



**Town of Barnstable
Conservation Commission**
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MINUTES – CONSERVATION COMMISSION HEARING

DATE: December 1, 2020 @ 3:00 PM

This meeting of the Barnstable Conservation Commission is being recorded and transmitted by the Information Technology Department of the Town of Barnstable on Channel 18. Under MGL Chapter 30A Section 20, anyone else desiring to make such a recording or transmission must notify the Chair.

Remote Participation Instructions

In accordance with the Governor's Order Assuring Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gathering of More Than 10 People issued on March 24, 2020, the July 14th public meeting of the Conservation Commission shall be physically closed to the public to avoid group congregation.

Alternative public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Channel 18 and may be accessed the Channel 18 website at <http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

2. Real-time public comment can be addressed to the Conservation Commission utilizing the Zoom link or telephone number and access code for remote access below.

Join Zoom Meeting

<https://zoom.us/j/93588787796>

Meeting ID: 935 8878 7796

One tap mobile

888 475 4499 US Toll-free

3. Applicants, their representatives and individuals required or entitled to appear before the Conservation Commission may appear remotely and are not permitted to be physically present at the meeting, and may participate through the link or telephone number provided above. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to Darcy.Karle@town.barnstable.ma.us, so that they may be displayed for remote public access viewing.

Public comment is also welcome by emailing Darcy.Karle@town.barnstable.ma.us. Comments should be submitted at least 8hrs prior to the hearing.

The meeting was called to order at 3:00 p.m. with roll call. Chair Tom Lee was present along with Vice Chair Louise R. Foster and Clerk Dennis Houle. Commissioners John Abodeely, George Gillmore, and Larry Morin were also present. Pete Sampou joined at 3:22 p.m.

Conservation Administrator, Darcy Karle, assisted along with Enforcement Officer Ed Hoopes, and Assistant Fred Stepanis.

3:00 PM AGENDA

I. CERTIFICATES OF COMPLIANCE (d = deviations, staff recommends denial) (* = on-going conditions)

- A. Kariotis SE3-4366 (coc, d) Construct single family dwelling (Guest House) *
67 Pirates Cove, Oyster Harbors - Cotuit Bay Tabled from 11/3/20

This is a single family dwelling (Guest House) on Cotuit Bay. It was built on lot 2 which is adjacent to the Main House on lot 3. In 1989 there was a house on lot 3 and a dock on lot 2.

The following compliance deviation was noted:

1. Special condition # 21 of the Order of Conditions states: “The applicant shall provide a deed restriction, worded to the satisfaction of the Conservation Commission, which provides that the existing onsite pier would also serve the adjacent Kariotis lot (No. 65). (Note: the Conservation Commission, in setting forth this requirement, anticipates that the subject pier will be proposed to be modified such that it could reasonably accommodate use by both parcels)”

A draft deed restriction was presented to the Conservation Commission at the 11/3/20 hearing. The Commission was satisfied that it be brought to the town’s attorney.

The applicant was represented by John O’Dea of Sullivan Engineering.

- The draft deed restriction is with the town attorney for review.
- Mr. O’Dea asked to withdraw the Certificate of Compliance request until the deed restriction has been recorded. Once proof-of-recording is submitted to Conservation, the COC will issue as an ‘ez’.

B. Kariotis SE3-4365 (coc, d) Raze & Construct single family dwelling (Main House) *
65 Pirates Cove, Oyster Harbors - Cotuit Bay Tabled from 11/3/20

This is a single family dwelling (Main House) on Cotuit Bay. It was built on lot 2 which is adjacent to lot 3 on which the Main House sets. In 1989 there was a house on lot 3 and a dock on lot 2.

The following compliance deviation was noted:

1. Special condition # 22 of the Order of Conditions states: “The applicant shall provide a deed restriction worded to the satisfaction of the Conservation Commission which provides that no pier will be constructed appurtenant to the subject parcel. (Note: the Conservation Commission, in setting forth this requirement, anticipates that the existing onsite pier on the adjacent Kariotis lot will be proposed to be modified, such that it could reasonably accommodate use by both parcels).”

- A draft deed restriction was presented to the Conservation Commission at the 11/3/20 hearing. The Commission was satisfied that it be brought to the town’s attorney.
- The issues of showing the A/C enclosure and generator and pad on a revised plan have been resolved by showing them on a revised plan.
- Other issues in the process of being resolved are:
 1. Trench drain – The approved plan shows a “PROP. TRENCH DRAIN”. Joyce Landscaping has been retained to install this as shown on the plan.
 2. Mitigation plantings were not being allowed to naturalize. Also, areas on the inland side of the driveway (shown as “EXISTING WOODLANDS” on the approved landscape mitigation plan, appear to be lawn and shrub areas. Again, I believe that Joyce Landscaping has been retained to implement landscaping that will address these issues.
- A site plan revised 10/27/20 was submitted for approval. With the exception of showing the trench drain for handling driveway storm runoff, it appears to address all other staff concerns.
- The applicant was represented by John O’Dea of Sullivan Engineering.
- The draft deed restriction is with the town attorney for review.

Mr. O’Dea asked to withdraw the Certificate of Compliance request until 1) the deed restriction has been recorded, 2) the trench drain has been installed, and 3) the landscaping is done. At that time, a re-inspection request will be submitted along with \$ 50 fee.

C. Morris SE3-5557 (coc, d) construct spa; hardscaping *
140 Bay Road, Cotuit - Shoestring Bay Tabled from 11/3/20

This is a single family dwelling on Shoestring Bay. A project to construct the house was issued a Certificate of Compliance in 2008 (SE3-4409) with an on-going condition not to disturb beyond the work limit (50-ft. buffer).

At the 11/3/20 hearing, it was agreed that the only existing non-compliance issue was the lack of understory and lower branches on the trees in the 50-ft. buffer. The Conservation Commission directed staff to meet on-site with Matthew Eddy of Baxter Nye Engineering & Surveying to discuss restoration of the 50-ft. buffer. Ed Hoopes and I met with Mr. Eddy and Mr. Morris on 11/17/20.

Ed is now working with the applicant to develop an acceptable restoration planting plan.

The applicant was represented by Matthew Eddy of Baxter Nye Engineering & Surveying. Mr. Eddy asked to withdraw the Certificate of Compliance request. Mr. Hoopes will continue to work with Mr. Eddy and Mr. Morris to develop an acceptable buffer restoration plan within the next couple of months.

II. REVISED PLANS

Project type:

Revisions

A. Timothy McCullough SE3-5800 3861 Route 6A, Barnstable	Construct addition to SFR	Proposed porch and mitigation
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The applicant was represented by Dan Ojala P.E. of Down Cape Engineering.

- The revised plan date is 8/19/20.

There were no questions from the Commissioners.

A motion was made to approve the revised plan.

Seconded and voted unanimously by roll call.

III. ENFORCEMENT ORDERS

A. Lyle A. & Cynthia R. Swanson – 277 Pleasant Pines Ave., Centerville – Map 214 Parcel 041.T01. Alteration of the buffer to a wetland resource area – Lake Wequaquet and Bordering Vegetated Wetland by maintaining an unpermitted deck and violation of on-going conditions of a Certificate of Compliance (SE3-0142).

Exhibits

- A ARC Reader plan showing resource areas
- B Before site photos
- C Current site photos

There were no representatives present for the hearing.

Issues discussed:

- The site is now in compliance with the Enforcement Order conditions

A motion was made to approve the enforcement order.

Seconded

Roll call

Voted unanimously.

B. Mark A. & Colleen A. Superko – 75 Bayberry Way, Osterville – Map 091 Parcel 007. Alteration of the buffer to a coastal dune and alteration of the floodzone by placing sand on a pathway without permitting.

Exhibits

- A ARC GIS resource areas and location of existing access path ARC
- B Plan (from ADM-20041) showing access easement

C Previous and Current conditions on Access Easement

There were no representatives present for the hearing.

Issues discussed:

- The site is now in compliance with the Enforcement Order conditions.

A motion was made to approve the enforcement order.

Seconded

Roll call

Voted unanimously.

IV. WARNING LETTERS

A. Barbara Folger – 713 Sea View Ave., Osterville – Map 113 Parcel 007. Cutting vegetation to create a trail within buffer to wetland resource area – coastal dune.

- The Folgers were ordered to cease and desist from further cutting and seek approval from homeowner and Conservation prior to conducting any future work.

There were no questions from Commissioners

A motion was made to approve the warning letter.

Seconded and voted unanimously by roll call.

V. NON-CRIMINAL CITATIONS

A. Gary S. Murphy of 460 Church St., West Barnstable.	
Violation of on-going Special Condition to (DA-98008)	\$300.00

- Noted

B. Mark Sullivan of Up-A-Tree – Alteration of a wetland resource buffer	\$200.00
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- Noted

VI. OLD AND NEW BUSINESS

A. Thomas & Helene Lauer AND Joyce Landscaping– 183 & 209 Bay St., Osterville – Map 117 Parcel 152 & 158. Review of Enforcement Order Response Plan (Restoration Planting Plan and Report). **Continued from 10/06, and 11/03/20**

The Lauer’s were represented by John O’Dea, P.E. of Sullivan Engineering. Mr. Everett represented himself.

Issues discussed:

- The plan was reviewed and was found to be sufficient in replacement of the cut trees.
- Substitution of aspen for poplar was discussed.

A motion was made to approve the enforcement response plan.

Seconded

Roll call

Voted unanimously.

4:30 PM AGENDA

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REMINDER TO APPLICANTS:

**FEES FOR LEGAL ADS ARE LISTED BELOW. PLEASE MAIL CHECKS TO CONSERVATION, 200
MAIN STREET, HYANNIS, 02601**

The meeting was called to order at 4:30 p.m. with roll call. Chair Tom Lee was present along with Vice Chair Louise R. Foster and Clerk Dennis Houle. Commissioners John Abodeely, George Gillmore, Larry Morin and Pete Sampou were also present.

Conservation Administrator, Darcy Karle, assisted along with Enforcement Officer Ed Hoopes, and Administrative Assistant Kim Cavanaugh.

VII. NOTICES OF INTENT

- A. **Chrisjen Realty Trust.** Proposed maintenance dredging to -4 MLW from an area roughly 150' X 70' around existing pier with beneficial reuse on site as beach and dune nourishment at 86 Sand Point, Osterville as shown on Assessor's Map 073 Parcel 015002. **SE3-5828**

The applicant was represented by John O'Dea, PE. from Sullivan Engineering and Consulting.

Comments letters were read into record from:

DEP with SE3 number and comments dated November 25, 2020

DNR – Liz Lewis dated November 14, 2020

DMF – Eileen Feeney dated November 23, 2020

DNR - Amy Croteau (2) dated November 14 and 18, 2020

Issues discussed:

- There was discussion of the site being last dredged in the late 1960's, and if the project should be considered improvement dredging rather than maintenance dredging.
- A question was raised if any comments were received regarding removing and replacing shellfish.
- Should have monitoring reports and replace any disturbed vegetation.
- There was a discussion regarding whether it will be good shellfish habitat after the dredge. It should be left to the shellfish biologist to make the determination.
- The depth on each side of the pier and the reason why dredging is necessary was discussed. The driving force is the boat on the east side of the pier as the bow of the boat is down to 1 ½' of water.
- The proposal said dredge spoils would be going on the beach. The sandy material does not require dewatering. It will be brought east and west to the reuse areas.
- Dredging will be done with an excavator on a barge. The material on the beach will be moved with a front end loader.
- A time of year restriction was discussed. January to May is the DEP restriction. Fall dredging was recommended.
- Reducing the dredge footprint was discussed. They will revise the plan.
- Staff noted the proposed new plan has a bump out on the pier and there is a second float that has not been approved. The extra float is a finger float on the inside of the L. It will need to be removed. Along the L there is a storage bench which is the bump out. The storage bench is fine but should be added to the plan.
- A question was raised about the containment plan. Siltation curtains should be available if needed.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan showing a reduced footprint of area to be dredged, in addition indicate bench on pier. The following conditions shall apply post dredging survey shall be required, removal of shellfish if deemed necessary by

Shellfish constable, TOY restriction of prohibiting dredging from January 15 through May 31st. Fall dredging is preferred. Disposal for beach fill in intertidal area shall be consistent with DEP's Beach Nourishment Guide (March 2007), silt curtain shall be made available onsite. Refueling should be done on upland area. If equipment is refueled on-site, adequate containment and clean up material shall be required. Approved limit of dredging shall be staked in the field prior to start of work and adhered too.
Seconded and voted unanimously by roll call.

B. Donald J. and Maureen J. Salamack. Proposed Shorefront Protection to include installation of a vinyl sheet pile bulkhead, beach nourishment and native plantings at 614 Popponesett Road, Cotuit as shown on Assessor's Map 007 Parcel 002.

The applicant was represented by Donald Munroe from Coastal Engineering, Jim O'Connell a coastal geologist, Attorney Glenn Wood and Jeremy Schaub from Wilkinson Ecological Design.

Donald Munroe reviewed the project for the Commission.

Jim O'Connell, Coastal Geologist did an analysis of the area for the project and made a presentation to the Commissioners.

Issues discussed:

- The depth at the end of the dock where they are putting the working barge would be 3 to 5 1/2 feet. The draft of the barge is 1 1/2 to 2 feet.
- The height of the bulkhead will vary from 3-5 feet along the bank. A notation should be put on the plan for the height.
- A question was raised about accessing the area to do the project with such a steep bank. There is a slight beach. Some of the vegetation on the beach would need to be removed. The work would be done depending on the tides.
- There was discussion about the trees already leaning out over the water that may be lost by next year if the bulkhead is not installed.
- A question was raised about installing deadmen for installing the bulkhead and if it would hurt any of the trees.
- A question was raised if anything is being done at the top of the bank to prevent runoff.

Jeremy Schaub of Wilkinson Ecological Design spoke to the Commission regarding invasive management and restoration over the entire bank.

- There was a question raised if there should be a finding that there is an exemption for a pre-existing structure.
- An updated work protocol summary by stage should be submitted.

Comment letters were read into record from:
DNR - Liz Lewis sent on December 1, 2020
Michelle Hunton dated November 23, 2020

The DEP number and any comments have not been received.

- Staff requested a pre-construction meeting on site and the work protocol to be submitted by the contractor. The work limit line should be staked. The project should be implemented by Wilkinson Ecological and any change would have to be brought to the attention of the Conservation Administrator.
- A question was raised about if there is going to be on going treatment of invasives.
- There was discussion if there should be demarcation where the proposed berms end.

- After the three year monitoring and reports are complete, anything in the green shaded area will need to be left untouched.
- Staff requested there be an as-built for the wall.

There was no public comment.

A motion was made to include a finding stating this property qualifies for an engineered coastal structure under the reconstruction provision.

Seconded and voted unanimously.

Based on the finding, a motion was made to approve the project subject to receipt of a revised plan indicating top of bulkhead height in various locations and a revised landscape plan showing additional demarcation in consultation with administrator, and subject to the following special conditions: provide a 3 year monitoring plan for the restoration work, restoration to be completed by Wilkinson Ecological and any change in contractor will require notice in writing to the Conservation Administrator, provide a surveyed as-built plan for vinyl bulkhead and restoration area. There shall be a preconstruction meeting 4 weeks prior to start of work with the Conservation Administrator. Prior to site visit a construction protocol shall be submitted in writing by the contractor. Work limit shall be staked in the field by the contractor for the preconstruction site visit. An ongoing condition is permitted for invasive management.

Seconded and voted unanimously by roll call.

The matter was Continued to 12/8/2020 for the sole purpose to receive SE3# and any comments DEP might have.

VIII. MINUTES

A. November 10, 2020

A motion was made to approved the minutes as submitted.

Seconded and voted unanimously by roll call.

A motion was made to adjourn.

Seconded and voted unanimously by roll call.

The time was 6:05 p.m.