



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

DATE: August 11, 2020 @ 3:00 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.

Remote Participation Instructions

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 July 14th 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/96552519021>

Meeting ID: 965 5251 9021

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.

The meeting was called to order at 3:00 p.m. by Chair F. P. (Tom) Lee. Also in attendance were: Vice Chair Louise R. Foster, Clerk Dennis Houle, Commissioners George Gillmore, John Abodeely, and Pete Sampou. Larry Morin was absent.

Conservation Administrator, Darcy Karle, assisted along with Edwin Hoopes and Fred Stepanis.

3:00 PM AGENDA

I. CERTIFICATES OF COMPLIANCE

(d = deviations, staff recommends denial) (* = on-going conditions)

- A. Kariotis SE3-4366 (coc, d) Construct single family dwelling (Guest House) *
67 Pirates Cove, Oyster Harbors - Cotuit Bay

This is a single family dwelling (Guest House) on Cotuit Bay. It was built on lot 2 which is adjacent to the Main House on lot 3. In 1989 there was a house on lot 3 and a dock on lot 2.

The following compliance deviation was noted:

1. Special condition # 21 of the Order of Conditions states: "The applicant shall provide a deed restriction, worded to the satisfaction of the Conservation Commission, which provides that the existing onsite pier

would also serve the adjacent Kariotis lot (No. 65). (Note: the Conservation Commission, in setting forth this requirement, anticipates that the subject pier will be proposed to be modified such that it could reasonably accommodate use by both parcels)”

No deed restriction has been provided.

An Order of Conditions (SE3-5189) remains open for maintenance dredging; dune nourishment; add 3 pilings to the existing pier on lot 2.

Present were the applicant, Mary Kariotis, and her representative, John O’Dea of Sullivan Engineering.

Ms. Kariotis recounted her involvement with the three parcels at Pirates Cove. She requested that Special condition # 21 be rescinded. Commissioner Houle presented his notes from the time of the filings and the Commission’s expectation that the existing pier would serve both parcels. Commissioner Abodeely said that, even if this condition were complied with, a new Notice of Intent application (NOI) for a pier at # 65 could be submitted in the future.

A motion was made to **Table** the Certificate of Compliance request to the **9/8/20 hearing**.

Seconded

Roll call

Voted unanimously.

B.	Kariotis	SE3-4365	(discussion only)	Raze & Construct single family dwelling (Main House)
	65 Pirates Cove, Oyster Harbors		-	Cotuit Bay

This is a single family dwelling (Main House) on Cotuit Bay. It was built on lot 2 which is adjacent to lot 3 on which the Main House sets. In 1989 there was a house on lot 3 and a dock on lot 2.

The following compliance deviation was noted:

1. Special condition # 22 of the Order of Conditions states: “The applicant shall provide a deed restriction worded to the satisfaction of the Conservation Commission which provides that no pier will be constructed appurtenant to the subject parcel. (Note: the Conservation Commission, in setting forth this requirement, anticipates that the existing onsite pier on the adjacent Kariotis lot will be proposed to be modified, such that it could reasonably accommodate use by both parcels).”

No deed restriction has been provided.

An Order of Conditions (SE3-5189) remains open for maintenance dredging; dune nourishment; add 3 pilings to the existing pier on lot 2.

Present were the applicant, Mary Kariotis, and her representative, John O’Dea of Sullivan Engineering.

Ms. Kariotis recounted her involvement with the three parcels at Pirates Cove. She requested that Special condition # 21 be rescinded. Commissioner Houle presented his notes from the time of the filings and the Commission’s expectation that the existing pier would serve both parcels. Commissioner Abodeely said that, even if this condition were complied with, a new Notice of Intent application (NOI) for a pier at # 65 could be submitted in the future.

A motion was made to **Table** this discussion to the **9/8/20 hearing**.

Seconded

Roll call

Voted unanimously.

II. EXTENSION REQUESTS

Project type:

Time Requested:

Edmund F. III & Jennifer Murphy SE3-4904
75 Bayberry Way, Osterville

Maintenance dredging

3 yrs. (2nd request)

The applicant was represented by John O’Dea, P.E. of Sullivan Engineering .
There were no issues discussed.

A motion was made to approve the extension request.
Seconded
Roll call
Voted unanimously.

III. ENFORCEMENT ORDERS

- A. Geoffrey S. & Laura A. Rehnert – 275 Seapuit Rd., Osterville – Map 095 Parcel 007.001, Map 095 Parcel 003 (#0 Seapuit Rd.), & Map 095 Parcel 004 (#265 Seapuit Rd.). Alteration of the buffer to a wetland resource area – salt marsh – by cutting trees. **Tabled from 7/14**

Exhibits

- A ARC Reader plan showing resource areas and approx. location of cut vegetation
- B Photos of Existing Site Conditions Photos

Attorney David Lawler represented Jaxtimer Landscaping and the Rehnert's.
Seth Wilkinson, Wilkinson Ecological Design, represented the Samra's.
Mr. Charles Wellington represented himself.

Issues discussed:

- Two trees and a large bayberry bush were cut on the property of the Samara's (265 Seapuit Rd.) and the Wellington's (0 Seapuit Rd.). Cutting was done by an employee of Jaxtimer Landscaping, LLC. One of the trees (red cedar) was cut back in Feb/Mar 2020 by person(s) unknown. The bayberry and black oak were cut by a Jaxtimer employee.
- Employee of Jaxtimer's misunderstood their responsibilities to the Rehnert's (who had nothing to do with this cutting incident).
- Jaxtimer provided the employee with wetland jurisdiction training.
- Wilkinson Ecological Design was hired to prepare the plan for, and carry out the restoration on, 0 and 265 Seapuit Rd.
- A tentative agreement on restoration plan was reached between all parties and will be finalized in the next 10-14 days.

A motion was made to approve the enforcement order.
Seconded
Roll call
Voted unanimously.

- B. Sanjaya Kumar & Shubjeet Kaur, Trs. & Lake Elizabeth Dr Realty Trust – 17 Bluff Avenue, Centerville – Map 226 Parcel 153. Alteration of riverfront area - herring run - by topping trees and alteration of a wetland resource area buffer by installing an unpermitted stone wall.

Exhibits

- A ARC Reader plan showing resource areas and location of stone wall
- B Photos of previous Site Conditions
- C Existing Conditions Site Photos

Dr. Sanjay Kumar represented himself.

Issues discussed:

- Dr. Kumar admitted he had an individual cut ("top") 4 trees on Dr. Kumar's 17 Bluff Ave. property sometime in early March 2020. The 4 trees were located in the riverfront area to a herring run.
- Between 16 Mar 2020 and 30 June 2020, Dr. Kumar hired a mason who constructed a stone wall within the 100' buffer to a Bordering Vegetated Wetland and riverfront area without a permit.
- The enforcement order was amended to include 3 years of monitoring reports for the understory trees being planted

A motion was made to approve the enforcement order as amended.

Seconded

Roll call

Voted unanimously.

- C. Gary Scott & Jennifer Ackerman – 40 Peep Toad Rd., Centerville – Map 173 Parcel 062. Alteration of the 0' - 50' buffer to a wetland resource area - unnamed pond - by cutting and removing vegetation and failure to comply with on-going conditions of a Certificate of Compliance.

Exhibits

- A Plan of record and foundation certification plan for SE3-0946
- B Photos of previous Site Conditions 2005
- C Existing Site Conditions Photos
- D Complete Certificate of Compliance with on-going Conditions SE3-0946
- E ARC Reader image showing required setbacks to bring the site back into compliance with COC for SE3-0946

Mr. Gary Scott & Ms. Jennifer Ackerman represented themselves.

Issues discussed:

- House was built in 1983. Plan of Record showed corner of house at 49' from observed high water mark. 1983 foundation certification plan shows pond water level rose and house corner sits at 39' from edge of pond.
- In November 2005, former owner received a COC with on-going conditions requiring a 20' buffer strip of vegetation from high water mark established in Plan of Record (SE3-0946) and allowing a 4' access path to be maintained. Mr. Scott purchased the house in November 2005.
- There was a path and 20' buffer strip newly established at time of COC issuance (Nov. 2005).
- Scott/Ackerman partially cleared the buffer strip in late July 2020. The manicured lawn that was long established to very near the water was also ripped out.
- The 20' buffer strip to the high water mark of the original plan of record (dated 12/20/1982, see SE3-0946) will be re-established and demarcated by a single-rail fence and allowed to revegetate naturally (denuded section of pond shore to be supplemented with planting's in kind and number as deemed necessary and approved by Conservation Staff). A 4' path will be demarcated by approved plantings and may be maintained.

A motion was made to approve the enforcement order.

Seconded

Roll call

Voted unanimously.

- D. Stanley Davitoria – 55 and 61 Beechwood Rd., Centerville – Map 252 Parcel 182 and 108. Alteration of a wetland resource area – BVW – and buffer to BVW by cutting trees, understory vegetation and other vegetation.

Discussion and possible action on Commission fine under Ch, 237 (\$300.00/tree, 17 trees cut).

Exhibits

- A ARC Reader plan showing resource areas
- B Plan of record for SE3-5739
- C Photos of previous Site Conditions
- D Existing Conditions Site Photos
- E Order of Conditions for SE3-5739
- F Barnstable Conservation Commission Form A (signed by Mr. Davitoria)

Attorney Jonathan Polloni represented Mr. Stanley Davitoria & Mr. Davitoria and Mr. Renan Barreto were present.

Issues discussed:

- This was a significant alteration of the BVW and undisturbed 50' buffer to the BVW.

- Mr. Davitoria admitted he had done the cutting in the undisturbed buffer. He was trying to clean up trash that was throughout the area. He was assisted by several people who worked with him, not a landscaping company.
- The Order of Conditions clearly states that the Work Limit Line shown on the approved plan shall be strictly observed and that no work is to be performed beyond the Work Limit Line.
- Mr. Davitoria signed and submitted Barnstable Conservation Commission Form A that states, signing the form signifies the signer has read and understands the Notice of Intent Application and the Orders of Conditions.
- Approximately 40% of the 50' undisturbed buffer was cut which included the cutting of many trees, saplings, virtually all of the understory vegetation and most of the groundcover vegetation.
- A total of 17 trees ($\leq 5''$ diameter) were cut in the 50' undisturbed buffer.
- The Commissioners believed the damage was significant enough to warrant a Commission fine of \$300.00 per tree (17 trees) for a total of \$5,100.00; to be paid by October 16, 2020.

A motion was made to issue a \$5,100.00 fine to Mr. Davitoria for cutting 17 trees in the 50' buffer.

Seconded

Roll call

Voted unanimously.

A motion was made to approve the enforcement order.

Seconded

Roll call

Voted unanimously.

IV. OLD AND NEW BUSINESS

- A. Discussion – possible requirement under mitigation, as built plan for Certificate of Compliance.

Tabled from 7/14

1. Darcy and Fred spoke to Arlene Wilson earlier today. She favors an as-built plan. She also suggested that the interests of mitigation can be furthered by waiting until the end of the 3-yr. permit period before issuing the Certificate of Compliance and issuing only a Partial Certificate of Compliance sooner. This gives time for the mitigation area to establish. Mulch would be sufficiently decomposed, temporary irrigation removed, and root systems developed to make it less likely that they would be removed.
 - The timing of a Certificate of Compliance request was discussed, but it was a general consensus not to bring the 3 year wait period into the mix at this time.
 - Dan Ojala expressed concern for having a non professional certifying the location of work previously based on a surveyor's staking.
2. Darcy suggested the following condition for work once it begins:

Mitigation areas required under Chapter 704, shall be accurately staked in the field by a registered professional engineer or land surveyor prior to installation of vegetation. This includes meadow restoration areas. Pin flags shall not be a substitute for staking. Staking shall be labeled as "mitigation area" to assist landscaper. It is up to the applicant to contact landscaper once stakes are in. Turf shall be removed prior to installation of vegetation. All mitigation planting shall be carried out. Once completed, the planting shall be retained. Replacement shall be provided for specimens failing to thrive. Temporary irrigation may be provided.

- There was general agreement for this condition.
 - The square footage amount was discussed for requiring an as-built plan.
3. It was suggested by Darcy and the Chair the following condition for projects requiring mitigation.

Where mitigation planting was requirement under Chapter 704 and measures 300 sq. ft. or less, the project surveyor or engineer shall verify in the Certificate of Compliance request letter accompanied by

photographs, or by as-built plan, that the required mitigation planting was installed as indicated in the approved plan(s) of record. This includes meadow restoration areas. Any discrepancies shall be clearly noted. Where the mitigation area is more than 300 sq. ft., an **as-built plan** indicating the mitigation areas must be provided as part of the Certificate of Compliance request.

- There was general agreement for this condition.
- Ed Pesce and John O’Dea took part in the discussion as well.
- It was added that the as-built should plot on the same scale as the original plan.
- Commissioner Abodeely commented that these guidelines are for staff and that they can always be modified.

4:30 PM AGENDA

Commissioner Pete Sampou left the meeting .

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REMINDER TO APPLICANTS:

FEES FOR LEGAL ADS ARE LISTED BELOW. PLEASE MAIL CHECKS TO CONSERVATION, 200 MAIN STREET, HYANNIS, 02601

V. REQUESTS FOR DETERMINATION

Bortolotti Construction Inc. Upgrade older Title 5 septic system, no increase in flow or any construction proposed, silt fence to contain all work at 111 Thankful Lane, Cotuit as shown on Assessor’s Map 039 Parcel 027. **DA-20028**

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

There were no issues discussed.

A motion was made to approve a negative determination.

Seconded

Roll call

Voted unanimously.

VI. NOTICES OF INTENT

Mark E. & Dawn C. Donovan. To remove existing pool and construct a new pool at 248 North Bay Road, Osterville as shown on Assessor’s Map 073 Parcel 033. **SE3-5804**

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

There were no issues discussed.

A motion was made to approve the project as submitted.

Seconded

Roll call

Voted unanimously.

Brian C. Koelbel & Tracy A. Ryan. Raise existing dwelling 2’, replace existing kitchen and garage wing, construct three small additions, a dormer, a detached garage, and a boardwalk to existing pier, and all associated appurtenances including retaining walls, patio areas, reconfigured driveway, and landscaping to include mitigation at 220 Bay Street, Osterville as shown on Assessor’s Map 094 Parcel 005.

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

Issues discussed:

- Staff raised concern regarding mowing beyond prior order of conditions, width of path is expansive, mowing beyond July date.
- Demarcation of proposed mitigation area is needed, fence or posts or larger plants in between cobbles.
- Demarcation of path, and path should be labeled, 4’wide.
- Size of some of the plantings should be increased.
- Question raised on reasonable length of boardwalk needed. Justification should be submitted for the length of boardwalk proposed.
- Revised plan is needed with additional information on the boardwalk.
- Question raised on mowing of mitigation areas.
- Hatched areas could be mowed once a year.
- SE3# is still needed.

A motion was made to approve a request for a continuance to 9/1/20.

Seconded

Roll call

Voted unanimously.

VII. MINUTES

A. July 7, 2020

A motion was made to approve as submitted.

Seconded

Roll call

Voted unanimously.

A motion was made to adjourn.

Seconded

Roll call

Voted unanimously.

Adjourned at 6:05pm.