

Atkinson Conservation Commission Minutes
Wednesday, April 26, 2023, 7:00 PM
Atkinson Town Hall

Approved May 24, 2023

Members Present:

Paul Wainwright, Chair
Bill Steele, Vice Chair
John Fournier, Secretary
Jeff Nenart
Charlie Pitts, Alternate
Chris Walker, Alternate

Others Present:

Bob Worden, Selectman Liaison
Megan Duffy
Scott Foley
Matt Fetty
Paula Fetty
Paul Schena

1. Call to Order, and Attendance:

Chair Paul Wainwright called the meeting to order in person at Atkinson Town Hall at 7:00PM on Wednesday, April 26th, 2023. Chair Wainwright took attendance and noted that there are four regular members and one new alternate member, Charlie Pitts; Charlie gave a brief introduction of his professional and educational background. Chair Wainwright stated that there are two other alternate members who will be joining, Sandy Cannon and Chris Walker.

2. Review & Approval of Minutes

a. March 29th, 2023 – Regular Meeting

Discussion: Chair Wainwright presented the regular meeting minutes from March 29, 2023 and asked for comments or corrections. Other than the spelling of Charlie Moreno's name there were no corrections.

Member Fournier made a motion to approve the regular meeting minutes from 03/29/2023, as written. Vice Chair Steele seconded the motion. Alternate Pitts abstained from the motion. Vote: 4/0/1

3. 2023 Expenditures Report

Chair Wainwright produced the latest 2023 expenditures report and stated that the only new expenditures were to pay the Recording Clerk and to purchase three new conservation handbooks for the new members.

4. The Worden Report

Selectman Liaison Bob Worden stated that the Town is operating on par with the budget thus far, although it continues to be underfunded when it comes to buildings. Mr. Worden continued that he looks forward to supporting the next steps of the accessible trail implementation in Town.

5. Accessible Trail on the Slade TF: Project Status, and Next Steps - John

Member Fournier stated that one of the big challenges has been knowing what the total price of the project will be. Member Fournier continued that it is a delicate matter to obtain pricing without putting the project out to bid first, but they believe it will be in the range of \$150,000 to \$200,000. Member Fournier stated that they are still working to find local contractors to avoid any travel fees associated with crews coming from further distances. Member Fournier continued that in GPI's existing contract there is a line item for construction supervision for Phase 1 construction this summer, and additional construction supervision costs will need to be included in the Phase 2 budget when applying for grants.

Member Fournier stated that the next step is fundraising, and this has also been difficult since until recently they did not know the total project cost. Member Fournier continued that he must have the LWCF grant application completed in mid-June, so the timeline is tight. Chair Wainwright stated that he is very concerned about the timing of the fundraising because normally at this stage of the process there would be a goal that could be worked towards rather than a nebulous number. Member Fournier clarified that for Phase One the fundraising should amount to \$25,000. Chair Wainwright stated that there is currently about \$3,300 in the Commission's account that can be utilized. Member Fournier stated that he has created a website and avenues for donors to contribute.

6. How to Encourage the Use of Natural Vegetative Buffers - Brainstorming

Alternate Walker arrived during the following discussion.

Chair Wainwright distributed a set of "brainstorming" notes to guide our discussion about encouraging the use of wetland buffers in Atkinson. A copy of these notes is attached to these minutes.

Chair Wainwright stated that the current wetland zoning deals mainly with wetland setbacks, which is the distance from a wetland in which certain structures are prohibited. In Atkinson, the setback distance is 100 feet, and the prohibited structures include any building that produces human or animal waste such as homes and barns, any garage (either attached or detached), and septic systems. Chair Wainwright stated that Prime Wetlands do have a 150-foot natural vegetative buffer, but most of the wetlands in Town only have setbacks

for protection. Chair Wainwright continued that our wetland setback ordinance is enforced in the building permit process, which has proven effective.

Chair Wainwright stated that he is not in favor of including buffers in zoning ordinances because they are nearly impossible to enforce. Chair Wainwright continued that he would like to see some education and encouragement of the residents to keep and use natural vegetative buffers. The Commission had a brainstorming discussion how to achieve the education and encouragement of residents regarding buffers. The Commission discussed adding informational resources on the Commission's website to help educate the public, and finding a subject matter expert at DES or UNH who could give a presentation in the library.

The Commission then briefly discussed the current wetland setback variance application for Map 14 Lot 37 on Maple Avenue, and the fact that two letters from this commission have been written thus far, and whether we should further document our thoughts about wetland buffers for that project. Chair Wainwright introduced the homeowner, Paul Schena, and asked him what his opinion was. Mr. Schena stated that he would rather not see the buffer on the plan but he intends to keep the buffer in place regardless of it being on the plan. Mr. Schena stated that he plans to keep the land the way that it is, and continued that he understands the benefits of doing so.

Chair Wainwright asked the other commission members whether a third letter should be written to the ZBA, and there was a consensus that, unless he gets a specific request for clarification from the ZBA, Chair Wainwright will do nothing at this time.

7. Brent Ebner – Driveway Paving Request

Chair Wainwright stated that Brent Ebner has a house in Hampstead on the town line with Atkinson abutting the Chambers-Fila Town Forest. Several years ago, Mr. Ebner approached the Town about exercising his deeded right-of-way over a portion of the Chambers/Fila Town Forest to build an unpaved driveway to his land, and stated that he would also provide parking for the trails. Chair Wainwright stated that Tim Dziechowski was the Chair of the Commission at that time, and he went through all the proper checks before determining that Mr. Ebner was allowed to use this this right-of-way. The Commission's letter stating the conditions for approving the driveway is attached to these minutes. One of the conditions was that the driveway should be unpaved.

Chair Wainwright continued that the unpaved driveway has not held up through the winter seasons, and Mr. Ebner would now like to pave this driveway. The Commission discussed the merits of different paving options such as pervious pavement and recycled asphalt.

Chair Wainwright read the documentation associated with the deed and the history of this property. Member Nenart stated that he does not have an issue with this request. Member Fournier stated that the Director of Public Works

should be brought into the discussion in case there are any storm water management or drainage requirements to be considered. Chair Wainwright stated that he will let Mr. Ebner know that the Commission is basically in agreement, but that the commission wants to ensure that any storm water management regulations are followed; the Commission agreed.

8. Turtle Crossing Signs - Monique

Chair Wainwright stated that Monique could not be here this evening, however she is on the Selectmen's agenda next week to discuss the installation of turtle crossing signs. Chair Wainwright continued that he is unsure how many signs Monique has, but one is certainly needed at the northern part of Maple Avenue. Chair Wainwright stated that Hall Farm Road always has a lot of turtle activity as well. Chair Wainwright continued that they looked at Island Pond Road about where Hog Hill Brook passes underneath. Chair Wainwright stated that the other location would be on Brushwood Avenue near the Veterinarian. Chair Wainwright continued that he believes the Selectmen will approve this request and then Matt Sullivan will be responsible for installing the signs, in time for turtle season which is May, June, and July.

9. Trail Recovery on Stickney and Beckhorn/Marshall – Need a Self-Motivated Working Group

Chair Wainwright stated that he took a walk on the Marshall Town Forest last week with Consulting Forester Charlie Moreno, Members Fournier, Steele, Pitts, and Legault, and several nearby residents. Chair Wainwright asked the Members what they thought of this walk. Vice Chair Steele stated that walking in the woods with Charlie Moreno was a great opportunity. The Commission discussed how beneficial and educational this walk was. Chair Wainwright proposed that the three new alternate members should take on the task of laying out where the trails should be, temporarily mark them with ribbon, and then create a GIS map of them before the next meeting; they agreed.

10. Other Upcoming Events and Public Outreach Programs – Save the Dates!

- a. A Garden for Wildlife: Natural Landscaping for a Better Backyard – Pete McVay and Scott Kukshtel, Kimball Library, Thursday May 18, 6:00 – 7:30 PM
- b. The Benefits of Selective Timber Harvesting – Charlie Moreno, Orr Town Forest, Sunday June 4, 1:00 PM (rain date Sunday June 11)
- c. Tree and Plant Identification Workshop – Greg Jordan, Chadwick Town Forest (Woodlock trails), Saturday June 24, 9:00 AM (rain date July 1)

11. Short Reports & Discussions

a. NHACC Board of Directors Report - Paul

Chair Wainwright stated that the NHACC is running a photography contest this year with a submission deadline of September 8th. Chair Wainwright continued that there will be a \$250.00 prize for first place in each of three categories: Kids 12 and under, Teens 13 – 18, and Adults 19 and over. Chair Wainwright continued that the purpose is to encourage folks to get out into their conservation lands and to inspire others to want to further conserve our natural resources.

b. Land Acquisition Status: the Lang Parcel on Knightland Road - Paul

Chair Wainwright stated that this deal is due to close on June 1st. Chair Wainwright continued that the conservation easement and a land management plan are both currently in the works.

c. Troop 9 News? - Bill

Vice Chair Steele stated that Troop 9 is doing an electronics recycling event on April 29th from 7:00AM to 12:00PM at the Community Center which is their biggest annual fundraiser.

d. Trail Maps: Current Inventory and Re-Printing Needs - Hannah

Chair Wainwright stated that Hannah has re-printed the Woodlock maps and has reported that all other maps are fully stocked at each trailhead.

e. How Shall We Celebrate Our 50th Anniversary Next Year? (1974 – 2024)

Chair Wainwright reminded members that next year is the Commission's 50th anniversary, and asked how the Commission can commemorate it. Member Nenart suggested a tree giveaway, and planting some blight-resistant American Elm trees at each of the Town forests. The Commission agreed to continue considering this.

f. Other Business:

Chair Wainwright stated that the no-boat-trailer sign on Boulder Cove Road was knocked down over the winter and will need to be repaired.

Chair Wainwright stated that the new homeowner who bought the Foley land wants to put a dock in place where the Foley's previously had a dock.

Chair Wainwright continued that this was the same dilapidated dock that the Steve Nasser, former Code Enforcement Officer, had removed.

12. Next Meetings: May 24 and June 28, 2023 (no ACTV in June)

13. Expect a Public Hearing for the Lang Parcel Acquisition on May 18 at 8:00PM

14. Hold the Date: NH ACC Annual Conference will be Saturday, November 4, 2023

15. Adjournment

Member Nenart made a motion to adjourn the meeting. Vice Chair Steele seconded the motion. Vote: 6/0/0

The meeting adjourned at 8:20PM.

Respectfully Submitted,

Zachary Gilberti, Recording Clerk

Attachments:

- Brainstorming Notes about Wetland Buffers
- Letter to Brent and Mary Ebner concerning their driveway

Brainstorming about Wetland Buffers
Conservation Commission Meeting
April 26, 2023

Introduction: In recognition of the value of buffers of natural vegetation around wetlands, the Conservation Commission has recently taken a renewed interest in promoting the voluntary inclusion of buffers in plans that come before us for discussion and recommendation.

Our position: While we have recognized the value of wetland buffers for many years, attempts to include them in Zoning have failed on three occasions, once in the late 1990s, and twice in the early 2000s. There were many reasons for this. Our current thinking is that wetland buffers, if included in zoning, could not be enforced, because the cutting of trees and clearing of natural vegetation does not require any permit. Any attempt to regulate this would place the Conservation Commission in an enforcement position, which is not what we are empowered to do. And, if they were to be included in zoning, buffers would probably only apply to new construction, and, given that the town is more than 90% “built out,” such regulation would have very little practical benefit.

Our current thinking is that buffers must be voluntary, whether or not they are included in zoning or as a requirement on a specific plan. People who understand and respect their value will implement them regardless of whether they are “required,” and people who do not understand and respect their value will ignore them regardless of whether they are required by zoning or are on as a specific plan.

Therefore, we are looking for a way to educate the public about their value, and encourage their use on a voluntary basis.

Case Study #1: The Noyes Lane Garage: In late 2022 we were asked to give our thoughts about a proposed detached 30 x 50-foot garage at the end of Noyes Lane. A portion of that plan is shown in the first attached diagram. As can be

seen on this plan, the entire proposed building would be within the 100-foot setback from a wetland. From investigating the wetland maps contained in the Land Conservation Plan of 2022, we determined that that wetland drained directly into a Prime Wetland. The entire area of the proposed construction was wooded and currently served as a buffer of natural vegetation between the house and yard and the wetland.

The applicant was requesting 44.2 feet of relief from the 100-foot setback variance – i.e., nearly half of the setback – and considerably more of the natural vegetation would need to be cleared to enable the garage to be constructed in that location.

We recommended that the applicant include a “limit of clearing” as shown on the attached plan, and recommended that the ZBA make this permanent vegetative buffer a condition of their granting of the setback variance. The ZBA agreed, since the requirement of this vegetative buffer was seen as an appropriate mitigation for the relatively large relief that was being requested of the ZBA.

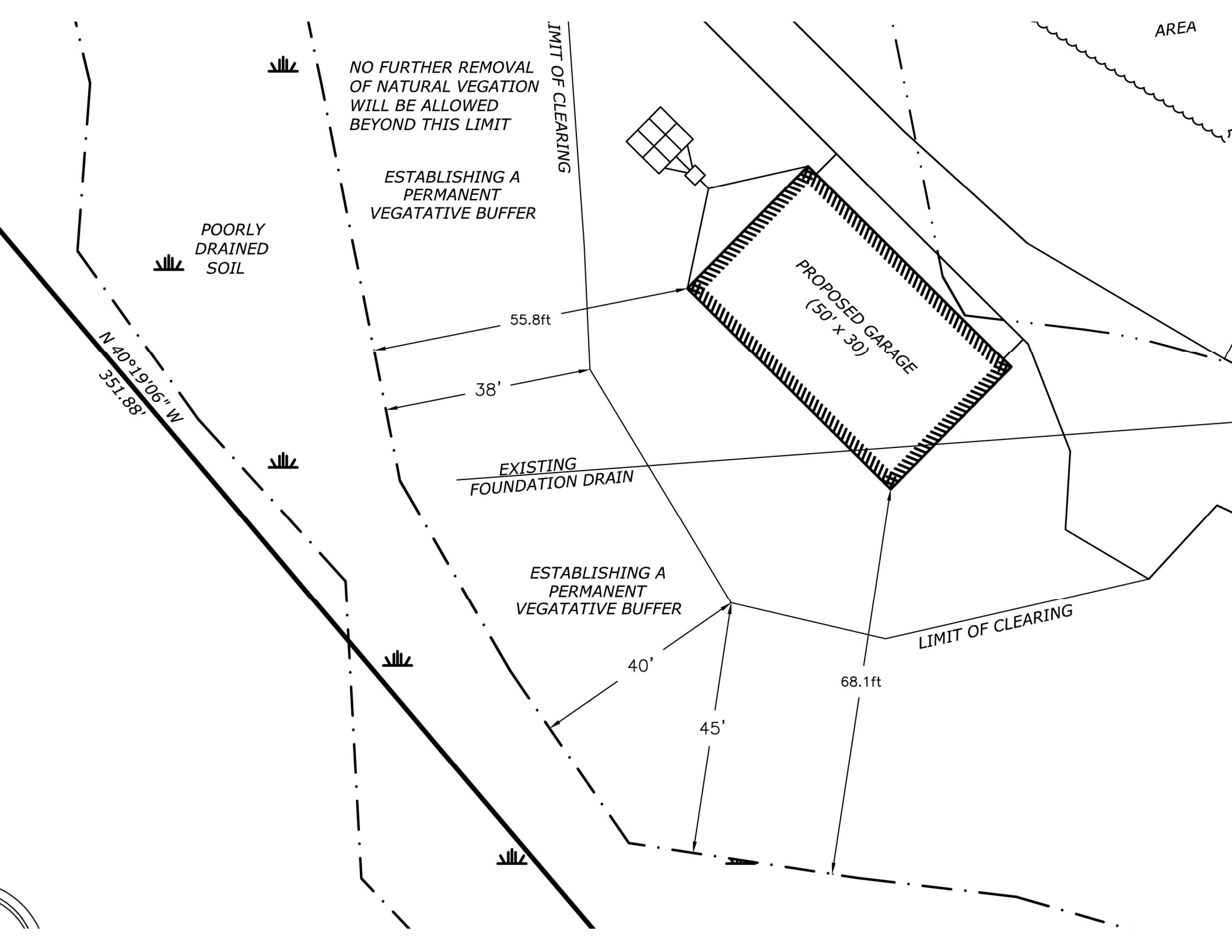
Case Study #2: The 16+- Acre Parcel on Maple Avenue: In early 2023 we were asked for our opinion about a wetland setback variance application for a proposed single-family house on a large parcel on the eastern side of Maple Avenue. Although the requested relief from the 100-foot setback was considerably smaller than the previous case – less than 10 feet – our qualitative assessment of the project concluded that buffers of natural vegetation would be beneficial to these wetlands as well. This home would be the first “incursion” into the relatively pristine forested terrain that contained intermittent wetlands that were part of a chain of wetlands between Academy Avenue and Bryant Brook. An inquiry to the NH Natural Heritage Bureau indicated the possible presence of both the Endangered Blanding’s turtle, and the Threatened Spotted turtle. Furthermore, an abutter reported an unconfirmed sighting of a Spotted turtle. For these reasons we suggested to the landowner and engineer that the inclusion of a buffer of natural vegetation between the wetlands and the disturbed area of the house would be a good thing, and these were included in the February 21 version of the plan that was presented to us in our meeting on February 22. A portion of

this February 21 plan is attached. Our “Happy Letter,” also attached, makes reference to this buffer.

Here's the problem: While the inclusion of a buffer seems to be proper mitigation for the relatively large setback variance requested in the first case, in the second case, looking only at the application for the setback variance and considering the relatively small relief being requested, the inclusion of a permanent buffer, while beneficial in a general sense, does not seem justified. Advocating for a buffer in this case could easily be interpreted as an attempt to create a de-facto zoning ordinance where none, in fact, exists.

The landowner and engineer have, apparently, come to this conclusion, and the version of the plan currently before the ZBA (labeled the “April 6 Plan,” attached) contains neither the vegetative buffer or a limit of cut.

Brainstorming at our April 26, 2023 meeting: What are the ways we can encourage the voluntary use of buffers without enforcing them on future landowners, keeping in mind that buffers cannot be enforced?



AREA

NO FURTHER REMOVAL
OF NATURAL VEGETATION
WILL BE ALLOWED
BEYOND THIS LIMIT

ESTABLISHING A
PERMANENT
VEGETATIVE BUFFER

POORLY
DRAINED
SOIL

N 40°19'06" W
351.88'

LIMIT OF CLEARING

55.8ft

38'

EXISTING
FOUNDATION DRAIN

ESTABLISHING A
PERMANENT
VEGETATIVE BUFFER

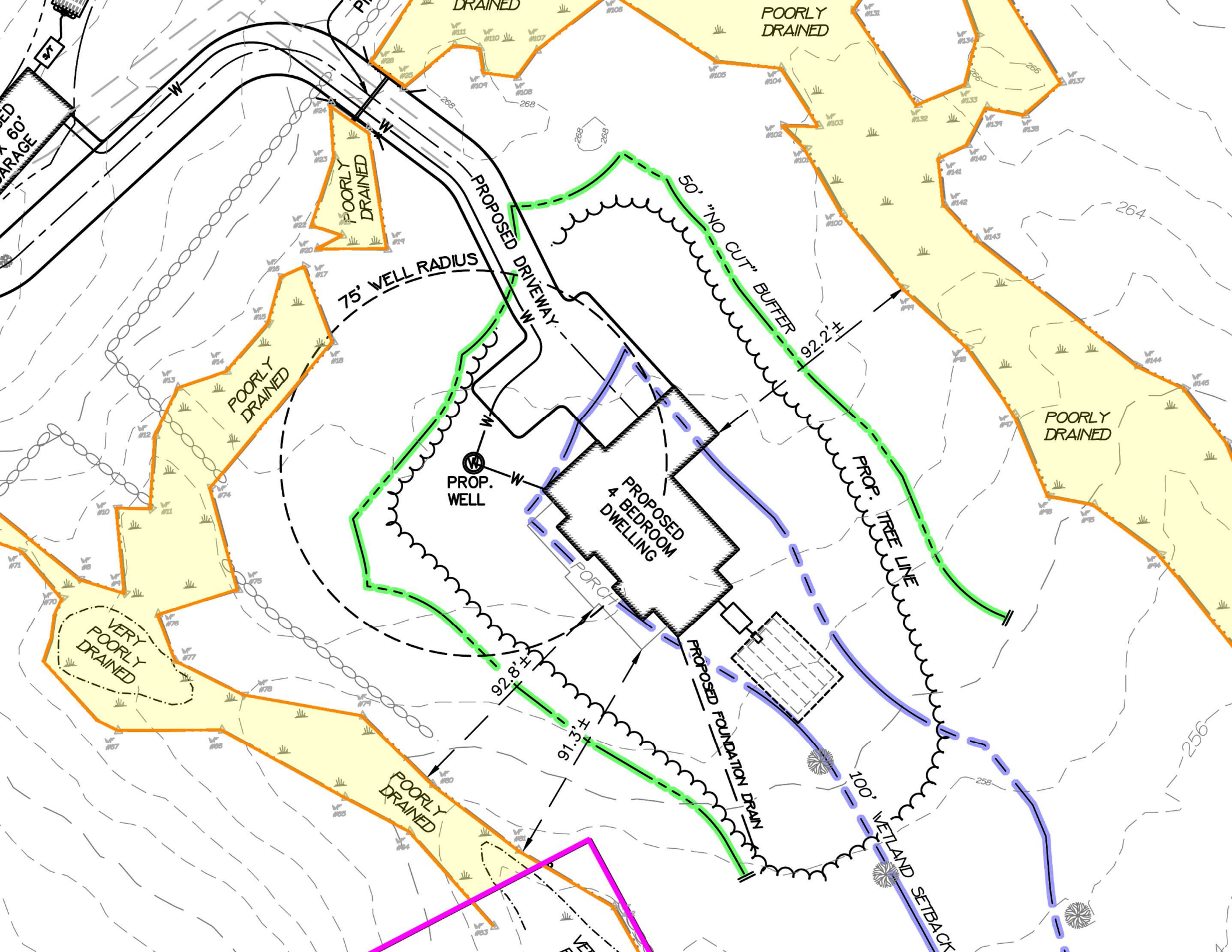
40'

45'

68.1ft

LIMIT OF CLEARING

PROPOSED GARAGE
(50' x 30')



TOWN OF ATKINSON CONSERVATION COMMISSION
19 Academy Avenue
Atkinson, New Hampshire 03811

March 29, 2023

Glenn Saba, Chair
Atkinson Zoning Board of Adjustment

Re: Application for a Wetland Setback Variance for Map14 Lot 37

Dear Glenn and Members of the ZBA:

Introduction: The Atkinson Conservation Commission was contacted by Charlie Zilch of SEC & Associates in late December of 2022, concerning the above-referenced wetland setback variance application that he was preparing for presentation to your Board. Mr. Zilch is representing Paul Schena, the new landowner of Atkinson Tax Map 14 Lot 37, and Mr. Zilch requested time on our December 2022 agenda for a preliminary discussion. In my absence, commission Member John Fournier informed Mr. Zilch that we were not meeting in December due to the unavailability of members and the lack of urgent business, and after further correspondence I suggested a site walk followed by an appearance at our February 22, 2023 meeting.

What we did: Members of the Conservation Commission conducted site walks of the property on January 17, February 17, and February 20, 2023. During those site walks we reviewed and commented on early versions of the conceptual plan. Mr. Zilch's associate, Bill Hall, presented a conceptual plan dated February 21, 2023 at our February 22 meeting. Before the meeting, we also reviewed data from the Land Conservation Plan of 2022 and other sources concerning the wetlands in the area and the contiguous block of wildlife habitat that exists in that part of town.

A copy of the February 21, 2023 plan is attached to this letter.

What we learned: The wetlands on the property are part of a chain of wetlands between Maple Avenue and East Road that run from Academy Avenue on the north to Bryant Brook on the south. While not designated as Prime Wetlands, nevertheless they provide important wildlife habitat and watershed protection qualities for the town. Also, the property in question is part of an unfragmented block of more than 100 acres, in which wildlife can travel without having to cross any roadways. During one of the site visits, one of the abutters mentioned that he has seen spotted turtle on his property. Spotted turtle is on the state's list of threatened species.

In viewing the conceptual plan dated February 21, 2023, we noted the location of the wetlands and the size of the relief being requested from the 100-foot wetland setback as required by Atkinson Zoning, Section 410:8 (b). We also noted on the plan that there is a 50-foot no-cut buffer of natural vegetation between the wetlands and the disturbed areas around the house, and stormwater management features to help stormwater from the roof of the structure to be contained and allowed to enter the groundwater for wells in the area.

Our thoughts and impressions: Although the nature of the wetlands and the presence of spotted turtle is fairly significant and thus important to protect, we were favorably impressed with:

- the small size of the relief that is being requested,
- the voluntary inclusion of a 50-foot no-cut buffer of natural vegetation between the wetlands and the disturbed areas around the house, and
- measures to manage stormwater runoff.

We feel these measures mitigate any potential harm to the wetlands, and we have no further concerns about this project.

This letter replaces an earlier letter about this application dated February 28, 2023. That earlier letter should be discarded.

Please let me know if you have any questions.

Sincerely,



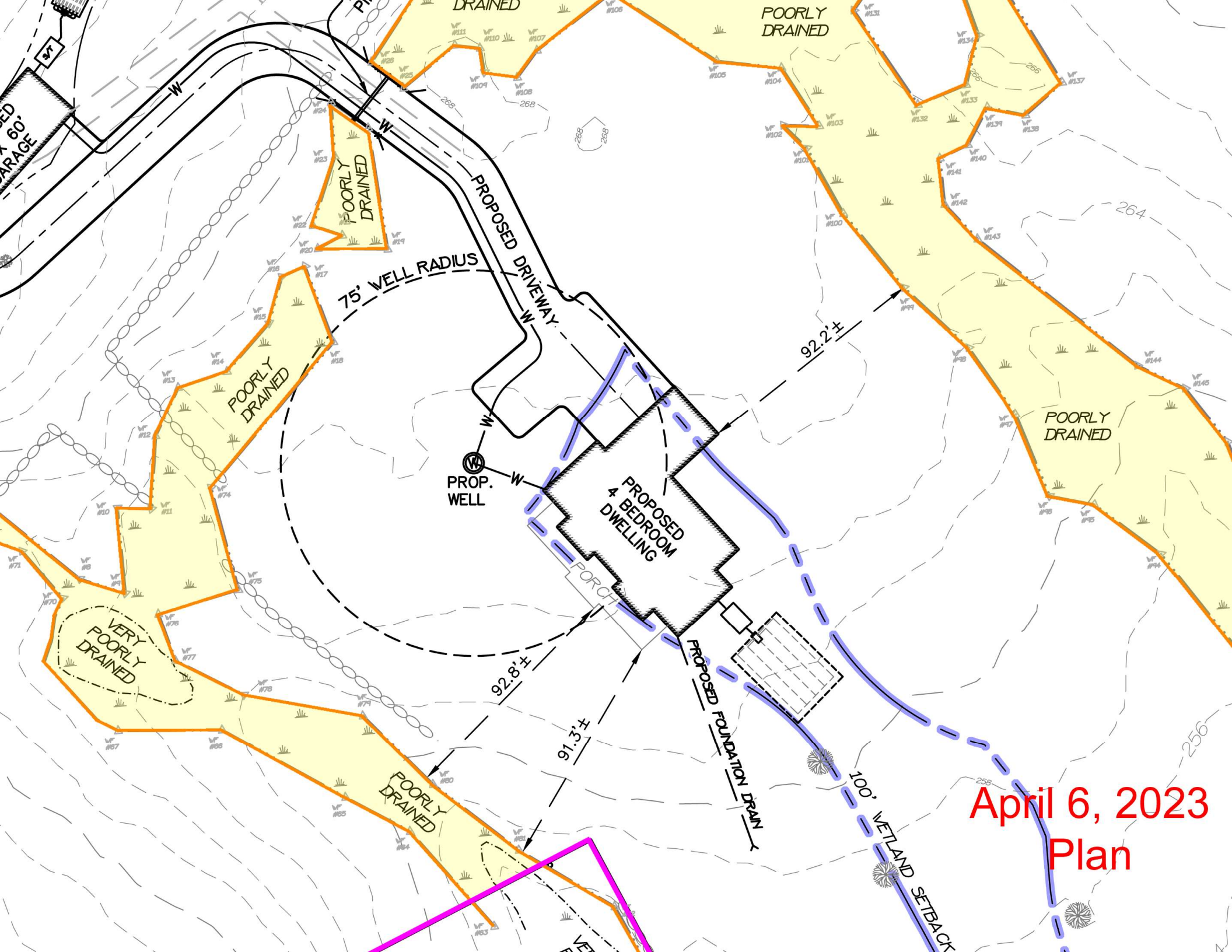
Paul Wainwright, Chair
Atkinson Conservation Commission

Attachment:

- Conceptual plan dated February 21, 2023 – highlighted to show detail

Copy to:

- Sue Coppeta, Planning and Zoning Administrator
- Charlie Zilch, Representative for the landowner



April 6, 2023
Plan

TOWN OF ATKINSON CONSERVATION COMMISSION
21 Academy Avenue
Atkinson, New Hampshire 03811

April 2, 2018

Mr. & Mrs. Brent Ebner
11 Collins Drive
Hampstead, NH 03826

Re: Deeded right-of-way over the Fila-Chambers Town Forest (Atkinson Map 19 Lot 18)

Dear Brent and Mary –

Upon careful review of your proposal to exercise your deeded right-of-way over a portion of the Fila-Chambers Town Forest (Atkinson Map 19 Lot 18), the Atkinson Conservation Commission has concluded that you have the right to use this right-of-way to reach your proposed home location (Hampstead Map 15 Lot 14). As noted in your attorney's letter of August 5, 2016, the intent of this right-of way, which was originally established in 1953, was clearly intended to enable your land to be used as a home site.

It is our conclusion that you have the non-exclusive right both to construct and maintain a driveway over this portion of the Town Forest, and to bury utilities along the right-of-way, so that you may effectively use your land as a home site. By "non-exclusive," we mean that others must also have the right to use this driveway to access the Town Forest and the trails that exist there. Also, access must be allowed for other purposes, including but not limited to first responders and logging equipment. Maintenance of the driveway will remain your responsibility.

One condition is that this driveway must be made of non-pervious material (as you have described in our meetings). Since you are crossing a Town Forest, any paving of or other improvements that you or your successors do to this driveway would require approval of the Atkinson Conservation Commission, which has responsibility for managing Town Forests under RSA 31:112.

Our review of your proposal has included confidential discussions with our town attorney Sumner Kalman, our own careful deed search back to the creation of this right-of-way in 1953, and numerous discussions with you in Conservation Commission meetings, including September 12, 2016, April 3, 2017, July 10, 2017, and March 5,

2018. These discussions are documented in our minutes, which can be found on the town's web site. Your verbal assurances made during these meetings become part of our condition of approval, and will also apply to future owners of your property.

The Commission would also like to express our appreciation for your offer to provide for parking along the driveway for people wishing to use the trails in the Town Forest.

Sincerely,

A handwritten signature in blue ink that reads "Paul Wainwright". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Paul Wainwright, Vice Chair

Atkinson Conservation Commission
email: conservation@atkinson-nh.gov

Copy to :

Atkinson Board of Selectmen

Atkinson Planning Board

Atkinson Zoning Board of Adjustment

Paul Wainwright

From: "Paul Wainwright" <paulwainwright@comcast.net>
Date: Monday, May 1, 2023 7:41 AM
To: "Ebner, Brent" <Brent.Ebner@nationalgrid.com>
Cc: <conservation@atkinson-nh.gov>; "Matt Sullivan - Road Agent" <roadagent@atkinson-nh.gov>; "John Apple - Town Admin" <townadmin@atkinson-nh.gov>; "Bob Worden - Selectman" <bob@atkinson-nh.gov>
Subject: Re: [EXTERNAL] Re: Access road

Good Morning, Brent --

In our meeting last week we discussed the situation with your driveway over the Chambers/Fila Town Forest. We came to the conclusion that we have no objection if you pave your driveway, as long as you check with our Road Agent, Matt Sullivan, to make sure you are following the MS4 requirements for storm water management.

Thanks,

-- Paul.

Paul Wainwright
Chair, Atkinson Conservation Commission
Member, Atkinson Planning Board
Board of Directors, NH Association of Conservation Commissions

Please note my preferred email address: paulwainwright@comcast.net

[Atkinson Conservation Commission Web Page](#)
[Atkinson Conservation Commission Facebook Group](#)
[Paul Wainwright Photography Website](#)

From: Ebner, Brent
Sent: Monday, April 17, 2023 6:28 AM
To: Paul Wainwright
Cc: conservation@atkinson-nh.gov
Subject: RE: [EXTERNAL] Re: Access road

Paul,

I don't have a plan honestly, I think the only permanent solution is to pave it but that's up to you and the commission. I regraded it this weekend and it should be good for a few months, I'll regrade it again before winter then again in the spring and so on.

As I said regrading is going to be a constant maintenance requirement as long as the surface can be permeated with water and endure freeze/thaw/traffic. Nothing needs to be done or done immediately but eventually all this maintenance is likely to fall on the town when I leave.