

## Conservation Commission Minutes, 10/05/2017

**Lenox Conservation Commission  
Landuse Meeting Room  
October 5, 2017  
Minutes**

**Members present:** Chair Neal Carpenter, (NC); Tim Flanagan, (TF); David Lane, (DL); Joseph Strauch, (JS); Vince Ammendola, (VA); Dick Ferren, (DF); Rose Fitzgerald Casey, (RFC)

**Staff Present:** Peggy Ammendola, Land Use Clerk, (PA)

Also present were the following: Rob Akroyd of Greylock Design; Mark Smith of Mark Smith Design; and Carolyn Newberger, abutter to Mr. Merritt's property; Jessica Toro and Sari Hoy, both of Native Habitat Restoration, LLC; DPW Superintendent Bill Gop and Jennifer Birrell, student of Dick Ferren's.

**Notice of Intent, Edward Merritt, 139-2 Lime Kiln Road, Map 27 Lot 18-2.** The project proposed is for the re-construction of the existing garage into an approximate 3,600 square foot studio expansion and to alter the existing drive to a new layout with comparable dimensions to service the studio expansion. First hearing was on September 7, 2017 and continued to September 21, 2017 for more information and continued for a second time to October 5, 2017 for more information.

On October 5<sup>th</sup>, just before this meeting, Mr. Akroyd delivered a supplemental package which was submitted in response to the Commission's request at the meeting of September 21<sup>st</sup> for additional information. Mr. Akroyd noted that the only change in the drawing is the roof line which is now pitched to the north east so that the water will drain one way and a portion of what was building is now a stone, dry laid terrace. The package included the following:

- Mass Audubon Letter
- Acknowledgement of the Conservation Restriction from Mass Executive Office of Energy and Environment Affairs
- Stormwater Recharge Calculations
- Floodplain Delineation Documents
- Revised NOI Site Plan (Revision date of 10/04/2017)
- Revised NOI Grading Plan (Revision date 10/04/2017)

Mr. Akroyd reviewed with the Commission the information contained in the package. He pointed out that within the package there is detailed information on how Patrick McColgan of Taconic Land Surveyors determined the flood plain information. TF confirmed with Mr. Akroyd that the elevations on the Site Plan are consistent with the 1929 USGS (Geological Survey).

Mr. Akroyd said that the vegetation line on the plan is accurate to what exists without the white pines which are closer to the building. There is no intention to clear trees and vegetation other what had been previously discussed.

Mr. Smith, of Mark Smith Design Inc. in Lenox, wanted the Commission to know that he is not the designer of the building, but here as a friend to the Newbergers to help them through this process. The Newbergers live across the street from Mr. Merritt.

Mr. Smith asked if the existing structure and slab would be removed. Mr. Akroyd said that this would be the case and a new slab would be poured and the entire proposed building will be on a frost wall. Mr. Smith asked if all of the roof runoff would hit the gravel trench and then be directed elsewhere. Mr. Akroyd responded that the runoff would not be diverted and it would percolate. Footing drains came up and Mr. Akroyd said that this hasn't been determined at this point, but would be put in if required by the building inspector.

TF asked Mr. Akroyd if Mr. Merritt has filed for a variance, Mr. Akroyd responded that a variance would be required if the proposed structure is built in its current configuration, with the reduced footprint and within the setbacks. TF responded that the Commission is required to ask the question if applications for all permits have been made and he does not feel that the Commission can approve this request until an application to the ZBA has been filed. Mr. Akroyd said that he will be filing a petition for a Variance to the Zoning Board of Appeals.

DF made a motion to continue to October 19, 2017 at 7:45 PM. RFC seconded the motion and the Commission voted to agree 6-0-1, with TF abstaining.

**Town of Lenox, Kennedy Park, Baker's Pond, West Dugway Rd., Map 22 Parcels 4 & 21, MassDEP File # 198-0281-** In May 2017 Town Manager Chris Ketchen started the process to have the Commission issue a Certificate of Compliance. Refer to June 1, 2017 minutes in which it is stated that on May 23, 2017, a site visit was held and the Commission concluded that the work done was not in compliance. The Commission provided this to the Town Manager:

- Restore water level to 85.3; as built spillway structures, bank, pond bathymetry, and path locations must comply with approved Notice of Intent Plans and Order of Conditions

- Repair and replant bank and S.E.C. areas as needed after water level and spillway modifications
- Decommission access road and restore native vegetation
- Confer with Conservation Commission about planting plan

(Refer to the minutes of June 1 and June 15<sup>th</sup>, 2017.)

Four photos of recent efforts for corrective measures at Bakers Pond were sent via email on October 5<sup>th</sup> from Land Use Director Gwen Miller. Jessica Toro and Sari Hoy, both of Native Habitat Restoration, LLC and DPW Superintendent Bill Gop were present to discuss the photos and the planting plan.

*History: In November of 2014 Darrin Harris of Hill Engineers requested that an existing Order of Conditions (OOC) be extended, File # 198-211, (May 18, 2006). The OOC had expired, as there was no evidence that it had been previously extended and even with the Permit Extension Act, it was invalid. The project for that OOC called for replacing of pipe, removal of invasive species, trail work around the pond area, repairing the dam, and vista clearing. The Commission agreed that the work had been completed and issued a Certificate of Compliance in order to close out this File #.*

*Also in November 2014 a new NOI was filed, Mass File # 198-0281, The project was for the environmental enhancement of site conditions for native amphibians and consequently an improvement of park aesthetics. Mr. Harris had presented the project at the Oct. 16, 2014 meeting as follows:*

*Phase #1- Involves clearing out around Baker's Pond, draining ~and dredging it, getting rid of invasive species, both plants and fish, and let the pond refill. ~As necessary, other invasive species around the pond will be cleared out. ~*

*Phase #2- Replace the rotted water pipe with 3 inch high density polyethylene pipe at a depth of four feet. ~It will have valves at each end. ~This will be used for a maintenance source of water. ~Hill Engineers will be working with Berkshire Community College students who are in the environmental program. ~*

*The Commission issued an Order of Conditions with special conditions which included the proposed removal of shrubs and bushes from the upland area (see Note #1 on submitted plans entitled "Baker Pond Site Plan and Cross Section") shall be limited to invasive species. Native vegetation shall be retained where possible. (Refer to the minutes of November 6 and November 20, 2014.)*

Mr. Gop said that the DPW has closed off the two access roads and he has removed the rubber gasket and extended pipe which had been installed by Hill Engineering to accommodate a higher level of water in the pond before the excess water would run out. This was a violation of the Order. Mr. Gop will research a drawing that he has to see if it has been marked to show where elevation was taken from and provide that to the Commission.

Ms. Toro and Ms. Hoy had specific questions regarding the area of work and how the Commission wanted them to proceed to restore. TF listed two concerns regarding the pond. One is having biomass below the water line and erosion of the bank. There are hay logs placed around the pond and jute netting which lines the pond. TF said that the logs should be removed, but would not want the jute netting that lines the pond to be removed. He said that there are minor problems with the decomposition of the netting, but the exposed netting is a wildlife entrapment hazard, so that should be clipped so that none of it is exposed. Nothing under water is to be dug up.

Ms. Toro clarified that the work area is from the curb cut to the pond, and invasive control would be up to the top of the bank. Discussion ensued regarding erosion control, seeding etc. and the steps to be taken now and in the spring. Mr. Gop will advise on what the water level will be and seeding will not begin until that is determined. The erosion wattle will be removed.

Ms. Toro said that she understood that the goal is to ultimately want Baker's Pond to be a vernal pool system (with no fish) to provide a habitat for specific species, a viewable site to walk around and enjoy and to have a wetland on the other side. Winterberries had been referenced as a single species hedgerow, but she pointed out that this species would grow very tall and dense. TF said that the planting was designed to get the bank as stable as soon as possible. Ms. Toro said that she would also provide suggestions for something other than winterberry that would not be any more expensive.

There was question as to whether the trail had been permitted and it went all of the way around the pond or not. DL felt that the trail was pre-existing. The Commission agreed that there was a need to determine which plan was the most current and that it was necessary to comply with the Order of Conditions. Ms. Toro will work with Gwen Miller, Land Use Director to get this information. She will review the Order of Conditions and the Commission's check list. With this and information gathered during tonight's discussion, Ms. Toro told the Commission that she and Ms. Hoy would work on providing suggestions/options on how to get the habitat value in and stabilize the site without impeding the visual aspects.

TF requested that the Commission be provided with information on the bottom contours of the pond as well as the pipe elevation.

In the meantime, the straw wattles and invasives will be removed. Photos will be taken. The meeting was continued to November 2, 2017 at 7:30 PM.

#### **Approve Minutes:**

- September 21, 2017 JS made a motion to approve the minutes as amended. DF seconded the motion and Commission voted to approve 6-0-1. RFC abstained as she was not at that meeting.

#### **Other Business:**

- Certificates of Compliance:

*Ed Merritt, 139 Lime Kiln Rd., Map 27 and partial of lot 18.* RFC made a motion to issue a Partial COC and VA seconded the motion. The Commission voted to approve 6-0-1. TF abstained.

*Macalin Realty Trust, Martha Lane, Map 18 Parcels 46, 47, 51, 52, 57 and 58*-Found to not be in compliance at this time. (Wrong plan was followed.) NC has spoken to Tim Face and the issues will be corrected.

**Site Visits:**

- September 16, 2017-**Edward Merritt, 139-2 Lime Kiln Road, Map 27 Lot 18-2, attended by TF VA NC**
- Scheduled for October 6, 2017 at 4:00 PM-**National Grid/Massachusetts Electric Company, Request for Determination of Applicability, Veteran's Memorial Highway within roadway right-of-way limits.**

**Other Business:**

**David Ward, Lenox Commons, 55 Pittsfield Road, Map 17 Parcel 40** - At the September 7, 2017 meeting, JS stated that he has looked at the Conservation Restriction and the Division of Fisheries and Wildlife permits for the entire project and he feels that this property may not be in compliance with the existing order with regards to the transfer of responsibility from Ward to the new owners. The Commission subsequently sent a letter to Mr. Ward. The Wards responded that at the time of the CR, the property was owned by association and still is. There have been changes in board members, but the ownership has remained the same. Mr. Ward said that he will have an attorney who is also on the board of the homeowner's association to write a letter to the Commission to that effect.

RFC made a motion to adjourn and DF seconded the motion. The Commission voted to agree 7-0 and the meeting was adjourned at 9:30 PM.

Respectfully submitted,  
Peggy Ammendola