



Town of Barnstable Conservation Commission

200 Main Street
Hyannis Massachusetts 02601

Office: 508-862-4093

E-mail: [conservation @ town.barnstable.ma.us](mailto:conservation@town.barnstable.ma.us)

FAX: 508-778-2412

MINUTES – CONSERVATION COMMISSION HEARING

DATE: June 9, 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 June 9th public 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/91725593222>

Meeting ID: 917 2559 3222

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 and Clerk Dennis Houle were also present along with Commissioners John Abodeely, Larry Morin, George Gillmore, and Pete Sampou. Vice Chair Louise R. Foster was not present.

Conservation Administrator, Darcy Karle, was present.

I REQUESTS FOR DETERMINATION

Vicki Marchant. Install anchored jute matting 40' X 12' for erosion control. Proposed mulch area bordered by Hill Street and extending 123' into the yard, planting of 12 hosta plants and one pound of New England Wetlands wildflower seeds at 31 Paine Avenue, Hyannis as shown on Assessor's Map 289 Parcel 119-001. **DA-20020**

The applicant represented themselves.

Issues Discussed:

- There was discussion about the proper use of the mulch.
- There was a comment that this file was a previous enforcement issue.

There was public comment:

- Property owner of 23 Hill Street is a direct abutter. There was a question about traffic and how the plants will be irrigated.

There was a motion to approve the project as a negative determination.
The motion was seconded and voted unanimously.

Edward M. Kennedy Institute, US Senate Inc. The project as proposed is to replace the existing storm damaged beach access walk and stairs on the easterly side of the lot, 5' – 7' landward at 47 Marchant Avenue, Hyannis Port as shown on Assessor's Map 286 Parcel 024. **DA-20021**

The applicant was represented by John O'Dea P.E of Sullivan Engineering and Consulting.
DA-20021 and DA-20022 were opened together.

Issues Discussed:

- There was a question about construction protocol.
- There was a comment about following conditions within a Request for Determination filing and having staff input guidelines in the Order of Conditions.

There was no public comment

There was a motion to approve a negative determination with standard stair conditions, 4'wide, no solid risers and work to be done by hand.
The motion was seconded and voted unanimously.

Edward M. Kennedy Institute, US Senate Inc. The project as proposed is to replace the existing storm damaged beach access walk and stairs on the westerly side of the lot, 5' – 7' landward at 47 Marchant Avenue, Hyannis Port as shown on Assessor's Map 286 Parcel 024. **DA-20022**

The applicant was represented by John O'Dea P.E of Sullivan Engineering and Consulting.
DA-20021 and DA-20022 were opened together.

Issues Discussed:

- There was a question about construction protocol.
- There was a comment about following conditions within a Request for Determination filing and having staff input guidelines in the Order of Conditions.
- There was discussion about the seaward facing coastal bank and its significance.
- There was a comment about a similar landscape in Cotuit.

There was no public comment.

There was a motion to approve a negative determination with standard stair conditions, 4'wide, no solid risers and work to be done by hand.
The motion was seconded and voted unanimously.

II NOTICES OF INTENT

Charles J. Murphy, Trustee. Construction of a stone retaining wall at 122 Point of Pines Avenue, Centerville as shown on Assessor's Map 230 Parcel 063. **SE3-5791 A continuance has been requested to June 23rd.**

There was a motion to continue the application to June 23, 2020, with no testimony.
The motion was seconded and voted unanimously.

III ADVISEMENT DISCUSSION AND DECISION

- A. Hard-A-Lee, LLC.** Site preparation, construction of single family dwelling, attached garage, utilities, pool, and landscape amenities including mitigation plantings at 299 Eel River Road, Osterville as shown on Assessor's Map 115 Parcel 003. **SE3-5766 Public hearing closed on May 26th.**

Issues Discussed:

- The quorum is all Commissioners present
- There was a disagreement between the applicant's representatives and the abutter representatives on two issues. First the flood elevations and secondly the presence of a Town defined Coastal bank beyond the edge of the flood zone.
- The first matter, flood elevation was resolved. Both engineers had agreed, including Chair Lee.
- It was noted a corrected site plan should be submitted showing the flood elevation
- The definition of a Town defined coastal bank under Chapter 237 was read into the record.
- The same definition is repeated at the top of Chapter 705.
- The only "complication" is, may or may not be a complication, comes in the last paragraph of Chapter 705, pg. 1, where there is a comparison with Department of Environmental Protection policy; it says under Chapter 237 a regulated coastal bank must necessarily reside adjacent to a tidal waterbody. This is not exactly what Chapter 237 says. It says, .. lies at the landward edge of a coastal beach, land subject to tidal action, or other coastal wetland.
- Commission Chair Lee and Administrator Darcy Karle were requested by the Commission to give their recommendation as to whether this bank beyond the edge of the flood zone is a Town defined coastal bank or not.
- There was a recommendation made by the Chair about Chapter 237 and Chapter 705 based on interpretations of those chapters. Chair Lee stated in his opinion is that in chapter 705, The word "adjacent" is equal to meaning of lying at the landward edge. That was how he interpreted what adjacent means. Even though there is a small area that exceeds 18%, the landform in question does not qualify as seaward facing. The landform does not lie at the landward edge of a coastal beach, land subject to tidal action or coastal wetland. Also, the landform is not a sediment source. Therefore, there is no town coastal bank. In addition the last paragraph in Chapter 705, it states, The Conservation Commission shall, however, reserve the right to find the appropriateness of an applicant's particular delineation method on a site by site basis. Moreover, where the application of this policy would describe a regulatable bank which is truly insignificant in scope, the Conservation Commission and/or its staff shall reserve the right to decline any jurisdiction over it.
- Administrator Darcy Karle agrees with the Chair interpretation and added that it is important to include the decision and review made by Department of Environmental Protection under the Longfields Case (SE3-4470) that banks, once they turn away from seaward face and run along a swale area they no longer act as a vertical buffer.
- Two other properties with similar cases were mentioned. The Lowell estate (when the descendants of the Lowells were subdividing the property) off of Putnam Ave and 882 Main Street, both in Cotuit and both had similar determinations, once the bank turned away from seaward facing that portion of the bank was not defined by the Commission as a Town Coastal bank.
- Other Commissioners agreed Chapter 705 is interpretive of what Chapter 237 says. They were in agreement with the Chair and Administrator. The bank needs to meet the criteria in Chapter 237.
- It was also mentioned the slope needs to be greater than 18% consistently. It did not appear to be the case at this location.

A motion was made for a finding that stated that base on the definition in Chapter 237 and repeated in Chapter 705 the Commission finds that this land form does not meet the definition of a Town defined Coastal Bank in that it does not lie at the landward edge of a coastal beach, it is not seaward facing and is not consistently greater than 18%.

Motion was seconded.

Further discussion took place, regarding concern raised over using the word consistently. The line "not consistently greater than 18%." will be stricken from the finding.

Clarification of which bank should be made in the finding. The one that lies above the flood elevation shall be added to the finding.

Motion seconded again.

5 Aye 1 Nay

Finding was approved on a 5 to 1 vote.

Based on the finding a motion was made to approve the project as submitted, subject to receipt of a site plan that shows the agreed upon flood elevation if not already submitted.

Motion seconded

5 Aye 1 Nay

Approved on a 5 to 1 vote.

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

- | | | | | |
|----|---|----------|-----------|--|
| A. | McQuade | SE3-5168 | (coc, ez) | maintain rip-rap boulder sea wall * |
| | 61 Dale Avenue, Hyannisport | | - | Nantucket Sound |
| B. | Thompson | SE3-4900 | (coc, ez) | construct bridge over isolated wetland (not done) |
| | 203 & 205 Scudder's Lane and 58 Calves Pasture Lane, Barnstable | | - | Barnstable Harbor area |
| C. | Horsley | SE3-4297 | (coc, ez) | construct garage (not done) & barn * |
| | 65 Little River Road, Cotuit | | - | Little River |
| D. | Herman | SE3-5349 | (coc, ez) | raze & construct single family dwelling (not done) |
| | 10 Nyes Neck Road East, Centerville | | - | Bearse Pond |
| E. | LaPoint | SE3-5401 | (coc, ez) | raze & construct single family dwelling; |
| | 980 Main Street, Cotuit | | - | invasive plant management*
Cotuit Bay |
| F. | Scudder | SE3-5081 | (coc, ez) | maintenance dredging for Hyannis Harbor Tours |
| | 220 Ocean Street, Hyannis | | - | Hyannis Inner Harbor |

There was a motion to approve A-F.

The motion was seconded and voted unanimously.

V MINUTES

A. May 12, 2020

B. May 26, 2020

There was a motion to approve A – B.

This motion was seconded and voted unanimously.

There was a motion to adjourn the meeting.

The motion was seconded and voted unanimously.

The meeting was adjourned at: 7:11 P.M.