

Department of Planning and Community Development

90 Pond Street
Braintree, MA 02184
781 794-8230



Mayor Joseph C. Sullivan

Braintree Conservation Commission

Patrick Flynn, Chair
Donald Murphy, Vice-Chair
Diane Francis
Matthew Hobin
Daniel J. McMorrow, Jr.
Gail Poliner-Feldman
Alan Weinberg

Staff Kelly Phelan

CONSERVATION COMMISSION MEETING MINUTES THURSDAY, MAY 17, 2012

Members Present: Patrick Flynn, Chair
Gail Feldman
Diane Francis
Daniel McMorrow, Jr.
Gus Murphy
Alan Weinberg

APPROVED

Staff: Kelly Phelan

Public Hearings

8-614 1091-1093 Washington St./Braintree/Clancy

Mr. Flynn opened the hearing. Sean Hardy, engineer, was present with the applicant, Richard Clancy. Staff explained that this started as an enforcement issue in October 2011 when the applicant brought a large amount of fill onto the property. The Monaquot River borders the property and the fill is within the floodplain.

Mr. Hardy said the applicant received approximately 1500 cubic yards of fill from the contractor for the high school fields. Much of the fill was placed below the floodplain elevation of 103'. Mr. Hardy prepared three plans. One shows the existing conditions with the fill. One shows the proposed conditions in relation to the pre-existing conditions before the fill was brought in. The third shows the proposed conditions in relation to the fill. An in-ground pool is proposed, approximately 150 feet from the river and 47 feet from wetlands. He said 1000 cubic yards of fill will be removed from the site. Overall, there will be a 4.7 cubic yard increase in flood storage.

Mr. Hardy addressed items raised in the staff report. One question was whether the property owner had signed the application (since Mr. Clancy is not listed as the owner in the assessors' database). Mr. Hardy said the property deed was in the name of the Clancy Children Trust and Mr. Clancy was authorized to sign on behalf of the trust.

The second item was clarification on proposed disturbance and replacement within the floodplain on the Notice of Intent form. Mr. Hardy provided staff a revised copy of this sheet. There is 653 square feet of permanent disturbance within the floodplain and 1097 square feet of proposed replacement (as flood storage area). The flood storage area will provide 33.4 cubic feet of flood storage to compensate for the loss of 28.7 cubic feet of flood storage.

The third item was clarification on the "cut" between elevation 101 and 102. Mr. Hardy addressed this with staff and marked up the plan to depict it.

The last item in the staff report was the need for a restoration area because the impacts within the riverfront area trigger restoration. Staff suggested restoring an area of lawn near the river to native plants and calculated that it would need to be about 3900 square feet to comply with 10.58(5)(f). Mr. Hardy said they will provide that if required.

Mr. Weinberg asked if the property was within the watershed protection district and if they filed with the Planning Board. Mr. Hardy said they had filed with the Planning Board and were awaiting a public hearing date.

Ms. Francis asked if they planned for a building to store the pool chemicals. Mr. Hardy said they would store the chemicals in the existing garage.

Mr. Flynn asked for public comment. John Gaine from 1105 Washington St. said that Mr. Clancy takes care of the property and cuts the grass all the way down to the river. He also said that during the flood a few years ago when the intersection by Dunkin Donuts was flooded, the flood didn't come up that far on this property. Mr. Flynn said he appreciated the comment but that the Commission does not like to see lawn up to the edge of the river. A buffer of plants helps prevent lawn chemicals from reaching the river.

Frank McDonald from 1099 Washington St. said that he is a direct abutter and probably would be most affected by flooding. He said he is not concerned about their project. He said a sewer taking across his property caused more of a flooding problem because it left a two-foot depression which holds water.

There was no additional public comment.

Mr. Weinberg asked Mr. Clancy who was in the trust. Mr. Clancy said himself, his wife and his mother-in-law and father in-law. He said the trust was set up for the property to pass to his children.

Mr. McMorrow expressed concern about asking for information on the trust. Staff said the reason it was of issue is to determine if the property owner has signed the application.

Mr. Flynn asked staff if she was satisfied that the items in the staff report had been addressed. Staff that only question had to do with the restoration area. Mr. Hardy will revise the plan to incorporate a buffer strip along the river.

Motion by Mr. Weinberg, second by Mr. Murphy, to continue the hearing for 1093 Washington St. (DEP file # 8-614) to June 7th for draft conditions contingent upon receiving a restoration plan. Vote: 6-0.

Other Business

Braintree Wetland Bylaw Review

At the May 3rd meeting, Mr. Weinberg raised the fact that the Town Council has not taken action on the revisions to the Wetland Bylaw which the Commission recommended almost three years ago. Mr. Flynn suggested the Commission revisit the proposed revisions since so much time has passed.

Staff said that she had heard from the Town Solicitor that the wetland ordinance would be going to the Council for approval within a month.

Mr. Flynn asked the members if anyone had concerns with any of the proposed revisions. Ms. Feldman said she had a concern about the 50 foot no disturb zone since there is trouble sticking to the 25 foot no disturb. Mr. Weinberg said he disagreed. There is a limited amount of land left to develop and flooding is a major problem. He said a 50 foot no disturb is not uncommon in other towns.

Mr. McMorrow said he did not like the “scenic vistas” provision. Mr. Weinberg said that other communities regulate this. Mr. Flynn said he was uncomfortable with protecting views. Mr. Weinberg said that it doesn’t mean the applicant can’t do something, only that the Commission wants to know about it. Mr. McMorrow said he didn’t think the Commission could start claiming expanded jurisdiction for themselves. Discussion ensued on whether this was within areas jurisdictional to the Commission. Staff the intent was not to increase jurisdiction into upland areas outside of wetland areas and buffer zones.

Mr. Flynn asked for examples of how a scenic vista provision would be applied. Ms. Feldman gave an example that it would pertain to a scenic waterfall. Mr. Weinberg gave an example of Devon Woods and the area around it being protected. Mr. Flynn used the example of the temple on Hayward St. He said he would rather have seen it remain forested than become a parking lot but he didn’t think the Commission had that right, outside of jurisdictional wetlands.

Mr. McMorrow said the town has the right to buy or negotiate for scenic view easements but not to regulate them.

Motion by Mr. McMorrow, second by Ms. Francis, to rescind the recommendation to the Town Council on the revisions to wetland bylaw by striking the reference to, and definition of, scenic vistas.

Mr. Flynn said that this would in no way suggest the Commission doesn’t find views valuable, only that they don’t regulate this.

Ms. Feldman said the Massachusetts Association of Conservation Commissions [MACC] courses which she attended addressed commissions’ responsibilities for stewardship and protecting open space and views.

Mr. Weinberg said the values of the Commission could be listed in the policy manual.

Mr. Flynn called for a vote on Mr. McMorrow's motion. Vote: 5-1 with Ms. Feldman opposed.

Mr. Flynn asked if the Commission wished to take up the 50 foot no-disturb zone. Staff said she felt the Commission had struggled to hold to the 25 foot no-disturb and they would run into more issues with the 50-foot no disturb. She used the example of the lot at Harness Lane. The Commission held several meetings over the issue of reducing the 25 foot no-disturb to allow for access to the lot.

Mr. Weinberg said it was important because of impervious surfaces and runoff. He said the Commission had voted to recommend the 50 foot before for valid reasons and wondered why they would change their minds.

Mr. Flynn said the Commission regulates work in the 100 foot buffer zone and has the right to restrict development in that buffer as they see fit but does not think locking into a 50 foot no-disturb zone is practical.

Motion by Mr. Murphy, second by Mr. McMorrow, to leave the no-disturb buffer at 25 feet.

Staff said there are many existing neighborhoods where the house might be 50 or 60 feet from a resource area and felt the Commission will have a hard time enforcing a 50 foot buffer in those cases.

Mr. McMorrow said the Commission has to consider the rights of property owners to use their land.

Ms. Feldman said if the Commission had 50 foot no-disturb zone they might waive it down to 25 feet but with only 25 feet they have waived it down to 8 feet.

Mr. Flynn called for a vote on Mr. Murphy's motion. Vote: 4-2 with Mr. Weinberg and Ms. Feldman opposed.

Other Business

Staff will schedule a site visit to 37 Baker Ave. at 6:30 pm on June 7th, directly before the meeting that night.

Staff suggested changing the September 20th meeting to September 13th. The Commission had cancelled the September 6th meeting because of the state primary election and the gap between the August 9th meeting and the September meeting is several weeks. This change would lessen the gap.

Approval of Minutes

Tabled until the next meeting.

Adjourn

Motion by Mr. Murphy, second by Mr. McMorrow, to adjourn the meeting at 8:40 PM. Vote: 6-0.