

Bourne Conservation Commission (BCC) – Public Meeting Minutes
May 18, 2023

Commission members present: Chm. Gray, Vice Chairman Rob Palumbo, Greg Berman, Sarah Butler, Patrick Scanlan, Paul Szwed, Susan Weston and Peter Holmes

Professional staff in attendance: Stephanie Fitch- Conservation Agent, Doug Schneider, Emery Robbins, Brad Holmes

Chm. Robert Gray called to order the meeting of the Conservation Commission at 6:30 p.m. conducted in person on Thursday, May 18th, 2023, held in the Bourne Veterans 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 asked if anyone was recording at this time, other than the Conservation Department.

Continuances:

96 Megsant Road, Cataumet requested continuance to 6/01/2023.

DEP File Number: **SE7-2172**

45 Harbor Drive, Pocasset requested continuance to 6/15/2023.

DEP File Number: **SE7-2241**

72 Megsant Road, Cataumet requested continuance to 6/01/2023.

DEP File Number: **SE7-2245**

Request for Determination File Number: CC23-13, 65 Winsor Road, Cataumet, Joseph Moore c/o Cape & Islands Engineering, Inc. An after-the-fact filing for an enlarged deck not in compliance with the Order of Conditions for DEP file # SE7-2016. The work took place within a V flood zone and 100 ft. of wetland resource area.

Doug Schneider PE, representative for the owner, explained that the RDA is for a small deviation from work that was originally permitted under two open Orders on the property; DEP file numbers SE7-2016 and SE7-2026. This filing is so the applicant can come into compliance and close out the open Orders of Conditions.

Ms. Fitch made a site visit with the builder on December 30th. At the time, she felt that the only significant deviation from the approved plan was the size of the boathouse deck. The original NOI proposed that the “roughly 8’x20’ deck on the bath house would be removed to facilitate the proposed riprap reconstruction... both the bath house and deck would be repaired and rebuilt within the existing footprint.” Instead, the deck is now approximately 10’ x 25’ on the seaward edge of the bath house and wraps around on the side facing the main house. She did not think it impairs the stability of the bank or impacts any native vegetation since it is all riprap, but wanted to ensure the larger deck was properly permitted before they ask for a COC.

No public comment.

Motion made for a Negative Two Determination by Ms. Butler and seconded by V. chairman Palumbo. All in favor. **Motion carried. 7-0-0.**

Request for Determination File Number: CC23-14, 122 Jefferson Road, Bourne, Donald and Monique Ward c/o Emery Robbins V, E5 Masonry. Restoration of an existing retaining wall and stairway system. This project is located in an AE flood zone, V flood zone and within 100’ of a wetland resource area.

Emery Robbins V, representative for the homeowners, submitted photos and explained his evaluation of the proposed project. The existing wall and stairway structure are in disrepair due to lack of drainage. They have proposed to leave the stairway system in place and repair the walls on either side; in kind with

Bourne Conservation Commission (BCC) – Public Meeting Minutes
May 18, 2023

the exact stone that is there. There are no plans to disturb existing vegetation. They have proposed to remove existing backfill and install proper drainage with no change in existing runoff. A skid steer machine will be used to dismantle the wall and remove materials. They have permission to access the wall from the abutting property. The proposed project is expected to take a week.

Ms. Fitch made a site visit back in August 2022 with Greg Berman, Commissioner. At the end of the site visit, they had concluded with three options: 1. Replace in kind, 2. Coastal bank restoration to be built over the rock wall and 3. Conversion of rock wall to a sloped revetment. She was pleased to see that all work can occur in existing landscaped areas. No machinery needs to go near the dune or coastal beach.

Mr. Berman and Commission agreed they normally don't like vertical structures in the V zones, but this is a replacement in kind. Also, this particular site doesn't have erosion at the toe of the structure, there is a nice wide swath of lawn and other vegetation where there certainly are not any waves eroding the area.

No public comment.

Motion made for a Negative Two Determination by Mr. Holmes and seconded. All in favor. **Motion Carried. 7-0-0.**

Request for Determination File Number: CC23-15, 61 Maryland Ave, Bourne, Leslie Dougherty

To remove a diseased maple tree and two (2) diseased pine trees, located within 100' of a wetland resource area and V flood zone. Leslie Dougherty, owner, represented her project. She submitted a site plan showing the three trees within 60 ft. of coastal bank.

Ms. Fitch asked for the tree removals to be applied for as an RDA because she did not feel comfortable issuing an Administrative Approval since the trees are far from the home and are some of the last remaining trees in an area that has been converted to turf grass adjacent to a dune. She printed some Google Earth images but it is hard to tell when the area was cleared- it has been a long time.

No public comment.

Motion made by Ms. Butler for a Negative Two Determination and seconded by Mr. Holmes. All in favor. **Motion carried. 7-0-0.**

Notice of Intent: DEP File Number: SE7-2236, 274 Williston Road, Sagamore Beach, Dana and Luann Hanna c/o Brad Holmes, ECR LLC.

A proposed vegetation management plan. The work will take place within an AE flood zone and within 100 ft. of other wetland resource areas.

Brad Holmes of Environmental Consulting & Restoration, representative for the homeowners, explained that they were before the Commission a month ago. At that time, Cameron of ECR represented the project and a continuance was made to clarify the vista pruning window which they have now updated the plan. Since then, the owners had the edge of their yard grubbed by a machine. The work mainly occurred at the edge of the lawn that is to be maintained and did not encroach on the 50 ft. buffer zone. Another continuance was requested so that they could update and identify that on the site plan and include it in the project.

Ms. Fitch explained that a building permit was originally approved on December 6, 2020 by the previous agent since the limit of work was not in jurisdiction. The limit of work was outside of the 150' buffer to the coastal bank. Several complaints came in regarding excessive clearing and the building inspector asked Ms. Fitch to join for a site visit. She took some measurements and found that they had extended

their lawn past the limit of work and performed clearing of underbrush within the 50-100' buffer to the BVW. She agreed with ECR's report on the number and type of invasive and nuisance vegetation. At the last hearing, the Commission requested specific vista corridors on the site plan. Since then, another complaint was filed regarding work in the buffer. Brad and Ms. Fitch did a site visit on May 5th and he has revised the plan. She also recommend that the Commission condition a permanent marker delineating the 100' buffer and making note that no additional work can occur without a permit.

No public comment.

Motion made to close the public hearing by Mr. Holmes and seconded by Ms. Butler. All in favor. Ms. Fitch read the draft order which is to include all general conditions and special conditions pursuant to M.G.L. Ch. 131, S. 40: 1,2,3,7,9,10,12, 22,25, 26,27 & 28 and special conditions pursuant to the Bourne Wetland Protection Bylaw Article 3.7: 4,5 &7.

ADDITIONAL SPECIAL CONDITIONS pursuant to the Bourne Wetland Protection By-Law Article 3.7

ASC-1) Herbicide must be applied by a MA licensed herbicide applicator.

ASC-2) The approved vista corridors may be maintained in perpetuity.

ASC-3) Permanent boundary markers with signage must be maintained in perpetuity. Signage must state that landscaping cannot occur beyond the boundary. Markers must align with the site plan of record.

ASC-4) Annual reporting with photos are required to be submitted to the Conservation Department prior to issuance of the COC.

Special Condition Number 1, Bylaw Conditions Numbers ASC-2 and ASC-3 above shall continue in perpetuity beyond the limitations of this Order and with the sale of the property to others.

Motion made to move the draft to the final and issue the order by Mr. Holmes and seconded by Ms. Butler. All in favor. **Motion carried. 7-0-0.**

Notice of Intent: DEP File Number: SE7-2240, 8 Heron Lane, Cataumet, JOMAR Realty Trust c/o Cape and Islands Engineering/ Wilkson Ecological Design. Invasive species management and vista corridor within a V flood zone and 100 ft. of a wetland resource area.

Doug Schneider PE, of Cape and Islands Engineering, representative for the homeowners explained the overview of the project. The developed single family home is outside of conservation jurisdiction, and the primary invasive species management plan will take place within the resource areas of 100 ft. buffer to Coastal Dune and within velocity flood zone. Mr. Schneider turned the next portion of the project over.

Matt Lautenberger, of Wilkinson Ecological Design explained the invasive species management plan overview. The project is within the 100 ft. buffer to coastal dune and has imposing bittersweet and honeysuckle to be removed, along with eight (8) Japanese black pines. The Japanese black pine will be removed by chainsaw with no need for machinery on the dune and no herbicide application on stumps. The vista corridor will have all saplings removed and replanted with a new native understory. The woodland understory is composed of woody and herbaceous species which include black huckleberry, Pennsylvania sedge, green briar, and many seedling trees. Invasive bittersweet is not heavily represented but does grow into the canopy in several places throughout the site. They are proposing a new path to meet up with the existing path and in order to create the new path they proposed to remove eight (8) more pitch pine trees and two (2) oaks for viewshed due to their large crowns.

The canopy will be mostly untouched and remain a wooded area. The species include white oak, black/scarlet oak, pitch pine, eastern red cedar, sassafras, serviceberry and black cherry. Woodland composition is approximately two-thirds deciduous species and one third coniferous species. Some of the pitch pine that are growing along the development edge, at the 100 ft. buffer, appear to be in decline. These trees appear stressed with limb die back and signs of turpentine beetle infestation. Mr. Lautenberger referenced the restoration plan which has a detailed plant specification list.

Ms. Fitch has done two site visits with Wilkinson Environmental at this site. She agreed with their delineations and appreciated the work they are doing here. She knows the applicants were pretty adamant about a second path and doesn't know if it is necessary and would like to limit the amount of disturbance in the buffer to the dune. 310 CMR 10.28 states any alteration on a coastal dune or within 100' shall have no adverse effect by disturbing vegetative cover. It also looks like part of the second path is within the dune itself.

No public comment.

Motion made by Mr. Holmes to close the public hearing and seconded by Ms. Butler. All in favor.

Ms. Fitch read the draft order which is to include all general conditions and special conditions pursuant to M.G.L. Ch. 131, S. 40: 1,2,3,7,10,12,14, 27 & 28 and special conditions pursuant to the Bourne Wetland Protection Bylaw Article 3.7: 4,5,6 & 7.

ADDITIONAL SPECIAL CONDITIONS pursuant to the Bourne Wetland Protection By-Law Article 3.7

ASC-1) Herbicide must be applied by a licensed MA herbicide applicator.

ASC-2) A final report with photos is required prior to issuance of the COC.

ASC-3) Maintenance of the approved vista corridor and control of the invasive species may continue in perpetuity by qualified professionals as outlined on page 7 of the NOI application.

Bylaw Condition # **ASC-3** above shall continue in perpetuity beyond the limitations of this Order and with the sale of the property to others.

Motion made by Vice Chair Palumbo and seconded by Mr. Holmes to move the draft to the final. All in favor. **Motion Carried. 7-0-0.**

Notice of Intent: DEP File Number: SE7-2234, 18 Lester Avenue, Monument Beach, Gail Corbett c/o Cape & Islands Engineering, Inc.: To remove the existing concrete seawall and replace with interlocking block wall, with timber stairs to replace existing concrete steps for beach access. The work will take place within a V flood zone and on or within 100 ft. of other coastal wetland resource areas.

Raul Lizardi PE, of Cape & Islands Engineering, representative for the homeowners, explained the current existing conditions of the seawall which needs repair due to portions that are exposed and have developed cracks. They are here to revisit and discuss the idea of the Commission's recommendation to replace with riprap instead of a vertical wall. They have initially proposed a modular block wall to be 2 ft. below existing grade. It is not considered a smooth face but still considered a vertical wall. When they went back to look at the idea of a sloped revetment structure, they felt it would compromise the property and the adjacent property's structure. A site visit with Commission members took place to look further on how it could be done other than replacing with a vertical structure. Mr. Lizardi feels that a vertical structure is the only option and to compromise they will provide one step back in one of the rows. The existing wall is adjacent to two other vertical walls. One is a modular block that belongs to the Town to

Bourne Conservation Commission (BCC) – Public Meeting Minutes
May 18, 2023

the south side of the property and the north vertical structure is a taller concrete smooth wall. He explained if they proposed a riprap wall it would be 3.5 ft. behind the existing south wall and 2.5 ft. behind the existing north wall. There was a suggestion at the site meeting to build a dual wall which would be too costly. Mr. Lizardi said the existing vertical wall dates back between the 1920's-1930's and the existing structure on the property also predates any seawall engineering protections because it was built prior to the 1978-Wetlands Protection Act. He stated that at elevation 8, a sloped riprap would bring any type of flood waters within 26 ft. of the home instead of the current 35 ft. and having waves on top of still water would be more impactful in the event of a storm. He said in the State Wetlands Protection Act this type of non-endangering reconstruction would be considered approvable and maintaining the existing seawall, which is what they are licensed to do under chapter 91. They have proposed two minor improvements planting a 10 ft. strip of native species and two down spouts on the back of the property to collect roof run off.

Ms. Fitch read the bullet on repair, maintenance, or improvement work to existing seawalls, bulkheads, and revetments on page 3-48 in the Coastal Manual, which says applicants should use best practices, which include reconstruction of the wall with a sloping revetment instead of vertical wall, pulling it as far landward as possible to avoid seaward encroachment, etc.

Mr. Lizardi explained there would be no adverse effects by replacing the existing vertical wall, but the Commission felt this could set the precedence among the abutters and that in the Wetlands Protection Act the standards for a coastal engineering structure or a modification thereto "shall be designed and constructed to minimize, using best available measures, adverse effects on adjacent or nearby coastal beaches due to changes in wave action."

The Commission discussed if they should explore a third party review and decided to take a vote. Motion made by Ms. Weston and seconded by Mr. Berman for a third party review. All in favor. **Motion carried. 7-0-0.**

Notice of Intent: DEP File Number: SE7-2227, 122 Wings Neck Road, Pocasset Mary Vendice c/o Zenith Consulting Engineers, LLC: The installation of a new pier, ramp and float. The pier is to be constructed out of lumber and flow thru decking within the V flood zone and within wetland resource areas.

Ms. Fitch, updated everyone on what was determined during the site visit on 5/5/23 by Greg, Paul and Rob. They recommended that the Commission require placing water and electric pipes lower than 28" in case the dune erodes and requiring a water shutoff.

The rev. plans 5.8.23 have removed the label of dune and is labeled just as coastal beach. Plans from 4.28.23 show the dune. Ms. Fitch recapped the site visit with Mr. Berman to confirm that it is okay to keep the label as coastal beach and that it's hard to label because it is kind of in-between resource areas, he said technically it is an over wash deposit on top of marsh, so it has dune qualities but relatively low performance standards; it doesn't get much windblown material on top of it which is why they are more okay with it being labeled coastal beach. Since the delineations of the plan of record are valid for three years they want to make sure it is accurate.

Use of plywood as swamp mats is okay with the Commission. They will need a 401 Water Quality Certificate from DEP for the temporary fill.

Motion made in second to close the public hearing. All in favor. **Motion carried 7-0-0.**

Ms. Fitch read the draft order which is to include all general conditions and special conditions pursuant to M.G.L. Ch. 131, S. 40: 1,2,3,7,8,10,12,18, 19,27, 28 and 29 and special conditions pursuant to the Bourne Wetland Protection Bylaw Article 3.7: 5,6,7,10,11,12 and under section (Docks, Piers, Floats, Dredging, etc.) 14,15,16,17,18,19,20,21,22,23,24 and 25.

ADDITIONAL SPECIAL CONDITIONS pursuant to the Bourne Wetland Protection By-Law Article 3.7

ASC-1) All recommendations included in the Division of Marine Fisheries letter dated March 15, 2022 [2023] and signed by Amanda Davis are to be incorporated into this OOC.

ASC-2) Applicant must meet with the Bourne Shellfish Constable and have a plan in place for shellfish mitigation prior to start of construction. A letter outlining the final plan and signed by both the applicant and Bourne Shellfish Constable must be submitted to the Agent prior to construction.

ASC-3) Draft of any boat moored at the dock must be of a size that it does not contact the ocean floor at low tide.

ASC-4) The contractor shall develop a spill management plan for any hazardous materials that may be employed during work in the buffer zone, salt marsh, or over the water. Specifically, the plan must address how to effectively deal with spillage of fuel or hydraulic fluids from equipment. The contractor must maintain an appropriate spill kit at the project site at all times.

ASC-5) The construction processes for the permanent pier and utility installation as outlined in the memo dated 5.10.2023 are incorporated into this OOC and must be followed during actual construction.

Bylaw Conditions Numbers **14-25** 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 Vice Chair Palumbo.
All in favor. **Motion Carried. 7-0-0.**

Notice of Intent: DEP File Number: SE7-2217, 134 Wings Neck Road, Pocasset, Richard W. Selby c/o Coastal Engineering Co., Inc. Dune restoration and beach nourishment. Located within a V flood zone and wetland resource areas. **Public hearing closed on 5/04/23.**

The hearing was continued pending the write up of the draft order:

Ms. Fitch read the draft order which is to include all general conditions and special conditions pursuant to M.G.L. Ch. 131, S. 40: 1,2,3,7,8,9,10,12, 27, 28 and 29 and special conditions pursuant to the Bourne Wetland Protection Bylaw Article 3.7: 7

ADDITIONAL SPECIAL CONDITIONS pursuant to the Bourne Wetland Protection By-Law Article 3.7

ASC-1) The Construction Sequencing and Protocol memo submitted as part of this NOI on April 21, 2023 is incorporated into this OOC and must be followed during construction.

ASC-2) An annual planting report with photos must be submitted to the Conservation Department for three years.

ASC-3) All flagging delineating the salt marsh must remain intact for the entirety of the project.

ASC-4) All restoration and nourishment material must be compatible with the existing sediment.

General condition Number(s), Special Condition Number(s), Bylaw Conditions Number(s) 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 Ms. Butler.
All in favor. **Motion carried. 7-0-0.**

Request to Amend Order of Conditions

Amended Notice of Intent: DEP File Number: SE7-2215, 128 Emmons Road, Monument Beach, Jonathan Levitt c/o Coastal Engineering Co., Inc.: To add a pool and spa with patio, add pool equipment and generator, add stone counter with gas grill, proposed new location for existing rinse station, add small deck and minor alterations to driveway. The work will take place within 100 ft. of wetland resource area.

Andrew Garulay RLA, of Yarmouth Port Design Group, represented on behalf of the applicant and reviewed the hardscape and planting plans. Mr. Garulay identified the resource areas and explained that he started on this project as it was already underway. The proposed pool will have a 20 ft. setback from the SAS (Soil Absorption System). The pool and pool equipment will also meet the setbacks for the propane tank and electric line. The size of the pool is 11' x 18' and the spa is 8' x 11' which will be held up by a retaining wall along the bayside of the resource area. The deck, which was part of the original approved plan, has been proposed to add a small extension to accommodate the rinse station. The drainage for the patio around the pool area will pitch away from the house going into a channeled drain and then away from the pool going into the same channel. There will be a draw down pit for winterizing which will also be the leach pit for the drainage of the patio area; located 25 ft. from the SAS. The existing stone wall will remain as is and there will be a countertop grill and outside kitchen area. The driveway area will be altered a little bit, not enlarged just reconfigured. The mitigation plantings will consist of replacement of cedar trees, more woody shrubs for wildlife and the access to construct the pool around the house will be reseeded after.

Ms. Fitch said the work occurring closer to the TOB than what currently exists includes the drywells and gas grill and stone wall. The runoff from the added impervious surfaces is being collected in a leach pit, which should avoid runoff channelization on the coastal bank. She is very pleased to see the added mitigation plantings and further removal of turf grass. Ms. Fitch asked the Commission if they were comfortable with the small creep towards the coastal bank and its stabilization; and if they approved of the amount of plantings to compensate for work within the 50' buffer.

Motion made by Mr. Holmes to close the public hearing, seconded by Mr. Palumbo. All in favor. Motion carried. 7-0-0.

Ms. Fitch read the draft order which is to include all general conditions and special conditions pursuant to M.G.L. Ch. 131, S. 40: 1,2,3,4,5,7,9,10,12,14,15,17,18,19,26, 27, 28 and 29 and special conditions pursuant to the Bourne Wetland Protection Bylaw Article 3.7: 1,5,6,7 and 9.

ADDITIONAL SPECIAL CONDITIONS pursuant to the Bourne Wetland Protection By-Law Article 3.7

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

General condition **Number 17** and Bylaw Condition **Number ASC-1** above shall continue in perpetuity beyond the limitations of this Order and with the sale of the property to others.

Bourne Conservation Commission (BCC) – Public Meeting Minutes
May 18, 2023

Motion made by Mr. Palumbo and seconded by Mr. Holmes to move the draft to the final.
Roll call vote: Chm. Gray-yes, Mr. Berman-yes, Mr. Holmes-yes, Ms. Butler-yes and Vice Chair
Palumbo-yes, Mr. Szwed-abstained and Ms. Weston-Abstained. **Motion carried. 5-0-2.**

Motion made to approve minutes of 4/06/2023 with edits by Mr. Berman and seconded by Mr. Holmes.
Mr. Szwed-abstained. **Motion carried. 6-0-1.**

Report of the Conservation Agent:

Discussion of the Shellfish Mitigation Fund H.5375 signed by the Governor, Chapter 410 of the Acts of
2022, on 1/5/2023.

Ms. Fitch explained this fund is a receipts reserved for appropriation fund, so it needs to be voted on at
Town Meeting. We can set up a regular article so that every year it gets transferred to DNR budget.

Adjourned 8:34pm.

Meeting audio recorded and minutes edited by Stephanie Fitch-Conservation Agent
Minutes typed by Amalia Amado-Secretary II