

**CONSERVATION COMMISSION
MINUTES
AUGUST 1, 2001**

MEMBERS PRESENT: Matthew Liebman, Barbara J. Epstein, Pamela Attardo, Chris Starr, Terry Maitland, Andrew Magee, Peter Berry

CONSERVATION ADMINISTRATOR: Tom Tidman

RECORDING SECRETARY: Andrea MacKenzie

VISITORS: Isabella V. Choate, Susan Mitchell-Hardt, Jake Diemert, Mr. & Mrs. M. Joyal, Joe Ricciardi, Michael Eder, David Barr, Robin Shott, Yvonne & Alan Dailey, Stephen Nelson, Frank Tricone, Rob Frado, Dough Edwards, Mike Eder

7:30 CITIZENS CONCERNS

PCRC Bylaw - Mike Eder

Mr. Eder described the PCRC (cluster zoning bylaw) in Acton versus surrounding towns. The reason he is before the Commission is that the Master Plan Policy and the Board of Selectmen (BOS) want other town boards to be more involved in the PCRC approval process. The purpose and intent of the bylaw has conservation interests. This bylaw is based on the total land area and does not take into consideration how many units could be built with a conventional subdivision. Acton is the only town with a cluster bylaw that does not limit the number of units to what a conventional subdivision could produce. The intent of this bylaw is not to make undevelopable land developable, nor to allow an increased number of building lots that would otherwise be possible on a conventional subdivision plan, but to encourage the preservation of important site features. One result of our town bylaw's failure to limit the number of units is the potential to make the development of land economically viable that would not otherwise be in a conventional development, especially in areas where there exist impediments to development (ie: wetlands, ledge). The granting of special permits is discretionary and "not by right". It is an alternative to standard zoning, and the recourse to a developer who has been denied a special permit is to create a conventional subdivision. Acton needs to insure that it is not turning unbuildable land into buildable land. The Commission needs to understand the purpose and intent of the PCRC bylaws to participate in the approval process effectively, specifically under conservation's jurisdiction.

Upon query by Ms. Epstein, Mr. Eder reported that the BOS wants more input in the special permit approval process.

Bill Cohen, of 8 Old Surrey Drive, stated that the Town should modify the bylaw to be in line with other towns and not allow more homes to be built in a PCRC than what the standard zoning would allow with the acreage available.

Mr. Starr noted that a wetland delineation process needs to be in the PCRC process in order for the Commission to be effective and currently there is no mechanism for this.

Mr. Liebman noted that the Commission has been asked to meet jointly for the development of the Robbins Mill Pond Land.

Upon suggestion by Mr. Eder, the Commission welcomed the development of a checklist for the permitting process.

8:15 Continuation - 114 River Street

Mr. Liebman noted that the hearing was continued in order for the applicant to address concerns of the abutters.

Mr. Diemert stated that he and the abutters have reviewed the amended plans and have five suggested special conditions for the proposal (submitted in a letter dated August 1, 2001 on file).

Scott Hayes, of Foresite Engineering, presented a revised plan dated July 27, 2001, and reported that he has reduced the limits of disturbance on the lot from 18,000 to 10,000 s.f.. By reducing the disturbance he is able to retain the existing large tree on the property and the fox den. The double tiered retaining walls have been replaced with a 1:1 riprap slope. Construction fencing demarking the limit of work has been added across the rear of the lot. The proposed house has been reduced to 65' X 28' and a 12' X 20' deck to the plans. There is a foundation drain was also added around the proposed dwelling and an infiltration trench at the rear of the proposed house for roof runoff. A subdrain was added along the top of the slope and connected to the proposed drainage system. A drywell was also added adjacent to the proposed driveway turnout to recharge intercepted groundwater from the subdrain. He also changed the elevation of the foundation to adequately service the house if the existing grade of River Street is changed due to the ongoing sewer project. He was able to reduce the limits of work in the riverfront area by approximately 40-50%. The revised plans are only disturbing approximately half of the lot from original plan. As requested the floodplain elevation has been added to the plan, and the general notes and construction sequence are more detailed.

Upon query by Ms. Epstein, Mr. Hayes reported that the original plans showed the house foundation as 65' X 30'. He and the applicant also do not have any problems with the proposed special conditions suggested by the abutters.

Upon query by Mr. Starr, Mr. Hayes reported that the sewer project will drop the elevation of River Street by one to two feet and therefore he changed the garage floor elevation for access from the proposed grade change of the road.

Upon query by Mr. Tidman, Mr. Hayes stated that the foundation drain is connected to the dry well and infiltration trench.

Upon query by Mr. Maitland, Mr. Hayes reported that the floodplain elevation is at the top of the bank, not at the water's edge.

Adria Cohen, abutter, stated that this is marginal lot that was not developable prior to the construction of town sewers. As abutters, the neighborhood's concern is that this proposed house lot meets the Bylaw and the Act. They as abutters don't want mistakes that can't be fixed after construction and asks that the Commission consider the statements of their engineer and attorney.

Attorney Jake Diemert stated that he is gratified with the Commission giving the applicant and the abutters time to meet to develop alternatives that create less impact on the riverfront area. The riverfront area is not a buffer; it is a resource area. They feel that this plan is infinitely better than the original, but it still needs special conditions for the construction of this lot. They do however, feel that drainage calculations should be done even though it is not required for a single family house lot.

Mr. Hayes noted that the proposal has no disturbance within the 100' wetland buffer and he has provided groundwater recharge with the drainage provisions. He has reduced the slope on the site. All impervious surfaces are sent to recharge. The applicant has been willing to amend plans for issues that are not related to the Wetlands Protection Act or the Bylaw. Although it is not required, he is willing to conduct drainage calculations of disturbed area on the site and is also willing to accept the suggested special conditions noted in Mr. Diemert's letter.

Ms. Epstein commended the applicant and abutters for working together and trying to address each other's concerns. Although the Commission may not use all suggested special conditions, it will consider what applies and is already covered in the standard Order of Conditions.

Mr. Magee stated that the Commission could require drainage calculations as a special condition. This is a steep lot with glacial till that likely has a high percentage of runoff currently. Mr. Magee noted that the calculations would be addressing fractions of percentages and the expected measurements are smaller than the margin of error for the calculations used.

Upon query by Mr. Berry, Mr. Hayes reported that they still need a building permit and a sewer connection permit but this proposal does not require any variances.

Upon query by Mike Fritzi, of 6 Old Surrey, Mr. Hayes reported that pre-blasting inspections are part of the bonding requirements for this proposed lot. It should take no more than three days maximum to conduct necessary blasting.

8:51 Hearing no further comments or questions, Mr. Liebman closed the hearing.

Continuation - 93 Taylor Road

Upon request by the applicant Mr. Liebman continued the hearing until September 5, 2001 at 8:30 PM.

8:30 Continuation – 64-76 Newtown Road

Mr. Magee reported that the Commission voted at the 7/18/01 meeting to reopen and asked for a continuation to get counsel's opinion.

Mr. Tidman reported that on July 18, 2001 the applicant presented amended plans and requested that the Commission reopen the hearing. The Commission questioned the legal procedure with a pending court action against them in Superior Court appealing the Commission's denial. This site has received a Superseding Order of Conditions from DEP. He has spoken to counsel regarding the reopening of the hearing and they felt that it would be most appropriate to have the court remand the case back to the Commission. However, based on the new information it is OK to reopen to consider the new amendments to the plans.

Attorney Steve Nelson reported that he did speak with counsel as well, who confirmed Mr. Tidman's previous statement.

Mr. Hayes reported that this lot predates the Bylaw and the Act, and the lot does have a septic permit from the Board of Health. This is a 3.7 acre lot with 1.4 acres of upland. The proposed construction disturbance is 10% of the lot, 29% of the lot is uplands. Over half of the disturbance is reclaimed with the proposed wetland enhancement plan. Total final disturbance of the lot is .23 acres, 16% of total site. In an effort to maintain the wildlife corridor Carr Research Laboratories has devised a plan to enhance the wildlife habitat on the site. The suspected vernal pool has been added to the plan. The proposed FAST septic system reduces the total nitrogen by 70%, which is better treatment than a conventional septic system. (See July 18, 2001 minutes.)

Upon query by Ms. Attardo, Mr. Hayes reported that they proposed shrub plantings and fallen tree timbers for habitat in the leach field area. The proposed driveway will be partially paved and partially crushed stone, although the crushed stone opens the driveway for erosion problems.

Upon query by Mr. Magee, Mr. Hayes reported that there is no proposal for the prevention of street runoff to bypass vernal pool area as it would be within the right of way (ROW) of the road, which is directed to the wetland anyway.

Upon query by Mr. Magee, Mr. Nelson stated that the applicant is willing to put a deed restriction on the property. A conservation restriction takes approximately six months to implement and the applicant is not willing to allow for this time frame. A deed restriction is valid for 30 years and can be renewed after that time. A conservation restriction is a tremendous burden on the applicant and is not feasible for a single family house lot. Mr. Magee noted that if the owners of the property don't take the responsibility of renewing a deed restriction it would be lost 30 years from now. Mr. Nelson noted that no activity could occur on this lot without coming before the Commission anyway. Mr. Nelson maintained that the area in question for the restriction is not buildable anyway and the Commission cannot force the applicant to provide a conservation restriction.

Dr. Jerome Carr, from Carr Research Labs, reported that this wetland is not pristine land. There is an old cart path. To the south he also discovered an excavation possibly an old foundation, with periwinkle, wisteria and violets, not wild native species in this area. Wetland species have encroached onto the interior of the site from the edge of Newtown Road. The beaver population on Conant Brook has created drowned trees, which have died. The northern wetland a clear channel of the brook that he feels used to flow differently before the construction of Newtown Road, a pooling area 1,540 s.f. is 24% of total wetland on site. His standard calculations predict a road traffic splash of approximately 14' from the road to the wetland. There is no proposed work within 25' of the road. The existing wetland plants on the site are stunted in this area due to it not having a lot of existing drainage directed to it. He feels that is due to the bisection of the wetland by Newtown Road. Across Newtown Road the wetland plants are not stunted in size. He feels that they have been creative in addressing the concerns stated in the Commission's denial. A recharge trench and an additional drainage trench along the driveway have been provided. The leaching field is to be planted as a meadow with logs to be left for wildlife habitat. Overall, the intent of the planting plan is to add wildlife food and habitat value. They have also proposed the creation of a turtle nesting area adjacent to the intermittent stream. Another key concern of the Commission was the potential of nitrogen impact on the wetlands from the proposed septic system. He is not concerned about this since the groundwater flow from the septic system is from the north to the south. Even if ledge is found during construction, which could change flow for a short period of time, it would not affect the suspected vernal pool. Title 5 is presumed to satisfy wetlands protection. The proposed house and driveway runoff is recharged to groundwater. Overall they have tried to address the concerns of the Commission based on previous plans and have addressed the interests of the Act and Bylaw.

Ms. Attardo noted that it will be difficult to enforce the "no disturbance-no-maintenance" of the meadow area over the proposed leaching field. Mr. Carr stated that the proposed plantings will make it difficult to maintain the area and the Commission can add a condition in perpetuity.

Upon query by Mr. Starr, Mr. Carr reported that facultative vernal pool species were found at the time of investigation, although he was not involved with the project at the time to determine the status of the vernal pool area. Mr. Hayes reported that he dip netted the pool and found fingernail clams and presence of caddis fly larvae. Mr. Carr stated when he was there in July he didn't find anything definitive, but one would need to evaluate the pool during the spring.

David Carr, an abutter, asked about elevation of the brook in relation to the house, because he thinks the groundwater elevation is higher than the house foundation. Mr. Hayes stated that flooding would not be a problem.

10:07 Hearing no further comments or questions, Mr. Liebman closed the hearing.

DISCUSSION – 64-76 Newtown Road

Mr. Starr reminded the Commission of the original reasons for denial.

Mr. Tidman noted that the pooling area has vernal pool characteristics; salt would limit some amphibian species but seems to function with road runoff. Green, Leopard and Bull Frogs

would use this vernal pool area that would also attract turtles (for a food source) to the area who find the new sandy area for their nesting purposes. If a sandy area is provided in an area with a southern exposure it will be utilized for turtle nesting. It has happened on the Water District property off of Massachusetts Avenue when they exposed sandy areas. They have Wood Turtles nesting on their property now. The applicant has addressed the Commission's issues stated in the in its denial and it meets the standard of today's bylaw. The proposal meets the Bylaw setbacks.

Mr. Magee moved that the Commission issue an Order of Conditions for the revised NOI Plan of 6/27/01 and Wildlife Habitat Plan dated 6/27/01 with the following special conditions:

1. Three monitoring wells shall be installed and monitored for Nitrates, volatile organic compounds (VOC) and Phosphorus and groundwater level annually for a period of five years from the time of occupancy. Sampling shall be conducted between April 1 and June 15. Monitoring wells shall be installed ten feet into the water table or to a depth of refusal. The well locations to be determined by the Conservation Administrator with at least two of the wells being located between the sewer disposal system and the wetlands adjacent to the leaching field. Results shall submitted to the Conservation Commission within four weeks of sampling.
2. Upon completion of site clearing the proposed fieldstone or boulder walls shown on the plan shall represent the limit of work and shall be constructed prior to the commencement of the construction of the house.
3. A deed restriction shall be written and enacted by the applicant protecting the land outside of the proposed line of haybales as shown on the NOI and Wildlife Habitat Enhancement Plan as a permanent restricted area. The applicant shall furnish a sketch plan showing the metes and bounds of said restricted area. This sketch plan of the metes and bounds of the restricted area shall become a permanent restriction within the deed in perpetuity.. Said restriction shall note the following:
 - a. There will be no future disturbance outside the proposed line of haybales (work area).
 - b. The driveway must remain as gravel where noted on said plan.
 - c. The Wildlife Enhancement Plan shall be maintained as described on said plan.
 - d. Said deed restriction shall reference this Order of Conditions voted on August 1, 2001.

Mr. Berry 2nd. Discussion. Motion passed unanimously.

Certificate – Newtown Road Sidewalk (Main St. to Minuteman Rd.) 85-706

Mr. Tidman reported that the project is done and the site is stable.

Ms. Epstein moved that the Commission issue a Certificate of Compliance. Mr. Maitland 2nd. Unanimous.

Decision - 114 River Street

Mr. Maitland moved that the Commission issue an Order of Conditions with the following special conditions:

1. There shall be no cutting or disturbance of any land outside of the "limit of work" area, as shown on the amended Notice of Intent Plan dated 8/7/00, revised 7/27/01, during construction or thereafter, except as necessary for routine and ordinary maintenance or repair, or testing for any necessary permits.
2. No site work shall commence, including removal of any vegetation, excavation or other disturbances, except as necessary for testing or preparation in order to comply with this Order of Conditions, unless and until all other permits and approvals have been received necessary to obtain a building permit for the construction of a single family dwelling on the premises in accordance with the NOI Plan dated 8/7/00, revised 7/27/01.
3. Each phase of the construction sequence, as shown on the NOI Plan dated 8/7/00, revised 7/27/01, shall be inspected and approved by an agent on behalf of the Conservation Commission before further stages commence, and that an as-built plan certifying construction in accordance with this Order of Conditions and NOI plan by a certified engineer/surveyor be submitted and approved prior to the issuance of any Certificate of Compliance.

4. Any subsurface soil conditions identified as requiring blasting result in written notification to the abutting and other affected property owners, as well as to the Conservation Commission, prior to any commencement of such activity, and that blasting be in accordance with this Order of Conditions and all applicable state, federal and local law and regulation.

Mr. Magee 2nd. Unanimous.

Extensions Maple Creek Farm – 122 Summer

Maple Creek –Parcel A1- Woodfield extension to proposed recreation area.

Mr. Maitland moved that the Commission issue a one year Extension Permit for Maple Creek Farm, 122 Summer Street. Mr. Berry 2nd. Unanimous.

The Commission discussed concerns of residents of 9 Woodfield Road regarding the replication area creating a setback on their property that currently does not exist and would limit future activities due to the created/replicated buffer zone. The Commission would like Mr. Sweeney to come to the next meeting to discuss this issue.

11:10 Meeting adjourned.


Matthew Liebman,
Chair

concom.minutes.2001.080101