

Conservation Commission Meeting  
Virtual Meeting  
October 5, 2023

This open meeting of the Sharon Conservation Commission was conducted remotely consistent with An Act Extending Certain COVID-19 Measures Adopted during the State of Emergency, signed into law on June 16<sup>th</sup>, 2021, and as amended and extended through March of 2025. These provisions allow public bodies to meet remotely if reasonable public access is afforded so the public can follow along with the deliberations of the meeting. For this meeting, the Conservation Commission convened by video/teleconferencing via Zoom, and members of the public were provided with access information so that they could follow the meeting remotely. All votes were conducted via roll call.

The remote meeting was called to order at 7:30 pm by the Chair, Peg Arguimbau.

Roll call was taken of members and staff present and included: Chair, Peg Arguimbau, Keevin Geller, Stephen Cremer, and Susan Drisko. Alan Westman and Jon Wasserman were not present. Staff present included Jana Katz, Conservation Clerk.

<b>7:35 PM</b>	<b>Topics not anticipated within 48 hours of posting the agenda</b> Vice Chair Meredith Avery, Resignation
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Meredith Avery submitted a letter of resignation to the Conservation Commission, Town Administrator, Fred Turkington, and the Select Board.

<b>7:38 PM</b>	<b>Discussion/Action Item</b>	Encroachment 3 Lily Lane, Simon and Vlada Zilberman
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Simon and Vlada Zilberman began the discussion summarizing what has transpired over the past couple of months. The Zilberman's first appeared before the commission on July 13, 2023 after the Conservation Administrator, Josh Philibert observed encroachment in the buffer on their property located at 3 Lily Lane. Philibert was performing a site visit for a Certificate of Occupancy at the time. Site plans on file proposed a retaining wall, as well as, all land disturbance outside the 100 ft buffer. According to Zilberman's recollection, the two issues Philibert named were: 1) the presence of a potentially unstable wall or structure within and/or around conservation area and encroachment into the buffer zone.

At the July 13<sup>th</sup> meeting, the Zilberman's explained that the two issues were not created intentionally. It was their understanding that the commission looked to find a reasonable solution. The Zilberman's have since complied with the commission's instructions to remove woodchips from the line of boulders so it can be properly checked for stability.

It should be noted that the two issues described in the July 13<sup>th</sup> meeting notes differ slightly from what was summarized. The commission questioned whether or not the structure the Zilberman's believe is a wall is in fact a retaining wall ensuring long-term effectiveness. Finding a reasonable solution for the two problems on site would at first requires the commission assessing whether the line of boulders could be considered a functional retaining wall. The Zilberman's were instructed to remove the wood chips on top of the boulders so members could inspect them on site visits.

After removing the wood chips from the line of boulders for inspection purposes, the Zilberman's took an extra step before coming back again before the commission. The Zilbermans removed much of the natural materials from the buffer and moved the wall further away from the wetland. They believed they were correctly remedying part of their situation. During that portion of the work, they were limited by an effort to create the least amount of disturbance on site. To remove some of larger boulders that were present since construction, the Zilberman's would have had to bring in an excavator and boulder crusher to clear that portion of the site.

The relocated formation was inspected by Town Engineer Peter O'Cain, Assistant Town Engineer Kevin Davis, and Building Inspector David Abbot who verified the stability of the formation and concluded it is a secure wall. Abbott requested that three small boulders be added to the lower area of the formation. The Zilberman's believed this was sufficient approval.

Zilberman then shared his screen to show pictures of the site throughout the past few months. The first photo showed the post-construction state of the wall which was woodchips on top of a line of rocks. Long term plans included smooth grading covered with woodchips and planted grass down to the Conservation Restricted area. He shared two additional photos of the slope and the wall. Next, two side-by-side pictures portrayed the rock and silt fence from two angles. He noted that relocating the structure put it 10-11 ft from the wetland. Zilberman also explained they had addressed Philibert's concerns regarding the slope of the area. He noted that Abbott had taken photos and sent them to the commission showing the state of the land.

Drisko identified a white stick that Philibert had placed to locate the buffer boundary. She asked whether the work performed was still inside the buffer. Zilberman said that with the 11 foot relocation they were likely still 3 feet in the buffer. Drisko explained to Zilberman that the commission had requested they remove the wood chips in order to examine the structure and did not ask for rebuilding whatsoever. Zilberman welcomed the commission to tour the site in person and hoped their work would allow the commission to make a reasonable accommodation for what has been done on site.

Cremer noted the difficulty in definitively seeing distances in pictures. Zilberman explained that Building Inspector Abbott had taken the photos.

Arguimbau addressed the issue of the work not being completed per plan. She explained that a Certificate of Compliance could not be issued because the wall does not match what was illustrated in the plan referenced in the Original Order of Conditions. She appreciates the Zilberman's efforts to remove materials outside of the buffer. However, because the work was not completed per plan and still remains inside the buffer, the Zilberman's are still in violation. They performed unpermitted work inside the buffer. She believes a new filing is required to address the work already performed.

She also noted that while Abbott's feedback regarding stability is positive: 1) the wall was not built per plan and 2) issues concerning the buffer zone and wetland area are not within his jurisdiction. There is still work needed to remedy the situation. The commission had only asked for the wood chips to be removed in order to assess what the next step should be. Philibert and the commission were planning on visiting the site to inspect the wall after the wood chips were

removed. As that matter is within the Conservation Commission's jurisdiction it would ultimately be there consensus regarding the stability, location, and any related next steps.

Drisko expressed concerns about setting a precedent by letting the project stay as is, 3 feet into the buffer zone. Arguimbau added that the plan that had been approved showed a wall outside the buffer. Although the Zilberman's have worked to minimize the distance that their wall crosses into the buffer, the finished product will not match the plan that was recorded with the original Order of Conditions. Arguimbau also explained that the Zilberman's were welcome to have a wetland scientist perform a new delineation on the land. Even though the Zilberman's made an effort to distance the wall from the wetland, it is still not in compliance because 1) the work done does not reflect the original plans on the OOC and 2) the wall is still within the buffer.

Arguimbau and Drisko discussed next steps. Arguimbau explained that a new filing would be required showing the stone wall with packed soil in question as it is not the retaining wall on file with the plan. Zilberman stated that they had not filed previously with the commission and Arguimbau noted that previous filing was likely before the Zilberman's bought the lot. She continued explaining that the work done in the buffer and subsequent attempts to remedy the situation were done without coming before the Conservation Commission. This sequence of events violates the Commonwealth's Wetlands Protection Act, as well as, the Town of Sharon bylaws.

Zilberman asked for instructions. He reiterated a desire to comply and come to a reasonable solution. He also noted that this process has been costly already. Arguimbau instructed Zilberman to file a Notice of Intent rather than a Request for Determination. Cremer explained that the commission is held by the law in reviewing applications. It clearly states regulations regarding requirements and limitations for properties adjacent to wetlands. Arguimbau explained the process of filing and coming before the commission. She added that there is an appeal process once the commission comes to a determination. She encouraged the Zilberman's to visit the Conservation Department website and reach out to staff for guidance in filing.

Arguimbau and Drisko recapped moving forward with the situation. Because a Certificate of Compliance cannot be issued for the Original Order of Conditions pertaining to the property, it will be an encumbrance should they decide to sell the land. Arguimbau hopes that the situation can be remedied and a Certificate of Compliance can be issued once work is complete. Simon also hopes that this is the case and asked members to make a site visit. Drisko wondered if the Notice of Intent should include plans for the existing wall and encroachment. Arguimbau said the proposal should be a plan for the final result. Drisko noted that one possible outcome would be a denial of whatever proposed plan the applicants submit.

This confused the property owners. They asked for guidance, wanting to know if the commission would likely approve a plan that included a reduced disturbance in the buffer, but still included at least 3 ft of encroachment. Cremer and Drisko restated that the commission must prevent buffer encroachment, which is illegal. Drisko recommended speaking with Philibert and noted that an updated delineation may be beneficial.

Vlada Zilberman addressed the financial component. She said that the Zilberman's have already spent \$5,000 in an attempt to remedy the problems. Estimates for additional work are tens of thousands of dollars. Simon questioned why previous discussions revolved around the wall's stability and not its location as well.

At the last meeting, the Zilberman's agreed to expose the rock formation in order for the commission to examine it, according to Arguimbau. Before members were able to inspect the site, work commenced putting fill in the area. Arguimbau reminded the Zilberman's that if the wall was built per plan, there would be no violation. There are now additional problems with the work done on site. She explained that the commission reviews projects and is not in a position to help design them. Arguimbau added that whatever can be done to remove rocks from the buffer is the best option.

Simon Zilberman restated his stance that the wall's location within the buffer was never part of the discussion from the beginning. He asserted that it was common knowledge that there was no way to stay completely outside the buffer. Vlada Zilberman agreed with the idea that the commission had asked them to expose the rocks for inspection. She stated the wall would still have been in the buffer zone. The Zilberman's took the extra step in relocating the wall in an attempt to remedy the situation. Simon Zilberman explained to members that their actions had been a waste of time and money. They would not have pursued remedying the problems as did if they had known the gravity of doing work within the buffer.

Arguimbau agreed with the property owners' sentiments and assured them that the commission is looking to get their property into compliance as soon as possible as every day is a violation. Zilberman understood and asked Arguimbau if the commission would consider making an exception and allowing the work to remain 3 ft into buffer. Arguimbau answered that what is there now is problematic. If a new delineation finds the wetland line is not the same, the buffer changes, and it is possible to move the rocks, it may be possible. She reminded the Zilberman's that the commission is charged with reviewing applications and their lot is problematic as it stands now.

Arguimbau and Zilberman discussed the fact that the work involves new construction. Projects on land with prior disturbance are different. No new construction within 100 ft of the buffer is allowed. The retaining wall is considered new construction, though there is an ability to request a variance to the rules and regulations. Grading, planting, and similar activities are allowable.

Drisko suggested halting on any more work on the wall. Although the commission is appreciative of their efforts, they only asked to see the wall, not rebuild it. The wall is within the buffer and not built per plan. Zilberman asked if 97% compliance was acceptable if the alternative would cost \$20,000 to remove the formation from the buffer. Arguimbau and Drisko suggested the Zilbermans consult the variance and exceptions portion of the bylaw. Geller suggested they speak with an attorney who specializes in environmental law. Cremer expressed both his sympathy for the situation and reminded the property owners of the commission's obligation to uphold the law.

Arguimbau ended the discussion instructing the Zilberman's to apply for a new hearing to address the new location. Katz will follow up with an e-mail to the Zilberman's with more information regarding the application process.

<b>8:28 PM</b>	<b>Discussion/Action Item</b>	<b>Site Analysis, DPW Superintendent Eric Hooper</b>
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DPW Superintendent Eric Hooper was present to discuss the PFAS Water Treatment Facility site analysis. He informed members of the Select Board's unanimous vote on September 26<sup>th</sup> in favor of choosing to build the facility off Tree Lane at the Well #4 site. The DPW has been working on plans for the federally mandated construction of a PFAS Water Treatment Facility for two years.

Initial plans prioritized building the facility at Well #2 on Moose Hill Parkway. However, DEP refused to support the initial proposal because the building would have been located in a FEMA flood zone. The DPW considered an alternative option at the Well #2 site that would have placed the building outside of the flood zone. The alternative plan at Well #2 would require the access road have a 9% incline. An access road with a 9% incline would create a separate set of challenges and concerns which were discussed at the Joint Meeting with the September 21<sup>st</sup> meeting.

The Well #4 site plan placed the building outside the 100 ft no build buffer zone, as well as the FEMA flood plain. Though, the access road's incline would not be an issue. However, the site's proximity to a residential neighborhood has been a longstanding concern.

Farnham Road where Well #3 is located was considered. That plan would require three separate wetland crossings with horizontal water mains that would bring their own risks. The site was ultimately not chosen as an option worth pursuing.

A cost analysis concluded that the plans to build the facility off Tree Lane would reduce the estimated tens of millions of dollars price tag by around \$6 million when compared to the other site options. In response to neighborhood residents' concerns, the DPW developed an alternative building plan moving the facility further away from homes. The new plan proposed repositioning the building at Well #4.

Building the facility with the reorientated plan would place the building within the 200 ft river front area buffer zone. It would require filing an NOI with the Conservation Commission. The DPW is aware the commission may consider the financial factors when reviewing the application and understands the bylaw and regulations prohibit disturbance within 200 ft of a riverfront area. This plan would not require seeking variances from the ZBA. The NOI will include site analysis as it is part of the Riverways Act.

Geller and Hooper briefly discussed the option to join the MWRA. Describing the variety of ways a municipality can tie into the infrastructure, Hooper mentioned Hopkington and Burlington specifically. He noted that financial concerns deterred the DPW from prioritizing that option.

Both the commission and the DPW anticipate a hearing in November of this year.

<b>8:41 PM</b>	<b>Other Business</b>	Approve Minutes from September 21, 2023
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**Motion:** To accept the minutes for the September 21, 2023 minutes as amended.

Cremer moved

Drisko seconded

Drisko – Aye, Cremer – Abstain, Geller – Abstain, Arguimbau – Aye

4-0-0 Motion Passed

<b>8:43 PM</b>	<b>Motion to Adjourn</b>
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**Motion:** Motion to adjourn

Cremer moved

Drisko seconded

Cremer – Aye, Drisko – Aye, Geller – Aye, Arguimbau – Aye

4-0-0 Motion Passed