



Town of Barnstable Conservation Commission

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MINUTES – CONSERVATION COMMISSION HEARING

DATE: January 17, 2023 @ 6:30 PM

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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.

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<https://townofbarnstable-us.zoom.us/j/88466740805>

Meeting ID: 884 6674 0805

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.

**REMINDER TO APPLICANTS:
FEES FOR LEGAL ADS ARE LISTED BELOW. PLEASE MAIL CHECKS TO CONSERVATION, 230
SOUTH 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, Hearn, Morin and Sampou.

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

I. REQUESTS FOR DETERMINATION

- A. **Justin Bearse and Jessica Peacock.** To construct a 14' x 28' addition to expand living space, reconfigure bedrooms and add a bathroom to accommodate an ADU in basement at 531 Bumps River Road, Osterville as shown on Assessor's Map 144 Parcel 041. **DA-23006**

The applicant was represented by Scott Peacock of Scott Peacock Building and Remodeling.

A revised plan dated 02/12/23 was submitted.

Issues discussed:

- ADU is an accessory dwelling unit. The grandparents will be moving in to the apartment.
- The area between the wetland and 50' is very dry and on a slope.
- The house was built approximately 35 years ago.
- The number of bedrooms is not being changed.

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, Sampou

Nay -

II. NOTICES OF INTENT

- A. Home Port Investments, LLC.** Proposed replacement of existing failing timber bulkhead with a vinyl bulkhead at 9 Indian Trail, Osterville as shown on Assessor’s Map 091 Parcel 015.

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

No DEP number has been issued. A continuance will be needed.

DMF letter dated January 17, 2023 was acknowledged and read into record.

Issues discussed:

- This project is an extension of the approved bulkhead replacement SE3-6029 on the abutting property at 17 Indian Trail.
- A special condition should be added that the contractor submit a work protocol.

There was no public comment.

A continuance was requested to January 31, 2023.

A motion was made to approve the project subject to receipt of a construction protocol the same as the other project and continued to January 31, 2023 for the sole purpose of receipt of the DEP number.

Seconded and voted unanimously by roll call.

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

Nay -

III. CONTINUANCES

- A. The Trustees of Reservations.** Proposed realignment of the existing parking layout to improve access, and circulation to meet ADA compliance for accessibility, additional improvements include green stormwater infrastructure systems, buffer restoration, and new landscape design at 675 Main Street, Osterville as shown on Assessor’s Map 141 Parcel 038. **SE3-6052 Continued from 1/3/23 Waiver Received.**

Chair Lee recused himself from the project. Vice-Chair Louise Foster conducted the hearing.

The applicant was represented by Elizabeth Keary Soule of The Trustees of Reservations.

Issues discussed:

- An analysis of the storm water plan was done by DPW.
- A revised plan dated 1/16/23 was received.
- Elizabeth reviewed the changes.

- Annual reports should be submitted for three years.

There was no public comment.

A motion was made to approve the project with the condition that invasives be pulled by hand and annual reports submitted for three years.

Seconded and voted unanimously by roll call.

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

Nay -

B. Alicia Fix, Trustee – 249 Seapuit Road Realty Trust. To remove existing pool and clearing for gardens at 249 Seapuit Road, Osterville as shown on Assessor’s Map 095 Parcel 015. **SE3-6055 Continued from 1/3/23 Waiver Received.**

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

Issues discussed:

- The changes to the revised plan dated 01/12/23 were reviewed.
- Commissioner Hearn reviewed a paper he submitted by William Deluca regarding the effects of development on wetland dependent wildlife species.
- A small part of the 0-50’ buffer is lawn. This is not an undisturbed 50’ buffer.
- Chair requested the second article Commissioner Hearn referred to be submitted.
- Pictures taken from western view submitted by Commissioner Morin were reviewed.
- None of the trees proposed to be removed were marked for the site inspection.
- There is a 15’ elevation from the marsh going up to the work area.
- No trees are coming down in the 0-50’ buffer.
- The question of the undisturbed 50’ buffer was discussed.
- There is potentially a coastal bank as well.
- This is not a coastal bank so more than a 50’ buffer is not required.
- The edge of lawn was reviewed and is only three feet into the 50’ buffer and can be easily corrected.
- Development within close proximity to near shore environments has a significant effect on water dependent organisms.
- Organic gardens will be going in.
- There are 14 trees in the 50’-100’ that are being removed and six outside the 100’ buffer.
- The 15 percent slope has come up in discussions on how wide a buffer is needed. A 0-50 is not adequate if there is a slope of 15 percent or greater.
- There is understory that is also being cleared in addition to the 14 trees.
- This removal has a major impact on many species.
- There are other possibilities of things that could be proposed in the 50 to 100. Organic gardens are a much less negative impact than what could be proposed.
- It looks like there has been topping of trees in the pictures. There are no prior filings for vista pruning. Vista pruning was not advertised with this project.
- A question was raised about fencing around the gardens.
- Construction sequencing and timing was reviewed. The goal is to have the area ready for planting by April.
- A second silt fence should be put in above the swale.
- Fencing could be confined to the growing season or could be a special condition to be approved by staff.
- If fencing is needed it could be submitted as a revised plan.
- An organic compost will be used in the gardens.
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There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan showing a second layer of silt fence above the swale. If fence is needed it will be submitted as a revised plan and vista pruning will require a separate filing.

Seconded and voted unanimously by roll call.

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

Nay – Hearn, Sampou

C. Town of Barnstable – DPW. The existing wastewater pump station at 720 Main Street will be removed and a new station will be constructed at 725 Main Street as shown on Assessor’s Map 308 Parcels 003 and 143. **Continued from 01/10/23 for the sole purpose of DEP# issuance.**

No DEP number has been issued. Another continuance was requested to January 31, 2023.

A motion was made to approve the continuance request to 1/31/23.

Seconded and voted unanimously by roll call.

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

Nay -

D. Town of Barnstable – DPW. Phosphorus inactivation using Alum applied at a not to exceed dosage of 13.5 G/M2 to depths greater than 8 meters in Shubael Pond, Marstons Mills. **Continued from 01/10/22 for the sole purpose of DEP# issuance. SE3-6061**

The SE3 number has been issued.

A motion was made to close the public hearing and authorize the staff to issue the order of conditions.

Seconded and voted unanimously by roll call.

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

Nay –

Abstain - Sampou

IV. TAKEN UNDER ADVISEMENT

Shawn D. Martin, Trustee. To convert post supported pier to pile supported pier with no change in footprint at 310 North Bay Road, Osterville as shown on Assessor’s Map 072 Parcel 005. **SE3-6058**

A finding was read into record as follows:

1. The proposed permanent pier NOI (SE3-6058) 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 existing and proposed permanent pier remains the same as for non-motorized vessels. There is no change in the pier footprint.
2. The Commission reviews all pier proposals on a site-specific basis, as stated in Chapter 703-5(c).
3. The Conservation Commission finds this pier to be in a significant shellfish area, especially considering that the shellfish rating has increased from 8 in 2001 to 10 in 2011. The shellfish rating for this area was 6 (CS21) and 8 (CS22) in 2001 and they had been increased to a rating

of 10 (CS21 and CS 22) in 2011. The highest shellfish rating is 10. The Conservation Commission has considered that a rating of 6 and higher is “high significant shellfish area.” The current shellfish rating maps are dated December 20, 2011, as posted on the Conservation Division website. This is the shellfish resource and habitat area mapping for Three Bay Area as determined the Shellfish Committee and adopted by the Conversation Commission

4. The Commission has determined that this project significantly increases the surface sediment area occupied by pilings in a highly significant shellfish area and therefore a permanent loss of shellfish habitat. The shellfish and accordingly shellfish habitat are protected under local Ordinance 237-1 and Chapter 703-2. This finding is also supported by the Town Biologist in the shellfish report dated January 6, 2023. The size of posts for the existing seasonal pier is 4-inch while the size of the piles for the proposed permanent pier will be 12-inch. The number of posts or piles remains the same with 16 from the Mean Low Water (MLW) to the end of the pier.
5. The Commission finds that this proposed permanent pier will reduce water access for fin fishing and boat-based shellfish harvesting. 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. Whereas a seasonal pier allows access to this site during roughly half the year.
6. The Commission agrees with the turbidity assessment by our Town Biologist in the shellfish report dated January 6, 2023. In that report, the Town Biologist states that “twice a year of installing and removal of seasonal pier cannot be considered a “significant” impact on turbidity in this area.” She also states that the postholes discussion by the applicant is incorrect. The claim that permanent piles result in a net benefit with respect to turbidity conditions should be based on the sediment type and the current flow through the area. At this site, evidence suggests sediment consistency in the pile holes will quickly return to a natural condition.
7. The Commission has determined that the availability of the contractor and the annual cost to install seasonal pier does not justify the permanent loss of a significant shellfish area by converting a seasonal pier to a permanent pier.
8. The Commission finds that the change from a seasonal pier to a permanent pier will have a cumulative effect on the overall water sheet. The Commission is charged to consider the cumulative effect under Chapter 703-5(a). If this application is approved, this will also set a precedent for all existing seasonal piers in the Town of Barnstable.
9. 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. 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.”

10. The Commission has relied historically and with confidence on opinions from our Town Biologist with regards to site specific review and recommendations. In this case, two Town Biologists, Tom Marcotti (retired)(SE3- 3961), and Elizabeth Lewis (SE3-6058) have confirmed the support of a seasonal pier at this location.

11. 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.

In conclusion, the Barnstable Conservation Commission finds that the switch of a seasonal pile supported pier to a permanent pile supported pier at this site is likely to 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. It is also specifically noted that the boating needs for the applicant are being met with a less environmentally damaging option - a seasonal pier. The Commission finds that the applicant did not provide enough evidence to justify a permanent pier. The Commission must deny the applicant’s request for a permanent pier under local ordinance and regulation Chapter 703 but approve under the State Wetland Protection Act, which contains only the minimum statewide standards and is less restrictive than the local Ordinance and regulations. The current seasonal pier (SE3-3961) as previously approved shall remain in full force and effect.

There was discussion about the finding.

- The ability to access shellfish was discussed.
- Turbidity concept in the regulation was discussed.
- The subject of turbidity relative to negative impacts of putting a pier in and out seasonally was discussed.
- The findings were well done.
- There is a 21 day rule that needs to be adhered to.
- Access for shell fishing was discussed. Some forms of shell fishing are done from boats which does limit access for shell fishing.
- The type of sediment is relevant to turbidity in this area.
- In Popponneset the sediment was different and the shell fish rating is different. This is a site specific finding.
- The type of shell fishing done in the area was reviewed.

A motion was made to approve the finding.

Seconded and voted unanimously by roll call.

Aye –Abodeely, Foster, Hearn, Lee, Sampou

Nay – Gillmore, Morin

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 the project under the Local Ordinances Chapter 237 and Regulation Chapter 703.

Seconded and voted by roll call.

Aye –Abodeely, Foster, Hearn, Lee, Sampou

Nay – Gillmore, Morin

V. MINUTES

A. December 20, 2022

B. January 3, 2023

A motion was made to accept A. & B. as submitted.

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 8:12 p.m.