

**TOWN OF ACTON  
CONSERVATION COMMISSION**

**Minutes**

**February 20, 2019**

**7:15 PM**

**TOWN HALL - 472 MAIN STREET  
ROOM 204**

**COMMISSIONERS PRESENT:** Terry Maitland, Amy Green, Jim Colman, Tim McKinnon, Zywia Chadzynska

**RECORDING SECRETARY:** Fran Portante

**VISITORS:** Kim Kastens, Mark Lavalle

**7:15 Notice of Intent: 66 Robbins St.**

“Notice of Intent” filed by Jianhua Jian of 64 Robbins St. The proposed project is the subdivision of two lots into three at 64 and 68 Robbins St. (*town atlas plate H2, parcels 19 and 23*), and the construction of a single family dwelling. *Work will occur within 100 feet of wetlands.*

Mark Lavalle, from Goldsmith, Prest and Ringwall, Inc., presented for the applicant. A prior filing, 85-1220, was an attempt to divide the space into 4 lots and add two houses. This plan was rejected by the planning board. The current proposal has significantly reduced impact on the resource area. It reduces the proposed two additional dwellings to a single new dwelling. There are two existing homes on two lots. The project will carve out a third lot from the existing two (at 64 and 68 Robbins Street respectively) and construct a single family home on the new lot (to be 66 Robbins St.)

Robbins St. is an historic road, and a stone wall exists along the street. In order to avoid disrupting the wall, a shared driveway was designed to accommodate both 68 and the new dwelling at 66. A grass swale drainage structure will be installed along the driveway, in accordance with Storm Water Regulations. Straw wattles will be installed around the area until the area is stabilized. Construction detail of the trench is included on the detail plan sheet #3. Mr. McKinnon asked about the location of the proposed trench and Mr. Lavelle said it ran along the right side of the driveway.

An abutter had sent an inquiry to the Commission asking why they hadn't received an abutter notice. This came in late in the day and the Dept. of Natural Resources will investigate and a response will be sent on Thursday.

The Commission verified that the mailing receipts matched the 100 foot abutters list. However, included in the filing was a list of 300 foot abutters, required for Planning reviews. Also, DEP had not sent their review or assigned the ID number at this time. The hearing will remain open until DEP has submitted their review.

The Planning Board had rejected the earlier proposal because they did not see where a waiver would have been in the public interest. Neighbors objected strongly to the construction of two houses on the site. Mark pointed out that, while the prior filing had pushed the structures very close to the 50 foot buffer, this new filing was able to move the home away from the 50 buffer, and well out of the 75 foot buffer.

The current plan minimizes the overall impact of construction on this site. Mark showed the Commission the prior plan for comparison. (DEP Filing 85-1220: <http://doc.acton-ma.gov/dsweb/View/Collection-9183>)

There is no building within the flood plain, and the closest limit of disturbance is outside the 50 foot buffer zone. There is no building within the 75 foot buffer, but the drainage basin is within the 75 foot. The low point of the driveway is positioned so sheet flow will move don't the driveway and flow into the infiltration basin.

Mr. McKinnon stated that he would like to see the basin moved out of the 75 foot buffer. Mr. Lavallee noted that they had to follow the contour of the land in positioning it. They also discussed the trees that were scattered over the lawn as large singlets, not a forested cover. The utility trench was also located within the 75 foot buffer. Mr. McKinnon asked that that also be relocated outside the 75 foot buffer. Mr. Mark agreed he could do that. Mr. Colman asked if the entire drainage ditch could be moved out of the 75 foot buffer. Mr. Lavallee demonstrated the drainage flow that would result, making such a change impractical. The design also protects the neighboring lot from excess runoff. But he would try to accommodate the request.

Ms. Green raised the topic of the Bamboo infestation that had been a discussion for the prior filing (85-1220). It had been marked on the plan as was conditioned in the Order. She would expect to see that same requirement on this order and would like to see it marked on the plan. She would also like to see a planting plan, and to set some of the grassy area to be naturalized.

Mr. McKinnon also suggested moving the shed away from wetlands. Mr. Lavallee said the shed was to be moved to a suitable location on Lot 3. Mr. Colman commented that, since the applicant for this filing is also the person who owns all three lots, he can make adjustments more reasonably; this is the time to make the changes. Mr. McKinnon also suggested the addition of boulders along the 50 buffer line, along the house to just beyond the stone weir of the infiltration basin. There should also be no clearing within the 50 foot buffer.

List of changes Mark will investigate to see if they can be incorporated in the plan:

1. Include location of invasive bamboo on the plan
2. Move filtration trench outside of the 75 foot buffer
3. Provide a planting plan
4. Install silt fence along the wattles
5. Move the shed out of 75 foot buffer
6. Install boulders along 50 buffer along the house past the stone weir
7. Move the drainage basin out of the 75 foot buffer
8. Allow some of the lawn to be naturalized.

The hearing is continued to March 6 at 7:15.

**Notice of Intent continuance:** 3 Jaime's Way, continued to March 6.

**Citizens' Concerns: Concord Water Treatment Plant**

*(Ms. Green recused herself from this discussion)*

Kim Kastens raised a concern about the Concord Water project, specifically the diagrams illustrating the intake system. Kim maintained that the hydraulic profile according to the official documentation presented with the original 2017 NOI filing and with the more recent request for an extended Order of Conditions, has the potential to draw down Nagog Pond 25 feet below its current level. A more current plan was sent to Tom Tidman by Allen Cathcart that depicts a “wet well” design, which would not be capable of the extreme drawdown as the original design would be.

Ms. Kastens is satisfied that this is a better plan and would satisfy her concerns for future use of the pond. However, she maintains that this is not an official document. In order to satisfactorily insure that this becomes the official design, she is asking the Commission to file an amended Notice of Intent and Order of Conditions, which would include this most recent diagram as the official design.

Mr. Colman stated that the original understanding of the project was that the system would be gravity fed, and therefore, would not be able to draw down the level of the pond. Concord has claimed there would be no changes to the hydrology of the existing intake system. Mr. McKinnon agreed that was his understanding as well. He pointed out that, based on the understanding from the original Notice of Intent that no water levels would be changed, should Concord take such action, the Commission would site them for violations of the existing Order that is in effect.

Ms. Kastens suggested that they provide this current diagram to other “permitting” committees.

Mr. Colman noted that Mr. Cathcart considers the diagram he recently provided to be “official”. It is posted on the Town website with all the Concord Water Project filing documents. The Commission was not in support of amending the Order of Condition.

**Discussion:** Definition of the term “Structure”

Mr. Colman provided the Commission with a draft of the latest attempt to clarify an exact definition of the term “structure.” He met with Tom Tidman to help to resolve. His latest draft is attached and reflects his discussion with Mr. Tidman.

**Minutes:** Mr. McKinnon moved to approve the Minutes of January 16, 2019. Mr. Colman seconded the motion and it was passed with a majority of 4 votes.

**Meeting adjourned at 9:30 PM.**

  
Terry Maitland  
Chairperson

FOR DISCUSSION PURPOSES ONLY

February 15, 2019

Prepared by Jim Colman

At the CC meeting on January 23, 2019, the Commission discussed the following suggested definition of the term “structures”:

Structure: Anything which is built or constructed which may alter or otherwise impact a resource area, including but not limited to a temporary or permanent building, shed, swimming pool, roofed storage area, decks, garages, car port, wall, riprap, animal shelter, patio, terrace, parking lot, dam, bridge, underground storage tanks, non-portable fire pits and barbecues, and fence. Structure does not include roads, driveways, or other ways.

I think there was a general consensus to delete the phrase “which may alter or otherwise impact a resource area”, which leaves us with the following:

Anything which is built or constructed, including, but not limited to, a temporary or permanent building, shed, swimming pool, roofed storage area, decks, garages, car port, wall, riprap, animal shelter, patio, terrace, parking lot, dam, bridge, underground storage tanks, non-portable fire pits and barbecues, and fence. Structure does not include roads, driveways, or other ways.

There were concerns about some of the other items included in the suggested definition, such as patios, riprap, and terraces. For the purpose of moving the discussion forward, I offer the following:

Include the following in the definition of structures:

concrete pad (regardless of what is on the pad, such as HVAC, fire pits, or barbecues)  
detention basin  
patio  
free-standing wall taller than 4'  
retaining wall  
deck  
headwall  
riprap????????  
temporary or permanent building  
shed  
below ground swimming pool  
roofed storage area  
garages  
car port  
animal shelter  
parking lot  
dam  
bridge  
underground storage tank  
fence  
terrace

Swales and gardens would not be included in the definition.

## FOR DISCUSSION PURPOSES ONLY

All of these items, therefore, would be prohibited within the 75' setback. They would also be eligible for the non-conforming "like structure" provision in the bylaw.

In order to make the 75' prohibition less absolute for landscaping features such as patios, the Commission could use the waiver provision:

When in the opinion of the Commission compliance with these setbacks will result in greater harm to the interests of the Bylaw than would waiver of the setbacks, the Commission is permitted to grant such waivers.

This waiver provision could be read to allow the Commission to permit a structure within the 75' setback IF the applicant proposed significant mitigation, for example improving the wildlife habitat of the buffer zone or expanding the resource area. In other words, if a project included appropriate mitigation that more than balanced the potential harm to the interests of the Bylaw, it could be approved by the Commission. This would be a case by case decision.

The benefit of this approach is that it provides flexibility to the Commission to allow those types of structures which are usually only marginal with respect to their impact on the buffer zone, such as patios. On the other hand, it would mean the Commission could likely see a lot more waiver requests, as applicants might be more inclined to try to use the waiver provision for larger, more potentially harmful projects, such as buildings, parking lots, etc. Applicants can already try to argue the waiver provision for any project, but the Commission has been pretty strict in applying it; using it for this purpose might make it more difficult for the Commission to limit its use.

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AGENDA  
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**7:30 Notice of Intent: 3 Jaime's Way, 75-284, continuance, bylaw only**

**Discussion:** Like Structures: Definition of the term "structure"

**Recognition:** Suzanne Flint

**Citizen's Concerns**

**Certificate of Compliance**

**Minutes:** January 16, 2019, reviewed by AG, TMc, TM

Filing documents may be accessed through the following link:

<http://doc.acton-ma.gov/dsweb/View/Collection-10601>



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02-20-2019

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PDF	05-1252 - 65 Robbins St NCH Transmittal	naturals	02/08/19	261 KB	View   Star   ...
PDF	05-1252 - 65 Robbins St SWMR	naturals	02/08/19	7 MB	View   Star   ...
PDF	Definition of Structures discussion 02-19-2019	naturals	02/19/19	10 KB	View   Star   ...

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