

North River Commission

Representing the Towns of – Hanover, Hanson, Marshfield, Norwell, Pembroke & Scituate
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Minutes October 27, 2022 - Meeting #578

Present: Hanover, Daniel Jones (M), Hanover, Andrew Butler (A), Norwell, Robert Molla (A), Norwell, Tim Simpson (M), Pembroke, Bill Boulter (M), Scituate, Adria Gallagher (A)

Not Attending: Hanson, Jennifer Heine (M), Hanson, Donna Frehill (A), Marshfield, Maryanne Leonard (M), Marshfield, Mike Dimeo (A), Pembroke, Gino Fellini (A), Scituate, Joseph Norton (M)

7:00 - Call to Order

7:00 - Informal Discussion - 67 Collier Road, Scituate - Cahill

Paul Mirabito of Ross Engineering and Attorney Jeff De Lisi appeared on behalf of the homeowners to discuss the construction of a boulder retaining wall within the 100' setback to the Natural Bank. Mr. Mirabito described the recent history of the property noting a Special Permit had been granted in April 2021 to raze and reconstruct the existing dwelling and that the work permitted had been completed. He indicated that in the course of construction the applicants decided to add a boulder wall in the rear of the house that had been inadvertently left off the plan submitted with the Special Permit. He described how every thing else currently at the property is in accordance with the Special Permit. Mr. Mirabito stated that the boulder wall has been constructed to stabilize the bank behind the house, describing a fairly steep slope behind the house to the existing stone wall, a so called "sea wall." The boulder retaining wall was constructed to hold back soil that was being used for landscaping. He described a set of stairs in the boulder wall that serve as a secondary access to the house. He stated that there was only one way into the house from the front and one way out from the back. He described how the applicants submitted a plan that showed the location and height of the boulder wall. He described the height of the boulder wall as 4½' to 5' tall at its highest. He indicated that the boulder wall fell within the prevailing view which is the principal view from the river. He suggested that it was significant that the boulder wall was not parallel with the river. Attorney De Lisa noted that a portion of the wall, not the entire wall, was not parallel with the river. Mr. Mirabito referenced his Narrative dated October 20, 2022 which explains what was done and why and that he hoped that the Commission could agree that the boulder wall could stay and that it was within the scope of the overall project. He noted the exterior work on the dwelling was complete and that interior work was continuing. Mr. Molla asked if the applicant was aware that the project was a prohibited use being constructed in a wetland tidal marsh. Mr. Mirabito said there was no wetland in the area of the house that the wetland was the salt marsh on the ocean side of the existing stone wall. GW asked if an AE Zone was considered a wetland. Mr. Mirabito agreed that it was. He explained that the house was located as close to the street as possible to keep it in a Zone X and that the lower level was elevated just above the FEMA flood level El.16. This was done for flood insurance purposes and to keep the lower level above the FEMA flood zone El.16. Mr. Jones related how the Commission recently denied a project proposing a similar retaining wall because it was within the 100' setback to the Natural Bank. He feels that the Natural Bank at the applicant's location is clearly defined by the existing stone wall at the bottom of the wall and doesn't understand the idea of "we forgot to tell you we're putting in a stone wall within the 100'" when the Commission doesn't allow structures within the entire 100' setback to the Natural Bank. He questioned the reasoning of the Narrative that the wall was not parallel to the river. His main issue is that the boulder wall

was constructed within the 100' setback to the Natural Bank and that applicants that came before the Commission with similar applications were not given a positive response. He suggested that it was a mistake to put the wall in without first obtaining North River Commission approval. Mr. Molla asked if the boulder wall under discussion was the wall shown on the plan that included a set of stairs. Mr. Mirabito answered in the affirmative and stated that the stairs served as a secondary access for the back of the house. Mr. Molla thought the boulder wall might be an extension of the "seawall." Ms. Gallagher feels the boulder wall is a permanent structure within the 100' setback and is not permissible by the Protective Order. Mr. Jones cited the second paragraph of the Narrative, specifically the first sentence that "In this case, the constructed boulder wall is not parallel to the river and therefore is not subject to the 100-foot setback requirement." Mr. Jones does not feel the two items are connected and feels that the argument is a little insincere. He feels that the 100' setback has been around for many years and that the boulder wall here was constructed within the 100' setback. Attorney De Lisi asked if there was any latitude, if the Commission sees any latitude, in the definition of "accessory structure," suggesting that, while there was language defining accessory structures "...including, but not limited to, garages and sheds which are less than or equal to 15 feet in height" there could be an interpretation that the language of that section of the order was referring to buildings. Mr. Jones cited Section 1(M), the definition of "Structure", which includes walls. Attorney De Lisi noted that this section describing "Structure" includes walls but that the language of Section 8(A)(2) describing site design standards does not track with the definition "Structure" contained in Section 1(M). He noted that there is probably great precedence for the Commission to view the boulder wall as an "Accessory Structure." Mr. Jones disagreed, stating that the Commission would not view the boulder wall as a secondary structure. Ms. Gallagher agreed, calling the boulder wall a "Structure." Mr. Jones clarified, indicating the boulder wall was not a house or a shed and that the Commission had always considered an "Accessory Structure" to be a relatively small shed-type building. Mr. Molla suggested an alternative, pointing out that the first paragraph of Section 7 listing Prohibited Uses states "Except where otherwise authorized as an allowed use or by Special Permit, the following uses or structures shall be prohibited;..." He thinks that a Special Permit applied for after the fact could be applied for. Attorney De Lisi asked if this would have been how the Special Permit to raze and reconstruct the dwelling had been approved. GW answered that Section 4 of the Order dealing with enlargement of Existing Uses was how the raze and rebuild was permitted. He believes the language cited from Section 7 more accurately refers to uses that are allowed in the 100' setback, examples being dock projects and access to the river. Attorney De Lisi stated that that walls like the boulder wall built at the applicants' location were not uncommon in the neighborhood and wondered whether the Commission would consider an after the fact Special Permit filing. Mr. Jones indicated the Commission would review any photos or information regarding neighboring properties but cautioned that there might be many similar structures still in existence that were constructed prior to the enactment of the Protective Order that would not be permitted today. Attorney De Lisi suggested this is how the applicant would proceed. He reiterated that that applicant did not willfully flout the Protective Order and that the wall had been intended at the time of the filing for a Special Permit to raze and rebuild the dwelling but was not included on the submitted plan. The Commission reviewed the mechanics of moving forward. There is nothing to prevent the applicant from applying for a Special Permit after the fact and this is what the applicant is likely to do.

Plans/Documents referenced: "North River Commission Special Permit Plan for 67 Collier Road in Scituate, Mass., Scale: 1"=20', Dated: April 12, 2021, Ross Engineering Company, Inc., Paul Joseph Mirabito, P.L.S."; "As-Built Plan for 67 Collier Road in Scituate, Mass., Scale: 1"=20', Dated: October 19, 2022, Ross Engineering Company, Inc., Paul Joseph Mirabito, P.L.S."; Photos dated May 24, 2022.

7:15 - Request for Determination - 26 River Road, Hanover - Phillips

Bart Lipinski of Grady Consulting presented a multi-purpose project consisting of the reconstruction of an existing stairway, the reconstruction and relocation of an existing shed, the removal of a tree and the removal of invasive plant material to be mitigated by new plantings. Mr. Lipinski described the existing

conditions, noting that the existing stairway, located on a steep slope, was damaged and eroded to the point that it was unsafe to use to access the lower area of the yard. He indicated the location of the existing shed, also in a state of disrepair, 20 ft. from the Natural Bank. The applicant proposes to increase the size of the shed and relocate it further away from the Natural Bank and within the envelope of the dwelling's visual impact. Mr. Lipinski described a damaged maple tree that has been deteriorating, which the applicant would like to remove. He further described the proposed stairway as a safer alternative than the current stairway, employing a down and across and down again design to alleviate the steepness with a railing for additional safety. The stairway includes two small modular block walls that facilitate construction on a steep slope. Mr. Lipinski indicated that no machines will be able to work on the onsite slope so all work will be done by hand. The applicant proposes to remove invasive plant material on both sides of the proposed stairway and reseed the area with a conservation mix and native shrubbery in the areas where excavation was necessary for construction. Mr. Jones noted that it looked like the plan did not call for much change to the grading and Mr. Lipinski agreed, noting that it changed only so much as required by the construction standards of a stairway and that the walls strategic placement minimized grading even further. Mr. Molla asked for clarification of the condition of the existing stairway and Mr. Lipinski gave it. Mr. Molla asked if the applicant had been to Conservation Commission yet and Mr. Lipinski indicated that ConCom asked that the applicant obtain North River Commission approval before filing with them. At Mr. Jones' prompting Mr. Lipinski reviewed details of the stairway construction. Mr. Butler asked for clarification of the wall heights and material. Mr. Lipinski indicated the wall height varied as it stepped down to match the grade and that it would be constructed of modular concrete blocks. Mr. Simpson also asked for the height of the wall. Mr. Lipinski indicated the wall at its highest was 24". Mr. Jones noted that the shed needed to be 15' high or less and Mr. Lipinski stated that it would, as it was a small pre-fabricated shed. Mr. Simpson and Mr. Molla asked Mr. Lipinski to explain the colored setback lines. He stated that the blue dashed line indicated the wetland location, the larger green dashed line indicated the ConCom's 25' No Disturb Line, the smaller green dashed line indicated the ConCom's 35' No Build setback, the small grey dashed line was the ConCom's 50' setback line and the green line at the top of the plan view was the 100' setback. Mr. Butler asked for details regarding the mitigation plantings and Mr. Lipinski described the replanting plan. A motion was made and seconded that the project, as presented, was an allowed use. The motion was carried unanimously. Plans/Documents referenced: "Landscape Plan, Assessors Lot 66-49, #26 River Road, Hanover, Massachusetts, Prepared for Kimberly A. Phillips, 401 Temple Street, Whitman, MA 02382, Dated: September 29, 2022, Scale: As Noted, Grady Consulting, LLC, Bart Lipinski, RLA"

7:30 - New Business

1. Minutes approved for September 22, 2022 meeting.
2. Administrators Report - Administrator Gary Wolcott (GW) reported on...
 - 98 Meadowbrook Road, Norwell - Appeal period for the Special Permit issued in September has lapsed. There being no appeal the Special Permit with Conditions was recorded at the Registry of Deeds in the chain of title for 98 Meadowbrook Road, Norwell.
 - Fiscal Year 2023 Quarter 1 Expense Report was forwarded to the NSRWA for administrative purposes. The report was reviewed by the Commission.
 - The Commission reviewed the Boat Patrol and what type of accounting should be required from the Town of Marshfield for their performance of the contracted patrols.
 - The Commission reviewed the condition of the Rt 3 bridge.
 - GW reviewed a call from 36 Little's Lane, Marshfield about removing a tree that is threatening the dwelling and asked for members who could accompany him on a site visit. Mr. Boulter and Mr. Molla volunteered. GW will arrange an appointment.

- Real Estate transactions in the Corridor - 235 Corn Hill Lane, Marshfield, 74 Kings Landing, Norwell, 37 Moorland Road, Scituate.
- Site Visits - None
- Recent municipal filings of Corridor properties - Projects previously reviewed, currently under review or expected to come under review by the North River Commission. Hanover, 214 Water Street, ConCom for addition to dwelling, Marshfield, 76 Carolyn Circle, Conservation Commission for dock project, O Edmund Road, ConCom for Dock Project, 76 Macomers Ridge, BOH filing, Norwell, Stony Brook Lots 55 and 56, ConCom for stormwater review.

3. **Storage on Marsh** - GW reviewed a report that a pontoon boat was being stored on the marsh along Old Meeting House Lane, Norwell. There is a history of the Corridor towns and the Commission allowing the temporary storage of floats on the marsh in the non-growing season as this has proven to do no harm to the marsh. It was suggested that a pontoon boat would have even less potential for harm to the marsh due to the nature of its construction. Others suggested that allowing storage of the pontoon boat might create a precedent and open up the possibility of additional craft, of a larger and more harmful nature, being stored on the marsh. No action was decided upon at this time.

Meeting adjourned 8:20 pm

Gary Wolcott, Administrator