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Conservation Commission

Meeting Minutes

Zoom Meeting Platform

December 2, 2021

2022 JAN 10 AM 11:35

TOWN CLERK BOURNE

I. Call to Order

Chm. Gray called to order the meeting of the Conservation Commission at 7:00PM on Thursday December 2, 2021, held via Zoom Platform. 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 § 40, Article 3.7 of the Town of Bourne Wetlands Protection Bylaw. If the Act or the Bylaw don't mutually apply to the review, it will be indicated at the time of review which instrument of law they will be reviewed under.

Note: The meeting was being held via the Zoom platform, and was being recorded, as noted per the "Recording in Progress" icon that was displayed. 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 due 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: Bob Gray, Tom Ligor, Peter Holmes, Elise Leduc-Fleming, Greg Berman, Paul Szwed, Rob Palumbo

Excused Members: Steve Solbo

Others in Attendance: Amalia Amado, Susan Baracchini, Emily Beal, "Bob", Kent Bream, "Brian", Donna C., Jack Landers-Cauley, "Christine's iPad", Matt Costa, "Cyndy", Jeremy Degler, Mark Dibb, "J Farkas", Jon Frank, "Frank", Nate Goshgarian, "grace", Kenny & Jenn Hatch, Don Jones, Kevin Kelly, Peter Lewitt, Raul Lizardi, Kate McCarey, "mgalligan", Ian Peach, "RAS", "SB", George Seaver, James Sullivan, Matthew Watsky, Brian Weiner, John York, Maureen York

Request for Determination:

1. Applicant: Brian J. and Gail J. Kennedy
Address: 70 Gilder Road, Gray Gables
Representative: J.E. Landers Cauley, P.E.

File Number: CC21-24

Construct new addition to existing dwelling, approximately 573ft², and two new decks, approximately 260ft². All disturbed areas are to be loamed, seeded, and landscaped. No changes to existing septic system, no increase in bedrooms, no increase in flowage.

Mr. Jack Landers-Cauley addresses the board. He states there have been revisions made to the drainage plan to accommodate the concerns regarding the drainage and roof runoff that were brought up at the previous November 18, 2021 meeting. There were additional concerns that were brought up at the previous meeting in regards to zoning, which Mr. Landers-Cauley states would be better suited to be addressed with the Building Department.

Initial member comment: None. Please see below for additional member comment.

Public comment: Ms. Donna C. brings up concerns regarding the location of the proposed structure, and questions whether the board would have an issue with the structure “sliding to the right in order to comply with zoning ordinances.” Mr. Landers-Cauley responds, stating that while it does show in the plan that there is a coastal bank, it is a coastal bank in name, but it is not really a coastal bank in function as defined by the Wetlands Protection Act. Ms. Donna C. responds with the same question. Mr. Landers-Cauley states that if the property was not in a Flood Zone, it would not be considered a Coastal Bank. Mr. Brian Kennedy comments regarding the flooding, stating that a flooding issue has not been brought up to him or his wife, being the property owners. Mrs. Leduc-Fleming states that she is hesitant with moving forward with this plan as there is no Coastal Bank noted on the plan. She requested an updated plan with the Coastal Bank shown, and a description of how it would meet all of the performance standards within the Coastal Bank resource area. Mr. Landers-Cauley states that he had discussed this plan with the previous Conservation Agent, who stated that he did not see an issue with the proposed plan. He then states he has no issue delineating the Coastal Bank on the plan. Mr. Palumbo provides clarification why the Commission cannot specifically answer Donna C’s question as they can only act and comment on plans that are in front of them, they are unable to reconfigure a project. The board would request updated delineation of the Coastal Bank, as well as a site visit for confirmation of whether or not there is a functioning Coastal Bank on the property.

With consent of the applicant’s representative and the board, continued to December 16, 2021 meeting.

2. Applicant: Calamar Construction Management
Address: 13 Kendall Rae Place, Buzzards Bay
Representative: John Farkas
File Number: CC21-26

55+ senior housing facility, commercial service install (National Grid)

Mr. John Farkas addresses the board. The structure has been constructed, and the plan for gas line installation is in front of the Conservation Commission due to the property having been in a Flood Zone "at one time."

Member comment: Mr. Berman does not believe the digging of the gas line will not have any impact on the Resource Area. Mrs. Leduc-Fleming requested sedimentation barriers be put in place. Mr. Farkas states that the entire property is surrounded by silt fence, and the property has been raised 17', and confirms that all of the trenching will be done by National Grid.

Public comment: None.

Chm. Gray states that if the property had an Order of Conditions that was approved in 2017, that would have expired in 2020. Chm. Gray requests clarification of work that still needs to be done that was not completed in the Coastal Flood Zone under the previously approved Order of Conditions from 2017. Mr. Farkas states he is not certain where the Coastal Flood Zone is in this area. He states that in addition to the gas line placement, electrical conduit would need to be run via the same type of trenching as the placement of the gas line. Mr. Farkas also states that the landscaping and parking areas outside of the building has been raised up. Chm. Gray requests clarification whether this type of work is planned to be carried out in the future, or if it had already been completed under the previous Order of Conditions. Mr. Farkas states that the work is planned to be completed. Chm. Gray states that a new Order of Conditions needs to be filed for and put back in place. Additionally, a Request for Determination can be filed for, and the original Notice of Intent can be reviewed and determined whether or not it contains sufficient information to allow the work to continue under a Negative Determination. Mr. Farkas states that there are two Request for Determination applications that have been submitted. Chm. Gray states that with the previous Order of Conditions being expired, there cannot be any work being done in the Flood Zone. Above issues will be further addressed at a different time, as it is believed that with all of the filling that has been done on the property, it was brought out of the Flood Zone.

Motion made by Mr. Ligor for a Negative 2 Determination, and seconded by Mrs. Leduc-Fleming. Motion carries 7-0-0.

3. Applicant: 24 Ram's Head Road, LLC
Address: 24 Ram's Head Road, Cataumet
Representative: Holmes and McGrath
File Number: CC1-25

Proposed deck and rinse station.

Mr. Nate Goshgarian addresses the board. He thanks the board for accommodating his request to go slightly out of order as his presentation was not ready at the time he was due to present during this meeting. He reviews the Wetland resources present on the property, as well as the proposed plan. He notes specifically the property is in an AE Flood Zone. There are three components of the plan:

- Relocation of an existing rinse station
- Construction and maintenance of a proposed deck
- Installation of a proposed drywell

Member comment: None

Public comment: None

Motion made by Mr. Ligor for a Negative 2 Determination, and seconded by Mrs. Leduc-Fleming. Motion carries 7-0-0.

Continuances:

Applicant: Thanos and Danielle Gossios
Address: 295 County Road, Bourne
Representative: Marsh Matters Environmental
Continued to December 16, 2021

Notice of Intent

1. Applicant: Pocasset Golf Club, Inc
Address: 24 Clubhouse Drive, Pocasset
Representative: Coastal Engineering
File Number: **NOT AVAILABLE**

Proposed invasive species management.

Chm. Gray informs the representative that since there has not been a file number provided, the hearing will automatically have to be continued to the next meeting.

Mr. Brian Weiner addresses the board and verbalizes understanding regarding the need to continue to the next meeting. He reviews the plan, confirming there will be no physical disturbance to the area. He then introduces a representative from Wilkinson Ecological Design. Mr. Ian Peach addresses the board and shares his screen. He states that there is an invasive area of *Phragmites*. This invasion has limited the growth of the potential native sea bank, as well as had an impact on water quality in the area. The plan is to restore open water habitat in the area after removal of the invasive *Phragmites*. The method that is proposed is a targeted herbicide application by licensed environmental technicians, through a process referred to as "bundle and wipe." The treated area will also be mowed. He opens the discussion to questions.

Member comment: Mr. Berman questions whether the *Phragmites* has spread over to the other pond that is noted on the site. Mr. Peach states that it has not yet spread to that pond, and this plan is being proposed in the hopes of preventing that. Mr. Holmes questions what the proposed length of time may be for the project. Mr. Peach believes that the plan will likely span over the course of two to two and a half years, but expects to have over 80% efficacy within the first application.

Public comment: Ms. Susan Baracchini requests specific location of the proposed plan area as she abuts the golf course. She then questions what type of impact the treatment may have on the ground water. Mr. Peach responds to the second question, stating that it is a targeted application from closed, anti-spill containers, with the goal being that nothing goes into the soil or water nearby. The herbicide is also approved to be used near and around aquatic environments. Clarification is then provided regarding the exact location of the proposed plan area. No additional public comment.

With consent of the representative and the board, continued to December 16, 2021 meeting pending a file number only.

2. Applicant: Champe A. Fisher
Address: 4 Fisher Lane, Sagamore Beach
Representative: Bracken Engineering
File Number: SE7-2167

To fill and grade within the 50'-100' Buffer Zone, perform invasive species removal/remediation within the 50' Buffer Zone, install a post-and-rail fence along the 100' Buffer Zone, seed all cleared/disturbed areas within the 50' and 100' Buffer Zones with wildflower/meadow mix, maintain a 4' wide mown path to future stairs.

Representative not available, continued to December 16, 2021 meeting.

3. Applicant: Oxford Development Group
Address: 2 Kendall Rae Lane, Buzzards Bay
Representative: Joe Longo/JL3 Consulting, Inc.
File Number: SE7-2177

Construction of a mixed-use residential and retail development, including two five-story buildings with associated parking, landscaping, utilities, and storm water infrastructure.

Closed at November 18, 2021 meeting.

Draft Order of Conditions pursuant to Chapter 131 § 40 include:

1, 2, 3, 4, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 25, 26, 27, 28, 29

Additional Special Conditions pertaining to Article 3.7 of the Bourne Wetlands Protection Bylaw:

4, 5, 6, 7, 8

Motion made by Mr. Ligor to move the draft Order of Conditions to final, and seconded by Mr. Holmes. **Motion carries 6-0-1. Order of Conditions issued.**

4. Applicant: JMC Realty Trust
Address: 534 Scraggy Neck Road, Cataumet
Representative: Holmes and McGrath
File Number: SE7-2163

The repair and maintenance of two existing groins, work will take place on or within land under ocean, land containing shellfish, rocky intertidal shore, and coastal beach.

Closed at November 18, 2021 meeting.

Draft Order of Conditions pursuant to Chapter 131 § 40 include:

1, 2, 3, 7, 8, 9, 10, 12, 18, 19, 22, 27, 28, 29

Additional Special Conditions pertaining to Article 3.7 of the Bourne Wetlands Protection Bylaw:

6, 7

Motion made by Mr. Ligor to move the draft Order of Conditions to final, and seconded by Mr. Holmes. **Motion carries 7-0-0. Order of Conditions issued.**

5. Applicant: Cape Club Building, Inc.
Address: 96 Megansett Road, Cataumet
Representative: Cape and Islands Engineering
File Number: SE7-2171

To raze existing cottage/dwellings, utilize the existing shed for storage and remove a portion of one of the existing dwellings to be converted into a covered open-air patio with a rinse station, ½ bath and outdoor kitchen area. Construct and maintain a new single-family dwelling with attached garage, decks, steps, covered porch, a/c, generator, in-ground swimming pool, driveways, retaining walls, fire pit, and to utilize the existing Title V sewage disposal system.

Presented in conjunction with application under file number SE7-2172

6. Applicant: Cape Club Building, Inc.
Address: 96 Megansett Road, Cataumet
Representative: Cape and Islands Engineering, Inc.
File Number: SE7-2172

Construction, licensing, and maintenance of an access ramp leading to a walkway, pier, ramp, and float in the waters of Squeteague Harbor. Additionally perform dredging to regain water depth adequate for boating access to and from the proposed float pier at 96 Megansett Road.

Atty. Matthew Watsky and Mr. Mark Dibb address the board and discuss the project. Previously proposed dredging associated with the proposed pier has been removed from the plan. Atty. Watsky discussed the peer review report. He then reviews the previous use of the property. It was discussed in the peer review plan that the site was not permitted to be treated as a previously developed site. Atty. Watsky believes that there was a misunderstood standard in regards to how much of the site would need to be degraded. He then goes on to discuss the restoration vs. mitigation ratio. He presents the example of a lawn area being considered as a previously developed area, but that has not been degraded. He states that in a case like this, where the area has been previously

developed, but not degraded, different regulations would apply. He believes the site would fall under the regulatory standard of 10.58(5) of the Wetlands Protection Act. He describes the mitigation plan for the project, and states that there is improvement over existing conditions, specifically regarding the existing house and paved areas that are closer to the river front, as well as restoration plantings. He then reviews the impervious areas that are planned to be removed, as well as the restoration planting plan of the project. Lack of current storm water management on the property is then addressed, and compared to the proposed plan, which does have a plan for storm water management, which is believed to be of assistance in erosion control, and improving water quality. Mr. Dibb then addresses a change to the plan for the patio, showing a change in the angle and making it run parallel with the angle of the Coastal Bank as opposed to an angle of the patio protruding into the Coastal Bank. Atty. Watsky argues that the Coastal Bank may be a Coastal Bank in name, but not necessarily in function. He states that in this situation, the only concern regarding work that would be done in the Coastal Bank would be to ensure that the Coastal Bank remain stable following completion of the proposed work. He believes the proposed project would meet that standard. He also does not believe that the previously requested alternatives analysis would be applicable in this type of project, due to the fact that it is a previously developed site. Proposed onsite mitigation square footage is reviewed. Chm. Gray requests clarification regarding the part of the plan labeled "Parcel B." Mr. Dibb states that this of the parcel is proposed to remain completely untouched, and remain natural and undisturbed. Chm. Gray requests quantification of this area be added to the plan. Mr. Dibb confirms that it is on the plan, and is 58,142ft², plus an additional 11,000ft² of proposed revegetated area. Atty. Watsky states that the applicant is selling land on the opposite side of the road to remain as permanent conservation as a part of the overall development plan. This land will have a development restriction included to protect the Riverfront area on that parcel of land. Atty. Watsky includes this in the mitigation ratio, arguing that it is increasing the mitigation ratio from 2:1 to 48:1. Chm. Gray informs the representative that there is nothing noted in the record regarding this parcel of property that would tie to the proposed construction, mitigation, etc. that is being discussed before the board this evening. Atty. Watsky believes that things are moving along with the additional parcel of property, and he is hopeful that there will be documentation available at a subsequent hearing to be able to confirm what the plan is for that parcel of property.

Member comment: Chm. Gray comments regarding the discussion of the necessity of an alternatives analysis. Per the wording of the Regulations, it is essentially not a guarantee that the alternatives analysis is not needed, but it would be at the discretion of the Commission whether it would be necessary. Chm. Gray then comments on a discussion from the last meeting regarding the peer review. There was request from Mr. Dibb to discuss the plan directly with the peer reviewer, but it was indicated by the peer reviewer

that he was not permitted to communicate directly with Mr. Dibb. There was no vote or discussion at the last meeting to authorize this conversation. Members then discuss the authorization of the communication of the engineers. No objections made by any Commission members.

Mr. Ligor requests to excuse himself from the remainder of the meeting. Chm. Gray excuses Mr. Ligor. Six board members remain.

Mr. John York expresses concern regarding the engineers discussing the plan, specifically regarding representation of the town by the peer reviewer. Atty. Watsky clarifies his previous comment that implied that the peer reviewer was representing the town.

Motion made by Mrs. Leduc-Fleming and seconded by Mr. Palumbo. Motion carries 6-0-0. The board will inform Mr. Creighton that he is permitted to communicate with Mr. Dibb.

Atty. Watsky makes a comment regarding the proposed plan for the pier. He states that the measurements that were taken of the waterbody in order to keep the pier length in compliance with the 1/5 the width of the waterbody standard, were not necessarily taken appropriately. The definition of the waterbody would actually encompass the entire width of the river, not just the width of the channel in which the dock and pier would be constructed. With the measurements of the river as a whole, the length of the pier would comply with requirement to not exceed 1/5 the width of the waterbody.

Member comment: Mr. Szwed comments regarding "Part E" and "Part F", requesting confirmation of calculations of mitigation. Mr. Dibb confirms those calculations are noted on the plan. Mr. Holmes states that he would disagree with the definition of the river, and the manner in which the river is being measured, and the effects of the pier on the river. Mrs. Leduc-Fleming states that there is nothing prohibiting the Coastal Bank from eroding in the future, even though it may be stable at this present time. She also expresses concern regarding the placement of the patio and pool directly in the Coastal Bank. Atty. Watsky responds with provisions from the Regulations, stating that if the Coastal Bank is presently providing sediment, the standards would apply. Where the Coastal Bank on the property of the proposed plan is not currently eroding, it is not subject to high wave action, or providing sediment, the standards would not apply. Mrs. Leduc-Fleming requests clarification regarding the location of the existing building from the top of the Coastal Bank. Mr. Dibb states that the current location of the existing building is about 20' from the top of the Coastal Bank. Mrs. Leduc-Fleming responds, noting concern about the plan having so much work not only being done near the top of

the Coastal Bank, but within the Coastal Bank. Mr. Raul Lizardi comments on a previous project that he has worked on in the town of Bourne. He reviews a previously approved project, and compares the present proposed project to that previously approved project. Mrs. Leduc-Fleming believes the example property that Mr. Lizardi is comparing to the proposed plan that is in front of the board is more similar to the presentation from earlier in the evening on Gilder Road in Gray Gables. Chm. Gray believes that the adjoining land areas need to be reviewed. Chm. Gray believes something needs to be prepared in writing regarding justification as to how the plan meets all of the performance standards. Mr. Berman comments, agreeing with Chm. Gray and Mrs. Leduc-Fleming regarding the statements made about the property that Mr. Lizardi was comparing this plan to. He appreciates the adjustments that have been made to the plan, with improvement of moving structures out of the resource area, and more toward the upland. He would also suggest markers for the edge of the lawn area if this plan were to be approved. Chm. Gray requests discussion with the applicant regarding the area of the parcel that was previously noted to remain undisturbed, for it to be protected in perpetuity. Atty. Watsky states he will discuss that with the applicant.

Public comment: Mr. Joe McGurl comments regarding the river, stating that he believes there should be strict adherence to the regulations as it is a sensitive area. Mr. Don Jones comments, stating he agrees with Mr. McGurl. Mr. James Sullivan comments directly to the board regarding the conservation regulations, stating to not allow any waivers of the conservation protections. Chm. Gray states the Commission will do their best. Mr. John York questions re-grading over the Coastal Bank. He believes there is potential for unwanted sediment from building a manmade berm below the Coastal Bank. He also comments that there was a storm in 2005 that caused wave action in the cove. He also believes the natural slope of the Coastal Bank is more stable than the steeper proposed manmade berm. He states that if he or any other residents on Squeteague Harbor were to ask for anything similar to the proposed plan, they would expect to be turned down. No additional public comment.

Chm. Gray makes a comment in regards to the request for vista pruning in the 100' Riparian Zone, to ensure it fits within the criteria of the definition of vista pruning per the 310 C.M.R. 10.4. Mr. Dibb states that will be reviewed. Chm. Gray requests clarification regarding whether the plan calls for the trees to be removed, or limbed. Mr. Dibb clarifies it would only be limbing, and they would meet with the new agent to ensure pruning practices would be carried out properly.

Attention is then turned to the pier portion of the proposed project. Mr. Dibb addresses the location and measurements of mean high water, length of the pier, and the center of the waterbody.

Member comment: Mr. Berman requests confirmation of distance from oyster beds to the proposed pier, as well as the water depth and float stops on the dock. Mr. Dibb states there were shellfish found from the edge of the salt marsh out about 20', but nothing beyond the mean low water level. The water depth is only about one foot of water, and a waiver request was submitted regarding the depth of the water. Mr. Dibb states that four float stops are proposed at 12" above the earth. Mrs. Leduc-Fleming requests review of the full waiver request narrative. She states there are some places in the town of Bourne that may not be suitable for docks. She will review the waiver request once she receives it. She also questions whether the seaward end of the salt marsh was surveyed and updated. Mr. Dibb states the survey was not yet submitted, it was pending peer review feedback of the revisions made. He also addresses the waiver request, stating that it was submitted with the peer response. Mrs. Leduc-Fleming responds to the waiver request, stating that waiver requests are not approved unless there is justification for doing so. Mr. Holmes has questions the likelihood of prop dredging due to the water level. Atty. Watsky states that the dock was looked at as a swim dock, not a dock that would dock a large boat. Mrs. Leduc-Fleming comments regarding the boat, stating that docks are not permitted to a specific boat size, and while the applicant may be responsible, and do everything appropriately, any subsequent owners may not be as careful, nor have the same size boat. Mr. Szwed requested something more compelling for the waiver request than what has been provided. Mr. Palumbo states he would be curious to find out how the dock across the waterway is utilized, knowing that may not be able to be answered. No additional member comment.

Public comment: Mr. Kent Bream questions if the waterway is measured from mean high water, why is the pier not measured in the same manner. Mr. Dibb goes on to describe that there is a difference in definition between "pier" and "walkway" in the Bylaw, and the measurement is based on this regulation per the Bylaw. Mr. Don Jones questions whether the applicant has taken the existing mooring in the river channel between the proposed dock and the existing dock on the other side of the channel. Mr. Dibb states that the mooring was originally licensed to the property for a swim float. An abutting neighbor is now stating that the mooring is his as the previous license expired around 2008. Confirmation will be provided regarding the ownership of the mooring. Chm. Gray comments on a Google Earth image of the dock across the waterway, stating it does appear to have a motorized boat on the dock. Kent Bream comments stating that the reason there is a motorized boat on the dock across the waterway is likely due to the fact that the water level is deeper there. Mr. John York comments regarding the dock and the waivers requested. He questions the calculation of the width of the water body, as well as the width of the extension of the dock into the water body. He notes the center line of the waterbody, drawn as a straight line, even though the waterbody is "wiggling" all over the

place. He believes the walkway and associated structures would be included in the definition of the “dock.” He would request that the measurement be confirmed, and what is actually being measured and considered the “dock” be confirmed as well. He also addresses his belief that there will be prop scouring, both at half-tide, and low tide. He then addresses the concern of sediment being spread over shellfish resources due to prop scouring.

With consent of the representative and the board, both applications continued to December 16, 2021 meeting.

Vote to excuse absent members:

No members absent. Not applicable.

Report of the Conservation Commission:

Mr. Palumbo discusses an enforcement order from 81 Philips Road. He would like to work with the Commission and is hoping to have an update prior to the next meeting. Chm. Gray states the resident is moving in the right direction, and will follow up at the December 16, 2021 meeting. Chm. Gray discusses compiling an updated checklist for the Order of Conditions. He also requests any assistance from the board regarding following up with requests for tree removal from storm damage. Another violation was briefly discussed, and will be addressed at a future meeting.

Adjournment:

Motion made by Mrs. Leduc-Fleming, and seconded by Mr. Palumbo. Motion carries 6-0-0.

Meeting adjourned at 11:05pm.

Meeting minutes submitted by: Fallon Doyle