

Town of Bourne
Conservation Commission
Meeting Minutes
10.20.2022

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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 20, 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, Chip Coen, Marcy Jackson, Mary Ellen Murphy, Steven Schuster, Suanne Santos, N. Douglas Schneider, Karen MacLachlan

Present by remote access: Peter Holmes, Chip Coen and John York

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.**
2. 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 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. **Continued to 11/03/2022.**

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Request for Determination

1. File Number: CC22-37

Applicant: Jill Doering/ Doering Kennels, Inc.

Representative: Cape & Islands Engineering, Inc.

Project Address: 24 Pasture Road, Cataumet

Proposed Project: Proposes to construct and maintain an in-ground swimming pool with patio, pool fencing and proposed pool draw-down leaching pit. This project is within an AE flood zone and within 100 ft. of a wetland resource area.

Doug Schneider of Cape & Islands Engineering, Inc. represented the project on behalf of the applicants. He explained the proposed project which consists of a pool and fence within the flood zone, and identified the resource areas. The house was rebuilt due to a fire 10 years ago with a previous order of conditions and was issued a certificate of compliance in May 2020. The proposed area of the pool is lawn which is in the flood zone and within 100 ft. of a fragmented coastal bank. The proposed pool is located 50 ft. from the coastal bank that is actually on top of a retaining wall and the house is actually set way back from the ocean separated by Pasture Road.

Agent comment: Ms. Fitch noted as Mr. Schneider said the proposed project is about 48 ft. from the fragmented coastal bank. The coastal bank is a retaining wall primarily with some landscaped bank in front of the house. The house is actually closer to the bank than the proposed pool and there is no structural creep in that sense. Ms. Fitch asked how the contractors will access the back yard. Mr. Schneider said along the NE side of the house which is by the driveway and garage.

No public comment.

Motion made by Mr. Palumbo for a Negative Two Determination, seconded by Mr. Holmes.

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

All in favor. **Motion carried. 7-0-0**

2. File Number: CC22-38

Applicant: Calamar

Representative: John Farkas, Project Manager.

Project Address: 13 Kendall Rae Place, Buzzards Bay

Proposed Project: Proposes to complete the site work previously permitted by the Order of Conditions for DEP file number SE7-1984. This project is in an AE flood zone.

Suanne Santos from Insite Engineering represented on behalf of the applicant. Ms. Santos gave a brief history on the project. In 2017 an order of conditions was issued to build in the flood zone. Ms. Santos further explained that the order of conditions was only recently recorded at the registry of deeds and the project is in various stages of completion. In the request for determination they have submitted a copy of the foundation as-built plan to show that it is now above the flood elevation and also submitted a construction schedule. Ms. Santos identified the work that remains in the flood zone which is the storm water, all of the landscaping and some of the utility connections. Ms. Santos concluded with the request to use the same plan issued by the Commission for the order of conditions SE7-1984.

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Agent comment: Ms. Fitch said the plans they submitted match the plan of record on the order of conditions. She was happy to see that the top of foundation was 17.9 feet which gives about a foot of clearance above the AE 16 and is compliant with the order of conditions and building code.

Public comment: The abutter Karen MacLachlan stated that 50% of her back perimeter property line is being engulfed by the Calamar property. Ms. MacLachlan would like to see more trees on the plan along with noise and light mitigation on that perimeter. She would also like to see better water retention due to flooding on her property. She mentioned the planting plan previously was approved so that the evergreens are to be planted on the lower level and the deciduous on the upper level. The construction has been ongoing for four years. There is a large amount of dust that comes onto her property and she is looking forward to having the trees replanted. Ms. MacLachlan's second concern was the follow-up promise of the doubled tiered wall that was supposed to have a simulated rock appearance but is currently a big concrete eyesore. She concluded that they have been waiting four years for trees to go back up and they have endured many disadvantages of construction as an abutter to this property.

Member comment: Mr. Ligor asked how many trees Ms. MacLachlin would like to see in-between the two properties. Ms. MacLachlin would like to see as many trees possible on two of the perimeters that give the most privacy.

Ms. Santos reviewed the original planting plan. Ms. Santos said that the planting would be done in spring time. Ms. MacLachlin stated that the 10 ft. privacy fence for dust control was never properly in place and if they could address that. Ms. Santos said that with the RDA they will be able to move forward with the site work. She also addressed connecting all of the drainage to the underground system to stabilize the site. Ms. Santos said by utilizing the system that's already there you will see less flooding. They plan on fixing the soil washout after the drainage is connected. Ms. Santos noted they will be adding more plantings as well. She will look into the Planning Board's decision and does not see a problem switching the evergreens and deciduous trees per the request of the abutter.

Chm. Gray said they are voting to reinstate the order of conditions which governed the change in elevations in the flood zone, which the representative has substantially done. Chm. Gray explained that because the original order was not recorded and had lapsed, work essentially cannot occur in the flood zone. The easiest way to get this back in compliance is through a Determination of Applicability to reinstate the order of conditions. He further explained that the concerns are well received but they are not within the Commission's purview. The planting plan did not have a stipulation in the order and does not want to run afoul against the Planning Board's permit. Chm. Gray said that the issue of flooding onto adjacent properties and Perry Avenue is within their purview. He explained if the runoff continues it could be considered a violation of the order of conditions. There are better designed erosion controls that can be implemented before the permanent structures. He suggested that should be addressed immediately by the site manager and would give some relief to the abutters.

Motion made for a Negative Two Determination by Mr. Ligor and seconded by Ms. Weston.
Roll call: Mr. Ligor-yes, Ms. Weston-yes, Mr. Berman-yes, Mr. Szwed-yes, Mr. Palumbo-yes, Mr. Holmes-yes and Chm. Gray-yes.
All in favor. **Motion carried. 7-0-0**

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Notice of Intent

1. DEP File Number: SE7-2219

Applicant: Marcia Jackson

Representative: Holmes & McGrath

Project Address: 20 & 21 Starboard Road, Mashnee Island

Proposed Project: The project is to raze two (2) existing dwellings, construct new single-family dwelling garage, in-ground Swimming pool and Title 5 sewage disposal system. This project is located in an AE flood zone, V Flood zone and within 100 ft. of a wetland resource area.

Doug Schneider from Holmes & McGrath represented on behalf of the applicant. They proposed to demo (2) existing 60 year old cottages (2) bedrooms each and construct one new home with a garage on the combined property. Mr. Schneider identified the resource areas to the project. The proposed new house will be elevated above the velocity flood zone. The new house will be two stories with (4) bedrooms. There will be no increase in septic design flow. The proposed construction will include a screened-in porch with a deck and terrace. The proposed pool area which is located in the front, is the closet to the top of coastal bank and is no closer than the existing house which is 50 ft. from the resource area. The garage and septic system will be on the south side and the driveway will now be coming off of Mooring Road. Mr. Schneider concluded that the project is an improvement to the site overall. He briefly summarized: The replacement of non-conforming cottages in the flood zone and replacing with one FEMA compliant home. The replacement of two septic systems. They will be pulling back the patio from the bank a little bit and restoring the stairs to the beach without impacting the coastal bank as much as possible. There is a limit of work around the perimeter and on top of the coastal bank. There will also be a pool fence installed. Drywells will be installed down lower to pick up runoff and regrading on the Mooring street side. There are 10 trees to be removed and replanting 5 red cedars along Starboard Road.

Agent comment: Ms. Fitch stated that she already reached out to Mr. Schneider and Mr. Johnson regarding her concern with the delineations of the coastal bank as shown. She further explained back in 2016 there was another order of conditions issued. She said the 2016 plan showed the coastal dune across the entire bottom of the coastal bank and compared to the new plan which showed it ending half way across the property. Per the coastal manual where there's a project that may directly or indirectly alter a resource area. In this case a majority is beyond the 50 ft. buffer but since there is some work occurring within the resource area. Applicants should submit plans with detailed topography; cross sections depicting the dune shape, slope, and volume, the dune boundaries; subsurface sediment analysis and profiling of the landform since the edge is difficult to determine due to vegetation and proximity to the bank. Ms. Fitch agrees with the engineer that the delineation between dune and bank will not change the 100' buffer in relation to the house, but it is important to get the delineations correct since they are proposing work in the resource area and if another engineer comes back in 2 years with another project. She explained further the delineations are valid the entire length of the permit when an order is issued. Ms. Fitch also stated that dunes may change over time but after her site visit with Mr. Berman, she doesn't believe this dune will change much because there isn't new sand coming into the resource area and that it is mainly a rocky inter tidal zone at this point.

Member Comment: Chm. Gray asked Mr. Berman if he saw any significant discrepancies from what he saw on the plan, in terms of size of the dune or configuration.

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Mr. Berman said when he looked at the site he saw why it was delineated in that location. He felt that possibly the reason they stopped the edge of dune right there was due to vegetation because there are some cedars starting there. He did not see that much change on the superficial sediments on the top of that landform. Mr. Berman said there are a few possibilities. It might be coastal bank with a perched dune on top of it or it could be a recently eroded coastal dune, so it is steeper than usual. Mr. Berman said if they were going to really determine what it is, he recommended they do subsurface borings.

Chm. Gray said the reason it is important they get this correct now is because the plan they accept is good for three years. If someone were to propose additional work in that area, and it is dune but not shown as dune on the plan, then they will not have the correct resource area. Chm. Gray further emphasized that the plan that is written into the order governs that area for that three year period; even if major discrepancies in the boundaries of the resource areas come to light, after the order was set you cannot change them until the order expires. That's what they are trying to avoid here.

They further discussed the landscape design and will come back to the next hearing with more specifics on handling the invasive species. They also proposed to replace the stair in kind with minimal work and meet the best imprint practices, keeping as close to the bank as possible. The project overall is an improvement to the property by upgrading to a Title 5 septic system and complying the new structure with the FEMA flood zone regulations. They will correct the dune delineations and add more detail to the landscape design.

Public comment: The abutter's at 36 Starboard stated they are in support of the project.

This project was continued to the next hearing November 3rd 2022.

Discussion/Business

Discussion and possible vote on unofficial kayak launch at Monks Park

Ms. Fitch shared past and current photos with the Commission from an area at Monks Park parking lot, where there has been trouble with an unofficial kayak launch. It appeared there is always someone parking there. Ms. Fitch explained they are working on storm water improvement. The runoff is tearing a path through the peat and has disintegrated the marsh over time and is not doing great. They have attempted to put in some erosion controls but part of it has been to try to get the public to use the coastal access way, which has been set up in the parking lot further down. Ms. Fitch had a sign made that was hit twice by vehicles and was now moved to a location that does not make sense and needs to come down. Chm. Gray asked Ms. Fitch if she has spoken with the DPW to maybe use boulders to try and stop people from dragging their kayaks through the salt marsh and use the designated coastal access. Ms. Fitch presented to the Commission that she has at least \$913.00 available to use for this issue at Monks Park and asked what they would like to see. Chm. Gray said he would like to see what the DPW can create using big boulders to stop people from parking in the area and if people continue to park there the vegetation will never regrow. Chm. Gray said people either park there to launch a kayak or they use it to cross through the marsh to walk around the little island.

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Motion made by Mr. Ligor for Ms. Fitch to resolve the inappropriate access at Monks Park and seconded by Mr. Palumbo.

Roll call: Mr. Ligor-yes, Ms. Weston-yes, Mr. Berman-yes, Mr. Szwed-yes, Mr. Palumbo-yes, Mr. Holmes-yes and Chm. Gray-yes.
All in favor. **Motion carried. 7-0-0**

Mr. Ligor excused himself from the meeting.

Discussion and possible vote on amendments to the BWR 1.16

The Commission started the discussion and reviewed eliminating the eel grass definition. The members stated that eel grass can be defined by the Department of Marine Fisheries. The next definition discussed was off season storage eliminating "off season" and kept storage. The Commission clarified the definition of adjoining land areas and discussed the intent of the setback regulations from the resource areas. The Commission moved on to page 20 and discussed the minimum required water depths for Float stops and where that would be feasible or not. The Commission added a minimum of 18 inches for all piers and maintain 30 inches in areas of land containing shellfish. Ms. Fitch will discuss the dinghy dock definition with the DNR director. The definition encourages the use of a smaller boat to get to a larger boat but it is not something they can enforce. The dinghy dock definition will be considered to be taken out. On page 22, the Commission briefly weighed in on DMF's guidance on eel grass setbacks. The Commission questioned whether there may be more influx from year to year, recommending to leave it up to the engineers to design a dock that is acceptable rather than a hard setback. Mr. Berman would like to see some language in the regulations about depth and horizontal offset with the guidance of DMF and DEP, rather than leaving it up to be caught by another department.

Public comment: John York submitted written comments in regards to classifying access and usage of the dinghy docks in the definition.

The discussion of BWR 1.16 was continued to the next hearing November 3rd 2022.

II. Adjournment.

Roll call: Ms. Weston-yes, Mr. Berman-yes, Mr. Szwed-yes, Mr. Palumbo-yes, Mr. Holmes-yes and Chm. Gray-yes.
All in favor. **Motion carried. 6-0-0**

Minutes typed by: Amalia Amado- Secretary II
Audio recorded & edited by: Stephanie Fitch- Conservation Agent
Recorded by Zoom