

TOWN OF LANCASTER
CONSERVATION COMMISSION
Lancaster Community Center
September 12, 2017

Members Present: Chair Ken Rapoza, Vice-Chair Nate Stevens, Bonnie-Mae Smith, Tom Christopher, Pete Farmer

Members Absent: Jim Lavallee

Also Present: David Koonce; Conservation Agent
David, James, and Philip Carle; Trustees of the Carle Family Trust

There being a quorum present, Chair Ken Rapoza called the meeting to order at 7:00 PM.

Public Hearing, Request for Determination of Applicability, Kelly and Clayton Arvidson, 310 Fort Pond Road (After-the-fact filing)

Present: Kelly Arvidson, Applicant and Property Owner

At 7:01 PM Chair Ken Rapoza read aloud a Notice of Public Hearing thereby convening a public hearing for the purpose of considering a Request for Determination of Applicability filed by property owners Kelly and Clayton Arvidson for proposed work within 100-foot Buffer Zone to Fort Pond at 310 Fort Pond Road, further identified as Assessor's Map 4, Lot 25. The project entails construction (already started) of a 9'x11' (99 square feet) utility/storage shed on granite blocks.

Chair Ken Rapoza began by informing the Commission that in response to a complaint from an abutter, he (i.e. Mr. Rapoza), Conservation Agent David Koonce, and Member Tom Christopher visited the property on August 11th, 2017, at which time they observed a partially constructed plywood shed on cinder blocks located on existing lawn no more than one (1) foot from the standing water in Fort Pond.

(The property owners were out of town at the time of Mr. Rapoza's, Mr. Christopher's, and Mr. Koonce's visit, but Ms. Arvidson subsequently contacted Mr. Koonce, agreeing to immediately discontinue all work on the shed and to file a Request for Determination of Applicability to be heard by the Conservation Commission at their next available meeting.)

Mr. Rapoza emphasized to the Applicant that the shed as currently located is in violation of the 25-foot no-disturb setback under the Town of Lancaster Wetlands Protection Bylaw, and advised her that the Commission might require it be moved to another location farther away from the Pond.

Ms. Arvidson responded that the shed is in the best location from her perspective. She said it is on the most level area of the backyard and is located conveniently close to where the lawn furniture is used during warm weather in the spring, summer and fall; she said storage of the lawn furniture during the off-season is the shed's intended primary use, and it will not be used to store gasoline or any chemicals used in lawn care.

1 Conservation Agent David Koonce described his site visit with Ms. Arvidson on August 18th. He said that
2 in his opinion, given that the shed will be used for the storage of lawn furniture only, the most serious
3 concern is with stormwater and snowmelt containing pollutants picked up from the roofing material,
4 such as asphalt shingles, running off directly into Fort Pond; he said that if the shed were to remain in its
5 current location, the roofing should be made of an "inert" substance. He added there is a more minor
6 concern that turtles living in Fort Pond may have over the years become accustomed to nesting in the
7 lawn now underneath the shed, but he said he felt this concern should not be great enough by itself to
8 require the shed to be moved, if the Commission were otherwise amenable to leaving it where it is. Mr.
9 Koonce stated that in his opinion the most ideal location for the shed from the standpoint of wetland
10 concerns is an area of lawn adjacent to the driveway turnaround located approximately 75-80 feet away
11 from the Pond's edge. He said that not only is this area much farther away from the water, but it is
12 already flat and would not need much, if any, re-grading for placement of the shed.

13
14 Ms. Arvidson responded that locating the shed where Mr. Koonce proposes would make it very difficult
15 for her husband, who she said has serious problems with his mobility, to regularly carry items back and
16 forth over what she said would be, in that location, the relatively long distance and steep slope between
17 the backyard and the shed. She said Mr. Koonce had indicated to her that there is a "hardship" provision
18 in the regulations that could allow the shed inside the 25-foot no-disturb setback in order to
19 accommodate her husband's limiting physical condition.

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21 Mr. Koonce concurred with Ms. Arvidson, citing the "demonstrable hardship" provision of Section 215-
22 6C(2) of the Town of Lancaster Wetlands Protection Bylaw.

23
24 Mr. Rapoza, saying specifically he was speaking for himself, said he would first have to be satisfied Mr.
25 Arvidson is legally disabled before he would consider allowing the shed under the Bylaw's hardship
26 provision.

27
28 Member Pete Farmer asked if there were any concerns with the shed's negatively impacting wildlife, in
29 particular whether the shed obstructs wildlife migration back and forth between Fort Pond and the
30 adjacent uplands, i.e. the Arvidson's lawn.

31
32 Agent Koonce responded that it is possible turtles have historically nested in the lawn where the shed
33 now sits, especially since it is south-facing, however, the shed has a relatively small "footprint" and any
34 turtles that have typically nested where it is now located should be able to continue to do so in the same
35 local area by shifting their nesting only a few feet. He added that the shed rests on granite blocks
36 providing sufficient clearance for the passage of small animals in between the shed's floor and the
37 surface of the ground underneath.

38
39 Chair Rapoza read aloud an e-mail from James Carle sent to Agent Koonce on September 8, 2017. Mr.
40 Rapoza then asked if there were any abutters or others in the audience with questions, comments
41 and/or concerns regarding the project.

42
43 James, David, and Philip Carle, speaking for the Carle Family Trust, owners of the abutting property at
44 314 Fort Pond Road, urged the Conservation Commission to "abide by" all statutes, rules, and
45 regulations applicable to this project. They expressed concern for the potential impact of the shed on
46 Fort Pond, particularly from the potential escape of hazardous chemicals/substances stored in the shed
47 and runoff from the shed's roof. They also said the "aesthetics" of the shed and its proximity to the
48 property boundary negatively impact their view, and wondered whether the shed violates the setback

requirements of the Town's Zoning Bylaws. The Carles went on to say there is an underground stream on their property that originally discharged into a "small inlet" of Fort Pond that had been filled in "years ago" by a prior property owner or owners, and the stream's outflow point, which they called a "spring", still exists and is now located beneath the surface of the Pond. They expressed concern that the spring provides extremely important habitat for fish and other wildlife living in Fort Pond and that the shed would adversely impact this habitat. In addition, the Carles claimed to have observed Mr. Arvidson earlier in the summer working on construction of the shed without apparent difficulty.

Ms. Arvidson responded by repeating her earlier assurances that no hazardous substances or chemicals would be stored in the shed. She then said that if the Carles had had any concerns with the shed, she would very much have liked them to approach her and Mr. Arvidson directly, before contacting Town agencies. She said that she and her husband would provide medical evidence of his disability, but said she felt "bullied" into publicly disclosing "personal and private" information.

Mr. Rapoza repeated that he would be inclined to approve the shed in its current location only upon a clear demonstration of physical hardship if it were moved to near the driveway turnaround as discussed earlier in the hearing.

Mr. Farmer stated that in his opinion a Positive Determination Applicability, through the filing of a Notice of Intent and issuance of an Order of Conditions recorded on the deed, would give the Conservation Commission the most control over not only the location of the shed but also its long term use and disposition. Vice-Chair Nate Stevens and Member Tom Christopher concurred.

At 7:43 PM Member Pete Farmer made a motion to close the public hearing for 310 Fort Pond Road, Member Tom Christopher seconded. No discussion. VOTE: 5-0-0.

At 7:44 PM Member Pete Farmer made a motion to issue a Positive Determination of Applicability, Vice-Chair Nate Stevens seconded. No discussion. VOTE: 5-0-0.

Public Hearing, Request for Determination of Applicability, Daniel and Sabina Bettencourt, 140 Fire Road #12 (After-the-fact filing)

Present: Daniel and Sabina Bettencourt, Applicants and Property Owners

At 7:46 PM Chair Ken Rapoza read aloud a Notice of Public Hearing thereby convening a public hearing for the purpose of considering a Request for Determination of Applicability filed by property owners Daniel and Sabina Bettencourt for proposed work within 100-foot Buffer Zone and shoreline to Big Spectacle Pond at 140 Fire Road #12, further identified as Assessor's Map 10, Lot 112. The project entails cutting (already started) and removal of approximately ten (10) trees (stumps to remain), trimming several others, and removal by hand of accumulated junk, trash, and organic yard debris.

Chair Ken Rapoza began by informing the Commission that in response to a complaint from an abutter, he (i.e. Mr. Rapoza), Conservation Agent David Koonce, and Member Tom Christopher visited the property on August 11th, 2017, at which time they observed several large trees lying in the front yard that had obviously been felled very recently; a contractor was removing the branches from the trees in preparation for taking them off-site for further "processing." Upon closer inspection of the property, four newly cut stumps greater than 12" in diameter were found within 25 feet of the edge of Big Spectacle Pond.

(The property owners were not at home at the time of Mr. Rapoza's, Mr. Christopher's, and Mr. Koonce's visit, but the contractor was told to cease and desist from any further activities within 100 feet of the Pond, and was given one of the Conservation Agent's business cards along with a verbal request that the property owner contact Mr. Koonce at his earliest convenience to address the matter.)

Mr. Bettencourt explained that he and his wife had only very recently purchased and moved into their house on Fire Road #12. They were concerned that a number of dead and dying trees close to the house were in imminent danger of falling and/or losing large branches, especially in a high wind, and they were worried the falling trees/branches could present a serious threat to the house and/or their own personal safety. Being very new to the Town, Mr. Bettencourt said, they had no idea they needed permission from the Conservation Commission to cut and/or remove trees within 100 feet of wetlands.

Agent Koonce said the contractor should have advised the Bettencourts that permission from the Conservation Commission would likely be needed prior to removing/trimming trees so close to the Pond, and pointed out the actual RDA requests the removal of a total of sixteen (16) dead/dying, diseased, or otherwise unstable trees, four (4) of which were already removed by the contractor, and the trimming of two (2) trees with large branches overhanging electrical powerlines. The stumps of the trees removed will be left in place but scraped down to ground level, eventually decaying. He agreed that the Bettencourts do have legitimate safety concerns and recommended the Commission approve the requested tree removal and trimming on condition that all affected trees be marked by the contractor and then inspected by him (i.e. Mr. Koonce) prior to the start of work. Mr. Koonce also said the removal of long-accumulated junk/trash/debris and sediment from the shoreline of the Pond would significantly benefit its ecological health, provided due care is taken, to the maximum extent practicable, not to remove any naturally occurring material in the process. He recommended a Negative Determination of Applicability with the above conditions included.

Member Tom Christopher said he had no problem with taking down dead and/or diseased trees for the purpose of addressing human health and safety concerns, but no trees can be removed or trimmed simply to improve the Applicants' view of the Pond.

At 8:01 PM Member Tom Christopher made a motion to close the public hearing for 140 Fire Road #12, Member Bonnie Mae Smith seconded. No discussion. VOTE: 5-0-0.

At 8:02 PM Member Tom Christopher made a motion to issue a Negative Determination of Applicability with conditions as discussed during the public hearing, Vice-Chair Nate Stevens seconded. No discussion. VOTE: 5-0-0.

New Business

Waiver of Right-of-First-Refusal: Parcels 36-1, 36-1A, 36-1B Hill Top Road

At 8:10 PM Member Tom Christopher made a motion the Conservation Commission recommend to the Board of Selectmen that the Town waive its Right-of-First-Refusal on Parcels 36-1, 36-1A, and 36-1B on Hill Top Road, Vice-Chair Nate Stevens seconded. No discussion. VOTE: 5-0-0.

Items for Approval and Signature

Minutes of August 8, 2017

A quorum of members in attendance at the August 8, 2017 meeting was not present, so the vote on the minutes of that meeting was postponed to the next meeting on September 26th.

Minutes of August 22, 2017

At 8:24 PM Member Pete Farmer made a motion to approve the minutes of August 22nd, 2017, Vice-Chair Nate Stevens seconded. No discussion. VOTE: 5-0-0.

Old Business

Proposed Amendment to Water Withdrawal Bylaw

At 8:28 PM Member Pete Farmer made a motion the Conservation Commission submit a warrant article for the October 2nd, 2017 Special Town Meeting to amend the Water Withdrawal Bylaw as discussed at the Commission's August 22nd, 2017 meeting and as approved by Town Counsel, Vice-Chair Nate Stevens seconded. No discussion. VOTE: 5-0-0.

At 8:30 PM Vice-Chair Nate Stevens made a motion to adjourn the meeting, Member Tom Christopher seconded. No discussion. VOTE: 5-0-0.

Respectfully submitted,

David Koonce
Conservation Agent