



Town of Barnstable Conservation Commission

230 South Street
Hyannis Massachusetts 02601

Office: 508-862-4093

E-mail: conservation@town.barnstable.ma.us

MINUTES – CONSERVATION COMMISSION HEARING

DATE: February 28, 2023 @ 6:30 PM

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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, 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.

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 Morin and Sampou. Commissioner Abodeely arrived at 7:14 p.m. Commissioner Hearn arrived at 8:48 p.m.

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

I. REQUESTS FOR DETERMINATION

- A. **Thomas Parish.** Proposed 16' x 24' addition to garage at 19 Ladd Road, Centerville as shown on Assessor's Map 186 Parcel 053. DA-23012

The applicant represented himself.

- There were no questions from Commissioners.
- No bedrooms will be added.

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 – Foster, Gillmore, Lee, Morin, Sampou

Nay –

- B. **Susan B. McAllister.** Proposed septic system upgrade at 10 Island Avenue, Hyannisport as shown on Assessor’s Map 265 Parcel 004. DA-23013

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

Issues discussed:

- This will be an I/A system.
- The representative and owner were thanked for upgrading to an I/A system.

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 –Gillmore, Lee, Morin, Sampou

Nay –

Foster unable to vote

- C. **Gregory Monfette.** Abandon existing septic system and install upgraded Title V septic system at 139 Meadow Lane, West Barnstable as shown on Assessor’s Map 134 Parcel 017. DA-23014

The applicant was represented by Corey Bracken of Sabatia Inc.

Issues discussed:

- There were no questions from Commissioners.

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 – Foster, Gillmore, Lee, Morin, Sampou

Nay -

- D. **Town of Barnstable – DPW.** Extend the existing rear deck across the entire rear of the building at 997 Craigville Beach Road, Centerville as shown on Assessor’s Map 206 Parcel 013. DA-23015

The applicant was represented by Mark Marinaccio, Town of Barnstable DPW.

Issues discussed:

- There were no questions from Commissioners.

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 – Foster, Gillmore, Lee, Morin, Sampou

Nay -

- E. **Built Different Construction.** To raze and replace existing rear deck and porch at 163 Long Beach Road, Centerville as shown on Assessor’s Map 205 Parcel 026. DA-23016

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

Issues discussed:

- A question was asked about the deck bench. It was existing and not part of this project.
- The approval of the bench will be looked into by staff.

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 – Foster, Gillmore, Lee, Morin, Sampou

Nay -

II. NOTICES OF INTENT

- A. **Oyster Harbors Club, Inc.** To replace Golf Course irrigation pump, pump house and intake pipe at 145 Grand Island Drive, Osterville as shown on Assessor’s Map 071 Parcel 004-001. **SE3-6070**

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

Issues discussed:

- There will be a lot of vegetation removed for the project. Many trees will be coming out. A question was raised if some trees could be put back in.
- They will work with staff and add trees to the plan.
- The current structure is a safety issue. The floor may be deteriorated where the pumps are located.
- There will be a drywell installed for roof run-off.
- The current system does not have sensors to detect breaks or clogging issues. The new system will have sensors.
- Construction and dewatering protocols will be needed as well as a pre-construction meeting with staff.
- Revised plan needs to be submitted showing mitigation to include trees.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan showing the mitigation trees locations, receipt of construction and dewatering protocols (to be prepared by the contractor), and submitted prior to the pre-construction conference.

Seconded and voted unanimously by roll call.

Aye – Foster, Gillmore, Lee, Morin, Sampou

Nay –

Agenda items were taken out of order as Representative for Hahn project was not available. Haseotes was taken next.

Commissioner Abodeely arrived at 7:14 p.m.

- B. **Angela Hahn.** Construct and maintain 4’ brushed footpath; bank access stairs; pile supported dinghy dock with 3’ x 12’ ramp, 8’ x 12’ float and kayak racks; vegetative maintenance and understory plantings at 150 Bay Road, Cotuit as shown on Assessor’s Map 007 Parcel 018. **SE3-6071 NHESP Letter Received. WC Form received.**

The site was not staked at the time of the site visit.

A continuance was requested to 3/28/2023 without testimony.

A motion was made to approve the continuance request without testimony to 3/28/23.
Seconded and voted unanimously by roll call.
Aye –Abodeely, Foster, Gillmore, Lee, Morin, Sampou
Nay -

C. **Tina Haseotes.** Install in-ground pool and adjoining patio at 773 South Main Street, Centerville as shown on Assessor’s Map 185 Parcel 013. **SE3-6072**

The applicant was represented by Matthew Eddy, P.E. of Baxter Nye Engineering.

Issues discussed:

- The drawdown pit will be on the southerly side of the pool.
- The equipment will be to the side of the guest house up by the driveway.
- The pool fence was discussed.
- Grass will remain around the pool.
- Commission would like to see some mitigation near the resource area.
- There will be less run off after the project then there is currently.
- Some plantings could be added around the existing landscape bed.
- There was discussion on possible locations for additional mitigation.
- They could look at the area near the top of the coastal bank.
- The area is currently lawn.
- A question was raised if there had been constraints put on the property for no further hardscape.
- A question was raised if monitoring reports for prior projects had been submitted.
- Staff will look into the above questions.
- If vegetative mitigation is done near the top of the bank, they could keep some of the hardscape around the pool.

Public Comment:

Attorney Michael Gill of Gill Devine, Hyannis - representing Patricia Carlson, Trustee/owner of abutting property at 789 South Main Street. This property will be most impacted by the pool. The property is in an area of critical concern. The entire project is within Conservation jurisdiction. The site is fully developed. The pool will be 3’ from the abutters’ property. There are large hedges on the property line and the root systems go very deep. There is concern the root system of the hedge will be damaged. He asked where the pool equipment will be located. There will be drainage impacts. There will be more run off to the Centerville River.

A continuance was requested to March 28, 2023.

A motion was made to continue the application to March 28, 2023.
Seconded and voted unanimously by roll call.
Aye –Abodeely, Foster, Gillmore, Lee, Morin, Sampou
Nay –

Hahn was taken next on the agenda.

III. AMENDED ORDERS

A. **Stephen M. & Beth F. McParland.** To amend the order of conditions to allow for removal of invasives from an additional area along the bulkhead at 150 Carriage Road, Osterville as shown on Assessors Map 071 Parcel 015-003. **SE3-5856 WC Form needs to be submitted.**

A continuance was requested to March 28, 2023.

A motion was made to approve the continuance request without testimony to 3/28/23.

Seconded and voted unanimously by roll call.

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

Nay -

- B. **Donald J. MacKinnon, Trustee.** To amend the order of conditions to add proposed garage/workshop structure, revised septic location, and mitigation planting changes at 910 Main Street, Cotuit as shown on Assessor’s Map 035 Parcel 090. **SE3-5914**

The applicant was represented by Dan Ojala, P.E. of Down Cape Engineering, and Sarah Turano-Flores of Nutter, McClennen and Fish, LLP, and Tabitha Kaigle of Wilkinson Ecological Design.

Issues discussed:

- An I/A nitro system will be put in.
- The hardscape changes were reviewed.
- The changes to the mitigation were reviewed.
- Tabitha Kaigle of Wilkinson Ecological Design described the changes.
- The mitigation will be closer to Cotuit Bay.
- The width of the stairs is greater than 4 feet. There is only a one inch over-hang on each side, and the stairs are already built.
- It is a common mistake by contractors. With the I/A systems going in it can be allowed.

There was no public comment.

A motion was made to approve the amended order including the width of the stairs slightly more than 4’.

Seconded and voted unanimously by roll call.

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

Nay -

- C. **Matthew MacKinnon, Trustee.** To amend the order of conditions for landscape changes including revised mitigation, planting plan, and fill around the house at 33 Oyster Place Road, Cotuit as shown on Assessor’s Map 035 Parcel 101. **SE3-5915**

The applicant was represented by Dan Ojala, P.E. of Down Cape Engineering, and Sarah Turano-Flores of Nutter, McClennen and Fish, LLP.

Issues discussed:

- An I/A nitro system will be going in.
- More fill was brought in than was allowed by the OOC.
- 200 cubic yards of fill was brought in.
- There is concern that this has been submitted as an amended order.
- This project maybe should have been submitted as a new NOI.
- The plantings may be affected if a swale is approved.
- Proposed drainage area was not on a prior plan.
- There is a very definite difference in grade between 33 Oyster Place Road and the neighbor.
- The drainage area is in the 50’ buffer.
- A question was asked how much material was removed before the fill was brought in.
- This is a significant change to what was permitted. The procedure and the filing of an amended order should not be considered. It should come back as a new NOI. It should be denied.

Attorney Sarah Turano-Flores addressed the Commissioners.

The fill should not be addressed through the amended order. The fill should be addressed outside the amendment application. Photographs of the site before the fill was brought in were

taken and can be submitted. They can address the fill issue simultaneously with the amended order but should not be part of it.

Commissioner comments continued.

- The abutter notification letter includes the fill around the house. The legal ad included the fill.
- The relocation of the air conditioning units was not listed as part of this amendment.
- It is clear the amended order came in because of the violation.
- It is a substantial change and should not be heard as an amended order.
- The fill was added to the amended order request because the violation was found.
- It could be withdrawn. The amended order request could be re-submitted without the fill. The fill could come in as a separate NOI.

The applicant withdrew the application for the amended order. An email should be submitted for the record.

Commissioner Hearn arrived at 8:48 pm

IV. CONTINUANCES

- A. **Stephanie J. Gaskill, Trustee – Barley Neck Trust.** Construct and maintain a garage, attached enclosed breezeway, removal of section of existing paved driveway, stone retaining wall and post and rail fence, installation of gutters, downspouts and drywells with proposed mitigation plantings, and associated clearing, grading, utilities and landscaping at 540 Old Falmouth Road, Marstons Mills as shown on Assessor’s Map 124 Parcel 005. **SE3-6067 Continued from 2/14/23. WC Form received, NHESP letter required.**

A continuance was requested to 3/14/23 without testimony.

A motion was made to approve the continuance request to 3/14/23 without testimony.
Seconded and voted unanimously by roll call.
Aye –Abodeely, Foster, Gillmore, Hearn, Lee, Morin, Sampou
Nay -

V. TAKEN UNDER ADVISEMENT

- A. **Stephen & Beth McParland.** Construction of permanent pile supported pier for non-motorized vessels at 150 Carriage Road as shown on Assessor’s Map 071 Parcel 015 003.**SE3-6059**

A proposed finding was read into record.

1. This proposed permanent pier NOI (SE3-6059) is filed 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. The use of the proposed permanent pier will be for non-motorized vessels (such as kayaks and a small sailboat). The small sailboat was added in the supplemental information dated February 9, 2023.
2. The Commission reviews all pier proposals on a site-specific basis, as stated in Chapter 703: Private Docks and Piers, Section 703-5(c).
3. The Commission finds that the specific requirement for the protection of shellfish as set forth in the ordinance includes by any logical extension the protection of shellfish habitat. Shellfish habitat is specifically defined in Section 703-2.

4. The Conservation Commission finds the proposed pier is located in an area rated 6 (WB7) on the shellfish rating map (dated December 20, 2011), which is published on the Conservation Division website. The shellfish rating is between 0 and 10 with 10 being the highest. This is the shellfish resource and habitat area mapping for Three Bay Area as determined by the Shellfish Committee and adopted by the Conservation Commission. As a long-standing practice, the Conservation Commission has considered that a rating of 6 and higher is “high significant shellfish area.” The current version is dated December 20, 2011, as posted on the Conservation Division website.
5. Based on the evidence submitted, the Commission finds that this proposed permanent pier will reduce water access for shellfish harvesting, which is detrimental to the recreation interest as defined in local Ordinance Chapter 237 and Chapter 703-1(I) and 703-4(O). A seasonal pier allows off-season access and shellfish harvesting along the full footprint of the seasonal pier when it is removed. The presence of a permanent pier at this location will impede recreational and commercial fishermen access and ability to harvest shellfish under this pier year-round. A seasonal pier allows access to this site during roughly half the year.

Chapter 703-1(I) states that “Docks and piers when placed in land containing shellfish or shellfish habitat have an adverse impact on the resource area value of recreation. The placement, length and size of docks and appurtenant floats can interfere with the harvesting of quahogs, soft shell clams, and scallops. Docks and piers can have an unacceptable significant or cumulative effect on habitat and recreation as defined in Section 14 of Chapter 237, Wetlands Protection, of the General Ordinances of the Code of the Town of Barnstable.”

6. The Commission has relied historically and with confidence on opinions from the Town Biologist with regards to site specific review and recommendations. In this case, the Town Biologist, Elizabeth Lewis, while preferring no pier at this location, concluded that a seasonal pier is preferred over a permanent pier in order to better protect shellfish, shellfish habitat and recreational and commercial shell fishing, interests of the local regulation Chapter 703-2 and 703-5(B), which are more stringent local interests are being adversely affected.
7. On her report dated December 27, 2022, the Town’s Biologist stated that the proposed project is located in the Massachusetts Division of Marine Fisheries designated growing area (DMF/SC22.0); classified as approved and open to the harvest of shellfish. The area never undergoes seasonal closures and is open to both recreational and commercial harvest.
8. Within the same report, the Town’s Biologist also stated that the proposed pier design will have significant impacts on the habitat and shellfishery, again interests protected under the local regulation Chapter 703- 4(J (3)) and 703-5(B). A permanent pier of this length will take up a large amount of space with just the pilings alone permanently removing this area as shellfish habitat from the fishery.
9. On the same report, the Town’s Biologist also mentioned that in the winter time, permanent dock owners run ice eaters so that the pilings are not frozen in the ice and then forced up out of position. With such shallow depth of water, the ice eater will create scouring of the bottom similar to what the propeller of a boat would do in shallow water. With no ice eater, these pilings from piers have been known to drift to different parts of the bay and several are still littering areas of the shoreline from icy winters years ago.
10. Commissioner Sampou cited the concern with the spread of exotic species related to permanent piers. This may have an adverse effect on resource areas and the use of these areas for recreational purposes under our regulation Chapter 703-2. Seasonal piers will at least reduce the presence, growth, and propagation of these exotic species, as seasonal removal of the pilings kills attached fouling organisms.

This is confirmed in the Thomas F. Ryan case by Barnstable Superior Court Judge Robert C. Rufo, Jr. – “While the Bylaw does not specially mention invasive species as a particular form of adverse effect to recreational interests such as shellfishing or finfishing, such specially is not required.”

11. Commissioner Sampou also provided a reference to the Invasive Species, Massachusetts Bays program, (US EPA). It mentioned that “These intruders cling to the hulls and other hard surfaces, including permanent floating docks and piers, ropes, buoys, and chains, even hitchhiking on the backs of native shellfish and other organisms. Once established, they can colonize and begin to smother native flora and fauna, killing off native populations by depriving them of space and food.”
12. The Commission finds that based on the evidence and testimony presented, including the scientific records submitted by Commissioner Sampou, a permanent dock, as opposed to a seasonal dock which would meet the needs of the applicant, will cause negative impacts on the values protected under local Ordinance Chapter 237-1 and Chapter 703-2.
13. Our Town of Barnstable regulation (Chapter 703-5(B)) states, “In most cases seasonal piers present less impact to the resource because of their seasonal nature and because they can be constructed entirely with environmentally benign materials.” Unless evidence is presented which shows a permanent pile pier would, in fact, lessen the environmental impacts of said dock, our regulation makes it very clear the benefits of a seasonal dock on our coastal resources. The applicant has failed to meet its burden of proof as required by the regulations Chapter 703-5(C).

In conclusion, the Barnstable Conservation Commission finds that a permanent pier for a non-motorized vessels shall result in negative effects on shellfish and shellfish habitat, accessibility for fin and shellfishery and contribute to the potential for exotic species proliferation in our embayments. The Commission finds that the applicant did not provide sufficient evidence to justify a permanent pier for non-motorized use. The Commission must deny the applicant’s request for a permanent pier under local ordinance and regulation Chapter 703 but approve it under the State Wetland Protection Act, which contains only the minimum statewide standards and is less restrictive under the local Ordinance and regulations.

Commissioner comments:

- The materials used in permanent and seasonal pier pilings was discussed.
- There was discussion on access to shellfish habitat.
- Written comments will be submitted by Commissioner Morin.

A motion was made to approve the finding.
Seconded and voted unanimously by roll call.
Aye –Abodeely, Foster, Hearn, Lee, Sampou
Nay - Morin, Gillmore

A motion was made to approve the project under the State Wetland Protection Act.
Seconded and voted unanimously by roll call.
Aye –Abodeely, Foster, Gillmore, Hearn, Lee, Morin, Sampou
Nay -

A motion was made to deny to the project under the local ordinance Chapter 237 and Regulations Chapter 703.
Seconded and voted by roll call.
Aye –Abodeely, Foster, Hearn, Lee, Sampou
Nay - Gillmore, Morin

VI. CERTIFICATES OF COMPLIANCE –

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

- A. SE3-5802 Timothy J. & Marla J. Kalkus** (COC, ez) Raze & Rebuild SFD w/
Attached Garage, New Deck, & Screened Porch 99 Old Farm Rd, Centerville Lake Weq.
- B. SE3-5845 Daniel & Kathryn Croteau** (COC, ez) Raze & Rebuild SFD w/ New
Deck & Retaining Wall 76 Long Beach Road, Centerville Barrier Beach / Coastal Beach
- C. SE3-5580 Oliver M. Berret & Lisa B. Rudolph** (COC, ez*) Rebuild Pool / Pool Patio &
Fence / New Deck, Mitigation & Invasive Removal 521 Bumps River Rd, Osterville
Micah's Pond / BVW

A motion was made to approve A. – C.

Seconded and voted unanimously by roll call.

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

Nay –

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 9:08 p.m.