



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

DATE: AUGUST 16, 2022 @ 6:30 PM

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Meeting ID: 862 9621 6171

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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 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, Hearn, Morin, and Sampou.

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

I. REQUESTS FOR DETERMINATION

- A. Michael D. & Susan L. White.** Repair revetment mortar at 577 Sea View Avenue, Osterville as shown on Assessor's Map 114 Parcel 050. **DA-22029**

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

Issues discussed:

- Construction access will be on the west side of the property.

- There will be no large heavy equipment used. It will be done mostly by hand. A small bob cat may be used to bring material in and out to the site.
- This is a standard repair.
- A protocol was included with the request for determination.

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

B. Jesse & Sharon Hurley. Proposed screened porch and second story addition at 20 Oyster Place Road, Cotuit as shown on Assessor’s Map 035 Parcel 086. **DA-22030**

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

Issues discussed:

- There were no questions from Commissioners.

There was no public comment.

A motion was made to approve the project as a negative determination subject to receipt of a revised plan adding the dimensions of the screened porch.

Seconded and voted unanimously by roll call.

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

Nay

II. NOTICES OF INTENT

A. William M. and Susan B. Sullivan. Proposed swim spa and patio improvements with all associated appurtenances including mitigation in the form of bank restoration at 990 Main Street, Cotuit as shown on Assessor’s Map 034 Parcel 034. **SE3-6021**

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

Issues discussed:

- Commissioners noted the bank seems to be vegetated and questioned the need for bank restoration.
- There is no grass now, the grasses will help stabilize the bank and add plant diversity for wildlife.
- The access is going to be along the north side of the property. Small equipment may need to be used.
- A swim spa is bigger than a hot tub but smaller than a full swimming pool.
- The distance to the wetland from the swim spa is about 13’ to the top of the coastal bank and 50’ to the bottom of the bulkhead area.
- A question was raised if it could be moved further from the 50’ buffer.
- The stairs on the plan are existing.
- The work on the bank will be done manually.
- The elevation is about 25’.
- The top edge of the pool is at the same level as the patio.
- There will be a lot of excavation needed for the swim spa.

- There will be a new retaining wall.
- It could be moved closer to the house and further away from the coastal bank.
- There was further discussion on moving the swim spa further away from the top of the bank.
- Commission would like to see the spa moved back.
- The bank is not unstable and does not need to be stabilized. The mitigation is not necessary to allow the closeness of the pool.
- The seating area was not permitted.
- The area between the spa and top of bank could be planted with native plantings.
- The vegetation that was on the bank to the south was basically the same as this location.
- The pool is about a foot lower than the existing patio.
- There was discussion involving an approval for the property to the south. There were a number of issues and some violations. There was damage to the bank. The bank was not in good shape. A lot of work had to be done to that bank. The work on the bank may have been due to an enforcement order.
- The spa was done as an amendment to the original order.
- The reasons for protecting the 0-50' buffer were reviewed.

There was no public comment.

- The plan for the project next door offered mitigation in the 50 – 100' buffer.
- Bill Sullivan, owner advised there is a full lawn at the top of the bank.

A continuance was requested to August 30, 2022.

A motion was made to approve the continuance request.

Seconded and voted unanimously by roll call.

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

Nay

- B. James J. & Elise M.P. Gustafson.** Proposed addition and deck in the 50'-100' buffer to an isolated vegetated wetland. Invasive species removal in the buffer zone proposed as mitigation at 34 Mount Vernon Avenue, Hyannisport as shown on Assessor's Map 287 Parcel 114. **SE3-6022**

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

Issues discussed:

- The foundation of the addition will not go into the 50' buffer. The work limit line will be temporarily slightly into the 50' but it will be restored.
- The addition does have a 4' foundation underneath.
- The elevations of the additions were discussed.
- The building should be pulled a little bit away from the 50' buffer. The contractor may not pay attention to the 50' buffer.
- It is a good plan. The end result should be outside the 50' buffer.

There was no public comment.

A motion was made to approve the project subject receipt of a revised plan show the dimensions of the proposed hardscape, annual reports for three years, written notification to Conservation Commission if change of contractor, and the corner of the addition to be outside the 50' buffer.

Seconded and voted unanimously by roll call.

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

Nay

C. Cape Cod Hospital – James Hafferty. Proposed parking lot redevelopment and retaining wall construction at 27 Park Street, Hyannis as shown on Assessor’s Map 342 Parcel 001. **SE3-6018**

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

Issues discussed:

- DPW reviewed the plan and had some minor comments. Most of the comments have been incorporated into this plan. They will work with DPW on a few minor issues. If there are any changes in Conservation jurisdiction they will bring the project back.
- A question was raised about how long the temporary storm water basin will be necessary. It will be very temporary, probably only a couple of months.

There was no public comment.

A motion was made to approve the project as submitted and if any revisions after meeting with DPW a revised plan will be submitted.

Seconded and voted unanimously by roll call.

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

Nay

III. CONTINUANCES

A. Donald Adams. Amended Order - To amend current Order of Conditions to permit existing seasonal 24.8’ x 2.7’ boardwalk at 57 Snow Creek Drive, Hyannis as shown on Assessors Map 325 Parcel 151. **SE3-5665 Continued from 7/5/22.**

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

Issues discussed:

- This was continued to provide a raised walk instead of a level walk.
- The revised plan is what was asked for.

There was no public comment.

A motion was made to approve the amended order with revised plan dated 7/12/22.

Seconded and voted unanimously by roll call.

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

Nay

B. Corey A. Griffin, Trustee – Glen Lane Nominee Trust. Modification of driveway at 49 Main Street, Osterville as shown on Assessor’s Map 185 Parcel 020. **SE3-6016 Continued from 8/2.**

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

Issues discussed:

- Asked again to look at if they could gain sufficient mitigation to compensate for what is needed.
- The new plan comes up with 35 sq. ft. in excess of what is needed.
- The elevations have been put on the plan.
- A third planting sheet has been added for areas B, C, and D.
- Demarcation for those areas has been added to the plan.
- Demarcation is not needed for areas E and F.
- The demarcation should be added to the engineering plan.

There was no public comment.

A motion was made to approve the project subject to receipt of a revised plan with the demarcations on the engineering plan, date of planting plan is August 9, 2022, and annual reports for 3 years.
Seconded and voted unanimously by roll call.

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

- C. **Lynn Osborn.** Proposed additions, mitigation and associated site improvements at 154 Breakwater Shores Drive, Hyannis as shown on Assessor’s Map 306 Parcel 165. **SE3-6017 Continued from 8/2 for DEP number only.**

The DEP number has been received.

A motion was made to close the public comment and authorize staff to issue the Order of Conditions.
Seconded and voted unanimously by roll call.

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

IV. CERTIFICATES OF COMPLIANCE (ez = no deviations, staff recommends approval)
(* = on-going conditions)

A. Christopher Hecksher	SE3-5973	(COC, ez*)	Vista Pruning / Access Path / Pinquickset Cove
Access Stairs	144 Peppercorn Lane, Cotuit		
B. 941 Sea View LLC.	SE3-5764	(COC, ez)	Replace Existing Beach
Shelter	941 Sea View Ave, Osterville		Coastal Dune / Coastal Beach
C. Alex McKee & Olivia Snyder	SE3-5948	(COC, ez)	Restore buffer after
installation of retaining walls	59 7 th Ave, Hyannisport		Hall’s Creek / Marsh

A motion was made to approve A. - C.

Seconded and voted unanimously by roll call.

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

V. MINUTES

- A. March 29, 2022 (tabled from June 14)

A motion was made to accept the minutes as written.

Seconded and voted unanimously by roll call.

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

A 10 minute break was taken before Old and New Business taken up.

VI. OLD AND NEW BUSINESS

- A. **CHAPTER 704** – Commission and public review and discussion regarding a draft revision to Chapter 704 in order to provide clarifications on mitigation calculations. Continued from 08/02/22.

Written comments were received and acknowledged from:

Arlene Wilson – A.M. Wilson & Associates

Gordon Starr

John O’Dea – Sullivan Engineering and Consulting
Kelly Barber – Barnstable Land Trust
Lindsey Counsell
Lynne Hamlyn – Hamlyn Consulting
Sean Riley – Coastal Engineering Company Inc.

Chair requested any additional comments be submitted by Friday August 19, 2022.

Public Comment:

Lynne Hamlyn – Hamlyn Consulting

- Wished she had more time to submit comments. The current revisions make it more confusing.
- She is confused as to how it is being applied. The mitigation credit seems to have been made more complicated.
- She feels it is being overthought and micromanaged. Taking out the phrase “as so far as possible” made it more confusing.
- The mitigation should be shown on the plan. The planting plan should be an addendum.

Commission – The reason for the revisions is to put in writing an issue Lynne Hamlyn brought up. If someone reduces hardscape in the 0-50’ buffer, they should get a credit for it.

Several scenarios were discussed.

The intent is to restore the 0-50’ buffer.
The “in so far as possible” wording was discussed.
Some re-drafting needs to be done.

Lynne Hamlyn

- Some 0-50’ buffers are not full of vegetation. She questioned the wording “until filled” and feels “in so far as possible” is better.
- Mitigation credit should be explained in the regulation.

The scenario of removing hardscape in the 0-50 and getting the 4:1 ratio, and then get another 3:1 to replant the bushes was brought up. Only the 4:1 ratio should be given.

Dan Ojala – Down Cape Engineering

- There are some cases that are very extreme. A slight disturbance creates a huge jump in mitigation.
- He likes the way it is currently worded.

John O’Dea – Sullivan Engineering & Consulting

- Does not understand what is being gained by requiring so much mitigation if there is a slight intrusion into the 50’ buffer.
- It is more of a benefit to get hardscape out of the 50. To replant the removed hardscape is more mitigation. Many people are not doing their projects because of the amount of mitigation needed.

Raul Lizardi-Rivera, P.E. – Cape & Islands Engineering

- Mitigation should first be planted in the 0-50’ buffer. Sometimes it should go in the resource area. On a bank is an example.
- Restoration of 50’ buffer is more complicated now.

There was discussion on the definition of an undisturbed buffer. Should a restored buffer be considered an undisturbed buffer?

James Bowes – He is a developer working on a project now at 191 Sea View Avenue.

- Questioned if a piece of concrete has been sitting in the 0-50' buffer for 50 years what is it disturbing?
- This is a 120 year old house. The house was picked up and moved for the pool to go in and mitigation put in.
- The owners were wealthy enough to do the project. A regular person could not afford to do that.
- There needs to be some exceptions made.
- Many people are not doing their projects because of cost.
- The purpose of the regulations should be thought of.
- He would like an in person public meeting for the public to express their stories of what has happened to them. He does not like zoom meetings.
- Tweaking the regulations seems like something sneaky is going on.

The Commission just wants to clarify how the regulations are applied.

They cannot make an exception sometimes for a small intrusion because the regulation needs to be applied consistently. Allowing an exception for one project, the next person should also get an exception. Where do you draw the line?

The Cape has changed and things cannot continue to be done the way they used to be. The goal is to respect and rebuild the 0-50' buffer as much as possible.

Jimmy Bowes

- Sometimes the amount of mitigation necessary does not better anything.

Arlene Wilson – A.M. Wilson & Associates

- The definitions in the bylaw do not cover some of the things that need to be covered.
- There should be definitions for an undisturbed buffer, mitigation, grass mitigation, and if a buffer is created, is it an undisturbed buffer.
- Water dependent facilities – under the regulation a pier is not water dependent, but a baseball field is.
- Clarifying the mitigation calculations has made it much more difficult than it needs to be.
- These clarifications have gone in the wrong direction. She would be willing to help with wording.

The Chair advised any additional comments are welcome.

This is only a first draft.

There was no further public comment.

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 9:13 p.m.