



# Town of Barnstable Conservation Commission

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## MINUTES – CONSERVATION COMMISSION HEARING

**DATE: September 4, 2018 @ 6:30 PM**

**LOCATION: Hearing Room, 367 Main Street 2<sup>nd</sup> Fl., Hyannis, MA**

Scrivener's note: The following minutes are general in nature. For those wanting specific detail on matters heard on this agenda, additional resources are available to you: video-on-demand (free on the Town website at [town.barnstable.ma.us](http://town.barnstable.ma.us)), and DVD recordings. Please contact the Conservation Division at 508.862.4093 for assistance.

The meeting was called to order at 6:30 p.m. by Chair F. P. (Tom) Lee. Also attending was Vice-Chair Louise R. Foster, and Commissioners John Abodeely, Peter Sampou, Larry Morin, and George Gillmore. Clerk Dennis R. Houle was away.

Darcy Karle, Conservation Administrator, assisted, along with Claudette Bookbinder, Conservation Administrative Assistant.

### I REQUEST FOR DETERMINATION

**Elizabeth Brosman.** Propose septic system upgrade at 190 Horseshoe Ln., Centerville as shown on Assessor's Map 207 Parcel 132. **DA-18043**

The applicant was represented by Peter McEntee.

Issues discussed:

- Approval received by the Board of Health.

A motion was made to issue a negative determination.

Seconded and approved unanimously.

### II NOTICES OF INTENT

**Ronald & Penney Mattes.** Construct single-family dwelling and driveway crossing intermittent stream at 105 Bayberry Ln., Cummaquid as shown on Assessor's Map 335 Parcel 038. **SE3-5607**

The applicant was represented by Daniel Ojala, P.E. of Down Cape Engineering and Bert Martin.

Exhibit A – Addendum sketch (distributed to Commission)

Issues discussed:

- Mr. Ojala gave over view of addendum sketch
- Culvert crosses an intermittent stream
- BOH approved, and a variance granted.
- Catch basin side of culvert to drain drive
- Paved drive rather than pervious
- Mitigation constrained, so asking for a waiver
- Question of whether drain connected to abutter's property; Mr. Ojala said that the drain has existed many years, so they no permission needed

- A bridge would be cost-prohibitive, and would require a larger culvert
- Is lot still a “buildable” lot? Has been considered one since the 1960’s
- Road run-off partly causes it to be a “wetland”
- A question of whether the drive would be pervious or paved
- Staff said a pervious drive would erode into wetland.

Comments:

- The Carrolls of 116 Bayberry Lane, Cummaquid, abutters, attended. Had submitted a letter dated 9/4/18. They said the lot had been empty for fifty years; photos they submitted show in early spring (2018) that [flooding] had been a constant problem.
- Elizabeth Kelley representing Marilyn Kelly of 46 Holly Point Road thought the area was a “vernal pool,” and that it drains into Flax Pond;
- Phineas Fisk, abutter, submitted sketch saying the area was a “severe drainage situation” after a storm.
- Herb Carroll, abutter, showed area on attachment (map) to Carroll letter that he claimed Mosquito Control had circled
- Bruce McCune, abutter to 119 Bayberry Lane cited the area as NHESP habitat; the ditch runs into a manhole at his property.

A motion was made to establish a finding that the lot is a constrained lot for purposes of mitigation.

Seconded and approved unanimously.

A motion was made to approve the project with special conditions, subject to two additional conditions, 1) the wetland replication area to be increased by 15% and, 2) based on the finding that this is a constrained lot, a fee, in-lieu of mitigation, in the amount of \$1,000.00 is to be paid to the Town.

Seconded and voted: 5 votes = Aye; 1 vote = Nay. The motion carried.

**Richard Avery/Cape Cod Remodeling, LLC.** Convert three-season living space to an all-season living space to include existing after-the-fact patio, stairs, retaining wall and railing at 170 Horseshoe Ln., Centerville as shown on Assessor’s Map 207 Parcel 130. **SE3-5605**

The applicant attended, and was represented by Kieran Healy of BSC Group.

Issues discussed:

- An after-the-fact paver patio, larger than before, or 450 sf.
- Proposed stair and landing
- Revised plan dated 8/31/18

A motion was made to approve the project with special conditions, based on the revised plan of 8/31/18.

Seconded and approved unanimously.

**John T. Yunits, Commissioner, Barnstable County.** Interim stormwater management improvements at Barnstable County Fire and Rescue Training Academy located at 155 South Flint Rock Rd., Barnstable as shown on Assessor’s Map 313 Parcel 007. **SE3 \_\_\_\_\_**

The applicant was represented by Roger Thibault of Nover-Armstrong.

Issues discussed:

- Restoration of the site
- DEP identified run-off into the area of soil removal and requested measures to correct and divert water away
- Southwest corner only of the academy (Phase I)
- Want to raise grade to modest mound of clean fill and peastone for temporary measures
- Unused shed and unpaved drive to be removed
- Work to be done within 50-ft. buffer

- No trees to be removed
- Possible/probable soil contamination under pavement.
- Question of whether test holes for soil testing for contaminants is viable
- Mr. Thibault said there are time constraints; could make it conditional or could withdraw pavement removal
- More filings through the MA DEP for remediation in the future.

Comments:

- Steve Seymour of 179 Plum St., W. Barnstable, stated that it was a “flawed Plan,” and a temporary fix that needed a long-term solution. He submitted a letter stating groundwater contamination statistics.
- Rob Stein of the Barnstable DPW submitted comments; was opposed to the project, and requested to deny.
- Deb Krau, President of the Greater Hyannis Civic Association said the Barnstable County has not been a good citizen – does not protect the environment.
- Sue Phelan of 179 Plum St., W. Barnstable submitted a letter saying that PFAS contaminants were an overriding concern, and were a public health concern
- Steve LaSelva of 358 Sea St., Hyannis spoke of “immense risk,” and the need to eliminate the academy.

A motion was made to approve the project, subject to receipt of a revised plan eliminating the proposed removal of asphalt driveway, building, and asphalt around the building, from the project. A special condition added to require semi-annual reports on the status of the location and also the status of the planning for the permanent solution. Those reports should also include testing results of levels of PFAS in Flint Rock Pond and, to that end, a baseline is required; testing to be done immediately to compare with interim testing. No activity to be done in the 100’ buffer zone, and the use of water is to be eliminated in the 100’ buffer, also. The applicant shall return and present the status to the Commission every six months.

Further discussion took place regarding restriction of property and water use in the 100’ buffer and baseline data of the pond. The Chair said it was better to have a restriction in the 50’ buffer zone and put the berm around the 50’ buffer and to show it on a revised plan. The 50-foot buffer needs to be staked. Consultant said Phase I report already contains baseline data of sediment sample and water quality of the pond. Ms. Foster requested a baseline from today.

A revised motion was made to restrict activity in 50’ buffer, which needs to be staked, as well as berm, around the 50’ buffer. Polyethylene sheeting thickness should be 10 mm (2 sheets), with layer of clean sand before placing pebble stones to be shown on revised plan.

Seconded and approved unanimously. (Continued to 9/18/18 for NHESP only)

**Christian Swenson.** Construct grass driveway at 110 Nyes Neck Road East, Centerville as shown on Assessor’s Map 232 Parcels 011-001, 011-002. **SE3**\_\_\_\_\_

The applicant was represented by Michael Ball, P.W.S. and Matthew Eddy, P.E. of Baxter Nye Engineering.

Issues discussed:

- One of the Commissioners stated that this project has worked at other locations

A motion was made to approve the project with special conditions.

Seconded and approved unanimously.

**III REQUEST FOR AMENDED ORDER**

**Susan Moore Morgenthau, Tr., 710-713 Sea View Avenue Realty Trust.** To amend Order of Conditions **SE3-5539** to permit demolishing detached garage and rebuilding new garage at 713 Sea View Ave., Osterville, as shown on Assessor’s Map 113 Parcel 007.

The applicant was represented by John C. O’Dea, P.E. of Sullivan Engineering.

Issues discussed:

- The detached three-car garage gets flooded
- A new three-car garage, to replace the old one, is to be elevated by two feet.

A motion was made to approve the amended order, as submitted.

Seconded and approved unanimously.

#### **IV CONTINUANCE**

**Tim & Mary Ball.** Install seasonal removable dock on Lake Wequaquet at 379 Lakeside Drive West, Centerville as shown on Assessor's Map 232 Parcel 048. **SE3-5596**

The applicant, Tim Ball, attended and was represented by Michael Ball, P.W.S. of Marsh Matters.

Issues discussed:

- NHESP concludes that it is a "no-take" area
- Stairs to dock with railing in corner of the dock to be removed from the plan
- Certain things to be brought back into compliance (Ms. Karle listed)
- The applicant said there was sand on the beach area beyond the railroad ties
- Twenty-four plants to be planted into the area between the embankment and the mowed area.

Correspondence: Letter from Natural Heritage & Endangered Species Program dated 8/9/18.

A motion was made to approve the project, subject to receipt of a revised plan, removing the "wedge" out of the proposed dock plan, and going with the "L-shaped" dock.

Seconded and approved unanimously.

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

A. Beach Leaf Island, Inc. SE3-1418 (coc, ez) construct single-family dwelling  
147 Beach Leaf Island Road, Centerville BVW to Bumps River (only foundation done) \*

A motion was made to approve the certificate.

Seconded and approved unanimously.

#### **VI MINUTES**

A. 8/7/2018

B. 8/14/2018

A motion was made to approve the minutes "A," as amended, and approve "B," as written.

Seconded and approved unanimously.

#### **VII EXECUTIVE SESSION and DECLARATION OF THE CHAIR:**

The Chair declared that the discussion of litigation strategy in open session with respect to the cases of Kenneth & Melissa Fish Crane v. Barnstable Conservation Commission, and, John Gormally v. Barnstable Conservation Commission may have a detrimental effect on the litigating position of the Commission.

The Chair recognized the Vice-Chair to make the motion to enter executive session.

The Vice-Chair moved to enter executive session under G.L. c. 30A§21(a) (3) to discuss pending litigation with respect to the cases of Kenneth & Melissa Fish Crane v. Barnstable Conservation Commission, and, John Gormally v. Barnstable Conservation Commission based on the Chair's declaration that an open meeting may have a detrimental effect on the litigating

position of the Commission. She stated that the Commission would not reconvene in open session following the conclusion of executive session.

The Chair seconded the motion.

By roll call vote:

John E. Abodeely =	Aye
Peter Sampou =	Aye
Larry Morin =	Aye
George Gillmore =	Aye
Tom Lee =	Aye
Louise Foster =	Aye

**The time was 9:52 p.m.**