

## Minutes of a Conservation Commission Meeting – 9 December 2020

Members present: Peter Vincent - Chairman, Jeff Carlson, Lil Province, Bob Avakian, Christina Brown, Geoffrey Kontje

Staff: Lisa Morrison and Jane Varkonda\*

**Woods CR** Tory Fletcher of Ariadne LLC and Brendan O’Neill of VCS were present to discuss two conservation restrictions on the Wood Property at 35 Tower Hill. One is a charitable gift, allowing only agricultural use of 10 acres of the property, and the second (mandatory) is to provide mitigation for conversion of moth habitat into agriculture and for future use as a reserved residential site as part of Mr. Woods’ estate. Both restrictions will be held by the Vineyard Conservation Society. Ms. Fletcher explained that Mr. Woods will convey the fee interest in approximately 30 acres of the property to Jim Athearn of Morning Glory Farm, but only after the CR has been established. Mr. Woods purpose is to ensure permanent protection of agricultural land on the island. His family has long been active in the MV agricultural Society.

Public access to the Tower Hill cemetery will not be impacted as the town has a right-of-way across the property.

The project has been through a MESA review. Ms. Fletcher says she hopes that the Commission will agree that the proposed CRs are in the public interest as they will promote agriculture and limit development.

Brendan O’Neil reiterated that the Woods family has a long history of donating farm land on the island.

A letter from an abutter, William Woodburn of 31 Tower Hill was read. Mr. Woodburn was concerned about possible effects from agricultural use on his property and on his well. Fletcher has been in communication with Mr. Woodburn and believes that she has addressed his concerns, noting that his property is relatively removed from the parcel that will be used for agriculture. Fletcher said that it is her understanding that Jim Athearn will focus on growing vegetables. The terms of the CR do allow for animals but she is sure that Jim Athearn will be a good neighbor. In addition, the agricultural parcel is screened by dense woodland, which will mitigate any noise or odors.

Vincent asked if there will be any public access. Fletcher replied that there will be no public access to the agricultural portion but the existing right-of-way owned by the town, will remain open to the public and the wooded buffer will be permanently protected.

Brown remarked that the CR provides permanent protection for a nice chunk of moth habitat.

Norman Rankow asked if there was any excess moth habitat that could be used to mitigate the expansion of the Boys and Girls Club. Fletcher said that there was no excess; they established the moth habitat to mitigate for agricultural use.

Kontje made a motion to endorse the CR as a benefit to the town. Brown seconded the motion. Unanimously approved. The Commission also voted unanimously to allow the assistant to sign for the municipal certificate on behalf of the Commissioners.

## PUBLIC HEARINGS

**Maruska - 3 Boldwater Road.** Request for a determination of applicability. Dave Hill from Tea Lane Nursery was present for the applicant. The proposal involves erecting a 7.5 ft high deer fence, as shown on the plan. There will be four access gates. The fencing will be practically invisible and the 4 x 4 posts will weather to gray.

Brown asked how much of the 3-acre property will be fenced. Hill replied that the fenced area will be about 1/4 of that area, basically - the backyard. Brown said she was concerned about the effect of the fencing on the wildlife corridor as fencing can interfere with animal migration routes.

Brown asked if a recent wildlife survey had been done on the property. Kontje asked why part of the fenced area was in otherwise undisturbed habitat, as opposed to lawn or garden areas.

After some further discussion, Brown made a motion to continue the hearing until the next meeting, 30 December, for a site visit. She said it would also be helpful for the Commission to have a current landscape plan. Kontje seconded the motion. Unanimously approved by roll call vote.

**Palma - 30 The Boulevard.** Request for a determination of applicability to clear vegetation. Mr. Palma said that the intent is to create a small campsite for him and his son. Essentially he would like to remove some bushes and small trees in the back of his property. He would also like to create a dirt road into the area to store boats, so they would not be in his driveway.

Mr. Palma said there would be no utilities serving the campsite, not even a tent platform.

Marsha Mungeam, an abutter, had some questions about the location of the wetlands adjacent to the property.

Kontje commented that it looked like the area already cleared was large enough for a campsite. He said he didn't think rototilling adjacent to a wetland was a good idea. After some further discussion, Kontje made a motion to continue the hearing to the next meeting, December 30th, for a site visit.

Commissioners asked Mr. Palma to flag the areas to be cleared on site and modify the plan to show the areas already cleared as well as any proposed clearing. The wetlands should also be flagged. Province seconded the motion. Unanimously approved by roll-call vote.

**Walsh - 46 Turkeyland Cove -** NOI to construct pool and cabana. Doug Hoehn and Norman Rankow were present for the applicant. Cabana will be open on three sides and will have a gas fireplace, half bath and wet bar. Hoehn said they may relocate the pool slightly to the east, but no closer to the wetlands.

Kontje asked if any clearing needed to be done. Hoehn replied that the cabana and pool will be at the edge of the existing lawn. No additional vegetation will be removed between pool and water. A salt water filtration system will be used and a dry well will be shown on the plan.

Avakian made a motion to approve the project as presented. Carlson seconded the motion. Unanimously approved by roll-call vote with standard conditions.

[ \* Jane Varkonda enters Zoom meeting]

**Sharfstein - 55 North Neck** NOI to install a pool and patio. Jude Villa and Derek Browser were present for the applicant. Proposal is to install a 17 x 56 foot pool and hot tub with surrounding patio. Pool will be located in existing lawn area. No trees will be removed for the installation.

Pool will have a salt water filtration system and they are proposing to locate a cistern at the back of the garage for fire department access.

A letter from former abutter Liz Villard was circulated among the members. Ms. Villard was concerned about the impact of the pool on the shallow aquifer.

Brown commented that North Neck is a very narrow and fragile area. She said she needed to know more about the pool's possible effects on the aquifer and nearby wells.

Varkonda noted that the same questions and concerns arose when dealing with the Sperling pool on Kanomika. Experts noted that filling a pool once will not draw down groundwater. SBH could calculate the draw down, if needed. Varkonda noted that Kent Healy had commented during the Sperling hearing that trucking in water wastes more energy and resources than it offsets. The agent said she believes the applicants are not planning on installing the pool until the fall, so there is time to do a groundwater assessment.

Brown was interested in the impact of irrigation systems as well. Vincent asked how much of the water used for irrigation goes back into the groundwater. Carlson said it really depends on the time of day and how much of the water evaporates. He also suggested that filling a pool in the off-season would have less impact on the groundwater.

Abutters Carol & Sam Fuller also had some concerns. They noted that the former owners irrigated 'like crazy.' The Fullers were especially concerned that the pool is proposed so close to their property line. Mr. Brower said that they intend to plant a vegetative screen between the two properties.

Mrs Fuller asked if the pool could be moved to the opposite side of the property. Ms. Villa noted that there are no exterior access doors on that side of the property, as that is the bedroom wing.

Liz Villard, former abutter, noted that there are no pools on this side of North Neck Road, and was afraid that it would be setting a precedent.

Villa said she would have the property lines surveyed and develop a plan for screening along the Fullers' property line.

Kontje commented that a lot of time has gone by since the Chappy aquifer study and development has increased significantly since then.

Avakian commented that, from a Conservation standpoint, which side of the house the pool is on is not really an issue for the Commission, who are more concerned with its relation to the resource area.

Carlson said that he would like to see more information on the state of the aquifer and also get an idea of the expected total water usage on the site. He would also like to have a better idea of the impact of the pool and the irrigation system on the water usage. Carlson made a motion to continue the hearing to the first meeting in January. Province seconded the motion. Unanimously approved by roll-call vote.

**Mason - 18 Earl Avenue** (Continuation)NOI for boardwalk (amended to remove pier). Kara Shemeth was present for the applicant. Revised plans submitted showing an expanded walkway. Walkway is slightly cantilevered over the edge of the water to allow for ladder access.

Avakian said he thought the new walkway was an improvement: it fits in with other structures in the area and will not set a precedent.

Kontje made a motion to approve the walkway as presented. Province seconded the motion. Unanimously approved by roll-call vote.

**Outer Banks - 375 Katama Road** (Continuation) NOI to construct a barn with commercial kitchen. A report of the site visit from Carlson, Brown, and Vincent was given. Carlson said that no issues were discovered on the site visit and the structure will be well screened from public views. Carlson made a motion to approve the project as presented with standard conditions. Carlson said the project will not adversely effect the interests protected under the WPA. Brown seconded the motion. Unanimously approved by roll-call vote.

**Sullivan - 32 Ocean View Avenue** NOI for the construction of a driveway, retaining wall, and a portion of a stairway, revisions to a septic system, and additional planting of vegetation. Doug Hoehn, Don Sullivan, Tim Moriarty, Michael Bonner, Beau & Caroline Reily, Tim Lee, John Lolley, and Eric Las were also present.

[Province is abstaining and leaves meeting]

The chairman noted that although this is a new filing, it is the same application that was filed in August. Because two members each missed one of two earlier meetings and another member has been seriously ill, a quorum could not be achieved and the applicant was required to file a new application. The chairman noted that all the members had reviewed the prior materials submitted with the application, several letters from the Reilys' attorney, and read the minutes from the previous meetings.

Doug Hoehn reiterated that the plans and the application are identical to those submitted on 24 July 2020. The subject matter is exactly the same and concerns items already constructed, and for which the Commission issued a negative determination on 25 October 2019.

The hearing was continued 9 September 2020 so that a third party could determine if there was any run-off from the Sullivan property onto the Reily property.

John Lolley told the board that he submitted his report several weeks ago. He said that he did not see any water draining off the Sullivan property onto the Reily property. No water was draining from the wall. He said he spent several hours on the property, in the rain, and was able to determine that the water running onto the Reily property was not coming from the Sullivan property, but from another property a quarter mile up the road. He said that the Sullivans had done an excellent job of designing their driveway to ensure that there is no run off onto other properties.

Kontje commented that in looking at the aerials of the properties from 2018 it appears that the Reily property has more protection as a result of the retaining wall on Sullivan's property than it did before, when there was no retaining wall.

Lolley agreed and noted that there are very steep grades in the area. He said again that he saw nothing draining from the retaining wall. He commented that Mr. Las, an engineer hired by the Reilys, was incorrect in his assumption that the driveway was impermeable. Lolley said that the driveway and the retaining wall were very expensively and expertly engineered, and the fill is working very well and containing all the water.

Mr. Moriarty, attorney for the Reilys, said that while he has great respect for Mr. Lolley, he believes he is working with limitations as a result of his limited history with the property. Moriarty said that what was removed from the site was old growth vegetation, and it was replaced with hardscape.

Prior to the Sullivans' purchase of the property there was just a single, modest dwelling on the site. Moriarty said his clients were not made aware of the extensive regrading that would take place on over a third of the property. Moriarty said that no mention was made of cutting trees at the Planning Board hearing, yet much of the property was clear cut. He also noted that driveway location was not included on the original plan.

Moriarty said that in listening in on other hearings, the board has taken into account private views, citing the recent Kaplan and Bower hearings. He said that his clients now basically look out at the service entrance to this property.

Moriarty said that no soil analysis was done to determine run off and asked how a massive retaining wall constructed in the flood zone could not have an effect on storm water. Moriarty again noted the inadequacy of the turn-around on the Sullivan property and the inadequate screening vegetation.

Moriarty concluded that all this work had been done without sufficient notice to the Reilys and asked the Commissioners to deny the application and have the Sullivans return the property to its natural state.

Eric Las said that Lolley's report was based on inadequate sampling and at a time when there was just over an inch of rain after a period of drought. He said the report needs to be made after a significant rain event of several inches or more. He said that driveway will not be able to absorb that amount of water and it will run off onto the Reily property.

Las asked that his letter of 8 December 2020, which was circulated among the Commissioners in advance of the hearing and to Mr. Sullivan, his attorney, and engineer, be made part of the administrative record. He asked why there was no topography included in the most recent plan and noted that the NOI was not signed by the applicant.

Mr. Hoehn said he was surprised that Mr. Moriarty and Mr. Las were raising the same issues that he fully explained in a recent four hour deposition, and were not really relevant to the issues currently before the Conservation Commission.

Regardless, Mr. Hoehn addressed several points raised in Mr. Las' letter, most of them procedural. Mr. Hoehn explained that there are two types of flood zones: the AE Zone, which is also called the 'still water flood zone' and has an elevation attached to it and the Velocity Zone, which has no elevation attached to it. Mr. Hoehn said that velocity zones don't fit any given elevation and took issue with Mr. Las's interpretation.

Michael Bonner, attorney for the Sullivans, said that Mr. Moriarty is continually putting a false narrative before the Commission by insisting that Mr. Sullivan intentionally misled various town boards about his plans for the property. He said that the 'Illustrative Site Plan,' which was referred to in the minutes of the original hearing, shows everything proposed on the property. No one was trying to game the system.

Moriarty commented that the site plan did not show the extensive regrading along the common boundary.

Caroline Reily said she believed that if the Commission had been made aware of what was really going to occur on the property, they would not have approved the construction of a 200-foot wall and the extensive removal of native vegetation.

Avakian commented that there has been a lot to absorb.

Kontje said he was curious about the desired result: removal of the retaining wall and the replanting of large tree would likely create far more damage. He said he believes that the Sullivans have gone to a lot of effort and have done a careful and well thought out job. He said that going backwards would be very disruptive.

Kontje made a motion to allow the work, noting that the Commission had already approved it once. Carlson seconded the motion and voted to grant the order for the same reasons. He noted that contrary to Moriarty's contention, the trees planted by Mr. Sullivan are not dying off in droves. Unanimously approved by roll call vote.

#### OTHER BUSINESS

[Province rejoins meeting]

The Commission voted unanimously by roll-call vote to extend the departure date of TTOR at the farm to January 15th.

The Commission voted unanimously by roll-call vote to approve the draft warrant articles for annual town meeting.

The Commission voted unanimously by roll call vote to enter into executive session for the purpose of discussing possible purchase of real estate. The Commission also voted unanimously to allow Doug Finn to remain in the meeting. The Commission voted by roll-call vote not to return to regular session at the end of the executive session.

There being no further regular business, the meeting was adjourned at 6:45 p.m.

Approved: \_\_\_\_\_

Minutes of an Executive Session of the Conservation Commission – 9 December 2020

The following members were present: Peter Vincent - Chairman, Jeff Carlson, Lil Province, Bob Avakian, Christina Brown, Geoffrey Kontje

Staff: Lisa Morrison, Jane Varkonda, and Doug Finn

Meeting commenced at 6:45 p.m.

The agent said that the Burke property adjacent to Katama Farm is coming up for sale. She said she didn't know the price, but that it is probably too small a piece for the Land Bank to consider.

Kontje commented that there will likely never be another opportunity to have ready-made farmer housing. He wondered if an affordable housing component could be added.

Province agreed and mentioned the incredible community support after the Fisher barn burnt down. She said that housing is crucial to the viable operation of the farm. An on-site farmer has always been a goal.

All the Commissioners were enthusiastically in favor of pursuing the purchase.

Executive session concluded at 7:05 p.m.

Approved: \_\_\_\_\_