



MANCHESTER-BY-THE-SEA

CONSERVATION COMMISSION • TOWN HALL
Manchester-by-the-Sea, Massachusetts 01944-1399
Telephone (978) 526-4397 FAX (978) 526-2001

Conservation Commission Meeting February 14, 2023 Zoom Virtual Meeting ♦ 6:30 PM

MINUTES

I. Call to Order

Members Present: Steve Gang, Sari Oseasohn, Olga Hayes, Henry Oettinger, David Lumsden, Jeff Bodmer-Turner, and Conservation Agent, Chris Bertoni.

Members Absent: None

Conservation Chairperson Mr. Gang opened the meeting at 6:30 p.m. under the Wetlands Protection Act and Town by-law. He announced that it was being recorded by the Commission. This was a virtual meeting.

II. Recess for Public Hearings under Wetlands Protection Act and Local Wetlands By-Law

III. Requests for Determination of Applicability

Public roadway intersection near 2 Harbor Street and Bridge Street (State Highway 127), Town of Manchester – improvements to the intersection within the 100' Buffer to Bordering Vegetated Wetland New 2023-0002

Ms. Bertoni read the published legal notice. Evin Guvendiren of DeRosa Environmental Consulting presented. Chuck Dam, DPW Director and Nate Derosiers, DPW engineer in attendance. The proposed project would be a reconfiguration of the intersection near 2 Harbor Street. Instead of the current V-shape the plan would be to have two-way traffic on just one side. The pavement on the other side would be removed and revegetated. Mr. Dam added that the intersection was identified in Complete Streets. When the State was repaving Route 127/Bridge Street Mr. Dam asked them if they would assist in the improvements of the intersection. There were safety concerns regarding crosswalks. There will be one crosswalk instead of the current three and a stop sign will be added.

Dr. Hayes suggested pollinator plants at the proposed grass area. Mr. Gang suggested planting trees. Mr. Dam agreed a planting plan could be considered with abutter approval. It could be established as grass first, then go back and add other plants. There is a water main and drainage under that area.

Ms. Bertoni asked what was the purpose of the proposed grass swale? Mr. Dam explained that it was there for excess water to go. It is outside the 100' Buffer. He also pointed out that there would be sidewalk improvements on the side closest to the wetland. Ann Harrison of 13 Tuck's Point Road asked about the reverse opening. Mr. Dam explained that an abutter across the street was concerned about cars lighting up the driveway. It also had better site distances for cars approaching from Beverly. Ms. Oseasohn and Mr. Lumsden appreciated the safety improvements and thought the plan was good.

Vote: To issue a Negative 3 Determination of Applicability with 6 conditions.

Motion: Mr. Gang

Second: Dr. Oettinger

Actual Vote:6-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes, Jeff Bodmer-Turner – Yes

IV. Notices of Intent/Abbreviated Notices of Resource Area Delineation

2 Old Neck Road, The Old Neck Road Nominee Trust, Christopher Vento – proposed construction of a new patio with pergola and cooking area within the 100’ and 50’ No Build Zone Buffers to Bordering Vegetated Wetland

Continued from 8/30/22, 9/27/22, (10/25/22 no discussion), continued to 1/3/23 (no discussion), 1/24/23

DEP File #39-0881

Per Mr. Gang the consultant had requested a continuance to the 3/7/23 meeting.

Vote: To continue the matter to the 3/7/23 meeting.

Motion: Mr. Gang

Second: Ms. Oseasohn

Actual Vote:6-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes, Jeff Bodmer-Turner – Yes

1 Crow Island, GMVN Crow LLC, Gail von Metzsch – demolition of select existing structures and construction of an enclosed pool with the 100’, 50’ No Build Zone (NBZ), and 30’ No Disturb Zone (NDZ) Buffers to Coastal Bank

Continued from 12/6/22, 1/3/23, 1/24/23

DEP File #39-0884

Peter Ogren of Hayes Engineering presented. William Rice, representative for the applicant and Mary Rimmer of Rimmer Environmental in attendance. At the last hearing the Commission had asked for an Alternatives Analysis and were looking for a planting plan for mitigation. The Alternatives Analysis presented looked at three locations. There is the preferred location which has the most disturbance in the NBZ and is entirely in an historically disturbed area. It has the easiest access for construction and the easiest grading program. An old access road used to be where they proposed to build. A second location would be in front of the house which is closest to the Coastal Bank and would have the most grading. A third location would be near the gazebo, which is in a less disturbed area, trees would need to be removed and it would go over utilities that service the house.

Mary Rimmer looked at the mitigation area. There is 5500 sf of area proposed which is currently mowed lawn area. She felt the best use of this area would be a meadow. The plan would be to remove the existing sod and reseed as a meadow.

Commissioners were not convinced that alternatives had been fully investigated. A smaller pool size, change in size and shape of the building, removal of the wading pool were all suggestions that the applicant could investigate to move construction away from the NBZ and NDZ. It was also pointed out that construction in the NBZ and NDZ would need 2:1 mitigation, which the planting plan only showed 1.5:1.

Mr. Ogren pointed out that the width of the pool had been downsized as well as the deck outside. The 70’ length of the pool is necessary for the homeowner. There was not much construction in the NDZ for the preferred location. There would be issues with utilities thereby needing to be rerouted if the wading pool were moved. Mitigation could be increased. In response to concerns regarding extreme water runoff, Mr. Ogren described the flow mitigation program. Water from roof runoff would be collected and directed to a sand filter under the pool and go underground. The infiltration system designed should handle extreme events. Ms. Rimmer added that the project met the performance standards of Coastal Bank and there would be no adverse effect on the Bank.

Mr. Gang and the Commission asked for more precise calculations of the mitigation area based on the local wetland regulations, and a more robust Alternatives Analysis with a look at change of size or shape of pool, and a calculation of storm water management. Mr. Gang also wanted to know the total water capacity of the pools.

Vote: To continue the matter to the 3/7/23 meeting.

Motion: Mr. Gang

Second: Mr. Lumsden

Actual Vote: 6-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes, Jeff Bodmer-Turner – Yes

8 & 0 Atwater Avenue, Simboli Prop Manchester, LLC Owner/Cell Signaling Corporation Inc., Applicant – Abbreviated Notice of Resource Area Delineation (ANRAD) to affirm the extent of all jurisdictional wetland resource areas and associated buffer zones on two parcels

Continued from 1/24/23

DEP File #39-0889

Devon Morse of Hancock Associates presented. A site walk occurred. There were a few revisions in flagging in the Riverfront area. The changes were made based on the high-water mark. Commissioners were comfortable with granting a waiver for removing the seasonal restriction except for Vernal Pools. Ms. Morse explained that any proposal would have to be looked at with concrete plans. Developers would follow the ORAD. Mr. Gang requested a condition be added for a Vernal Pool study in the next breeding season (within the next 90 days).

Vote: To issue an ORAD using revised flagging for the A-G wetland series with the finding that there is a low probability of error. There is the added condition that the applicant conduct a survey of potential Vernal Pools at the next breeding season and certify if proper and report back to the Commission.

Motion: Mr. Gang

Second: Ms. Oseasohn

Actual Vote: 6-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes, Jeff Bodmer-Turner – Yes

2 Harold Street, Wrecking Crew LLC – demolition and reconstruction of a single-family home within Riverfront Area Resource

Continued from 1/24/23

DEP File #39-0885

Per Ms. Bertoni the applicant had requested a continuance to the 3/7/23 meeting.

Vote: To continue the matter to the 3/7/23 meeting.

Motion: Mr. Gang

Second: Dr. Bodmer-Turner

Actual Vote: 6-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes, Jeff Bodmer-Turner – Yes

15 Smith's Point Road, Hamid Shir Khan – request approval to keep "Wall A" as constructed, rather than remove it, and implement a restoration project at the limit of Coastal Bank, Land subject to Coastal Storm Flowage and within the 30' No disturb Zone Buffer to Coastal Bank

New

DEP File #39-0885 (ACOP-NE-15-6W001-NT-AMEND1)

Ms. Bertoni read the published legal notice. Hooshmand Afshar of Taj Engineering LLC presented. Mr. Afshar gave a brief history of the property. Per Mr. Afshar, starting in 2009 erosion was occurring. Several stone walls were erected to stabilize the slope and avoid erosion of the yard. A Superseding Order of Conditions was issued. In 2015 an Administrative Consent Order with Penalties (ACOP) was issued. In 2017 there was an amendment to the ACOP. In 2020 it was signed off by DEP. DEP approved wall B, C, & D and they can remain in place. Wall A was built for restoration. When the ACOP was amended DEP required Wall A should be presented to the local Conservation Commission. As an alternative to removing Wall A the applicant must file an after-the-fact NOI.

Mr. Afshar presented two alternatives to keeping the wall. The first was to inject chemicals for soil stability or, second, using riprap to replace existing Wall A. Both alternatives have adverse effects. Mr. Afshar asked that

the Wall A remain in place since it is at the limit of Coastal Bank and removal would have an adverse effect on the resource area and destabilize the slope.

Dr. Hayes explained to the Commission that in 2008, 800' of stone wall was placed on Coastal Bank, unpermitted. The Commissioners requested a site visit. Ms. Bertoni pointed out that there was a Restoration Plan in Area 3 by Mark Jacobs which may need permission from the Commission to complete. She also pointed out that there are previous Orders of Conditions that have not been closed out. Ms. Bertoni has been in touch with Town Counsel to verify some details re past filings, but at the time of the hearing had not heard back from them. A site visit was scheduled for Saturday 2/25/23 at 10:00 a.m.

Mr. Afshar explained that this filing was under the local by-law and DEP has been informed of all communications along the way. Mr. Shir Khan informed the Commission that the pathway to see the wall is dangerous and has poison ivy. He suggested Commissioners wear boots or sneakers. He thanked everyone for all their work.

At the end of the meeting there was a brief discussion about which current members were on the Conservation Commission when this project initially came before the board.

Vote: To continue the matter to the 3/7/23 meeting.

Motion: Mr. Gang

Second: Dr. Oettinger

Actual Vote: 6-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes, Jeff Bodmer-Turner – Yes

17 Proctor Street, Trustee of the KSPS Family Trust, Kevin Potter – ecological restoration project and tree removal within the 100', 50' No Build Zone, and 30' No Disturb Zone Buffers to Coastal Bank (Salt Marsh)

New

DEP File #39-0XXX

Ms. Bertoni read the published legal notice. Evin Guvendiren of DeRosa Environmental presented. Timothy Armstrong of Bartlett Tree in attendance. This project is tree management and ecological restoration. It is not a limited project. All work is within the 100' Buffer Zone. There is a tree removal and invasive species removal plan. There are 63 trees to be removed and the area replanted with 64 native trees as well as shrub and herbaceous species. Bartlett Tree assessed 100 trees on site. There will be a view corridor.

Ms. Bertoni informed the Commissioners that (Manchester Essex Conservation Trust (MECT) holds a Conservation Restriction along the salt marsh area. All work is outside the MECT area. Ms. Bertoni had received an email from Patrice Murphy of MECT and she had no comment on the proposed work. A site visit was scheduled for Saturday 2/25/23 at 9:30 am. Trees to be removed will be flagged.

Vote: To continue the matter to the 3/7/23 meeting.

Motion: Mr. Gang

Second: Dr. Oettinger

Actual Vote: 6-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes, Jeff Bodmer-Turner – Yes

40 Masconomo Street, Margaret & Ian Strachan – extend an existing boardwalk, grading, conversion of lawn to native plantings, and removal of invasive species within Bordering Vegetated Wetland, Land Subject to Coastal Storm Flowage, 100', 50' No Build Zone, and 30' No Disturb Zone Buffers to Bordering Vegetated Wetlands

New

DEP File #39-0888

Per Ms. Bertoni the applicant requested this filing not be opened and to continue the matter to the 3/7/23 meeting where the proper filing can be opened. There have been process issues raised by DEP regarding the filing. Mr. Gang passed over the filing and it was not opened.

V. Reconvene Regular Meeting

VI. Requests for Certificates of Compliance

33 Forster Road, Dominic Paratore – construction of a single-family home and appurtenances, including upgraded septic system, with the 50’ No Build Zone and the 100’ Buffer to Bordering Vegetated Wetland

Continued from 1/3/23, 1/24/23

DEP File #39-363

Mr. Gang summarized the project and explained the outstanding issue was the lack of a Conservation Restriction which was part of the Order of Conditions. Per Ms. Bertoni the applicant requested a continuance to the next meeting.

Vote: To continue the matter to the 3/7/23 meeting.

Motion: Mr. Gang

Second: Dr. Hayes

Actual Vote: 6-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes, Jeff Bodmer-Turner – Yes

27 Proctor Street, Lees Island Realty LLC – installation of chimney and outdoor kitchen within 100’ of Coastal Bank

New

DEP File #39-0769

Evin Guvendiren of DeRosa Environmental presented. John Morin of Morin-Cameron Group and Peter Gourdeau, representing the owner, were in attendance. This project was the installation of a chimney and outdoor kitchen. An As-Built Plan and letter of compliance from the Morin-Cameron Group was submitted. There was a final monitoring report of the restoration area which showed 100% removal of invasives and 70% survival rate of plantings. It was a very successful mitigation area. The retaining wall was never built. Ms. Bertoni did a site inspection and informed the Commissioners that the site was stable, the mitigation had established well, and the Rhododendron was relocated and is thriving. Ms. Guvendiren would submit revised plans that do not show the Chapter 91 Waterways jurisdictional lines and notes on it as Chapter 91 notations were not on the original approved plan.

Vote: To issue a Certificate of Compliance with 5 perpetual conditions.

Motion: Ms. Oseasohn/Mr. Gang

Second: Dr. Bodmer-Turner

Actual Vote: 6-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes, Jeff Bodmer-Turner – Yes

27 Proctor Street, Lees Island Realty LLC – proposed raze and rebuild of an existing single-family home within Buffers to Salt Marsh and Coastal Bank, amended in 2020 include driveway realignment, remove existing driveway, add walking paths, and additional minor alterations

New

DEP File #39-0802

Evin Guvendiren of DeRosa Environmental presented. John Morin of Morin-Cameron Group and Peter Gourdeau, representing the owner, were in attendance. All work was completed. The 2-year monitoring was completed. The plantings are doing well. It is a stable and well vegetated restoration area. There were minor deviations. There are fewer walkways than approved. The island in the middle of driveway configuration is shaped differently and the side parking area is elongated, and smaller. The white pines by the driveway were retained.

Ms. Bertoni did a site inspection. She did not see any additional impact to the wetland due to the deviations. There are Ch. 91 jurisdictions on the plan and Ms. Guvendiren will remove them and submit revised as-built plans.

Vote: To issue a Certificate of Compliance with 6 perpetual conditions.

Motion: Mr. Gang

Second: Dr. Hayes

Actual Vote: 6-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes, Jeff Bodmer-Turner – Yes

24 Forest Street, Charles & Merry Anderson – demolition of an attached garage structure and rebuilding a new living space addition to the home within existing footprint within the 100' Buffer to Inland Bank and Bordering Vegetated Wetland

New

DEP File #39-0786

Bill Manuell of Wetlands and Land Management presented. The addition was built on the same footprint of the old garage. There were a few deviations. In front of the house there is a stone drip edge that does not show on the plan. There was a dirt/sparse grass area that is stabilized with crushed stone. There are two precast support posts for the pergola. A small, crushed stone area was added between the addition and the property line. A short fence was installed, and 19 shrubs were installed.

Ms. Bertoni did a site inspection. The site is stable. The deviations are minor. She saw no issues.

Vote: To issue a Certificate of Compliance with 4 perpetual conditions.

Motion: Dr. Oettinger

Second: Dr. Bodmer-Turner

Actual Vote: 6-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes, Jeff Bodmer-Turner – Yes

VII. New Business:

Forest Management Plan: Dr. Bodmer Turner will work with Patrice Murphy of MECT to survey certified and potential certifiable Vernal Pools under property owned by MECT and property under the jurisdiction of the Town in the Western Woods. The Town Administrator had suggested Dr. Bodmer-Turner present this to the Select Board and get approval. Dr. Bodmer-Turner first wanted the support of the Conservation Commission for him to cooperate with MECT in identifying Vernal Pool resources in the Western Woods.

Vote: The Conservation Commission expressed undivided support with Dr. Bodmer-Turner collaborating with MECT in identifying Vernal Pools.

Motion: Mr. Gang

Second: Dr. Hayes

Actual Vote: 6-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes, Jeff Bodmer-Turner – Yes

Western Woods Cart Paths: Dr. Hayes informed the Commission that there would be a site visit Saturday 2/18/23 at 10:00 a.m. to inspect the areas where cart paths have been used. There has been pushback from owners in the Western Woods. All Commissioners were invited to attend.

27 Proctor Street: Ms. Bertoni heard from Chip Nylan, Attorney for the homeowner, that they would be filing an application for repairs on the seawall [Note: at the following meeting, Ms. Bertoni corrected her statement.] Ms. Bertoni had reached out to Town Counsel who responded that if the applicant was filing an application his original letter regarding being exempt was moot.

Letter Permits:

2 Harold Street: for soil tests.

150 Bridge Street: for fence installation.

Expenditure: Mr. Gang presented an invoice from Beaver Solutions for maintenance for flow devices. Commissioners agreed to pay it.

Vote: To pay \$1406.25 to Beaver Solutions for maintenance.

Motion: Mr. Gang

Second: Dr. Bodmer-Turner

Actual Vote: 6-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes, Jeff Bodmer-Turner – Yes

Violations: 38 School Street

Adam Zaiger, Attorney for property owner, in attendance. Ms. Bertoni recapped for the Commissioners that this property, currently on the market, has an unpermitted patio from the previous owner. The back yard has a large stormwater swale and is in Riverfront. This patio should be pervious. When Ms. Bertoni was first notified that contractors were working on the patio, she had the work stopped, and then it began again a few days later and the patio was completed. She was told that they wanted the area safe for tenants. Mr. Gang suggested a friendly Enforcement Order.

Mr. Zaiger explained that the property was purchased at a foreclosure sale. He said it was a nuisance property. He did not know that there still was an Enforcement Order. He would like the existing Enforcement Order modified or rescinded. He thought the patio was a minor activity and not a violation of the state statute. He felt this was an exemption. He pointed out the work was completed for the safety of the people on the property. Mr. Gang clarified that under the local by-law the patio was an increased impervious surface in a resource (Riverfront). It needs to be permitted or modified. Mr. Zaiger responded that he would like an engineer on site and could file a RDA or NOI, but felt an Enforcement Order was incorrect as it refers to the Wetlands Protection Act. This situation is being disclosed to all potential buyers. Mr. Zaiger added that he hoped Ms. Bertoni's site visit during an open house was a coincidence otherwise he felt it was improper. Ms. Bertoni pointed out that converting lawn to impervious surface is an issue under the state act and local bylaw.

VIII. Minutes:

10/25/22: Commissioners discussed edits.

Vote: To accept the minutes as amended.

Motion: Mr. Gang

Second: Ms. Oseasohn

Actual Vote: 6-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes, Jeff Bodmer-Turner – Yes

IX. Adjournment:

There being no further business, the meeting was adjourned at 9:05 p.m. The motion was presented by Mr. Lumsden and seconded by Dr. Oettinger and approved by unanimous consent.

Submitted by,

The Conservation Commission

X. Meeting Documents:

- Certificate of Compliance – 27 Proctor Street DEP File # 39-0769 submitted by Lees Island Realty LLC.
- Certificate of Compliance – 27 Proctor Street DEP File # 39-0802 submitted by Lees Island Realty LLC.
- Certificate of Compliance – 24 Forest Street submitted Charles & Merry Anderson.
- Request for De Minimis Change – 156-160 Pine Street submitted by Cheryl Marshall, Town of Manchester Parks and Recreation
- Notice of Intent – 15 Smith’s Point Road submitted by Hamid Shirkhan.
- Notice of Intent – 17 Proctor Street submitted by Trustees of the KSPS Family Trust, Kevin Potter.
- Notice of Intent – 40 Masconomo Street submitted by Margaret & Ian Strachan.
- ANRAD – 8 & 0 Atwater Avenue submitted by Simboli Prop Manchester, LLC, Owner / Cell Signaling Corporation, Inc., Applicant
- Requests for Determination of Applicability – Roadway intersection near 2 Harbor Street submitted by the Town of Manchester.
- Violation: 21 Proctor Road
- Beaver Solutions invoice.
- Forest Stewardship Plan.
- Stormwater Information.