



**Town of Barnstable  
Conservation Commission**  
200 Main Street  
Hyannis Massachusetts 02601

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**MINUTES – CONSERVATION COMMISSION HEARING**

**DATE: September 7, 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/96697494361>

Meeting ID: 966 9749 4361

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**

The meeting was called to order at 3:00 p.m. by Chair F. P. (Tom) Lee. Also in attendance were: Vice Chair Louise Foster, Clerk George Gillmore, Commissioners Abodeely, Morin, and Hearn. Commissioner Sampou was absent.

Conservation Administrator, Darcy Karle was present along with Conservation Agent Ed Hoopes and Conservation Assistant Fred Stepanis.

**3:00 PM AGENDA**

**I. REVISED PLANS**

**Project type:**

**Revisions:**

- |  |                             |   |
|--|-----------------------------|---|
| A. Cashin, James & Susan SE3- 5645<br>362 Huckins Neck Road, Centerville | new porch & bulkhead to sfd | driveway spur, fire pit, and<br>increase size of deck |
|--|-----------------------------|---|

The applicant, James Cashin, was accompanied by Michael Pimentel of JC Engineering.

The plan revised 8-24-21 shows the driveway spur, the as-built deck, and the fire pit. It shows additional mitigation plantings to compensate for the additional hardscaping. Mr. Cashin says the areas disturbed during construction are re-vegetating and future boat storage will be outside the 50-ft. buffer or in the garage.

A motion was made to approve the revised plan.  
Seconded and voted by roll call.

Aye – Abodeely, Gillmore, Hearn, Lee, Morin

Nay – Foster

Motion carries.

B. Robin & Marcia Brown SE3-5022 250 Smoke Valley Rd., Marstons Mills	Elevate cottage, add 2 <sup>nd</sup> story, septic, new guesthouse access stairs	9.5' additional building, deck, and patio
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John O'Dea of Sullivan Engineering Inc. represented the client

Issues discussed

- Date of revised plan being reviewed is 9/7/21
- Request to remove proposed rinse station label.

A motion was made to approve the revised plan.

Seconded and voted unanimously by roll call.

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

Nay –

## **II. EXTENSION REQUESTS**

### **Project type:**

### **Time Requested:**

A. DT Properties II, LLC SE3-5593 47 Sea View Avenue, Osterville	Repair/replace stone revetment & groin, beach nourishment	3 yrs (1 <sup>st</sup> request)
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Arlene Wilson of AM Wilson represented the client.

A motion was made to approve the extension request.

Seconded and voted unanimously by roll call.

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

Nay –

## **III. ENFORCEMENT ORDERS**

A. Thomas Carvalho and E. J. Jaxtimer – 158 Swift Avenue, Osterville – Map 165 Parcel 083. Unauthorized activity beyond the scope of an Order of Conditions and Plan of Record (SE3-5869). **Tabled from August 10, 2021.**

### **Exhibits**

- A ARC Reader image of 158 Swift Ave., Osterville
- B Before and After Photos
- C Illustrative Site Plan for 158 Swift Ave., Osterville

Mr. John O'Dea, Sullivan Engineering, represented Mr. Carvalho and Mr. Jaxtimer, EJ Jaxtimer and Jeff Garran (Jaxtimer Building) were present.

Issues discussed:

- This item was tabled from August 10, 2021 pending receipt of a new plan showing the location of the new home.
- In order to bring the property back into compliance Mr. Carvalho will have to file a new plan showing the demolition of the old house and location of a new house. A Revised Plan may be submitted to the Conservation Commission showing the razing of the old home and that the position of the new home is outside Conservation jurisdiction.

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. Stanley Davitoria – 55 and 61 Beechwood Rd., Centerville – Map 252 Parcel 182 and 108. Unauthorized activity beyond the scope of an Order of Conditions and Plan of Record (SE3-5739).

#### Exhibits

- A ARC Reader image of 158 Swift Ave., Osterville
- B Before and After Photos
- C Illustrative Site Plan for 158 Swift Ave., Osterville

Attorney Jonathan Polloni and Dan Ojala, Down Cape Engineering, represented Mr. Davitoria. Mr. Stanley Davitoria and Mr. Renan Barreto were present.

#### Issues discussed:

- Mr. Davitoria had a previous enforcement action against him in August 2020 for cutting vegetation in BVW. He was issued a Commission fine and required to restore the BVW. That work was completed in December 2020. He confirmed he would clear any further changes to approved plan with Conservation staff prior to making such changes.
- Between February 2021 and August 2021, Mr. Davitoria and/or his contractors continued work on a single family dwelling approved under SE3-5739.
- In July of 2021, at the direction of one of the Barnstable Building Inspectors, Mr. Davitoria's Project Supervisor applied for a building permit for retaining walls at 55 Beechwood Rd. As part of that permit application a reference was made to an as-built plan being prepared. This prompted the Conservation Agent to perform a visual inspection of the work site.
- That site visit found the stone retaining wall approved under SE3-5739 had been installed approximately 4'-5' inside the 50' buffer (instead of on the 50' buffer, as approved) and that the wall was significantly longer and built with additional wing walls with considerable amounts of fill behind the wing walls.
- Upon further examination, several other unpermitted and unapproved additions had been made to the building site within the 50'-100' buffer; including a second set of stone steps, a 10'x12' shed, a pergola structure, a hot tub/spa and surrounding deck, and a stone wall running along the western property line from Beechwood Rd to the 50' buffer.
- The project engineer also determined the sheet pile retaining wall that was to be built at the work limit line approximately 45' from the resource area boundary had been installed at 36.7' from the wetland resource boundary and badly out of approved footprint.
- The homeowner and the project supervisor were both repeatedly told by Conservation staff not to make any changes to the approved plan without getting prior permission from Conservation.
- Discussion of whether an independent consultant (acting as a site monitor) be hired either by Conservation Commission or by homeowner. The logistics of having Conservation hire the consultant would take 4-6 months. The Commissioners believed it would be better for Atty. Polloni and Mr. Ojala to hire a consultant that would meet Conservation staff approval and be paid for by Mr. Davitoria.
- The Commissioners would like Chairman Lee and Conservation Administrator to discuss with the Town Attorney the possibility of issuing criminal fines to Mr. Davitoria.
- The Enforcement Order was amended as follows:
  1. An independent consultant should be hired, at Mr. Davitoria's (the homeowner) expense and with Conservation Agent approval, to act as a site monitor for the remainder of the project; ensuring future compliance with respect to deadlines, inspections, and any reports that are to be filed with the Commission as defined below.
  2. Specifically, the monitor will:
    - a. Begin site monitoring the week of September 20, 2021.
    - b. Make regular visits to 55 Beechwood Rd., Centerville (the site). At the start of the monitoring period, visits should be at least once every other day during the week (M-F). The frequency of visits may be adjusted by the Commission Agent after the first month, depending on work activity at the site.
    - c. Keep and maintain a log that includes dates and times of all site visits, any contacts made on site, comments on the general work that is currently going on at the site, and any issues that require further attention by either

Conservation Agent or the Conservation Commission. Photos should document the work going on and conditions on site.

- d. Make a weekly report via email to the Conservation Agent with a copy to the Conservation Administrator. At the October 26, 2021 Barnstable Conservation Commission hearing, the Commission will determine if weekly reports should continue or report frequency may be reduced to a bi-weekly schedule.
  - e. Continue to provide reports as specified until such time the Commission determines they are no longer required or the Certificate of Compliance request for SE3-5739 is filed, whichever comes first.
3. The Project Engineer (Down Cape Engineering) will provide a written report to the Commission that addresses the location of the sheet pile wall and stone retaining wall; whether either or both walls should be removed and placed in their previous permitted locations, what would be the environmental impacts involved in terms of removal/replacement of the wall(s) versus leaving the walls in place; what and how much mitigation would be proposed if keeping the walls in place and what procedures would need to be taken to accomplish said mitigation. If drainage and stormwater issues exist on site, address them with respect to their impact on the existing site conditions. This report is due no later than October 20, 2021. It will be discussed at the October 26, 2021 Barnstable Conservation Commission hearing under Old Business.
  4. A stamped, surveyed engineered plan showing the existing conditions and all unpermitted structures on site will be prepared and submitted to Conservation by October 20, 2021, and will be discussed relevant to the engineers report in Item #3 above at the October 26, 2021, Barnstable Conservation Commission hearing under Old Business.
  5. File an application for an Amended Order of Conditions that incorporates all changes for an approved site plan by November 5, 2021.

A motion was made to approve the Amended Enforcement Order.

Seconded and voted by roll call:

Aye – Lee, Foster, Gillmore, Abodeely, Morin, Hearn, Sampou (joined hearing at 4:08 pm)

Nay – none

**\*Commissioner Sampou signed in at 4:08 p.m.**

#### **IV. NON-CRIMINAL TICKETS**

- A. Stanley Davitoria, 55 & 61 Beechwood Rd. - Violation of an order of conditions (SE3-5739). \$300.00

Issuance of this ticket suspended pending outcome of discussions 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 4:43 p.m. by Chair F. P. (Tom) Lee. Also in attendance were: Vice Chair Louise Foster, Clerk George Gillmore, and Commissioners Abodeely, Morin, Hearn.

Conservation Administrator, Darcy Karle and Agent Ed Hoops assisted.

#### **V. REQUESTS FOR DETERMINATION**

- A. **Patrick Callahan.** Proposed garage addition and driveway improvements at 9 East Bay Road, Osterville as shown on Assessor's Map 141 Parcel 009-001. **DA-21049**

John O’Dea of Sullivan Engineering Inc. represented the client.

Issues discussed:

- Request by staff prior to hearing to add dimensions of garage and label driveway as paved drive.
- Request to have drywells added.

Motion to approve the project as a negative determination subject to receipt of a revised plan showing drywells, label paved driveway, and add the dimensions of proposed garage.

Seconded and voted unanimously by roll call.

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

Nay –

**B. Sharon L. Taylor.** Interior improvements to existing shed with bathroom piping to existing septic tank and ejector pump at rear of shed at 191 Lewis Pond Road, Cotuit as shown on Assessor’s Map 020-057. **DA-21050**

Edward Stone of EAS Survey Inc. represented the client.

Issues discussed:

- Interior work will be completed in the shed.
- This proposal will need to go to Board of Health.
- Project was not staked out.
- Administrator mentioned a revised plan is needed to show path to pond and cautioned the float/structure might not be permitted so it should be removed from the plan.

Motion was made to approve the project as a negative determination subject to receipt of a revised plan removing float from the plan and adding the path.

Seconded and voted unanimously by roll call.

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

Nay –

## **VI. NOTICES OF INTENT**

\*Agenda item taken out of order. Fieldgate, letter B., addressed first.

**A. Matthew J. MacKinnon, Trustee.** Removal of lower septic tank, upgrade septic system from current split leaching field built into the coastal bank; construct retaining wall behind top of slope; remove 1 bedroom cottage, construct new 1 bedroom cottage on floodzone-designed foundation; replacement of portion of dwelling’s slab foundation with floodzone-designed foundation; light regrading with addition of “Eco-Sod” at 33 Oyster Place Road, Cotuit as shown on Assessor’s Map 035 Parcel 101. **SE3-5915**

- A verbal request was received by Down Cape Engineering to continue to 9/28/21. The abutter letter had the wrong time listed.
- Engineer will re-notify abutters and cover a legal add cost.

Motion to approve the request for continuance until September 28, 2021 without testimony.

Seconded and voted unanimously by roll call.

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

Nay –

**B. Damon and Natalie Fieldgate.** To permit seasonal float, dock, and ramp at 67 Lakeside Drive, Centerville as shown on Assessor’s Map 252 Parcel 096.

Peter McEntee represented the client.

Issues discussed

- Project does exceed the Freshwater guidelines a little.
- Project not really centered on the property.
- Float is over guideline size, however this could be addressed with a special condition that when the dock is in need of repair, they will need to bring it into compliance with the guidelines
- NHESP letter and DEP SE3# is needed.

Motion to approve the project subject to a special condition, stating when the dock is in need of maintenance, the property owner will need to bring the structure back into compliance with the Fresh water pier guidelines. A continuance is needed for the sole purpose of the review of the NHESP letter and DEP SE3# and any comments, continuance to 9/14/21.

Seconded and voted unanimously by roll call.

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

Nay –

## VII. CONTINUANCES

- A. **Donald J. MacKinnon, Tr. – MCCM Realty Trust.** Demolish patio and construct additions within the area and to the rear of dwelling; upgrade septic system to Title 5 (remove cesspools); install new driveway with drainage to access drive under garage addition; rebuild front deck with storage space under; retaining walls, hot tub/grill area; remove/add walks; replace steps down bank with raised stairs; invasives and non-native tree removal at 910 Main Street, Cotuit as shown on Assessor’s Map 035 Parcel 090. **SE3-5914 Continued from 8/31.** •

- A verbal request was received by Down Cape Engineering to continue to September 28, 2021 so both MacKinnon NOI applications can be opened at the same hearing.

Motion to approve a continuance to September 28, 2021 without testimony.

Seconded and voted unanimously by roll call.

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

Nay –

## VIII. MINUTES

- A. August 10, 2021
- B. August 17, 2021

Motion to approve both sets of minutes.

Seconded and voted unanimously by roll call.

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

Nay –

Motion to adjourn the hearing.

Seconded and voted unanimously by roll call.

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

Nay –

Adjourn at 5:07pm