



Town of Danvers

Conservation Commission

1 Sylvan Street, Danvers, Massachusetts 01923
p: 978-777-0001 x. 3095 | www.danversma.gov

Commission Members
Peter Wilson, Chair
Vanessa Curran
Chelsea King
Ann McGill
Joseph O'Donnell
Michael Splaine
Ken Walley

The Danvers Conservation Commission held a public meeting on Thursday, September 10, 2020.

I. ROLL CALL

Michael Splaine, Acting Chair
Peter Wilson
Vanessa Curran
Ann McGill
Chelsea King
Georgia Pendergast, Staff
David Fields, Staff
Alicia Linehan, Staff

Dan Nitzsche – 191 Old Burley Road
Gloria Bouillon – 191 Old Burley Road
Craig Schuster – 191 Old Burley Road
Attorney James F. Mears, Jr. – 102 Poplar Street
John Shipe – 152 Endicott Street
Ann Martin – 152 Endicott Street
Rob Hewitt – 152 Endicott Street
Brian McCarthy – 152 Endicott Street
Janis Carroll – 152 Endicott Street

Mr. Splaine opened the Conservation Commission meeting at 7:00pm with a roll call as stated in the Open Meeting Law, G.L. c. 30A, sec. 20 by Governor Charles Baker signed on March 12, 2020 on Remote Participation and Remote Conduct for Open Meetings.

Mr. Splaine reads the rules of how the meeting would be conducted.

II. REGULAR AGENDA

1. Continued Public Hearing - NOI

Beverly Airport – 191 Old Burley Street, DEP File No. 14-1347

Applicant: Gloria Bouillon

The reason for the continuation was to allow opportunity for the public to comment on this project.

Public comment - Mark Zuberek, Town Meeting Member, wants to assure the residents that this is a replacement for the existing fence, and that no trees or bushes located on Danvers property are being removed.



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The Chairman responded that the Commission is requesting the fence be removed from the wetlands which would bring it further away from property lines.

Craig Schuster, Airport Division Group, confirmed that all of the fence is being replaced, some in the same spots but most is being relocated away from the wetlands. And anything near the property line is at least 10 feet away, which is airport property and not on Danvers property that abuts the airport.

Mr. Zuberek asked if the clearing is within the boundaries of the property line. Mr. Schuster responded that anything close to the property line would be set 10 feet away so there is room to maintain and clear outside of the Danvers property line.

The applicant is requesting a waiver to work within the 25 foot no disturb and 35 foot no build zone. Staff suggested that the Commission grant waivers for both in case there are posts that fall within both areas. Fences are considered permanent structures and this would also be required for any future maintenance.

Ms. Curran asked if there is anywhere on the plans that the fence is less than 10 feet away from the property line. The response was that it is 10 feet all the way around, except for one small area that exactly at 10 feet.

Ms. King asked what are the wood mats. The mats are made of spruce or oak, 4 feet wide by 16 feet long, lagged together. They will not remain more than a week and are moved around. Typically, they are not allowed any more than 30 days.

Mr. Wilson asked on the timing of construction. Not as of yet because it will depend on plumbing from MassDot.

No further public comments.

MOTION: Ms. McGill makes a motion to close the hearing for 191 Old Burley Street, Beverly Airport, DEP File No. 14-1347; Mr. Wilson seconded

ROLL CALL VOTE - Chelsea King – yes, Mike Splaine – yes, Vanessa Curran – yes, Ann McGill – yes, and Peter Wilson – yes

MOTION: Mr. Wilson makes a motion to grant a waiver to allow work within the 25 foot no disturb zone; Mrs. Curran seconded

ROLL CALL VOTE - Chelsea King – yes, Mike Splaine – yes, Vanessa Curran – yes, Ann McGill – yes, and Peter Wilson – yes



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MOTION: Mr. Wilson makes a motion to grant a waiver to allow work within the 35 foot no build zone; Mrs. McGill seconded

ROLL CALL VOTE - Chelsea King – yes, Mike Splaine – yes, Vanessa Curran – yes, Ann McGill – yes, Peter Wilson – yes

MOTION: Mr. Wilson makes a motion to issue an Order of Conditions for 191 Old Burley Street, DEP File No. 14-1347 with the following conditions:

- All concrete footings that are removed from the ground, are removed from the site.
- All trash is picked up around the work sites
- All footings will be removed

Mrs. Curran seconded

ROLL CALL VOTE: Chelsea King – yes, Mike Splaine – yes, Vanessa Curran – yes, Ann McGill – yes, and Peter Wilson – yes

2. Request for Certificate of Compliance [310 CMR 10.05 (9)]

102 Poplar Street, DEP File No. 14-938

Applicant: Attorney James F. Mears, Jr.

A Notice of Intent was originally filed in June of 2004 by the former owner Phyllis Dykens. The proposal was to expand the foundation and erect a new residence at 102 Poplar Street. Through a title search it was determined that the owner ran into financial problems, eventually facing a mortgage foreclosure and in 2013 deeded the property to the holder of the mortgage title. Therefore, the proposed project was never begun or completed. The only construction approved and completed was an addition of a landing and steps to the current structure.

Attorney Mears is requesting that the Commission issue a Certificate of Compliance. Ms. Pendergast visited the site and confirmed that the addition had not been constructed, only the landing and steps.

Ms. Pendergast explains that a Certificate of Compliance is issued to close out the Order even though the work was never completed. Because if this home were to be sold and repurchased the Order is tied to the title. And a future project would not be allowed until the old order is closed out.

Typically, the Commission wants the applicant to apply for a Certificate of Compliance so that the work done is compliant with Order issued. However, in this case nothing was built, which staff has confirmed. If the Commission issues a Certificate of Compliance, then it would be for an invalid order. This means that the order was issued, the project was approved but the work never commenced, and the Order has since expired. This would close out the Order and untie it from the Deed.

No public comments.



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MOTION: Mr. Splaine makes a motion to close the hearing for 102 Poplar Street, DEP File No. 14-938; Mrs. Curran seconded

ROLL CALL VOTE: Chelsea King – yes, Mike Splaine – yes, Vanessa Curran – yes, Ann McGill – yes, and Peter Wilson – yes

MOTION: Mrs. Curran makes a motion to issue a Certificate of Compliance Order for 102 Poplar Street, DEP File No. 14-938; Ms. King seconded

ROLL CALL VOTE: Chelsea King – yes, Mike Splaine – yes, Vanessa Curran – yes, Ann McGill – yes and Peter Wilson – yes

3. Request for Informal Discussion

152 Endicott Street

Applicant: Fairfield Residential

Those present were John Shipe, Licensed Engineer; Ann Martin, Environmental Scientist of LEC; Rob Hewitt, Vice President of Fairfield Residential; Brian McCarthy, Civil Engineer; and Janis Carroll.

The property location is where the dilapidated Denny's and Days Hotel exist. The proposed project would be 208-unit apartments. The applicants have been looking at this site for about a year and have had several meetings with Town staff. They will be applying for a Use Variance in a couple of weeks. And a meeting is scheduled with the Zoning Board in mid-October. If all goes well, a Notice of Intent will be submitted in about 6-8 weeks. The current zoning for that property is commercial use, not residential. But based on all the perimeters of this property; the location, state of the economy, it is not viable for anything but a multifamily project which is the Use Variance the applicant will be seeking.

Ms. Martin shared the existing conditions plan. They are two entries to the site, one from Endicott Street and the other from the Bed, Bath & Beyond parking lot. The porter river is a coastal tidal river which is indicated in yellow. The mean level high water elevation is 4.2 sets the elevation for the river and the setbacks with a 200' riverfront from a small tidal inlet stream from the west and small one from the east. The site is within land subject to coastal storm flowage set by FEMA at elevation 10 around the perimeter of site. The three buildings are shown in orange; parking lot in grey; and pool which has been filled in is indicated in white. The wetland in the field has not been delineated yet, but there are plans to have it delineated. When the Notice of Intent is filed, the plans will reflect this delineation.

The next plan shared is the proposed project. The red line shows the existing limit of pavement on the site. The multifamily building is shown in orange with a center courtyard. A parking garage is attached to the building with 10 surface spaces at the front with an entrance at the lighted



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intersection on Endicott Street. The building and parking have been pulled further away from the water's river and further away from the wetlands. There is pavement in the 25 foot and 35 foot and some in the northerly portion of the project which a waiver will be requested. And there is a small stream in the access which would also require a 25 foot and 35-foot waiver. The crossing would have to comply with the stream crossing standards. All this information will be presented with any wetland restoration and replication required.

It will consist of 208-unit apartments, 355 parking spaces of a which 345 will be in the garage and 10 at grade for visitors.

The Chairman asked if allowed uses will need to be presented. The answer is that they would need to meet the redevelopment standards. What is being presented this evening is what represents the constraints on the property which are extensive. The project is viable to the local industries in the area, the other land uses.

Mr. Shipe explained to the Commission that during the due diligence studies, the attempt was made to balance at how large the property is; what is a good density; what are the constraints around the perimeter. There are numerous other permitting efforts that need to be made including going through MEPA, Chapter 91, and the access to the property is a right in and right out.

The Chairman asked the height of the building and whether there is underground parking. The building is 67 feet tall, five-story building. Another constraint both horizontal and vertical is that it is close to the river, relatively shallow ground water so it is not practical to have underground parking. Around the perimeter is the coastal flood plain. As the tide comes in, it comes up on to portions of the site.

The impervious will be reduced by almost 15,000 square feet for the overall project.

They will be building within the 200-foot boundary. For the corner of the building will be within the 100-foot boundary. The existing pavement comes within about 50 feet of the river. As part of the access road will be a wetland crossing and they are prepared to replicate some wetlands somewhere else on the site.

The parking garage will also be five stories.

The project will require hearings with the Zoning and Planning Boards.

Public Comment - Joseph O'Neil, 3 ½ Essex Street, stated that this does not meet the Chapter 91 guidelines.

Mrs. Curran asked how this applies to Chapter 91. Ms. Martin responded that historically there was a title creek that went through the center of this site. when the Denny's & hotel were built the title,



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creek was relocated to the west so the footprint of the previous title creek is Chapter 91 jurisdiction and a portion of the project site falls within jurisdiction that would require permitting.

The Chairman asked if there were other concerns such as wildlife, traffic studies, altering of the stream. The traffic study was conducted and will be submitted to the town. They are confident that what is being proposed will be accommodated by the local roadways. The utility requirements have also been factored in and will be submitted to the town as well. This is a phragmites wetland. The stream within the crossing is receiving surface water off the roads and mall complex.

Mrs. Curran asked if there is an invasive management program. The response is that it would be exceedingly difficult because it is will be difficult to address invasive species management with such a strong prevalence of phragmites all through the wetlands along the river system, the entire title area.

Mr. Fields asked if west of Route 128 is phragmites. Ms. Martin has not walked the area but believes this is a pretty accurate statement since she is very familiar with the area.

Mr. Wilson commented that the Commission will request a site visit once the Notice of Intent is filed.

No further public comments.

III. MINUTES

July 23, 2020
August 13, 2020
August 27, 2020

The Commission did not get a chance to read the minutes. They will be continued to the September 24th meeting.

IV. OLD/NEW BUSINESS

- **Distribute Zoning Bylaw Language**

Ms. Pendergast explained that the current local bylaw was adopted in 1988 and modeled after the MACC model bylaw. In updating, review of what is existing, what MACC has updated in 2006, towns that are like us such as Manchester and Gloucester. The bylaws are the skeleton, and the regulations are the muscles and the brain. What the Commission is updating is the skeleton, the regulations updates can be done at the local Conservation Commission meeting. There are three new sections that have either been expanded or added.



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One section reviewed – Jurisdiction, Section 2 in the bylaw. This states what the commission protects, this is where we have our authority, as in the Wetlands Protection Act. What is listed in the WPA is also in our bylaw. There is opportunity to expand upon the existing jurisdictions. The bylaw currently states that one can not alter within a resource area and can not alter within the 100-foot buffer. But what it does not include is the 200-foot riverfront area because this is protected under the WPA. However, it is not in our bylaw so this language has been added. Vernal pools are currently not included either. In the Act now, they are not regulated on their own, only if associated with another resource area. Under the new proposal, vernal pools are protected whether or not attached to a resource area, they would have a 100-foot buffer zone. We do have a couple of vernal pools in town, Lebel's Grove, the Ipswich River areas, and behind Endicott Park.

Protection for isolated wetlands, under the Act they are not protected unless they touch a resource area. It is uncommon an isolated area would be found for a 5,000 square feet would not be attached to something. These are defined now.

Another update would be changing the buffer zones, 25 foot No Disturb/35 foot No Build to 35 foot No Disturb/50 foot No Build. The reason for expanding the buffer zone area is to protect the resource area and the associated buffer zones within it. This will allow a better job of regulating within the 50-foot buffer than what is done now, such as for installation of pools or expansion of decks.

Residential pier projects have been added to the jurisdiction section, not because there is more jurisdiction being added but it will make applicants aware that these projects are regulated and specifically monitored.

Definitions – alter is the most important in WPA because it determines everything that an applicant requires for a hearing. There have been added words to the definition of our bylaw.

Another big change in the bylaw refer to the exemptions which are also defined under the WPA. Anyone repairing an infrastructure, such as replacing a water main in the street that is 20 feet from a wetland or anything that would fall under Public Works. Also exempt are emergency projects or anything that does not apply to this Commission. Any projects that fall under the exempt category will require staff review. Must be within the 100-foot buffer zone to a wetland, but not within the 35 foot no build/50 foot no build, or in the riverfront area at least 50 feet from the mean high water line. If these requirements are met, then the applicant must provide erosion controls, stabilization after construction and evidence that performance standards have been met. An exemption form which will contain the requirement and completed by the application. There also may also be a request for some unofficial maps from the applicant to be sure that the project meets all standards to qualify for a minor project.

Mr. Fields told the Commission that the department is working closely with Engineering on storm water updates to get technical clarification on some of the submitted plans for staff and the Commission.



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Some miscellaneous changes are the Town filing fees, consultant fees (peer review), establishment of buffers and restrictions, and fees were moved to their own section.

- **28 Harbor Street, DEP Appeal – Site Visit**

A group of citizens have appealed the Order of Conditions issued by the Commission on the basis of insufficient protection provided for the bank within the Order. It did not take measures to protect the stability of the bank. The DEP has accepted the appeal, but does not mean a decision was issued. They will be conducting a site visit on Monday, September 14 at 1:00pm. It is strictly limited to the Commission and the applicant due to strict COVID guidelines. It is limited to 10 people, so anyone interested in attending the site visit should inform staff as soon as possible. All attending must complete a COVID release form and email to the DEP representative by Friday evening, September 11th.

V. Adjournment

Mr. Wilson makes a motion to adjourn the meeting at 8:43pm; Ms. McGill seconded

ROLL CALL MOTION: Peter Wilson – yes, Vanessa Curran – yes, Ann McGill – yes, Michael Splaine – yes; Chelsea King - yes