



Town of Barnstable Conservation Commission

230 South Street
Hyannis Massachusetts 02601

Revised 2/11/2025

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MINUTES – CONSERVATION COMMISSION HEARING

DATE: October 15, 2024 @ 3:00 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.

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 Angela Tangney, Commissioners Abodeely, and Hearn. Commissioner Sampou arrived at 4:35 p.m.

Administrator Darcy Karle was present along with Agent Ed Hoopes, and Administrative Assistant, Kim Cavanaugh.

I. OLD AND NEW BUSINESS

A. Emergency Declaration Request, Cotuit Entrance Channel – Severe Hazard to Navigation Request for support letter from the Commission to DEP. **SE3-6100**

Brian Taylor, Harbor Master and Paul Marsala of Foth presented the request to the Commissioners.

Issues discussed:

- The initial survey was in 2023. The area has filled in 11 feet since the initial survey.
- If approved as an emergency, it would be a temporary amendment.
- It would need to be applied for again if maintenance dredging is requested.
- The request is necessary and is an emergency situation.
- If approved, it could be an after the fact NOI.

A motion was made to approve the emergency declaration request.

Seconded.

Aye –Abodeely, Foster, Hearn, Lee, Tangney

Nay – none

B. Review and approval of 2025 Conservation Commission meeting schedule.

A motion was made to approve the 2025 meeting schedule.

Seconded.

Aye –Abodeely, Foster, Hearn, Lee, Tangney

Nay – none

II. REVISED PLANS

Project Type

Revisions

A. Gordon & Jane Slaney SE3-6152
878 Main Street, Cotuit

Replace pool, patio, maintain paths,
steps and decks

To authorize as-built pool
patio and provide mitigation
plantings

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

Issues discussed:

- A planting plan needs to be submitted.
- Demarcation should be included for the mitigation area.

A motion was made to approve the revised plan subject to review and approval by staff of the size and type of plantings and demarcation.

Seconded.

Aye –Abodeely, Foster, Hearn, Lee, Tangney

Nay – none

B. Terry L. Simpson, Trustee SE3-6090
525 South Main Street, Centerville

Relocate SFD, replace garage,
driveway

To adjust the location of
driveway

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

- There were no questions from the Commissioners.

A motion was made to approve the revised plan as submitted.

Seconded.

Aye –Abodeely, Foster, Hearn, Lee, Tangney

Nay – none

III. CERTIFICATES OF COMPLIANCE

(ez = no deviations, staff recommends approval) (* = on-going conditions)

A. SE3-6002	John A. & Colleen J. Boselli, 183 Bay Street, Osterville	(COC, ez)	Renovation/addition. Guest house/pool house. Pool and associated appurtenances.
B. SE3-6103	John A. & Colleen J. Boselli 183 Bay Street, Osterville	(COC, ez*)	Permit & maintain float expansion.
C. SE3-5017	Thomas H. Lowell		

	Ropes Farm, LLC 135 Putnam Avenue, Cotuit	(COC, ez)	Construct & maintain stairs down coastal bank.
D. SE3-6051	Pamela Ellis Simons, Et Al, Trustees Anchor to Windward Real Estate Trust 271 Eel River Road, Osterville	(COC, ez)	Adjust location of driveway.
E. SE3- 5806	Barbara C. Doherty 500 Shootflying Hill Road, Centerville	(COC, ez*)	Permit & extend formerly existing stairs and pier. Vista Pruning.
F. SE3-5212	Town of Barnstable/D.P.W. 130 Oregon Way, Cotuit	(COC, ez)	Replace drain, add armor stone around exposed sections.
G. SE3-5943	Gregory J. & Julianne P. Pinto, Trustees JDC Ocean Avenue Realty Trust 63 Ocean Avenue, Centerville	(COC, ez*)	Construct & maintain boardwalk, ramp and float.

A motion was made to approve A. – G.

Seconded.

Aye – Abodeely, Foster, Hearn, Lee, Tangney

Nay – none

IV. ENFORCEMENT ORDERS

- A. Patrick Braun – 91 Sterling Road, Hyannis – Map 268 Parcel 203. Alteration of the 50’ buffer to a wetland resource area – vegetated wetland – by cutting vegetation, placing fill, and regrading.

Exhibits

- A ARC Reader and Aerial photo of 91 Sterling Road, Hyannis
- B Site Photos 91 Sterling Road

Patrick Braun represented himself, Kelly Ferreira was present

Issues discussed:

- Homeowner was attempting to put in a new lawn and placed fill in the 50’ buffer for that purpose.
- Homeowner will either remove fill by November 30, 2024 or file a NOI seeking to permit the activity by February 1, 2025.

A motion was made to approve the Enforcement Order as written.

Seconded.

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

Nay – none

- B. Elisa D Cunningham, Tr & Al Mare Realty Trust - 547 Main Street, Osterville – Map 141 Parcel 100. Alteration of a wetland resource area - Bordering Vegetated Wetland (BVW) - by cutting trees. Failure to request a Certificate of Compliance for SE3-5821.

Exhibits

- A ARC Reader of 547 Main St., Osterville
- B Site Photos

Edward Cunningham represented Elisa Cunningham & Al Mare Realty Trust

Issues discussed:

- Homeowner caused their agent to cut several trees in the wetland both on subject property and on neighbor's property (110 East Bay Rd., Osterville)
- Homeowner would not state which company did the tree cutting, hence a non-criminal citation will be issued to her for cutting trees in a wetland without permit

A motion was made to approve the Enforcement Order as written.

Seconded.

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

Nay – none

- C. F. Thomas Parsi, Tr & 3rd Amndtmt FTP Rev Trust of 2004 - 98 Hayes Road, Centerville – Map 210 Parcel 097. Alteration of the buffer to a wetland resource area - Lake Wequaquet - by creating and maintaining a beach without a permit

Exhibits

- A ARC Reader and Aerial photo of 98 Hayes Road, Centerville
- B Site Photos

Mark Burgess, Shorefront Consulting represented Mr.Parsi and 3rd amendment FTP Rev Trust

Issues discussed:

- This was a violation that was noticed at a NOI hearing for a seasonal dock at this property (May 2024).
- The homeowner will comply with the enforcement order and remove the sandy area and return to surrounding conditions.

A motion was made to approve the Enforcement Order as written.

Seconded.

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

Nay – none

- D. ALJ Realty Corp - 700 Old Falmouth Road, Marstons Mills – Map 124 Parcel 026. Alteration of a wetland resource area - Bordering Vegetated Wetland (BVW) and intermittent stream - by cutting vegetation and placing fill AND alteration of the buffer to a wetland resource area - BVW - by cutting vegetation.

Exhibits

- A ARC Reader image & Aerial Photo of 700 Old Falmouth Road, Marstons Mills
- B Site Photos

Attorney Robert Mills represented the homeowner, Juan Marical (homeowner) was present

Issues discussed:

- This violation involved alterations in both the wetland resource area and the 50' buffer
- The violation was committed by the tenant on the property, not the homeowner, but the homeowner understands he is responsible for restoration.
- A Certified Ecological Restoration Practitioner (CERP) contractor will need to be involved with planning and implementing the restoration efforts.
- There was an incorrect date for final restoration which will be corrected with an amended enforcement order

A motion was made to approve an Amended Enforcement Order (to correct an incorrect date for final planting to be completed).

Seconded.

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

Nay – none

- E. New Rushy Marsh Realty LLC. – 1541 Main Street, Cotuit – Map 017 Parcel 007. Alteration of a wetland resource area – vegetated wetland and floodzone - and alteration of the buffer to a wetland resource area – vegetated wetland – by cutting vegetation, placing fill and regrading without a permit AND failure to comply with an Order of Conditions/Approved Plan of Record. Tabled to November 26th.

Exhibits

A Aerial photo of 110 East Bay Road, Osterville

B Site Photos

Attorney Mike Ford and Sean Reardon., P.E., Tetra Tech and Ian Peach Wilkinson Ecological Restoration represented New Rushy Marsh Realty, LLC

Issues discussed:

- This was a self-reported violation
- This is a serious violation that involves cutting and filling within a wetland resource area and its buffer.
- This is a show-cause hearing and the Commission will determine the final enforcement order and any conditions required to achieve compliance with the order.
- Staff recommends the Commission require full restoration of the wetland resource area and the 50' buffer.
- Homeowner representatives would like the opportunity to address the Commission with an alternate plan that includes replication of a new wetland resource area, enhancement of the other side of the impacted wetland and to allow most of the fill to remain in place.
- Wilkinson Environmental Design will return on November 26, 2024 with an alternate plan. They will provide the Commission with the proposed plan one week prior to that meeting.

A motion was made to table this enforcement hearing until November 26, 2024.

Seconded.

Aye – Lee, Abodeely, Tangney, Foster, Hearn

Nay – none

Commissioner Sampou arrived at 4:35 p.m.

V. WARNING LETTERS

- A. Matthew B. Wake - 396 Huckins Neck Road, Centerville – Map 233 Parcel 031. Failure to adhere to a plan of record (ADM-24036).

- Noted

VI. NON-CRIMINAL TICKETS

A. Marcilio Pina Dos Santos 700 Old Falmouth Road, Marstons Mills
Alt. of wetland resource area – cutting vegetation & placing fill \$300.00

- Noted

The Commission took a 5-minute break.

Items were taken out of Order –Notice of Intent item VIII. E. Town of Barnstable DPW was taken next.

VII. REQUESTS FOR DETERMINATION

A. Paul M. & Stephanie Basta. To replace existing stairway to pier at 87 Main Street, Osterville as shown on Assessor’s Map 185 Parcel 062. **DA-24050**

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

Issues discussed:

- At the site visit it was noticed that the downspouts on a large part of the house are emptying out within the bank.
- They are on the west side of the main house.
- It can be noted and followed up with an enforcement order, but it is not part of this RDA.
- If it is a pre-existing condition, it is not a violation.

Public comment: None

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

Seconded.

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

Nay – none

B. Matthew & Stacey Ovanes. To modify and expand existing patio and proposed stepping stones at 132 Bay Shore Road, Hyannis as shown on Assessor’s Map 325 Parcel 080. **DA-24051**

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

Issues discussed:

- There is not an undisturbed 50’ buffer.
- The footprint is being extended in the 50-100’ buffer.
- Mitigation cannot be required in an RDA.
- The guidelines were reviewed, and consultant felt it should come as an RDA not a NOI.
- Some mitigation should be offered.
- There is a guideline for filing this type of project. This is a small expansion, and the additional square footage is small enough to file as an RDA.
- The proposed project does include some plantings but wasn’t included as mitigation. It is approximately 350 sq. ft., but they are perennial gardens not native plantings.
- The perennial gardens are replacing sod. They could be native perennials.
- The Commissioners feel this maybe should have come in as a NOI.
- Each project is site specific.

- The guidelines are not set in stone.
- They could withdraw or a positive determination could be issued.
- If the project has a significant negative impact, then a positive decision should be given.
- The 0-50' buffer is non-existent on this property.
- This is an exception to the guidelines.
- An RDA negative determination means that the environmental impact of the project would be so minor that it can be disregarded. The Commission can say they feel it will have a negative impact on the environment and can issue a positive determination.
- Consultant feels the project will not have a negative impact on the environment.
- The native planting beds and gardens offered are four times the area of the patio.

Public comment: None

Motion was made to issue a positive determination.
Seconded.

Aye –Abodeely, Lee, Sampou
Nay – Foster, Hearn, Tangney

A tie vote is a positive determination.

VIII. NOTICES OF INTENT

- A. Thayer F. Swartwood, Alexander B. Swartwood & Helen Swartwood Carley.** Proposed beach access stairs and landing at 241 Ocean View Avenue, Cotuit as shown on Assessor's Map 033 Parcel 018. **SE3-6218**

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

Issues discussed:

- A landing on stairs is not a common practice.
- The stairs are not on a lot with a structure so it would be difficult to bring chairs.
- The landing area is 6'x8'.
- The property lines are very narrow. The property on the left and right are different owners.
- Any vegetation disturbed will be re-planted.
- A landing is usually approved for a steep bank so there is a place to rest. This landing is just to sit and enjoy the view.
- There is not a dune area at the elevation of the landing.
- There is concern about precedent being set. This is clearly a place for the applicants to sit and relax.
- The applicant addressed the Commissioners. The reason for the landing is for the grandchildren. A place to put on life jackets, change a diaper, etc. A place to be off the sand.
- Landings have only been allowed where there is a steep bank to allow for a place to rest.
- The beach is a dune but the stairs and the landing are not in a dune area.
- The location of the landing was discussed. This location has the least impact.
- There was continued discussion about setting a precedent.
- Because of the steepness and location of the landing it could be considered. All applications are looked at on a case-by-case basis.

Public comment: None

A pole was taken of the Commissioners.
Aye –Abodeely, Foster, Hearn, Lee, Tangney, Sampou
Nay – Foster, Sampou,

The representative said they could consider reducing the size of the landing. They could do 6'x6' instead of 6'x8'.

A motion was made to approve the project subject to receipt of a revised plan reducing the size of the landing to 6'X6' and any damage to vegetation during construction will be repaired.

Seconded.

Aye –Abodeely, Hearn, Lee, Tangney, Sampou

Nay – Foster

B. Francis T. & Julia B. Keally, Trustees – The Keally Old Post Real Estate Trust. To replace existing bank stairs and landings at 635 Old Post Road, Cotuit as shown on Assessor's Map 054 Parcel 015-002. **SE3-6219**

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

Issues discussed:

- This is an incredibly steep bank.
- The steps on the existing dock have lights. A question was asked if lighting is proposed on the stairs.
- A revised plan should be submitted with downward facing lights.
- Any vegetation disturbed should be restored.
- A pre-construction meeting with staff should be required.

Public comment: None

A motion was made to approve the project subject to receipt of a revised plan showing downward lighting along the stairs and a pre-construction meeting with a construction protocol submitted four weeks prior to start of work.

Seconded.

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

Nay – none

C. Josh Blakely – Portal Construction Company Inc. Proposed four bedroom single family dwelling, detached one bedroom accessory dwelling unit, driveway, and associated utilities at 56 Redwing Lane, Barnstable as shown on Assessor's Map 318 Parcel 007. **SE3-6220**

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

Issues discussed:

- There is a vernal pool which is important.
- The silt fence and work limit line could be moved out of the 100' line from the vernal pool.

Public comment: None

A motion was made to approve the project subject to receipt of a revised plan showing the relocations of the silt fence and work limit line moved outside 100' line from the vernal pool.

Seconded.

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

Nay – none

D. David Shastany. Proposed single family dwelling at 306 Lake Elizabeth Drive, and 61 Sound View Road, Centerville as shown on Assessor's Map 227 Parcels 050 and 097. **SE3-6221**

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

Issues discussed:

- The only thing currently on the property is a shed.
- The existing house has already been demolished.
- There were no questions from Commissioners.

Public comment:

Mary Lou Gleason - There is Town right of way near parcel 061. The undeveloped area should be preserved. The area will not be disturbed.

A motion was made to approve the project as submitted.

Seconded.

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

Nay – none

- E. Town of Barnstable DPW – Engineering Division.** Removal and replacement in kind of the existing damaged raised boardwalk at Kalmus Beach Park, 670 Ocean Street, Hyannis as shown on Assessor’s Map 324 Parcel 041.

The applicant was represented by Matt Wrobel – Town of Barnstable, DPW.

A continuance was requested without testimony to October 29, 2024.

A motion was made to approve the continuance to October 29, 2024.

Seconded.

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

Nay – none

IX. AMENDED ORDERS

- A. Douglas Conigliaro.** Amend Order of Conditions to remove paved driveway and replace with stone, remove concrete pad and replace with loam and seed, rotate pool and add apron, re-build portion of deck, rebuild stone wall, add two aprons at driveway entrances at 289 East Bay Road, Osterville as shown on Assessor’s Map 163 Parcel 017. **SE3-6008**

The applicant was represented by Michael Pimentel, P.E. of JC Engineering.

Issues discussed:

- Commissioners would like old plans submitted and new plans submitted in the future.
- A top of wall elevation should be shown on the plan. The wall is approximately 1 ½ feet high.
- The original amount of hardscape was a net 0. They have decreased the hard scape with this plan. No mitigation is being offered.

Public comment: None

A motion was made to approve the project subject to receipt of a revised plan showing the top of stone wall elevations.

Seconded.

Aye –Abodeely, Foster, Hearn, Lee, Tangney

Nay – none

X. CONTINUANCES

- A. Marc Casper – CB Enterprises LLC.** Enhancement of Coastal Bank by the removal of invasives, select pruning of lower and fallen branches, and planting of native species. Also, repair and maintenance of existing brick retaining wall and steps at 315 Main Street, Osterville as shown on Assessor’s Map 164 Parcel 003-001. **SE3-6207 Continued from 10/1. Continuance requested to 10/29.**

A continuance without testimony was requested to 10/29/24.

A motion was made to approve the continuance request without testimony to October 29, 2024.

Seconded.

Aye –Abodeely, Foster, Hearn, Lee, Tangney

Nay – none

XI. MINUTES

- A.** September 10, 2024
- B.** September 17, 2024
- C.** October 1, 2024

A motion was made to approve the minutes as submitted.

Seconded.

Aye –Abodeely, Hearn, Lee, Tangney

Nay –

Abstain - Foster and Sampou abstain for 10/1 minutes only.

A motion was made to adjourn the meeting.

Seconded.

Aye –Abodeely, Foster, Hearn, Lee, Tangney

Nay – none

The time was 6:23 p.m.