



**Town of Barnstable
Conservation Commission**
230 South Street
Hyannis Massachusetts 02601

Office: 508-862-4093

E-mail: conservation@barnstable.gov

MINUTES – CONSERVATION COMMISSION HEARING

DATE: July 7, 2026 @ 6:30 PM

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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 live via Xfinity Channel 8 or high definition Channel 1072. It may also be accessed via the Government Access Channel live stream on the Town of Barnstable's website: <https://barnstable.cablecast.tv/internetchannel/watch-now>
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.

Remote Participation Instructions

<https://townofbarnstable-us.zoom.us/j/82066363831>

Meeting ID: 820 6636 3831

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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 Edwin.Hoopes@barnstable.gov, so that they may be displayed for remote public access viewing.

Public comment is also welcome by emailing Edwin.Hoopes@barnstable.gov. 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/Clerk Angela Tangney, Commissioners Abodeely, DeMelo, Hearn, and Kaschuluk. Commissioner Sampou was absent.

Conservation Administrator Ed Hoopes, and Administrative Assistant Kim Cavanaugh were also present.

Conservation Commission meeting materials are available through Laserfiche. Links to application materials can be accessed [HERE](#).

I. EMERGENCY CERTIFICATION

- A. Emergency Certification for the repair of a water main break at 121 Ocean Avenue, Hyannis as shown on Assessor's Map 305 Parcel 001.

Chair Lee explained the circumstances of the water main break.

A motion was made to ratify the Emergency Certification.

Seconded.

Aye – Abodeely, DeMelo, Hearn, Kaschuluk, Lee, Tangney

Nay –

II. REQUESTS FOR DETERMINATION

- A. **Andrew Gundlach.** To install a 21' diameter above ground pool in same location as previous pool at 116 Deer Jump Hill Road, West Barnstable as shown on Assessor's Map 132 Parcel 040. **DA-26030**

The applicant was represented by Robert Fawcett.

Issues discussed:

- This is an above ground pool kit.
- It should last approximately 20 years.

Public comment: None

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

Aye – Abodeely, DeMelo, Hearn, Kaschuluk, Lee, Tangney

Nay –

III. UNDER ADVISEMENT

- A. **Pamela Randon.** To reconstruct and extend existing permanent pier, replace ramp and float, relocate kayak racks and provide electric and water services at 117 Eel River Road, Osterville as shown on Assessor's Map 116 Parcel 097. **SE3-6379 WC Form received. Request continued from 4/28, 5/19 and 5/26. From 6/23 for Commission only discussion and vote.**

The Chair reviewed the project.

The applicant is requesting the following:

1. Reconstruct the existing permanent pier in a new footprint and extend to 100 ft from the mean low water as shown on the engineering plan dated March 26, 2026. The proposed ramp is 3 ft x 26 ft and the float is 8 ft x 25 ft.
2. The relocation of the existing kayak rack, electrical and water service in the new proposed pier.
3. A waiver for the pier length.
4. A waiver for the draft depth to 12-inch (verbal request during the hearing. The application stated that the new boat has not been selected at this time.)

The Chair reviewed the finding:

1. The Commission reviews all pier proposals on a site-specific basis, as mentioned in Chapter 703-5 (C).
2. The proposed permanent pier extension NOI (SE3-6379) is filed under the State Wetlands Protection Act (MGL 131, Ch. 40) and the local regulation Chapter 703, adopted by the 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. This NOI proposed to reconstruct the existing permanent pier (SE3-5195, without motorized boat) in a new footprint and extend to 100 ft from mean low water with 3 x 26 ramp and a float of 8 x 25 with a motorized boat, which is not selected at the time of this NOI filing.
3. The Conservation Commission finds this proposed pier extension to be in a significant shellfish area, (shellfish rating of 10 out of 10 from the current version of the Shellfish Habitat Rating Map, dated December 20, 2011, posted on the Conservation division website). This area is WB-31 or DMF/SC22.0 in the Three Bays area. The highest shellfish rating is 10. The Conservation Commission has considered a rating of 6 and higher are considered as "significant shellfish area." This is the shellfish resource and

habitat area mapping for Three Bay Area as determined by the Shellfish Committee and adopted by the Conservation Commission.

4. The Commission determines that the shellfish report prepared by the Town Biologist, Elizabeth Lewis dated April 24, 2026, confirmed the shellfish habitat value for this area as significant. In addition, testimonies by John Townes, President of BARS (Barnstable Association Recreational Shellfishing) and Jacob Angelo, commercial shellfisherman, supported the significance of the shellfish habitat in this area.
5. The Commission reviewed the shellfish report provided by the applicant dated March 4, 2023, which included three field surveys dated 10/29/2022, 12/2/2022 and 1/4/2023 and a second shellfish report prepared by Paul Caruso for field dated August 16 and 22, 2024. This report is specifically for 95 and 117 Eel River Road. In his report, he mentioned that “I would personally rate it slightly lower at an 8 to 9, based on the existing habitat characteristics. However, given the sediment types the area could likely be much more productive for quahogs.” This report confirmed the significance of the shellfish habitat in the area.
6. The Commission determines that the reconstruction of the pier at a new footprint will have an impact to the shellfish habitat in the area. This is supported by the Town Biologist’s report dated April 24th, 2026, and the testimony at the April 28th hearing. The Commission determines that the adverse effects of the short-term construction of a new pier at a new footprint would outweigh the benefits of having greater distance between piles as proposed.
7. The Commission determines that the pier length waiver request can be approved but limited to 100 ft from mean low water. The existing pier as permitted under SE3-5195 received the approval of the pier length waiver to approximately 45.5 ft from mean low water and 71 ft including ramp and float.

Based on the evidence submitted in the application, the Commission finds that the proposed reconstruction and extension of the existing pier with a motorboat will be approved with the following conditions:

1. The pier extension shall be constructed from the existing permanent pier footprint. The pier extension shall be allowed to the 100 ft from the mean low water. A revised plan shall be provided to reflect this proposed change. The ramp and float shall be stored on the permanent pier during the off season. The revised plan should show the distance between the proposed float to mooring # WB061 and # WB 50250. The minimum distance between the proposed pier and mooring # 50250 shall be at least 110 ft including 55 ft of the arc.
2. With the significant shellfish habitat in this area, the Commission finds that Chapter 703-4(M)(1) shall apply. Chapter 703-4(M)(1) states that in areas determined to be of high -value shellfish habitats, the minimum depth under the draft of the motorized boat must be 30 inches at MLW. The Commission determines that no waiver on this condition can be allowed.

Based on the above findings, the Commission will approve this application under the State and Local Ordinance Chapter 237 and Chapter 703 with the above conditions for the pier extension with a motorboat meeting the 30-inch rule.

There were two motions, first under the State Regulation and the second under the local ordinances.

A motion was made to approve this project under the provisions of the Massachusetts Wetlands Protection Act (MGL Chapter 131, Section 40) with the receipt of a revised plan showing the pier extension to 100 ft from Mean Low Water from the existing permanent pier.

Seconded.

Aye – Abodeely, DeMelo, Hearn, Kaschuluk, Lee, Tangney

Nay –

A motion was made to approve the project with special conditions under the Code of the Town of Barnstable Wetlands Ordinance (Chapter 237, Section 1-14) with the receipt of a revised plan showing the pier extension to 100 ft from Mean Low Water from the existing permanent pier, and Chapter 703-4(M)(1) with a minimum depth under draft of the motorized boat must be 30 inches at MLW.

Seconded.

Aye – Abodeely, DeMelo, Hearn, Kaschuluk, Lee, Tangney

Nay –

- B. Stephen Madden.** To reconstruct and extend existing permanent pier, replace ramp and float, relocate kayak rack and provide electric and water services at 95 Eel River Road, Osterville as shown on Assessor's Map 116 Parcel 121. **SE-6381 WC Form received. Request continued from 4/28, 5/19, and 5/26. From 6/23 for Commission only discussion and vote.**

The Chair reviewed the project.

The application submitted requests three changes in the current configuration of the dock/pier located at 95 Eel River Rd, Osterville, Mass.

1. A complete tear down of the existing dock and rebuilding using a different design, extending the dock 31.5 feet, 53' beyond mean low water mark;
2. Adding a 26' aluminum ramp and 8'x25' float for a total length of 100' beyond mean low water mark; and
3. Adding a motorized boat with an associated finding that the current designation of the location as a high value shellfish area requiring a 30" depth of water under the boats prop be changed to a less than high value shellfish area requiring 12" of water under the prop.

The applicant seeks the following waivers:

1. A waiver for the pier length; and
2. A waiver for the draft depth to 12".

Legal and Regulatory Framework

1. The proposed permanent pier extension NOI (SE3-6379) is filed under the State Wetlands Protection Act (MGL 131, Ch. 40), the Code of the Town of Barnstable Wetlands Protection Ordinance, and the local dock and pier regulations, Chapter 703 of the Code of the Town of Barnstable, adopted by the Commission under Town of Barnstable Ordinance Chapter 237, with an effective date of October 26, 2004, as amended on February 20, 2018.
2. The applicant bears the burden of proving that the work will not have unacceptable effects on values protected by the Ordinance. §237-11.
3. The Town's Ordinance contains more stringent standards than the State Wetlands Protection Act. In addition to the eight interests or values protected under the State Wetlands Protection Act, the Town of Barnstable has exercised its Home Rule powers to include additional protected interests which, which include protecting recreational boating and shell fishing.
4. The Commission reviews all pier proposals on a site-specific basis, disposing of each according to its merit and to the degree that the preponderance of the evidence shall show that the statutory interests have been preserved and protected.
5. Section 703-4 (K) states that a dock "may not obstruct waterways normally used for recreation."
6. Further "Private piers shall be constructed so as to not interfere with any longstanding public recreational use of the waterway" §703-4 (K).

The Commission finds that the totality of the evidence submitted in this matter establishes that the requested dock extension would result in unacceptable impacts on recreational boating. This determination is based on the following:

1. An aerial of 95 Eel River Mooring Field and Mooring GIS.png provided by Barnstable Harbormaster
2. The end of the proposed extended dock would be 33' from mooring WB096 with 45 ft of arc.
3. Assuming boats with an eight-foot beam, a not unusual beam width, are tied to existing moorings and the proposed dock, the distance between the dock and the nearest moored boat could be significantly reduced to as little as 17 feet.
4. The Harbor Master for the Town of Barnstable and the Waterways Committee submitted testimony that the proposed extension extends too far into the mooring field creating a potential hazard to recreational boaters and imposes a setback of field that allows all waterfront homeowners to safely navigate along the shoreline. Oral testimony to this effect was also provided during the public hearings.
5. In the Mooring Spacing Graphic submitted by the applicant, Exhibit E in document 20260623 Response Letter Madden 95 Eel River, two moorings are identified as being the closest to the proposed pier and float at 95 Eel River Road – Mooring WB 061 and Mooring WB 096.
6. Based on information provided by the Harbormaster, Mooring WB 061 has a mooring chain and associated vessel that extends 55' from the mooring, effectively creating a 56' separation between this mooring and the proposed float. Mooring WB 096 has a mooring chain and associated vessel that extends 45' from the mooring effectively creating a 33' separation between the between this mooring and the proposed float.
7. Considering the factors above, and the maneuvering area required for vessels berthed in, entering, and departing the proposed pier and the adjacent mooring field, the Commission finds that there will be a significant negative impact on recreation/navigation.
8. While the applicant states they, "believe that there will be sufficient navigational space between those boats and the proposed pier" the Harbormaster and WWC disagreed.
9. The applicant submitted no direct testimony on the issue of the significant negative impact on recreational boating, except to state that in their opinion it was not a problem. The applicant also argued that the Supreme Judicial Court ruled in Fafard v. Conservation Commission of the Town of Barnstable that the Commission has no authority to regulate "navigation" as a public trust right. However, in that case the Court specifically upheld the Commission's denial of a dock application based upon the Commission's authority over recreational activities including boating, thus distinguishing boating activities from the Public Trust doctrine.
10. In light of these findings on the negative impact of a dock extension, the Commission finds it unnecessary at this time, to address the additional requests for a dock rebuild and for defining the value of the shellfish rating

There were two motions, first under the State Regulation and the second under the local ordinances.

A motion was made to approve this project under the provisions of the Massachusetts Wetlands Protection Act (MGL Chapter 131, Section 40)

Seconded.

Aye – Abodeely, DeMelo, Hearn, Kaschuluk, Lee, Tangney

Nay –

A motion was made to approve this project with special conditions under the Code of the Town of Barnstable Wetlands Ordinance (Chapter 237, Section 1-14)

Seconded.

Aye –

Nay – Abodeely, DeMelo, Hearn, Kaschuluk, Lee, Tangney

IV. CERTIFICATES OF COMPLIANCE

(ez = staff recommends approval) (D = staff does not recommend approval) (* = on-going conditions)

A. SE3-6175	Michael Tieu Town of Barnstable DPW 0 & 789 Mary Dunn Road, Barnstable	(COC, ez*)	Abandonment of #4 well & demolition of well building.
B. SE3-5842	51 Sunset Point LLC 51 Sunset Point, Osterville	(COC, ez*)	New driveway entrance. Relocate electric lines.
C. SE3-5981	51 Sunset Point LLC 51 Sunset Point, Osterville	(COC, ez*)	Partial reconstruction, garage addition, patios & walkways.
D. SE3-6106	Bennett Daniel 744 Sea View Avenue, Osterville	(COC, ez*)	Remove & replace inground pool, deck, patio & amenities. Construct shed. Landscaping.
E. SE3-6018	William Hafferty Cape Cod Hospital 27 Park Street, Hyannis	(COC, ez*)	Parking lot redevelopment & retaining wall.
F. SE3-5849	Steven Cohen 209 Bay Street, Osterville	(COC, ez*)	Demolish existing dwelling, construct new dwelling, garage, pool, patio, cabana.
G. SE3-6013	Angela Y. Hahn 150 Bay Road, Cotuit	(COC, ez*)	Construction of single-family home & site improvements. Vista pruning.

A motion was made to approve A. – G.

Seconded.

Aye – Abodeely, DeMelo, Hearn, Kaschuluk, Lee, Tangney

Nay –

A motion was made to adjourn the meeting.

Seconded.

Aye – Abodeely, DeMelo, Hearn, Kaschuluk, Lee, Tangney

Nay –

The time was 7:05 p.m.

