



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

**DATE: April 26, 2022 @ 6:30 PM**

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**Meeting ID: 983 3877 7378**

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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.

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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, Morin and Sampou. Commissioner Hearn was absent.

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

**I. REQUESTS FOR DETERMINATION – CONTINUED FROM APRIL 12, 2022**

- A. Elizabeth LePage.** Installation of a post and rail fence at 174 Tanglewood Drive, Osterville as shown on Assessor's Map 121 Parcel 063. **DA-22009** Continuance from April 12th for proper legal ad notification.

The applicant represented herself.

Issues discussed:

- During a site visit for a prior history where Fred issued a Certificate of Ccompliance, it was agreed there would be an 8' buffer strip that would not be disturbed. The fence will be along

the buffer strip. Pin flags were put where the fence will be. There will be no disturbance beyond the fence.

- The revised plan is dated April 22, 2022.
- The fence will be 4' with a wire screen.
- A 6" to 12" space should be left at the bottom of the fence before the wire starts.

There was no public comment.

A motion was made to approve the project as a negative determination subject to no cutting beyond the fence and a 6" space will be left at the bottom before the wire screen starts.

Seconded and voted unanimously by roll call.

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

Nay

## **II. NOTICES OF INTENT - CONTINUED FROM APRIL 12, 2022**

- A. Vahan & Rosemary Martirosian, Trustees, Martirosian Realty Trust.** To replace existing stairs down the bank at 15 & 25 Sea View Avenue, Osterville as shown on Assessor's Map 162, Parcel's 026 001 and 002. **SE3-5979.** Continuance from April 12th for proper legal ad notification.

The applicant was represented by Chuck Rowland, P.E. of Sullivan Engineering and Consulting.

Issues discussed:

- NHESP letter received and reviewed. The project must be conditioned in order to avoid a prohibited take. The four conditions were reviewed.
- The steps will be widened on this property only.
- The reconstruction of the revetments has not been done yet.
- A condition should be added that the existing trees on either side of the steps are to remain.

There was no public comment.

- Representative asked for leniency on the time of year restriction if a qualified shore bird monitor were present. The NHESP conditions must be included in the Order of Conditions.
- If a shore bird monitor were to verify there are no birds nesting, DEP could be notified and grant permission to revise the time of year restriction.

A motion was made to approve the project as submitted adding the conditions mentioned in the NHESP letter and keep the two trees next to the stairs.

Seconded and voted unanimously by roll call.

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

Nay

- B. David & Jan Singer.** To demolish the existing dwelling and garage, and construct a new dwelling and guesthouse with all associated appurtenances at 68 Little River Road, Cotuit as shown on Assessor's Map 053 Parcel 006. **SE3-5980** Continuance from April 12th for proper legal ad notification.

The applicant was represented by John O'Dea, P.E. of Sullivan Engineering and Ian Peach of Wilkinson Ecological Design.

Issues discussed:

- This is a complete demolition of the house on a two acre lot. Commission asked if the 50' buffer could be restored.

- This is going from a 3,000 sq. ft. house to a 6,000 sq. ft. house.
- There is a steep coastal bank down to the water. There was discussion on buffer zone regulations.
- There was discussion on the location of the house.
- Cotuit bay is an endangered area that needs to be preserved.
- The existing house in northeast corner of the house is 12' to the top of the bank. The new house closest portion is 30'.
- Commission asked that the top of bank vegetation be increased.
- There is no tree removal proposed in the proximity of the bank.
- Ian Peach of Wilkinson Ecological Design addressed the Commission.
- 19 Norway maples will be removed and will be replaced with 19 native trees to be planted in the 100' buffer. Some are within the 50' buffer but not all.
- 5 of the 19 are within the 50' buffer. The Norway maples are predominately in the 50' buffer. Ten of the native trees being replanted will be in the 50' buffer.
- Ian reviewed the landscaping plan.
- The trees that are being removed need to be marked on the plan.
- A question was raised about a tree that has been topped and pruned. It will not be removed.
- All the new trees are going in on the side property lines. There is only a thin strip of plantings going between the house and the bay area. There is a lot of mitigation on the sides but very little in the center.
- The area in the front does not contain many invasive species that need to be removed.
- The strip in the front is 5' wide. Commission asked if it could be made 10' wide, providing more infiltration to the bay.
- The new septic systems are toward the road. The biggest impact of people living on the property would be the septic.
- The existing septic systems will be abandoned. Commission asked if an IA system would be considered. Consultant will ask the owner.
- Flagstones area should be considered hardscape. It was counted as part of the patio area.
- Clarification was made that there is no fire pit.
- There should be notification to Commission staff if there is a change in contractor for the planting plan and 3 year monitoring reports should be submitted.
- Revised plan should show the dimensions of the building.
- The SE3# of the pier should be shown on the plan.
- Redesign of mitigation area from 5' to 10' strip will need to be incorporated to the revised plan.
- There was further discussion on the septic system, however it is outside Conservation jurisdiction.

A motion was made to approve the project subject to receipt of a revised plan marking the trees being removed, add dimensions of hardscape, add the SE3# of the pier, if a change in contractor Conservation staff will be notified, annual monitoring reports will be submitted for 3 years and the Representative will check with applicant on an IA septic system.

Seconded and voted unanimously by roll call.

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

Nay

- C. Tobias Welo.** Modifications to existing pier by extending its total length 41', relocating it 3' north and substituting piles for supports at 25 Cove Lane, Osterville as shown on Assessor's Map 052 Parcel 009. **SE3-5984** Continuance from April 12th for proper legal ad notification.

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

Issues discussed:

- DMF letter dated April 12, 2022 was reviewed and read into record.

- Liz Lewis email dated April 12, 2022 regarding Shellfish report was reviewed read into record. Requested landscape material be removed.
- Comment letter from John Townes dated April 21, 2022 was reviewed.
- Jacob Angelo letter dated April 23, 2022 was reviewed.
- The change in location of the dock will no longer impact the piece of salt marsh and it will add some water depth to the float.
- In 2015 an almost exact same request to change a seasonal pier to a permanent pier was submitted. The Commission denied the application and Superior Court sided with the Conservation Commission on the decision.
- Traditionally the shellfish rating has been taken into consideration on a waiver request.
- In Regulations there is a clear presumption for seasonal docks vs. permanent docks. There would be substantial construction involved in removing the seasonal dock to install a permanent dock.
- The extension should be considered, but no waiver for depth requirement and should remain seasonal in the current location.
- The shellfish survey is designed to protect shellfish habitat. The 30” rule should stand.
- There is no definitive counting for shellfish further out in the water in the area where the extension will be.
- The Ryan denial and the court case is part of the document for this application.

Amy Croteau from Senior Natural Resource Officer addressed the Commissioners. There is no reason the current pier should be moved and made permanent. The extension is acceptable.

Public comment:

Jake Angelo – Barnstable Shellfish Committee. Applicant survey was done by Megalodon Environmental. Jake raised a question how do get the credentials and qualifications to become a shellfish surveyor. Representative Arlene Wilson provided information that Pamela Neubert has a Ph.D in Marine Biology.

Tyler Hagenstein - Shellfish Committee is concerned of the project and an email written by Arlene Wilson judging habitat by the amount found on a particular day. If clams were taken today, a shellfish survey done later in the day would result in a rating of 0, where if it were tested yesterday it would be rated at 10. Judging a habitat by the amount of shellfish present on a particular day is dangerous. There is habitat loss all over the 3 bays. This area is pretty thick with shellfish, if left untouched the entire area could become covered in soft shell clams. The particular boat should be considered as part of the decision. 2.3’ at mean low is not enough water for any boat. The sizes of the boats need to be taken into consideration. There should be more respect for the remaining shellfish habitat.

John Townes from Barnstable Association for Recreational Shell fishing. Feels this proposal shows a complete disregard for the shellfish habitat. He is opposed to the project. The extension would be acceptable but not moving or allowing as a permanent pier.

Stuart Rapp - Resident of Cotuit and Chair of the Town Shellfish Committee. The Shellfish Committee has not had the opportunity to submit a letter relative to this project as the last meeting had to be re-scheduled. As a residential shellfish license holder, he is opposed to a change in this particular structure. He has regularly submitted letters requesting the Commission deny the applications of permanent or seasonal structures on behalf of the Shellfish Committee. Loss of habitat cannot be restored once it cannot be restored in an area where there is a structure. His preference is the pier application be denied. The boats attached to the structures cause dredging. The rating map should definitely be considered.

Patricia Farinha - Resident and member of the Shellfish Committee. Addressed Arlene Wilson in regards to her statement that we do not have warm waters. Patricia stated we do have warm waters that

are getting warmer so invasive species are a threat. Historically there were a lot of shellfish in the area. We are the ones who have removed them over time.

Chris Clark - Town Council Liason to the Shellfish Committee. Stated she is concerned for the loss of habitat if this application is approved. Conservation Commission has an obligation to preserve shellfish habitat. Chris understands the questioning by Jake Angelo of the qualifications for a shellfish evaluator who may have more classroom time rather than time in waders. She supports the Natural Resources request to deny the proposal. Requested debris from the revetment be removed.

Connor Rogan - Full time commercial harvester in Barnstable. Requests the application be denied.

Continued discussion:

- The professional shell fisherman's comments are valued.
- Arlene Wilson further explained the report from Pam Neubert. Arlene will go back to the client to see if he is willing go forward with just the extension without relocating. Arlene requested a continuance to look at the issue of permanence to May 24<sup>th</sup>, 2022.
- Commission requested the landscaping material from the revetment be removed as soon as possible.

A motion was made to approve a continuance to May 24, 2022.

Seconded and voted unanimously by roll call.

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

Nay

- D. Nancy Place.** Landscaping and construction of a pool, pergola, and retaining wall in the 100 foot buffer zone, and replanting of the coastal bank and buffer zone at 58 Eel River Road, Osterville as shown on Assessor's Map 116 Parcel 091. **SE3-5978.** Continuance from April 12th for proper legal ad notification.

The applicant was represented by David Haines of Haines Hydrogeologic Consulting.

Commissioner Abodeely left the meeting at 8:54 p.m. because of a power outage.

Issues discussed:

- There are no other reasonable locations for the pool.
- The mitigation is more on the street side rather than the pool side of the property.
- The swale is being eliminated and all run off from roof, pool, and driveway area will go into the leaching area.

Commissioner Abodeely rejoined the meeting at 9:02 p.m.

- The information about the leaching area is not included.
- There needs to be more detail on the leaching pit, dimensions of the hardscape.
- A question was raised on the condition of the trees to be removed. There should be no trees removed in the 50' buffer.
- The leach basin detail was shown and should have been included in the submission.
- There is an area of erosion control on the plan that is not needed.
- A question was raised if the pool could be pulled completely out of the 50' buffer.
- This is an example of why we have Chapter 704. The Commission is getting a great mitigation plan for the small portion of the pool in the 50' buffer.
- The leach pit is designed to take the entire volume of the pool. It will have more than enough capacity from the driveway and the roof runoff.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan showing dimensions of the hardscape, removal of erosion control on south side of the building, and remove label for the tree not being removed.

Seconded and voted unanimously by roll call.

Aye – Foster, Gillmore, Lee, Morin, Sampou

Nay –

Abstained - Abodeely

### **III. AMENDED ORDERS – CONTINUED FROM APRIL 12, 2022**

- A. **James Montgomery. SE3-5876.** To erect a seasonal aluminum dock that extends within his property line(s) extended, into Sam’s Pond. The dock is refabricated aluminum and comes with adjustable legs. The dock shall be installed 20’ into the water where the depth is proper for small craft. The dock shall be removed and stored in a previously approved kayak area upland from the pond at 142 Pond Street, Osterville as shown on Assessor’s Map 118 Parcel 100. Continuance from April 12th for proper legal ad notification.

The applicant was represented by Wayne Tavares, PLS.

Issues discussed:

- A question was raised if this should be a new NOI filing instead of an Amended Order. Darcy felt comfortable with it being an Amended Order.
- The motion should include it is a non-motorized dock.

A motion was made to approve the project as submitted for a non-motorized dock.

Seconded and voted unanimously by roll call.

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

Nay

### **IV. NOTICES OF INTENT**

- A. **Dean R. and Andrea B. McWilliams.** To reconstruct the existing stone revetment, proposed beach nourishment and to replace beach access stairs with proposed landing at 153 Sea View Avenue, Osterville as shown on Assessor’s Map 162 Parcel 023. **SE3-5982**

The applicant was represented by Chuck Rowland, P.E. of Sullivan Engineering and Consulting.

Issues discussed:

- A construction protocol should be submitted.
- Nourishment should be conditioned as annually.
- During a site visit there appears to have been cutting on the bank.
- The large landing is being proposed because the stairs would run into the revetment.
- Benches are being proposed on the landing.
- There was discussion on allowing benches on the landing.
- There is nothing that prohibits benches on the landing.
- Typically benches are not allowed on the landing.
- This is not a party deck, it is just a resting point.

There was no public comment.

A motion was made to approve the project subject to receipt of a construction protocol 28 days prior to the pre-construction meeting with staff and natural resources, annual monitoring reports of beach

nourishment for 3 years, and a revised plan showing the benches labeled. Beach nourishment shall be permitted annually based on the annual report and may be requested under a revised plan if the project is extended after 3 years.

Seconded and voted unanimously by roll call.

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

- B. Sunset Point, LLC.** Proposed repairs and renovation to existing dwelling to include partial reconstruction, proposed garage addition, patios/walkways, and all associated appurtenances at 51 Sunset Point, Osterville as shown on Assessor’s Map 051 Parcel 008. **SE3-5981**

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

Issues discussed:

- A stone walk going down to the dock will be removed and a new walkway will be installed.
- There is 9 acres of land however they are asking to infringe on the 50’ buffer. There should be more mitigation on revetment.
- The primary driver of the filing is for the repairs. The garage addition is secondary. The mitigation is being provided for the patios’ and walkways.
- There is a lot of mitigation off to the side that maybe should go across the front.
- A question was raised if the proposed generator is replacing the other generator. It is temporary for construction purposes.

There was no public comment.

A motion was made to approve the project as submitted.

Seconded and voted unanimously by roll call.

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

## V. CONTINUANCES

- A. Charles Pisacano.** Raze and replacement of a multi-unit residential housing unit at 182 Sea Street, Hyannis as shown on Assessor’s Map 307 Parcel 193. **BCC-0199 (Continued from 3/8/22)**

The applicant was represented by Hannah Raddatz.

Issues discussed:

- A revised plan dated March 8, 2022 showing the hardscape outside the 50’ buffer has been submitted.

A motion was made to approve the project as submitted on the revised plan dated March 8, 2022.

Seconded and voted by roll call.

Aye – Foster, Gillmore, Lee, Morin, Sampou  
Nay

Commissioner Abodeely was not present for the vote.

- B. Philip Scudder – Hyline Cruises.** Installation of a new sheet pile bulkhead immediately out-shore of an existing deteriorated timber bulkhead and maintenance of a timber pier at 138 Ocean Street, Hyannis as shown on Assessor’s Map 326 Parcel 067. **SE3-5970 (Continued from 3/29/22)**

The applicant was represented by Brad Saunders of GEI Consultants, Inc.

A 5 minute break was requested. Meeting will resume at 10:05 p.m.

Issues discussed:

- A shellfish report was received.
- A Natural Resource report from Liz Lewis was received 4/26/2022 and read into record.
- Greenheart pilings will be used in the project.
- A construction protocol should be received 28 days before the pre-construction meeting.
- Amy Croteau addressed the Commission. The work needs to be done but damage will definitely be done to the existing habitat. There should be compensation for seed purchase to replant after the project is complete.

There was no public comment

A motion was made to approve the project subject to providing a construction protocol by the contractor 4 weeks prior to the pre-construction meeting with Conservation and Natural Resources staff, applicant will use Greenheart pilings, compensation will be made for seed purchase (amount to be determined by Natural Resources staff after the construction is completed).

Seconded and voted unanimously by roll call.

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

Nay

- C. Glen Lane Nominee Trust – Amended NOI** Modification of existing pier by extending fixed section 24', reusing the existing ramp and turning the end float parallel to the channel or, in the alternative, dredging ±95 cu. yds. around the existing pier at 49 Main Street, Osterville as shown on Assessor's Map 185 Parcel 020. **SE3-5941 (Continued from 3/29/22)**

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

Issues discussed:

- A revised plan dated April 4, 2022 was reviewed.
- There is 35' between the boat and the edge of the channel.
- A waiver is required for additional 108 sq. ft. for the float. Total would be 308 sq. ft.
- Commission needs to specify why a waiver would be allowed for this specific project. There needs to be something unique to the situation to allow the waiver.

**Due to a weather event, Town Hall lost power and the meeting was no longer being recorded.**

A motion was made to continue all items from V. C. through VII. A. be continued to the May 3, 2022 meeting.

Seconded and voted by roll call.

Aye – Abodeely, Foster, Gillmore, Lee, Morin

Nay

Commissioner Sampou was unavailable to vote due to power outage.

A motion was made to adjourn.

Seconded and voted by roll call.

Aye – Abodeely, Foster, Gillmore, Lee, Morin

Nay

Commissioner Sampou was unavailable to vote due to power outage.

The time was 10:40 p.m.