

# **RYE CONSERVATION COMMISSION**

**Thursday, September 21, 2017**

**7:00 p.m. – Rye Town Hall**

***Members Present: Chair Sally King, Vice-Chair Suzanne McFarland, Mike Garvan, Jeff Gardner, Jaci Grote, Susan Shepcaro, Heather Reed and Alternate Jim Raynes***

## **I. Call to Order and Pledge of Allegiance**

Chair King called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

## **II. Approval of Minutes – August 17, 2017**

**Motion by Jeff Gardner to approve the minutes of August 17, 2017 as presented. Seconded by Mike Garvan. All in favor.**

## **III. Wetlands:**

- A.** 44 Causeway Road, Tax Map 2, Lot 78  
Owner: George and Karen Sophinos  
Corey Colwell, TF Moran Engineering  
Wetland buffer impact

**Corey Colwell, TF Moran Engineering**, presented to the Commission. He stated that this is a 16,00sf lot in the medium density Residential zone of the Rye Beach Village District. He noted that the property has been before the Rye Beach Village District Zoning Board for a variance application. There is an existing 1.5 story residential home on the property with a garage and driveway to Causeway Road. The house and garage covers about 15.3% of the lot. Currently, about 28.6% of the lot is covered with impervious surface. In this district, up to 50% coverage is allowed. The proposal is for the addition of a 33x8' porch on the front with steps and a 15x26' wide pervious patio in the back. The patio is within the 100ft tidal buffer and requires a wetlands permit. The porch and steps are in the 250ft shoreland buffer and requires a Shoreland Permit. He noted that the Shoreland and Wetlands Permits have been filed with the State. The State has approved the Shoreland application. He reiterated that the application was before the Rye Beach Village District Zoning Board for a variance. The variance was for a front yard setback, side yard setback and minimum open space. The existing front yard setback is 31.1ft. The proposed setback is 32.8, where 40ft is required. Because this is building in the non-compliant front setback a variance is required. He noted that the side yard setback is very close

to the abutting property. The existing open space was calculated at 51.1% and the proposed is down to 49.5%. The variance was applied for even though it was not needed. The zoning board issued the variance with the ruling that they did not think it was needed but in case it went over that half percent, they issued the variance.

Mr. Colwell explained that the front porch is designed to be an open porch. (He showed the proposed plan for the porch to the commission. He also showed the back of the house with the proposed patio.) He noted that vegetation was added along the patio. There is natural woodland vegetation between the yard and the poorly drained soils. (He pointed out the areas where vegetation was added on the plan.)

Chair King asked if some cutting had taken place on the vegetation on the side of the property.

Mr. Colwell stated that he was told there was some vegetation removal on the Sophino's property within the last few years.

Chair King asked if the vegetation that is being put in is an attempt to replace the removed vegetation.

Mr. Colwell explained that the added vegetation is being done primarily because of this project. It was felt that additional vegetation was warranted for screening and to add a more protective buffer to the wetlands.

- **Site Walk scheduled for Wednesday, September 27<sup>th</sup>, 4:30 p.m.**

**B.** 5 Sea Road, Rye Beach, Tax Map 2, Lot 19  
Owner: Michael and Elizabeth Garceau  
Corey Colwell, TF Moran Engineering  
Tim Phoenix, Atty  
Rye Beach District – Frank Drake  
Wetland buffer impact

**Corey Colwell, TF Moran Engineering**, presented the application for 5 Sea Road, Rye Beach. The application is currently pending before the Rye Beach Village District Zoning Board. The Board had asked for a couple of points of clarification and the application is scheduled to go back on October 3<sup>rd</sup>. The property is 1.9 acres in size. He noted that there is an existing two story house which is connected to a two car garage. There is also a standalone garage on the site with a generator behind it and a shed that houses propane tanks. (He pointed out Eel Pond and the edge of the wetland on the plan for the commission.) He noted that there is a brick driveway that comes in off Atlantic Ave and back out to Sea Road. (He pointed out the 250ft shoreland buffer zone to the Ocean.) He commented there is no tidal buffer zone to Eel Pond because it is fresh water. All the buffer zones for State permits are coming from the ocean. He continued that the project does not require a wetlands permit from DES; however it does require a Shoreland Permit.

**Greg Burch, 15 Sea Road**, asked if the definition of a wetland is based on the soil and the plants growing on the soil.

Mr. Colwell explained that work in the wetlands requires a State permit. Work that is within 100ft of a tidal wetlands requires a State permit. Since there is no work being proposed in the wetlands, nor is there work within 100ft of tidal wetlands, the proposal does not require a permit.

Mr. Cowell presented the existing conditions plan to the commission. He pointed out the buildings that are being removed; attached garage and mudroom and detached garage. He stated that in its place a three car garage with attached mudroom is being proposed. He noted that a piece of the driveway will need to be expanded in order to accommodate access to all the bays in the garage. A patio is proposed for the back with a sitting wall and fireplace on the outer edge. Currently, there is 4575 footprint area of buildings, including the house, two garages and the shed. The proposed is 4471, which is a reduction of 104sf of building coverage. The lot coverage increases from 10,851sf to 12,620sf; which is an increase of 13.3% to 15.4%.

Member Gardner asked how close the driveway is to the wetland.

Mr. Colwell replied that it is 50ft. Right on the corner. He noted that the increase in the percentage is due to the driveway, the sitting wall, fireplace, hot tub and landing area accessing the mudroom.

Member Shepcaro stated that the application states that the propane tanks are going to be removed and buried. The place where the propane tanks are currently is where the generator was going to be moved to.

Mr. Cowell commented that was the original plan. The Rye Beach Village District Zoning Board suggested that the building be eliminated. The applicants have agreed to remove the building that currently houses the propane tanks. This building is the closest to the wetlands. (He pointed out on the plan the area where the propane tanks will be buried. He also pointed out the location for the generator.)

Member Gardner asked how amenable the applicants are to native plantings. He commented that this is so close to the marsh that there should be a native buffer.

Mr. Colwell stated that he has not discussed this with the applicants. He is going to take the recommendations of the commission and try to integrate them into the plan.

Vice-Chair McFarland asked if there was a way that the propane tanks and generator could be located even further away from the wetlands. She commented that she has been on this property and has seen the water when it was quite high. She is a little worried about where those are proposed.

Mr. Colwell stated they are in the flood zone. The generator is not going to be permitted from the building inspector, unless it is elevated above the base flood elevation. He continued that the

tanks can be buried but because it is in a flood zone special anchors and other precautions are required.

Member Garvan asked what kind of material is on the current driveway. He asked if the material will differ from the proposed driveway.

Mr. Colwell replied that it will not differ. The driveway is currently brick and it will remain brick. It is impervious with no gaps.

Member Grote asked what the patio material will be.

Mr. Colwell replied that it will be pervious pavers.

The commission reviewed the plans.

Chair King opened to the public for comments and questions.

Mr. Burch stated that he heard that DES permitting is not required. It is his understanding that the definition of wetlands is based on the soil type and the plants that are growing in that soil. He commented that this entire property floods almost every year. He continued that the home is equipped with three large industrial generators currently in the basement. There was also a large generator to provide power during a power outage. This generator was located inside an enclosed building. They are now talking about removing that building and moving the generator outside. That generator has to be elevated. He does not see how this is going to mitigate any of the noise. Right now, the generator is located the furthest from his property and they are talking about moving it closer. He noted that he also has a concern about the propane tank. The property is often flooded. He does not know how an underground propane tank could be put there. He has a safety concern with the tank being under the ground. He stated that the land has been used by many different species of water fowl and they can't use it any more. The water level of Eel Pond was dropped in an attempt to reduce the flooding. The pond is now totally cluttered with lily pads. The Phragmites are out of control. His concern is that if they are allowed to go ahead with this project there will be a need to have more flood control with respect to Eel Pond. (He submitted photos to the commission for review.)

Speaking to Rye Beach Village District Commissioner, Frank Drake, Chair King asked if Rye Beach has a plan for Eel Pond in regards to Phragmites control.

Frank Drake replies stated that Eel Pond is privately owned. It is up to the citizens who own it. They have formed the Eel Pond Association.

Chair King asked if the water level has changed.

Mr. Drake stated that Fred Clark, who is a long time local, claims that the general level of the water has not changed. Perhaps what is really changing is the infill.

Mr. Colwell stated that Mr. Burch had a question regarding the wetlands permit. The only thing that requires a DES Wetlands Permit is the stonewall and cobble stones at the end of the driveway. All of the other work requires a Shoreland Permit only because it is beyond the 100ft tidal buffer zone and none of the work is within the wetlands.

- **Site Walk scheduled for Wednesday, September 27<sup>th</sup>, 5:00 p.m.**

C. 731 Ocean Blvd, Tax Map 23, Lot 6  
Owner: McIntyre Family Trust and Judy Smith  
Steve Riker, Ambit  
52' wetland buffer impact where 100' is required

**Steve Riker, Ambit Engineering**, presented the proposal. He noted that there are two condo units. The work is being proposed for unit 2, which is a house with a wooden deck and detached garage. (He pointed out the tidal wetland boundary.) He commented that the application is before the commission for a DES Wetland Permit for impacts to the previously developed tidal buffer zone. The work is within 100ft so a wetland permit is needed. He pointed out there is a freshwater wetland that is not contiguous with the tidal wetland. Therefore, it has not setback in Rye. The tidal marsh has a 100ft setback. (He pointed out the 100ft setback on the plan.) He commented there is a 50ft primary structure setback, for DES purposes. (He pointed this out on the plan.) The proposal is to tear down the garage and build a new garage in a similar footprint. He explained the existing garage is one space. The roof is very low. The proposal is to remove the garage and build a new garage that will be 22ft wide, large enough to fit two cars into. There will be a deck on top of the garage. To handle storm water from the new garage, the roof will be pitched to the north to a gravel drip edge installed around the foundation of the garage.

Member Garvan asked how much wider the garage will be from the existing garage.

Mr. Riker replied that the existing garage is 18.8x19.9. He noted that the existing steps to the house will be moved over the front of the porch. The driveway will be repaved. The existing flag pole will have power running to it so there can be a light on it. He pointed out there will be a concrete pad in the back to accommodate a hot tub. The pad will be going on top of existing ledge. There will also be a new set of stairs on the back of the garage to allow access to the deck. There will be no access to deck from the main living space. There is a slight increase in impervious surface from 8.5% to 9.2%.

- **Site Walk scheduled for Thursday, September 28<sup>th</sup>, 5:15 p.m.**

D. Straw's Point Road, Tax Map 91, Lot 12  
Owners: Straw's Point Trust  
Steve Riker, Ambit  
Repair/re-construct the existing stone revetment along the Atlantic Ocean

Steve Riker stated that he does not have engineered plans at this time. They have just completed the survey; however, they can discuss what he has submitted. The proposal is to repair/replace the existing stone revetment.

- **Site Walk scheduled for Thursday, September 28<sup>th</sup>, 5:00 p.m.**

**E.** 5 Libbey Lane, Tax Map 16, Lot 162-3  
Owner: Michael C. Appe  
Steve Riker, Ambit  
Wetlands buffer violation

Steve Riker presented the proposal to the commission. He explained that he was before the commission last month. A site walk was completed by the commission. This is in response to the commission's recommendations. One of the recommendations by the commission was for a retaining wall and fill removed. That is one of the major components of the new plan. The retaining wall will wrap around and join an existing stonewall. The hatched area on the plan is the area of fill that will be removed. He continued the pool deck and all walkways will be a pervious surface. There were some concerns about the roof drains at the site walk. He noted that they have designed an infiltration trench about 65ft long. There is an 8 inch PVC pipe in the bottom of the trench. The leaders off the down spouts are connected to that pipe. There is a slight pitch which allows for percolation. The purpose is to collect stormwater from the two roof drains to go into the pipe that is buried in the ground to allow for infiltration. He noted that there is a 4 inch drain for the pool cover well. The reason the pipe is 4 inches is because the pipe is vacuumed for maintenance. This pipe will go into the same infiltration trench.

Mr. Riker reviewed the landscape plan for the commission.

It was agreed that a note should be added to the plan that says the property boundary stonewall will be restored to its original state.

The commission reviewed the plans.

Mr. Riker reviewed the variances requested from the Board of Adjustment. He agreed to address the fill removal, note the boundary wall will be restored to original state and find out what is happening to the back wash for the commission.

The commission agreed the revisions were an improvement to the original plan.

#### **IV. Restorations/Violations/NHDES Cases:**

**A. 2013 and 2016 --25 Appledore**, NHDES case file #3212/2013-3206, Tax map 19.4 Lot 52, buffer restoration

- Remains open - follow up is needed with DES – Possibly schedule a follow up site walk

- B. **2016 August --7 Elizabeth Lane**, Tax Map 024 Lot 061-013 - buffer restoration, Steve Riker-Ambit plan. COMPLETED August 16, 2017, all parties notified
- Photos of completed project have been taken – file closed.
- C. **2016 August --245 Pioneer**, NHDES case file #2016-0277, Tax Map 024 Lot 118 - buffer restoration. RCC Site walk to check on restoration August 2, 2017, RCC checking plan
- Follow up with building inspector needed to confirm work on submitted plan. Work completed so far not satisfactory with commission.
- D. **2016 August --335 Washington Road**, NHDES case file #2015-02470, Tax Map 016 Lot 122 - pond removal and wetlands restoration
- Remains open – recommended that the commission conduct a site walk to see how the project is proceeding.  
*Site Walk scheduled for Thursday, September 28<sup>th</sup>, or Friday, September 29<sup>th</sup>, 1:00 p.m. with Peter Rowell (to be confirmed.)*
- E. **2016 August --243 Parsons**, Tax Map 19 Lot 103, land and buffer restoration. July 20, 2017 letter from Steve Riker to Peter Rowell stating they have completed work, RCC needs to schedule site walk and take pictures
- Work completed – site walk needed with photos taken  
*Site Walk scheduled for Tuesday, October 10<sup>th</sup>, 1:00 p.m. with Peter Rowell (to be confirmed.)*
- F. **2017 July --60 Park Ridge**, Tax Map 19.4 Lot 17, cutting trees on conservation land
- An independent arborist will be consulted and the commission will follow his recommendations with regard to hazard trees.
- G. **2017 August 12 --650 Long John Road**, Tax Map 016 Lot 145, Peter Rowell notified large trees down
- Follow up needed with Peter Rowell.
- H. **2017 July --45 Washington Road**, Tax Map 017 Lot 073, too much loam put into the wetlands buffer, Peter Rowell visited, Greg Bauer supposed to remove excess fill, concern with regard to water runoff
- Follow up needed with Peter Rowell.

**I. 35 Recreation Road** – Tree cutting in buffer (copy of letter sent to owners submitted to commission by Peter Rowell)

- The commission agreed that a formal Notice of Violation should be sent to the owners. Follow up with Peter Rowell needed.

**V. Items for Discussion – Continued**

**Town Forest**

Member Shepcaro noted that Charlie Moreno will start working on the Town Forest project in mid-October or early November. He will do all the site work before winter and work on the plan through the winter.

It was agreed that an invoice should be submitted by Moreno before the end of the year for the work that was completed in 2017.

**Rye Board of Adjustment – Effectively working together**

Member Grote suggested that they request to be put on a checklist for the Board of Adjustment. All applications that may be of interest to the Conservation Commission will not be heard by the BOA, unless it is checked that they have been to the commission.

Chair King will bring this request to Zoning Administrator Kim Reed.

Vice-Chair McFarland suggested that Chair King and the chair of the BOA have a meeting to discuss the procedures for an application. Ideas and suggestions from the commission will be given to Chair King before the meeting.

**Marden Woods**

Member Grote noted that she received an invoice for \$184 from Alan Bucklin to make the trail through Marden Woods. The trail is completed. She would like to mark the trails and have a kiosk to show the trail.

The commission agreed to order markers for the trail. (Member Garvan to take care of the order.)

The commission discussed holding an ‘Open Woods’ day at Marden Woods for the public.

**Easement on Washington Road to Town Forest**

Member Grote noted there is a house about two houses down from the back of the T.D. Bank. The Conservation Commission has an easement in this location, which is between two houses and goes into the Town Forest. She visited the owners last week to discuss with them the clearing that is going to take place on the easement. She also took Alan Bucklin, who will be clearing the easement, to the location to show him the area to be cleared. After the easement is cleared, a sign will be posted stating “Pedestrian Walkway to Town Forest”.



### **Granite Posts**

Member Grote stated that she has found somebody who will get the posts and plant them. The posts are 7x7 and 7ft long. They will be sold to the commission at cost of \$200 each. The posts that are now in the rec area are 7x14.

The commission agreed with the 7x7 posts.

Member Grote noted that the posts will be delivered to DPW. The supplier (Jesse Minor) will assist DPW with placing the posts.

It was agreed to order:

- 2 posts for Seavey Acres
- 2 posts for Rand Property (back of Liberty Common)
- Chair King will speak to Sea Glass about possible posts at the front of the Rand Property (Sea Glass Lane) – Removal of existing boulders.
- 2 posts for South Road

Member Grote will email a photo of the posts to the commission before ordering.

### **VI. Budget Review**

Member Grote asked if any money has been spent on marsh restoration.

Chair King noted that the areas that have been treated are Awcomin' marsh, behind the Goss Farm and Japanese Knotweed has been treated throughout Goss Farm.

There was some discussion in regards to other areas in town that should be treated.

### **VII. Bills**

- **Rockingham Conservation Commission - \$2,653**

**Motion by Jeff Gardner to pay Rockingham Conservation Commission in the amount of \$2,653. Seconded by Mike Garvan. All in favor.**

### **VIII. Correspondence**

- Southeast Land Trust Report received

## **IX. Other Business**

- Information was received from Peter Rowell, Building Inspector, regarding a building permit application for 0 Brackett Road, Tax Map 17, Lot 34-2, which is in the Wetland Overlay District. This application is going before the ZBA at their October 4<sup>th</sup> meeting. This has not been before the Conservation Commission.
- Chair King requested that a non-public be scheduled as soon as possible to address an issue that has come to her attention.

The members agreed to notice a non-public meeting for September 27<sup>th</sup>, 5:45 p.m.

- Vice-Chair McFarland noted that the filing of applications has gotten behind.

Member Grote agreed to work on the filing.

- Vice-Chair McFarland stated that there was a citizen's complaint filed against Ray's Seafood. There was a settlement made against Ray's Seafood in May. There are definite dates that the defendant has to comply with. The case is at the Attorney General's level and it addresses the septic system. The citizen who filed the complaint feels that the water coming out of the restaurant is still an issue and is running into the marsh. The defendant did not comply with one of the dates for July 1<sup>st</sup> and there is another one coming due in December. The commission should be aware of the issue.

## **Adjournment**

**Motion by Jaci Grote to adjourn at 9:44 p.m. Seconded by Jeff Gardner. All in favor.**

Respectfully Submitted,  
Dyana F. Ledger