

# **Conservation Commission**

## **Meeting Minutes**

Town Hall Lower Conference Room

24 Perry Ave., Buzzards Bay, MA 02532

August 3, 2017

### **I. Call to order**

Chm. Gray called to order the meeting of the Conservation Commission at 7:00 PM on August 3, 2017. Chm. Gray explained all of the reviews, unless otherwise stated, are joint reviews. Applications will be processed pursuant to the Massachusetts Wetlands Protection Act, M.G.L. c. 131, s. 40 and pursuant to Article 3.7 of the Town of Bourne Wetlands Protection Bylaw.

Note: Chm. Gray addressed the audience and explained the 5, 5, 5 rule; which allows the applicant / representative five minutes to make a presentation to the Commission members, Commission members will take five minutes to seek clarification if needed, the conservation agent will also give a report and five minutes of public input is allowed. He asked for all to silence their cell phones.

Note: The meeting was being recorded anyone in the audience who was recording or videotaping was asked to acknowledge such to the Commission. The proceeding listing of matters are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may be discussed to the limited extent permitted by the Open Meeting Law. All items within the meeting agenda are subject to deliberation and vote(s) by the Conservation Commission.

**Members Present:** Robert Gray, Thomas Ligor, Paul Szwed, Rob Palumbo, Susan Weston and Elise Leduc.

**Excused Members:** Melvin P. Holmes.

**Also Present:** Sam Haines, David Dawe, Steve Rice and Jim Mulvey.

**Request for Determination of Applicability:**

1) David Dawe

File # CC17-31

Representative: Same

105 Phillips Road, Sagamore Beach

To construct a shed in a V Flood Zone and within 100 feet of a Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record, Storm Damage Prevention language, FEMA excerpt, Building Code regulations and DEP Wetlands Change Mapping.

David Dawe addressed the board and stated he'd like to construct a shed on his property.

Board Comment – None.

Agent Comment – Mr. Haines stated according to aerial photos, the proposed shed will be approximately 75 feet from the dune, landward of the existing house on a flat portion of the property, located entirely within a V Zone. At first Mr. Haines considered the filing to be straightforward, but the Commission will have to take into consideration the language in the Bylaw regarding storm damage prevention. The current plan is hand drawn over an old plan so there isn't currently a certification from an engineer. The homeowner is planning to anchor the structure to a concrete slab. After considering the Bylaw language and researching the FEMA and Building Code regulations, Mr. Haines doesn't think this plan currently meets the standards as shown. He suggested three alternatives in an effort to meet the standards of the Bylaw; 1) a design engineer could certify that the shed is designed to meet the requirements for the entry and exit of flood waters or by submitting a plan that shows the flood vents meet the building code criteria, 2) reducing the footprint of the shed under 120 sq. ft., which would then be considered a low value structure that is no longer subject to the Massachusetts State Building Code; it would still need to be anchored to prevent flotation, 3) elevate the shed above the VE elevation. Mr. Haines stated he spent a lot of time with the building inspector regarding this. It was originally thought that as long as the structure was anchored down, it would meet the building code. However, after reviewing the FEMA and Building Code regulations, it was determined that the structure will need flood vents in order to meet building code regulations.

Mr. Dawe stated installing flood vents would be fairly simple to do and is willing to submit an updated plan showing the flood vents.

Mr. Haines briefly discussed the conversation he had with the building inspector.

Board Comment – Mr. Ligor asked if the site will need to be graded. Mr. Dawe stated it does not need to be, it's relatively level. Mr. Ligor asked how much vegetation will

need to be removed. Mr. Dawe stated just in the area of the proposed shed location, approximately 280 sq. ft. Mr. Haines elaborated further stating the entire footprint for the shed will be concrete.

Both Mr. Palumbo and Mr. Haines agreed that if the applicant brings in an after-the-fact plan that shows flood vents, and the building inspector determines they meet the criteria of the FEMA regulations and the Building Code, they are fine with moving forward. Chm. Gray and the remaining Commission members agreed.

Public Comment – None.

Chm. Gray entertained a motion. **Mr. Palumbo moved, Mr. Ligor seconded a Negative Two Determination, providing the applicant obtains a Building Permit from the building inspector.** With no discussion, the motion carried. 6-0-0.

2) Steven Rice

File # CC17-31

Representative: Same

26 Benedict Road, Buzzards Bay, MA

To construct an enclosure to be attached to existing shed, landscaped area and retaining wall within a V Flood Zone and within 100 feet of a Wetland Resource Area.

Materials Reviewed – Site Photographs, Site Plan of Record and DEP Wetlands Change Mapping.

Steven Rice addressed the board and discussed the proposed project.

Board Comment – Chm. Gray asked for the size of the proposed shed. Mr. Rice stated the size is 12'x20'. Mr. Rice stated there is not a basement on the property. There is a bulkhead that accesses the outside water shutoff. This area isn't large enough to store anything. There are two existing sheds on the property, one is attached to the house. They are filled to capacity. He described items that are currently being stored outside of the shed which is why he needs additional storage.

Agent Comment – Mr. Haines stated although it's not clear on the agenda, the retaining wall and the fill work will be within the V Flood Zone and the proposed shed is located within an AE Flood Zone. He stated he doesn't have a filing for the existing shed; however based on aerial photography, it appears to be over 25 years old. Expansion of the shed would take place within the 50', but it's within an existing landscaped area and would be no further forward than the house is currently. The location of the proposed

retaining wall is approximately 12' away from the Mean High Water and an existing seawall which is a vertical structure within the V Zone and was constructed prior to 1940. Mr. Haines discussed the possibility that under regulation 92.1, a fragment of a Coastal Bank may be located on the property; however based on the topography, he doesn't feel it offers much in the way of storm protection. One issue he observed is that the property owner's boat was grounded. He referred to one of the photographs which shows an existing dock and the boat grounded next to the salt marsh. Mr. Haines found a Chapter 91 License from 1997 for that dock and pier. Mr. Haines went to DNR to determine whether or not they were permitting that dock and pier, which they are not. They consider it to be an illegal mooring. Mr. Rice stated he's been offered a mooring and is waiting for it to be installed.

Board Comment - Chm. Gray briefly discussed the greater impact that the weight of a shell fisherman has on an area vs. the weight of a grounded boat.

Ms. Weston asked if the retaining wall is an existing structure. Mr. Haines stated there's an existing seawall, licensed under Chapter 91, that is located approximately 12' in front of the proposed retaining wall.

Chm. Gray asked if the dock is licensed under Chapter 91. Mr. Haines stated he wasn't sure if it has an existing Chapter 91 License. Mr. Rice stated the license is existing; however Mr. Haines stated he could only locate the one from 1997 at the registry. Mr. Rice stated the dock was submitted with the plan with the existing seawall which was approved and then renewed by the prior owner. Mr. Rice spoke with the state because as a new owner of the property he wanted to know if he had to file an amendment or a renewal to reflect his ownership of the property. He was told there's 8 years left on the existing license. He stated he inquired as to whether or not he could tie his boat to the dock and was told he is allowed to use the permitted dock for any lawful or reasonable purpose that a dock can be used for. Mr. Haines confirmed on the Chapter 91 License that he saw, boat access was allowed.

Chm. Gray asked if DNR is requiring the boat to be anchored on a mooring or are they requiring that the dock be removed? Mr. Haines stated the dock is an existing structure that is licensed under Chapter 91, the boat needs to be on a DNR approved mooring,

Ms. Leduc asked if any tree removal is required to construct the retaining wall. Mr. Rice stated no and described the proposed location of the wall.

A brief discussion transpired with regard to how the wall will be constructed.

Ms. Leduc questioned whether or not silt runoff will be an issue. Mr. Haines stated he was going to suggest adding that the use of erosion controls between the Wetland Resource Area and the area of work be required as a condition, should the Commission move forward with a Negative Determination. Mr. Rice agreed.

Mr. Rice discussed the possible need to adjust the dimensions of the proposed shed to accommodate existing gas/water lines once the area is marked by Dig Safe. Mr. Haines stated once a Negative Determination is made, he would most likely handle that administratively. A new plan would be required to be submitted for the file.

Public Comment – Mr. Mulvey stated in the Town of Bourne, a float is considered a mooring whether you have a boat tied to it or not. If you have a state registered boat, you don't need a separate mooring permit because the float is a mooring and requires yearly re-permitting. Chapter 91 does not cover a local permit. A discussion ensued.

**Mr. Palumbo moved, Ms. Leduc seconded a Negative Two Determination.** With no discussion, the motion carried. 6-0-0.

#### **Other Business:**

- 710 County Road: Storm water outfall to privately owned Mill Pond, discussion and possible vote – Mr. Haines stated he made revisions as suggested by Mr. Holmes to the letter he drafted and it is ready to be signed and a vote be taken to issue the letter.

After review of the letter, **Mr. Palumbo moved to sign the letter as drafted in order to send it. Ms. Leduc seconded.** With no discussion, the motion carried. 5-0-1. Ms. Weston abstained.

Ms. Leduc asked if there is any recourse should the DPW not clean the catch basin as requested in the letter. Mr. Haines stated he will follow up on the situation.

- Revisions to Bourne Landscaping and Yard Work Policy 10-1 – Mr. Haines stated he reviewed the policy and changed a lot of the formatting. He provided the members with a copy of the clean draft, the draft showing the changes and a copy of the existing policy as it's currently formatted for their review. After a brief discussion, Chm. Gray suggested Mr. Haines disseminate the policy to all of the landscaper companies that perform work in town. Mr. Haines agreed. Mr. Szwed suggested adding a list of FAQs to the website and/or FAWs as an addendum to the policy. Mr. Haines agreed.

Chm. Gray entertained a motion. **Ms. Weston moved, Mr. Palumbo seconded to adopt the revised Landscape and Yard Work Policy 10-1 as written.** With no further discussion, the motion carried. 6-0-0.

- Vote excused absent members, if necessary – **Mr. Palumbo moved, Ms. Leduc seconded to excuse Mr. Holmes.** With no discussion, the motion carried. 6-0-0.

- Acceptance of Previous Meeting Minutes – None.

- Report of the Conservation Agent – Mr. Haines stated at the next hearing the Commission will be discussing possible revisions to BWR 1.16 (e) 9, which pertains to floats being placed on the Wetland Resource Area & BWR 1.16 (g), which pertains to the velocity flood hazard area. Chm. Gray offered a brief history on how these regulations were drafted and became effective in 2000. He suggested that the members look at these regulations prior to the next hearing in order to discuss revising them. A brief discussion transpired with regard to the role of the Dock and Pier Review Committee that was formed to review the regulations and then recommend revisions to them. Mr. Mulvey dovetailed on that discussion and questioned whether or not the committee is up and running. A discussion ensued.

A discussion transpired concerning revisions to the regulations that are allowed to be made by the Commission vs. revisions that require a Town Meeting vote.

- Correspondence – None.

- Public Comment Period on Non-Agenda Items- None.

- Any other business that may legally come before the Commission – None.

- Questions and Answers re: M.G.L. Chapter 131 s. 40 and 310 CMR 10.00-10.99 – None.

- Questions and Answers re: Town of Bourne Wetland Protection By-law (Article 3.7) and BWR 1.00-1.16 – None.

## **II. Adjournment**

**Mr. Palumbo moved, Ms. Weston seconded to adjourn.** With no discussion, the motion carried. 6-0-0. The meeting adjourned at 8:05 PM.

Minutes submitted by: Carol Mitchell