



**Town of Barnstable
Conservation Commission**
200 Main Street
Hyannis Massachusetts 02601

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AGENDA – CONSERVATION COMMISSION HEARING

DATE: October 6, 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/92721590128>

Meeting ID: 927 2159 0128

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.

Chair, Tom Lee made the following statement prior to the start of the meeting:

The Town including Town Councilors, Town Manager, and Conservation Division received numerous complaints regarding to Mr. Larry Morin's recent Facebook postings. His Facebook postings are his personal and private matter. His Facebook postings do not represent the Barnstable Conservation Commission and Conservation Division. I want to make this point very clear.

3:00 PM AGENDA

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 Larry Morin, John Abodeely, and George Gillmore were also present. Commissioner Pete Sampou joined the meeting at 4:03.

Administrator Darcy Karle assisted along with Conservation Agent Edwin Hoopes and Fred Stepanis.

I CERTIFICATES OF COMPLIANCE

(d = deviations, staff recommends denial) ((ez = no deviations, staff recommends approval) * = on-going conditions)

A. O'Reilly SE3-5063 (coc, ez) Pave impervious driveway *
185 Oak Street, West Barnstable - abandoned bog

A motion was made to approve A.
Seconded
Roll call
Approved unanimously.

B. Kariotis SE3-4366 (coc, d) Construct single family dwelling (Guest House) *
67 Pirates Cove, Oyster Harbors - Cotuit Bay

The applicant is working on a deed restriction.

A motion was made to Table the Certificate of Compliance request to the 11/3/20 hearing and it was seconded and voted unanimously.

C. Kariotis SE3-4365 (discussion only) Raze & Construct single family dwelling (Main House)
65 Pirates Cove, Oyster Harbors - Cotuit Bay

The applicant is working on a deed restriction.

A motion was made to Table the Certificate of Compliance request to the 11/3/20 hearing and it was seconded and voted unanimously.

II REVISED PLANS

Project type:

Revisions

A. Wolfram Vedder SE3-5105 119 Island Avenue, Hyannisport	Replace pilings and and sheeting under existing cottage	Approval of as-built plan to close out COC
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The applicant was represented by Matthew Eddy of Baxter Nye Engineering and Attorney Theodore Schilling.

Issues discussed:

- The revision date on the plan is 10/1/2020. Date needs to be changed to 10/5 and revision number should be changed.
- There was a discussion about in lieu fees. The in lieu fee is meant for properties with very small lots not for larger properties.
- The lawn proposed to be left is in the 50-100 buffer zone. There is no hardscape available to be removed.
- There was a discussion about the area between the buildings and where the mitigation is going. Some of the lawn needs to be left in order to get on to the deck of the boathouse.
- The boathouse is all within the 50' buffer and the rebuild was grandfathered in. There was discussion about allowing additional hardscape within the 50' buffer.
- A discussion ensued regarding the old pilings being removed.

A motion was made for a finding that this is a constrained site and will accept the remainder of the mitigation in the form of an in lieu fee.

Seconded
Roll call
Finding is approved on a 4-2 vote.

A motion was made to approve the revised plan request subject to receipt of an additional revised plan with a correct date of 10/5, and the revision number and a notation on the plan that those remaining pilings will not be replaced in the future.

Seconded
Roll call

Approved on a 5-1 vote.

- | | | |
|--|--------------------------------------|---|
| B. Barbara & Randolph Noelle SE3-5677
35 Short Beach Rd., Centerville | Construct pier, ladder
kayak rack | Condition #15 &17 size
of boat Tabled from 9/8/20 |
|--|--------------------------------------|---|

Randy Noelle represented himself.

Issues discussed:

- There was discussion of prior approval and comment letter from waterways committee.
- The new vessel has a beam of 8'5" and length of 17'. There was no length indicated in the prior approval.

A motion was made to approve the revised plan request with a condition that the vessel not have more than a beam of 8'5" and the sign is to be revised to reflect that.

Seconded

Roll call

Approved unanimously

- | | | |
|--|--|-------------------------|
| C. Thomas Munsell & Susan Degennaro SE3-5736
15 Circuit Avenue, Centerville | Raze existing dwelling
construct new 3 bed-
room dwelling. | House footprint change. |
|--|--|-------------------------|

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

Issues discussed:

- The trees were approved to be removed and will be replaced with native plantings.
- The sketch dated 11/14 included the riverfront information.

A motion was made to approve the revised plan request.

Seconded

Roll call

Voted unanimously.

- | | | |
|---|---------------------------------|---|
| D. Robert & Andrea Melvin SE3-5538
250 Hollidge Hill Ln., Marstons Mills | Porch on sonotubes
and deck. | Add gravel parking
area, use of irrigation
system, added plantings. |
|---|---------------------------------|---|

The applicant was represented by Daniel Ojala of Down Cape Engineering.

Issues discussed:

- This was a COC request with a year left on the order.

There were no questions from the Commission.

A motion was made to approve the revised plan request.

Seconded

Roll call

Voted unanimously.

- | | | |
|--|-------------------------|---|
| E. Carlton and Christine Sands SE3-5661
4 Bay Shore Road, Hyannis | Raze and rebuild
SFD | Revised mitigation area
for added revetment SE3-
5811 |
|--|-------------------------|---|

The applicant was represented by Sean Riley of Coastal Engineering.

Issues discussed:

- A new NOI is being submitted for the revetment. A revised mitigation planting plan was requested by the Commission for the displacement of the approved mitigation for the original project.
- This planting plan is more condensed.

There were no questions from the Commission.

A motion was made to approve the revised plan request.
Seconded
Roll call
Voted unanimously.

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|----|---|---|--|
| F. | Assembly Required LLC SE3-5481
25, 34 Gardiner Ln. & 106 E. Bay Rd, Osterville | Demo SFD's construct
SFD, pool, pool house | Install 5' high fence, add
native plantings |
|----|---|---|--|

The applicant was represented by Sean Riley of Coastal Engineering.

- The security company for the owner recommended the fence.

There were no questions from the Commission.

A motion was made to approve the revised plan request.
Seconded
Roll call
Voted unanimously.

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|----|---|---|---|
| G. | Assembly Required LLC SE3-5474
8 East Bay Road, Osterville | Reconstruct existing
dwelling & site
Improvements | Install 5' high fence add
native plantings |
|----|---|---|---|

The applicant was represented by Sean Riley of Coastal Engineering.

- This is at the other end of the property.

There were no questions from the Commission or staff.

A motion was made to approve the revised plan request.
Seconded
Roll call
Voted unanimously.

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|----|---|--|---------------------------------------|
| H. | Halls Creek Preservation Fund, Inc. SE3-5760
25 Batchelder Street, Melrose | Beach nourishment
Squaw Island barrier spit | To allow for optional sand
fencing |
|----|---|--|---------------------------------------|

Arlene Wilson of AM Wilson Associates represented the applicant.

Issues discussed:

- A question was raised about the fencing being in place long term and if it will be taken out seasonally.
- The fence will go up in the fall, leaving the posts in and be taken down before April 1st in order to not interfere with the birds.
- The fencing will be put up and taken down annually until the project is complete.

A motion was made to approve the revised plan request.
Seconded
Roll call
Approved unanimously.

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|----|--|-------------------------------------|--|
| I. | Diana & David Gerbereux SE3-5705
96 Waters Edge, Marstons Mills | Construct SFD with
appurtenances | Add boardwalk bridge,
patio, 8' bump off back |
|----|--|-------------------------------------|--|

John O'Dea from Sullivan Engineering and Consulting represented the applicant.

There were no questions from the Commission.

A motion was made to approve the revised plan request.

Seconded

Roll call

Approved unanimously.

- | | | | |
|----|--|---------------------------------------|-------------------------------------|
| J. | John & Elizabeth Ganey SE3-5731
251 Bay Lane, Centerville | 2 additions, deck/patio
work, shed | Increase size of northerly
patio |
|----|--|---------------------------------------|-------------------------------------|

John O'Dea from Sullivan Engineering and Consulting represented the applicant.

Issues discussed:

- The Commission would like the plan to show what was originally approved and the revisions.

A motion was made to approve the revised plan request.

Seconded

Roll Call

Approved unanimously.

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|----|--|-----------------------------------|---|
| K. | 986 Sea View Ave. Nominee Trust SE3-5738
986 Sea View Ave, Osterville | Repair/replace timber
bulkhead | To allow vinyl sheeting
as alternative to timber |
|----|--|-----------------------------------|---|

John O'Dea from Sullivan Engineering and Consulting represented the applicant.

- There was discussion about how the sheeting is installed and the structural support.
- This material has been approved in the past.

Commissioner Sampou joined the meeting at this time, 4:03 p.m.

A motion was made to approve the revised plan request.

Seconded

Roll call

Voted unanimously.

x

- | | | | |
|----|--|--|--|
| L. | South Bay Road LLC SE3-5647
132 South Bay Rd., Osterville | Demolish portion of
dwelling, construct
pool, patio, pier lights | Remove existing stone
wall replace with grading |
|----|--|--|--|

John O'Dea, P.E. of Sullivan Engineering and Consulting represented the applicant.

Issued discussed:

- There was a discussion of what would be in the area where the wall is coming down. The Commission asked for some plantings to be added.

Representative requested time to speak with the applicant.

The matter was tabled until later in the meeting.

- | | | | |
|----|---|---|--|
| M. | Joan M. Legraw SE3-5433
48 Harrison Rd., Centerville | Driveway reconfigure
deck, stairs, landscape | To permit as built patio &
and driveway |
|----|---|---|--|

John O'Dea, P.E. of Sullivan Engineering and Consulting represented the applicant.

Issues discussed:

- Staff advised the Commission that the permit has expired.
- A COC will be requested.
- In 2017 the pond rose and many plantings did not survive but it appears as though some beach may have been added.
- This revised plan request will be withdrawn.

III EXTENSION REQUESTS

Project type:

Time Requested:

- A. Three Bays Preservation & MA Audubon Maintenance dredging 3 yrs. (2nd request)
0 Sampson's Island, Osterville/Cotuit SE3-5053 beach nourishment

The applicant was represented by Barry Fogel from Keegan Werlin LLP.
There were no questions from the Commission.

A motion was made to approve the extension request.
Seconded
Roll call
Voted unanimously

- B. Barry Lehman SE3-5494 Construct addition to 3 yrs. (1st request)
240 Baxter's Neck Rd., Marstons Mills SFD, pool, patio, stairs
to dock, landscaping

Matthew Eddy from Baxter Nye Engineering represented the applicant.

There were no questions from the Commission.
A motion was made to approve the extension request.
Seconded
Roll call
Voted unanimously.

- C. Town of Barnstable/MEA SE3-4712 Essential off road 1 yr. (3rd request)
Sandy Neck Beach, Barnstable vehicle management

The applicant was represented by Nina Coleman, Sandy Neck Park Manager.

Issues discussed:

- Commission commented on the extraordinary managing of the park and it's benefit to the habitat.

A motion was made to approve the extension request.
Seconded
Roll call
Voted unanimously.

- D. Town of Barnstable/MEA SE3-4713 Recreational off road 1 yr. (3rd request)
Sandy Neck Beach, Barnstable vehicle management

The applicant was represented by Nina Coleman, Sandy Neck Park Manager.
There were no questions from the Commission or staff.

A motion was made to approve the extension request.
Seconded
Roll call
Voted unanimously.

Item L. was revisited by the Commission and John O'Dea of Sullivan Engineering.

The representative was unable to speak with the owner but did speak with the landscape team. They will advise the owner they can leave the wall in place or remove it and add some plantings in the area.

A motion was made to approve the revised plan request subject to receipt of a plan revision showing added plantings in consultation with staff.
Seconded

Roll call
Voted unanimously.

IV ENFORCEMENT ORDERS

- A. Jonathan A. & Erin M. Lubash – 38 Peep Toad Rd., Centerville – Map 173 Parcel 068. Alteration of a wetland resource area – unnamed pond – by installing and maintaining an unpermitted dock.

Exhibits

- A ARC Reader plan showing resource areas
- B Screenshot showing no previous filings before Conservation for this parcel
- C Current site conditions photos

Mr. Jonathan Lubash represented himself.

Issues discussed:

- The Lubashes recently purchased this property and were not aware they needed a permit for the dock.
- Mr. Lubash was interested in maintaining the dock and is pursuing proper permitting. He will remove the dock from the buffer by October 20, 2020 and will not re-install until such time that he has proper permitting.

A motion was made to approve the enforcement order.

Seconded

Roll call

Voted unanimously.

- B. David T. & Joyce A. Lawton – 131 Abbey Gate, Cotuit – Map 021 Parcel 024. Alteration of a wetland resource area – shallow marsh – and buffer by maintaining an unpermitted path.

Exhibits

- A ARC Reader plan showing resource areas and approx. location of path
- B Photo of the existing path
- C Letter from Mr. Lawton dated 10/1/2020

No representative was present.

Issues discussed:

- The Lawton's purchased the property approximately 2 years ago. The path was in existence at that time.
- There has never been a filing with Conservation for the path.
- Mr. Lawton's letter (Exhibit C) states that the path pre-existed their purchase of the home but that he did not have an interest in pursuing permitting the path at this time. He further stated that he would meet the requirements of the enforcement order – specifically, that he would remove the boards and planks from the path, plant a native shrub at the top of the path and allow the rest of the path to revegetate naturally and he will provide monitoring photos of the shrub and path for 3 years.

A motion was made to approve the enforcement order.

Seconded

Roll call

Voted unanimously.

- C. Brian J. & Mariapaz H. Wallace – 49 Weathervane Way, Marstons Mills – Map 147 Parcel 042. Alteration of 2 resource area – inland bank and Weathervane Pond – by cutting vegetation and alteration of buffer to inland bank and Weathervane pond – by cutting vegetation.

Exhibits

- A ARC Reader plan showing resource areas impacted and their buffers
- B Photos of the unpermitted path
- C Current site condition photos

Gordon Peabody, Safe Harbor Environmental Services represented the Wallaces and Mr. Brian Wallace was present.

Issues discussed:

- The Enforcement Order was amended to 1) add BVW as an impacted resource area and 2) to include the words “and with prior Conservation staff approval” to Condition # 13 of the enforcement conditions to read, “Clearing or pruning of vegetation within the restoration planting area is prohibited except for the removal of storm damaged limbs and branches which may impact the newly planted specimens and with prior Conservation staff approval.”.
- The path is unpermitted and was cut into 3 separate private properties.
- The clearing at the edge of the pond, inland bank and BVW covers approximately 800 sq. ft. in area
- If total restoration planting cannot be completed by October 31, 2020, the Wallaces will notify the Conservation Agent and will stabilize the site for winter. Restoration planting to be completed by May 15, 2021.

A motion was made to approve the amended enforcement order.
 Seconded
 Roll call
 Voted unanimously.

- D. Ira F. Silverman – 85 Main St., West Barnstable – Map 111 Parcel 008.001. Alteration of the buffer to a wetland resource area – salt marsh – by cutting trees and shrubs.
- This item was tabled to November 3, 2020.

V WARNING LETTERS

- A. Ninety Bay View LLC. – 90 Bayview Rd., Barnstable – Map 319 Parcel 031. Work beyond Mitigation Planting Plan by installing permanent irrigation and sod grass within the mitigation area.

Noted. Sod and permanent irrigation have been removed from mitigation planting area,

- B. Gary S. & Carolyn M. Murphy – 460 Church St., West Barnstable – Map 176 Parcel 010. Violation of on-going Special Condition to (DA-98008).

Noted. Supposed to demarcate the 50’ buffer and supply name of landscaper by November 20, 2020.

VI OLD AND NEW BUSINESS

- A. Stanley Davitoria – 55/61 Beechwood Road, Centerville – Map 252 Parcel 182 and 108. Review of Enforcement Order Response Plan (Restoration Planting Plan and Report). **Continued from 8/11/20**

Exhibits

- A Restoration Plan by Wilkinson Ecological Design dated 9/28/2020
- B Vegetation Report by Wilkinson Ecological Design dated 9/28/2020

Seth Wilkinson, Wilkinson Ecological Design, represented Mr. Davitoria and Mr. Stanley Davitoria was present.

Issues discussed:

- Total DBH and Caliper inch to be planted = 63.1”
- Many of the trees and shrubs that were impacted will be managed under stump-sprout management.
- Total of 29 trees (63.5” diam total) and 24 shrubs to be planted. Bare soil to be seeded with Cape Cod Meadow mix.

- The 4' access path to water will be relocated. The starting point is the same place but the end point is approximately 63' to the WNW of originally proposed end point. A revised plan will be submitted showing this change.

A motion was made to approve the enforcement order response plan.

Seconded

Roll call

Voted unanimously.

- B. 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 6/16/20**

- This item was tabled to November 3, 2020.

Chair Tom Lee made the following statement:

Before I open the next item, I want to mention the following.

Under normal enforcement cases, the Commissioners will receive the notes from our agent before the hearing. Commissioners will review the notes and ask questions during the hearing. Commissioners can revise the language or conditions for the enforcement order during the hearing. Then we vote for the enforcement order. Once the enforcement order is voted and approved, no Commissioner can talk to the agent requesting a change or tone down the language on the approved enforcement order. This is critical to understand this process. Also, I would like to ask the Commissioners to contact Darcy or I for any questions from now on. This means that no commissioners can contact the staff, except Darcy.

In this case, Mr. Larry Morin was at the site by coincidence and did not participate in the site meeting with our Agent, Engineer and others. However, he later called our Agent asking him to tone down the language on the enforcement order. He thought the enforcement was a draft. However, the enforcement order was voted and approved. This action is inappropriate. For the transparency and caution, I have asked Mr. Morin to recuse himself on this matter.

- C. Patrick H. Carey AND Toscafund LTD – 765 Old Post Rd., Cotuit – Map 073 Parcel 026. Review of Enforcement Order Response Plan (Restoration Planting Plan and Report). **Continued from 9/8/20**

Exhibits

A Enforcement Sketch Plan by Sullivan Engineering dated 10/2/2020

B Enforcement Order Response Report by Sullivan Engineering dated 10/5/2020

John O’Dea, Sullivan Engineering, represented the Carey’s and Ms. Maggie Carey was present.

Issues discussed:

- Number of trees cut. There were several stumps on the bank that were cut but most of these were of indeterminate species because they were cut more than 4 or 5 years ago. Consensus between horticulturalist, project engineer and Conservation staff is 2 red cedar (total dbh 5”) and 1 Quercus spp. (diam. = 3”) were cut. Proposed replacement with 3 red cedar (6” diam tot.) and 1 Dogwood (2” diam.).
- The unpermitted meadow area created 5 years ago (by previous homeowner) will be supplemented with clusters of native dogwood shrubs.
- The impacted area that consists mostly of bare soil will be seeded with Cape Cod Meadow Mix and the area stabilized with jute matting. Jute matting will also be placed on the coastal bank to prepare the site for winter and prevent erosion. Initial plantings according to the approved plan will be installed based on availability of stock and may be planted until October 31, 2020 or an alternative date specified by the certified horticulturist (Chris Joyce, Joyce Landscaping). After said date, restoration planting will cease for the year and resume on a suitable date in the spring of 2021 (determined by Chris Joyce) but will be completed by May 15, 2021.

A motion was made to approve the enforcement order response plan.

Seconded

Roll call

Voted unanimously

4:30 PM AGENDA

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.

REMINDER TO APPLICANTS:

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

VII REQUESTS FOR DETERMINATION

- A. **Cathy Fair.** Proposed landscape repairs and enhancements due to septic renovations at 1379 Falmouth Road, Centerville as show on Assessor's Map 229 Parcel 087. DA-20033

The applicant was represented by Joe Theoharidis of Maffei Landscape.

Issues discussed:

- There were no questions from Commissioners.
- There was no public comment.

A motion was made to approve as a negative determination.

Seconded

Roll call

Voted unanimously.

VIII NOTICES OF INTENT

- B. **Jeffrey Fanara, Bella Pools.** Installation of an in-ground swimming pool, pool decking, cabana, pool mechanicals and fencing at 27 Kalmia Way, Centerville as shown on Assessor's Map 188 Parcel 049. **SE3-5818**

The applicant was represented by Robin Wilcox of Sweetser Engineering.
DEP issued a DEP number but had no comments on the project.

Issues discussed:

- Staff asked if there were any plantings being put in behind the fence.
- There was a discussion about the types of plantings.

There was no public comment.

A motion was made to approve the project as submitted subject to the receipt of a revised plan showing the planting of 12 shrubs either juniper or other native shrubs chosen in consultation with staff.

Seconded

Roll

Voted unanimously.

A motion was made to adjourn.

Seconded

Roll call

Voted unanimously.

The time was 5:25 p.m.