



# 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

March 28, 2023

Zoom Virtual Meeting ♦ 6:00 PM

## MINUTES

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### I. Call to Order

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

**Members Absent:** Jeff Bodmer-Turner

Conservation Chairperson Mr. Gang opened the meeting at 6:00 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

**37 Vine Street, Michael C. Kirk – proposed construction of an in-ground swimming pool, pervious patio, covered porch and a covered entryway from the driveway within the outer 100' of Riverfront Area Resource**

New

**2023-0003**

Ms. Bertoni read the published hearing notice into the record. Michael Kirk, homeowner, presented. The proposed plan concerns the installation of a 15' X 35' inground pool. He plans to offset this work by converting the current asphalt driveway, which is the approximate size of the pool, to a permeable surface. The pool is 500 sf. The covered porch is 400sf. Another covered porch on the other side of the house is 138 sf. The asphalt driveway to be converted to pervious material is approximately 600sf. There will be the removal of an existing brick patio 300sf. After all the calculations there is a net increase in impervious of 200sf. Part of the existing lawn will be planted with native plantings to offset this 200sf of impervious area.

Mr. Gang noted that this is a large and complex project. Ms. Bertoni's noted that the abutter had a high-water table and had questions regarding ledge. Dr. Oettinger would like to see the water table elevation view for this property and neighboring property. The Commissioners requested a site visit, and one was scheduled for Saturday 4/1/23 at 8:30 a.m.

**Vote:** To continue the matter to the 4/18/23 meeting.

Motion: Mr. Gang

Second: Dr. Oettinger

Actual Vote: 5-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes

**38 School Street, Capolavoro, LLC – after-the-fact installation of a patio within the outer 100' of Riverfront Area Resource**

New

**2023-0004**

Ms. Bertoni read the published hearing notice into the record. Adam Zaiger, Attorney for the homeowner, in attendance. David Kelly of Meridian who prepared the calculations, presented. The site was developed in 2014/2015. There is a large infiltration basin in the back yard. An unpermitted 460 sf patio was installed. The storm water runoff from the patio is handled by the infiltration basin. The side edges of the patio have a gentle slope therefore erosion is not anticipated. The patio is 125' from the bank of the perennial stream. There is no direct impact to the bank/brook and no direct impact to the abutters. The stones for the patio have decent spacing and there is a pervious grout in between. In a low rain event, water will infiltrate.

Ms. Bertoni agreed that there was plenty of capacity in the drainage swale to accommodate patio runoff. The only concern was erosion at the edges. The Commissioners agreed.

**Vote:** To issue a Negative 2 Determination of Applicability with 5 conditions.

Motion: Mr. Gang

Second: Dr. Hayes

Actual Vote: 5-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes

**Vote:** To lift the Enforcement Order on the previous ownership.

Motion: Mr. Gang

Second: Dr. Hayes

Actual Vote: 5-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – 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, 2/14/23, 3/7/23 (no discussion)

**DEP File #39-0881**

Bill Manuell of Wetlands and Land Management presented. A site visit occurred. The Commission had requested that the grass area on the west side be restored with vegetation. The owner agreed. There is a landscape design by Palazola Brothers. Planting will completely revegetate the area with 4900 sf of mitigation. The Commissioners were satisfied.

**Vote:** To close the hearing.

Motion: Mr. Gang

Second: Dr. Hayes

Actual Vote: 5-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes

**15 Smith's Point Road, Hamid Shirkhan – 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**

Continued from 2/14/23, 3/7/23

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

A second site visit had occurred. There was no representative for this property in attendance when the hearing was called. The Commission decided to table the matter until later. After all filings had been heard, there was still no representative therefore with the understanding that the hearing could not be continued without the consent of the applicant, the Commission closed the hearing. The representative, Hooshman Afshar of Taj Engineering, did not appear until after the hearing was closed. He was informed of this, and that no outstanding information was requested by the Commissioners.

**Vote:** To close the hearing.

Motion: Mr. Gang  
Second: Dr. Oettinger  
Actual Vote: 5-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – 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 (BVW), Land Subject to Coastal Storm Flowage, 100', 50' No Build Zone, and 30' No Disturb Zone Buffers to Bordering Vegetated Wetlands**

Tabled from 2/14/23 (hearing was not opened), opened & continued from 3/7/23 **DEP File #39-0888**

Mike DeRosa of DeRosa Environmental Consulting Inc. presented. John Morin of Morin-Cameron Group was in attendance. A site walk occurred, and many questions were addressed. No plan changes are proposed. Commissioners were concerned about the amount and extent of fill added, some of which was in the No Disturb Zone (NDZ) Buffer to BVW. It was explained that the allotted amount of fill was necessary to build up the area for a usable backyard space. Consultants did not see the need for a retaining wall. Grading seemed more appropriate. Mr. Gang asked for alternatives to this fill and to see if the amount could be reduced. Mr. DeRosa pointed out that the benefit of the revegetation of lawn (mitigation area) and removal of invasives added more value than the conversion of lawn to lawn and increase of fill in back yard. This is a beneficial project ecologically.

Ms. Bertoni wondered why this is not Bordering Land Subject to Flooding. Mr. DeRosa replied that this is Coastal Flood plain. The flooding source is the ocean, not an inland stream. This property is taking in runoff from an abutting property that had additional impervious surface installed recently. A swale will be made to direct that water out back.

**Vote:** To close the hearing.

Motion: Dr. Oettinger  
Second: Dr. Hayes  
Actual Vote: 4-1

Steve Gang – No, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes

**Town-owned Black Beach, Chuck Dam, Director of DPW – dune planting project within Coastal Dune and Land Subject to Coastal Storm Flowage**

New

**DEP File #39-0890**

Ms. Bertoni read the published hearing notice into the record. Mike DeRosa of DeRosa Environmental Consulting Inc. presented. Chuck Dam, DPW Director, in attendance. This is a dune planting project. The proposed plan will install plantings from the end of the sea wall to the beach path. The goal is to create a vegetated barrier where sand will get trapped and eventually turn into a natural barrier. It will serve as storm damage protection. The area will be planted with beach grass and woody vegetation. Commissioners are concerned as to how effective this will be. It was explained that this is the first attempt to stabilize the dune. The plan is to augment the vegetation there and get the beach grass planted which will do the heavy lifting in maintaining this area. This project is meeting performance standards of Coastal Dune. The area has been a continuing maintenance issue area for shifting sands during storm events. They will have to wait and see how this barrier performs during storms and deal with any consequences when they happen. The DPW will work on a more permanent solution for the displaced sand for when a storm pushes sand into the road.

Henry Parkman who lives in the area asked about flooding.

**Vote:** To close the hearing.

Motion: Mr. Gang  
Second: Dr. Hayes  
Actual Vote: 5-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes

**V. Reconvene Regular Meeting**

**VI. Requests for De Minimis Change**

**110 Bridge Street, Prescott Logan – removal of an existing pool, and landscape improvements within the 100', 50' No Build Zone, and 30' No Disturb Zone Buffers to Bordering Vegetated Wetland and Inland Bank**

New

**DEP File #39-0883**

Prescott Logan, homeowner, presented. The pool was removed, and erosion controls are in place. The loam and final grading and seeding will occur in the next few weeks. The change is the removal of a small clump (4) young 4' *arbor vitae* next to the driveway as well as a Norway Maple and Privet from the large overgrown boxwood hedge.

**Vote:** To accept the De Minimis Change.

Motion: Mr. Gang

Second: Ms. Oseasohn

Actual Vote: 5-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes

**43 Lincoln Street, MERSD and Construction Manager for WT Rich – Demolition and construction of new school within Riverfront Area, Bordering Land Subject to Flooding, and 100' Buffer to Bordering Vegetated Wetland (BVW)**

New

**DEP File #39-0800**

Mary Rimmer of Rimmer Environmental Consulting presented. Alice Corbett of WT Rich in attendance. On the proposed As-Built Plan the surveyor noted that there was an error in grading on the west side of the site in the compensatory flood storage area. There is an additional 4,219 cubic feet of flood storage which affects 550 sf of BVW. It is at a lower elevation. Fill would need to be brought in to restore it to its original grade. It will have better function as BVW if left as currently constructed.

The Commissioners were fine with leaving it as it is. Ms. Bertoni felt it was reasonable and the area was well constructed.

**Vote:** To issue an after-the-fact De Minimis Change.

Motion: Mr. Gang

Second: Mr. Lumsden

Actual Vote: 5-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes

**VII. 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 explained that this property had a perpetual condition to create a Conservation Restriction (CR) and that had not been done. Mark Glovsky, Attorney for the new owners, was in attendance. He pointed out that the legal issue had been bantered about. Town Counsel (in an email) had opened the door to resolve this. In the original order (1999) the CR was not very specific. Town Counsel had pointed out the Commission could address the issue by not listing it the perpetual condition or not having it be required. Mr. Glovsky suggested this. He felt it was superfluous and an added burden which does not protect any resources. There is no guidance where the CR delineation line should be.

Ms. Bertoni clarified that it is not just a perpetual condition, it is a listed condition (#30) that needs to be satisfied for a Certificate of Compliance. Mr. Gang felt the Commission should not second guess what the previous Conservation Committee added as conditions. He pointed out that there is no significant barrier to putting in a CR.

Mr. Glovsky will come back with a proposed CR and a plan.

**Vote:** To continue the matter to the 4/18/23 meeting.

Motion: Mr. Gang

Second: Dr. Hayes

Actual Vote: 5-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes

**14 Forest Street, Alex Wilczek – replace an existing house with new house within the 100', 50' No Build Zone, and 30' No Disturb Zone Buffers to Bordering Vegetative Wetlands**

New

**DEP File #39-0763**

Alex Wilczek, homeowner, presented. The project was to replace an existing house with a new house. Ms. Bertoni did a site inspection. The site is stable. There are no issues with runoff. The gutters were approved. Deviations from the plan included the shed not being constructed and a swing set in its place, new plantings, a picket fence and a permeable paver patio. Ms. Bertoni had no issues with these minor deviations affecting the site stability.

**Vote:** To issue a Certificate of Compliance.

Motion: Mr. Gang

Second: Ms. Oseasohn

Actual Vote: 5-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes

**19 Smith's Point Road, John & Meredith Pasquesi – proposed addition to an existing cottage within the 100' Buffer to Coastal Bank**

New

**DEP File #39-0715**

Evin Guvendiren of DeRosa Environmental Consulting Inc. presented. Ms. Guvendiren represented the new owners. This property had been recently acquired. Work started on the cottage but never finished. There was construction of a foundation to the addition to the cottage. A new Notice of Intent is forthcoming. The site is stable.

Ms. Bertoni did a site visit. There are no issues with runoff. Everything was stable. There is some rubble to be cleaned up.

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

Motion: Mr. Gang

Second: Dr. Oettinger

Actual Vote: 5-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes

**VIII. New Business:**

**27 Proctor Street:** Ms. Bertoni reminded the Commission that there were proposed seawall repairs at this property without permitting. The attorney for the applicant, Chip Nylen, was in attendance. He felt the repairs could be done without permission. With no objection from the Commissioners, Ms. Bertoni read into the record the opinion of the Town Counsel on this matter. Mr. Nylen felt that he and the Town Counsel agreed. The work would not go beyond existing height, they would stay in the existing footprint, they would keep the Commission updated, and they would not alter, dredge, fill, or remove. The Commissioners had no questions.

**Letter Permit: 5 Ledgewood Road** - for interior work and strip siding with conditions to protect bank.

**Conservation Commission Board Member:** The Commission is still short of one Board member. Mr. Lumsden asked Jack Burke, but he declined. The Commission will work on finding another board member.

**Artificial Turf:** Mr. Lumsden wanted to reexamine the toxicity of artificial turf. Mr. Gang had sent around an article on the toxicity of infill. They would like to keep this on the Commission's radar.

**Frog Fungus:** Ms. Bertoni reminded the Commission that a few years back there was student study of frogs. Recently another student from Gordon College decided to take it up. Auditory sampling, only. The Commissioners wanted to hear more about it.

**Remote Meetings:** Ms. Bertoni informed the Commission that the Select Board prefers that Committees meet in a hybrid setting. Ms. Bertoni had reserved room 5 for the 4/18/22 meeting. Mr. Gang did not feel that hybrid was an effective substitute. He had been underwhelmed with the tech of hybrid meetings. Ms. Oseasohn felt we should discuss this at the next meeting. Ms. Bertoni will keep the next meeting remote.

**Master Plan:** Mr. Gang informed the Commission that Chuck Dam, DPW Director, has begun work on a Facilities Master Plan, part of which is understanding what is Town-owned land, and how many areas are under restriction or easement.

## **IX. Order of Conditions**

**2 Old Neck Road:** Commissioners discussed conditions and monumentation.

**Vote:** To issue an Order of Conditions with 9 special conditions, 2 of which are perpetual, and to have the exact square footage of mitigation to be added by Ms. Bertoni

Motion: Mr. Gang

Second: Dr. Hayes

Actual Vote: 5-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes

**Town-Owned Black Beach:** Commissioners discussed conditions.

**Vote:** To issue an Order of Conditions with standard perpetual conditions and 10 special conditions.

Motion: Mr. Gang

Second: Ms. Oseasohn

Actual Vote: 5-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes

**40 Masconomo Street:** Several Commissioners were concerned about the amount of fill in the project and the fact that some of it was in the No Disturb Zone. A broader issue is the increased fill across properties which does not benefit the resource. Mr. Gang felt the impact to the wetland is significant. It would change drainage patterns. It would eliminate the Buffer Zone for overflow and marshy area for periods of storm water. Ms. Oseasohn felt the Commission should look at the project as a matter of balance. It would improve the resource and habitat.

Ms. Bertoni reminded the Commission to determine if the applicant has met the performance standards for Bordering Vegetated Wetlands and Land Subject to Coastal Storm Flowage or could the Commission make conditions for them to meet the performance standards.

Mr. Gang felt the Commission could deny it under the local bylaw due to the Alternatives Analysis does not meet the standard of convincing the Commission with clear evidence to overcome the presumption of significant impact. Denying it under the Wetland Protection Act may not hold up.

Conditions were discussed for approval under the Wetland Protection Act.

**Vote:** To deny the application under the local bylaw due to the extent of activity without a sufficient Alternatives Analysis and the failure to overcome presumption of impact to the wetland resource.

Motion: Mr. Gang

Second: Dr. Oettinger

Actual Vote: 3-2

Steve Gang – Yes, Sari Oseasohn – No, Olga Hayes – No, David Lumsden – Yes, Henry Oettinger – Yes

**Vote:** To approve under the Wetland Protection Act with standard conditions and 8 special conditions.

Motion: Mr. Gang

Second: Dr. Hayes

Actual Vote: 5-0

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – Yes, David Lumsden – Yes, Henry Oettinger – Yes

**15 Smith's Point Road:** Mr. Gang felt Wall A remains an issue. The Commission most recently denied the wall in 2017. DEP permitted Wall A to remain arguing removal of the wall would lead to destabilization of the Coastal Bank in 2019. DEP further required the applicant to get Conservation Commission approval to maintain it. Mr. Gang could not understand why the Commission would reverse the Commission's prior decision on Wall A. He felt we should be consistent with what was found in the past.

Ms. Bertoni reminded the Commissioners that the Commission did not approve Wall A previously because at that time it was an either/or option. The Commission approved all the other walls with their conditions. Now there is no disagreement about where Coastal Bank is. Wall A is at the top of Coastal Bank. The base of Wall A is where Coastal Bank line is now established and confirmed by the consultants. The walls are within the buffer. There is a portion of Wall A in the Velocity Zone. The other walls and the restoration plan were approved by the Commission. During restoration a temporary retaining wall was partially installed to aid in restoration, but is now to be removed.

Mr. Gang felt there was no way to enforce conditions. He was compelled to draw a line to protect the resource. He felt Wall A interfered with the Coastal Bank. Ms. Oseasohn and Dr. Oettinger agreed. Mr. Lumsden couldn't argue with the reasoning.

Dr. Hayes felt that Wall A should remain, and it could be conditioned that it could not be rebuilt if nature reclaimed it.

Mr. Gang pointed out that the State Superseding Order of Conditions (SOC) was not obeyed, and neither was the ACOP (both have conditions). If the walls had been brought before the Commission, they would not have been permitted.

Conditions were discussed if Wall A was approved.

Dr. Oettinger questioned if the removal of Wall A could be conditioned to protect the resource. It cannot.

**Vote:** To deny the Order of Conditions under the local bylaw permitting Wall A to remain with the finding that there are no conditions that would sufficiently protect the Coastal Bank and Land Subject to Coastal Storm Flowage under the local bylaw.

Motion: Mr. Gang

Second: Dr. Oettinger

Actual Vote: 4-1

Steve Gang – Yes, Sari Oseasohn – Yes, Olga Hayes – No, David Lumsden – Yes, Henry Oettinger – Yes

## **X. Adjournment:**

There being no further business, the meeting was adjourned at 9:05 p.m was approved unanimously by acclamation.

Submitted by,

Eva Palmer

## **XI. Meeting Documents:**

- Certificate of Compliance – 14 Forest Street submitted by Alex Wilczek.
- Certificate of Compliance – 19 Smith's Point Road submitted by John & Meredith Pasquesi.
- Certificate of Compliance – 33 Forster Road submitted by Dominic Paratore.
- Request for De Minimis Change– 110 Bridge Street submitted by Preston Logan.
- Request for De Minimis Change – 43 Lincoln Street submitted by MERSD and Construction Manager WT Rich.
- Request for Determination of Applicability – 37 Vine Street submitted by Michael C. Kirk.
- Request for Determination of Applicability – 38 School Street submitted by Capolavoro, LLC.
- Notice of Intent – Town-owned Black Beach submitted by Chuck Dam, DPW Director, Town of Manchester.
- Notice of Intent – 40 Masconomo Street submitted by Margaret & Ian Strachan.
- 27 Proctor Street seawall letter dated 1/11/23.