



Office: 508-862-4093E-mail: conservation @ town.barnstable.ma.us

FAX: 508-778-2412

MINUTES – CONSERVATION COMMISSION HEARING

DATE: MARCH 29, 2022 @ 6:30 PM

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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.

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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 6:30pm by Chair F. P. (tom) Lee. Also in attendance were: Vice Chair Louise r. Foster, Clerk George Gilmore, Commissioners Abodeely, Hearn, Morin, and Sampou.

Conservation Administrator, Darcy Karle was present along with Administrative Assistant Grayce Rogers.

I. OLD AND NEW BUSINESS

A. Property Access Form – Required document to be submitted with Notice of Intent Application and Request

for Determination. This form has been revised and reviewed by Kate Connelly, Assistant Town Attorney.

Issues Discussed:

- Chair Lee reviewed and revised the form. He sent it to Town Attorney Kate Connelly for review.
- There was a comment from the Commission about that the form may create an increased call volume and energy expended to reach applicants. The clause that Conservation staff will attempt to contact the applicant for the visits shall remain as Town legal counsel recommended.
- “Notice will be provided to the applicant, prior to, or at the time of the visit” was a recommended edit.
- The Commission supported the suggested edits.

There was a motion made to approve the property access form as modified subject to review by the town attorney.

Seconded and voted by roll call:

Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn, Sampou

Nay – none

- B. Chapter 707 – revision to add Property Access Form requirement to Submission Checklist as reviewed and discussed at the March 8, 2022 meeting.

There was a motion made to approve Chapter 707 as previously discussed.

Seconded and voted by roll call:

Aye – Lee, Foster, Gillmore, Abodeely, Hearn, Sampou

Nay – Morin

- C. Chapter 710 – revision to add Property Access Form requirement to Guidelines for filing a Request for Determination as reviewed and discussed at the March 8, 2022 meeting.

There was a motion made to approve Chapter 710 as previously discussed.

Seconded and voted by roll call:

Aye – Lee, Foster, Gillmore, Abodeely, Hearn, Sampou

Nay – Morin

II. REQUESTS FOR DETERMINATION

- A. **Donald Anderson.** Raise garage roof and add dormers with no change in footprint at 100 Bay View Road, Barnstable as shown on Assessors’ Map 319 Parcel 030. DA-22006.

The Request for Determination was represented by Arlene Wilson of A. M. Wilson Associates.

Issues discussed:

- Materials needed for construction will be stored in the drive way and the construction vehicles will park in the street.
- The drywells were discussed during the site visit.
- The enforcement order will be separate from this application.
- The edge of the wet lands was checked.
- There is an enforcement order for weed whacking within the wetland jurisdiction.
- There is a deed restriction on this property for the town sewer project.

There was no public comment.

There was a motion made to approve the request for determination as negative determination subject to receipt of a revised plan showing a stone trench or a drywell.

Seconded and voted by roll call:

Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn, Sampou

Nay – none

- B. Daniel Kevles.** Upgrade of failed leach pit to fully compliant Title 5 System at 215 Bay Lane, Centerville as shown on Assessors' Map 186 Parcel 013. DA-22007

The application was represented by Darren Meyer of Meyer and Sons, Inc.

Issues discussed:

- The tank and pump components are about 60 feet away from the vegetated wetland.
- The vegetation planted will most likely be grass.
- There should not be a lot of damage outside the wall.
- There is about 16 feet of natural vegetation from the wall to the street.

There was no public comment.

There was a motion made that this request for determination is a negative determination.

Seconded and voted by roll call:

Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn, Sampou

Nay – none

- C. Colm and Ann Dunphy.** Proposed construction and maintenance of a detached garage, pervious driveway, relocation of the existing sewer connection with no change in grade at 44 Gosnold Street, Hyannis as shown on Assessor's Map 324 Parcel 027. DA- 22008

The application was represented by Jeff Johnson.

Issue discussed:

- It is only in flood zone AE 11.
- The driveway will be constructed in pervious materials with no change in grade.
- There will be no change in the driveway.
- There is no intent to vegetate the area.
- Drywells can be added to the plan.

There was no public comment.

There was a motion made to approve this as a negative determination on this request for determination subject to receipt of a revised plan showing stone trench or a drywell.

Seconded and voted by roll call:

Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn, Sampou

Nay – none

III. NOTICES OF INTENT

- A. Jonathan & Elizabeth Carey.** To construct a pool cabana and patio at 315 Baxters Neck Road, Marstons Mills as shown on Assessor's Map 075 Parcel 008-001. SE3-5969

The application was represented by John O'Dea of Sullivan Engineering.

Issues discussed:

- The cabana would be constructed east of the pool.
- The plan was preliminarily reviewed with staff.
- The landscape plan was reviewed. The ends of the pathway will have shrubs. Beyond the pathway, there is vegetation to supplement the meadow area. Additional shrubs could be added to the pathway.
- The drywell for the existing pool is unknown. The agent ensured that a dry well would be consistent with this project.

There was no public comment.

There was a motion made to approve the project subject to receipt of a revised plan showing the dimensions and the proposed additions of the planting plan and to locate the existing drywell of the existing pool.

Seconded and voted by roll call:

Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn, Sampou

Nay – none

- B. Philip Scudder – Hyline Cruises.** Installation of a new sheet pile bulkhead immediately out-shore of an existing deteriorated timber bulkhead and maintenance of a timber pier at 138 Ocean Street, Hyannis as shown on Assessor’s Map 326 Parcel 067. SE3-5970 **(Continued to April 26th)**

There was no testimony made for this application.

There was a motion made to accept the continuance to the April 26, 2022 meeting.

Seconded and voted by roll call:

Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn, Sampou

Nay – none

- C. Carmella Kletjian – Yasmine Realty Trust -** To construct and maintain a stone revetment extension located at 261 and 253 Seapuit River Road, Osterville as show on Assessors’ Map 051 Parcel 004 002 & Map 051 Parcel 002. **SE3-5971**

The application was represented by John O’Dea of Sullivan Engineering and Consultants.

Issues discussed:

- The water is active in this area. Over time it has been found that, the spit of land on Sampson’s Island has been moved. There is washout in the area. The material comes out and gets deposited at the dock. Over the last ten years, it has become unusable.
- There has been 2 Notices of Intent filed for dredging to ensure the pier can be used.
- The erosion is extensive across the other property.
- The agent, with permission, reached out to the neighbors about the extensive erosion.
- The plan now spans both of the properties.
- The stone revetment would be about 300 feet in length. It will be landward of above mean high water. The access would be from the land.
- The staging can be on the land.
- The construction equipment will need to be on the beach.
- The beach does not appear to be growing.
- There was clarification if there was a jetty. It is believed that the jetty was formed over time from a revetment.
- A study was done by Coastal Research and Engineering that there was a change from water pattern flow from Sampson’s Island.
- There was clarification about back filing eroded areas. The stones are designed to be set up against the existing bluff. There is no intension to recreate the land that has been lost over the past 10 to 20 years. No fill would be brought in. There might be digging into the bluff by a couple feet to set the stones. The top of the wall will taper with the land. There will be an elevation of about 6 and drop down to around 4 to follow the natural land.
- There was a rusty pipe which use is unknown. The pipe seems to be completely plugged. It is speculated that it may have been to drain the nearby bogs.
- The cove area was built in the 1970s. The embankment is contributing to the erosion. The excavated material has been used on Sampson’s Island in the past. This may solve two problems.
- There needs to be good hydrological studies to demonstrate potential effects over time.
- Mosquito Control should be contacted to investigate the pipe.

- For the construction protocol, the bulk of the material storage can be above the wall. There might be some material needed during daily construction on the beach.
- The construction protocol is normally prepared by the contractor.

There was no public comment.

There was a motion made to approve the project subject to receipt of a construction protocol, stake the work limit line prior to the pre-construction meeting with the shellfish biologist, and the revetment be natural granite.

Seconded and voted by roll call:

Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn, Sampou

Nay – none

- D. Paul Fitzgerald** – Construction of approximately 102 ft. sloped stone revetment, approximately 67 ft. of vertical plastic bulkhead, and buffer plantings located at 207 Keveney Lane, Cummaquid as shown on Assessors Map 352 Parcel 023. **SE3-5972**

The application was represented by Arlene Wilson of A. M. Wilson Associates.

Correspondence:

DPW email dated March 29, 2022

DMF letter dated March 29, 2022

Issues discussed:

- Historically, this was farm land. The farm house is on the opposite side of the street.
- The bridge has been most recently worked on the bridge abutments and the drainage in the streets. The catch basins still overflows and run down the bank.
- Historically, the salt marsh has been protected by a jetty and rumble revetment.
- Historically, the up land vegetation extended to the end of the salt marsh. There has been significant changes over the past 5 years in response to the series of winter storms that has come from the north and north east. The woody vegetation that previously existed has been inundated with salt water. It was killed by the salt water or flood water due to velocity from the storms.
- It is proposed to add 100 linear feet of loose stone revetment on the northerly end which will help to prevent impact.
- It is proposed to have a 20 foot buffer zone to replace the meadow with wood vegetation. The look of the meadow will be maintained.
- The Division of Marine Fisheries submitted comment about the project.
- Paul Graves, DPW, was present to answer questions for the Commission. The impact of that the revetment may or may not have on the bridge is unknown which must be known with some certainty for public safety. The inspection report can be shared with the Commission. The bridge is at the point where issues need to be corrected. There is no direct evidence that there is an issue with the road. There is , what appears to be, an increased frequency and effects of major storms.
- There was a comment from the Commission that there is often unintended consequences to armoring shorelines. Yes, there is approval of armoring shorelines if high valued land needs to be protected. This project seems to be unneeded and no need to create such precedent.
- Graves commented that the Town and the Massachusetts Department of Transportation inspect the bridge regularly. There was no plans, currently, to address those issues. There is no special knowledge about the water flow. The water does move with a lot of velocity.
- There is no structure on the property that is threatened.
- The rumble along the edge of the salt marsh could be reconstructed at the north tip to protect the bridge. However, the stonework is old. It would need to be authorized through every state and federal agency. It would take a considerable amount of time for a private party to do so.
- There is no hydrodynamic study on the bridge.
- The Commission was concerned about approving the application without knowing the potential unintended consequences. A report about potential effects would be helpful to make a determination.

- It is difficult to locate permits dated before 1970.
- There was a suggestion from the Commission to plant woody vegetation and shrubs to protect the environment before approving something with unknown effects.
- Arlene Wilson suggested a 2 month continuance.
- There should be a revision to the form (see video for edit).

Public Comment:

Sarah and Mark Bishop of 112 Mill Lane and abutters to the proposed project. They own the boathouse on the eastside of the bridge. The Bishop's are concerned about unintended consequences with the project. There is a large rock that might teeter into the channel. They would like to know what the impact on the shoreline will be.

Douglas Bishop of 112 Mill Lane referred to Exhibit K. It looks like that there is significant work proposed in front of his property. The plan is from previous work on the bridge. The shoreline in front of their property is washing away. He has conducted major reconstruction of the structure close to the shoreline. There is concern that enforcing one side may make his side erode more rapidly. This is at least the third bridge that has been constructed since the 1980s. He questioned if the Town of Yarmouth needs to be involved.

William Golden of 187 Keveny Lane was interested in what the plastic sheeting would look like.

There was a motion to continue the matter to the June 7th meeting.

Seconded and voted by roll call:

Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn, Sampou

Nay – none

- E. Christopher D. Heckscher.** Proposed pruning and limbing of trees to establish a vista corridor, create footpath, and install seasonal beach access stairs at 144 Peppercorn Lane, Cotuit as shown on Assessor's Map 004 Parcel 010. **SE3-5973**

The application was represented by Sean Riley, P.E. of Coastal Engineering.

Issues discussed:

- The Commission commented that it is preferred that the pier is as close to the middle as possible. The proposed area is the only area with depth to place the pier.
- The trees on the left and right could be limbed instead of removed.
- There was a question from the commission about why there is a roll out instead of just a path.
- There was a comment that the path does not need to be straight.
- There was a comment that roll out mats on paths are usually used for specific circumstances.
- The path location is amongst the most amount of trees.
- There was discussion about moving the path.

There was no public comment.

There was a motion to continue the application to the April 12th, 2022 meeting.

Seconded and voted by roll call:

Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn, Sampou

Nay – none

IV. CONTINUANCES

- A. Glen Lane Nominee Trust – Amended NOI** Modification of existing pier by extending fixed section 24', reusing the existing ramp and turning the end float parallel to the channel or, in the alternative, dredging

±95 cu. yds. around the existing pier at 49 Main Street, Osterville as shown on Assessor's Map 185 Parcel 020. **SE3-5941 Continued from 2/15/22**

The application was represented by Arlene Wilson of A. M. Wilson and Associates.

Correspondence:

DMF letter dated March 29, 2022

Waterways Committee email dated March 23, 2022

Issues discussed:

- Arlene Wilson presented the revised plan.
- The shells have bleaching which shows that there is not enough oxygen.
- The project has been reviewed by the Division of Marine Fisheries, the Barnstable Waterways committee, and the Barnstable Shellfish Committee.
- The Commission was concerned about the considerations of other agencies and Committees.
- There was discussion about reorienting the floats.
- There was discussion to possibly not to extend the pier but add a float instead.
- There was a comment about three options: dredging, install the extension, or to recommend that the applicant purchases another style boat.

Public Comment:

Michael Payne of 63 Main Street, Osterville, commented that water vehicles do not adhere to the speed limits. The water may not have gone down, but the sand may have gone up. The neighbors may have caused build up under the dock. If nothing down than more build up with gather under the dock. He mentioned that his property has build up between the shoreline and his floating dock. There was always a second dock tied to the floating dock which narrowed the flow of water as well. He supported the idea to move it to the east and believes that recommendation would be helpful.

Patricia Fairnha, Shellfish Committee Member, commented that she found the comments to be encouraging.

Amy Croteau, Shellfish Constable, commented that the discussion is promising. She noted that the option to dredge is not supported as the area is productive, but compromised. She supported seeking additional alternatives.

There was a motion to continue the application to the April 26, 2022 meeting.

Seconded and voted by roll call:

Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn, Sampou

Nay – none

- B. IL-TEMPO-SE-NE-VAS, LLC.** Proposed patio reconfiguration, installation and maintenance of boardwalk and ramp, restoration and mitigation plantings and all associated landscaping at 105 Sunset Lane, Barnstable as shown on Assessor's Map 301 Parcel 029. **SE3-5967 Continued from 3/15/22.**

The application was represented by Jeff Johnson of Holmes and McGrath

Correspondence:

Comment letters were received and acknowledged.

Richards dated March 14, 2022

Lyons dated March 15, 2022

Thornton dated March 15, 2022

Quinn dated March 15, 2022

Lewis dated March 14, 2022

Lenart dated March 14, 2022

Dugas dated March 15, 2022
Bassett dated March 14, 2022
Tirrell dated March 16, 2022
Densieski March 14, 2022
Kira and Aleksandr (applicants) – not dated

Issues discussed:

- The resources areas include the coastal beach, costal dune, and armored coastal bank.
- The boardwalk had been approved in 1992. There was a level walkway and a step down.
- There was a question from the Commission about the reasoning why a larger patio is needed in the 0 to 50 foot buffer zone.
- There was a comment about removing hardscape from the 0 to 50.
- Once there is no further need for the handicap ramp than it should be removed.
- There was clarification about measurements.
- There was discussion regarding the patio materials. It would be a ground level stone patio; impervious.
- There was conversation about the hardscape advantages and disadvantages.
- There was a discussion about beach grass used to mitigate the buffer zone.

Public Comment:

William Quinn of 11 Second Way, Barnstable asked that from the top of the ramp to the beach sand, how far is the drop? He has built handicap ramps before. The drop is about 3 feet. In order for the ramp for every inch of drop you need to have 1 foot of ramp which means that the ramp should be 36 feet not 20 feet. This is a private ramp, not public use. This is not designed as an ADA compliant ramp. It is an accessible ramp for a handicapped person.

Bruce Richards of 31 Second Way, Barnstable, commented that he rejected the proposal. In the deed, 90 homeowners have access to the bathing beach; it is a use easement. The proposed ramp and vegetation is within that easement. If the Conservation Commission approves the Notice of Intent than it will be a matter of litigation. There is a access to the bathing beach 100 feet east of the applicants property. There is a path down to the beach where one could use a wheelchair on.

Robert Hall of 99 Sunset Lane, Barnstable, commented that he has owned his parcel for 70 years. The proposed project will put in a larger patio will require plantings around there. There will be cedar trees down the property line which will limit his view of the scenery. This will impact his quality of life because he will not be able to enjoy the view shed.

There was a motion made by approve the project submit to the receipt of a revised plan showing demarcation and materials used for the patio, the proposed beach grass will be replaced by some alternative, and there is a sunset clause on the walkway, if there are changes made after the civil matter than the applicant will submit revised plans, and the applicant will provide ownership.

The motion was seconded by Commissioner Abodeely

Aye: Abodeely, Foster, Gilmore, Lee, Morin

Nay: Hearn, Sampou

Abstain: 0

- C. **Mass. Division of Fisheries and Wildlife.** Management of specialized and rare species in a unique ecosystem using various tools including herbicide, mechanical (cutting/mowing), prescribed fire, and timber harvest at 0 Mary Dunn Road, Hyannis as shown on Assessors' Map 347 Map 002-001. **SE3-5957. Continued from 3/15/22 for the sole purpose of receipt of NHESP letter and comments.**

The application was opened for the NESHP letter.

Public Comment was closed.

There was a motion to approve the Notice of Intent.

Seconded and voted by roll call:
Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn, Sampou
Nay – none

V. CERTIFICATES OF COMPLIANCE (ez = no deviations, staff recommends approval)
(* = on-going conditions)

- | | | | | |
|----|--|-----------------|--------------------------------|------------------------|
| A. | A.J. Khoury, TR. The Khoury CC RE Trust | SE3-5010 | Pool/Retaining Walls/2x | |
| | Staircase for Beach Access / Mitigation Planting | (COC, ez) | 835 Sea View Ave, | |
| | Osterville | | Coastal Bank, Coastal Beach | |
| B. | Chris Cotia, Executive Landscaping | SE3-5372 | Pool/Patio/Mitigation | |
| | 1311 Craigville Beach Rd | (COC, ez) | Riparian Buffer Zone, BVW | |
| C. | Larry Singmaster | SE3-1108 | (COC, ez) | Removal of Wooden |
| | Groins / Construction of Stone Groins | | | 101 Ocean Ave, Hyannis |
| | Land Under Ocean, Coastal Beach | | | |
| D. | Nominee Trust Services | SE3-4914 | (COC, ez*) | Invasive Management / |
| | Mitigation Planting / Stairs / Pool | | 819 South Main St, Centerville | Coastal Bank |

There was a motion made by to approve Certificates of Compliance A-D.

Seconded and voted by roll call:
Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn, Sampou
Nay – none

VI. MINUTES

- A. March 1, 2022
- B. March 15, 2022

There was a motion made to accept the minutes as submitted.

Seconded and voted by roll call:

Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn, Sampou
Nay – none

VII. Adjournment

There was a motion to adjourn the meeting.

Seconded and voted by roll call:

Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn, Sampou
Nay – none

Meeting adjourned at 10:07pm