



# Town of Barnstable Conservation Commission

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## MINUTES – CONSERVATION COMMISSION HEARING

**DATE: January 19, 2021 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.

The Conservation Commission's Public Hearing will be held by remote participation methods as a result of the COVID-19 state of emergency in the Commonwealth of Massachusetts.

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/98189545498>

**Meeting ID: 981 8954 5498**

**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](mailto: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](mailto: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: Vice Chair Louise R. Foster, Clerk George Gillmore, Commissioners John Abodeley, Dennis Houle, Larry Morin and Pete Sampou.

Conservation Administrator, Darcy Karle was present along with Administrative Assistant, Kim Cavanaugh.

### **I. REQUESTS FOR DETERMINATION**

- A. **Donna Quirk.** Install 15' X 40' bluestone patio in proposed patio area at 557 Old Craigville Road, Centerville as shown on Assessor's Map 226 Parcel 099. DA-21003  
The applicant was represented by Camden Lariviere of Jaxtimer Landscaping, LLC.

**Issues discussed:**

- The project is between the 50' and 100' BVW.
- There was no public comment.
- A concrete pad could be used for the project with notification to staff.

A motion was made to approve the project as a negative determination.  
Seconded and voted unanimously by roll call.

**B. Eileen L. Heng, Trustee.** Septic system upgrade at 160 Point Hill Road, West Barnstable as shown on Assessor's Map 135 Parcel 005. DA-21004

The applicant was represented by Michael Pimentel from JC Engineering.

**Issues discussed:**

- A question was raised if it would be more direct to have sewage come out the side of the leaching field.
- They are waiting for Conservation Commission approval before filing with the Health Department.

There was no public comment.

A motion was made to approve the project as a negative determination.  
Seconded and voted unanimously by roll call.

**II. NOTICES OF INTENT**

**A. Robin B. Schwartz.** Demolition of existing residence and construction of new residence, including pool, hardscape, sewage disposal system, stairs to dock and landscaping amenities at 240 Baxters Neck Road, Marstons Mills as shown on Assessor's Map 075 Parcel 024. **SE3-5840**

The applicant was represented by Mike Ball, P.E. and Mathew Eddy, P.E. of Baxter Nye Engineering.

Louise Foster recused herself. Her sister is an owner of an abutting property.

**Issues discussed:**

- The house has been pulled as close to the street Zoning allows.
- The planting plan was reviewed by Sean Papich, Landscape Architect, Hingham.
- Annual monitoring reports should be required for 3 years.
- The mitigation calculations were reviewed.
- A question was raised if the house is being sold.
- There was discussion on the difference between renovating an existing home or a complete demolition.
- The new home looks substantially larger than the existing home. A question was raised of what the difference in hardscape is between the 0-50' and the 50-100' buffer as existing vs. what is proposed.
- The retaining wall dimensions were reviewed. Goes from 0 high to six feet high.
- The mitigation plantings on the seaward side were discussed. There was a filing in 2018 for the entire area. It has already been addressed. There are 2 vista view corridors on the plan that were previously approved.
- There are more shrubs, ground cover, and grasses being used rather than large trees.
- The plan should be labeled with what has already been approved vs. what is new.
- The square footage of existing building vs. new building should be submitted, in terms of hardscape issues. A continuance may be needed to get that information.
- A couple of canopy trees outside of the view corridors would be a nice addition.
- Pulling the building closer to street is a good feature of the plan.

- The proposed landscape plan needs to be reviewed by staff.

There was no public comment.

A motion was made to continue the matter to 2/2/21 for submitting the revised information. It should be submitted to staff by the Tuesday before the hearing.

Seconded and voted unanimously by roll call.  
Commissioner Foster recused.

- B. Matthew Barry.** Demolish existing single dwelling and construct new single family dwelling with patio and pool at 28 Folsom Avenue, Hyannis as shown on Assessor's Map 324 Parcel 079. **SE3-5839 \$20.58**

The applicant was represented by Adam Hostetter of Complete Home Group.

**Issues discussed:**

- There were no questions from Commissioners.

Public comment:

Harry Baker asked where the drywells are going to be placed in relation to the water table. The representative advised there will be 30-50 gallon drywells. The locations will be about 15 feet from the foundation. Mr. Baker also asked if each downspout would get its own drywell and if they could be connected into the mitigation area.

The drywells should be shown on the plan.

Tris Weller – Weller and Associates advised there will be two sets of drywells connected by pipe. They will be added to the plan.

Glenn Ruben 22 Folsom Avenue - Asked if the trees being taken down will be replaced.

The representative advised the trees are marked on the plan.

Some of the oak trees are coming down, some are not.

Mr. Ruben asked how much further the new home is to the street as opposed to the old home. It may affect his view. The representative advised the new home is approximately 10 feet closer than the existing plan, but it also shifts, so sit should not affect his view.

Dianne Muller - 64 Folsom Avenue

The pool is 15' from their property line. She asked the representative what kind of screening and fencing will be around the pool. The representative advised there will be screening and fencing per code. The landscape plan has not been fully developed. It is outside the 100' buffer so it is not in Conservation jurisdiction.

The representative will work with them to do something appropriate.

A motion was made to approve the project subject to submission of a revised plan to show the drywells.

Seconded and voted unanimously.

### **III. CONTINUANCES**

- A. Ropes Farm, LLC.** Proposed Land Management to include tree removal, invasive species removal and installation of native plantings at 135 Putnam Avenue, Cotuit as shown on Assessor's Map 036 Parcel 040-001. **SE3-5835 Cont frm 1/5 for sole purpose of DEP number and any comments.**

The DEP number was received. There were no comments.

All Commissioners present for quorum.

A motion was made to close the hearing and have staff issue the Order of Conditions.

Seconded and voted unanimously.

Previous motion was to approve the project subject to submission of monitoring reports for 3 years.

- B. **Mac Davis.** Home exterior renovations, deck reconstruction with 62 +/- sf enlargement, retaining wall re-build, retaining wall removal, pond shore access path, tree removals, pond shore vegetation management for view window at 253 Tower Hill Road, Osterville as shown on Assessor's Map 118 Parcel 093. **SE3-5836 Continued from 1/5**

A revised plan dated 1/11/21 was submitted earlier in the day.

The applicant was represented by Mike Ball of Marsh Matters Environmental.

The removal of the damaged trees was taken off the plan (see cover letter).

The changes were reviewed.

There were no questions from Commissioners.

There was no public comment.

A motion was made to approve the project with the revised plan dated 1/11/21.

Seconded and voted unanimously by roll call.

- C. **Raymond Ferretti.** Proposed construction of a pier and dock, along with the replacement of an existing stairway leading from lawn at the top of the slope to the shore of Mystic Lake at the base of the slope at 52 Halletts Lane, Marstons Mills as shown on Assessor's Map 064 Parcel 016. **SE3-5837 Continued from 1/5 Continuance requested to 2/2**

A motion was made to approve a continuance to 2/2/21 without testimony.

Seconded and voted unanimously by roll call.

- D. **Donald J. MacKinnon, Trustee, MCCM Realty Trust.** Removal of 3,000 s.f. of an existing historic, solid fill wharf (first licensed in 1874), construction of low vinyl bulkheads along 300 s.f. portion to remain, the landward relocation of existing rock revetment, installation of replacement pier, ramp, floats and appurtenances, establishment of halophytic marsh species in intertidal zone, and installation of seasonal town office building on 15'x30' deck at 33 Oyster Place Road, Cotuit Map 035 Parcel 101 and 910 Main Street, Cotuit Map 035 Parcel 090 . **SE3-5833 Continued from 12/22, 3<sup>rd</sup> continuance.**

The applicant was represented by Sarah Turano-Flores and Eliza Cox of Nutter McLellan and Fitch. Also present were members of the project team, John O'Dea, P.E., the project engineer, Tray Ruskin from Applied Coastal, and Seth Wilkinson of Wilkinson Ecological Design.

There will be zoning relief also included with this project. The Zoning Board meeting will take place next week. Sarah reviewed the project with a slide presentation.

John O'Dea reviewed the site plan and work protocol.

Waiver 704 H will be needed.

Waiver J1 length waiver will be needed.

Seth Wilkinson of Wilkinson Ecological Design reviewed the restoration plan.

DJ MacKinnon addressed the Commission.

Assistant Town Attorney, Kate Connolly was consulted for this application.

Comments:

DMF letter dated 11/20/2020 was read into record.

Letter from Elizabeth Lewis, Town of Barnstable Shellfish Biologist dated 12/5 was read into record

There were no comments submitted by the Waterways Committee.

Brian Taylor comment letter was read into record.

Derek Lawson comment letter was read into record.

Harbor Master comment letter read into record.

Public comment letters were summarized.

26 opposed

4 supported the project.

The abutter notification issue was addressed – mooring and easement owners are not required to be notified of these applications.

Issues discussed:

- Many of the letters dealt with dock overlay. Conservation has no jurisdiction. It is ZBA jurisdiction.
- There was discussion on navigation questions raised relative to where the fire boat would go, and dinghy docks.

Chief Paul Rude, Cotuit Fire addressed the Commission.

Fire boat is 8' 5" wide. The largest dinghy is 12'-15' in length. There should be room to navigate.

Sarah Turano Flores advised the Commission the Waterways Committee reviewed the project. They deal with navigation. The 12/8/21 letter noted the Waterways Committee supports the project. Cotuit launch operator also has a comment letter in support of the project.

- Waiver for length was addressed. It would need to be a 38' waiver.
- A question was raised if the depth could be achieved with a shorter dock.
- The additional length gives linear footage to tie up the additional vessels of the Clean Water Coalition and the Fire boat.
- Impact on recreational use regulation was discussed. Some of the comment letters stated this would interfere with recreational use.
- Dock and pier regulations were discussed relative to if there is an existing pier and if this is a residential use pier.
- Chapter 237 regulations were analyzed and performance standards in the application were looked at. Land under ocean, coastal beaches and coastal banks, terminology needs to be looked at more closely.
- There were a number of issues raised in the comment letters received that are not within Conservation jurisdiction.
- A question was raised regarding the reasoning used to determine the project would improve water quality. Commissioner does not see evidence of it in the filing.
- Trey Ruthven of Applied Coastal Engineering addressed the questions. Water quality will not change significantly.
- Commissioner feels the six engines that will be put on this pier will affect water quality. The black mud will be very sensitive to prop disturbance. A huge amount of nitrogen will be disturbed in these muds from the engines. There will be no improvement to water quality.

Written supplementation could be submitted at a future hearing.

- Navigation issues were discussed.
- A question was raised about mooring displacement. Will it affect navigation.

- A question was raised regarding the calculation of length of pier. The portion of the wharf that is remaining was not calculated into the equation. Another 44 feet needs to be added to that length.
- Further discussion on the length of the pier. They could just add a ramp and float to the current wharf without removing the wharf. Prior wharf projects similar to this were reviewed.
- Commissioner expressed real concern about taking out something that is very well established as a land form. It has been there well over a hundred years. To remove it is like removing pieces of the coast.
- There was discussion on this being a shared pier.

Public comment:

Larry Laser, owner 916 Main Street. There is a lot of marine life in the rocks. He has had several discussions with Fire Chief Rhude who said the current location of the fire boat is fine. DJ MacKinnon's boat is not included in the drawing. Kids are swimming in the area. Navigation is an issue. This is a small harbor. He finds it dangerous and irresponsible. Mr. Laser asked how the Coalition boat will get in and out if fire boat is there.

Matthew Walter, resident 932 Main Street. His house has been in the family since 1973. Shell fishing has been done in this area recently. DNR said it is an excellent shellfish habitat area. There will be impact on recreational shell fishing and long term environmental impacts. This would set precedence issues. Easement - they have used the walkway for the past 42 years. The Fire Department boats have been moored at his dock face out. There are a number of private docks that are already being utilized by the FD.

John Townes - 150 Fest Hill Circle. Mr. Townes stated he stands in opposition of the building of the new dock. Cotuit Oyster owns the property on which the new dock would be built. The positive affects explained by applicant are not appropriate.

Michael Fiore – 932 Main Street, neighbor to proposed pier. He spent time as a child on the rocks. There is sea life there. He questions how they came to the conclusion there is limited sea life in the area. It is a sea wall not a pier currently. The fire boat has been tied up facing out at the other docks in the area. He is opposed to the project.

Jesse Hurley - 20 Oyster Place. Long-time resident and neighbor is in support of the project. The current wharf is not amenable to children. He feels it is an improvement to the area. Is in support of the project.

Arlene Wilson – Submitted a 5 page letter. The inter tidal salt marsh is proposed to be 1' above the inter tidal zone. There are questions about the material that is going to be removed. The material was placed there when Cotuit was an industrial harbor. There may be artifacts in the material removed. There should be some investigation. Coastal resiliency and retreat does not relate to shoving land mass back, it relates to the moving of buildings. The new rip rap is shown as elevation. The original license showed it at elevation 6. Elevation 6 on the old plan is now elevation 4. The new wall is higher than the old wall was supposed to be. The area labeled as intertidal will actually be beach. Regarding the permanent easement for the boats, they do not have the right to do that. They can only say they can use it for 30 years, per the Chapter 91 license regulations.

Jade Kelley –31 Keela Road. The applicants presentation talked about benefitting the environment. That was not shown to be true. The ZBA hears the overlay issue. The ZBA relies on what the Conservation Commission discusses. It should be taken into consideration. The FD should have had a better idea where they wanted to keep their boat before they purchased it. Bathrooms and town offices are not needed in this area. It is a small area.

Ron Mycock – Community support. Asked if any board in the village voted to approve this project and if there is anything in writing.

Alison Lowe - Her comments were submitted in writing. The Chief cannot approve the project on behalf of the Fire District. The joint committee would have to approve it. The proposed town office should not be in the village of Cotuit. She asked what town business she could conduct there. There are no parking attendants or dock staff at this location. She asked if the Town has committed to open an office there and if there really is any public benefit.

Ed Gargiulo 80 Ocean View Ave. Resident, boat owner, dingy owner. There is case law saying that mooring owners have a right to real estate. There is an issue of notice. It would be helpful for the mooring owners to be aware. There are at least seven moorings that will be affected by this pier. There are five commercial users of the west side of the dock which will be most affected by this pier. It is clear that it was meant as erosion control not as a wharf. There has never been a Chapter 91 license there. It is not a pier or wharf. It is an erosion device. Applicant has asked Commission to ignore the evidence.

Cathy Grove - Many kids use the dingy dock. It will be a safety problem.

Lloyd Bunting –916 Main. Biggest concern is the misrepresentation of the fire boat, and the access from Oyster Place to the beach. He is in objection to the project.

Zenas Crocker – Addressed the water quality issue. The applicant has offered to put in two nitro septic systems. Everyone in the area should consider putting these in. The black algae is from septic systems. This dock is trivial compared to the dozens of moorings in the area. The chain of the mooring destroys the bottom. Applicant has offered to dredge the area. He would like people to get involved in controlling the waste and waste water going in to the bays.

Stuart Rapp – Will raise his comments at the next hearing.

Tina Soares - Is impressed with the depth the MacKinnon's have gone to for this project. Hoping for better solutions as a community. She is not opposed to the project.

Mia Walter, 932 Main Street – Efforts to improve the environment should not be contingent on building of a dock. There is already a public walkway. It is not being added. There are 55 people wanting to comment at the meeting. Most were informed by neighbors, not notified by the applicant.

Claudia Walter – No additional comments. She is opposed to the project.

Loretta Foss is strongly opposed.

Richard Pisano, member of Cotuit Board of Fire Commissioners. They feel it is a matter worthy of pursuit. A no cost location for the Fire boat is an option. They endorsed the project and submitted letters for the file.

Andrew Howell – 6 Newtown Drive Hingham. He is in favor of the project.

Marisa Fiore Kelley, 932 Main Street, Cotuit. Is opposed to the project. The project will cause irreversible damage to the water quality. The salt marsh will not withstand any winter storms. Navigational hazards need to be taken into account. There are many kids in the area.

William Babcock wrote letter. Agrees with Zenis Crocker. Need more nitro septic systems which is not needed to put in a dock. Discussion tonight shows the benefits are minimal at best. It will not have a broad effect on water quality.

Laura Toner. Her concern is with safety. This is not just a neighbor opposition. It is January and many people are away and do not even know about this project.

Matthew Walter. The fire boat is not under the prevue of the Conservation Commission.

- Commissioner raised a question on why there are two addresses on the application. 910 Main and 33 Oyster Place. The revetment will spill over to the 910 parcel. Pier will service 910 Main Street. 33 Oyster is the

only property eligible at this time. It is not a shared pier. It is intended to benefit 910 Main. It will have to be issued to 33 Oyster.

- Commissioner noted a dock does not have to improve water quality under Conservation Commission regulations.

A continuance was requested to 2/2/2021.

A motion was made to continue the hearing to 2/2/2021.  
Seconded and vote unanimously by roll call.

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

A.	Vedder 119 Island Avenue, Hyannisport	SE3-5105	(coc, ez)	-	replace pilings & sheeting under boat house * Nantucket Sound
B.	Jenkins 195 Seapuit River Road, Oyster Harbors	SE3-4874	(coc, ez)	-	dredging; spoils deposited on Dead Neck Seapuit River
C.	Bancroft 21 Bancroft Circle, West Barnstable	SE3-5422	(coc, ez)	-	permit existing dock & hardscape * Garrett's Pond

A motion was made to approve A-C  
Seconded and voted unanimously by roll call.

**V. OLD AND NEW BUSINESS**

A. Update on Scudder Lane Projects – Emergency Repair.

During site visit there are two types of PVC pipe next to the mat that look to be active. There is a 2” drain pipe. Irrigation heads were found close to edge of the bank. The engineer needs to address these. The 4” pipe is an active pipe as there is a gully of erosion seen.

There are cracks at the top. The mats are a very temporary fix. Water run-off from lawns needs to be addressed. Bank will have to be cut back.

The Consultants are coming back on 2/2 /21 with revised plans.  
Staff asked Nate to speak with the homeowners.

A motion was made to adjourn  
Seconded and voted unanimously.  
The time was 10:47 p.m.