



Town of Barnstable Conservation Commission

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MINUTES – CONSERVATION COMMISSION HEARING

DATE: November 28, 2023 @ 6:30 PM

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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: Clerk George Gillmore, Commissioners Abodeely, Hearn, Sampou, and Tangney. Vice Chair Louise Foster was absent.

Conservation Agent Ed Hoopes was present along with Administrative Assistant, Kim Cavanaugh.

I. EXECUTIVE SESSION

- A. Executive Session for the purpose of discussing litigation strategy with respect to the following pending appeals if the Chair determines that an open session could be detrimental to the Commission's litigation position: 1. Department of Environmental Protection DEP SE3-6084 request for superseding order of conditions and 2. Barnstable Superior Court 2372CV00245 by JMS Holdings LLC at 134 South Bay Road, Osterville.

CHAIR: Next on the agenda is an Executive Session to discuss litigation strategy with respect to the following pending appeal if the Chair determines that an open session could be detrimental to the Commission's litigation position: 1 to the Department of Environmental Protection and 2 to Barnstable Superior Court by JMS Holdings LLC at 134 South Bay Road, Osterville as shown on Assessor's Map

093 parcel 064. Modification of existing pier by converting from post to pile supports with no change in footprint. DEP SE3-6084 and Barnstable Superior Court docket 2372CV00245.

DECLARATION OF THE CHAIR: I declare that the discussion of litigation strategy in open session with respect to the pending appeal by JMS Holdings LLC at 134 South Bay Road, Osterville as shown on Assessor's Map 093 parcel 064. Modification of existing pier by converting from post to pile supports with no change in footprint. DEP SE3-6084 and Barnstable Superior Court docket 2372CV00245 may have a detrimental effect on the litigating position of the Commission and I, therefore, ask for a motion to go into executive session.

"Following the Executive Session, the Commission will re-convene in open session. I recognize the Clerk to make the motion."

CLERK: I move to go into Executive Session under G.L.C. 30A§21(a)(3) to discuss litigation strategy with respect to the pending appeal by JMS Holdings LLC at 134 South Bay Road, Osterville as shown on Assessor's Map 093 parcel 064. Modification of existing pier by converting from post to pile supports with no change in footprint. DEP SE3-6084 and Barnstable Superior Court docket 2372CV00245, based on the Chair's declaration that an open meeting may have a detrimental effect on the litigating position of the Commission and will reconvene in Open Session following the conclusion of the Executive Session.

CHAIR: "I second the motion."

ROLL CALL VOTE:

Abodeely	-Aye
Gillmore	-Aye
Hearn	-Aye
Lee	-Aye
Sampou	-Aye
Tangney	-Aye

The Commissioners entered executive session at 6:36 p.m.

The Commission returned to public session at 7:05 p.m.

II. REQUESTS FOR DETERMINATION

- A. Town of Barnstable – Sandy Neck Beach Park.** To place two 8-foot X 8-foot seasonal sheds at the mouth of the off-road vehicle access trail at 425 Sandy Neck Road, West Barnstable as shown on Assessor's Map 263 Parcel 001. DA-23056

The applicant was represented by Nina Coleman, Director of Natural Resources/Sandy Neck Beach Park.

Issues discussed:

- The sheds will store emergency response equipment and will be placed on the sand.
- In the winter they will be stored in the parking lot.

Public comment: None

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

Seconded.

Aye – Abodeely, Gilmore, Lee, Hearn, Sampou, Tangney

Nay – none

B. Dimitry S. Herman. Proposed deck addition at 10 Nyes Neck Road, East, Centerville as shown on Assessor's Map 233 Parcel 023. **DA-23057**

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

Issues discussed:

- The corner of the deck is in the 0-50' buffer.
- At the site visit it was noted that the site is mostly vegetated and does not need any additional mitigation.

Public comment: None

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

Seconded.

Aye – Abodeely, Gilmore, Lee, Hearn, Sampou, Tangney

Nay – none

C. Mystic Lake Hills Civic Association. Repairs to wooden retaining wall and access stairways, landscaping, and beach nourishment at 30 Sawmill Road, Marstons Mills as shown on Assessor's Map 063 Parcel 062. **DA-23058**

The applicant was represented by Hannah Raddatz of BSC Group.

Issues discussed:

- There are 25 cu. yds. of sand proposed.
- A question was raised about how they will be getting the sand into the area.
- There will be erosion caused by bringing the sand down with a skid steer.
- The nourishment will be mostly contained to the wall area.
- There are potential impacts of sand going down the slope sand being washed into the shallow waters.
- 25 cu yds. is a lot of sand and is not natural to the area.
- The kind of beach grass they are proposing is not native to fresh water, it is more for salt-water areas.
- The retaining wall is falling apart.
- There was discussion about replacing the retaining wall and putting in fill with shrubs and plants instead of putting in more sand.
- The reasoning behind the sand rather than replacing the wall is it is cheaper and less impactful than replacing the wall.
- The choice was to be less impactful and to save money.
- There is a current nourishment permit for 15 yds. of sand to be brought in.
- There is no information in the file of how the sand was brought in in the past.

Public comment:

President of the Association Jay McDonald – They have already established a path on the right side of the stairwell for bringing down the sand. They could change the plants that have been proposed. To replace the retaining wall would be a cost the Association cannot afford. He is open to suggestions from the Commission.

Continued discussion:

- Some kind of dirt should be brought in with plantings instead of sand with grasses, which will not hold for controlling erosion.
- Sand is proposed to be placed on top of the current retaining wall and slope toward the beach.
- Backfilling the retaining wall with soil and adding plantings is proposed by the Commission.
- Sweet fern and some other low growing shrubs could be added.

- The sand will be restricted to the beach where nourishment has already been approved.
- This is an RDA so it cannot be changed too much.
- It should be withdrawn and refiled with the revisions.
- The applicant withdrew the application.

III. NOTICES OF INTENT

A. Alicia Fix, Trustee – 333 Seapuit Road Realty Trust – to demolish an existing guest house, and construct a new guest house, pool, patio, and cabana at 333 and 359 Seapuit Road, Osterville as shown on Assessor’s Map 095 Parcel 008 and 009.

The applicant was represented by John O’Dea, P.E. of Sullivan Engineering and Consulting, Inc. and Caitrin Higgins of Wilkinson Ecological Design.

Issues discussed:

- This is a great restoration project.
- There was concern about the length of the cart path.
- The path is currently a wide open area without any trees or vegetation.
- A question was raised if it is possible to move the path inland, on the other side of the vegetation, so there is a greater true vegetated buffer.
- The meadow area would be mowed early spring or late winter to maintain it as a meadow.
- The environmental impact of the plan is a great improvement.

Public comment: None

A motion was made to approve the project subject to annual reports submitted for three years, change in CERP consultant from Wilkinson Ecological Design will require written notification and approval from Conservation staff, and receipt of a revised plan showing the demarcation along the path.

Seconded.

Aye – Abodeely, Gilmore, Hearn, Lee, Sampou, Tangney

Nay – none

B. Robert Fitzpatrick. To construct a pool, patio, and cabana at 38 Ocean Avenue, Hyannis as shown on Assessor’s Map 288 Parcel 182-002.

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

Comment letters from Jasmine Rosner dated 11/28/23 and Ashley Keeney dated 11/27/2023 were acknowledged.

Issues discussed:

- The letter from Jasmine Rosner raised some good points.
- There was discussion on the excessively steep slope. The Commission can require more than a 50’ buffer on a very steep slope.
- There will be more than a 50’ undisturbed buffer provided.
- There will be no work done on the slope.
- The cabana is approximately 80’ away from the BVW.
- There was discussion on the possibility of removing a portion of the patio and moving the cabana.
- The elevations of the pool and cabana were reviewed.
- The cabana is not near the 50’ buffer.
- A question was raised if the pool could be rotated.
- It was noted that there is a lot of hardscape on this small half acre property.
- The cabana should be pulled to the south 10 to 15’ and remove some of the patio.

- Much of the project is out of Conservation jurisdiction.

Public comment:

Minnette Boesel, 160 Marston Avenue – abutter behind his property. Minnette stated she is concerned about the cumulative effect of this project and the next project on the agenda. The water goes into the pond nearby which is already compromised with pollution from Joshua’s Creek and Stewart’s Creek. The culvert built on Ocean Avenue caused invasion of phragmites in the pond. Keyes beach has been closed several times in the past couple of years because of bacterial pollution. To have three houses in a row with pools, septic systems etc. She feels there needs to be as much consideration as possible if these projects go forward. Ch 704-D addresses cumulative activities that can cause negative outcomes.

Scott Hunter - 21 Captain Kelley is concerned about the slope. It is not a gentle slope. It is a steep slope going down to Harbor Village properties. Drainage from the pool or septic could go down the slope and would feed directly into Stewarts’ Creek which is already compromised.

Continued discussion:

- There is a drawdown pit for the pool. It would not flow down the slope.
- This and the other project will be the only two properties that will have an undisturbed 50’ buffer in the area.
- A note should be added to the plan with the information of the person who did the wetland delineation.

A motion was made to approve the project subject to receipt of a revised plan showing the wetland delineation date and delineator.

- There was continued discussion on moving the cabana 10’ further away from the bank.
- Consultant will adjust the work limit line giving a 65’ undisturbed buffer from the BVW.
- The cabana is 75’ from the BVW.

Motion amended to include subject to receipt of a revised plan showing the work limit line pulled landward 5’ which will make it 65’ from the BVW.

Second.

Aye – Abodeely, Gilmore, Hearn, Lee, Sampou, Tangney

Nay – None

C. Darryl Sullivan and Aisling Hassell. To demolish existing garage and construct a pool, patio and cabana at 48 Ocean Avenue, Hyannis as shown on Assessor’s Map 288 Parcel 182-003

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

Comment letters from Jasmine Rosner dated 11/28/23 and Ashley Keeney dated 11/27/2023 were acknowledged.

Issues discussed:

- This project is not on a slope.
- There is a retaining wall where the garage is currently.
- Top of the wall elevations should be provided.

Public comment: None

A motion was made to approve the project subject to receipt of a revised plan showing the top of the retaining wall elevations on both ends.

Seconded.

Aye – Abodeely, Gilmore, Lee, Hearn, Sampou, Tangney

Nay – None

D. Donald Beaulieu. Reconstruction of a single-family residence at 350 Sandy Neck Road, West Barnstable as shown on Assessor’s Map 136 Parcel 014-002.

The applicant was represented by Mike Ball, Marsh Matters Environmental.

The revised plan is dated 11/27/23.

Issues discussed:

- There were no questions from Commissioners.

Public comment:

Joseph Gill – 42 Burning Tree Lane had a question about runoff .

The drywells will receive roof runoff so there will be no additional runoff or waterflow onto his or any other property.

The wetland area was probably created to receive run off.

There are 5 drywells proposed around the building. It will be better than the existing conditions.

A motion was made to approve the project subject to receipt annual reports for three years.

Seconded.

Aye – Abodeely, Gilmore, Lee, Hearn, Sampou, Tangney

Nay – none

The Commission took a five minute break returning at 8:45 p.m.

E. Tomasz & Ann Telma. Proposed porch, deck, and relocation of a section of stairs and walkway at 115 Keveney Lane, Cummaquid as shown on Assessor’s Map 351 Parcel 059. **BCC-0204**

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

Issues discussed:

- The Commissioners would like the work limit line moved up to the existing pavement of the driveway.

Public comment: None

A motion was made to approve the project subject to receipt of a revised plan showing relocation of the work limit line close to the driveway.

Seconded.

Aye – Abodeely, Gilmore, Lee, Hearn, Sampou, Tangney

Nay – none

IV. AMENDED ORDER OF CONDITIONS

A. Barry Morse. To authorize as-built retaining walls and raised garden plots at 585 Santuit Road, Cotuit as shown on Assessor’s Map 007 Parcel 006. SE3-5827

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

Issues discussed:

- There was discussion on the raised beds not being considered hardscape.
- Raised beds do not provide the same thing as roots being in the ground.

- The mitigation calculations were reviewed.
- A raised bed area and a planting area are two different things.
- Vegetation creates a filter for the wetland, a raised bed does not do that. This would set a precedent.
- Most of the raised bed areas were previously either lawn or actual hardscape.
- The gardens are organic, no fertilizer or herbicide is used.
- Representative does not recall mitigation being required for vegetable or garden beds in the past.
- It is not clear if the excess mitigation was granted as a credit the in previous project.
- A question was raised if the raised beds are considered hardscape; does it change the mitigation required.
- They could come back with mitigation calculations using the raised beds as hardscape.

Owner Mr. Morse addressed the Commission.

- All the work is happening outside of the 50' buffer area.
- The main issue at this house was that there was a lot of run off from the road.
- There is a huge amount of water that is being captured.
- A raised bed should be looked at as similar to lawn furniture.
- No water makes its way down to the bay.
- There is no water that comes down the path.
- He does not feel justice is being done here.

Continued Commission discussion:

- The previous owner had many problems with road run off. He has eliminated all the runoff.
- The retaining walls and a drain that was put in to capture the water help.
- Every gutter on the roof drains into a drywell.
- There is concern about precedent, but they have done a lot of work to make it right.
- They have gone above and beyond to fix the problem.
- To require mitigation for planters would not be the right thing to do.
- There was continued discussion on the planters being counted as hardscape/mitigation.
- Planters cannot be considered mitigation.
- If made clear in the record they would not consider raised beds as a replacement for mitigation but it in this case given what was there before it is considered as an off set.

Public comment: None

A motion was made to approve the project as submitted with a clear finding that planting beds are not to be considered mitigation but under these particular circumstances of this application they replace existing hardscape. Seconded.

Aye – Abodeely, Gilmore, Lee, Hearn, Sampou, Tangney

Nay – none

Mr. Morse asked what the next step is. They will need to apply for a COC.

The reason for the 50' buffer was explained to the applicant.

V. CONTINUANCES

- A. **Stephen and Christine Fournier.** To remove invasive plant species, construct sand path and firepit at 0 Bridge Street, Osterville as shown on Assessor's Map 093 Parcel 036-005. **Continued from 11/14 for DEP # only. SE3-6142**

The DEP number has been received.

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

Seconded.

Aye – Abodeely, Gilmore, Lee, Hearn, Tangney

Nay – none

Commissioner Sampou is not part of the quorum.

VI. CERTIFICATES OF COMPLIANCE

- | | | |
|-------------------------------------|---|---|
| A. SE3-5292 | Patrick J. Melampy, Tr. - 41 Ship's Eagle Lane Nominee Trust | (COC, ez*) |
| Demolish Structures & Rebuild SFD | 41 Ship's Eagle Lane | BVW / Wooded Swamp |
| B. SE3-5611 | John B. & Marissa A. Lazor | (COC, ez*) |
| 60 Great Bay Road, Osterville | | Bulkhead Construction |
| C. SE3-6006 | John B. & Marissa A. Lazor | (COC, ez*) |
| 60 Great Bay Road, Osterville | | Coastal Bank / Coastal Beach / Salt Marsh |
| D. SE3-5154 | William Walser, Tr. – Wingaway Trust | (COC, ez*) |
| Ecological Restoration / Mitigation | 305 Baxters Neck Road, Marstons Mills | Patio / Spa / Walkways |
| | | Coastal Bank / Coastal Beach / Salt Marsh |
| | | Demolish / Rebuild SFD / |
| | | Coastal Bank / Beach |

A motion was made to approve A. – D.

Seconded.

Aye – Abodeely, Gilmore, Lee, Hearn, Sampou, Tangney

Nay – none

VI. MINUTES

- A. October 17, 2023
- B. November 7, 2023
- C. November 14, 2023

A motion was made to accept the minutes as submitted.

Seconded.

Aye – Abodeely, Gilmore, Lee, Hearn, Sampou, Tangney

Nay – none

A motion was made to adjourn the meeting.

Seconded.

Aye – Abodeely, Gilmore, Lee, Hearn, Sampou, Tangney

Nay – none

The time was 9:27 p.m.