

CONSERVATION COMMISSION

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CATHERINE WALSH, VICE CHAIR
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JOHN GEAR
PETER BAMBER
KELSEY QUINLAN



ASSISTANT DIRECTOR OF COMMUNITY DEVELOPMENT & ENVIRONMENTAL PLANNER/ CONSERVATION AGENT

HOLLY JONES, MSCJ

Norwood Conservation Commission

May 10, 2023

7:30 P.M.

Present: Stephen Washburn, Carolyn Rocklen, John Gear, Peter Bamber, Kelsey Quinlan.

Absent: Catherine Walsh (Note: Catherine Walsh later reviewed the recording of the meeting in keeping with the Mullin Rule)

Also Present: Holly Jones, Environmental Planner/Conservation Agent

The May 10, 2023, meeting was held remotely using Google Meet and in person at the Norwood Senior Center, 275 Prospect St. The meeting was called to order by Chairman Stephen Washburn at 7:30 p.m. followed by a roll call and an informative announcement to attendees regarding meeting procedures.

Public Hearings:

1. 115 Norwood Park South. DEP No. 251-0543 Norwood No. 2023-04

Applicant: Frank Giglio of 1144 Properties, LLC; Representative: Deborah Keller of Merrill Inc.
Project Description: Building addition and parking lot improvements in the buffer zone of a bordering vegetated wetland.

The Chair stated that this was a continued public hearing. Mr. Giglio said the Planning Board reviewed the project and had one recommended change to the landscape plan for 1 tree that was thought not to be indigenous. Mr. Giglio said it would be reviewed and changed if non-native. He said the parking lot to be resurfaced would be in the same location. In the back of the building there would be a chilling unit and generator. He said they relocated 2 dangerous parking spaces from in front of the generator to other areas of the parking lot. He noted that the parking lot was going to be in the same footprint. He mentioned his concern with the walkway pitch in front of the building and said he would tie a drain from the front door of the building to a drain. Commissioners had no comments.

Ms. Jones stated this was after the fact filing and that Commissioners could close the public hearing. She recommended issuing the Order of Conditions with the normal conditions and one additional one; that the Commission be provided with a planting plan and that the applicant verify that all plantings are native prior to the landscaping being installed.

The Chair opened the floor to the public. Ms. Judith Howard/District 3 Town Meeting Member asked if there were going to be parking spots in the buffer zone of the BVW. Ms. Jones replied that yes, there would be some spaces in the buffer zone, that it was pre-existing from the 1980's, and that there would be no new impervious surfaces.

Motion: Mr. Bamber made a motion to close the public hearing and issue an Order of Conditions with the specific condition that the Commission be provided with a planting plan and that all plantings be verified as native prior to the landscaping being installed.

Mr. Gear seconded the motion.
Motion passed, 5-0 by roll call vote.

2. 76 Prospect St. Norwood No. 2023-06 -local filing

Applicant: Marion Group, LLC Representative: Dan Merrikin of Legacy Engineering

Project Description: A residential subdivision including roadway, stormwater infrastructure, and associated earthwork and utilities, in the buffer zone of bank and riverfront area of an intermittent stream.

Attorney David Hern Jr. introduced Mr. Dan Merrikin of Legacy Engineering who provided a presentation of the project. He said the project involved work adjacent to an intermittent stream. He stated that the site was located on 3 house lots on Prospect Street and would incorporate approximately 10 acres of land. There is an area identified as bordering vegetative wetlands. Downstream of the BVW, he said another intermittent stream was identified. He mentioned a berm and that when the water comes over the top, the pocket of BVW overflows and there is an 8" PVC pipe in the neighbor's yard that ties out to the street's drainage system. He said upland from the wetland area is another intermittent stream. He noted no other wetland areas. The area was said to be underlaid by ledge with some soil on the top; across the middle on the top is an outcropping with a valley at the surface and below the ground.

During rainfall events, rainwater soaks into the ground, creating a temporary perched groundwater condition. A photo was distributed to the commissioners showing the normal condition of the area (w/o significant rainfall). It does not have water in it very often, he reiterates that it mostly looks like a normal upland wooded area. But during periods of significant rainfall, rainwater will build up and will break out into the intermittent stream area. In periods of severe and persistent rainfall, the groundwater breaks out within 10 feet of the woods, then the lawn/field near tennis court. A Stream is not jurisdictional on a state level unless it has a wetland or resource area above it and the stream in question has nothing above it. From the top of the intermittent stream to the wetlands area, only local bylaw jurisdiction applies. The lower intermittent stream has a bordering vegetated wetland above it, so both state and local bylaws apply.

Mr. Merrikin proposed developing an infiltration and storm water basin, as well as a possible replanting scheme in the buffer zone of the intermittent stream. He puts forth the possibility of building a road through existing developments including homes, tennis court, and an outbuilding. He also proposes taking the existing disturbance in the buffer zone, removing it, and then restoring it to a natural condition. Some work is to be done in the 25 foot disturb to remove and replace the burning bushes. There is also work required in the 25-50 foot range to remove what's there presently and to install drainage. No impervious surface can be installed within 65 foot of an intermittent stream.

Mr. Merrikin stated that a key objective is to maintain existing runoff and then have it discharge into wetland. A storm water report and a hydrology assessment were reviewed by Tetrtech for the Planning Board. Mr. Merrikin notes that they were satisfied. He states that there will still be surface flow to intermittent streams and wetlands from the adjacent area. Mr. Merrikin states that the wetland is currently too small to be land subject to flooding. The area has been studied every spring for 3 years, and no vernal pool activity or flooding was observed.

Ms. Jones stated that the Conservation Commission has riverfront standards that apply to intermittent streams and that the Commission has historically given riverfront area to those streams. She said that no alternative analysis had been received, and that they received no information about what percentage of the riverfront area was to be altered. Ms. Jones stated that without those pieces of information, it would be difficult to determine if the project meets the

Commission's standards.

Attorney Hern argued that the area in question does not constitute riverfront, and thus is not legally bound by the definitions in the General Bylaw which were approved by Town Meeting. He reiterates that from a legal point of view, the Commission does not have the authority to make regulations that go beyond the terms of the bylaw. He said that regulations could effectuate the provisions of the bylaws, not change what the bylaw does. Attorney Hern argued that intermittent streams are not the same as streams in the Bylaw's definition and that therefore intermittent streams do not have riverfront. Ms. Jones stated that the Town Counsel did not have a chance to do an extensive review but thought that a judge would look at the definition of stream vs intermittent or perennial stream as typically used in the field. She suggested consulting a professional wetland scientist. Ms. Jones stated that 'streams' as a term is not meant to exclude intermittent streams but rather to include them, while Attorney Hern argued that they are not the same and that the more specific term usually takes precedence. He states that it makes a difference between 100 feet of protected area where some things may take place vs 200 feet where nothing can be done. He said that this will affect what dozens of existing homeowners can do on their properties in the riverfront area. He argued that you cannot go beyond what the bylaw authorizes when you are writing legislation, and that the problems are with the regulations not the bylaw.

Mr. Bamber respectfully disagreed and noted that he had been on the Commission when the Bylaw was written and that the intent was to give Riverfront Area to intermittent streams and that was consistent with the Commission's application of the Bylaw since it was passed.

The Chair opened the floor to members of the community in attendance.

Attorney Dan Hill, representing many neighbors/abutters, stated that the Riverfront jurisdiction question is a question of law, one that should be brought before a judge. He opined that the applicant should be providing what the Commission asks for. He states that the bylaw is ambiguous when it comes to distinguishing between intermittent streams and perennial streams. The section of the bylaw that defines the riverfront is lands within 200 feet of any river, stream, or creek. He said that the language interpretation is reasonable, but at best it could be described as ambiguous. Attorney Hill states that when the language of a bylaw is ambiguous, it is up to the Board to decide how to interpret its own bylaw. He reiterated that it was not the responsibility of the board to adjudicate this matter, and that it was instead a legal issue that should go before a judge.

Attorney Hill submitted two comment letters from John Chessia (Civil Engineer) and Patrick Garner (wetland scientist), who both questioned the accuracy of the delineation. It was argued that the intermittent stream on the southwest portion of the site was just a stream and not bordering vegetated wetland, but Mr. Garner believes the area flagged as A1-A18 is bordering vegetated wetland. He said that there was likely to be a strong hydrological impact from the construction of the project, as it would require significant ledge removal, which in turn would result in predictable changes to groundwater input to the wetlands. Mr. Garner drew attention to the fact that no pre-input or post-input analysis had been provided by the applicant in the Notice of Intent. Attorney Hill stated that Tetrattech had not yet signed off on any plans and that the Planning Board was skeptical of the outstanding issues, such as the drainage design.

Mr. John Chessia, Civil Engineer said that the storm water regulations adopted as part of Wetlands Protection Act is within the jurisdiction of the Conservation Commission. He stated that if you are within the buffer zone, which he notes that the proposed project site is, then you are required to comply with the storm water regulations. He said that the project proposal and design is missing a lot of important information. Mr. Chessia notes that one of the standards is to

maintain ground water, yet one of the proposals was to conduct ledge blasting, to install drains along the foundations of the houses, and to pump that water into a drainage system within the road which in turn will flow into the municipal system. He states that it is highly unlikely that these measures will not in some way change the current ground water condition on the property. Mr. Chessia suggested that the current storm water design is questionable as to whether it will function as designed. He recommended that the Commission should have their experts look at the storm water design as there is the potential for the wetland to be starved of water.

Ms. Jones addressed some of the jurisdiction questions. She stated that a wetland boundary review with wetland scientist had been conducted. She stated that it would be significantly easier for the applicant to meet the Commission's standards if the project site was classified as bordering vegetated wetlands as opposed to being classified as an intermittent stream. However, Ms. Jones said that it does appear to be an intermittent stream, as it flows in a defined channel, water is not staying in soil for two weeks of growing season, and there is no sign of wetland vegetation in that area. She states that the storm water jurisdiction stems from the bylaw and Wetland Protection Act regulations, which were reviewed by both the Planning Board and TetraTech.

Mr. Merrikin states that there were excessive generalizations in the comments raised. He stated that a hydrogeologist from TetraTech analyzed the site and had no issue with the designs. Mr. Merrikin stressed that there would be no blasting in the buffer zone. He also stated that the town engineer asked for foundation drainage around houses and that this would not interfere with the groundwater table. He said that the ground water table at the site is very seasonal and only appears when there is a lot of rainfall. There was no water during test pits, which were conducted all over the property. Mr. Merrikin asserts that the proposed drainage design is intended to support the recharge to the ground water table for the health of the wetland.

The Chair asked what was performed by Tetrattech and what the final conclusions of the peer review were.

Ms. Jones recommended that if the Commission wanted a peer review to go with same peer reviewer used by the Planning Board so as not to replicate their own work.

She said that TetraTech's conclusion was that they supported the ability of the Planning Board to close the public hearing. They reached the point where they felt that additional review was not needed. She suggested that delineation of the wetland could be looked at more closely.

Attorney Hill asked if the jurisdiction of this Commission is for the entire project site and not just water going into the wetland. The Storm water area discharges into the town's NS4 system, which eventually ends up in the Neponset River. He states that the town's bylaws has language in it that requires the TMDL information to be provided in the NOI. He states that this is in fact under the jurisdiction of the Conservation Commission. Attorney Hill also states that no tree survey had been included in the NOI, as well as the need for a potential wildlife study. Attorney Hill stated that one of the biggest concerns raised by his clients was the lack of protection of the natural features of the site. He said that significant cuts and fills were proposed to take place, which would have tremendous hydrological impacts.

Mr. Merrikin stated that the proposed project site constituted an area of 1800ft², which represents 4.5% of the total tree filter zone, well under the requirement that states that 50% of trees in the tree filter zone cannot be removed.

The Chair opened the floor to the public.

Cathy DeGeorge, of 11 Myrtle St, asked the Commissioners to do a site visit and questioned the

storm water design. She also requested a wildlife study be conducted, as well as a tree survey and wetland scientist evaluation.

Ms. Jones replied that a site visit would be arranged.

Francis Hopcroft, of 56 Prospect St, asked if the Commissioners have read all the documents submitted by residents. The Commissioners responded in the affirmative.

Mr. Hopcroft also expressed concern about storm water system and the hydrology of the site and the surrounding properties. He requested that the Commissioners analyze areas of concern.

Catherine Kalliel, of 72 Fulton St, expressed concern about the storm water pipe connecting with the town pipe.

Mr. Merrikin replied that since it was a private pipe on private property, it could not be changed and that there were no plans to modify the pipe.

Ms. Kalliel asked if developers would take into account more water coming down Fulton St. The Commissioners answered yes. The issue of blasting was also raised again, with Attorney Hern reiterating that there would be no blasting and that other alternatives were available. He encouraged everyone to do a pre-blast survey.

Judith Howard, of 200 Nichols St, District 3, TM member, asked if the Department of Public Works Director Mr. Ryan provided written comment to the Conservation Commission.

Ms. Jones stated that he provided extensive review comments to the Planning Board including on storm water but not related to conservation issues. Mr. Ryan was satisfied with the storm water report.

Cathy DeGeorge, of 11 Myrtle St, wished to highlight that blasting/ledge removal can impact watershed and wetlands, by changing groundwater capacity and flow for example.

Mr. Gear asked if there had been any site probing to determine the profile of a ledge throughout the site.

Mr. Merrikin replied that all information is provided in the hydrological report to the Planning Board and was reviewed by Tetra Tech.

Ms. Rocklen expressed curiosity about the storm water system and requested further information and peer reviews. She also expressed concern with blasting rock and the installation of more impervious surfaces, as there is less infiltration. She asked how much infiltration would occur with imported soil and rock. Ms. Rocklen also raised the issues of mosquitoes and the detention basin.

Mr. Merrikin stated that the wetland is a standing water, that it has water in it for over half the year. Storm water basins are designed to drain within 3 days of a rainfall event.

Diane DeGeorge, of 11 Myrtle St, asked the Conservation Commission to consider the amount of water that would be impacted by removal of trees.

Mr. Merrikin reassured her that the storm water analysis report takes into account tree removal.

Attorney Hern stressed the importance of conducting a peer review of the applicant's proposal, not a peer review of public comments. However, he did not object to making all public documents available for peer reviewer.

Ms. Rocklen expressed concern regarding the displacement of wildlife by the planting of a tree border between the development and their yards.

Ms. Jones replied that she would not recommend a wildlife study, as it was unlikely rare or endangered species were present. Also there would not be a lot of habitat disturbance within the 100 foot buffer zones. Ms. Jones stated that the areas being disturbed are largely lawn. She said the Commission has the authority to conduct a wildlife impact study but that it did not anticipate much change.

Mr. Merrikin stated that the use of a retaining wall means that they do not have to cut down all

the trees on the property.

Ms. Jones outlined the next steps to be taken, such as a peer review, town counsel, and site visit.

Motion: Mr. Bamber --- continue to May 31st at a time to be determined.

Ms. Rocklen seconded the motion.

Motion passed, 5-0 by roll call vote.

1. Request for CoC 59 Puritan Place. DEP File No. 251-0344, Norwood No. N2004-08

Ms. Jones said it has been continued multiple times. They still have not installed the required plaques. She recommended deny and the applicant can re-apply.

Motion: Mr. Bamber made a motion to deny the request for the COC

Mr. Gear seconded the motion. Motion passed unanimously, 5-0 by roll call vote.

Conservation Commission Business:

1. Endean Orchard Subcommittee update

Ms. Jones stated that irrigation lines were installed but not hooked up yet and thanked volunteers from Norfolk Aggie for removing water bags and other cleanup. Thanks to Commission and DPW for the fencing and parking lot.

2. CPC report -passed over

3. Agent update

Ms. Jones gave thanks to the NepRWA for organizing Earth Day volunteers at the Cooper Park. As well as the Norfolk Aggie Environmental Science program and junior class volunteers who helped with invasives remediation at the Cooper Park, with spring tasks at the Orchard, with cleanup at the butterfly garden, litter pick-up at Endean, and with planting goldenrod at Pezwick.

Ms. Jones also highlighted an upcoming event at the library, titled 'Kill your Lawn' on May 16th. She noted changes in staffing taking place in Community Development Dept. Ms. Jones will be the new Asst. Director of Community Development. She will continue to be the acting Agent until her position is filled. Responsibilities will be rearranged so Ms. Jones can still help with Conservation.

4. Minutes: 4/5/2023

Motion: Mr. Bamber made a motion to approve.

Mr. Gear seconded the motion.

Motion passed unanimously, 5-0 by roll call vote.

Adjournment.

Motion: Mr. Bamber made a motion to adjourn.

Ms. Quinlan seconded the motion.

Motion passed unanimously, 5-0 by roll call vote.

The meeting adjourned at approximately 9:40 pm.

Next meeting: May 31, 2022 at 7:30 p.m. via Google Meet & in person.

Respectfully submitted by Lynn Marchand and Thomas Hackett



OWNER
ROBERT DEMPSEY
76 PROSPECT STREET
NORWOOD, MA 02062

STEPHEN & JEANNA AYOUB
70 PROSPECT STREET
NORWOOD, MA 02062

OBRIEN FAMILY REVOCABLE TRUST
74 PROSPECT STREET
NORWOOD, MA 02062

APPLICANT
THE MARION GROUP LLC
42 RIVERDALE AVENUE
NEWTON, MA 02458



PROGRESS
PRINT

[illegible]

PLAN DATE: MAY 10, 2023

PROSPECT GROVE
ESTATES
BUFFER ZONE
PLAN OF LAND IN
NORWOOD, MA

NOTES:

1. REMOVE ALL EXISTING HARDSCAPE WITHIN THE PREVIOUSLY DISTURBED AREA. (TENNIS COURT, FENCE, LIGHT POLES, ETC.)
2. REMOVE ANY INVASIVE SPECIES ENCOUNTERED.
 - 2.1. CUT BURNING BUSHES TO GROUND ALONG WETLAND SIDE OF THE TENNIS COURT AND TREAT WITH GLYPHOSATE.
 - 2.2. TREAT THE PATCH OF JAPANESE KNOTWOOD IN THE WOODS WITH A GLYPHOSATE DRIP.



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SHEET 1 OF 1

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DAVID HERN, JR.
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May 9, 2023

Conservation Commission
Town of Norwood
566 Washington Street
Norwood, MA 02062

Re: Prospect Grove - Proposed Subdivision
70, 74, and 76 Prospect Street, Norwood

Dear Members of the Conservation Commission:

In anticipation of tomorrow evening's hearing on the Notice of Intent filed by my client, The Marion Group LLC, relative to the proposed Prospect Grove subdivision, I am writing to respond to questions that have been raised about the appropriate standard of review to be applied to this matter. Conservation Agent Holly Jones recently raised a question with my client's engineer, Dan Merrikin, of Legacy Engineering, regarding whether compliance with the Riverfront Area requirements of your regulations is necessary in the present matter. (This issue has also been raised by representatives of some of the abutting neighbors.) I have discussed this issue briefly with Ms. Jones and with Town Counsel David DeLuca, but neither of them had the benefit of my written comments, so the discussions were limited.

It is my client's position that the applicable performance standards in this matter are those involving the 100-foot buffer zone (*see Regulations, Section III,*

Subsections A through F), as the condition giving rise to the current Notice of Intent is the presence of an intermittent stream on the premises. Ms. Jones has suggested that under the current regulations (revised in 2021 or 2022) the applicable standard is that for the "Riverfront Area" (*Subsection G of Section 3 of the Regulations*.) For the reasons hereinafter stated, my client believes that the Commission cannot deem the current application to be covered by the Riverfront Area standards.

The issue at hand revolves around the question of what regulations the Commission is legally permitted to adopt and enforce. The Commission's authority to adopt regulations as to substantive matters arises from the Town's Wetlands Protection Bylaw ("Bylaw"), as enacted by Town Meeting in 2009. Section IX of the Bylaw provides, in relevant parts, that "the Commission shall promulgate rules and regulations to effectuate the purposes of this Bylaw" and that such "regulations shall reiterate the terms defined in this bylaw, [and] define additional terms not inconsistent with the bylaw".

Section II of the Bylaw sets forth definitions of various terms relevant to the subject of the Bylaw, including definitions of "intermittent stream" and "stream". According to the Bylaw, an "intermittent stream" is one that moves "intermittently" and "does not flow throughout the year". In contrast, a "stream" is defined as "[a]n open body of running water, including brooks and creeks, which move in a definite channel, natural or man-made in the ground due to a hydraulic gradient year-round . . ." Thus, the two conditions are similar in that they involve running water, but different in that one flows only intermittently (i.e. not throughout the year) and the other flows year-round.

The distinction is important when looking at the question of jurisdiction; see Section III of the Bylaw. In the list of "resource areas", item 13 is stated as "streams, including intermittent streams". The addition of the words "including intermittent streams" shows that "intermittent streams" are different from "streams" and needed to be specifically included in the recitation of resource areas. Of further note are items 17 and 18. Item 17 defines "buffer zone" as "lands within 100 feet of any of the aforesaid resource areas; rivers, streams and creeks whether perennial or intermittent". Because of the differences in the definitions of "intermittent stream" and "stream", it is necessary to include specific reference to "intermittent stream"; otherwise, the definition of buffer zone would not include intermittent streams. Contrast item 17 with item 18, wherein the "Riverfront Area" is stated to be "Lands within 200 feet of any river, stream, or creek (collectively the 'resource areas protection' (sic) by this Bylaw". There is no mention of intermittent streams in the definition of "Riverfront Area". The Bylaw, therefore, clearly distinguishes between "intermittent

streams" and "streams", with the result that "intermittent streams" are within the "buffer zone" but not within the "Riverfront Area".

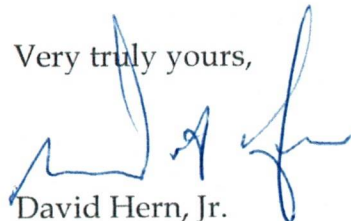
This distinction is important in looking at the Wetlands Protection Regulations enacted by the Commission. While there is no doubt that Town Meeting in 2009 authorized the Commission to adopt rules and regulations that effectuate the purposes of the Bylaw, the Bylaw makes clear that the "regulations shall reiterate the terms defined" in the Bylaw; the Commission is also authorized "to define additional terms not inconsistent" with the Bylaw. The Commission is bound by the definitions set forth in the Bylaw and is not authorized to change those definitions, either directly or indirectly.

The regulations adopted by the Commission after 2017 have expanded the definition of "Riverfront Area" by stating that "[a]ll streams, perennial and intermittent, as defined in the Wetlands Protection Act and the Norwood Wetlands Bylaw, shall have a protected 200 foot Riverfront Area". This expansion of the definition of Riverfront Area is not permissible, as it contradicts and goes beyond the definitions set forth in the Bylaw, by which the Commission is bound. The adoption of the current regulations in this regard, therefore, was in excess of the Commission's authority, as created by Town Meeting, and the regulations in question cannot stand or be applied to my client's project.

My client submits that the appropriate performance standards are as set forth in its Notice of Intent - Performance Standards A through F in Section III of the regulations.

I appreciate your consideration of the foregoing. My client and its representatives look forward to discussing the matter with you more fully at tomorrow's hearing.

Very truly yours,



David Hern, Jr.

cc (by e-mail): Conservation Agent Holly Jones
Town Counsel David DeLuca