trees cut down in perpetuity. Attorney Collins replied yes. O. Lathrop expressed that he was pleased with the driveway being moved out of the 100-foot buffer zone and there being only a small area of grading in the Conservation area. Attorney Collins explained that there is a rain garden in that area as well. O. Lathrop then questioned the runoff flow. S. Dillis explained that the water flows sideways between the two lots and then flows into the infiltration/rain garden area. Attorney Collins commented that the water flow would be replicating what is currently happening now.

L. Hurley questioned if Attorney Collins was writing the DR. Attorney Collins replied yes and he would provide the ConCom with a copy once it is completed.

The ConCom had a brief discussion if the hearing should be continued. After speaking with Attorney Collins and explaining that the DR only addresses the requests made by Natural Heritage, they agreed to close the hearing.

B. Easom questioned if there would be a homeowner’s association to maintain the fields. Attorney Collins explained that Richard Lewis and his sons would be responsible for any mowing.

Upon a motion by B. Easom, seconded by J. Smigelski, it was:

Voted to close the public hearing.

**The motion passed by a roll call vote.** **(Yes: JS, PM, EM, BE, OL, LH)**

6:46 PM – NOI, MassDEP#169-1220, Lot 2 Old Dunstable Road, for the construction of a shared driveway as part of a proposed residential subdivision ***(cont.)***

Upon a motion by B. Easom, seconded by P. Morrison, it was:

Voted to close the public hearing.

**The motion passed by a roll call vote**

**2. GENERAL BUSINESS\***

Permitting

OOC, MassDEP#169-1222, 37 Boathouse Road

Upon a motion by P. Morrison, seconded by E. McHugh, it was:

Voted to issue the Order of Conditions for 37 Boathouse Road under the Wetlands Protection Act, MassDEP#169-1222.

Upon a motion by O. Lathrop, seconded by B. Easom, it was:

Voted to strike condition #58 and replace it with a condition that states: “The building must remain in the vertical footprint of the structure which is the previous foundation except for the roof which may extend up to 2’ outside that.”

E. McHugh commented that the footing extends to the water's edge and requested clarification on the building and the deck. O. Lathrop stated that the overhanging deck and the overhanging second floor would be part of the structure and constrained in the vertical footprint of the existing building, not including the concrete pad.

He withdrew his first motion and made the following changes.

Upon a motion by O. Lathrop, seconded by B. Easom, it was:

Voted to Strike condition #58 and replace it with a condition that states: “Any part of a proposed structure including any decking must remain vertically in the footprint of the existing foundation except for the roof that may extend up to 2 feet.”

**The amended motion failed by a roll call vote. (Yes: BE, OL/ NO: PM, JS, EM, LH) 2-4**

Upon a motion by O. Lathrop, seconded by B. Easom, it was:

Voted to strike condition #58 and replace it with a new condition that states: “The new structure may not extend out past the lake.”

E. McHugh clarified that the lake edge does not move, and requested that the language say no structure will extend out past the existing concrete wall in the lake direction.O. Lathrop withdrew his motion and added the recommended language.

Upon a motion by O. Lathrop, seconded by B. Easom, it was:

Voted to strike condition #58 and replace it with a new condition that states: “The new structure may not extend out past the existing concrete wall in the lake direction.”

**The amended motion failed by a roll call vote. (Yes: BE, OL/ NO: EM, PM, JS, LH) 2-4**

**The original motion passed by a roll call vote. (Yes: EM, JS, PM, LH/ NO: BE, OL) 4-2**

Upon a motion by P. Morrison, seconded by E. McHugh, it was:

Voted to issue the Orders of Conditions under the Groton Wetlands Protection Bylaw for 37 Boathouse Road, MassDEP#169-1222.

**The motion passed by a roll call vote**. **(Yes: JS, EM, PM, LH/ No: BE, OL) 4-2**

COC, MassDEP#169-0295, 267 Whiley Road

Upon a motion by E. McHugh, seconded by B. Easom, it was:

Voted to issue the Certificate of Compliance for 267 Whiley Road, MassDEP#169-0295.

**The motion passed by a roll call vote. (Yes: JS, PM, EM, BE, OL, LH)**

COC, MassDEP#169-0420, 267 Whiley Road

Upon a motion by E. McHugh, seconded by B. Easom, it was:

Voted to issue the Certificate of Compliance for 267 Whiley Road, MassDEP#169-0420.

**The motion passed by a roll call vote. (Yes: JS, PM, EM, BE, OL, LH)**

COC, MassDEP#169-1149, 267 Whiley Road

Upon a motion by E. McHugh, seconded by P. Morrison, it was:

Voted to issue the Certificate of Compliance for 267 Whiley Road, MassDEP#169-1149.

**The motion passed by a roll call vote. (Yes: EM, BE, OL, JS, PM, LH)**

COC, MassDEP#169-1197, 267 Whiley Road

Upon a motion by E. McHugh, seconded by B. Easom, it was:

Voted to issue the Certificate of Compliance for 267 Whiley Road, MassDEP#169-1197.

**The motion passed by a roll call vote. (Yes: BE, OL, JS, PM, EM, LH)**

Land Management

*Priest Family Conservation Area – MassWildlife Habitat Grant (Update)*

N. Gualco informed the ConCom that the grant was approved and the CPC will be notified. N. Gualco has been corresponding with the forester and reviewing the contract documents that will need to be finalized with the State. There were two setbacks that needed to be managed before proceeding; one was cleared today with the Mass Historical Society. The second one is with Natural Heritage, at the time of applying for the land grant the land was not a priority habitat, with the update the whole property is classified as a priority habitat. Permission should be received shortly. The Stewardship Committee suggested conversing with Mike Barry to treat the land in the spring. B. Easom questioned what is required to be filed to Natural Heritage. N. Gualco explained there is nothing that needs to be submitted; only the grant will be evaluated.

*Discuss MOU between Conservation Commission & Invasive Species Committee*

N. Gualco commented that the Stewardship Committee had been working with O. Lathrop and a vote was made to recommend the MOU for approval. O. Lathrop added that The Invasive Species Committee has endorsed the MOU as well.

O. Lathrop discussed that the Invasive Species Committee submits numerous RDA’s to treat invasive species and they are trying to make the process simpler for treating land outside of the buffer zone on Conservation Land. This would allow for the use of pesticides, and when completed they would notify the Conservation Administrator on the species that were treated, the location, and the pesticide used. At any time the ConCom would have the authority to change the MOU. B. Easom requested an explanation on how this would help the Invasive Species Committee. O. Lathrop responded that RDA’s will not be continuously filed to request permission to treat invasive species on the ConCom land outside of the buffer zone. If treatment is required within the buffer zone the appropriate requests will be made to meet the State regulations. J. Smigelski suggested a notification to the Conservation Administrator prior to any work, this would allow for concerned residents to be properly informed. B. Easom questioned what is required if the Invasive Species Committee treats invasive species within the buffer zone. O. Lathrop explained that an RDA needs to be filed; State requirements cannot be met with an MOU. N. Gualco suggested that the ConCom could approve a management plan submitted by the Invasive Species Committees for either a particular property or geographic region with a few properties to identify needs of services, describe the methodology, and submit an NOI to precede approval for any treatment within a buffer zone. A process can be streamlined as long as the State Requirement has been met. E. McHugh requested that O. Lathrop included that the Conservation Administrator would be notified prior to any treatment. O. Lathrop agreed to include the request.

Upon a motion by E. McHugh, seconded by B. Easom, it was:

Voted to accept the MOU developed by the Invasive Species Committee with the amendment of pre-notification.

**The motion passed by a roll call vote. (Yes: JS, EM, BE, OL, PM, LH).**

General Discussions/Announcements

None

Committee Updates

B. Easom informed the ConCom that CPC learned that the State match would be 57%.

Approve Meeting Minutes

Upon a motion by B. Easom, seconded by E. McHugh, it was:

Voted to approve the meeting minutes for November 9, 2021.

O. Lathrop requested that the ConCom revise the minutes prior to approving.

Upon a motion by B. Easom, seconded by P. Morrison, it was:

Voted to approve the meeting minutes for November 9, 2021 as amended.

**The motion passed by a roll call vote. (Yes: BE, OL, EM, PM, LH) JS- Abstain.**

Invoices

Upon a motion by O. Lathrop, seconded by B. Easom, it was:

Voted to approve the Conservation Administrator to pay the invoice to the Town Council to not exceed $2,000.

**The motion passed by a roll call vote. (Yes: JS, PM, EM, BE, OL, LH)**

**3. Open Session for topics not reasonably anticipated 48 hours in advance of meeting**\*

**4. Executive Session pursuant to MGL Ch. 30A, Sec. 21(6):** \* “To consider the purchase, exchange, lease, or value of real estate, if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body.”

Larry Hurley, Chairmen, declared that there was business that required the Commission to move to executive session.

**5. Adjournment**

**8:01 PM**

Upon a motion by B. Easom, seconded by E. McHugh, it was:

Voted to move to Executive Session and not to return to the open session for the purpose of considering the purchase, exchange, lease, or value of real estate, as the chair had declared that an open meeting may have a detrimental effect on the negotiating position of the Commission.

**The motion passed by a roll call vote (Yes: OL, PM, BE, EM, JS, LH)**

**Minutes Approved: December 14, 2021**