



# Town of Barnstable Conservation Commission

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## MINUTES – CONSERVATION COMMISSION HEARING

**DATE: February 14, 2023 @ 6:30 PM**

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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://townofbarnstable-us.zoom.us/j/81024831075>

Meeting ID: 810 2483 1075

US Toll-free 888 475 4499

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.

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 Abodeely, Hearn, Morin and Sampou.

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

## I. NOTICES OF INTENT

- A. Wianno Club.** To permit seasonal tent, timber walkway & ADA access and grading at 107 Sea View Avenue, Osterville as shown on Assessor's Map 162 Parcel 024. **SE3-6066**

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

Issues discussed:

- There was discussion about the width of the proposed walkway. It will be approximately 12' and ADA compliant.
- Mitigation calculations were not included for the tent area.
- The area has historically been used for tents. Only within the last three years the tent has been left up all season.
- During the season, there have been events almost every weekend historically.
- The tent will be in use May through October.

- It is a sizeable area within Conservation jurisdiction.
- Part of the walkway is in the 50' buffer. There was discussion on moving the walkway completely out of the 50' buffer.
- While there is historical significance the 50' buffer should be protected.
- At the other end of the building there will be a steep slope above the ramp. It will be all grass.
- There is no slope toward the bank from the walkway. The walkway will be level with the floor of the building. The doors should be marked on the plan.
- There is no option for moving the door to get the walkway out of the 50' buffer.
- People will be able to step off the walkway to the lawn.
- The purpose of the walkway is for access to the tent for members, guests and staff.
- Historically the tents have been put up and taken down on a weekly basis and were different sizes.
- Grass under the tent will die. Outside the footprint of the tent there will be little disturbance.
- Prior to the tent being left up the area was re-seeded or re-sod seasonally.
- A question was raised if the tent could be moved across the street out of the 50' buffer. There really is no other space for the size of the tent.
- A smaller tent would bring it outside the 50' buffer.
- There was discussion on what the floor of the tent will be. Grass will not survive under the tent.
- There is concern that this will end up being a permanent structure and will end up with a wood floor.
- Mitigation will be required. There was discussion on locations for mitigation.
- There was discussion on the type of drains that will be put in to handle the run off from the roof of the tent.
- When the tent comes down sod will be put in. Sod replacement could be a special condition.
- Erosion control measures need to be put in place during the project.
- There should be confirmation of the demarcation along the edge of the lawn. On the side where the tent is going there is only one demarcation marker. There is concern "edge of lawn" is right at the top of the bank. Some of the buffer strip is missing.
- There was discussion regarding ongoing conditions after the OOC expires.
- The representative would like some direction on the amount of mitigation needed.
- Calculations should be done to see what the mitigation should be. A proposal should be submitted.
- A continuance was requested to March 7, 2023.

There was no public comment.

A motion was made to continue the project to March 7, 2023.

Seconded and voted unanimously by roll call.

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

Nay -

- B. Stephanie J. Gaskill, Trustee – Barley Neck Trust.** Construct and maintain a garage, attached enclosed breezeway, removal of section of existing paved driveway, stone retaining wall and post and rail fence, installation of gutters, downspouts and drywells with proposed mitigation plantings, and associated clearing, grading, utilities and landscaping at 540 Old Falmouth Road, Marstons Mills as shown on Assessor's Map 124 Parcel 005. **SE3-6067 Continuance requested to 2/28/23 WC Form received.**

A continuance was requested to 2/28/2023 without testimony.

A motion was made to approve the continuance request to 2/28/23.

Seconded and voted unanimously by roll call.

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

Nay -

- C. Janet Holian, Trustee – Holian Family Realty Trust.** To construct a single family dwelling and all associated appurtenances at 250A Windswept Way, Osterville as shown on Assessor’s Map 051 Parcel 012. **SE3-6068**

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

Issues discussed:

- An I/A septic system was recommended.
- This is prime example of where and I/A system could be used as mitigation.

Public Comment:

David Moir, 220 Windswept Way – Abutter. Referred to his email dated 2/14/23 which was sent to the Commissioners earlier in the day. He spoke with abutters Patti Baker and the owners at 196 Windswept Way. There is concern about how the land is being subdivided. There is an issue of water being removed from the golf course and being brought into the marshland. This parcel is located within the flood plain. Although this is for construction of a new house the applicant has already installed several structures and a pool. There has been an increase in septic load on the site. There is a storm water run-off issue. There has been new construction on 250B and a large removal of trees. They are concerned about increased storm water flow and possible septic issues.

- Mr. Moir was advised he should also contact the Building and Zoning Departments with his concerns.

A motion was made to approve the project as submitted.

Seconded and voted unanimously by roll call.

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

Nay -

- D. Deborah O’Rourke.** Proposed pool, patio, and retaining wall on an existing residential property at 35 Hull Lane, Cotuit as shown on Assessor’s Map 019 Parcel 162. **SE3-6064**

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

Issues discussed:

- A question was raised about how the equipment will be brought in to do the project. They will access from the north.
- There was discussion regarding the construction of the retaining wall.
- There is a draw down pit. There will be no surface run off toward the wetland.

There was no public comment.

A motion was made to approve the project subject to construction protocol submission to staff.

Seconded and voted unanimously by roll call.

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

Nay -

- E. Margareth RiBiero.** Construction of two stone retaining walls and a second story addition above an existing garage at 120 Cobble Stone Road, Barnstable as shown on Assessor’s Map 316 Parcel 063-001. **SE3-6069**

The applicant was represented by Paul Mancuso of BSC Group.

Issues discussed:

- The project is submitted as the result of an Enforcement Order.
- A small portion of the retaining wall is in the 50' buffer.
- The 0-50' buffer must be fully restored to avoid mitigation.
- They can either correct the incursion into the 50' buffer or do mitigation.
- If a bedroom is being added to the second floor of the garage the septic may need to be upgraded.
- This will not approve the paving on the neighbors' property. They need take it up with the neighbor.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan showing plantings in the full 50' buffer area.

Seconded and voted unanimously by roll call.

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

Nay -

## **II. CONTINUANCES**

- A. Christian Camp Meeting Association.** Proposed dock and stairway reconstruction at 160 Lake Elizabeth Drive, Centerville as shown on Assessor's Map 226 Parcel 137. SE3-6050 **Continued from 01/03/23.**

A continuance was requested to June 6, 2023 without testimony.

This will be the last continuance allowed.

A motion was made to approve the continuance request to June 6, 2023.

Seconded and voted unanimously by roll call.

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

Nay -

- B. Stephen & Beth McParland.** Construction of permanent pile supported pier for non-motorized vessels at 150 Carriage Road as shown on Assessor's Map 071 Parcel 015 003. **SE3-6059 Continued from 01/03/23 WC Form was received.**

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

A report dated 2/13/2023 submitted by Liz Lewis was read into record.

Issues discussed:

- The Commission requested shortening the pier. The applicant would like a small sailboat which would require this length of a pier.
- The Commission cannot protect shellfish without protecting shellfish habitat.
- There is new science, new evidence, and new biologists working for the Town submitting their preference to a seasonal vs. permanent pier at this location.
- Because there are other permanent docks in the area it does not justify adding another one.
- Two items submitted for the file by Commissioner Sampou were reviewed.
  1. EPA – Estuaries tutorial
  2. National Oceanic and Atmospheric Administration
- There is concern about non-native invasive species to estuaries. They can overwhelm local environments.

- There was discussion on situations that may require a permanent pier, ie.. a boat lift, or tie off situation.
- Traditionally a non-motorized use of a dock has been seasonal.
- The size of the pilings requested is 12". The same as the piers on either side.
- This would be a removable platform and removable stairs.
- There was a review of the issues to consider with this project. Permanent vs. seasonal, shellfish issues, Chapter 703 issues,
- Piers and docks interfere with harvesting of shellfish.
- Seasonal piers present less impact to shellfish harvest.
- Piles can be colonized by invasive species.
- There is continuing research on invasive species.
- Piles take up more space which is a loss.
- There was review of some projects referred to in the letter submitted by A.M. Wilson dated February 9, 2023.
- The Cohen project was a very different situation environmentally from this one.
- 231 Baxters Neck was an already permanent dock, just adding 2 piles not completely changing the entire structure.
- Butcher was a very old structure that was in before there were regulations. It was a substantial change and approval would bring the dock into compliance with current regulations which was worth approving.
- This is a non-motorized pier. A seasonal structure is preferred for a non-motorized pier.

Public comment:

John Townes of president of BARS and full time resident of Cotuit – Stated the applicant does not own a boat and they are seasonal residents. Kayaks and canoes do not need docks. The stress of a permanent dock is not necessary. The next owner may want a motorized vessel if this is approved. Mr. Townes asked how the use of non-motorized vessels will be enforced. He took invasive species identity training. In North Bay he saw 4' of black sludge of dead plants and animals on the bay bottom. The muck is spreading out and coming toward the shoreline. The public's right to access shellfish is a concern and a permanent dock obstructs that access. He is against the project.

Amy Croteau – Shellfish Constable reiterate the position of their Division. They are not in favor of the application.

Commissioner comments continued:

- It is easier to get into a kayak from land than it is from a dock.

Arlene Wilson addressed the Commission.

- The issue of a seasonal pier allowing recovery in the off season she feels is the same amount of habitat loss as a permanent pier.
- The rapid assessment surveys look at ease of access but also are different organisms. The floats are non-native materials.
- The different fouling organisms that affect shellfish the most are the ones that grow on the bottom.
- Whether someone needs a dock is not the issue. The issue is impact of the pier.

Commissioner comments:

- Seasonal vs. permanent is preferred under the regulations.
- Biologists in Town always recommend seasonal over permanent.
- The intended use by the applicant and if there is a lower negative impact alternative should be considered.
- It is easier and safer to get into a kayak from shore.

A poll of Commissioners was taken for approving the project as a permanent pier.

Abodeely - Support seasonal pier, not a permanent pier at this location

Foster - Support seasonal pier, not a permanent pier at this location

Gillmore - Support permanent pier at this location

Hearn - Support seasonal pier, not a permanent pier at this location

Lee - Support seasonal pier, not a permanent pier at this location

Morin – Support a permanent pier at this location

Sampou - Support seasonal pier, not a permanent pier at this location

Five in favor of a seasonal pier, not a permanent pier at this location

Two in favor of a permanent pier at this location.

A motion was made to take the matter under advisement and bring it back on February 28<sup>th</sup> for the final vote.

Seconded and voted unanimously by roll call.

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

Nay –

### **III. CERTIFICATES OF COMPLIANCE –**

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

<b>A. Assembly Required LLC.</b>	<b>SE3-5011</b>	(COC, ez*)	Raze & Replace House, Studio, Spa / Landscaping and Mitigation	110 E. Bay Rd, Osterville	Coastal Bank / Salt Marsh
<b>B. Assembly Required LLC.</b>	<b>SE3-5474</b>	(COC, ez*)	Reconstruct existing dwelling & Site Improvements	617 Main St & 106 E. Bay Rd, Osterville	Coastal Bank / Salt Marsh
<b>C. Assembly Required LLC.</b>	<b>SE3-5480</b>	(COC, ez*)	Demo Existing SFD / Build Gardens / Site Improvements	617 Main St & 106 E. Bay Rd, Osterville	Coastal Bank / Little Parker's Pond
<b>D. Assembly Required LLC.</b>	<b>SE3-5481</b>	(COC, ez*)	Demo 2 Existing SFD's / Construct Pool & Pool House	25 & 34 Gardiner Ln, Osterville	Coastal Bank / Salt Marsh
<b>E. Assembly Required LLC.</b>	<b>SE3-5581</b>	(COC, ez*)	Raze & Replace House / Landscaping and Mitigation	27 Gardiner Ln & 110 E. Bay Rd, Osterville	Coastal Bank / Salt Marsh
<b>F. Assembly Required LLC.</b>	<b>SE3-5585</b>	(COC, ez*)	Little Parker's Pond Ecological Restoration	8 E. Bay Rd, Osterville	Coastal Bank / Little Parker's Pond
<b>G. Assembly Required LLC.</b>	<b>SE3-5694</b>	(COC, ez*)	Build Guest House / Invasive Management / Native Plantings	120 E. Bay Rd, Osterville	Coastal Bank / Salt Marsh
<b>H. Assembly Required LLC.</b>	<b>SE3-5710</b>	(COC, ez*)	Construction of Greenhouse and Mitigation Planting	617 Main Street, Osterville	Coastal Bank / Little Parker's Pond
<b>I. Assembly Required LLC.</b>	<b>SE3-5717</b>	(COC, ez*)	Little Parkers Pond Restoration / Dredging / Bridge Culvert	110 E. Bay Rd, Osterville	Coastal Bank / Little Parker's Pond
<b>J. Perry &amp; Sheila Vieth</b>	<b>SE3-5779</b>	(COC, ez)	Raze & Replace SFD w/ Mitigation Plantings	97 Harbor Bluffs Road, Hyannis	Coastal Beach / Coastal Dune
<b>K. Matthew Barry</b>	<b>SE3-5839</b>	(COC, ez) (Partial COC, ez)	Raze & Replace House & Garage , Mitigation Planting	28 Folsom Ave., Hyannis	Salt Marsh / BVW

A motion was made to approve A. – K.

Seconded and voted unanimously by roll call.

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

Nay -

### **IV. MINUTES**

A. January 10, 2023

B. January 31, 2023

A motion was made to accept the minutes as submitted.  
Seconded and voted unanimously by roll call.  
Aye –Abodeely, Foster, Gillmore, Hearn, Lee, Morin, Sampou  
Nay -

A motion was made to adjourn.  
Seconded and voted unanimously by roll call.  
Aye –Abodeely, Foster, Gillmore, Hearn, Lee, Morin, Sampou  
Nay –  
The time was 9:24 pm.