

WEST TISBURY
CONSERVATION COMMISSION
MINUTES OF MEETING
January 22, 2019

Present: John Brannen Prudy Burt, Whit Griswold, Binnie Ravitch, Peter Rodegast, Michael Turnell and Tara Whiting

Staff Present: Maria McFarland

Also present for all or part of the meeting: Chris Alley, Chris Cottrell, Carlos Teles Filho Greg Milne, Deb Hancock, Reid Silva, George Sourati and Chuck Sullivan

The meeting was called to order at 5:05 P.M. Tara Whiting, Chairman presiding.

The minutes of the December 11 meeting were approved as revised. All in favor. Michael abstained. The minutes of the December 12 meeting were approved as written. All in favor. Michael abstained.

Public Hearings:

Map 35 Lot 6.15/SE79-390: a continued public hearing under the requirements of G.L. Ch.131 § 40, as amended, and West Tisbury Wetlands Protection Bylaw and regulations to consider a **Notice of Intent** filed by Vineyard Land Surveying & Engineering, Inc. on behalf of Jon McNeill for a project at 160 Plum Bush Point Road owned by Philip W. Spalding, Trustee of Spalding Investment Realty Trust. The project consists of landscaping and creation of view channels within the Buffer Zone accessory to a new single family dwelling to be constructed outside the Buffer Zone, construction of a 34' raised boardwalk through a Bordering Vegetated Wetland and an 80' long seasonal pier with fixed pilings and seasonal ramp and float. [The boardwalk and dock have been withdrawn from the application.]

The NHESP comment letter is not due for another 2 weeks. Reid does not expect that NHESP will have any comments beyond what their 2013 letter said.

Members discussed what work they may approve to create the lawn and meadow area at length. Tara summarized what the board will allow subject to receipt the comment letter from NHESP.

Within the footprint of the lawn trees may be cut and the area bush cut and rotovated. Trees that are on the edge of the lawn and meadow that might be a hazard to the house once constructed can be removed after administrative review. The meadow may be brush cut and trees tagged but none would be removed until after the house is constructed. No view channels will be approved or created until the applicant submits a landscape plan.

There was no public comment.

At the request of the applicant, a motion was made and seconded to continue the public hearing on this application to February 19 at 5 00 PM. All in favor.

Map 35 Lot 9/SE79-394: a public hearing on a **Notice of Intent** filed by Vineyard Land Surveying & Engineering, Inc. on behalf of Blue Heron Farm LLC for a project located at 99 Pond View Farm Road. The project consists of grading and associated site work in the Outer Buffer Zone in connection with the construction of a structure outside the Buffer Zone.

Reid presented the project for grading in the Buffer Zone. The project plan shows all relevant setbacks within the Buffer Zone. The house is sited outside the Buffer Zone. The applicant proposes to lower the elevation of the house site from elevation 19 to elevation 16.

There is no activity proposed within Estimated or Priority Habitat in connection with the house project, however, the grading is within 50 feet of the boundary line of Estimated Habitat as shown on the project plan.

In Reid's opinion, there will be no impact to the Buffer Zone caused by surface runoff. The drainage characteristics of the site will be improved because the slope of the land will be lessened. All roofs on the proposed house are pitched toward the inland side of the property.

Some of the fill from the grading work will be used around the site. Excess excavated material from the grading will be removed off site.

Few trees remain on the property, except those on the coastal bank and the 40-50 Eastern Red Cedars in the No-Disturbance Zone.

The subsoils will be removed and all disturbed areas will be top dressed with topsoil and seeded with an appropriate conservation mix.

Commissioner's Comments/Questions:

John asked if the elevation is going up or down. Reid explained that the elevation is going as much as 6 feet.

John also asked how much square footage of the area will be graded. There will be approximately 9, 600 square feet of alteration.

Michael asked if the building is as far back as it can be. Reid replied it is as far back as the applicant wants it to be. The applicant prefers the proposed location. If they pull the house further toward the road, they will have to do more excavation/ grading on the slope.

Carlos added that the applicant wants to plant large white Oaks on the inland side of the house to create screening from the road.

While none of the actual project is proposed within estimated habitat the grading comes within 30 feet of the boundary.

Prudy cited the following bylaw performance standards for work near estimated or priority habitat:

1. No activity shall be permitted that alters existing vegetation within twenty-five (25) feet of verified estimated habitat of rare species and wildlife.
2. No activity shall be permitted that result in the construction or enlargement of a structure within fifty (50) feet of verified estimated habitat of rare species and wildlife.
3. No alteration of topography (filling or cutting) and/or drainage characteristics shall be permitted within fifty (50) feet of verified estimated habitat of rare species and wildlife.

There was a long discussion about what "verified" means.

Maria suggested that the board could look at these performance standards to mean if the NHESP letter places conditions on the project and states the actual species that would be impacted, then the board should apply these performance standards. If NHESP says the proposed project will not adversely affect the habitat of a protected species, it may not be necessary to apply the performance standards in the bylaw.

John said if the Estimated Habitat line is an arbitrary line, or a mapped line but NHESP has not identified any habitat that specific needs to be protected, he was comfortable approving the grading with a waiver of the bylaw performance standards.

Reid said the board has never raised this issue before to his knowledge and that he did not see there was any issue and asked if the board has ever asked for a waiver request or granted a waiver from these provisions. No.

Tara asked about landscaping after the house is constructed. Carlos said most of the landscaping will be on the road side of the house.

Any landscaping within the Buffer Zone will require the applicant to submit a landscaping plan for review and approval of the board.

Public Comment: There was no public comment. An undated letter from the property owner was read for the record.

Reid requested a waiver from the provisions of the Bylaw regarding the performance standards or work near Estimated Habitat under Section XXI of the Bylaw regulations. The vote on the motion to grant a waiver was approved 6-1. Prudy voted no. Motion carried.

A motion was made and seconded to approve the proposal as presented for grading down to the 16 ft. contour and removing fill as proposed. The project was approved by a vote of 6-1. Prudy voted no. Motion carried.

If top soil remains on site it shall be properly stockpiled and stabilized in a location outside the buffer zone. Any excess material shall be removed.

Any landscaping within the Buffer Zone requires the submission of a landscape plan for approval.

A motion was made and seconded to approve the special conditions as presented. The vote of the motion was 6-1. Prudy voted no. Motion carried.

Map 35 Lot 9/SE79-389: a continued public hearing under the requirements of G.L. Ch.131 § 40, as amended, and West Tisbury Wetlands Protection Bylaw and regulations to consider a Notice of Intent filed by Teles Landscaping on behalf of Blue Heron Farm LLC for a project located at 99 Pond View Farm Road. The project consists of the removal of invasive vines from Eastern Red Cedars at the top of the coastal bank and the relocation of Eastern Red Cedars from the Buffer Zone to other locations onsite.

Carlos reviewed the proposal originally presented to the board at the November 11, 2018 hearing. The client wants to transplant 40-50 Eastern Red Cedars within the No-Disturbance Zone for screening around the property. The original proposal was to remove the trees using a tree shade. He is now asking to flush cut the trees.

The trees are within the AE Federal Flood Hazard Zone as well as the first 25 feet of the Buffer Zone to the top of the coastal bank. A section of the trees is located within Estimated and Priority Habitat. The NHESP letter dated November 30, 2018 states that the project as currently proposed, “will not adversely affect” the actual Resource Area Habitat of state-protected rare wildlife species.

It was noted that the Cedar trees provide protection from wind and salt spray. Carlos said the trees on the coastal bank are taller than the ones the applicant would like to remove. The applicant is not asking to remove the trees to create a view channel as most of the trees that sit on top of the coastal back are taller than the Cedars they want to move.

Carlos said if the board is not amenable to spading the trees; the applicant is willing to flush cut them.

Carlos told the board that the invasive species removal work that will be done by hand is minimal.

Commissioner’s Comments/ Questions:

Tara and John both said they are opposed to the removal of the cedars in the No-Disturbance Zone but are ok with the invasive removal work and tree removal by tree spade of trees in the rest of the Buffer Zone.

Carlos asked if they could do selective removal by taking only the trees that are not healthy.

Peter asked if the tree removal could be part of a landscape plan to come back under the NOI for the grading project. Reid said the grading NOI does not ask for approval of any tree removal or landscaping beyond placing top soil and seed on disturbed areas after the house is constructed.

Maria suggested that they could do that if the applicant withdrew this NOI. Otherwise, the board has to consider this proposal as a stand- alone application.

Chuck Sullivan asked about the trees that are more than 25 feet away from the top of the coastal bank. There are approximately 9 trees in the second 25 feet.

Carlos asked if they could tree spade the ones outside the 25 foot and come back with a landscaping plan. Mike said he was ok with that.

Tar asked if they could deny certain aspects of the proposal and approve others.

In response, Maria asked why the board would deny the removal of the trees in the No-Disturbance Zone under the original Notice of Intent but would consider the proposal as part of landscape plan. Tara replied that the applicant can ask for whatever they want in a landscaping plan. That doesn’t mean the Board would approve it. Maria asked why the board would deny the request under one NOI and suggest to the applicant that they include it in a landscaping plan after the house is constructed if they all will vote to deny the removal of trees under any circumstance.

Mike said he was ok with the transplanting the trees in the No-Build and outer buffer zone.

There was no public comment.

Tara closed the public hearing. A motion was made and seconded that there is to be no alteration (transplanting or flush cutting of trees) in the No-Disturbance Zone. Within the No-Build Zone and Outer Buffer Zone trees may be transplanted using a tree spade and disturbed areas reseeded. Minimal removal

of invasive species vines may be done on trees and shrubs along the top of the coastal bank provided all work is done by hand and no trees or shrubs are cut down or pruned.

The vote on the motion was 6-1. Prudy voted no. Motion carried.

Map 39 Lot 2.1/SE79-392: continued public hearing under the requirements of G.L. Ch.131 § 40, as amended, and the West Tisbury Wetlands Protection Bylaw and regulations to consider a Notice of Intent filed by Schofield, Barbini & Hoehn on behalf of Thomas and Christina Shropshire owners of 147 Middle Point Road. The project consists of the creation of two view channels by selective clearing, maintenance of an existing path to Thumb Cove, and construction of a set of stairs to the beach accessory to the construction of a new single family dwelling to be located outside the Commission's jurisdiction.

Peter Rodegast recused himself from the public hearing because of his relationship with South Mountain Company who is working for the applicant.

Chris Alley said the applicant will come back for approval of the view channel after construction of the house is completed. The project plan has been revised to add the elevations of high pond. The applicant submitted a revised proposal for the beach stairs. Instead of constructing a permanent wooden staircase, they propose to install an aluminum set of stairs that will be removed seasonally. Every piece of the staircase including the 4 posts is removable.

Special conditions: All landscaping including the view channels will come to the board for approval after the house is constructed. The existing path may be maintained as it currently exists.

A motion was made and seconded to approve the project with conditions as revised. The vote on the motion was 4-0-2. Binnie and John abstained as they missed the first hearing.

After the hearing was over, Peter rejoined the meeting.

Map 15 Lot 1/SE79-395: a public hearing under the requirements of G.L. Ch.131 § 40, as amended, and West Tisbury Wetlands Protection Bylaw and regulations to consider a Notice of Intent filed by Schofield, Barbini & Hoehn, Inc., on behalf of Christopher Cottrell for a project located at 274 Indian Hill Road owned by Brian & Elizabeth McBride. The project consists of construction activities associated with the relocation and expansion of an existing single-family dwelling including backfilling of a cesspool and grading with the Buffer Zone.

Chris Alley described the existing conditions of the property. The proposal is to keep the old part of the house that has some historic value and move it back from the road. An addition will be added to the back of the old house. The existing well and the new well are outside the Buffer Zone. The old cesspool is in the Buffer Zone. Both the old well and the cesspool will be abandoned and properly filled in. The new leach field for the septic system sits at the edge of the buffer zone with grading extending into the Outer Buffer Zone. Chris described how the grading will be handled. The septic system was permitted many years ago was never constructed. After 30 perc tests the proposed location has been submitted to the Board of Health.

The project plan shows a limit of work and site protections to be located within the existing stone walls. There is some existing clearing in the first 50 feet of the Buffer Zone that extends into the bordering vegetated wetland.

Commissioner's Comments Questions:

Peter asked if the minimum amount of grading was proposed. Chris said yes.

Michael asked if the house will have a full basement. It will.

Peter asked if recent perc tests were done. Chris said the tests were 20 years old as is the wetland delineation.

Prudy asked about the number of bedrooms and if it was possible to move the leach field grading out of the Buffer Zone and away from groundwater. Chris explained that the Board of Health requires the leach field to be 30 feet from the property line rather than the 10 feet required by the State. The septic system is designed for 3 bedrooms; two in the main house and one over the garage.

Peter said the board would be interested to see some restoration in the first 25 feet from the edge of wetlands.

Maria said that if the board was going to ask for restoration, the plan should show the existing edge of clearing. Chris said he would locate the edge of clearing and that the existing stone wall could serve as the permanent boundary for mowing.

Mr. Cottrell said he might want to do some work in the wetland. He was told he would have to file for a new permit to do work in the resource area. Mr. Cottrell said he wasn't a mower but might want to bring in goats.

A motion was made and seconded to approve the project as presented. All in favor.

Conditions: no stockpiling of excavated materials. The stone wall to the southwest of the building envelope will serve as the edge of permitted clearing within the Buffer Zone. Any disturbed areas outside the stone wall or wetland shall be allowed to grow back. Any new work outside the stone walls will need to come back under a request for an amendment to the Order of Conditions or as a new Notice of Intent.

A motion was made and seconded to approve the special conditions. All in favor.

Map 3 Lot49/SE79-393: a public hearing under the Wetlands Protection Act G.L. Ch.131 § 40, as amended, and West Tisbury Wetlands Protection Bylaw and regulations to consider a **Notice of Intent** filed by Sourati Engineering Group on behalf of Nooni and Shira Hammarlund owners of property located at **60 Stone Bridge Road**. The proposed project consists of the construction of a single-family three-bedroom house and associated site work including installation of a well, sewage disposal system and utilities on Lot 49. The proposed work is located within the Buffer Zone.

George presented the project plan.

This is a vacant lot that the Commission approved a house project for in 2004 that was never built. George described the wetland as an area where most of the year there is a pond and a wetland associated with it. The original house plan was approved before the local bylaw was adopted. Because of time constraints, it would be difficult to conduct the required study to determine if this pond would meet the criteria to be a certified vernal pool so the applicant agreed to assume that it is vernal pool habitat subject to jurisdiction under the bylaw.

The Board of Health has approved the septic system and well locations. There is an easement agreement with the abutting lot owner to allow the leach field to be right up against the property line instead of the required 30 feet and therefore, 100 feet from the wetland edge. The well on the abutting lot is going to be

relocated to allow the leach field. The well to serve this lot will be located 27 feet from the edge of the wetland. The location was determined to meet setbacks to other systems in the area. The plan show erosion control measures around the well location.

In order to keep the house site 55 feet from the edge of the wetland, the house is set 35 feet from Stone Bridge Road and 22 feet from the side lot lines. These setbacks will require a variance from the Zoning Board of Appeals.

The house site is on a knoll at contour 112. The peak is contour 115. The applicant plans to lower the grade in order to have a flatter area for the house. This will help to capture runoff so that it will not run toward the pond. The roof will have gutters. The limit of work line is set 35 feet from the edge of the wetland.

Commissioner's Questions/ Comments:

John asked if the Board has ever approved a house this close to Vernal Pool Habitat. Maria explained that the lot is very constricted by its size and zoning setbacks. A house was approved in 2004 that was closer to the pond.

Prudy suggested permanent boundary markers to limit post construction activities impacting vernal pool habitat.

The well area is not disturbed so some clearing is required. The work can be done from the road. Trenching for a water line to the house will need to be done.

Peter asked if there were final house plans and if the house was designed to be as compact as possible. Prudy followed up Peter's question by asking if there was any discussion to be had with the owner about reducing the size of the house. George responded that this is the footprint they asked him to present. This is a three bedroom house as was the original house.

It was noted that the original location of the house was 35 feet from the edge of the wetland. George said the foot print won't get any larger without the plan coming back to the Commission.

George said it would be hard to ask them to pull it closer to the road because the ZBA will look to see if it is keeping with the rest of the neighborhood.

Peter asked if they had to ask for setback relief for the leach field. George explained that because they are doing an easement agreement that was approved by DEP they do not.

George will revise the plan to move the limit of work line 10 feet closer to the house.

There was no public comment. The public hearing was closed.

A motion was made and seconded to approve the project as presented. All in favor.

Special conditions will include snow fence and silt fencing. The project plan will show the final edge of lawn after the house is constructed with permanent boundary markers to be located along the edge of the lawn. The water line trench will be installed using a one foot bucket with spoils placed on the uphill side of the well and trench. The trench shall be filled within 48 hours of opening. All fill will be removed off site.

A motion was made and seconded to approve the conditions. All in favor.

Old Business:

MVAS/ APR meeting: Maria will follow up with Jen on the status of the list of events to be submitted to VCS, the Town and Town Counsel. No action was taken.

Water withdrawal bylaw: Maria will check with Ron. After meeting with Tara, Prudy and Cindy, Ron recommended having an attorney who specializes in water rights look at the bylaw language.

Administrative

Correspondence

Out: Map 3 Lot 49/ Hammarlund/SE-244/ (2004) House never built
Map 6 Lot 14.1/ Graham:
SE79-63- (1990) House and restoration of unauthorized work
SE 79-73 (1991) Invasive species work
SE79-108- (1993) Work on dam
SE79-109 (1993) Invasive species removal; amendment to continue restoration
work done in 1997

There being no further business to conduct, the meeting adjourned at 7:25PM.

Respectfully submitted,

Maria McFarland
Board Administrator
APPROVED