

**Bourne Conservation Commission
Public Meeting Minutes
January 18, 2024**

Note this meeting is being audio recorded by Bourne Conservation Department. If anyone in the audience is also recording or videotaping, they need to acknowledge such at this time.

Commission Members Present: Chair Robert Gray, Vice Chair Rob Palumbo, Paul Szwed, Peter Holmes (remote), Joesph Soares and Jacob Gadbois.

Excused Members: Susan Weston and Sarah Butler.

Professional Staff in Attendance: Stephanie Fitch, Conservation Agent

Chair Robert Gray called to order the meeting of the Conservation Commission at 6:30 PM, conducted in person on Thursday, January 18, 2024, and held in the Bourne Veterans Community Building, 239 Main Street, Buzzards Bay, MA 02532, and held virtually by Zoom. Chair Gray explained all reviews, unless otherwise stated, are joint reviews. Applications will be processed pursuant to the Massachusetts Wetland Protection Act, M.G.L. Chapter 131, Section 40, and pursuant to Article 3.7 of the Town of Bourne Wetlands Protection Bylaw. Chair Gray said that they follow a 5-5-5 rule, and he explained the rule. Chair Gray said that if a member of the public wishes to comment they will first clearly state their full name for the record. Chair Gray asked if anyone was recording at this time other than the Conservation Department.

Request for Determination

1. Applicant: Amy E. Daly File Number: CC-23-39
Representative: Engineering Works, Inc.
Project Address: 87 Puritan Road, Buzzards Bay
Proposed Project: Upgrade to a septic system within 100 ft. of a wetland resource area.
Due to an insufficient quorum, the meeting was continued from 1/04/2024.

Peter McEntee represented the project on behalf of the homeowner. He explained that the proposed septic system is situated on the east side of the property near Buttermilk Bay, within the buffer zone to the top of the coastal bank and salt marsh.

The new proposed septic system, equipped with I/A (Innovative/Alternative) technology, is positioned at the closest point 25 feet to the top of the bank and 35 feet to the Soil Absorption System (SAS). The septic system will be located in the gravel driveway, while the SAS will be situated in the lawn area. It's noteworthy that the plans were revised to preserve one tree.

Ms. Fitch, Conservation Agent, reported that the proposed project is in buffer zone only- no flood zone or priority habitat. Based on her site visit she agreed with the delineations of top of bank per policy 92-1 figure 2 and salt marsh. The site plan shows a siltation barrier and notes confirm that any disturbed soil will be restored. She was happy to see the replacement of a cesspool with a nitrogen reducing system and she was happy to see the revised plan taking down one less tree. She had no issues with the work as proposed.

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Jacob Gadbois, associate member, raised a question regarding the protection measures for the siltation barrier. He specifically inquired about the choice between a silt fence and hay waddles. Mr. Gadbois said, given the slope, he believes that opting for a silt fence would be a more effective solution for the site conditions. No public comment.

Rob Palumbo, vice chair, made a motion for a negative two determination and seconded by Mr. Szwed. Roll call: Mr. Soares-Yes, Mr. Szwed-yes, Mr. Palumbo-yes, Chair Gray-yes and Mr. Holmes-abstained. Motion carried 4-0-1.

2. Applicant: Jeffrey Hansen and Pamela Sette File Number: CC-24-1
Representative: JC Engineering, Inc.
Project Address: 157 Scraggy Neck Rd, Cataumet
Proposed Project: Septic system upgrade of an existing failed septic system located within an AE flood zone. Reviewed under the State Act only.

Sam Iamele with JC Engineering served as the representative for the homeowners in overseeing the project. He conveyed that the project involves a septic upgrade, including the installation of a new tank, leaching field, and distribution box. The entire property is situated in a flood zone with no other resource areas identified. Furthermore, there will be no tree removals or disturbance to existing vegetation, as the work is planned to be carried out within the existing lawn.

Ms. Fitch had no concerns with the project as proposed.

No member comment and no public comment.

Mr. Szwed made a motion for a negative two determination and seconded by vice chair Palumbo. Roll call: Mr. Szwed-yes, vice chair Palumbo-yes, Mr. Soares-yes, Chair Gray-yes and Mr. Holmes-abstained. Motion carried 4-0-1.

3. Applicant: Katrine Karstad File Number: CC-24-2
Representative: Brian Smith
Project Address: 10 Squeteague Harbor Rd, Cataumet
Proposed Project: To build a covered porch that will stretch 28' along the backside of the original house. The project is located within 100' of a wetland resource area.

Brian Smith provided a brief overview of the property, mentioning that it has a block foundation dating back to the 1800s. He highlighted the presence of an old greenhouse adjacent to the main living room. The plan is to square off the old greenhouse, connecting it with the existing house. Additionally, three sonotubes will be installed on top of a non-eroding coastal bank. A 6.5-foot bump out from the building is proposed to create a covered porch.

Ms. Fitch shared photos and inquired about the removal of stone work and steps. Mr. Smith explained that in the 1980s, it was an open area, which was subsequently covered to create a living space. Regarding the project, they plan to connect the gutters to the 6.5-foot bump out and implement a new system. Additionally, the existing concrete will be removed, making way for grass in that area.

Ms. Fitch provided her report, noting that the coastal bank, despite being covered in invasives, is well-vegetated and adjacent to a salt marsh. She observed no signs of scour or erosion impacting

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the down-drift beach. According to the new bylaw, Ms. Fitch believes the project is permissible, given that it involves a well-vegetated vertical buffer bank situated comfortably above the AE 15 flood zone. She expressed satisfaction in the applicant's mention of gutters tying into existing drywells, a requirement to prevent adverse impacts on the bank. Ms. Fitch emphasized the need for the applicant to ensure that disturbed areas are appropriately stabilized.

During the discussion, Vice Chair Palumbo inquired about the method for removing the concrete. Mr. Smith explained that, if permitted, they plan to use a small skid steer for the task. Mr. Soares raised a question about a tree in the back, asking if it would be removed. Mr. Smith confirmed their intention to remove the tree due to insurance concerns, given its proximity to the house.

Mr. Gadbois expressed concern about the tree stump and the slope's stability. Mr. Smith assured that Hamilton Tree has a tree climber machine, and they intend to leave the stump. The tree in question is a Black Oak, and Mr. Smith proposed including the tree removal in the permit.

Ms. Fitch requested that the tree company reach out to her before commencing work.

Mr. Holmes made a motion for a conditional negative two and seconded by vice chair Palumbo. Roll call: Mr. Szwed-yes, vice chair Palumbo-yes, Mr. Soares-yes, Mr. Holmes-yes and chair gray-yes. Motion carried 5-0-0.

Notice of Intent

1. Applicant: Mary Vendice DEP File Number: SE7-2278
Representative: Zenith Consulting Engineers, LLC
Project Address: 122 Wings Neck Rd, Pocasset
Proposed Project: Addition to the existing residential dwelling with associated grading, landscaping and utilities. The work will take place within a velocity flood zone and within 100 ft. of a wetland resource area.

Jamie Bissonette, from Zenith Consulting Engineers, LLC represented the homeowners, described a project involving a two-section addition. One part, covering approximately 226 sq. ft., is situated on the street side. The second section, totaling around 335 sq. ft., is located on the water side. The street-side addition will primarily occur over the existing concrete driveway with minimal grading. On the back side, the majority of the addition will extend over the patio area, with modifications planned for an existing deck.

Ms. Fitch, gave her report and said due to the existing Open OOC (Order of Conditions) on the property, the resource delineations are considered final. Upon comparing the two site plans, it appears that the resource areas align consistently. The proposed work is located within the V flood zone and within buffer to a coastal bank and salt marsh.

Given the proximity to environmentally sensitive areas, it's crucial to adhere to regulations. The proposed additions are in areas previously disturbed, and they maintain a distance not closer to the TOB (Top of Bank) than the existing brick patio. Referring to 310 CMR 10, projects within 100' of a salt marsh should not adversely affect its productivity. The proposed controls for roof runoff and shower runoff are of concern.

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To address this, it is suggested that all gutters be connected to catch basins. This includes tying in the underground pipe from the driveway, which likely directs water towards the salt marsh. Implementing these measures is essential to mitigate the impact of runoff on the sensitive coastal environment and align with regulatory requirements.

Mr. Szwed inquired about the slit fence along the marsh, questioning its association with the other project. Mr. Bissonette clarified that both projects would occur simultaneously, and integration would take place when they are underway. Jacob asked about the foundation and the plan for the location of construction materials. The explanation was that materials would be loaded on a truck, never touching the ground. During backfilling, they would dump from the truck using the same soil. Only a portion of the patio would be removed, saving the rest. Mr. Gadbois concurred that addressing roof runoff should be considered.

Ms. Fitch requested revised plans to include gutters and catch basins.

Vice chair Palumbo made a motion to close the public hearing seconded by Mr. Soares. Roll call: Mr. Szwed-yes, vice chair Palumbo-yes, Mr. Soares-yes, Mr. Holmes-yes and chair gray-yes. Motion carried 5-0-0.

The draft order of conditions which is to include all general conditions as well as the following special conditions pursuant to Mass General Law Chapter 131, Section 40: 1, 2, 3, 4, 7, 9,10, 12, 14, 15, 16, 18, 19, 21,22, 27, and 28. She said that the special conditions pursuant to the Bourne Wetland Protection Bylaw, Article 3.7 including 5, 6, 7, and 8.

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

ASC-1) A revised plan showing gutters and catch basins is required to be submitted to the Conservation Department.

Special Condition # **15 and #16** above shall continue in perpetuity beyond the limitations of this Order and with the sale of the property to others.

Vice chair Palumbo made a motion to move the draft to the final seconded by Mr. Szwed. Roll call: Mr. Szwed-yes, vice chair Palumbo-yes, Mr. Soares-yes, Mr. Holmes-yes and chair gray-yes. Motion carried 5-0-0.

2. Applicant: Eric & Susan Marandett DEP File Number: SE7-2276
Representative: Jeff Thibodeau, Helios Land Design
Project Address: 37 Harbor Drive, Pocasset
Proposed Project: Proposed landscape improvements (pool, spa, patio, fencing, walls, fire pit) in a previously landscaped area. The work will take place in an AE and VE Flood Zone and within 100 ft. of wetland resource areas. **Due to an insufficient quorum, the meeting was continued from 1/04/2024.**

Jeffrey Thibodeau, presenting on behalf of the homeowner, presented the project, highlighting revisions made to the proposed pool landscape since the last meeting. These modifications were

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made outside the 50' buffer zone, prompted by the discovery of a special condition in perpetuity from a past permit. The project entails upgrading and redesigning the existing pool, patio, fence wall, and above-ground spa. The enhanced design includes the addition of a fire pit and an outdoor kitchen area. Notably, adjustments have been made to the pool's location. The proposal also involves the removal of four existing trees, accompanied by the planting of 1,000 sq. ft. of mitigation plantings. Furthermore, there is a request to remove trees within the 50' buffer to enhance the view.

Ms. Fitch gave her report and after a thorough review of the Orders of Conditions (OOCs) and Certificates of Compliance (COCs) for SE7-1221 and SE7-1464, as well as the minutes from the 2019 public hearing for the Request for Determination (RDA), Town Counsel has identified that special condition #5 from SE7-1221, marked as an ongoing condition in the COC, remains applicable. Both the OOC and COC have been duly filed with the Registry.

Special condition from the 1998 OOC, in perpetuity, mandates maintaining 50' of natural vegetation. The minutes from 2019 indicate historical mowing within the 50'. Ms. Fitch would like to see a no touch zone demarcated again, such as a post and rail fence or conservation area signage. Ms. Fitch requested a catch basin to be shown on the plan to collect the pool drawn down to prevent emptying pool water into the resource area.

The commission members affirmed that the existing special condition stands for no work in the 50' no-touch zone. Suggestions were provided, including options for revegetation, installation of boulders, or the erection of a fence to restrict access and promote natural revegetation in the specified area. **The representative will engage in discussions with the client and formally requested a continuance to February 1, 2024.**

3. Applicant: Rob Leavell, Cape Associates Inc. DEP File Number: SE7-2277
Representative: Graham Carr, Vital Structures LLC
Project Address: 42 Monument Avenue, Monument Beach
Proposed Project: Repairs to stabilize existing concrete seawall within 100 ft. of wetland resource areas and in a VE Flood Zone. **Continued from 1.04.2024**

Graham Carr of Vital Structures LLC represented homeowners for a proposed project involving the replacement of a cast-in-place concrete seawall. The existing seawall is 30" high, 30" deep, 48 feet long, with landward returns towards the house at north and south ends (15" on one side and 30' on the other). The wall predates regulations and licenses, and they aim to stabilize a failed, unsalvageable wall. Part one of the replacement plan involves stabilizing minor chipping and hand digging without heavy equipment, to be performed by a mason. The engineer set a deadline for homeowners to file for a full replacement solution by October 2024.

The Commission faces a challenge in permitting temporary Coastal Engineering Structure (CES) work due to the absence of specific regulations for such cases. There is a preference for soft solutions like beach nourishment. The Commission has put effort into requiring sloped revetments instead of replacing vertical walls in velocity zones. There is concern that issuing an Order of Conditions (OOC) might lead to the stabilization of the existing wall without a commitment to an improved replacement. Discussions with the Department of Environmental Protection (DEP) indicate that the proposed work should align with design recommendations from CZM and the Coastal Manual. The recommendation is not to issue an OOC at this time.

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Graham Carr highlighted a challenge with the property's proximity to a corner for public beach access. While considering a temporary soft solution, they face the issue of excavation in front of the fractured wall, which they wish to avoid to prevent destabilization. Although he believes the entire wall won't overturn, there's concern about portions of the 30" x 30" concrete block could possibly overturn. Protection of the corner, deemed a sensitive area, Graham acknowledges no guarantee of a full replacement without consulting the client but expresses interest in discussing the possibility for a written commitment.

Ms. Fitch read an email response from Mark Bartow (DEP): "To me the existing wall obviously failed because it's vertical, and the word "temporary" as used in the application is relative. The level of effort for this "temporary" fix seems to me to be indiscernible from a permanent one. If they plan on removing the seaward facing part of the wall, why not reconstruct it in accordance with the CZM storm smarts guidance and, as you point out slope it? My suggestion would be for the commission to ask the applicant to redesign the project for consistency."

The Commission is relying on the recommendations provided by the Department of Environmental Protection (DEP). They recommended to the engineer to return in a few months with an updated plan for the complete replacement. In the meantime, the engineer will discuss with the applicant to determine the approach going forward. This includes consultations with the Department of Environmental Protection (DEP) on the possibility of permitting both a temporary solution and a permanent plan together under the existing Notice of Intent (NOI). **The representative requested a continuance to February 1, 2024.**

4. Applicant: Town of Bourne c/o Timothy Lydon DEP File Number: SE7-2269
Representative: Daniel Cannata of VHB Inc.
Project Address: 0 Old Monument Neck Rd, Bourne (Mass Coastal Railway Layout)
Proposed Project: Bourne Rail Trail Phase 1. Work consists of constructing a 10-foot wide shared use path (SUP) along the west side of the existing Mass Coastal Railway Corridor between the existing parking areas at the Tidal Flats Recreation Area on Monument Neck Road near its intersection with President's Road. **Continued to February 1, 2024.**

Request for Certificate of Compliance

1. Applicant: Russell Keeler DEP File Number: SE7-2165
Representative: Cape & Islands Engineering, Inc.
Project Address: 49 Maryland Avenue, Monument Beach
Proposed Project: Certificate of Compliance requested for the Order of Conditions issued on August 30, 2021. The project included a raze and rebuild of a single family dwelling, new Title 5 septic system and new proposed cottage with deck, patio, and outdoor fire pit. The project also included the removal of a failed concrete seawall with a temporary soft solution and replacement of a new riprap revetment. Located within 100 feet of a wetland resource area, in an AE Flood Zone and Velocity Flood Zone. **Continued from 1.04.2024**

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Ms. Fitch made a site visit on January 3, 2024. Vice chair Palumbo made a motion to grant the COC seconded by Mr. Szwed. Mr. Szwed-yes, vice chair Palumbo-yes, Mr. Soares-yes, Mr. Holmes-yes and chair gray-yes. Motion carried 5-0-0.

2. Applicant: James Morrison DEP File Number: SE7-2205
Representative: Same
Project Address: 31 Buttermilk Way, Buzzards Bay
Proposed Project: Invalid Certificate of Compliance requested for the Order of Conditions issued on May 6, 2022. Raze and rebuild of a single family home. The project never commenced, and the owners are seeking to close out the order. **Continued from 1.04.2024.**

Ms. Fitch made a site visit on January 4, 2024. The work never commenced. Vice chair Palumbo made a motion to grant invalid COC seconded by Mr. Szwed. Mr. Szwed-yes, vice chair Palumbo-yes, Mr. Soares-yes, Mr. Holmes-yes and chair gray-yes. Motion carried 5-0-0.

3. Applicant: Hazen Kelley and Jane Costello DEP File Number: SE7-2108
Representative: Falmouth Engineering, Inc.
Project Address: 23 Boulder Road, Cataumet
Proposed Project: Certificate of Compliance requested for the Order of Conditions issued on June 1, 2020. To raze and reconstruct existing single-family dwelling within an AE Flood Zone, a Velocity Flood Zone and within 100 feet of a wetland resource area.

Ms. Fitch made a site visit on January 12, 2024. Vice chair Palumbo made a motion to grant the COC seconded by Mr. Szwed. Mr. Szwed-yes, vice chair Palumbo-yes, Mr. Soares-yes, Mr. Holmes-yes and chair gray-yes. Motion carried 5-0-0.

- Approve minutes 11.02.2023, 11.16.2023, 12.07.2023 and 12.21.2023.
Motion made to approve the minutes of 11.02.2023 as written.
Roll call: Mr. Szwed-yes, vice chair Palumbo-yes, Mr. Holmes-yes, Mr. Soares-yes and chair Gray-yes. **Motion carried 5-0-0.**
Motion made to approve the minutes of 12.21.2023 as written.
Roll call: Mr. Szwed-yes, vice chair Palumbo-yes, Mr. Holmes-yes, Mr. Soares-yes and chair Gray-yes. **Motion carried 5-0-0.**

The minutes have been tabled for the next meeting: 11.16.2023 and 12.21.2023.

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- Discussion and potential vote on proposed amendments to the Bourne Wetlands Regulations.

The commission discussed proposed changes concerning the 1/5 across the water body. Notably, Joseph McGurl, a public member, was among the attendees.

On January 18, 2024 motion made to accept the following revised language.

Roll call: Mr. Szwed-yes, vice chair Palumbo-yes, Mr. Holmes-yes, chair Gray-yes, and Mr. Soares. **Motion carried 5-0-0.**

(BWR) 1.16.

Regulation Revisions:

2. Notwithstanding the provisions of BWR 1.16(1)(c), no pier shall extend more than 1/5 across a water body as measured linearly to the nearest shore line from MLW to MLW. This is intended to preserve at least 60% open water for recreational and/or commercial use. Only one measurement to the nearest shore line is required. The measurement must be displayed on the site plan.

- Motion made to excuse absent members

Roll call: Mr. Szwed-yes, vice chair Palumbo-yes, Mr. Holmes-yes, chair Gray-yes, and Mr. Soares. **Motion carried 5-0-0.**

- Motion made to adjourn.

Roll call: Mr. Szwed-yes, vice chair Palumbo-yes, Mr. Holmes-yes, chair Gray-yes, and Mr. Soares. **Motion carried 5-0-0.**

Meeting adjourned 9:33PM.

Minutes typed by Amalia Amado, Conservation Secretary.

Audio recorded by the Conservation Department.

Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, including as much detail as you can and include a way we can contact you if we need more information. Please allow advance notice. Send an email to kthut@townofbourne.com or call the Town Administrator's Office at 508-759-0600 x1503.