



**Town of Barnstable  
Conservation Commission**  
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Hyannis Massachusetts 02601

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**MINUTES – CONSERVATION COMMISSION HEARING**

**DATE: November 2, 2021 @ 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**

The Conservation Commission's Public Hearing will be held by remote participation methods.

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/95534262031>

**Meeting ID: 955 3426 2031**

**US Toll-free 888 475 4499**

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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**REMINDER TO APPLICANTS:**

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

**3:00 PM AGENDA**

The meeting was called to order at 3:00 pm by Char F.P (Tom )Lee. Also in attendance were Vice Chair Louise Foster, Clerk George Gillmore, and Commissioners Abodeely, Morin, and Hearn. Commissioner Peter Sampou was absent. Administrator Darcy Karle, Agent Ed Hoopes and Conservation Assistant Fred Stepanis assisted.

**I. OLD AND NEW BUSINESS**

- A. Emblem Hyannis Project, 35 Scudder Ave. Hyannis – Informal discussion with Conservation Commission: 1) Jurisdictional call on one man-made pond, and 2) initial revised layout concept plan. Conservation Commission discussion only. Project manager Edward L. Pesce, P.E., Pesce Engineering & Associates, Inc.

Project manager Ed Pesce represented the client. Also present were members of the project team, Daniel Lee, Alice (Rand) Anderson, Brian Dugdale, Katie Barnicle, Mike Ball and Steve Mack.

Issues Discussed:

- A power point was presented.
- Project team was asked by the Cape Cod Commission, where the project is currently being reviewed, to make some suggested changes to the site plan.
- Suggested changes involved Pond #4, filling and shifting it to the north in order to try and locate the development 98% out of the river front area.
- Information regarding Pond #4 was presented to the Commission, to get a feel from the Commission on jurisdictional call and process for review.
- The team had reviewed the Pond under State regulations, however still looking into local ordinance.
- The pond was man made by extraction of sand and gravel during construction of the golf course around 1968. Pond was reduced in size in 1976. Currently runoff/drainage enters the pond from the conference center. Pond was used for irrigation of the course. The pond is at a higher elevation, so it is perched. Remnants of an asphalt walk way still exist.
- Under state regulation the bank around a pond has to have a natural occurring bank to be regulated.
- It does have wetland vegetation in the water, however it does not have an associated Bordering Vegetated Wetland (BVW).
- Questions were raised regarding pond wildlife, inhabitants such as fish.
- Relocation of pond inhabitants could be explored.
- Question raised, can man-made pond revert to natural habitat.
- Question raised on drainage of pool water.
- Commission down the road would want to weigh the pros and cons to pond relocation.
- Commission would like more studies on the pond.
- Administrator recommended a Request for Determination of Applicability (RDA) be submitted to make a jurisdictional call.
- The team took back the suggestions made by Commissioners and staff.

B. Stanley Davitoria – 55 and 61 Beechwood Rd., Centerville – Map 252 Parcel 182 and 108. Discussion of Engineers Report and Existing Conditions Plan prepared by Down Cape Engineering. **Continued from 10/26/21.**

Issues discussed:

- Current status of the violations on site was summarized.
- There was a summary of the construction activities on site over the past 5 weeks given by the site monitor. There was some tree damage within the 50' buffer and a large limb had fallen on the unpermitted spa and deck.
- Erosion of material over the stone retaining wall continues after heavy rain events
- There is a small split in the vinyl wall that should be fixed by staking a strawbale in place to prevent any sediment transport into the buffer.
- Weekly monitoring reports should continue until such time there is no outdoor work going on and the site is prepared for winter.
- The Commission ordered:
- A portion of the rock retaining wall from a point beyond the northern corner of the house closest to Huckins Neck Rd be removed and reinstalled in its previously approved location along the 50' buffer (SE3-5739) until it reconnects to the portion of the wall that continues through the 50'-100' buffer to its intersection.
- The spa/deck to be removed
- A detailed construction protocol will be provided to Conservation Staff at least 7 days prior to initiating work on the retaining wall removal and replacement. The protocol should be written by the contractor doing the removal and replacement. A copy of the approved protocol should also be provided to the construction site monitor.
- An Amended Order of Conditions with revised plan showing the changes in the wall location as well as any additional hardscape and corresponding mitigation or plan changes from the plan of record for SE3-5739 within the 50'-100' buffer and a planting plan for the area between the rock retaining wall and the work limit line shall be filed with the Commission by January 31, 2022. Detailed mitigation calculations should be provided.
- Weekly construction site monitoring reports should be provided when work on the wall relocation commences.

A motion was made to approve the order as written.

Seconded and voted by roll call:

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

Nay – none

## **II. REVISED PLANS**

A. 132 South Bay Road, LLC SE3-5647  
132 South Bay Road, Osterville

### **Project type:**

Demolish portion of existing  
SFD, outdoor pool, deck, patio,  
pier lighting

### **Revisions:**

Add path to flagpole, stairs to beach  
add mitigation, update buffer zone with  
existing wall to remain

There are five items found during the COC inspection that need to be addressed.

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

Issues discussed:

- There was discussion about measuring the pier lighting above the 2' marker.
- There was discussion on the best way to fix the height of the pier lighting.
- The plank spacing regarding the steps leading down from the retaining wall is very tight and does not allow for the light penetration. It will be corrected.
- The steps were not on the approved plan. The steps were existing but washed away and needed to be replaced and extended.
- There were irrigation sprinkler heads in the 50' buffer. They have been removed.
- The flagpole was not on the approved plan. The lights pointing up onto the flagpole have been removed. The 2' path and the flagpole was discussed.
- The liberal use of mulch in the planting restoration area was discussed. The area will be left to naturalize and not be re-mulched.

A motion was made to approve the revised plan.

Seconded and voted by roll call:

Aye – Lee, Foster, Gillmore, Abodeely, Hearn

Nay – none

**Morin did not vote.**

## **III. ENFORCEMENT ORDERS**

A. Shakeab Alshabkhoun, Tr. & Estate Nominee Trust of 2003 – 408 Wianno Rd., Osterville – Map 140 Parcel 154.002. Alteration of the buffer to a wetland resource area - Bordering Vegetated Wetland - by cutting vegetation, placing wood chips and installing an unpermitted patio.

### **Exhibits**

- A ARC Reader image of 408 Wianno Ave., Osterville showing Resource Areas
- B Before and After Aerial Photos
- C East Side Cutting Area
- D Slope Cutting Area Before and After Photos
- E Patio and approved plans for SE3-5130

John O'Dea, Sullivan Engineering, represented the Alshabkhoun's, Mr. Justin Alden (Homeowners son) was present.

Issues discussed:

- There were 2 areas that had been cut within the buffer to BVW (1 by the agent of the homeowner and 1 by person(s) unknown.
- The area cut by the homeowner is a slope within 50' buffer to a BVW. It does not meet the definition of a Town Coastal Bank.

- Because there is no Town Coastal Bank, the unpermitted patio is approximately 85'-90' from the BVW. It can be permitted via an Administrative Review.

A motion was made to approve the Enforcement Order as written.

Seconded and voted by roll call:

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

Nay – none

- B. Mr. Raymond Brooks & Ms. Catherine McAuliffe – 82 Tern Ln., Centerville – Map 212 Parcel 009. Alteration of the 50' buffer to a wetland resource area - Lake Wequaquet and Bordering Vegetated Wetland - by cutting vegetation and installing an unpermitted shuffle board court.

Exhibits

- A ARC Reader image of 82 Tern Lane, Centerville
- B Site Condition Photos

Arlene Wilson, A.M. Wilson Associates, represented Mr. Brooks and Ms. McAuliffe and Mr. Brooks and Ms. McAuliffe were present.

Issues discussed:

- The current homeowners inherited the violations from the previous owner.
- The current homeowners believed the shuffleboard may pre-date the Wetlands Protection Act.
- Ms. Wilson stated they would need more time to complete the NOI filing. The new deadline will be February 25, 2022.

A motion was made to approve the Enforcement Order as written.

Seconded and voted by roll call:

Aye – Lee, Foster, Gillmore, Abodeely, Hearn

Nay – Morin

- C. Alex P. McKee & Olivia T. Snyder – 59 Seventh Ave., Hyannis – Map 246 Parcel 153. Alteration of a wetland resource area - Coastal Bank (Town) - by installing unpermitted retaining walls and shell driveway and alteration of the 50' buffer to a wetland resource area - Bordering Vegetated Wetland - by installing an unpermitted retaining wall. **Tabled from 10/05/21.**

Issues discussed:

- This item was tabled to 12/14/21 to allow the Chairman to discuss permitting options with Town Attorney.

**4:30 PM AGENDA**

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**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 4:30 p.m. by Chair F. P. (Tom) Lee. Also in attendance were: Vice Chair Louise Foster, Clerk George Gillmore, and Commissioners Abodeely, Morin, Hearn. Commissioner Pete Sampou was absent. Conservation Administrator, Darcy Karle assisted along with Administrative Assistant Kim Cavanaugh.

**IV. REQUESTS FOR DETERMINATION**

- A. Gerardo and Stephanie DiIorio.** Removal and replacement of five trees within the 100' buffer to a bordering vegetated wetland at 19 Cranberry Lane, Centerville as shown on Assessor's Map 226 Parcel 195. **DA-21056**

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

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 – Abodeely, Foster, Gillmore, Hearn, Lee, Morin,  
Nay –

- B. Spanky's Clam Shack, LLC.** Removal and replacement of exterior HVAC and refrigeration equipment, shed removal, subsurface drainage improvements, regrading and site improvements within existing fenced area at 134 and 138 Ocean Street, Hyannis as shown on Assessor's Map 326 Parcels 066 and 067. **DA-21057 Withdrawn**

There was no one in attendance representing the applicant.

## **V. NOTICES OF INTENT**

- A. Margaret and Michael Kerr.** To demolish and reconstruct a single family dwelling and all associated appurtenances and restoration/mitigation at 25 Maywood Avenue, Hyannis Port as shown on Assessor's Map 287 Parcel 156. **SE3-5929**

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

Issues discussed:

- There was discussion on the mitigation calculations.
- There needs to be a label put on the plan for the area that is not to be mowed.
- The grass path is growing in nicely.
- Annual monitoring reports should be submitted for 3 years.
- Any change in contractor should be approved by staff.

There was no public comment.

A motion was made to approve the project as submitted subject to providing written notice to staff if there is a change in contractor and submission of annual monitoring reports for three years.

Seconded and voted unanimously by roll call.

Aye – Abodeely, Foster, Gillmore, Hearn, Lee, Morin.  
Nay –

- B. Cape Cod Property Trust.** Rebuild gazebo, retaining walls, steps, terrace; install spa and fence; install pergola; install shed; remove invasive plant material; install mitigation plantings at 1025 Old Post Road, Cotuit as shown on Assessor's Map 074 Parcel 003-003.

The applicant was represented by Lauren Cronin of Gregory Lombardi Design.

Issues discussed:

- No DEP number has been issued yet.
- There was no staking of the project during the site inspection.
- Everything should be put on one plan.
- Dimension of the proposed structure needs to be put on the plan.
- Annual monitoring reports should be submitted for three years.
- Written notification to Conservation of the landscaping contractor.
- Siltation control fence needs to be added and put on the plan.
- The gazebo is being rotated not moved.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan showing dimensions of additions and retaining walls and erosion controls and annual monitoring report for 3 years, with written notification regarding any change of landscape contractor with a continuance to 11/23 for the sole purpose of receipt of the SE3 number and comments.

Seconded and voted unanimously by roll call.

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

Nay –

## **VI. CONTINUANCES**

- A. James and Deborah Fowler.** Free standing hot tub placed on hardscape with existing drainage pit (for existing rinse station) to be used for periodic drainage of hot tub at 346 Holly Point Road, Centerville as shown on Assessor’s Map 232 Parcel 024. **DA-21055 Continued from 10/26**

This project was taken out of order as there was no one was in attendance to represent the Fowlers.

Deborah Fowler represented herself.

There were no questions from Commissioners.

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, Hearn, Lee, Morin.

Nay –

- B. Marc Landry and Nancy Allen.** Landscape modification including removal of dangerous and diseased/damaged trees, replacement of foundation plantings, reconstruction of masonry walls, modification of deck, installation of firepit, construction of boardwalk with kayak racks, brush access path, replace pool fencing and re-establish view corridors at 494 Elliott Road, Centerville as shown on Assessor’s Map 226 Parcel 192. **SE3-5927 Continued from 10/26**

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

A letter dated November 1, 2021 from Joyce Landscaping stating the condition of the trees that need to be removed was acknowledged.

Issues discussed:

- There are a total of 25 trees coming down that are believed to be a safety hazard, and nine more proposed to be removed because of their condition.
- No DMF letter has been received.

- No comments from Natural Resources have been received. Arlene Wilson stated she received a verbal approval.
- There was discussion about the trees being removed.
- There was discussion about relocating the boardwalk.
- There was a question raised about Vista Corridor A.
- There was further discussion on the removal of the three pines in the sitting area.
- The pool fence and work limit line need to be on the same plan.
- Wetland flagging information should be labeled on the plan.
- Annual monitoring reports should be submitted for three years.
- There was further discussion on the sitting area.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan showing the pool fence, work limit line, wetland flagging information, the boardwalk will be removed from the plan.

Seconded and voted by roll call.

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

Nay – Hearn

**C. Michael E. Olson.** Proposed pool and patio at 11 Maywood Avenue, Hyannis as shown on Assessor’s Map 287 Parcel 130. **SE3-5928 Continued from 10/26**

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

Issues discussed:

- A question was raised about the location of the pool fence being partially in the 50’ buffer.
- The existing garage is in the 50’ buffer.
- There is no undisturbed 50’ buffer.
- They would be required to meet the 3 to 1 mitigation calculation. This plan does not include enough mitigation.
- The additional mitigation needed could go in to the 50’ to 100’ buffer.
- There was discussion about interpretation of the regulation.
- There was discussion about alternatives to mitigation.
- A question was raised if this property could be considered mitigation restrained.

A continuance was requested to November 23<sup>rd</sup>.

There were no public comments.

A motion was made to continue the application to November 23, 2021.

Seconded and voted unanimously by roll call.

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

Nay –

**Commissioner Morin left the meeting.**

**Amended Order - Michael J. Gill, Trustee – 72 & 52 North Bay Road Realty Trust.** To amend the Order of Conditions to increase the footprint of the pool cabana and to modify the approved driveway and driveway wall at 72 North Bay Road, Osterville as shown on Assessor’s Map 072 Parcel 029 **SE3-5864. Continued from 10/26**

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

Issues discussed:

- There will not be a fully restored 50’ buffer with this project.
- There was discussion of the location of the driveway.
- There was discussion of the amount of mitigation needed.

A continuance was requested to November 23<sup>rd</sup>.  
There was no public comment.

A motion was made to approve the continuance to November 23, 2021.  
Seconded and voted unanimously by roll call.  
Aye – Abodeely, Foster, Gillmore, Hearn, Lee,  
Nay –

**D. Eduardo Franco.** To construct a pool, patio, and retaining wall at 46 Captain Lumbert Lane, Centerville as shown on Assessor’s Map 147 Parcel 011 007. **SE3-5916 Continued from 10/26/21.**

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

Issues discussed:

- There is a request to consider the property mitigation constrained.
- There was discussion on the mitigation calculations.
- There is an area within the 100’ buffer that some mitigation could be added.

A continuance was requested to November 23<sup>rd</sup>.

There was no public comment.

A motion was made to continue the project to November 23, 2021.  
Seconded and voted unanimously by roll call.  
Aye – Abodeely, Foster, Gillmore, Hearn, Lee  
Nay –

**VII. CERTIFICATES OF COMPLIANCE**

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

A.	C-O-MM Water 0 Old Post Road, Marstons Mills	SE3-5009	(coc, ez) -	Construct pump station (not done) Patty’s Pond
B.	Simon Property Group 793 Route 132, Hyannis	SE3-5721	(coc, ez) -	vegetative management of detention pond * unnamed pond
C.	Callahan/North Bay RT 138 Bridge Street, Osterville	SE3-5340	(coc, ez) -	construct addition & patio * North Bay

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

**VIII. MINUTES**

A. July 6, 2021



- B. August 3, 2021
- C. September 28, 2021
- D. October 5, 2021
- E. October 12, 2021

A motion was made to approve the minutes as submitted.  
Seconded and voted unanimously by roll call.  
Aye – Abodeely, Foster, Gillmore, Hearn, Lee.  
Nay –

A motion was made to adjourn.  
Seconded and voted unanimously by roll call.  
Aye – Abodeely, Foster, Gillmore, Hearn, Lee.  
Nay –

**The time was 7:20 p.m.**