

Town of Bourne Conservation Commission Meeting Minutes December 01, 2022

- I. Chm. Robert Gray called to order the meeting of the Conservation Commission at 6:30 P.M. conducted in person and via remote access on Thursday, December 01, 2022, held in the Bourne Veteran's Community Building, 239 Main Street Buzzards Bay, MA 02532. Chm. Gray explained all reviews, unless otherwise stated, are joint reviews. Applications will be processed pursuant to the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131 Section 40 and pursuant to Article 3.7 of the Town of Bourne Wetlands Protection Bylaw.

Chm. Gray asked if a member of the public wishes to comment they will first clearly state their full name for the record. Chm. Gray also reviewed the 5-5-5 Rule which allows the applicant or representative to make a five minute presentation to the Commission Members, Commission Members will then take five minutes to seek additional information if necessary, and then the public will be allowed five minutes for comment. If the matter is more complex, more time will be allotted. Mr. Gray asked if anyone was recording at this time, other than the Conservation Department.

Members present: Bob Gray, Robert Palumbo, Greg Berman, Peter Holmes, Tom Ligor and Paul Swzed

Excused members: Susan Weston

Others in attendance: Stephanie Fitch, Zac Basinski, Chip Coen and Danny Gonsalves

Present by remote access: Tom Ligor, Paul Johnson and Jack Landers-Cauley

Continued Hearings:

1. **DEP File No. SE7-2223 Timothy Bernard c/o Bracken Engineering, Inc.** have filed a Notice of Intent for the construction of a single family dwelling, Title V septic system, and all associated landscaping, grading, utilities, and appurtenances. This project is located at **68 Elgin Road, Pocasset** within an AE flood zone & 100 ft. of wetland resource area. **Continued to 1/05/2023.**
2. **DEP File No. SE7-2172 Cape Club Building, Inc. c/o Cape & Islands Engineering, Inc.** have filed a Notice of Intent for the construction, licensing and maintenance of an access ramp leading to a walkway, pier, ramp and float in the waters of Squeteague Harbor. This project is located at **96 Megansett Road, Cataumet.** **Continued to 01/05/2023.**

Request for Determination:

1. **File No. CC22-39 Christine M. Moscatiello c/o Down Cape Engineering, Inc.** has filed a Request for Determination for a proposed septic system upgrade located at **7 Wales Drive, Pocasset** in the AE flood zone, V flood zone & 200 ft. of a river front.

Danny Gonsalves P.E. from Down Cape Engineering, Inc. represented on behalf of the applicant. The proposed project is a septic upgrade. The lot is impacted by several resource areas: Coastal bank, BVW, LSCSF and riverfront. They have moved the septic to the front of the lot, farther away from the wetlands and plan to save the front tree. The system will be an Innovative/Alternative nitrogen reducing septic tank, with a pump chamber which will pressure dose evenly to a leaching field. They have greater than 5 ft. separation to groundwater. There are multiple variances being requested from the Board of Health.

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Agent comment: Ms. Fitch explained that this is a tiny lot and that the existing cesspool is right in the coastal bank. She said it's a great upgrade to get rid of the cesspool and replace with the I/A system. The sediment controls will be key for this project and Ms. Fitch asked Mr. Gonsalves what they will be using.

Member comment: Chm. Gray confirmed that the new leaching field is out of the flood zone. The proposed septic work is allowable in a previously developed area within Natural Heritage/Priority Habitat. Mr. Berman asked if this project is in the ACEC.

Public comment: An abutter Paul Johnson spoke by Zoom in favor of the project but asked if there was a maintenance plan for the new septic system. Mr. Gonsalves answered his question, which was geared towards the Board of Health regulations, that the Board of Health would be the ones to have a monitoring agreement set up for the I/A system.

Motion made by Mr. Palumbo for an approval for a Negative Two Determination and seconded by Mr. Holmes.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 6-0-0.**

Chm. Gray recused from the next review.

Request to Amend Order of Conditions:

1. **DEP File No. SE7-2053 James Diede c/o Bracken Engineering, Inc.** has requested to amend the existing Order of Conditions to include a beach access path to Buttermilk Bay. This project is located at **60 Lewis Point, Buzzards Bay** in an AE flood zone and within 100 ft. of a wetland resource area. **Continued from 11/17/2022.**

Zac Basinski P.E. from Bracken Engineering, Inc. represented the applicant. He explained the history of the project: In 2017 they came before the Commission and were approved to fill in a portion of the lot to remove a flood plain and then back again in 2019 to construct a single-family home. That order is still open at this time and the homeowner is now looking to install a 4 ft. wide path through the mitigation area of the 50 ft. buffer, proposed granite steps and grading of the slope on the lot and a set of wooden stairs over the bank at the bottom. Mr. Basinski explained that he had a site visit with Ms. Fitch and went over some erosion concerns. He concluded by saying that they plan to reestablish the mitigation area and the walkway. The granite steps are designed to be set into the slope and pitched back to prevent erosion down the slope. The project had been reviewed by Natural Heritage with no concerns. Mr. Basinski was made aware of a building permit granted to install a pool and shed, which was established outside of the 50 ft. buffer. They asked cordially for a post-facto filing to include that in the plan for the Order.

Agent comment: Ms. Fitch shared photos and explained the erosion concerns, which is a 50 ft. naturalized buffer that is still being planted and needs to vegetate, hopefully with that it will correct the erosion issue. Ms. Fitch asked if there was a drywell for backwash of the pool. Mr. Basinski said initially a drywell was installed not for the pool but it is sizable to accommodate the backwash. There will be an additional special condition that the pool will drain to that drywell and no illicit discharge over the bank and resource area will be permitted. Ms. Fitch was concerned about the access through the salt marsh to the water from the stairs to the beach. She asked the Commission if a special condition should be put in place stating that access through the salt marsh is not permitted under this Order of Conditions.

Member comment: Mr. Berman also had concerns of potential damage to salt marsh from creating a path. Mr. Berman explained that if it is a nice healthy salt marsh there is no easy access

around the salt marsh. If the applicant does not want to do a salt marsh catwalk, then maybe there should be some kind of required monitoring for a certain number of years showing that there is no degradation and if there is they would need to restore it.

No public comment.

Motion made by Mr. Holmes to close the public hearing and seconded by Mr. Szwed.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-abstained. **Motion carried. 5-0-1.**

Ms. Fitch read the draft order of conditions to include: *All general conditions and special conditions pursuant to 131 40 include:* 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 27, 28 and 29. *Special conditions pursuant to the Bourne bylaw article 3.7 include:* 2, 3, 4, 5, 6, 7 and 9.

ASC-1. Pool water cannot be drained directly into any resource area. Pool drainage must be directed into a drywell.

ASC-2. This OOC does not permit access through the salt marsh. A report on the condition of the salt marsh will be required prior to issuance of the COC.

General condition Number(s), Special Condition Number(s), 17 Bylaw Conditions Number(s) 2, 3, 4, **ASC-1** above shall continue in perpetuity beyond the limitations of this Order and with the sale of the property to others.

Motion made by Mr. Holmes to move the draft to the final and seconded by Mr. Ligor.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-abstained. **Motion carried. 5-0-1.**

Chm. Gray back as chair.

2. **DEP File No. SE7-2110 Karen and Philip Brendli c/o J. E. Landers-Cauley** have requested to amend the existing Order of Conditions to construct a new in-ground pool located at **50 Academy Drive, Buzzards Bay** within an AE flood Zone, and within a 100 ft. of a wetland resource area. Jack Landers-Cauley P.E. from J.E. Landers-Cauley represented the applicant. He stated that there are two parts to this project: 1) A request to extend the existing order of conditions and 2) To amended the order of conditions to include a proposed construction of an in ground pool and a fence around the perimeter of the pool. The entire project will be from 50 ft. off the coastal bank and they are relying on the resource areas depicted in the original order from the proposed house improvements.

Agent comment: Ms. Fitch stated that the original order of conditions was issued on 6/29/2020 and will expire 6/29/2023. She explained that the delineations of the coastal dune and coastal bank are still valid under the current order, and that the project does creep the area of disturbance 43 ft. closer to the bank, although it will still stay out of the 50 ft. no touch zone, which was a condition in the original Order of Conditions. Ms. Fitch said that the impervious surface is increasing by 1,924 sq. ft. She asked for the proposed project to include a drywell and revised plans were submitted. She would like to see at least 5 ft. of some woody shrubs or native vegetation near the top of coastal bank to counter the increase of impervious surface.

Member comment: Mr. Holmes asked how far the pool is form the costal bank. Mr. Landers-Cauley said 60.2 ft. at the closest point. Members agreed the 5ft. buffer would be helpful there.

No public comment.

Motion made by Mr. Palumbo to close the public hearing and seconded by Mr. Holmes.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 6-0-0.**

Ms. Fitch read the draft order of conditions to include: *All general conditions and special conditions pursuant to 131 40 include:* 1, 3, 4, 5, 7, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 27, 28 and 29. *Special conditions pursuant to the Bourne bylaw article 3.7 include:* 2, 3, 4, 5, 6 and 7.

ASC-1. The fence on the southern property line can extend no further than the top of the coastal bank as shown on the plan of record. This Order does not approve any fence on the northern property line within the coastal bank, coastal dune, or beach.

ASC-2. Pool water cannot be drained directly into any resource area. Pool drainage must be directed into a drywell.

General condition Number(s), Special Condition Number(s), 11, 16 and 17, Bylaw Conditions Number(s) 2, 3, 4 and ASC-2 above shall continue in perpetuity beyond the limitations of this Order and with the sale of the property to others.

Motion made by Mr. Palumbo to move the draft to the final and to amend the order, seconded by Mr. Holmes.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 6-0-0.**

Request to Extend Order of Conditions:

1. **DEP File No. SE7-2110 Karen and Philip Brendli c/o J. E. Landers-Cauley** have requested to extend the existing Order of Conditions to construct a new garage, driveway, new deck, fencing, and chimney. This project is located at **50 Academy Drive, Buzzards Bay** within an AE flood zone, and within a 100 ft. of a wetland resource area. The Order of Conditions issued to the applicant on 6/29/2020. The requested extension date is 6/29/2024.

Mr. Lander-Cauley explained that the construction of the pool is weather dependent and timing depended on how soon it was going to be approved. They will need at least a year the way construction is proceeding.

Motion made by Mr. Holmes to extend the order for two years and seconded by Mr. Palumbo.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-no, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 5-1-0.**

Request for Certificate of Compliance:

DEP File No. SE7-1946 Marcia Jackson c/o Environmental Consulting & Restoration, LLC have requested Certificate of Compliance for Order of Conditions issued on 7/22/2016.

Vegetation management and proposed landscape improvement. This project is located at 20 Starboard Road, Mashnee Island in an AE flood zone, V Flood zone and within 100 ft. of a wetland resource area.

Agent comment: Ms. Fitch made a site visit and recommended to grant the COC. Motion made by Mr. Holmes to grant the COC, seconded by Mr. Palumbo.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 6-0-0.**

Discussion/Business:

Report of the Conservation Agent: Conservation meeting canceled on December 15th, 2022.

Approve minutes 10.20.22 & 11.03.22:

- a. Motion made by Mr. Berman to approve the minutes of 10.20.2022, seconded by Mr. Holmes. Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 6-0-0.**
- b. Motion made by Mr. Holmes to approve the minutes of 11.03.2022, seconded by Mr. Palumbo. Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-abstained and Chm. Gray-yes. **Motion carried. 5-0-1.**

Amendments to BWR 1.00 to be voted on 12/1/2022:

1. Remove definition of Dinghy from BWR 1.04 and BWR 1.16(1)(b). Rewrite BWR 1.16(1)(o)4. to read "the pier is used to accommodate dinghies."

Motion made to approve and seconded.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 6-0-0.**

2. Keep existing eelgrass bed definition under BWR 1.04 (definition cannot be removed at this time because of the definition in the Bylaw). Bourne DNR to supply a letter to ConCom stating that they interpret "significant" to mean: a minimum of 3 shoots per 0.25 m2 (1/4 square meter) within 1 meter of any adjacent shoots. To identify the bed boundary, proceed in a linear direction and find the last shoot that is within 1 meter of an adjacent shoot along that transect. The bed boundary (edge) is defined as the point 0.5 meter past that last shoot, in recognition of the average length of the roots and rhizomes extending from an individual shoot (Washington Dept. of Natural Resources (WADNR) 2012).

Motion made to accept and seconded.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 6-0-0.**

3. Add definition of Marina District to BWR 1.04: Marina District shall consist of all the "pier" structures as defined in BWR 1.16 (b) and the mooring field (as approved by the Bourne Department of Natural Resources, Massachusetts Department of Environmental Protection Chapter 91 License, and the US Army Corps of Engineers Permit) used for non-residential purposes. The constraints mentioned in BWR 1.16 (g) "Applications for Small Residential Piers in Velocity Zones (SR V-zone piers)" shall not apply to commercial, educational, or governmental entities. Other restrictions in BWR 1.16(e) "General Performance Standards for all Piers" can be waived by the Bourne Conservation Commission on a case-by-case basis. The following are considered a "Marina District": Waterside non-residential facility that has piers, docks or moorings and other facilities for boats. Examples include, but are not limited to, Kingman Yacht Center, Taylor Point Marina and Massachusetts Maritime Academy.

Motion made to accept and seconded.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 6-0-0.**

4. Add "the Town's online permitting system" to BWR 1.05(4)(a)

Motion made to accept and seconded.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 6-0-0.**

5. Redefine seasonal use: Seasonal use means the dock, ramp, floats, and all supporting materials except approved anchorage systems may only be installed below MHW between April 1 and November 1 of each year and must adhere to storage requirements when not in use.

Motion made to accept and seconded.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 6-0-0.**

6. Add storage definition: Storage means the dock, ramp, floats, and all supporting materials except approved anchorage systems must be stored securely outside of wetland resource areas. Storage area cannot cause an adverse effect on resource areas. - Rewrite BWR 1.16(1)(d)5. to say "A note on the plan indicating the site for storage of floats and method of hauling (if any);"

Motion made to accept and seconded.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 6-0-0.**

7. Rewrite BWR 1.16(1)(d)7.b.(v.) to read "The minimum area surveyed shall include 50' in all directions from the proposed structure. The actual samples shall represent 0.5% of this area."

Motion made to accept and seconded.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 6-0-0.**

8. Rewrite BWR 1.16(1)(e)1 to read "The pier length shall not exceed one hundred twenty-five (125) feet in length beyond the mean high water line. In cases where there is salt marsh, the pier shall not exceed one hundred (100) feet in length beyond the seaward edge of the salt marsh."

Motion made to accept and seconded.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 6-0-0.**

9. Rewrite BWR 1.16(1)(e)3. to read "To keep disturbance of the bottom minimal at all times during both construction and use, the distance from the lowest structural member of the float, or if no float then the seaward end of the pier, shall be a minimum of eighteen inches (1.5 feet) from the bottom measured at mean low water in coastal wetland resource areas and ordinary high water or annual high water for inland wetland resource areas. If the proposed project is located within Land Containing Shellfish the water depth at the end of the pier shall be a minimum of thirty inches (2.5 feet) at the time of mean low water. a. Float stops can be used for the float to meet the thirty (30) inch requirement in Land Containing Shellfish. A minimum of eighteen (18) inches from the bottom without float stops is required for all piers. b. Minimum required water depths for construction and use must be met without the benefit of dredging.

Motion made to accept and seconded.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 6-0-0.**

10. Rewrite BWR 1.16(1)(e)16.c. to read "One hundred (100) feet from the location of any mooring anchor to the nearest edge of the float or pier if no float."

Motion made to accept and seconded.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 6-0-0.**

11. Rewrite BWR 1.16(1)(g)2.a. to read "Any new SR V-zone pier shall include no more than 600 sq. ft. of project structure seaward of mean high water (MHW) or seaward of salt marsh edge, or such amount as qualifies under 310 CMR 9.00 et seq. as a small residential dock."

Motion made to accept and seconded.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 6-0-0.**

12. Rewrite BWR 1.16(1)(h) to read “Notwithstanding the provisions of BWR 1.16(1)(a) through (g), The terminal float and any associated anchors or piles must maintain a 25’ setback from the edge of existing eelgrass beds (*Zostera marina*). If there is any eelgrass within 50’ of the structure, the float shall be at least four (4) feet from the bottom at mean low water.”

Motion made to accept revised language and seconded.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-no, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 5-1-0.**

13. Rewrite BWR 1.16(1)(i) to read “Notwithstanding the provisions of BWR 1.16(1)(a) through (g), no new dock or expansion of an existing dock shall be permitted within an ACEC.”

Motion made to accept and seconded.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 6-0-0.**

14. Rewrite BWR 1.16(1)(j) to read “Notwithstanding the provisions of BWR 1.16(1)(a) through (g), no new dock or expansion of an existing dock shall be permitted within wildlife habitat of species that are considered endangered, threatened, or of special concern, if the project is identified as a take by Mass Wild Life Endangered Species Program.

Motion made to accept and seconded.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 6-0-0.**

15. Remove BWR 1.16(1)(k) “Notwithstanding the provisions of BWR 1.16(1)(a) through (g), no new dock or expansion of an existing dock shall be permitted within blind (dead-end) canals, and tidal creeks in salt marshes.

Motion made to accept and remove and seconded.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Ligor-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 6-0-0.**

General discussion continued regarding the 100 ft. setback from an anchor/mooring. Ms. Fitch will clarify the amendment number 10 with DNR.

Mr. Ligor left the meeting.

Vote to excuse absent members:

Motion made and seconded.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 5-0-0.**

II. Adjournment:

Motion made and seconded.

Roll call: Mr. Holmes- yes, Mr. Berman- yes, Mr. Palumbo-yes, Mr. Szwed-yes and Chm. Gray-yes. **Motion carried. 5-0-0.**

Submitted By:

Minutes typed by Amalia Amado- Conservation Secretary II.
Recorded and edited by Stephanie Fitch- Conservation Agent.
Recorded by Zoom.