

Department of Planning and Community Development

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Mayor Charles C. Kokoros

Braintree Conservation Commission

Heather Charles Lis, Chair
Christopher Hayward, Vice Chair
Kimberly Kroha, Clerk
Joyce Albrecht
Diane Francis
Peter Williams

Staff: Kelly Phelan

APPROVED

CONSERVATION COMMISSION AGENDA JULY 9, 2020 MEETING 7PM REMOTE MEETING

Ms. Charles Lis opened the meeting and noted the MA COVID – 19 State of Emergency and the Town’s Remote Participation Policy. Meeting materials such as plans will be displayed on the screen and are available on the Commission’s website. Ms. Charles Lis asked if anyone other than the Town was recording the meeting. No one indicated that they were recording the meeting. Ms. Charles Lis noted that, for clarity, she would make the motions and that votes would be done by roll call.

PUBLIC HEARINGS

Request for Determination of Applicability Gordon Rd.-Watson Park/East Braintree Little League

(continued from March 5, 2020)

Ms. Charles Lis opened the public hearing. Andrew Berman from East Braintree Little League was present. He updated the plans to show the electrical conduit and the revised locations of the batting cage and the Sheridan Field scoreboard.

Ms. Charles Lis asked if any of the members had questions on the overall project since it has been several months since the project was last before them. There were no questions. Ms. Charles Lis asked if members objected to the limit of work and erosion control not being shown on the plan. The draft conditions specify that staff will verify prior to the start of work. There were no objections to that.

Ms. Charles Lis thanked the applicant for moving the proposed location for the batting cage and the Sheridan scoreboard out of vegetated areas. She confirmed that East Braintree Little League only maintains the infield of their fields but they will work with the Recreation Department to ensure the buffer strip recommended by staff and included in the conditions is installed. Mr. Berman agreed.

Ms. Charles Lis suggested amending the draft conditions to specify that turf will be removed and the buffer strip will be seeded with a conservation seed mix approved by staff and that the length of the strip be clarified to be “along the length of Machado Field”. Mr. Williams agreed.

Ms. Charles Lis asked for public comment. There was none.

Motion: by Ms. Charles Lis to issue a negative Determination of Applicability with conditions as drafted and modified.

Second: by Ms. Francis.

Roll Call Vote: For: 5 (Charles Lis, Francis, Kroha, Albrecht, Williams), Against: 0, Abstain: 0

Motion: by Ms. Charles Lis to close the public hearing.

Second: by Ms. Francis.

Roll Call Vote: For: 5 (Charles Lis, Francis, Kroha, Albrecht, Williams), Against: 0, Abstain: 0

Request for Determination of Applicability 62 Park Ave. /Daskalovic and Guerin

Ms. Charles opened the public hearing. Mr. Daskalovic explained the proposal for a 16' x 38' in-ground pool in the backyard. Ms. Kroha confirmed that the area is now lawn. Ms. Francis asked if there was water nearby. Mr. Daskalovic said it was swampy but no ponds or streams were close by. Ms. Charles Lis suggested that only wetland delineation flags that were located on the property be confirmed in the decision.

Ms. Charles Lis noted the staff report and recommendation by staff that the applicant plant native shrubs in front of the existing split rail fence between the lawn and the wetland. Ms. Charles Lis asked the applicants if they would consider moving the fence out a few feet and planting the shrubs behind the fence to allow the area to provide a better buffer to the wetland. Mr. Daskalovic and Ms. Guerin indicated that they were willing to do that.

Mr. Williams asked if they were replacing the fence in-kind. Mr. Daskalovic said they were not sure yet. Ms. Charles Lis suggested a gap at the bottom to let wildlife through.

Ms. Charles Lis asked about pool chemicals. Mr. Daskalovic said the type of filter they are using does not require backwashing. Ms. Charles Lis noted that pool water should be allowed to dechlorinate for a few days prior to any discharge and it should be discharged away from the wetland.

Ms. Charles Lis asked for public comment. Shannon McCormack from 50 Park Ave. asked how long the project would take. Ms. Guerin said about 6-8 weeks.

Ms. Charles Lis suggested amending the proposed condition # 2 to say that the replacement fence will be located 3 feet upgradient of the wetland. Mr. Williams wondered if that would be enough room for the shrubs which will be planted. Ms. Albrecht suggested shrubs could be varied either in front or in back of the fence depending on the space available behind the fence. Mr. Daskalovic and Ms. Guerin said they were prefer to keep the fence in the same location so as not to lose usable area

of their yard. Staff noted that the current fence is located where the elevation begins to drop off toward the wetland and the area in front of the fence looks suitable for planting shrubs. Ms. Charles Lis suggested leaving condition #2 as it is with the exception of specifying a 6-inch gap be maintained at the bottom of the fence to allow wildlife and water movement.

Motion: by Ms. Charles Lis to issue a negative Determination of Applicability with conditions as drafted and modified.

Second: by Ms. Francis.

Roll Call Vote: For: 5 (Charles Lis, Francis, Kroha, Albrecht, Williams), Against: 0, Abstain: 0

Motion: by Ms. Charles Lis to close the public hearing.

Second: by Ms. Francis.

Roll Call Vote: For: 5 (Charles Lis, Francis, Kroha, Albrecht, Williams), Against: 0, Abstain: 0

Request for Determination of Applicability 70 Alida Rd. /Morris

Ms. Charles Lis opened the public hearing. John Morris said that they would like to install a 24-foot diameter above-ground pool in their yard. They learned from having the property surveyed that their shed is encroaching on the town land. The shed was there when they bought the property. He said the shed is 12 feet by 26 feet and too big to move. They would have to tear it down. He asked that it be grandfathered and allowed to remain in its current location until they sell the property.

Ms. Charles Lis suggested taking up the encroachment issue separately from the pool project. She said she was sympathetic to the problem with the shed but there is no provision to grandfather an encroachment on conservation land. She also referred to the staff report which noted that part of the retaining wall supporting the yard also encroaches. Ideally everything would be removed from the conservation land but it is complicated by the retaining wall. She is in favor of allowing the retaining wall to remain and entering in a Memorandum of Understanding to that effect. She does not see how the Commission could allow the shed to stay.

Ms. Kroha suggested the possibility of a land swap to square off the rear property line and return some area to the conservation parcel. Staff said there would likely be complications with that approach due to Article 97 which protects conservation land. She will discuss with the Town Solicitor's office.

Ms. Charles Lis suggested making a site visit.

Ms. Charles Lis returned to the pool project. She asked that the deck noted in the application be added to the plan. Mr. Williams asked what type of filter they plan to use. Kathleen Morris said they had not gotten that far yet. Ms. Charles Lis asked that they provide that information.

Ms. Charles Lis asked for public comment. There was none.

Motion: by Ms. Charles Lis to continue the hearing to the August 6th meeting.

Second: by Ms. Francis.

Roll Call Vote: For: 5 (Charles Lis, Francis, Kroha, Albrecht, Williams), Against: 0, Abstain: 0

Ms. Charles Lis suggested members go on their own for a site visit. Mr. and Mrs. Morris said that would be fine.

Request for Determination of Applicability 60 Albee Dr./Vo

Ms. Charles Lis opened the public hearing. Mr. Vo said he would like to install an 18-foot by 38-foot in-ground pool. Ms. Charles Lis noted the staff report which said that a grading plan should be provided. Mr. Vo said he was working on that and he is working with a new engineer. Ms. Francis said the contour lines on the plan are very close together indicating that is a steep slope. Mr. Vo said it was very steep and hard to maintain.

Ms. Charles Lis asked Mr. Vo to have the buffer zone distances (25 feet, 50 feet and 100 feet) clearly labeled on the plan and the deck around the pool shown on the plan. She also noted the tree protection regulations. Staff will send Mr. Vo a copy.

Ms. Charles Lis asked for public comment. Mark O'Brien from 90 Albee Dr. said he was in support of the project.

Motion: by Ms. Charles Lis to continue the hearing to the August 6th meeting.

Second: by Ms. Francis.

Roll Call Vote: For: 5 (Charles Lis, Francis, Kroha, Albrecht, Williams), Against: 0, Abstain: 0

OTHER BUSINESS

Request for Certificate of Compliance 8-650 40 Jensen Rd./LF Properties, LLC

Staff noted that compliance with the condition for meeting the Tree Policy remained outstanding. Joe Fernald, Jr. said they assumed that the trees shown as being removed on the plan did not require replacement. They have a buyer for the house who is waiting for the Certificate of Compliance in order to complete the closing for the property. They have planted some white pines and they are willing to contribute \$5000 to the tree fund in lieu of replacing 20 trees.

Ms. Charles Lis noted that the purpose of the tree fund is for when there is not room to replace trees on site. Mr. Fernald said there is limited room. Ms. Charles Lis suggested adding a row of shrubs at the 25 foot no-disturb buffer. Ms. Kroha asked how clear it was during permitting that the trees shown to be removed required replacement. Ms. Charles Lis said there was clear discussion of this during permitting.

Mr. Fernald proposed planting 10 additional shrubs on the site. Staff agreed that ten was a reasonable number. Staff will send a list of native species from which they will chose two or three different species based on availability. Ms. Charles Lis requested they tag the shrubs in the field and provide the receipt from the nursery. The amount to be contributed to the tree fund would then be \$3750.

Staff noted that the Department is holding a \$2000 guarantee to ensure the survival of the trees/shrubs for the first two growing seasons.

Motion: by Ms. Charles Lis to issue the Certificate of Compliance for 8-650 provided that ten shrubs (of at least two different species approved in advance by staff) are planted within the buffer zone, tagged on the site and the receipt is provided to staff and \$3750 is contributed to the tree fund.

Second: by Ms. Francis.

Roll Call Vote: For: 5 (Charles Lis, Francis, Kroha, Albrecht, Williams), Against: 0, Abstain: 0

Request for Certificate of Compliance 8-491 141 Messina Woods Dr/Tai

Staff noted that she was awaiting the engineer's certification.

Motion: by Ms. Charles Lis to continue this to the August 6th meeting.

Second: by Ms. Francis.

Roll Call Vote: For: 5 (Charles Lis, Francis, Kroha, Albrecht, Williams), Against: 0, Abstain: 0

Enforcement – 1209 Washington St. Cielo Restaurant/Perez

Ms. Charles Lis noted the staff report detailing the unpermitted patio expansion in the Bordering Land Subject to Flooding and Riverfront Area and buffer zone. Francisco Perez, one of the owners of Cielo Restaurant, said they were trying to be proactive by expanding the patio for outdoor seating. He said the area was previously cinder blocks and they didn't realize the work would create a problem.

Ms. Charles Lis explained the resource areas on the site: Bordering Land Subject to Flooding (floodplain), Riverfront Area of the Monatiquot River, and buffer zone to the Bank of the river and Bordering Vegetated Wetlands. All changes on the site are subject to the Commission's jurisdiction.

Ms. Charles Lis asked when the cinder block pavers and wall were installed. Mr. Francisco said about five years ago and they did that without a permit so they did not think they needed one for the poured concrete patio. The Building Inspector came out during the recent work and told them to shut it down. Ms. Charles Lis said the Commission has a separate purview from the Building Dept. but staff of the Departments communicate and coordinate. She said the project should have come before the Commission.

Ms. Kroha said she would be comfortable with an after the fact Notice of Intent. Ms. Charles Lis agreed. Mr. Perez said they would like to get the patio open. Ms. Charles Lis said she did not have an issue with that. Staff will let the Building Department know that the Commission does not object to the patio being used while the Notice of Intent is being prepared. Staff noted that the expectation for a Notice of Intent is that is professional Wetland Scientist and/or a Civil Engineer are involved to address the performance standards and develop mitigation.

Ms. Charles Lis noted the second issue raised in the staff report. There are storage containers in the floodplain and cleaning supplies are being stored outside. The containers should be elevated to be above the floodplain and the cleaning materials should be moved inside due to risk from flooding and potential for spills which would get into the river.

Ms. Charles Lis asked for public comment. There was none.

Ms. Kroha suggested that the Commission give the owners six months to file the Notice of Intent. Members agreed.

Motion: by Ms. Charles Lis to issue an Enforcement Order to 1209 Washington St. Cielo Mexican Restaurant with direction to file a Notice of Intent within six months.

Second: by Ms. Francis.

Amendment: by Mr. Williams to note there is no objection to using the patio during this period.

Roll Call Vote: For: 5 (Charles Lis, Francis, Kroha, Albrecht, Williams), Against: 0, Abstain: 0

Enforcement – 169 Walnut St./D’Andrea

Ms. Charles Lis noted the staff report detailing the work along the Town Brook. Ms. D’Andrea said they were trying to put a fence along the property line which is on the other side of the brook. She said they had an agreement with the neighbor regarding the fence but that fell through. They placed straw wattle along the sides of the brook as requested by staff.

Ms. Charles Lis noted the 200 foot Riverfront Area along Town Brook. There is also Bordering Land Subject to Flooding and Bank to the brook.

Mr. Williams said he would like to see the site. Ms. D’Andrea agreed but asked for notification in advance.

Ms. D’Andrea said the Army Corps comes down every year to inspect the culvert under Walnut St. She removes trash and debris from the brook. There are invasive plants along the banks of the brook. She thinks the Corps has an easement over the brook. Ms. Charles Lis said the Commission still has jurisdiction regardless of an easement. Staff said that the Town’s GIS shows only the culvert under Walnut St. as being in an easement. Ms. Charles Lis said removing trash is great but making changes to the bank or removing vegetation needs to go through the Commission.

Ms. Charles Lis asked for public comment. John Barbati said his father owns the house on the other side of the brook. This project began as a project to fence along the property line but they started installing a fence over the brook which he doesn’t think is allowable. He wonders if they have a plan.

Ms. Charles Lis said the fence posts are very close to the brook and it is unlikely the Commission would allow a fence that close to the brook or over the brook.

Mr. Williams said they should file a Notice of Intent with a stamped plan from a surveyor with the floodplain and floodway shown. Ms. Kroha agreed.

Ms. D'Andrea asked who would be liable if the neighbor fell in the brook because there is not a fence. Ms. Charles Lis said that is out of the Commission's expertise.

Motion: by Ms. Charles Lis to issue an Enforcement Order to 169 Walnut St. /Ms. D'Andrea to do no further work, maintain the erosion control and submit a Notice of Intent prepared to restore the area along the brook within 90 days.

Second: by Ms. Francis.

Roll Call Vote: For: 5 (Charles Lis, Francis, Kroha, Albrecht, Williams), Against: 0, Abstain: 0

Meeting Procedure During COVID-19 State of Emergency

Ms. Charles Lis noted the Emergency Orders issued by the Governor allows boards to suspend permitting deadlines until 45 days after the emergency is declared to be over. This decision can be made by the Chair. She consulted with staff and determined to hold hearings for the RDA applications only for the first remote meeting. One Notice of Intent has been received for the next meeting and staff expects others. She asked the Commission if they were willing to hold hearings on more complex projects remotely or if they would prefer to wait until the emergency ends and in-person meetings can resume.

Ms. Kroha said she was in favor of taking up Notices of Intent remotely. If the hearing is not going smoothly it can always be continued and the Commission is still protected by the tolling of the timeframes. Mr. Williams agreed, noting that this meeting went better than other remote meetings he has attended.

Approval of Minutes – March 5, 2020

Motion: by Ms. Charles Lis to approve the minutes of March 5, 2020

Second: by Ms. Francis.

Roll Call Vote: For: 5 (Charles Lis, Francis, Kroha, Albrecht, Williams), Against: 0, Abstain: 0

Adjourn

Motion: by Ms. Charles Lis to adjourn the meeting at 10:46 PM

Second: by Ms. Francis.

Roll Call Vote: For: 5 (Charles Lis, Francis, Kroha, Albrecht, Williams), Against: 0, Abstain: 0