



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

DATE: May 10, 2022 @ 6:30 PM

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Meeting ID: 849 8069 9554

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, 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.

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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 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 Agent Ed Hoopes was present along with Administrative Assistant, Kim Cavanaugh and Emil Assing.

I. REQUESTS FOR DETERMINATION

- A. **Babcock Holdings, LLC.** Install 4', three rail, split rail fence and plantings adjacent to existing lawn at 11 Marchant Avenue, Hyannisport as shown on Assessor's Map 286 Parcel 026. DA-22011

The applicant was represented by Bernice Wahler of Bernice Wahler Landscapes.

There is a revised plan dated May 4, 2022.

Issues discussed:

- Commissioner noted the project description says it is a split rail fence for a pool enclosure. A split rail fence would not meet the requirements of a pool enclosure.
- This pool has an auto cover. Per MA Code and auto cover satisfies the pool enclosure guidelines. There is an over-riding code in Barnstable that still requires a 4' high fence. They spoke with a Building Inspector and were told it does not need to comply with the pool enclosure. They just need a 4' high fence of some type.

There was no public comment.

A motion was made to approve the application as a negative determination.

Seconded and voted unanimously by roll call.

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

Nay

- B. **Amy Mesirow.** Two patches of Purple Loosestrife (an invasive plant) to be cut, bagged, and disposed of at Barnstable Transfer Station from 737 Santuit Newtown Road, Marstons Mills as shown on Assessor's Map 028 Parcel 010-002. DA-22012

The applicant represented herself.

Issues discussed:

- It was verified by Ed Hoopes and Emil Assing that the plants are Purple Loosestrife.
- Amy was shown how to cut and remove it.
- It is a very small patch and is easily manageable.
- During the site visit it was noted that there was a float in the water and attached to a tree, several boats, and a hammock. It is a fragile area and these items should be removed.
- There is a mooring permit for the float. It should be anchored in the lake not attached to shore.
- Amy was thanked for taking care of this before it is a bigger problem.

There was no public comment.

Normally removal would require a Notice of Intent.

A motion was made for a finding to allow the removal under the RDA as presented.

Seconded and voted unanimously by roll call.

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

Nay

A motion was made to approve the application as a negative determination.

Seconded and voted unanimously by roll call.

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

Nay

II. NOTICES OF INTENT

- A. **JoEllen Bendall.** Proposed addition and garage to existing house, installation of new Title 5 septic system, and planting of new native shrub species within the 50' buffer zone of BVW at 27 Orchard Road, Centerville as shown on Assessor's Map 207 Parcel 145. **SE3-5985**

The applicant was represented by Paul Shea of IEC.

Issues discussed:

- Date of revised plan is May 9, 2022.
- Mitigation calculations were not provided.
- Chair confirmed the amount of mitigation is sufficient to meet the 3:1 requirement.
- When the shed is removed and the area replanted there will be an undisturbed 50' buffer.

There was no public comment.

A motion was made to approve the application as submitted.

Seconded and voted unanimously by roll call.

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

Nay

- B. **Mark Klamman.** Proposed 728 square foot addition to existing single-family dwelling within buffer zone to salt marsh at 25 Cross Way, Hyannisport as shown on Assessor's Map 245 Parcel 043. **SE3-5989**

The applicant was represented by Matthew Eddy, P.E. of Baxter Nye Engineering and Attorney David Lawlor.

Attorney Lawlor addressed the Commission.

Matthew Eddy, P. E. addressed the Commission and reviewed the plan.

- There was a prior NOI filed for this project that was withdrawn without prejudice.
- A partial waiver is requested for work in the 50' buffer.
- Both hardscape driveways will be removed. One will have mitigation plantings in a portion of it. The other driveway will become a grassy driveway area.
- The mitigation calculations were reviewed by Matt Eddy.
- Attorney Lawlor – By law says it is within Commissions discretion to consider the overall project.
- The lot is a mitigation constrained lot.
- An in lieu fee is being proposed.
- The Commission can account for off-site mitigation. The removal of the hardscape (driveway) can be considered as mitigation.
- This project should be considered a net benefit to the environment.

Issues discussed:

- Past practice has been roof run off goes into drywells. It has never been considered as mitigation.
- The existing building has a down spout that is a point discharge to the ground.
- The roof run off of the addition is not included as mitigation.
- The roof run off from the existing building is also not included in the mitigation.
- There are environmental benefits to the project, but consideration should be given if it is enough for this project.
- They are asking for 820 sq. ft. of additional hardscape in the 0-50' buffer. A question was raised how much of the mitigation will be planted in the 0-50. Approximately 350 sq. ft.
- The mitigation calculations were reviewed. There does not appear to be enough mitigation.
- If the off-site paved area is used as mitigation there would not need to be any mitigation.
- There is concern that granting this would set a precedent.
- A question was raised if the resource is better off if the project goes forward. They feel it is and can be used in the discretionary regulations. This is site specific and will not set a precedent.

- This is a very constrained site. This addition is for the ability to have more people on this property. It is an intensification of use on the property. There is not enough mitigation for this increase.
- There are no additional bedrooms being put in. It is a small space for people already living there.
- This is not just marsh. This is riverfront area. The plan from 2012 shows no patio in the southwest patio. The difference is 96 sq. ft.
- If the Town decides the road needs to be widened in the future this mitigation area will be lost.

Public Comment:

Sarah Alger on behalf of Pat Bradley, 15 Cross Way - The application is premature as the applicant has not applied for all necessary permits. The applicant is out of compliance with its 2012 Order of Conditions. The applicant is trying to use the non-compliance as a bargaining chip.

The landscaping plan from 2012 shows there was mitigation proposed in the exact location where this addition is being proposed. The mitigation from the 2012 project was reviewed. The patio was not permitted, they are only proposing to take out part of the patio and are requesting it be permitted under this OOC along with the addition. She questions what mitigation is new and what is being borrowed from the 2012 OOC.

The site is constrained because they are proposing to construct this addition in the only area available for mitigation. The quality of the mitigation should be considered as most is on the north side of the house. The northeast side driveway is outside the 50' buffer. Mitigation outside the 50' for construction in the 50' is not like/kind mitigation. The mitigation is all north of the building. The resource area is all south of the building. The granting of a waiver for work in 50' buffer should be considered only under exceptional limited circumstances.

Commission discussion continued:

- A question was raised regarding the previous mitigation area from 2012. The mitigation that has been completed for that project was reviewed. There is some that has not been done.
- There have been many invasive species removed.
- A question was raised if the project is denied would the property be subject to an enforcement order. The COC has not been requested it could be addressed in the COC request. There was no condition of ongoing maintenance included in the 2012 OOC. The patio could have an enforcement order issued. That would be a reduction in hardscape.
- If part of the mitigation was removing some of the invasive species, but they have grown back before the COC was issued they still need to be removed.
- The invasives will be maintained going forward.
- They are trying to correct an area that was not permitted with this application.
- The invasives were not included in the mitigation for this project.
- The invasives need to be addressed in order to close out the old Order of Conditions. This project if approved will make it an ongoing condition.

Applicant Barbara Klamon addressed the Commission. They will maintain the invasive area. She did not realize she needed to do the other side. She will do what she is supposed to do.

There was no additional public comment.

There may need to be a finding.

A pool of the Commissioners was taken on the project.

Abodeely – Probably Negative
Foster – Probably Negative
Gillmore – Leaning toward approval
Lee – Probably Negative
Morin – Leaning toward approval
Sampou - Leaning toward negative
The applicant requested a vote.
Chair suggested it be taken under advisement.

A motion was made to take the application under advisement until 5/24 and bring back for a proposed finding.

Seconded and voted unanimously by roll call.

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

Nay

- C. **Richard and Jennifer Gallagher.** Proposed modifications by adding 3’X32’ ramp and 8’X16’ float to the end of existing dock (#1718) and to retain, license, and maintain the complete structure in and over the waters of Shoestring Bay. Proposed elimination of seasonal stairs and pulley pile located at 611 Santuit Rd, Cotuit as shown on Assessor’s Map 007 Parcel 005. **SE3-5988**

The applicant was represented by Raul Lizardi, P.E. of Cape & Islands Engineering.

Comment letter dated 5/10/22 from Dept. of Marine Fisheries was reviewed and read into record.

Comment letter dated 5/10/22 from Natural Resources was read into record.

Harbor Master and Waterways letter dated 4/27/22 was reviewed. They do not have any objections to the project.

Issues discussed:

- A fixed pier was previously approved.
- A question was raised what kind of boat will be at the proposed dock. It will be kayaks, canoes, and/or paddleboards. Only non-motorized crafts.
- The float and piles must be permanent to hold the float off the bottom during a mean low tide.
- A ramp will be used to go from end of existing pier to the float.
- A question was raised if there is a necessity for this float and ramp for these types of vessels.
- Because of the low water levels, there is a tide timing issue.
- The shellfish rating is 3 out of 10 from the 2017 shellfish rating map.
- This is a significant improvement to what exists now and there is no detrimental impact to the environment with this plan.
- It needs to be permanent because of the size of the piles needed.
- There is a great benefit to the owner. The area is not usable at low tide at this time.
- The piers on either side of this project are also for non-motorized vessels.
- This is a benefit to the homeowner and to the environment as people will not be trudging through the mud to get back to shore.
- The recommendation from DMF should be considered.

There was no public comment.

A motion was made to approve the project subject to the barge work shall be done two hours before and two hours after high tide, no proposed work shall take place in the salt marsh area, float stops should be at 18” below the float bottom.

Seconded and voted unanimously by roll call.

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

Nay

- D. **Pond Restoration LLC.** The applicant is proposing to implement a restoration and management plan to reduce levels of phosphorus and cyanobacteria within Parker Pond. Management actions may include alum and algaecide treatments, aeration, filtration in the pond with vegetative buffer enhancements at 379 Parker Road, Barnstable as shown on Assessor's Map 115 Parcel 022. **SE3-5987**

The applicant was represented by Matt Ladewig from ESS Group.
Applicant Peter Duggan addressed the Commission.

DEP Comment letter dated May 2, 2022 was acknowledged and read into record.

Amber Unruh from DPW addressed the Commission and reviewed the Ponds and Lakes Program and the water quality in the pond. Amber will submit a hardcopy of water quality findings after the meeting.

Issues discussed:

- There are significant water quality issues.
- There is an abundance of wild geese in the area contributing to the problem. Fences should be set up to keep them away. Many years of fecal matter from ducks and geese has caused the problem.
- Cut grass should not go to the water edge. That area is owned by the Wianno Club not the applicant.
- There are many good tools incorporated into the project to help.
- Aerators are the first tool.
- Cyanobacteria will also be disturbed by the aerators.
- A question was raised if monitoring reports could be improved. It could be conditioned. It is crucial to determine if the tools are working. They could only utilize the necessary tools and may not need them all.
- Use of chemicals should be conditioned at the discretion/approval from staff.
- There is a test that can be done to determine when the socks need to be replaced.
- A timeline for the phases was reviewed. Phase 1 would happen this year, based on the results Phase 2 may or may not need to be implemented.
- Algaecides will only be used if necessary. Applicant asked to have a flexible approval because if it is needed it will need to be treated quickly. It is an emergency tool.
- Phase 1 should also include the removal of geese to be effective. Phase 1 should include monitoring data be submitted to the Commission before moving on to Phase 2.
- The Town funds April and August sampling. Volunteers are needed to help. The funding of the additional sampling will need to be provided by the applicant.
- The problems occur when water temperatures are at their peak in July and August. Water quality monitoring should be done in these months.
- Mark Krebs from Wianno Club addressed the Commission. He supports the project and has been involved in the process of getting the project together. He will work with abutters to get wild bird mitigation in check.

There was no public comment.

A motion was made to approve the project in a phased approach subject to reports being submitted after Phase 1 with monthly monitoring data, monitoring program will be in consultation with Darcy, Amber and Commissioner Sampou, funding for monitoring will be provided by the applicant. Phase 2 will be considered after reports submitted for Phase 1.

Seconded and voted unanimously by roll call.

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

Nay

III. CONTINUANCES

- A. Tobias Welo.** Construction of wave break and planting at 25 and 35 Cove Lane, Osterville as shown on Assessor’s Map 052 Parcel 009 and Map 053 Parcel 012 002. **SE3-5976.** Continued from 4/5.

A continuance requested to 6/7/2022.

A motion was made to approve the continuance request without testimony to 6/7/2022.

Seconded and voted unanimously by roll call.

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

Nay

IV. CERTIFICATES OF COMPLIANCE (ez = no deviations, staff recommends approval)

(* = on-going conditions)

- A. Christine Scanlon SE3-5514** (COC, ez) Construct garage addition / Driveway modification / Mitigation 127 Shell Lane, Cotuit Wooded swamp / BVW
- B. Ocean Gate Condos SE3-5572** (COC, ez) Repair old & damaged stairway w/ granite steps 21 Hawes Ave, Hyannis Coastal Dune / Coastal Beach
- C. Mounir Lakhall SE3-1441** (COC, ez) SFD / Septic 48 Larch Lane Stream / Wooded Swamp
- D. Shoestring Properties LLC SE3-5429** (COC, ez) Demo existing building & build multi-family dwelling units 110 School St, Hyannis Coastal Bank / Flood Zone

A motion was made to approve A. – D.

Seconded and voted unanimously by roll call.

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

Nay

Motion to adjourn

Seconded and voted unanimously by roll call.

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

Nay

The time was 9:28 p.m.