



**March 18, 2020 Minutes of the Meeting
Delaware and Raritan Canal Commission**

TIME: 10:05 a.m.
DATE: March 18, 2020
PLACE: Prallsville Mills, Stockton, New Jersey

ATTENDING COMMISSIONERS:

Vice-Chairman John Loos; Commissioner Bruce Stout; Commissioner Phillip Lubitz; Mr. Edward Mulvan, DEP Office of Resource Development as designee for Commissioner Catherine McCabe; and Commissioner Julia Allen all participated via telephone.

STAFF: Executive Director John Hutchison; Commission Engineer Joseph Ruggeri; Ms. Colleen Maloney were present in the Commission conference room. Deputy Attorney General Jason Kane participated via telephone.

GUESTS: Rikki Massand, Montgomery Township Landmarks Preservation Commission, was present in the Commission conference room. Linda Barth, D&R Canal Watch; Robert Barth, D&R Canal Watch; Robert von Zumbusch, D&R Canal Commission Master Plan Advisory Committee; Daniel Popkin, Pine Valley Holdings; LLC; Keith Smith, French & Parello; Bill Forbes, Montgomery Township Open Space Advisory Committee; and Timothy J. Reidy, Harbor Retirement Development all participated via telephone.

Vice-Chairman Loos announced that this was a monthly meeting of the Delaware and Raritan Canal Commission and that the provisions of the “Senator Byron Baer Open Public Meetings Act” (OPMA) had been complied with in the scheduling of the meeting.

Vice-Chairman Loos announced that the meeting was being taped pursuant to the exception set forth at Section C.(1) of DEP Policy & Procedure 2.85 “Prohibition of Recording in the Workplace” Policy adopted on September 18, 2019.

Administrative Items

Since Commission members were participating via telephonic device pursuant to Article III, Section 4 of the Commission Bylaws, the Vice-Chairman directed the Executive Director to take the roll. There being five Commissioners present, the Director indicated to the Vice-Chairman that a quorum was

present and that the transaction of Commission business could therefore proceed.

Vice-Chairman Loos confirmed the April 15, 2020 Commission meeting date and that the meeting would be held at the Commission offices at Prallsville Mills. Vice-Chairman Loos advised Commission members and the public that it may be necessary for Commissioners to participate using telephonic devices if the state of emergency regarding the COVID-19 virus was still in effect at that time.

Minutes

Vice-Chairman Loos asked if there were any comments with respect to the February 19, 2020 meeting minutes. Commissioner Lubitz recommended one revision; namely, that the reference on Page 2 relating to DRCC #19-2291C (Nassau Park Pavilion -- Gateway Outparcel Buildings (West Windsor Township) to plant small plantings at an Asian-themed restaurant be revised to clarify that he was referring to the planting of Heavenly Bamboo (*Nandina domestica*), which is not a bamboo at all, but rather an evergreen shrub. He also suggested that a reference to the plant's taxonomic name would make the point clear.

Vice-Chairman Loos stated that he had no objection to the proposed revision and said he would entertain a motion to adopt the minutes prepared by the staff as revised in the manner proposed by Commissioner Lubitz. Mr. Mulvan moved that the Commission approve the February 19, 2020 meeting minutes as revised, which motion was seconded by Commissioner Stout. The minutes were approved unanimously.

Review Zone Projects

Zone A Projects

19-1706A 1 Elm Street Extension -- Proposed Garage and Artist Studio (Lambertville City)

Vice-Chairman Loos asked for a motion to approve the project. Commissioner Stout made the motion, and Commissioner Lubitz seconded the motion. The Vice-Chairman asked for comment.

Commissioner Lubitz and Director Hutchison discussed the age of the existing garage structure, which Director Hutchison estimated could be described as mid-century. The applicant, Mr. Popkin noted he did not have records on the age of the building.

Commissioner Lubitz noted the project site is within an urban setting as described by the Commission's Master Plan, but that the site is separated from everything in Lambertville by the railroad track, in a "country" sort of atmosphere and the house sits on the park path. He noted the proposed structure sits barely 50 feet from the path.

Commissioner Lubitz noted he found the height of the proposed building to be problematic. He described the current garage structure as low slung and that the proposed project would be 20% higher than the existing home, creating a condition that is not in keeping with the existing nature of the property.

Vice-Chairman Loos noted that the project site is within an "urban" environment as designated by the Commission's Master Plan, so the regulations of an "urban" environment must apply. Yet, he noted, the

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Commission regulations state that projects in Zone A “shall maintain a reasonable height and scale relationship to nearby structures or vegetation.”

Commissioner Stout noted that the project site is set back approximately 50 feet from the D&R Canal State Park path, and the site is isolated from other structures in the City of Lambertville. He stated that his concern is the height of the proposed project and historic nature of the site is not reflected in the proposed garage/studio structure. He disagreed, in this case, with the applicant’s comment as reported in the staff report that the use of modern architecture, juxtaposed next to a historic structure, is preferable to mimicking historic architecture. He stated that, should the Commission allow the use of very modern architecture in the case of this project, it would be abdicating its responsibility to preserve the park.

Commissioner Lubitz commented that modern industrial-like design can be valuable in areas that are historically commercial/industrial sites, but not in this case, next to a stand-alone farm house.

Mr. Popkin stated that he has spent his career working in historic restoration and rehabilitation in Mercer and Hunterdon Counties. He asked the Commission to consider the Louvre, which embodies both classic and modern architectural styles. He stated that the proposed garage/studio structure is contained within the existing footprint, 56 feet from the park path, and neutral in color. The proposed design intentionally uses a neutral, dark metal siding, which he proposed minimizes impact and is sensitive to the setting. Mr. Popkin argued that a change to wood siding in an effort to make the proposed structures look “historic” or designing the project in a Federalist style in an effort to make the structure look original is not the correct solution. However, Mr. Popkin stated, he would consider changing out the proposed use of metal siding with wood.

Vice-Chairman Loos called for public comment.

Mr. von Zumbusch noted he has not seen the renderings of the proposed project, but he agreed with Commissioners Lubitz and Stout of the need to address appropriateness of any such structure so close the canal. He noted that there is nothing wrong with a modern building under the Secretary of Interior standards, but metal siding may not be appropriate. He stated that the context of the canal corridor is of concern. Vice-Chairman Loos and Mr. von Zumbusch discussed compatibility of modern design, metal siding and the issues of mimicking an adjacent historic structure.

Commissioner Stout noted additional concerns that the project could have a visual impact on the nearby historic Holcombe farmstead.

Mr. Barth noted he took issue with the glass materials used in the proposed design and also opposed the proposed height of the building.

Director Hutchison stated that he recently became aware of analysis of the existing structures on the site that had been undertaken by the United States Army Corps of Engineers (USACE) as part of the proposed Alexauken Creek floodwall project. The Director noted that while the project is located within the boundaries of the Delaware and Raritan Canal Historic District, neither the existing garage structure, nor the adjacent residence, are listed on the State Register of Historic Places. Mr. Hutchison also noted that because the project was not being undertaken by the State, county or municipality, review under the

“Register of Historic Places Act of 1970” N.J.S.A. 13:1B-128 et seq., there was no basis to refer the project to the Department of Environmental Protection State Historic Preservation Office (SHPO) for their approval, or condition the Commission’s approval upon SHPO Register review. The Director further noted that N.J.S.A. 13:1B-15.131, stated in relevant part that “[T]he State, a county, municipality or an agency or instrumentality of any thereof shall not undertake any project which will encroach upon, damage or destroy any area, site, structure or object included in the Register of Historic Places without application to, and the prior written authorization or consent of, the Commissioner of Environmental Protection.”

The Director informed the Commission that the USACE recently conducted a consulting party meeting under Section 106 of the federal “National Historic Preservation Act” for the proposed Alexauken Creek Flood Risk Management Project and that “National Historic Preservation Act of 1966” provides for review of any federally-licensed, financed or assisted undertaking for properties listed on, or eligible for listing on, the National Register. As part of that review, the property at 1 Elm Street was evaluated, but the USACE recommended that it was not individually eligible for listing in the National Register of Historic Places and that it did not contribute to the historic district.

Director Hutchison related that the reason for this recommendation was that the property and structures thereon apparently failed to meet any of the criteria for listing under the federal act; namely, that it was not associated with the lives of persons significant in our past; the building’s architecture did not embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or possess high artistic values, or represent a significant and distinguishable entity whose components may lack individual distinction; nor would it have yielded or may be likely to yield, information important in prehistory or history. Director Hutchison noted that SHPO was aware of these findings, but had not issued any response to the USACE.

Commissioner Lubitz noted that his primary objection is the height of the structure, which would loom over the Delaware and Raritan Canal State Park multiuse trail in both summer and winter conditions -- that it would be highly visible.

Mr. Popkin offered that, to gain approval of the project, he would agree to replace the exterior metal siding with wood siding, and that he would also be willing to limit the height of the proposed structure to that of the existing home.

Vice-Chairman Loos stated that the height of the proposed building is his greatest concern, and that he was less concerned with the composition of the proposed exterior materials.

Vice-Chairman Loos suggested the applicant consider withdrawing the project from consideration at today’s meeting or the commission could vote and it may reject the project without prejudice allowing the applicant to consider the comments from the meeting and submit a revised project, including a rendering and architectural illustrations for consideration at another Commission meeting.

Mr. Popkin asked the Commission to consider approving the project conditioned upon his providing the revised design for approval by the Commission Director. Commissioner Stout explained that he felt the changes were so substantial, he would require reviewing them for approval. Vice Chairman Loos agreed.

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Mr. Popkin asked Director Hutchison for clarification about the review process, were he to withdraw the application. Director Hutchison stated it is his understanding from the discussion that the Commissioners want a revised architectural rendering of the project addressing their concerns about visual impact of the project, and that, as no footprint has changed, it would appear no new engineering would be required. He anticipated that the submission of a rendering and new architectural drawings to be distributed to the Commissioners and the interested public will be sufficient.

Commissioner Lubitz requested that the applicant supply a rendering of the project from the viewpoint of the old railroad bed across from the canal near the project site and that the rendering include the proposed garage/studio structure and the existing home.

Vice-Chairman Loos asked that each Commissioner state their concern so that the applicant can clearly understand objections and make the appropriate changes to the project design.

Vice-Chairman Loos stated that his concern is that the height of the proposed structure be lowered to the existing structure, and that use of wood is less a concern.

Commissioner Lubitz stated that he wishes to see a rendering that is fitting and keeping with the nature of the location, with consideration to height and scale of nearby structures and vegetation. Vice Chairman Loos noted there would still be a lot of glass used in the design.

Commissioner Allen stated her concerns are those issues discussed by the Commissioners, who wish to see the project improved.

Mr. Mulvan stated he agreed with concerns expressed by the other Commissioners about the proposed height and the exterior materials.

Commissioner Stout stated his concern was about how the project would fit into the context of the surrounding natural and built and that it was important that he see a revised architectural rendering before commenting further on the project.

Mr. Popkin indicated that he would withdraw his application.

19-5295 41 Bridge Street Apartment Conversion (Lambertville City)

Vice-Chairman Loos called for a motion on the project. Commissioner Stout moved to approve the project, and Commissioner Lubitz seconded the motion. Vice-Chairman Loos and Commissioners Stout and Lubitz, and Mr. Mulvan voted to approve the project. Commissioner Allen abstained. The motion carried.

Zone B Projects

Vice-Chairman Loos called for a motion on:

19-0446B Towne Centre Dental Care Building Additions (Hillsborough Township)

Commissioner Stout motioned to approve the project with the conditions as listed in the staff report. Commissioner Lubitz seconded the motion. It was approved unanimously.

Vice-Chairman Loos called for a motion on the remaining Zone B projects:

- 19-3341J Princeton Healthcare System -- Proposed Crescent Parcel Parking Improvements (Plainsboro Township)
- 20-5169 Harborchase of Princeton -- Major Modification (South Brunswick Township)
- 19-5227A West Windsor-Plainsboro School Board -- Additions and Renovations to Community Middle School (Plainsboro Township)
- 19-5283 JSM @ Rt. 33 LLC -- Proposed Mixed Use Development (Monroe Township)
- 19-5444 Provinceline Woods -- Phase V (Municipality of Princeton)
- 20-5524 Grace N. Rogers Elementary School -- Outdoor Basketball Court (Hightstown Borough)
- 20-5521 East Windsor MUA -- Proposed Solar Array (East Windsor Township)

Commissioner Lubitz motioned to approve the projects, and Commissioner Stout seconded the motion. The motion was approved unanimously.

Executive Director's Report

Director Hutchison reported that in response to the COVID-19 virus state of emergency, the Commission had implemented the following actions:

- Tammy Romsdahl will remain out of the office for the duration of the school closure order issued by the Governor. The Director reported that the Commission was short-staffed and that he had reorganized the workload to concentrate on: 1) pending private individual permit applications; 2) general permit applications; 3) governmental project applications; 4) certificates of approval; 5) conservation easements and conservation and maintenance agreement reviews. All other staff work would be suspended for the duration of the emergency.
- The Director reported that all in-person Commission pre-application meetings were cancelled until further notice. The staff will be conducting preapplication meetings via conference call or Skype, effectively immediately and until further notice.
- Effective immediately and until further notice, the Commission will no longer accept walk-in permit applications. A message was posted on the Commission website directing applicants to submit permit applications by U.S. Postal Service or via a private delivery service.
- Staff participated in two internal DEP broadcasts to obtain information on how to implement work from home strategies in the event that operations from the Commission office were not possible. Mr. Hutchison noted that the situation was fluid as it requires the use of new technology, and that he would keep the Vice-Chairman apprised of the situation.
- The Director reported that Superintendent Kalleser wished to report that all park offices, park restrooms and historic sites are closed until April 30, consistent with Commissioner McCabe's

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directive.

Commissioner Lubitz requested that the Executive Director examine whether an online platform such as Zoom could be employed for future Commission meetings. Director Hutchison noted that the DEP Office of Information Resource Management (OIRM) has approved Skype for Business for use by DEP employees, and that the Skype platform would allow the staff to share documents in real time with meeting participants. Director Hutchison noted that staff would assess the use of such technology in light of the requirements of the "Open Public Meetings Act," which mandate that the public have the ability to attend government meetings in person.

Mr. von Zumbusch requested to see materials supporting the visual impact of projects, such as the 1 Elm Street discussed at the day's meeting, should meetings be held remotely.

Park Superintendent's Report

No report.

New Jersey Water Supply Authority (NJWSA)

No report.

New Business

No new business.

Public Session

No comments.

Executive Session

None.

Adjournment

There being no other business, Vice-Chairman Loos entertained a motion to adjourn. Commissioner Lubitz moved to adjourn, which motion was seconded by Commission Stout. The motion was approved unanimously.

The meeting adjourned at 10:59 a.m.

Respectfully submitted,



John Hutchison, Secretary