



**Town of Barnstable  
Conservation Commission**  
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**MINUTES – CONSERVATION COMMISSION HEARING**

**DATE: May 9, 2023 @ 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.

**Remote Participation Instructions**

The Conservation Commission's Public Hearing will be held by remote participation methods.

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://townofbarnstable-us.zoom.us/j/84974526406>

**Meeting ID: 849 7452 6406**

**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, Commissioners Abodeely, Gillmore, Hearn, and Morin, and Sampou.

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

The Chair congratulated Commissioner Bill Hearn for completing the MACC program.

**I. OLD AND NEW BUSINESS**

A. Commission vote on remote or in person hearings.

Issues discussed:

- Hybrid meetings are not available at this time.
- There are some technology issues.
- A suggestion was made for a seasonal in person hearings.
- There are citizens in the Town that have a problem with technology.
- Communication is also non-verbal, which does not come across in a Zoom meeting.
- Town Counsel has capability of doing hybrid meetings.
- There was a comment that the COVID 19 emergency is over and there is no reason to continue in the zoom setting.

- There was discussion on the need for hybrid meetings.
- There is an issue with staffing to cover hybrid meetings.
- The decision should not be based on what is good or bad for the Commissioners, but what is best for the public.
- The shellfish ratings map hearings had a student from UMass Amherst attend via Zoom which would not have happened if the meeting had been held in person.
- There are a lot of people who can attend when it is held in zoom that otherwise would not attend.
- There is enhanced participation in a zoom setting.
- There have been several discussions with input from consultants on the issue.
- There was discussion on if there are more technology challenged people who do not have access to Zoom meetings or populations that do not have the ability to attend in person because of transportation issues and location. The remote option makes participation more available for everyone.
- Although the pandemic is over COVID is still out there. The commissioners are in an age group that would be more affected by COVID .
- Many elderly people would not go out to an in person hearing.
- There have been several controversial meetings with large groups of people offering public comment that worked well. There were over 40 participants in those meetings.
- A suggestion was made to approve remote meetings for one year and vote again if hybrid meetings become an option.
- Most clients are out of state and cannot attend in person meetings. The remote meetings offer the best ability for participation.
- The number of people coming in on zoom vs. how many we have had in the past when in person is much greater.
- Participation is up since zoom meetings began.

A motion was made to approve future hearings to be remote for at least one year until June 1<sup>st</sup> 2024, with the option to re-open it if the hybrid option becomes available.

Seconded and voted by roll call.

Aye –Abodeely, Foster, Gillmore, Lee,

Nay – Sampou, Morin, Hearn

## **II. REQUESTS FOR DETERMINATION**

- A. **Eric Fu.** Planting of native trees, shrubs, and perennials to create a woodland garden in the backyard at 1645 Race Lane Marstons Mills, as shown on Assessor’s Map 047 Parcel 010 004. **DA-23035**

The applicant was represented by Julia Esteves of Julia Garden Design.

- Staff went out and reviewed the property and feels this is a good project.
- There are a lot of invasives that will be cut down for the plantings.
- It will be a dense planting so they should not return.
- The value of the plants proposed far out-weighs the invasives that are there now.

There was no public comment.

A motion was made to approve the project as a negative determination.

Seconded and voted unanimously by roll call.

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

Nay -

## **III. CONTINUANCES**

**A. Christopher C. Bushing.** Addition to existing single family dwelling and relocation of septic tank at 39 Hilliards Hayway, West Barnstable as shown on Assessor's Map 136 Parcel 048. **SE3-6085 Continued from 4/25/23. Form WC received.**

There is a revised plan dated April 28, 2023.

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

- There is a plan revised today (May 9), two drywells have been added.
- Some native bayberry and blueberry have been added.
- The demarcation will be 50 lb. rocks, at least 1 ½ feet high.
- Any hand clipping of invasives should be in writing in advance to Conservation staff.
- There was a mitigation area that was a meadow. It will now have plantings and allowed to grow wild in the spaces in between.
- Temporary mulching will be done to allow the plants to grow initially.
- The mitigation is 490 sq. ft. short.
- The representative offered to have them pay the in lieu fee.
- There was discussion about possible locations of mitigation to get to the amount required.
- There is space north of the planting strip near the stone steps for some plantings.
- A question was raised if the path going out to the marsh is being used. There was discussion on the use of the path.
- Some shade tolerant plants could go in behind the garage in the cedar grove.
- They could add 460 sq. ft. of mitigation.
- There was very little discussion at the June 2021 meeting on the type of plants being put in or where they were going.
- In the southeast corner some scattered plantings could go in after the drywells are added.
- It was noted that there has been a loss of vegetation between the great marsh and homes.
- There is not a lot of vertical complexity in the area of the bayberry and blueberries.
- Some cedars planted in the middle could negate a portion of the required mitigation.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan showing the additional mitigation including two more cedar trees in the center, and notify staff for manual clipping,.

Amended motion: Revised plan shall move two of the cedar trees to the center, provide 460 sq. ft. of mitigation, , notify staff for manual clipping, and add a note bringing the height of the demarcation to 1 ½'.

Seconded and voted unanimously by roll call.

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

Nay

**B. Thomas Keane.** Remove and replace existing deck with new deck. A 2' extension is proposed on the west side with repurposing of existing sono tubes at 160 Huckins Neck Road, Centerville as shown on Assessors' Map 252 Parcel 144. **SE3-6083 Continued from 4/25 for NHESP letter. Form WC received.**

The NHESP letter dated April 27, 2023 was received and read into record.

- Everyone except Commissioner Abodeely is eligible to vote.

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

Seconded and voted unanimously by roll call.

#### **IV. TAKEN UNDER ADVISEMENT**

- A. JMS Holdings LLC.** Modification of existing pier by converting from post to pile supports with no change in footprint at 134 South Bay Road, Osterville as shown on Assessor’s Map 093 Parcel 064.  
**SE3-6084 Continued from 4/25/23**

The finding dated May 8, 2023 was read into record.

JMS Holdings LLC – Proposal is limited to the replacement of the existing pier, which is partially permanent and partially seasonal, with a permanent pile supported pier in the existing footprint. The existing pier was approved under SE3-3237 in 2004.

Proposed Draft Findings:

The Conservation Commission finds the following:

1. The proposed change of a seasonal section (4 ft by 80 ft in length) of the existing pier to become a permanent part of the pier constitutes a “substantial change to the existing structure” as set forth in the Commissions' Dock and Pier Regulation, Chapter 703. Accordingly, this application will be reviewed under the local regulation Chapter 703, adopted by Commission under Town of Barnstable Ordinances Chapter 237, with an effective date of October 26, 2004, and the latest revision of this regulation with an effective date of February 20, 2018.
2. The two waiver requests: 1) 703-4(J)(1) related to pier length, and 2) 703-4(L) related to the closest to the centerline of the lot, will not have an adverse impact on the resource area in this specific location.
3. The third waiver request for 703-4(M) which would allow for a 12-inch depth under the propeller is not acceptable. The Conservation Commission finds this pier is in SC22.0 (Growing Area Code for West Bay, Barnstable by Massachusetts Division of Marine Fisheries, dated 6/7/2021), which is classified as “Approved” by Massachusetts Division of Marine Fisheries and in Three Bay segment, WB2 (as identified in the Town of Barnstable shellfish and Habitat Rating map dated 2011) , which has a rating of 9 out of 10 in the latest shellfish rating map dated 2011. Pursuant to the regulation the Conservation Commission has determined that a rating of 6 and higher is a “high value shellfish area.” The current approved rating map is dated December 20, 2011, as posted on the Conservation Division website. The existing pier is also located in the West Bay Shellfish Relay Area, which is an area designated for the protection of shellfish and shellfish habitat. Under Chapter 703-4(M)(1), the minimum depth under the draft of the boat must be 30 inches at Mean Low Water (MLW). Multiple scientific studies confirm that insufficient depth of water between a motors prop and the bottom can cause significant damage to shellfish and shellfish habitat.
4. The Commission has relied historically and with confidence on opinions from our Town Biologist with regards to site specific review and recommendations. In this case, two Town Biologists, Tom Marcotti (retired) in 1997 (SE3- 3237), and Elizabeth Lewis in 2023 (SE3-6084) have confirmed that this location is considered significant for shellfish and shellfish habitat. Additionally, the applicant’s consultant acknowledged that the shellfish findings showed good population of quahogs in close proximity to the existing pier in her email dated April 8, 2023. The findings are consistent with the 8/18/97 Marcotti sampling (SE3-3237) done prior to the installation of a pier at this site.

Issues discussed:

- The terms significant, important, and substantial were discussed.
- The vote was 5 to 1 that this is a substantial change.
- There was discussion that the size of the dock/pier would be a substantial change.
- The substantial finding was due to the pier going from seasonal to permanent.

- The dock/pier will be in for 12 months instead of 4-6 months.

A motion was made to approve the finding and the conclusions.

Seconded and voted by roll call.

Aye –Abodeely, Foster, Hearn, Lee, Sampou

Nay – Morin

Commissioner Gillmore was not eligible to vote.

Additional special conditions were read into record.

1. A time of year (TOY) restriction should be observed to protect sensitive life stages of horseshoe crabs from beach construction activities on potential nesting beaches. Construction on the beach could bury and crush spawning adult crabs and nests. No in water construction activities should take place from **May 1 – June 30<sup>th</sup>** of any year to protect spawning habitat.
2. Construction activity, including staging of construction material and equipment as well as equipment transit to and from the construction site, should avoid intertidal habitat to the greatest extent practicable. As much work as possible should be conducted from the upland portion of the project site to minimize impacts and avoid compaction of sediment in mapped shellfish habitat. Any work in the intertidal zone should be limited to low tide such that work is conducted in the “dry”.
3. No boat shall be used or berthed at the approved pier such that, at any time, less than thirty inches (30”) of water resides between the bottom of the boat or the propeller in the full downward position – whichever is lower – and the top of the substrate.
4. The tidal datum reference point for calculating depth under vessel shall be 2.0 ft below the MLW at the end of the float (plan dated 2/15, 2023) or approved by the Commission.
5. Proposed vessels to be berthed at the float shall require prior approval from the Conservation Commission. Spec sheets for the proposed vessels shall be submitted for review.
6. A small sign shall be displayed at the end of the pier, facing open water. It shall read :

SE3-6084; 134 South Bay Road  
Limitations:

- Props 30” above bottom, all

7. Work on the pier shall occur between mid-tide rising and mid-tide falling, or as otherwise necessary to provide a minimum twelve (12) inch clearance for the work barge above the substrate.
8. Prior to starting any work, a pre-construction meeting on site **MUST** take place. Site visit shall include the following parties:
  - Conservation Agent or designated Conservation staff member
  - Town’s Shellfish Biologist or designated shellfish staff member
  - Project Engineer
  - Contractor

**The contractor shall prepare and submit a written work protocol to the Conservation Administrator at least four (4) weeks prior to the pre-construction meeting.**

The work protocol shall include specifics of timing, access, equipment, storage and stockpiling of materials and work limits, use of barge for unloading equipment and materials.

A motion was made to approve the special conditions.

Seconded and voted by roll call.

Aye –Abodeely, Foster, Hearn, Lee, Sampou

Nay – Morin

Commissioner Gillmore was not eligible to vote.

There was a request made for a copy of the completed Order of Conditions.

A request was made for clarification of the special condition regarding mean low water. The condition was read again. It is for datum reference.

**V. CERTIFICATES OF COMPLIANCE –**

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

- A. **SE3-5854 Allen & Jone Dalezman** (COC, ez) Construct Pool, Spa, Patio, Firepit, Sheds, and Pathway 355 Baxter Neck Road, Marstons Mills Marstons Mills River, BVW
- B. **SE3-4561 Frederick & Roberta Tonsberg** (COC, ez) Raze and Rebuild SFD 2 Short Beach Road, Centerville Centerville River, Salt Marsh
- C. **SE3-5130 ALSHABKHOUN ESTATE NOMINEE TRUST** (COC, ez) SFD, Guesthouse, Detached Garage 408 Wianno Ave, Osterville Shrub Swamp, Salt Marsh

A motion was made to approve A.-C.

Seconded and voted unanimously by roll call.

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

Nay

**VI. MINUTES**

A. April 25, 2023

A motion was made to approve the minutes as submitted.

Seconded and voted by roll call.

Aye –Abodeely, Foster, Hearn, Lee, Sampou

Nay - Morin

Abstain - Gillmore

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 8:00 p.m.