



Town of Barnstable Conservation Commission

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MINUTES – CONSERVATION COMMISSION MEETING

DATE: APRIL 3, 2018 @ 6:30 PM

LOCATION: Selectmen's Conference Room, 367 Main Street 2ND Fl., Hyannis, MA

Scrivener's note: The following minutes are general in nature. For those wanting specific detail on matters heard on this agenda, additional resources are available to you: video-on-demand (free on the Town website at town.barnstable.ma.us), and DVD recordings. Please contact the Conservation Division at 508.862.4093 for assistance.

The meeting was called to order at 6:30 p.m. by Chair F. P. (Tom) Lee. Also attending were Vice-Chair Louise R. Foster, Clerk Dennis R. Houle, and Commissioners Peter Sampou and Larry Morin. Commissioners John E. Abodeely and Scott Blazis were away.

Darcy Karle, Conservation Administrator, assisted.

I OLD & NEW BUSINESS

- A. Sandy Neck Coastal Resiliency Plan – Richard French, Chair of the Sandy Neck Board gave a brief update on where the plan stands and where the Sandy Neck Board stands.

Issues discussed were the following:

- The plan was completed in 2016
- The plan has been sent to the State and was vetted through public meetings and presentations to the Town Council (not requesting funding at that time)
- Storm Riley, which took place March 3rd, was a most damaging storm.
- The gatehouse experienced 18" of water inside.
- There is increased urgency to move this plan forward after the past three storms
- The cost of replenishment sand this year has been \$300,000. Sandy Neck will be spending an additional \$100,000 for sand.
- The Sandy Neck Advisory Board has reached out to the Town Council with a request to present the study. The board would request the Town Council to obtain funding to support one of the alternatives outlined in the study to protect the Sandy Neck parking area and infrastructure. Sandy Neck has some monies; however, the Council's help with funding is needed.
- The study outlines a plan and the cost to protect Sandy Neck for the next fifty years.
- A letter will be sent to the Town Council requesting them to meet with the Sandy Neck Board, and make a presentation for needed funding.
- Commissioner Sampou has been involved in this process from the inception.
- The Sandy Neck Board recommends the "retreat alternative," which is "5D" in the plan.
- Coastal Zone Management (CZM) recognizes that something needs to be done.
- The Town Manager could possibly give an update to the Council on where this stands or give an informal presentation.

B. Robert and Marie Gerardin SE3-5509, 23 Laurel Ave., Centerville – Administrative review of a revised plan request.

Issues discussed:

- Chair Tom Lee and Administrator Darcy Karle gave a brief overview of the request by the Gerardins, and why administrative review was appropriate to move the project forward.

II REQUESTS FOR DETERMINATION

David V. Lawler, Tr., 347 Eel River Road Realty Trust. Permit removal of damaged and dangerous trees and overgrown yews, burning bush, autumn olive and other non-native or invasive ornamental plantings around house at 347 Eel River Rd., Osterville as shown on Assessor's Map 115 Parcel 001. **DA-18013**

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

Issues discussed:

- An additional tree flagged in the field that snapped, but was not shown on the plan, needs to be addressed
- The possibility of replacement trees substituted for damaged ones
- The applicant was willing to work with staff on possibly replacing the damaged trees.
- Lower growth vegetation

A motion was made to approve a negative determination, subject to receipt of a revised plan showing of four replacement trees, eastern red cedar or American holly.

Seconded and voted unanimously.

Eric & Anne Krusell. Add first-floor additions; permit existing stairs on outside deck; permit existing wood-slat path at 38 Lakewood Dr., Centerville as shown on Assessor's Map 212 Parcel 002. **DA-18014**

Applicant Eric Krusell attended the hearing.

Exhibit A – Revised plan dated 3/18/2018, addressing comments by staff.

Issues discussed:

- A revised plan was submitted to take the distance from the 34 contour line (shown on an autocad plan).
- The applicants were requesting to remove two trees.
- An addition is being placed over the driveway.
- The existing shed and stockade fence will be added to the sketch plan.
- Plantings will be added to the east side of the dwelling, in consultation with staff.

A motion was made to issue a negative determination, with the addition of native plants to the plan to the east side of the house, in consultation with staff.

Seconded and voted unanimously.

III NOTICES OF INTENT

Timothy R. O'Brien, Tr., Windswept Way Realty Trust. Construct and maintain boardwalk, seasonal pier, ramp and float at 196 Windswept Way, Osterville as shown on Assessor's Map 052 Parcel 002-002. **SE3-5552 (Rescheduled from 3/13/18)**

The applicant was represented by John C. O'Dea, P.E.

Issues discussed:

- The pier will be for non-motorized vessels, only.

Correspondence: Letter from the MA Division of Marine Fisheries dated 3/9/2018; email from Waterways Committee's dated 4/2/2018; email from Town Shellfish Biologist Tom Marcotti, dated 4/3/2018.

A motion was made to approve the project, as submitted.

Seconded and voted unanimously.

Anne & Christopher Morris. Expand existing deck; install outdoor spa, fireplace, walkway, stepping stones; revise landscaping within the 50 – 100-ft. buffer zone of coastal bank at 140 Bay Rd., Cotuit as shown on Assessor's Map 007 Parcel 019. **SE3-5557**

The applicants were represented by Stephen A. Wilson, P.E. of Baxter Nye Engineering & Surveying.

Issues discussed:

- This property has an exceptional undisturbed 50-foot buffer.
- The applicants would like to trim white pine branches hanging over the house and deck.

A motion was made to approve the project with a special condition to allow the trimming of branches that are hanging over the house and deck.

Seconded and voted unanimously.

Robert & Jennifer Cannon. Construct a single-family dwelling, driveway, utilities and associated grading within 100' of a cranberry bog at 951 River Rd., Marstons Mills as shown on Assessor's Map 044 Parcel 014. **SE3-5558 \$24.24**

Applicant Robert Cannon attended and was represented by Brian Grady of G.A.F. Engineering.

Issues discussed:

- This is an agricultural property.

A motion was made to approve a finding that, as this property is under an agricultural exemption, the mowing practice in the 50-foot buffer to the bog may continue for as long as the bog is in active use.

Seconded and voted unanimously.

A motion was made to approve the project as submitted, based on the above finding,

Seconded and voted unanimously.

IV CONTINUANCES

James & Susan Kelleher. Vista pruning and maintenance; mitigation planting and species substitution at 39 Hilliard's Hayway, W. Barnstable as shown on Assessor's Map 136 Parcel 048. **SE3-5547** (Continued for NHESP only)

Correspondence read into the record: Letter from NHESP dated 3/9/2018, with no added recommendations.

A motion was made to close the hearing, and to issue the order of conditions within twenty-one days.

Seconded and voted unanimously.

MSSI 31 Dale Ave. Property Group LLC. Elevate existing buildings to comply with FEMA regulations, and landscaping at 31 Dale Ave., Hyannisport as shown on Assessor's Map 286 Parcel 030. **SE3-5556** (Continued for NHESP only)

Issues discussed

- The letter from NHESP had not yet been received.

A motion was made to continue the project to April 10th for NHESP comments, only.

Seconded and voted unanimously.

Jason Stone, Tr., Jason Stone Trust. Install boat lift on existing licensed pier at 183 Bay Shore Rd., Hyannis as shown on Assessor's Map 325 Parcel 180. **SE3-5546**

The applicant was represented by John C. O'Dea, P.E.

Exhibits:

- A – A Mullin Rule sign-in sheet for Chair Tom Lee
- B – Photo from a video clip of the bow facing out.
- C – Receipt for whips and tide slides
- D – Invoice for slip rental and email
- E – Order of Conditions for SE3-5341
- F – Plaintiff's Memorandum of Law filed on behalf of Jill F. G. Mitchell, dated March 10, 2017
- G – Order of Remand in the Mitchell case

Issues discussed:

- The Stone project first opened on March 6th of 2018.
- A quorum was comprised of Clerk Dennis Houle, Vice-Chair Louise Foster, and Commissioner Peter Sampou, with Chair Lee joining the quorum under the Mullin Rule
- John O'Dea stated that he was requested to go back to the applicant after the last hearing and see if he could berth the vessel bow-out. The photo submitted for the record (Exhibit B) indicated that that is how the vessel was being berthed.
- Mr. O'Dea showed a video clip taken from a boat (date uncertain) after a ferry had passed by.
- The applicant had tried different alternatives over two years. John O'Dea related the applicant's use of whips and tide slides. Two out of three lines had snapped once before.
- The applicant had once rented an inside slip because conditions then were not as bad as they are now at the present location.
- It was mentioned by a Commissioner that the Mitchell case was more of a case that the property owner had not tried alternatives recommended by the Commission. This proposal has similarity to the Bonny Brook case, in which the applicant had tried several alternatives, but because of the extreme conditions of wind, tides, currents and boat wake, the applicants were awarded a boat lift.
- Although this (Stone) application came in just prior to the effective date of new boat lift regulations (703-4 Q 2B), it would meet the conditions indicated in the current regulations. Also, the applicant indicated that he would be willing to comply with the four conditions required to have a boat lift.
- Questions were raised regarding the current owners' experience securing a vessel as compared to prior owners, and whether the video clip was indicative of an extreme day, or an average daily condition.
- Concern was raised, after watching the video clip, that the bumpers were small; whips were taking all the stress, and the lines were loose. Also, dolphin piles were not used. The Commission wondered why this issue was being brought up now and not by prior owners; some Commissioners believed that the submitted documentation was insufficient. The video seemed to them to indicate the applicant's lack of experience in tying-off a boat. Perhaps there could be better use of larger bumpers, lines and of dolphin piles. Some felt that conditions at this location were not similar enough to those in the Bonny Brook case.
- The video clip presented to the Commission would need to be submitted for the file.
- One Commissioner believed that the applicant had tried alternatives, and that the project should be approved, and a boat lift allowed.
- John O'Dea stated that the boat should not be tied tightly to a float as a single unit in this type of environment.
- Concern was raised by the Commission that if the vote is two for approval, and two against (i.e., a stand-off), there will be no decision, and thus, no findings. If the project is approved, the Commission may condition the project according to the new regulations. If the project is denied due to a split vote, it left the chance that a future decision could be over-turned in an appeal and the Commission would lose the chance to impose special conditions.

- Conditions Q 2 and 3 (a-d) of Town pier regulations – Chapter 703: Private Docks and Piers, which the applicant was willing to comply with, were read into the record

Chapter 703: Private Dock and Pier Regulations:

- Q (2) Boat lifts, boat elevators and boat davits are prohibited for any existing, permitted dock except:
- (a) where necessary for handicapped access for a resident of the property where the dock is located. Where there is no longer a demonstrated medical need, or when the property is transferred or sold, the boat lift, elevator or davits must be removed and the Conservation Division notified, or,
 - (b) where extraordinary circumstances are proven to exist such as wind, tides, currents and boat wakes, and, where the commonly-used alternatives of boat whips and dolphins/tie-off piles are proven by the applicant as being unable to provide stability for vessels berthed at the dock.
- (3) Boat lifting devices that qualify above in paragraphs 1 or 2 must comply with the following:
- (a) be either mechanically operated or electrically driven. The use of hydraulic fluid is prohibited.
 - (b) be painted a neutral color or anodized.
 - (c) be elevated so that the hull of the vessel is no more than 12” above Mean High Water except that greater heights can be set for extreme tides, not to exceed the spring tide line. Notwithstanding this provision, elevated vessels should be removed during storm events. Due to extreme tidal range, boat lifts, elevators and davits are prohibited in Barnstable Harbor.
 - (d) have a specific vessel identified with its use; such vessel having a neutral hull color and having either no bottom paint or a non-toxic bottom paint. The applicant will provide bottom paint specifications to staff for review.
- Two Commission believed that there was sufficient documentation to show that extreme conditions exist at the site, e.g., due to wind, tides, current, and boat wakes as in 703-4 Q2 (b). Two other Commissioners believed that the submitted documentation was insufficient, and that extreme conditions do not exist at this location. Rather, they concluded that the property owner is inexperienced in securing a vessel.
 - A question was raised as to why a lift is needed for the larger boat, but not for the smaller one.

Correspondence: Email from the Waterways Committee dated 3/1/18, stating it had no objections to the project; Email from MA Division of Marine Fisheries dated 2/26/2018 with no recommendations.

A finding was determined as follows: This project qualifies under 703-4 Q 2 (B) where extraordinary circumstances are proven to exist, such as wind, tides, currents and boat wakes, and where the commonly-used alternatives of boat whips and dolphins/tie-off piles are proven by the applicant as being unable to provide stability for vessels berthed at the dock.

A motion was made to approve the finding.

Seconded and voted: 2 votes = Aye; 2 votes = Nay.

A motion was made to approve the project.

Seconded and voted: 2 votes = Aye; 2 votes = Nay.

The project was denied.

James N. White & Patricia A. O’Brien, Trs., White Revocable Trust. Proposed ell and float modifications and dolphin piles at existing licensed pier, and construction of boat shed at 50 Fox Island Rd., Marstons Mills as shown on Assessor’s Map 096 Parcel 001. **SE3-5554**

The applicants were represented by John C. O’Dea, P.E.

Issues discussed:

- A quorum of all Commissioners was present
- The project required one waiver 703-4 J (4)
- If the Commission finds this modification to be a substantial expansion, then the Commission can allow greater control over the structure.
- Mr. O’Dea said that trees would not need to be removed for the boat shed.
- Concern was raised regarding the location of the boat shed.
- Drainage pipes from the patio may have added to the erosion problem, which is being corrected.
- An exemption exists for water-dependent structures being placed in the 50’ buffer
- Could a rack be placed instead?
- The shed will only be 6’ x12’ – the dotted line represented the roof overhang
- The MA Division of Marine Fisheries recommends the use of alternative piles instead of CCA-treated piles

Correspondence: Letter from MA Division of Marine Fisheries dated 3/16/18 with comments; letter from the US Army Corps of Engineers dated 3/26/18; email from Waterways Committee dated 4/2/18

Finding: The Commission grants a waiver under Chapter 703-4J4, and finds that this is a substantial expansion under Chapter 703-4P.

A motion was made to approve the project, based on the above finding.

Seconded and voted unanimously.

V CERTIFICATES OF COMPLIANCE

- | | |
|--|---|
| A. Johnson SE3-2358 (coc, ez)
137 Harbor Bluffs Road, Hyannis | Reconstruct riprap seawall
Hyannis Inner Harbor |
| B. TOB/CONS SE3-5191 (coc, ez)
Centerville | Sonar treatment of fanwort
Bears Pond (Lake Wequaquet) |

A motion was made to approve the certificates (A – B).

Seconded and voted unanimously.

A motion was made to adjourn.

Seconded and voted unanimously.

The time was 8:22 p.m.