

Town of Bourne
Conservation Commission
Meeting Minutes
10.06.2022

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TOWN CLERK BOURNE

I. 6:30 P.M. Call meeting to order.

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 October 6, 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, Greg Berman, Thomas Ligor, Rob Palumbo, Paul Szwed, Susan Weston and Peter Holmes

Others in attendance: Stephanie Fitch, Raul Lizardi-Rivera, Maryfrances Galligan, Zac Basinski, Susan K Malcom, David B Malcom, Don Bracken, Chip Coen

Present by remote access: Greg Berman, Elizabeth Pyle, Scott Horsley, Glenn Wood, and Stan Humphries

Continued Hearings

1. DEP File Number: SE7-2217
Applicant: Richard W. Selby
Representative: Coastal Engineering Co., Inc.
Project Address: 134 Wings Neck Road, Pocasset
Proposed Project: Proposed dune restoration and beach nourishment. Located within a V flood zone and wetland resource areas. **Continued to 11/03/2022.**

Request for Determination

1. File Number: CC22-36
Applicant: HOTB LLC
Representative: Peter Valeri
Project Address: 681 Head of the Bay Road, Buzzards Bay
Proposed Project: HOTB LLC has petitioned to replace failed septic systems at three buildings as shown on the plan. This project is within 100 ft. of a wetland resource area.

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Chm. Gray recused himself, Mr. Palumbo took over as the chair.

Zac Basinski P.E. of Bracken Engineering represented the project on behalf of Peter Valeri and the HOTB LLC. Mr. Basinski explained that 681 Head of the Bay Road is an old compound estate and identified the resource areas. He further explained that the property recently sold and required the upgrade of the onsite septic systems. There are three residences on the lot: a primary seven (7) bedroom residence, a caretaker's cottage and a one (1) bedroom loft above the garage serviced by a one bedroom septic system. The main house is serviced by 3 daisy-chained cesspools that sit close to the top of the bank and then in the bank. The caretaker's cottage is three (3) bedrooms which is actually used year round with a cesspool right on the bank into Buttermilk Bay. The proposal is to remove the cesspools and install two (2) new Title V compliant septic tanks, pump chamber and then another septic tank with pump chamber system behind the garage. The septic system will be sited on the highest part of the lot to provide the best vertical treatment and a distance of over 300 feet to the water.

Agent comment: Ms. Fitch said it is a great improvement to have the cesspools replaced. She also noted that there is a seawall at the coastal bank, so the stability of the coastal bank is not too much of an issue here. She asked Mr. Basinski to speak on why they proposed the cottage's system so close to the top of bank and if there were any other options on the other side of the house. Mr. Basinski said because of the grading and the tanks are high on one side low on the other. There is actually a little slot with the old plumbing underneath the house. This was the only option to place the tanks on that side of the house, unless they wanted to reroute all the old plumbing of the cottage. Ms. Fitch is fine with this project as proposed.

Member comment: Mr. Ligor asked how many cesspools are on the property right now. Mr. Basinski answered four total right now and they will be abandon and filled in.

No public comment.

Motion made by Mr. Ligor for a Negative Two Determination, seconded by Mr. Szwed.

Roll call: Mr. Berman-yes, Mr. Holmes-yes, Mr. Szwed- yes, Ms. Weston-yes, Mr. Ligor- yes, and Mr. Palumbo-yes.

All in favor. Chm. Gray abstained. Motion carried. 6-0-1

Notice of Intent

1. DEP File Number: SE7-2218
Applicant: Ann & William Murray
Representative: Bracken Engineering Inc.
Project Address: 31 Tahanto Road, Pocasset
Proposed Project: The proposed raze and rebuild of a single-family dwelling. This project is located in an AE flood zone, within 100 ft. of a wetland resource area and 200 ft. of a riverfront.

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Mr. Basinski P.E. of Bracken Engineering, Inc. presented on behalf of Ann and William Murray. This is an existing developed single family house lot. The existing house was built in 1920 and it is a 5,800 sq. ft. lot. This project was before the Commission about a year ago to upgrade the septic system for the transfer of a sale. Mr. Basinski said that Mr. Murray was looking to do renovations and raze the house due to the FEMA requirements. They have proposed to demo the existing structure and build a new flood compliant structure on the property. The new structure will be built on concrete piles in accordance to the building code elevation 15, which is about a story up out of the ground. Mr. Basinski stated the importance of FEMA compliant buildings if a flood event occurred. All utilities would be elevated and the onsite nitrogen reduction septic system is still what is proposed and previously approved for the location. The project is in the riverfront area and proposed within the same foot print of the existing structure with additional living space above the building. Mr. Basinski identified the other resource areas and explained they met all setback requirements.

Agent comment: Ms. Fitch explained further that the applicant first came before the Commission to upgrade just the septic system and turned out they decided to upgrade the entire house. Ms. Fitch said the project meets 310 CMR 10.58(5), redevelopment within the riverfront, by improving existing conditions with the storm water control. There is decreased nitrogen and a slight decrease in impervious surface. The structure is not any closer to the river than the existing structures and also meets the performance standards of no adverse effects on coastal bank and no adverse effects on productivity of saltmarsh.

Member comment: Mr. Holmes questioned the septic system being so close to the 50 ft. buffer zone. Mr. Basinski explained that the type of system they chose is a drip irrigation system in order to provide nitrogen reduction and ground water separation. Unfortunately, they cannot put that system under parking or paving. A condition on this lot is that there is no parking in front of the existing house, so they must provide it on the lot. With that type of system they could not push anything further away from the river because of the parking.

No public comment.

Motion made by Mr. Holmes to close the hearing, seconded by Ms. Weston.

Roll call: Mr. Berman-yes, Mr. Holmes- yes, Mr. Szwed-yes, Ms. Weston-yes, Mr. Ligor- yes, Mr. Palumbo-yes. Motion carried.

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, 7, 9, 10, 12, 14, 15, 16, 18, 19, 24, 27, 28 and 29. Special conditions pursuant to the Bourne bylaw article 3.7 include: 4, 5, 6, and 7.*

Motion made to move the draft into the final order by Mr. Holmes, seconded by Mr. Ligor.
Roll call: Mr. Berman-yes, Mr. Holmes- yes, Mr. Szwed-yes, Ms. Weston-yes, Mr. Ligor- yes, Mr. Palumbo-yes. **All in Favor. Chm. Gray abstained. Motion carried. 6-0-1**

Chm. Gray returned to chair the meeting.

2. DEP File Number: SE7-2216
Applicant: Liam Coyne

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Representative: Jeffrey Johnson, Holmes & McGrath

Project Address: 3 Sunny Lane, Gray Gables

Proposed Project: The proposed project includes the demolition, reconstruction and maintenance of the existing single family house, with attached garage, gravel driveway, Title 5 sewage disposal system and all associated demolition, excavation, grading and landscaping. Work will take place within an AE flood zone, within 100 ft. of a wetland resource area and 200 ft. of a riverfront. **Continued from 9/01/2022.**

Raul Lizardi of Holmes & McGrath presented on behalf of Liam Coyne. Mr. Lizardi explained the proposed project and identified all the wetland resource areas associated with the property. The proposed septic system is going to replace what is currently existing, which is a septic tank that is in ground water at elevation 4. The site is at elevation 5 and there is no doubt that the septic system and leaching pit are sitting in ground water. They have proposed to put a nitrogen reduction septic system and a septic system that will be raised for leaching enclosed with a retaining wall. The retaining wall will be between 3 and 5 feet above ground level. The current ground is between elevations 4 ½ -5. The house will be located 20 feet from the front setback. Mr. Lizardi mentioned that this property is not located in the ACEC to Back River or in Natural Heritage. The septic system and retaining walls are proposed to be located against the property line because they have a few existing trees to keep in place. Mr. Lizardi explained the benefit of the proposed nitrogen reduction septic upgrade that will comply with current code. Mr. Lizardi also explained alternative locations of the proposed project would put the structure closer to the buffer zone. It is best to have the septic closer to the corner of the two streets to comply with the setback to the buffer zone. Mr. Lizardi also explained that the septic system is proposed close to the house and still meets the 10 foot setback to the structure. The house will be elevated to 16 ½ ft. anticipating any rising sea level in the future.

Member comment: Mr. Szwed asked about the dewatering as seen on the plan. Mr. Lizardi explained that depending on the time of year, likely either late winter or early spring, the ground water is high. They felt they would need to dewater to install the footings for the columns and also for the septic tank. Part of the septic tank is going to be buried within the existing grade and more than likely will have to deal with some ground water. If the work is done during the summer where ground water is low then they may not have to dewater. It is on the plan in case they need to keep the excavation site dry.

Mr. Holmes asked where they will pump the old septic system to. Mr. Lizardi said the existing septic will be pumped into a sewage truck and hauled away. It is located within the area of the new building and the components themselves will be dug out.

Agent comment: Ms. Fitch clarified that they have filed with the Health Department. Mr. Lizardi explained they will need a waiver from the Health Department because of the 150 foot setback to the wetland and there is no place on this property to meet that. Ms. Fitch read a technical comment form DEP which asked what portion of the proposed project is considered an improvement over the current conditions. Ms. Fitch also asked for calculations of existing degraded riverfront area and disturbed area VS what's proposed which will help the Commission decide whether the project meets the riverfront regulations. Mr. Lizardi said the first improvement is elevating the septic system out of ground water and proposing a denitrifying UV unit. The second major improvement would be eliminating two structures located in the flood plain (the shed and the main house) and building the new structure to be in compliance with

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building codes and current floodplain construction. Ms. Fitch also noted that the house is condemned and no one is living there at the moment. Mr. Lizardi did not have the degraded riverfront calculations. He explained there is a patio in front of the house and a crushed shell driveway over to the side leading up the existing shed. Those are the degraded areas but did not have the square footage of those areas. Mr. Lizardi said they proposed a gravel driveway and the leaching field will be grass.

Mr. Ligor asked about the neighboring retaining wall and Mr. Lizardi explained that is the neighbor's wall holding their septic system.

No public comment.

Motion made to close the public hearing by Mr. Holmes, seconded by Mr. Ligor.

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, 7, 9, 10, 12, 14, 18, 19, 24, 27, 28 and 29. Special conditions pursuant to the Bourne bylaw article 3.7 include: 4, 5, 6, 7 and 9.*

Motion made to move the draft into the final order by Mr. Ligor, seconded by Mr. Holmes.
All in favor. Motion carried. 6-0-0

*Mr. Berman lost wifi and tabled the next item until Mr. Berman's wifi was reconnected to Zoom.
Moved onto the request for COC.*

Request for Certificate of Compliance

1. DEP File Number: SE7-1957
Applicant: Scraggy Neck Recreation Association
Representative: N/A
Project Address: Scraggy Neck Recreation Association, Cataumet
Proposed Project: The Scraggy Neck Recreation Association has petitioned to reconstruct and extend the existing stone revetment on the North side of the Scraggy Neck Causeway within a V flood zone and a Wetland Resource Area at 301 Scraggy Neck Road, Cataumet.

Ms. Fitch made a site visit on October 3, 2022 and recommended issuance of the certificate of compliance.

Motion made to grant the certificate of compliance by Mr. Ligor, seconded by Mr. Holmes.
All in favor. Motion carried. 6-0-0

Resumed back to the tabled notice of intent.

3. DEP File Number: SE7-2208
Applicant: The Long Point Trust
Representative: Brian T. Madden, LEC Environmental
Project Address: 176 Scraggy Neck Road, Cataumet
Proposed Project: Proposed demo of existing dwelling and construction of a new dwelling with associated appurtenances, including a new driveway, attached garage, decks, upgraded septic

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system, utilities, regrading, storm water management, lawn/landscaping, and restoration/mitigation plantings. This project is located in an AE flood zone and within 100 ft. of a wetland resource area.

Mr. Berman reconnected to the Zoom meeting and Chm. Gray recused himself from this review.

Brian Madden of LEC Environmental Consultants presented on behalf of the applicant. He gave an overview and addressed comments and revisions made to the plan since they last met. The house was further reduced by 400 sq. ft. and has shrunk in size since the first submission. The house itself was rotated and shifted slightly to increase the separation to the coastal bank and also to the salt marsh. The current proposed conditions are 76 ft. from the salt marsh and with the rotation they were able to increase the setback from the garage to the finger-like coastal bank to 20 feet at the closest point. They are proposing to restore portions within the limit of work. They have reduced the limit of work in size to the south of the driveway area and instead of extending with subtle regrading, they proposed an 18 inch stone boulder wall. The boulder wall basically is to retain the slope and reduce the amount of alteration to the vegetation to the south. Mr. Madden handed out hard copies of the updated planting plan. They are restoring 4,675 square feet within the buffer zone which overlaps with the existing dwelling and the surrounding lawn and landscaped area. They are revegetating the former house footprint and surrounding area. The project is removing a total of 19 trees and proposed to plant 19 new trees and 124 shrubs. They provided information on the proposed fill, which has been reduced to 172 cubic yards.

Agent comment: Ms. Fitch added that the Commisison requested to put in a 50 ft. buffer from the toe and top of bank and requested that the new plans identify each tree proposed to be removed. She was happy to see a reduced number of trees being removed.

Member comment: Mr. Ligor asked why they are cutting the 19 trees and replanting, and could they leave the trees where they are instead of regrading. Mr. Madden explained the tree line is where they are encroaching into the buffer zone in that location to the coastal bank. Mr. Ligor asked if they have done a wildlife study for animals that use the property as their habitat. Mr. Madden said they could provide a wildlife habitat study. The total upland acreage from the tree line is 6.9 acres total. The square footage of the new house is 2,735 with the garage. The new tree saplings on the planting plan will be a 4-6 ft. minimum.

Mr. Berman was pleased with the way the applicant addressed all the concerns from the last meeting and he had no further questions at this time.

Mr. Madden requested a two week continuance to address a letter received by the abutter's attorney.

Glenn Wood, counsel representing the applicant, addressed the wildlife habitat comments and said normally a study would be requested on a specific species, he did not think this project has any adverse effect on a wildlife habitat.

Scott Horsley, a water resource consultant, reviewed the coastal banks. He said originally there were two and he suggested to add the third finger like coastal bank. He further explained that it should be identified as a coastal bank but doesn't agree with them being called a second and third. He said it is either a coastal bank or it's not. The current submission calls it a third coastal bank

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which is better than no coastal bank but the point being that it is a coastal bank and there is jurisdiction, setbacks and performance standards. The proposed development is within the buffer zone and also below the coastal bank and in most cases they are concerned about a project being within a certain distance from the top of coastal bank. As the CZM guidance points out it can create instability of the bank. He further concluded that this project raises concern over stability because the project is located at the toe of the bank in a very susceptible part of the property and he believes the Commission should require submittals on geotechnical stability of coastal bank.

Attorney Elizabeth Pyle submitted a letter the day prior for the Commission's review. The letter addressed concerns over the project being so close not only to the third coastal bank but also within 50 feet from the second coastal bank. She believes the project doesn't comply with the bylaw section 3.7.4 no habitable dwelling or accessories thereto or roadway/driveway shall be allowed any closer than 50 feet from the boundary of a wetland resource area and that includes a coastal bank unless permitted under the bylaw. Ms. Pyle said where there is competing legal opinions she suggested this be brought to Town Counsel to discuss what is the intent and purpose of the bylaw and as she interpreted you cannot have a house within 50 feet of a coastal bank.

Don Bracken of Bracken Engineering, Inc. addressed Mr. Horsley's comment about the impacts of the coastal bank from the construction of the house. As they have mentioned before the house is going atop a crawl space foundation so the excavation itself is only going to be about 3 ½ feet deep below grade. He said assuming everyone has been out to the site to see where these coastal banks are that these are not steep banks and they barely qualify under the policy as a coastal bank. He further explained they are a 10:1 maybe a 9:1 slope. In his professional opinion as an engineer they will not have any geotechnical impact on the coastal bank or in any way will the excavation have impact of that coastal bank.

Public comment: Susan Malcom, an abutter, commented that they do have a pair of breeding Red Tail hawks that fledged two babies this spring. She said they are existing and are documented. Ms. Malcom also had concerns about cement trucks and the narrowness of the roads- are there protocols on place to ensure a truck will not fall into the salt marsh. Mr. Bracken said there is a house further down the road built about 10 to 15 years ago and they probably had the same vehicles on the road then. He did not know if there is a history of trucks falling into the marsh but he would probably handle that at a pre-construction meeting with the contractors and staff. They can discuss at that time if there is anything that needs to be done to further shore up the road.

Member comment: Mr. Ligor asked Maryfrances Galligan, an abutter, if the town plows Scraggy Neck Road. She said they do not plow. The road is what they call a shared driveway and she said there are about 5 homes with no plowing. Ms. Galligan also noted that many work trucks have been going down the road all summer long to do work on another house, and there is damaged to the road and tree branches were cut so trucks could pass by leaving tons of debris. She has stopped a couple of the truck drivers and they did not want their truck getting scratched, she said they just start doing their own vista pruning right up against the marsh. Ms. Galligan also had concerns about the south side tree clearing on the plating plan and felt it unnecessary to clear the trees and re-plant. Mr. Bracken said no additional clearing will be done just what needs to be cleared around where the proposed house will be. Mr. Bracken also noted that the closest limit of work will be 200 feet from the abutter's property line, about 70 feet of marsh and 130 feet of woodland buffer between the neighbors on the south side. **Continued to 10.20.22.**

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Discussion/Business

Approve minutes for August 18, 2022 & September 1, 2022:

Motion made by Mr. Ligor, seconded by Mr. Holmes to approve the August 18, 2022 minutes with corrections. **All in favor. Motion carried. 6-0-0**

Motion made by Mr. Ligor, seconded by Mr. Holmes to approve the September 1, 2022 minutes. **All in favor. Paul Szwed abstained. Motion carried. 6-1-0**

Report of the Conservation agent: *The Commission discussed the internet buffering during the hybrid meeting. They want to have the Wi-Fi strength in meeting room #1 checked out by the IT Department.*

Discussion and vote on amendments to the BWR 1.16:

The Commission had an extended discussion and drafted revisions of the language of the Bourne Wetland Regulations. There is an added definition recommended by the Shore and Harbor Committee for Marina Districts. The Chairman drafted the definition and it was reviewed by the Shore and Harbor Committee. The Commission made further edits to the regulations covering float stops, water depth, and setbacks to the salt marsh and eel grass. Public input was heard. Chm. Gray recommended to take a vote and bring it back at the next meeting for further review.

Mr. Szwed made a Motion to allow the agent to make the edits discussed, seconded by Mr. Palumbo. **All in favor. Motion carried. 6-0-0**

II. Adjournment.

Mr. Palumbo made a Motion to adjourn, seconded by Mr. Szwed.

All in favor. Motion carried. 6-0-0

Minutes typed by: Amalia Amado- Secretary II

Audio recorded by: Stephanie Fitch- Conservation Agent

Recorded by: Zoom