



Town of Barnstable
Conservation Commission
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MINUTES – CONSERVATION COMMISSION HEARING

DATE: February 2 , 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/93538473743>

Meeting ID: 935 3847 3743

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.

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 Abodeely, Dennis Houle, Larry Morin and Pete Sampou.

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

I. REQUESTS FOR DETERMINATION

- A. **Town of Barnstable DPW.** Proposed installation of an electric generator on a concrete pad, installation of a 2-inch gas service line with meter and minor grading at 3010 Main Street, Barnstable as shown on Assessor's Map 279 Parcel 021. **DA-21005**

The applicant was represented by Griffin Beaudoin Town Engineer, Andrew Smith from Wright Pierce, and Chuck Caron from Caron Associates.

Issues discussed:

- A question was raised if 3' above flood zone is enough. The standard is 3' above for the 100 year flood elevation.
- The conduit will run underground and will be sealed. The conduit should be shown on the plan. The electrical site plan was not available at the time of the filing.

There was no public comment.

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

- B. **Robert J. & Rita M. Davis.** To replace the fixed "T" on Southern Pier with ramp and floats at 986 Sea View Avenue, Osterville as shown on Assessor's Map 091 Parcel 002. DA- 21006

The applicant withdrew the application.

- C. **John W. Carey.** Proposed 12' X 21' addition of landward/street side of single family dwelling with a partial 2nd floor above both the existing structure and new addition at 56 Cook Circle, Hyannis as shown on Assessor's Map 325 Parcel 36. DA-21007

The applicant John Carey represented himself.

There were no questions from Commissioners.

There was no public comment.

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

- D. **Gary Markowitz.** To repair existing retaining wall using recycled plastic timbers at 628 Popponeset Road, Cotuit as shown on Assessor's Map 006 Parcel 019. DA-21008

The applicant was represented by Karl Mueller of Paramount Designs, Inc.

- They are using artificial material rather than wood.
- The Commission would like a report in a year to see how it is holding up.
- Care needs to be taken as it appears the work will be on the verge of a slope.

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. **Benjamin S. and Linda M. Butcher.** To reconfigure pier, ramp and floats at 105 Eel River Road, Osterville as shown on Assessor's Map 116 Parcel 096. **SE3-5841**

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

Issues discussed:

- The survey lists the pier as a seasonal pier, but it does not seem to be seasonal.
- If the pier is going from a seasonal to permanent the criteria would be different.
- Existing is a 4x4 pier which has been seasonal. The changed pier would be fixed and permanent but the floats would be seasonal.
- Waivers would need to be granted to go from seasonal to permanent.
- A question was raised regarding why the change is needed. The new configuration would be better for the floats and the boats. They do not want to deal with the seasonal removal any longer.
- It was noted that nails were found during the shellfish survey.
- The existing piles are 4” the new piles would be 12” piles.
- The boats are being pushed further out. The project should be viewed as a substantial change.
- There are 4 waivers needed. Float size, length, not exactly centering on the lot, and high value shellfish area.
- Under current regulations 30” of water would be needed under the boats.
- This is an existing licensed pier with less area. There was discussion if less area is significant enough to grant three major waivers.
- It was noted there is concern regarding setting a precedent.
- A question was raised if there are significant issues with wind and surf to make the 12” posts necessary and if the structure of the proposed pier is substantially heavier than what is existing.
- The float size is less. The length is not greater. The draft of the boat was discussed. They will be bringing the boats out further than they are kept currently.
- There was discussion of the regulations and if this is a substantial expansion.
- A question was raised if it would be possible to get the floats below 200 sq. ft.
- It was noted that no dredging is proposed at this time.
- A question was raised if the applicant would accept a 12” depth requirement in exchange for granting permanent vs. seasonal.
- There are two parts to this application. One is the reconfiguration and the other is going from seasonal to permanent. A question was raised if they would consider doing only the reconfiguration.
- A condition could be added that if property is sold the size of the dock would be reduced to 200 s.f., and the 12” rule would be put in place.
- A suggestion was made to shorten the length of the float and make the ramp longer.

A motion was made approve the project subject to the submission of a revised plan showing the float length reduced by 4’ and increasing the length of the ramp from 10’ to 14’.

The current property owner may have one vessel with a draft of no more than 34” or less and a second vessel no more than 25” or less.

The 12” rule will apply once the property is sold to a new owner.

Seconded and voted unanimously by roll call.

III. REVISED PLANS

- A. Revised plans for 203 Scudder Lane, David & Ann Gergen SE3-5789 and 205 Scudder Lane, and Timothy & Jessica Grady SE3-5790.

The applicant was represented by Nate Jones of Coastal Engineering and Michael Lundsted of SUMCO

The temporary changes have been done.

Gergan plan at 203 Scudder was reviewed.

- The runoff is going down toward the staircase. There is some minor grading and installation of a drywell needed. Top of bank line will be slightly different.

Grady plan at 205 Scudder was reviewed.

- The top of bank line will be cut back a little and will be more gradual. Re-grading will be done in the back lawn area. Small berms 6" high will be put in to divert the water away from the bank to the western drywell, and one going to an eastern drywell so no water will go over the bank. The 4" pipe seems to be abandoned but could be diverted to the drywell. The other pipe on the east of the house 1" diameter is from a sump pump in the basement. It will be cut back and diverted into the drywell.

Issues discussed:

- The 4" pipe should be capped rather than diverted if it is truly abandoned.
- The back of Grady's house does not have gutters and could be a source of more water coming toward the bank. Gutters should be put on the house and water diverted to drywells.
- There are no changes being made to the planting plan.
- Temporary irrigation is needed for the new plantings.
- The temporary solution seems to be working.
- The changes should wait until the vegetation is put in.

A motion was made to approve the revised plan as submitted.

Seconded and voted unanimously by roll call.

Commissioner Foster abstained.

IV. CONTINUANCES

- A. **Lester A. and Rosemary Dunn Moeller.** Proposed seasonal dock at 71 Snow Creek Drive, Hyannis as shown on Assessor's Map 325 Parcel 155. **SE3-5834 Continued from 1/5/21**

Mark Burgess of Shorefront Consulting represented the applicant.

The revised plan is dated January 13, 2021.

There were no questions from Commissioners.

There was no public comment.

A motion was made to approve the project as submitted with the revised plan dated 1/13/2021.

Seconded and voted unanimously by roll call.

- B. **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 Continued from 1/19**

The applicant was represented by Matthew Eddy, P.E. of Baxter Nye Engineering along with Mike Ball, Seth Wilkinson and Attorney Glen Wood.

Louise Foster recused herself.

Matt Eddy reviewed the changes to the plan.

Seth Wilkinson of Wilkinson Ecological Design addressed the Commission regarding the planting plan.

A comment letter dated January 27, 2021 from John G. Kassakian regarding planting of trees was read into record and discussed.

The property is not on the market to be sold and is not under agreement.

There was no public comment.

A motion was made to approve the project as submitted.
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 Hallets Lane, Marstons Mills as shown on Assessor's Map 064 Parcel 016. **SE3-5837 Continued from 1/19**

The applicant was represented by Hannah Raddatz of BSC Group.

The NHESP comments were received. It was determined to be a "no take".
There were no questions from Commissioners.
There was no public comment.

A motion was made to approve a the project as submitted subject to annual monitoring reports for three years.
Seconded and voted unanimously by roll call. (See February 9, 2021 minutes for reconsideration of motion)

- 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 1/19**

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.

The Zoning meeting scheduled for last week was continued and has been rescheduled. The team will be asking for a continuance tonight as well.

The project was reviewed by Sarah Turano-Flores.
Seth Wilkinson reviewed the contents of the letter he submitted.
Trey Ruthven from Applied Coastal Engineering addressed the Commission to respond to comments from the previous hearing.

Pamela Neubert, Shellfish Biologist addressed the Commission. 175 shellfish samples were taken. The results were the same as the shellfish survey done by the Town. The project has great habitat restoration value.

Sarah Turano-Flores addressed some legal questions regarding zoning and property right issues, the length waiver, and the question of if the pier serves the property on which it is located.

Issues discussed:

- Two boats are being proposed are for 33 Oyster Place. The question was raised if this is going to be a shared pier.
- Abutter regulations have been complied with.
- The legal criteria for the water quality question is to determine no adverse effect, not improvement of water quality.
- Zoning overlay cannot be addressed by Conservation Commission.
- There was discussion if the frontage of the lot requires a variance. The frontage of both lots cannot be considered.
- There was discussion regarding the length of the dock. The length of dock is 79' and is being measured from mean low water. Mean low is substantially out from the wharf they are retaining. There is substantial amount that they are not calling a pier. The length regulations are from mean low water.
- The regulation states the pier starts at mean low going seaward. Mean low going landward would be considered boardwalk.
- There was discussion if the boats need to be owned by the property owner.
- It was noted that extra things are being proposed to appease the Commission. It is not something the Commission can consider. The Town building and Town vessels are nice attributes but cannot be considered for making the dock larger to accommodate.
- The navigation issues need to be considered. The project as proposed will cause problems with many moorings. There is very little distance between the proposed pier to the Town dock and the 916 dock.
- The matter presented to the Zoning Board clearly states it is a shared use.
- The question of an existing pier needs to be addressed. Grandfathering does not fit into this application.
- A question was raised if dredging will be needed to remove the wharf. Taking out the upland of the wharf would be considered excavation not dredging.
- There was discussion about the depth of excavation necessary in the bulkhead area.
- The Commission would like to review the location of the test pits and the soil conditions.
- The Commission would like to know what the volume of material being moved is. 3,000 sq. ft. of wharf is being removed but that is only surface area. Would like to know the total volume.

Public comment:

William Potter, 184 Eisenhower Drive, Cotuit submitted a letter. Asked the Commission to consider if the net of the project would be considered positive.

Edward Garguilo, 80 Ocean View Ave. spoke on behalf of Cotuit Oyster Company. The dock would have an adverse cumulative effect. There is an extreme negative impact to the public. The navigation issue is significant. It should be treated as a new pier.

Laura Toner, 164 Little River Road. The dock that would be built would affect the whole community.

Mia Walter, 932 Main Street, Cotuit submitted comments in writing.

Faith Holloway – wants to echo comments on the effect to the community.

John Townes. The shellfish survey only talks about quahogs not oysters and other shellfish. The impacts of power boats close to shore rip up the sea bottom. The project would be prohibited at this time according to the Town Zoning portal.

Haley McMurray, 6 Wings Lane, Cotuit, submitted a letter. They are taking out one man made structure and adding another. According to the shellfish biologist there does not seem to be consensus that this would be a benefit to the environment.

Wally Grove, 944 Main Street Cotuit. Concern is with a channel being developed near the dinghy dock. There will be a safety issue.

David Churbuck, 854 Main Street, Cotuit is opposed to the project. He submitted his comments in writing. The zoning issues should be considered by the Conservation Commission. Wants the Commission to consider the history of the regulations adopted regarding docks and piers. He believes the Zoning conditions are extremely relevant. The dock and pier regulations were revised, and the dock and pier overlay district was established which bans the construction of docks and piers because of their impact on coastal wetlands. The Conservation Commission and the Zoning Board have the regulatory power to deny these public nuisances. Mr. Charbuck cited similar prior projects that have been denied. Mr. Churbuck asked if it is practical to ask the Conservation Commission to overlook a 20 year old ban on pier construction. He urged the Commission to deny the project.

Emily Sherman, 149 Grove Street, Cotuit, stated many any things have already been said. It is not just the abutters not happy with this project. The new dock is counter-productive to helping the environment. There is a safety issue.

Marissa Fiore Kelley, 932 Main Street is opposed to project. The proposed marsh would not survive the environment.

Matthew Walter, 932 Main Street. A continuance is being requested by the applicant not the Zoning Board. It is not in the public interest to keep continuing the hearing. He urged the Commission to review the letter he submitted.

D.J. Long, 7 Lewis Pond Road. He is opposed to the project. This will inhibit navigation near the Town dock. He is dismayed at the attempts to rationalize this as a benefit to the Town. There will be no benefit to the town.

Marta Downing of New Hampshire. The navigation in the area would be shut down with this pier with a northerly wind direction. Could not sail off the dock with a southerly wind direction.

Claudia Walter, 932 Main Street. Most of the reasons for her opposition have already stated.

Larry Lazor, 916 Main Street. The presentations are not fair in time. Attorney Garguilo should have had more time. The marsh proposed must be extremely small. It is only about 25 steps to the Town dock from his dock.

Stuart Rapp Chair of Shellfish Committee is opposed to the project. Asked if public comment will continue to be allowed. If the matter is going to be continued he would like to reserve his comments for the next meeting.

Commission asked the representatives what the reason is for requesting a continuance tonight. They were under the impression Conservation wanted to hear from Zoning Board before making a decision, and would like to take comments from tonight's hearing to come up with modifications.

The Commission could close public comment and take the matter under advisement.

Elizabeth Haenle, 85 Grove Street, Cotuit. She is not an abutter but is a Town resident. Questions how more boats in the area could possibly improve water quality. She would like to see the continuances stopped. As a family user, there are safety concerns.

Arlene Wilson. Raised the issue of cumulative impacts for piers that require waivers. There are dozens of properties in the area that would love to have piers. The reason there is no intertidal zone is because of the rip rap and bulkhead. The bulkheads to the south of this property all have beach. Dredging vs. excavation issue needs to be discussed. Is

the material being excavated going to be used to build the new beach and salt marsh or bring in new material. The deck for the new building needs to be discussed. The applicant is looking for approval in a velocity zone within 50' buffer. There is no information on how it will be constructed. Swapping of the lot sizes will not work if a portion of the lot is given to the Town. There is no mitigation provided for the hardscape in the 50' buffer.

Arlene remembers the original discussions regarding the issue of boats at the dock. The intent was the boats on the dock would be the land owners' boats, not off site boat owners. Arlene asked if there are any plans submitted by Down Cape Engineering as referenced in application.

A continuance was requested to 3/2/2021.

A motion was made to continue to 3/2/2021.
Seconded and voted unanimously by roll call.

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

- | | | | | |
|----|----------------------|-------------|-----------|---|
| A. | Rowe | SE3-4842 | (coc, ez) | construct storage building (not done) |
| | 55 Wianno Head Road, | Osterville | - | West Bay |
| B. | Hostetter | SE3-1433 | (coc, ez) | construct single family dwelling (not done) |
| | 494 Elliott Road, | Centerville | - | Centerville River |

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

VI. MINUTES

A. January 5, 2021

A motion was made to amend page 3 of the January 5th minutes and approve as amended.
Seconded and voted unanimously by roll call.

A motion was made to adjourn.
Seconded and voted unanimously by roll call.

The time was 10:40 p.m.