

North River Commission

MA Dept of Conservation & Recreation – Hanover, Hanson, Marshfield, Norwell, Pembroke & Scituate
188 Broadway, PO Box 760, Hanover, MA 02339 Office Hours 9am – 1pm, Tuesday & Thursday,
Phone: 781-659-7411 Website: www.northrivercommission.net Email: northrivercom@gmail.com

Minutes September 24, 2020 – Meeting #552

(Meeting conducted via Zoom Video Conferencing)

Present: Hanover, Dan Jones(M), Hanover, John O'Leary(A), Hanson, Jennifer Heine(M), Marshfield, Chris Head(M), Marshfield, Maryanne Leonard(A), Pembroke, Bill Boulter(M), Pembroke, Gino Fellini(A), Norwell, Tim Simpson(M), Scituate, Adria Gallagher(A)
Not Attending: Norwell, Robert Molla(A), Scituate, Joseph Norton(M),

7:00 – Call to Order

1. Minutes approved for August 27, 2020 meeting.
2. Administrators Report - Administrator Gary Wolcott(GW) reported on and the Commission discussed...
 - a. Recent correspondence.
 - b. Real Estate Transactions in the Corridor - 28 Damon's Point Circle, Marshfield, 42 Damon's Point Circle, Marshfield, 8 Brown Avenue, Scituate, 58 Turner's Way, Norwell - Welcome letters sent to new homeowners.
 - c. Asbuilt for completion of dock project at 296 Spring Street, Marshfield submitted and reviewed.
 - d. Modification request for dock project at 45 Cedar Point, Norwell reviewed. The pier was narrowed from 5.8 ft. to 5.3 ft. at the Army Corps of Engineers' request.
 - e. Cooperation between Marshfield Conservation Commission and North River Commission to clean up Blueberry Island and Couch Beach and to remove scaffolding/rope swing structures from the bases of both the Northbound and Southbound Rt. 3 bridges described and reviewed.
 - f. Ongoing Budget matters.

7:15 – Special Permit Application – 25 Washington Street, Hanover - Brian Burns & Matthew Lawless- Applicants, w/subsequent owners Laurie Lawrence & Christopher Bunker - Ms. Lawrence described the fences that had previously constructed on the property and why she felt that they were warranted. She indicated that the fences were not visible from the river due to vegetation. She feels the post and rail fence parallel to the river is for safety reasons, that there was a steep drop off behind the fence that the fence protects against. She described the two cast iron fences as perpendicular to the river. She described the property as unique in that the river runs along the side of the property rather than along the rear of the property and also that the proximity of the bridge generated a lot of foot traffic along the road and the front cast iron fence prevents liability issues developing under the Torts legal theory of the public accessing an "attractive nuisance" on private property. Ms. Lawrence contends the third, or rear cast iron fence is not parallel to the river and does not violate the order. Mr. O'Leary spoke about precedent, specifically a filing from 110 Bartlett's Island Way, Marshfield in 2010 where the Commission denied a filing to construct a fence for safety purposes. Mr. Head recollected that the fence in that instance was proposed right along the natural bank of the river and Mr. Jones asked if the filing was for a Special Permit where there was a pre-existing non-conforming structure. Mr. O'Leary indicated the Bartlett's Island Way hearing was an informal discussion but that the Commission felt then that safety was not a reason to allow the fence and he feels this filing is similar. Mr. Jones isn't sure the situations are similar as the current filing is for a Special Permit with a non-conforming pre-existing structure and cited hearing was an informal discussion. Mr. Head is unsure, but doesn't believe the previous hearing involved a pre-existing non-conforming structure. Mr. Wolcott relayed that the Bartlett's Island filing involved an existing fence that the applicant wanted to expand to enclose the entire yard. Mr. Head expounded, that this desire to expand the fence right to the natural bank is what he recollected and the reason why the Commission

was against the construction. Ms. Leonard noted the difference in the topography between the two sites, specifically that the Bartlett's Island site did not involve such a steep drop-off to the river. She also agrees with Mr. Head's recollection that the previous filing involved expansion of an existing fence right to the natural bank of the river. Mr. Jones reminded the Commission of the nature of Special Permit hearings, given the situation of structures built before the enactment of the Protective Act versus new construction post enactment and the flexibility that this fact allows. He suggested that the Commission ought not hold the current owners responsible for any failings of prior owners. Ms. Gallagher feels the applicants' argument regarding safety and liability is compelling and does not feel that precedent applies here and is favor of granting a Special Permit. Ms. Leonard asked how the Special Permit is written, whether an approval is for all three fences or whether they are ruled on individually. Mr. Boulter stated that the previous owners should have known about the North River Protective Act and that the fences should come down because they were not properly permitted in the first place. He feels that to allow the fences would be to ignore what the North River Commission was created to do, i.e., protect the scenic beauty of the river. Mr. Simpson agrees with Mr. Boulter that Corridor members should not be allowed to build non-permitted structures and correct it later but does not feel that the current filing is comparable to the Bartlett's Island filing. He agrees that there is a safety issue and gives weight to the fact that the fences are not visible from the river. He supports keeping the fences. Mr. Boulter asked about the age of the house. Ms. Lawrence stated the house was built in 1793. Mr. Boulter asked if the house had fences in the past and whether it was a safety issue then. Mr. Boulter does not feel the slope behind the fence is a safety issue. Ms. Lawrence does not know the history of fences or the topography on the site and isn't sure where the 100 ft. setback is and reiterated that she doesn't think the fences that are not parallel to the river are in violation of the order. She maintains that the slope behind the post and rail fence is steep and is a safety issue. Mr. Bunker expressed optimism about moving forward and working cooperatively and constructively with the Commission. Abutters Peter and Sandra Moll of 174 River Road, Hanover addressed the Commission and asked for clarification of where the 100 ft. setback was. Mr. Wolcott reviewed a plan of file that showed the Natural Bank and 100 ft setback line and indicated roughly where the top of slope and fences were located. Mr. Moll does not feel modern analysis works with a 1793 structure. The Molls are pleased with the upgrades to the house and feels that the fences create no visual impact on the river. Mrs. Moll feels the split rail fence is not visible. Mr. Moll argues for "yankee" common sense. The Molls support the applicant's request. Mr. O'Leary made a motion to remove the three fences and Mr. Boulter seconded it. Hanover and Pembroke voted in favor, Hanson, Marshfield, Norwell and Scituate opposed. The motion did not carry. Mr. O'Leary moved that the applicants remove the front cast iron fences and Mr. Boulter seconded. Ms. Gallagher asked Mr. O'Leary for clarification of his objection to the front cast iron fence. He indicated that he is relying on the precedent he cited earlier and does not feel the fence serves any safety role. Ms. Gallagher asked if there were any views of the fence from the river on file. None exist but an overhead image shows the approximate location of the fence's construction. Ms. Lawrence, Mr. Jones and the Molls state that the front cast iron fence is not visible from the river. Mr. Moll asked for clarification on the voting procedure. He asked if the motion to remove the fences hadn't already been defeated and was the Commission now separating the motion into individual segments. Mr. O'Leary explained that compromises in the nature of his separate motions had been made at the last meeting and were unable to be resolved when the applicants left the meeting prematurely. Ms. Lawrence pointed out that in a similarly situated house along the river at the Bridge/Union street crossing there was a fence and trees in a similar vein to what exists on her property and that ultimately any liability issues that were raised due to unwanted access to her property would fall upon her and not the Commission. Mr. Head asked if perhaps the Commission had erred by separating the fences into individual motions and that they should have been voting simply on a motion to approve/deny the Special Permit. Mr. O'Leary believes that the Special Permit

can be amended. Mr. Moll pointed out that no motion to amend the Special Permit had been made. Ms. Gallagher moved to approve the Special Permit and Mr. Simpson seconded it. Mr. O'Leary would like to amend the Special Permit to include only the post and rail fence and the rear cast iron fence. He so moved. Mr. Boulter seconded. Hanover and Pembroke voted in favor of amending the Special Permit as moved. Hanson, Marshfield, Norwell and Scituate opposed, the motion did not carry. The motion made by Ms. Gallagher and seconded by Mr. Simpson to approve the Special Permit as written, including two cast iron fences, front and rear and a post and rail fence was taken up again. Hanson, Marshfield, Norwell and Scituate voted aye, Hanover and Pembroke voted no. The motion to grant the Special Permit was approved, 4-2.

Plan/Material referenced: Photographs of the property submitted by Mr. Burns and Mr. Lawless for the February 2020 and August 2020 North River Commission meetings and photographs submitted Ms. Lawrence for the September 2020 North River Commission meeting.

7:30 - Informal Discussion - 67 Collier Road, Scituate - Katie & Mike Benning - Homeowners - Mr. and Mrs. Benning described their desire for a 2,000-2,500 square foot dwelling on a lot with a pre-existing non-conforming structure that would be torn down. Mr. Head explained the Commission's interest in the prevailing view of any structure as seen from the river. The Commission concluded that the view in this instance was roughly from the south-southwest or along the existing spit. Mr. Jones explained that a Special Permit filling would be appropriate for the type of project that the Bennings are describing. Mr. Benning reviewed a Powerpoint presentation for the proposed project. He presented rough depictions of what they are proposing, i.e. to add a second floor to a portion of the dwelling and to maintain the roofline as much as possible for the remainder. Ms. Benning added that the elevation of the first floor would need to be raised due to Flood Zone regulations. Mr. Head reviewed expansion to pre-existing dwellings and how the Commission had analyzed comparative visual impact square footage in the past where the structure needed to be elevated. He acknowledged that generally some expansion to the visual impact is allowable and that elevation increase due to Flood Zone regulations is not penalized and that elevation comparisons would be made from the existing dwelling at its current grade to the first floor elevation of the proposed building and would not include the empty space beneath the proposed elevated structure. Mr. Jones clarified that the prevailing view elevation drawings would be somewhere between the views presented in the Powerpoint presentation, at an angle between the south and east faces of the dwelling rather than a straight on view of either of the two. Ms. Benning asked for advice on the next step. Mr. Jones suggested coordination with each approving authority prior to drawing up any plans. The Bennings will proceed and come back with a Special Permit application at a later date.

Plan/Material referenced: Powerpoint presentation.

7:45 - Request for Determination - 34 Island View Circle, Norwell - Kristin Keefe & Brian Nihill - Applicants - Cavanaro Consulting - Representative - John Cavanaro presented plans for a pier, ramp and float. Mr. Cavanaro described the existing conditions, wetlands and location of the natural bank on the site. The applicants propose a pier 4 ft. in width and approximately 500 ft. in length 5 ft. over the marsh. They propose a 30 ft. long ramp and a 24 ft x 12' long float to be removed seasonally. Norwell ConCom and Chapter 91 filings will follow the NRC determination. Mr. Jones asked for railing confirmation to be just along the ramp. Mr. Cavanaro confirmed. Mr. Head questioned the ramp and float size and the distance of the structure into the river. Mr. Jones asked for information about abutting or nearby floats and ramps. Mr. Head ran down figures from the NRC dock list that showed generally shorter ramps. Ms. Heine seconds

this impression and that most of the nearby floats are smaller. Mr. Cavanaro explained that the structure proposed includes the pier which ends at the edge of the marsh and that the ramp and float are not structures built within the bounds of the natural bank as they are seasonal and removed annually. Mr. Boulter asked why a 30 ft long ramp was proposed. Mr. Cavanaro stated the 30 ft will ensure an adequate length for the elevation difference at extreme low tides, that 30 ft is a conservative figure that is amendable to nothing less than 24 ft in this location. Mr. Jones suggested shortening the ramp to 24 ft and downsizing the float to 10 ft x 16 ft which would be consistent with other docks on the river. Mr. Simpson asked how and where the ramp was attached to the float. Mr. Cavanaro indicated that the ramp was pinned to the edge of the float. Mr. Simpson suggested that centering the attachment of the float improves the balance of the float. Mr. Head reiterated that 10 ft x 16 ft was the preferred size. Mr. Fellini suggested shortening the length of the pier so that it stops short of the edge of the marsh and the ramp extends over the remaining marsh. Mr. Cavanaro is concerned that it will prove unworkable at low tides. Mr. Head and Mr. O'Leary reminded the Commission that the Act does not guarantee dock access to water at low tides and Mr. O'Leary particularly that the structure should not protrude more than 10 ft into the open water channel of the river. Mr. Cavanaro clarified that he was following DMF provisions designed to protect the river and prevent structures from bottoming out and harming the existing ecology and reiterating his point about the difference between permanent structures and removable seasonal structures. Mr. Boulter expressed concern about the width of the navigable channel in this area and would also like to see a shorter ramp and smaller float. Mr. Head summarized the Commission's position for a 24 ft length ramp and 10 ft wide float. Mr. Cavanaro is willing to compromise to a 24 ft long ramp and 10 ft x 16 ft float. A motion was made and seconded that the proposed project with a revised 24 ft long ramp and 10 ft x 16 ft float was an "Allowed Use". The motion was unanimously approved.

Plan referenced: "NRC Dock Plan, 34 Island View Circle, Norwell, MA 02061, Prepared for Brian Nihill, 34 Island View Circle, Norwell, MA 02061, Scale: As Shown, Dated: 9/18/2020, Cavanaro Consulting, John C. Cavanaro, Registered Professional Engineer."

8:00 - Informal Discussion - 67 Washington Street, Hanover - Caleb Estabrooks - Homeowner - Mr. Estabrooks reviewed a Powerpoint presentation of damaged/dead trees on his property that he would like to dispose of. Mr. Estabrooks showed photos of the trees of interest and described their location in relation to the natural bank of the river. Ms. Leonard suggested a site visit to walk through and view the proposed cutting. A site visit will be scheduled and coordinated with Mr. Estabrooks for members of the Commission to meet with Mr. Estabrooks on site to view the proposed cutting.

Plan/Material referenced: Powerpoint presentation (67 Washington St trees for removal.pptx)

Meeting adjourned 9:30 pm

Gary Wolcott, Administrator