

Conservation Commission Minutes, 10/19/2017

Lenox Conservation Commission Landuse Meeting Room October 19, 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 was Mark Smith of Mark Smith Design Inc. and DF's student, Jordan Young.

The meeting was called to order at 7:30 PM

Request for Determination of Applicability, Massachusetts Electric Company for property located on Veteran's Memorial Highway within roadway right-of-way limits. Replacement of three utility poles, one push-brace pole and the installation of one anchor pole and associated push-brace.

No one was present to present the application. VA made a motion to continue the meeting to November 2nd at 7:30 PM. DF seconded the motion. The Commission voted to agree 6-0. (DL was not present at the time.)

At 7:35 Katy Wilkins of Tighe & Bond arrived. DF made a motion to nullify the previous motion. RFC seconded the motion and the Commission voted to agree 7-0.

(Note: PA had called the applicant's representative, Jaime Walker, the day before tonight's meeting on two occasions to remind her of the meeting. The first voice mail misstated that the meeting would be at 8:00 PM, and the second voice message was to correct the time to 7:30 PM. The message relayed to Ms. Wilkins was that the meeting was at 8:00 PM.)

Ms. Wilkins described the project which was to replace a pole damaged in a recent storm. Upon investigation it was felt that the other poles should also be replaced. They had hoped to move the poles out of the wetland area, but Mass DOT didn't approve. As had been past practice, one pole had been anchored in a nearby tree. Instead, the replacement pole will have a screw anchor 4-5 inches in diameter that will be placed in the ground. This is the only new impact. Two poles are in the BVW and one is in the buffer zone at the edge. It is thought that the proposed work falls under exempt maintenance activity.

TF asked Ms. Wilkins if she had received a "no take" letter from Natural Heritage. She did not, but offered documentation, an email, from David Paulson, Endangered Species Review Biologist with Natural Heritage. Mr. Paulson expressed no concerns but agreed with the Applicant's proposal to do the work in the dormant season. Ms. Wilkins will email the letter to the Commission. TF suggested that the Commission could issue a negative finding with a condition that the letter be received. (Email was received following the meeting.)

RFC made a motion to issue a Negative 2 determination with conditions. DF seconded the motion and the Commission voted to approve 6-0. DL was not present for this presentation.

Notice of Intent, Joseph Toole, Map 33 Parcels 1 & 1.1, and Map 50 Parcel 1, 445 Pittsfield Rd. (Rear). AKA The Toole Wildlife Preserve- Proposal is to install 3 boardwalks to span beaver-flooded areas & wetlands to restore a complete public access loop trail around the property & create wildlife viewing locations. Continued from January 19, 2017 pending receipt of a "No Take" letter from Natural Heritage. *Continued from Feb. 2, 2017 to April 20, 2017 to September 7, 2017. On Sept. 6, 2017, request of applicant to cont. to October 19, 2017.* NC said that Mr. Toole requested that their continued hearing be continued again to November 16, 2017 due to the death of a close friend.

JS made a motion to continue to November 16th at 7:30 PM and VA seconded the motion. The Commission voted to agree 7-0.

DL arrived at 8:00 PM.

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. Continued for a second time to October 5, 2017. Third continuation to October 19, 2017 to allow time for applicant to file for a Variance with ZBA.

The Variance was filed with the Town Clerk on October 13, 2017 and the Zoning Board of Appeals hearing date is November 1, 2017 at 7:00 PM.

Mr. Akroyd, who represents Mr. Merritt, had advised at the last meeting that he would be out of state for this continuation.

JS said that he has been reading the regulations of the Wetland Protection Act which has reinforced what he already knows and stated that the regulations are all about buffer zones protecting the wetlands. He feels that this property has all kinds of buffer zone problems. He said that the Commission should give special attention to vernal pools. JS said that Mr. Merritt wants to put a paved drive along the fifty foot buffer and JS believes that the paved drive will act as a dam for any runoff from the uplands. He said that a vernal pool needs water in the spring and an impervious surface will have road salt and petroleum products from automobiles. These products will go into the pool and will accumulate and could eventually kill the pool as far as amphibians are concerned. JS said that at this point he is now inclined to take up Mr. Akroyd's offer to have the Commission close the hearing and reject the project. NC responded that Mr. Akroyd had made that statement at an earlier hearing, but has changed his mind and asked that in his absence at this meeting, he would rather continue if there are any questions. JS responded that if the meeting is to be continued, the Commission should think harder about this project.

JS said that the existing drive is gravel, a pervious surface, unlike a paved drive that is impervious. DL argued that water will run underneath the blacktop to get to where it needs to go downhill and that it is unknown if Mr. Merritt would use salt. TF argued that this site is not being used at the moment as it is currently a garage which is used for storage and the proposal is to improve the site for a residential use. TF also corrected JS in that the buffer is 100 feet, but 50 feet is shown on the map.

DL and NC argued that there is an existing driveway, an existing building and existing parking area and referred to a project that the Commission previously approved for a hotel to be built in a wetland and asked JS why he didn't deny this request two years ago. JS agreed that it should have been denied, but now it is the Commission's responsibility to take this in consideration as he feels that Mr. Merritt is making it much worse. NC and DL argued that Mr. Merritt has cut his project significantly, but JS did not agree. NC said that in 2006, the Commission approved a bigger building for the site.

TF said that the Commission should follow the regulations of a residential dwelling and that he believes this project will impair the wetlands. NC responded that the project is not in the wetland, but the buffer zone. DL agreed and stated that work can be done in the buffer zone with a permit. TF responded that there is a purpose for the buffer zone and the Commission should be looking at how the project impacts the functions of the buffer zone. Both JS and TF said that the area in question wipes out the buffer zone.

DL responded that it was time for DEP to rule on this, as it has gone on for two years and that if this issue was so significant, the application should have been denied in the beginning. RFC agreed stating that continuing the process has been very expensive for the applicant and that it seems that once the applicant clears a hurdle the Commission gives him another. DL suggested that the hearing be continued again to provide Mr. Akroyd an opportunity to defend the application.

At this point, NC read aloud to the Commission Mr. Akroyd's October 16th email as follows.

Under a separate email I sent to you the proof of our filing of the Variance Petition with the Lenox Zoning Board of Appeals, this, to the best of my knowledge, completes our submittals to the Conservation Commission and clears the path to the issuance of an Order of Conditions for the Merritt Notice of Intent. ~ If this is not the case or if anything arises during the meeting on 10/19 that requires my attention I would respectfully request that you continue the hearing to your next meeting as I am not available on 10/19. Thank you for all your help and please contact me if you have any questions.

RFC made a motion to continue to November 2, 2017 at 7:30 PM. DL seconded the motion and the Commission voted to agree 5-2. JS and TF voted against the continuance.

Approve Minutes October 5, 2017-DL made a motion to approve the minutes with one correction. DF seconded the motion. The Commission voted to approve 7-0.

Other Business

- A resident of Lenox Woods spoke to NC about an herbicide that is being sprayed on the top of the hill that overlooks the meadow i.e., behind the condos. Erica Deane of CT Management provided information on the product, Triplet, which is being used by Legend Lawn Care. NC will advise Ms. Deane that an herbicide should not be used.
- Berkshire Natural Resource Council-Mackenzie Greer has been in touch with NC and others in the Town regarding improving a trail at the ridge of Lenox Mountain that goes between Pittsfield and Lenox. The trail has existed for years, but the intent is to make it safer and more enjoyable for the public. NC has been invited to a meeting at Mass Audubon on November 8th from 1:30 to 3:00 PM to discuss the plan. The invitation was not to the entire Commission to avoid having a quorum. After discussion it was agreed to ask Ms. Greer to come to the November 2nd Commission meeting to provide details of the project. The time set is 7:15 PM.
- Stone Path Development, Inc., 24 Walker, Map 8 Parcels 1 and 6-1. SK Design filed an NOI today. Copies were handed out to the Commissioners and it is on the agenda for November 2, 2017 at 8:00 PM. There will not be a site visit as the Commission was there recently when an RDA was filed.
- Site Visit October 27th at 3:00 PM-Macalin Realty Trust, Martha Lane, Map 18 Parcels 46, 47, 51, 52, 57 and 58
- JS presented a draft of the following letter for approval:

Thomas French
Natural Heritage & Endangered Species Program
Massachusetts Division of Fisheries & Wildlife
1 Rabbit Hill Rd, Westborough, Ma 01581

Dear Sir,

The Lenox Conservation Commission requests that NHESP revises and update the Rare Plant Maintenance Plan (2005) to include the recommendations of the Wood Turtle Nesting Habitat Enhancement Plan (2010) for Lenox Woods at Kennedy Park CR, Lenox, MA.

Members of the Lenox Conservation Commission along with members of the Lenox Land Trust visited the area in July of this year. We found that woody vegetation was invading the meadow. The site had not been mowed in 2016 and possibly not in the previous year. Furthermore, we found that weeds were invading and becoming established in the Wood Turtle Nesting Habitat site.

We request that paragraph 2 of the Maintenance Plan be revised to indicate which body has responsibility for periodically observing the area to determine whether invasive or woody species are colonizing the site and how often. We request that we receive a report of the finding of such a survey and of any recommendation for action.

We also request that the mowing area be expanded to include the entire meadow to the tree line and that the Wood Turtle Nesting Area be hand weeded annually in October or November after the meadow is mowed.

The Commission approved by consensus.

RFC made a motion to adjourn. JS seconded the motion and the Commission voted to agree 7-0. The meeting was adjourned at 8:40 PM.

Respectfully submitted,
Peggy Ammendola