



Town of Barnstable Conservation Commission

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MINUTES – CONSERVATION COMMISSION HEARING

DATE: May 12, 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 May 12, 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/95448192312>

Meeting ID: 954 4819 2312

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.

Roll Call

The meeting was called to order at 6:30 P.M. by Chair Tom Lee. Vice Chair Louise R. Foster and Clerk Dennis Houle were also present. Commissioners John Abodeely, Larry Morin, George Gillmore, and Pete Sampou. (Commissioner Sampou joined the meeting at 6:49 p.m.)

Conservation Administrator, Darcy Karle, was present.

I REQUESTS FOR DETERMINATION

- A. Judith A. Dumbra.** After the fact filing for landscaping, tree maintenance, driveway repair/resurfacing and drainage at 76 Cranberry Lane, Centerville as shown on Assessor's Map 246 Parcel 014. **DA-20017**

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

Issues Discussed:

- There was a question from the Commission regarding easterly planting and vegetation removal.
- There was a point of clarification about plantings removal both outside and inside the 100 foot.
- There was discussion about tree removal and on site flagging.

There was no public comment.

A motion was made to approve a negative determination with a deletion of the one note on plan about flagged trees to be removed (only two trees to be removed, one in Conservation Jurisdiction).

The motion was seconded and voted unanimously.

- B. John and Deirdre Kwartunas.** Replace two existing decks with expanded size Azek decks at 61 Whidden Avenue, Hyannis as shown on Assessor's Map 324 Parcel 103. **DA-20018**

The applicant represented themselves.

No issues were discussed.

There was no public comment.

A motion was made to approve as a negative determination.

The motion was seconded and voted unanimously.

- C. Christina LeBedis and Avneesh Gupta.** Maintain existing 4 foot wide path at 563 Whistleberry Drive, Marstons Mills as shown on Assessor's Map 061 Parcel 044. **DA-20019**

The applicant represented themselves.

Issues Discussed:

- There was a question about where the path leads to and the location of the river.

There was no public comment.

A motion was made to approve as a negative determination.

The motion was seconded and voted unanimously.

II NOTICES OF INTENT

- A. Frederick Tonsberg.** Raze existing 2 bedroom dwelling, sheds; construct new 2 bedroom dwelling on pilings; new Title 5 septic system at 2 Short Beach Road, Centerville as shown on Assessor's Map 206 Parcel 044. **SE3-5785**

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

The project was withdrawn.

- B. John and Judy Clancy.** Remodel dwelling; add second floor porch addition; rebuild existing retaining wall at 191 Stoney Point Road, Cummaquid as shown on Assessor's Map 336 Parcel 028. **SE3-5784**

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

Issues Discussed:

- There was a concern about replacing the retaining wall and its potential impact on the environment.
- There was discussion about the specifications regarding the retaining wall, planting plan, and construction protocol.
- A question arose about the location of the septic.
- There was a concern about this site being labeled as mitigation constraint.
- There was a comment about vegetation locations.
- It was proposed to focus on the construction and revisit the retaining wall at a later date.

There was no public comment.

A motion was made for a finding that this is a constrained site under the Commission's regulations.

6 Ayes, 1 Nay

The motion carried.

Based on the finding, there was a motion to approve the project as submitted, deleting the proposed retaining wall replacement until a future amended order is submitted. The mitigation shall be split between ½ planting and ½ in-lieu fee. Plantings shall be 120 square feet along the retaining wall. Any plantings that are disturbed by future replacement of the retaining wall, would have to be restored. A revised plan shall be submitted to indicate no work on the wall and location of the mitigation planting. The motion was seconded and voted unanimously.

III. CONTINUANCES

- A. Paul Roiff.** Proposed single family house construction with on-site sewage disposal system, pool, driveway, and utilities at 172 Peppercorn Lane, Cotuit as shown on Assessor's Map 004 Parcel 013001. **SE3-5769 Continued from 4/14/20.**

The applicant was represented by Michael Ball of Baxter Nye Engineering and Surveying and Attorney Jeffrey P. Allen of Lawson & Weitzen.

Issues Discussed:

- There was discussion regarding the alternative analysis.
- A question was posed about how all three properties have Peppercorn addresses.
- There was discussion about the Commission's jurisdiction regarding the lot history and application.
- A comment was posed that a hardship was not described.
- It was discussed that the Commission does not have the legal authority over easements.
- There was a summary of the arguments about hardship, a viable alternative, the approval of the project with appropriate conditions to protect the wetland interests.
- There was a question posed about narrowing the width of the driveway, but continue to meet the requirements for emergency vehicles. In addition, the narrowing of the driveway should come off the side of the wetland.
- Another question was asked about the filtration system and water flow.
- There was discussed about mitigation plantings.
- There was a question about the existing width of Bailey road.
- There was a suggestion made about a condition regarding an arborists and/or a certified ecological restoration practitioner review of the property and try to enhance the wetland as much as possible.

Public Comment:

Arlene Wilson of A.M. Wilson Associates Inc.: Wilson of A.M Wilson Associates Inc. was representing Ms. Lloyd. The issue is that both the Notices of Intent for 166 and 172 Peppercorn were submitted to the Conservation Commission at the same time. The Notice of Intent for 166 Peppercorn was approved before the 172 Peppercorn applications without dealing with common access and environmentally friendly methodology. Although, the normal Commission review would be constrained to the single Notice of Intent before the Commission, this application is a situation similar to a sub divider where multiple properties are proposed. The requirement is that in spite of however many lots there may be and that the access to each lot needs to be through the street frontage and across the creek. The Wetlands Act says one only gets to alter 50 linear feet of bank in that situation regardless of how many lots are in the subdivision. Consequently, people are forced to provide a common access to those lots. Wilson believes that the Commission should be viewing this project like the creek project because of Roiff owns the abutting property. Therefore, the property owner has the ability to solve this problem without actually having to damage the wetland. The rough calculation here is that there will be more than 4,000 square feet of permanent wetland alteration. The construction access is almost

5,500 square feet of alteration. The driveway is wider than one would usually think as a driveway at 18 feet wide. There is almost enough for two small cars to pass. 12 feet is usually the requirement to satisfy the emergency vehicle aspect. This driveway is a quarter of a mile long. It is an improvement to put the utilities underneath the pavement, but the road surface itself has not moved from the last plan at 19 feet from the wetland and the fence is going to be 16 feet from the wetland. Mr. Alan's letter suggests that the shoulder of the road would be planted to shrubs, but here is not even a note to indicate that on this plan. The note on the plans says that all the areas that are disturbed that are not shown to be otherwise landscape are going to be loamed and seeded.

The box that the fire department usually wants is 14 by 14; 14 feet wide and 14 feet high. It is a large isolated wetland. There are turtles in the area even though the area is not mapped by Natural Heritage any longer. It is known that having a succession of driveways cut through forest interrupt the tracks animals take to the wetlands into the spring and the start of summer. On the geographical information systems maps, the Town shows a low point of about one and a half in the middle of the wetland so it holds water. The ocean is 1.8 mean high water here. If one views the plans one will see the topography in the driveway, opposite the wetland, almost has a swale like feature that runs to the north with a low point of 4. Some of the water here will be diverted. If in the winter, if the driveway will be plowed, the snow will get wind rode over the drainage structure. The ground will be frozen and the water will run off to the north. There are other kinds of amphibians and insects that will be impacted with the change in vegetative structure so close to that wetland. There will be the removal of shade and the temperature characteristic will be changed. There are amphibians and insects sensitive to that. Therefore, there are impacts that will happen here that do not need to happen. There is the ability to have the property owner to look at the alternative of a common driveway because they own both parcels.

Lallie Lloyd of 340 Vineyard Road, Cotuit: She offered historical context about the property. Before the two lots were sub divided by Llyod's aunt. The aunt filed a petition to change the access to Peppercorn Road. She had negotiated an easement with the former owner of Roiff's current home at 160 Peppercorn. The easement that was negotiated at that time, changing the address of Peppercorn, is not binding. The aunt did that with the hope that the access to these properties would have the least amount of impact on the surrounding environment. The request for the combination of driveways is only a partial combination of the driveways until they are clear of the wetland.

Lloyd discussed mitigation. The pines are being devastated by the beetle. The woods are transitioning slowly to white pines and scrub oak. With careful attention to replanting formerly indigenous trees and shrubs, it would go a long way to return the greater health of the woods to their more natural state which they have not been in in a long time. In a previous letter that Lloyd submitted, she indicated that combined woods that would be cut in half by long wide driveways are one of the largest, privately owned woodlands in the town of Barnstable. She wanted to bring this to the attention of the Commission. Lloyd is trying to return diversity and greater health to the woods on her property as well. Lloyd recalled a previous meeting. She requested clarification about the footage of which the jurisdiction of the Commission reaches. She requested that the Commission consider extending the 50 foot buffer to the full 100 feet.

Attorney Jeffrey P. Allen of Lawson & Weitzen: The question is about whether or not this project would have a detrimental impact on the resource area. He believes that the information submitted to the Commission by their consultant so far has shown that is not the case and that the proposed project will uphold the wetland's interest in the Barnstable bylaw in respect to native growth in the buffer zone, a fence being installed to limit maintained in the area or intrusion in the area. He encourages the Commission to focus on that.

Reply by Michael Ball of Baxter Nye Engineering and Surveying: This is not direct wetland alteration, this is buffer zone alteration.

A motion was made to approve the project as submitted, subject to receipt of a revised plan showing the driveway portion in the 50' buffer is narrowed to 12' width and that is if the fire department requires a larger width than that, the applicant will have to come back before the Commission as a revised plan request. Beyond the 12', the northern edge of the driveway will remain where it is now, and the portion of the driveway towards the wetland will be shortened, and the space between the shortened driveway and the wetland will be selected for planting restoration with native shrubs. Prior to start of work, a certified arborist or a Certified Ecological Restoration Practitioner (CERP) shall be retained to examine the rest of the 50' buffer within this area of the driveway. They shall report back to staff if there is an opportunity to enhance this area with additional plantings.

5 Aye, 2 Nay
The motion carried.

B. Fabricio Vieira. Construct one bedroom dwelling, deck and subsurface with Title Five septic at 251 Mitchell's Way, Hyannis as shown on Assessor's Map 290 Parcel 048. **SE3-5782 Continued from 4/28.**

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

Issues Discussed:

- There was a comment about vertical diversity.
- There was a question about the sizes on the planting plan.

There was no public comment.

A motion to approve the project subject to a revised planting plan indicating the Carolina rose size be increased to 3 gallon. The motion was seconded and voted unanimously.

C. BW Residential LLC. To amend the Order of Conditions to permit beach access steps and a Land Management and Vegetation Restoration Plan of coastal bank area at 23 Atlantic Avenue and 25 Squaw Island Road, Hyannis Port as shown on Assessor's Map 286 Parcels 001 & 033. **SE3-5679 Amended Order continued from 4/28 for the sole purpose of NHESP review.**

This matter was last heard on April 28th, 2020. The quorum was all The Order of Conditions was approved.

Correspondence was read into the record:

Letter from Natural Heritage and Endangered Species Program – May 8th, 2020

Letter from Seth Wilkinson of Wilkinson Ecological Design – May 12th, 2020

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

There were no issues discussed.

There was no public comment.

A motion was made for a finding that the invasive management and restoration on the entire coastal bank of this property, in the amount of 16,315 square foot are not serving to mitigate proposed or existing activities at the time of this filing. The motion was seconded and voted unanimously.

A motion was made based on the finding and the previous conditions approved by the Commission and, now including the four conditions found in the Natural Heritage and Endangered Species Program letter dated May 8, 2020, to close the public hearing and ask staff to issue the order of conditions.

This motion was seconded and voted unanimously.

D. Douglas B. and Elizabeth D. Evans – Raze dwelling, construct new dwelling; repair/replace access steps to beach; proposed stockade fence along property line at 125 Harbor Bluffs Road, Hyannis as shown on Assessor's Map 325 Parcel 120. **SE3-5786 Continued from 5/5 for the sole purpose of receiving SE3 number and comments from DEP.**

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

There were no issues discussed.

There was no public comment.

A motion was made to close the public hearing and issue the order of conditions.

This motion was seconded and voted unanimously.

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

- | | | | | |
|----|---------------------------------|----------|-----------|-------------------------------------------|
| A. | Mugar | SE3-5496 | (coc, ez) | raze & construct single family dwelling * |
| | 114 Peppercorn Lane, Cotuit | | - | Pinquickset Cove |
| B. | Simmonds | SE3-5542 | (coc, ez) | raze & construct single family dwelling * |
| | 160 Harbor Bluffs Road, Hyannis | | - | Lewis Bay |
| C. | Zeikel | SE3-5609 | (coc, ez) | replace & modify pier, ramp, & float * |
| | 129 Main Street, Osterville | | - | Centerville River |

There was a motion to approve the A through C Certificates of Compliance.
The motion was seconded and voted unanimously.

V MINUTES

A. April 28, 2020

There was a motion to approve the minutes.
The motion was seconded and voted unanimously.

There was a motion to adjourn the meeting.
The motion was seconded and voted unanimously.

Meeting adjourned at **8:31 p.m.**