



Town of Barnstable Conservation Commission

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MINUTES – CONSERVATION COMMISSION HEARING

DATE: October 27, 2020 6:30 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.

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 June 23, 2020 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/99398080980>

Meeting ID: 993 9808 0980

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.

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 6:30 p.m. by Chair F. P. (Tom) Lee. Also in attendance were: Clerk Dennis Houle, Vice Chair Louise R. Foster, Commissioners John Abodeceely, George Gillmore, and Larry Morin. Pete Sampou was absent.

Conservation Administrator, Darcy Karle was present along with Administrative Assistant, Kim Cavanaugh, and Conservation Agent, Ed Hoopes.

I. REQUESTS FOR DETERMINATION

- A. Jon M. Alander and Kristin Shepherd, Co-Trustees.** Abandon or remove failed cesspool. Install new Title 5 sewage disposal system at 20 Portside Drive, Hyannis as shown on Assessor's Map 289 Parcel 072. **DA-20034**

The applicant was represented by Raul Lizardi from Cape and Islands Engineering.

Issues discussed:

- A question was raised about Health Department approval.
- There was discussion/clarification on the difference between abandoning and removing the cesspool. If the new system is in close proximity it can be removed. If not it is better to pump and fill it with sand for less disturbance.

There was no public comment.

A motion was made to approve a negative determination.

Seconded

Roll call

Voted unanimously.

B. 879 Craigville Beach Road, LLC. To request permission to retain existing fence along the pedestrian easement footpath at 870 Craigville Beach Road, Centerville as shown on Assessor's Map 225 Parcel 030. **DA-20036**

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

Issues discussed:

- There was a complaint filed when they put up the fence. Conservation Agent Ed Hoopes investigated. This application was filed after an enforcement order had been issued.
- Conservation Agent Ed Hoopes reviewed the time line of conditions surrounding the fence issue.
- An as built plan needs to be filed for the COC which is still outstanding.
- Only approval of the fence, no other parts of the plan, is being addressed at this hearing.
- There is a private easement that is 5' wide for the condo to the east and possibly across the street for access to the beach.
- The opposition to a stockade fence by Agent Ed Hoopes is that it will stop most of the movement of the sand. A split rail fence will allow for a more natural flow of sand.
- The reasons the owner wants a stockade fence vs. the split rail fence is to protect children from running into the street.
- There was discussion about spacing under the fence for the passing of wildlife.
- The owner told Agent Ed Hoopes he was going to remove the fence but then filed the RDA.

Thomas Poti the home owner spoke. The fence has been there for almost 30 years. There was also a shed before the construction. The abutter did not have a view previously. An extra 2 feet has been given to the easement. A split rail fence would not prevent people from walking through his property. It is a privacy issue as well as a safety issue to prevent his 3 year old from running into the street. The abutter is just trying to get a view that he did not have previously.

Public comment:

Rich Capen an abutter asked if the fence is on the plan that was approved. It is not. He said he does have that view because he has the adjacent property as well. The fence was not there when he purchased the property. He purchased the property as an investment.

Greg and Elizabeth Jones. Asked what this has to do with Conservation. The fence is in Conservation jurisdiction.

The representative Dan Ojala said he made a mistake by not putting the fence on the original plan. It has been there and should have been put on the plan. They are willing to take six inches off the top and the bottom to accommodate for the view and the passing of wildlife.

- A question was raised if this is to approve the fence east to west as well as north and south. There is an extension of the fence into the paved area.

- The size of the house is not being approved. It will have to go back in front of the Commission for a Certificate of Compliance.
- There needs to be clarification on the revised plan to have a six inch clearance.
- There was discussion of maintaining the sand from under the fence if it builds up.

A motion was made to approve the project as a negative determination approving the fence extension running north to south in the paved area as shown on the plan, approve the fence running east to west, and asking that the 15' section running east to west have 6 inches cut off the bottom. Not approving any change to the dimensions of the house. It will have to wait for the as-built plan at the time of the Certificate of Compliance. The owner will not be required to maintain the 6 inches under the fence.

Seconded

Roll call

Voted unanimously.

- C. **Cape Cod Oyster Company.** Normal maintenance and improvements to land in aqua-cultural use to include a boat lift at existing bulkhead at 262 Bridge Street, Osterville as shown on Assessor's Map 093 parcel 021 001. DA-20038

The agenda items were taken out of order E. Gordon, and F. Corcoran were heard next.

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

Issues discussed:

- A question was raised about the guidelines for lifts. Should the guidelines apply to this site or should an exception be made for commercial vs. recreational use. Commercial operations are not subject to recreational regulations. This would not be governed by the paragraph in Chapter 703.
- One of the requirements that would carry over from Chapter 703 is that it not be hydraulic. The system being asked for is electric.
- A question was raised if an RDA is the appropriate filing for this and if this is being considered as an aqua-cultural exemption.
- There should be a condition that if it is no longer a commercial or aqua-cultural site the lift would have to be removed.

There was no public comment.

A motion was made for a finding that the boat lift is being considered for exemption under aqua-cultural use.

Seconded

Roll call

Voted unanimously.

Based on the finding a motion was made to approve a negative determination. If the boat lift is no longer used for aqua-cultural use or commercial use it would have to be removed or would have to be applied for under Chapter 703 for private recreational use.

Seconded

Roll call

Voted unanimously.

- D. **South Bluff Realty Trust of 1997.** Proposed roof gable to the existing dormer, and proposed porch 98' from coastal bank on an existing deck with a gable above at 195 Seapuit River Road, Osterville as shown on Assessor's Map 070 Parcel 015. DA-20039

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

There was a discussion about two expired permits. Normally they need to request a close out before any work could be started under this RDA.

There was no public comment.

A motion was made to approve as a negative determination with a requirement that the applicant request the expired permits be closed out before work starts on this project.

Seconded

Roll call

Voted unanimously.

- E. **Bruce and Pamela Gordon.** Removal of six tall trees within the 50' buffer zone from Shubael Pond due to decreased solar production at 153 Evergreen Drive, Marstons Mills as shown on Assessor's Map 125 Parcel 065. DA- 20040

Bruce Gordon represented himself.

Issues discussed:

- Applicant is requesting removal of trees because he was told he cannot top evergreens because they will not survive.
- Applicant is asking to remove trees in the 50' buffer. Normally a notice of intent is required within the 50' buffer.
- Darcy sent out minutes from 10/2017. The minutes indicated the tree contractor needed to file a Notice of Intent.
- Staff had indicated they only needed to file an RDA. The staff person may not have been aware the trees were in the 50' buffer.
- The guidelines state an NOI is required within the 50' buffer.
- The solar was put in many years ago when the trees were not as tall. The applicant would be willing to replace the trees cut down.
- An arborist needs to be consulted to address what trees are going to be taken and what they are going to be replaced with and where.
- Although the solar expert may have said the trees are shading the panels, the photograph shows shadows but they are not reaching the house. It only affects the winter solar.
- The trees are Black Cherry which do not get that tall.
- A report from the arborist needs to be submitted showing the size of the caliper of trees being removed and the caliper of the replacements.
- The trees cannot be placed in the same spot because of the stump. Stumps should not be removed on a slope.
- It was recommended to withdraw the application and refile a Notice of Intent. The NOI must include a stamped engineered plan.

The applicant requested to withdraw the application but would like to put the application fee toward the new NOI application. Some of the fee may be applied but some fees go to the State.

- F. **Robert Corcoran.** Addition of a second floor to the existing structure at 59 Seventh Avenue, Hyannis as shown on Assessor's Map 246 Parcel 153. DA-20037

The applicant represented himself.

There were no questions from the Commissioners

There was no public comment.

A motion was made to approve a negative determination.

Seconded
Roll call
Voted unanimously.

C. RDA Cape Cod Oyster Company and D. South Bluff Realty Trust were heard at this time. John O’Dea returned to the meeting.

II. NOTICES OF INTENT

- A. Daniel C. Hostetter, Jr.** To construct a pool and patio at 285 Windswept Way, Osterville as shown on Assessor’s Map 052 Parcel 015 004.

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

Issues discussed:

- A question was addressed about the draw down at the end of the season.

There was no public comment.

A motion was made to approve the project as submitted.

Seconded

Roll call

Voted unanimously.

- B. Elisa Cunningham.** Landscaping and driveway extension at 547 Main Street, Osterville as shown on Assessor’s Map 141 Parcel 100. SE3-5821

The applicant was represented by Phillip Cheney, Landscape Designer.

Issues discussed:

- There was discussion on the size of the view corridor.
- There was discussion about maintaining of bushes to 5 – 6 feet annually, it may be excessive.
- They could eliminate the annual cutting by using shrubs that will not grow that high.
- The amount of planting is substantial. There should be monitoring reports for 3 years.
- Staff asked if they can switch out the plantings to avoid annual pruning.
- The view corridor will stay on the plan. If something grows too high it can be approved by staff to be pruned. Winterberry, bayberry and chokeberry are the plants in question.
- Vista pruning is allowed in a view corridor with a special condition.

There was no public comment.

A motion was made to approve the project as submitted with annual monitoring reports submitted for three years.

Seconded

Roll call

Voted unanimously.

- C. James Barri.** To construct an in-ground swimming pool, pool patio and perform landscaping within a portion of the outer 100’ buffer zone to a bordering vegetated wetland at 110 Meadow Lane, West Barnstable as shown on Assessor’s Map 133 Parcel 024. SE3-5823

The applicant was represented by Robert Gray, SPWS, RS, CSE of Sabatia, Inc.

Issues discussed:

- There was discussion about how the water is going to be treated and what the draw down method is.
- The 50’ buffer is being left undisturbed so no mitigation is required.

- They are planting cypress and huckleberry.

Public comment:

Greg Jones, abutter is concerned about the impact on their home which is adjacent to the project. He is concerned about the well water and contamination. Mr. Jones asked about the fencing running down the length of the property line which will be completely visible to their property, and if the foliage will be on the inside or outside of the fence.

The representative responded that the engineer put the leach pit over 110' from the well, and it is a down hill flow.

Kris Clark asked if the fence could have clearance under it.

- There was discussion about the pool regulations which do not allow for a clearance.
- There was discussion about pulling the fence back a little and not go all the way to the 50' buffer line.

A motion was made to approve the project as submitted subject to submittal of a revised plan moving the pool fence landward of the 50' buffer.

Seconded

Roll call

Voted unanimously.

- D. Joanna W. Chodes, Trustee.** To construct and maintain a 5 foot wide path and 4 foot wide elevated boardwalk over the existing freshwater wetland to access the beach on Long Pond at 791 Santuit Newtown Road, Marstons Mills as shown on Assessor's Map 028 Parcel 005. SE3-5819

The applicant was represented by Mike McGrath, PLS, PE of Holmes and McGrath.

Issues discussed:

- There may be some plants that did not survive and need to be replaced under a previous order. The plants can be addressed when a COC is requested and do not need approval at this hearing.
- There is no need to revegetate the existing path as it will be grown over within a couple of years.

There was no public comment.

A motion was made for a finding that they are allowing for a 5' wide path in the 50' buffer due to the demonstrated need of the applicant with regard to poison ivy sensitivity.

Seconded

Roll call

Voted unanimously.

Based on the finding a motion was made to approve the project as submitted with a 5' wide path to remain so long as there is a demonstrated need.

Seconded

Roll call

Voted unanimously.

- E. TMT Realty Trust, Laurie J. Hall, Trustee.** Proposed construction of a family apartment cottage and associated site improvements at 979 Sea View Avenue, Osterville as shown on Assessor's Map 090 Parcel 008. SE3-5824

The applicant was represented by Attorney Sarah Turano-Flores and Sean Riley, P.E. of Coastal Engineering Inc.

Issued discussed:

- The plan has a revision date of 10/22/20.
- The plan was reviewed previously in the delineation of the dune. When it was approved earlier there was no finding made on the significance of the dune.

There was no public comment.

A motion was made to approve the project based on the October 22nd revised plan.

Seconded

Roll call

Voted unanimously.

- F. Adrian P. and Mary L. Pryshlak.** To construct and maintain a boardwalk, ramp, and float at 0 Long Beach Road, Osterville as shown on Assessor’s Map 185 Parcel 044. SE3-5822

The applicant requested a continuance to 11/10 with no testimony.

A motion was made to continue to 11/10 with no testimony.

Seconded

Roll call

Voted unanimously.

III. CONTINUANCES

- A. Olga Shemanyuk.** Landscape improvements to include replace rotting railroad tie steps, old concrete patio, brick walks and timber terraced walls with modular block wall and steps, new brick walk, paver or stone patio under deck with added drainage structures to mitigate run-off, boulders to be added in place of timbers at edge of pond to stem erosion at 30 Lauren Drive, Marstons Mills as shown on Assessor’s Map 101 Parcel 062. **SE3-5814 Continued from 10/13 for NHESP only.**

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

The representative reported receiving the letter from NHESP on 10/26/2020.

The letter requires a condition be included in the Order of Conditions. NHESP determined that the project will not result in a prohibited Take of state-listed rare species provided that all substrate/fill are certified weed free.

Based on the receipt of the letter from NHESP a motion was made to add the condition required by NHESP, close the public hearing, and ask staff to issue the Order of Conditions.

Seconded

Roll call

Voted unanimously.

IV. CERTIFICATES OF COMPLIANCE

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

- | | | | |
|----|--|-----------------------|--|
| A. | Melvin
250 Hollidge Hill Lane, Marstons Mills | SE3-5538
(coc, ez) | construct porch and deck *
- Hamblin Pond |
|----|--|-----------------------|--|

B. O'Donnell SE3-5430 (coc, ez) construct pool *
25 Oyster Way, Oyster Harbors - West Bay

A motion was made to approve A. and B.

Seconded

Roll call

Voted unanimously.

V. MINUTES

A. 10/06/2020

B. 10/13/2020

A motion was made to approve A. and B. as submitted.

Seconded

Roll call

Voted unanimously.

A motion was made to adjourn.

Seconded

Roll call

Voted unanimously

The time was 9:03 p.m.