

Town of Bourne
Conservation Commission
Meeting Minutes
11.03.2022

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I. Call to Order 6:30 P.M.

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 November 3rd, 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, Peter Holmes and Paul Szwed

Excused members: Susan Weston

Others in attendance: Stephanie Fitch, Zachary Basinski, Joseph Povoas, Chip Coen, Mike Ball, John Carroll and Mark Dibb.

Present by remote access: Mr. Ligor, Matthew Watsky

Continued Hearings:

1. DEP File Number: SE7-2219, Applicant: Marcia Jackson
Representative: Holmes & McGrath
Project Address: 20 & 21 Starboard Road, Mashnee Island
Continued to 11/17/2022.
2. DEP File Number: SE7-2217, Applicant: Richard W. Selby
Representative: Coastal Engineering Co., Inc.
Project Address: 134 Wings Neck Road, Pocasset
Proposed Project: Dune restoration and beach nourishment. Located within a V flood zone and wetland resource areas. **Continued to 1/19/2023.**
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: Demo of the 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

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restoration/mitigation plantings. This project is located in an AE flood zone and within 100 ft. of a wetland resource area. **Continued to 11/17/2022.**

4. DEP File Number: SE7-2053, Applicant: James Diede
Representative: Bracken Engineering, Inc.
Project Address: 60 Lewis Point, Buzzards Bay
Proposed Project: Amend the existing Order of Conditions to include a beach access path to Buttermilk Bay. Located in an AE flood zone and within 100 ft. of a wetland resource area.
Continued to 11/17/2022.
5. DEP File Number: SE7-2136, Applicant: Brian & Martha Gegan
Representative: J.E. Landers Cauley, P.E.
Project Address: 132 Emmons Road, Monument Beach
Proposed Project: Construction of a new garage; construct apartment above new garage and install new Title V System. The project is located within 100 ft. of a wetland resource area.
Continued to 11/17/2022.

Notice of Intent:

1. Applicant: Michael & Michelle Keyes DEP File Number: SE7-2221
Representative: Marsh Matters Environmental
Project Address: 1 Gaffield Ave, Monument Beach
Proposed Project: To install an in-ground pool and patio with retaining wall (reconfiguration of previously approved septic system components required) within an AE flood zone.

Mike Ball from Marsh Matters Environmental represented on behalf of the applicant. Mr. Ball explained that Michael & Michelle Keyes were before the Commission and were issued an order of conditions in April for a garage construction project. The project is near completion where they are close to submitting a certificate of compliance. They have decided in between that time to go forward with a pool proposal. Mr. Ball felt it to be too much additional work for an amended order of conditions, and he filed a new notice of intent. He explained the proposed project and identified the resource areas. He also explained that the engineered septic plans were revised by Pete McEntee to accommodate the pool. They have also modified the plan to add in a pool drain. The project area is 3,000 sq. ft. and (2) oak trees near the house need to be removed, he offered to show photographs of the site.

Agent comment: Ms. Fitch stated that there are no performance standards since this is in the flood zone only. She said yet it is an increase in impervious surface, and since they are removing (2) trees she would like to see some mitigation planting to help with flood water storage.

Member comment: Mr. Holmes asked if the retaining wall will be concrete. Mr. Ball said it will be more of a block wall.

No public comment.

Motion made by Mr. Holmes to close the public hearing and seconded by Mr. Ligor.
Roll call: Mr. Holmes-yes, Mr. Ligor- yes, Mr. Szwed-yes, Mr. Berman-yes, Mr. Palumbo-yes, Chm. Gray-yes. All in favor. **Motion carried. 6-0-0**

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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, 10, 12, 15, 27 and 28.

Special conditions pursuant to the Bourne bylaw article 3.7 include: 5, 6, and 7.

Motion made by Mr. Holmes to move the draft into the final Order and seconded by Mr. Ligor.
Roll call: Mr. Holmes- yes, Mr. Ligor- yes, Mr. Szwed- yes, Mr. Berman- yes, Mr. Palumbo- yes, Chm. Gray-yes. All in favor. **Motion carried. 6-0-0**

Chm. Gray recused himself from this review.

2. Applicant: Keith Galizio DEP File Number: SE7-2220
Representative: Bracken Engineering, Inc.
Project Address: 140 Main Street, Buzzards Bay
Proposed Project: To raze/demo existing retail building and reconstruct a proposed flood compliant mixed-use retail/residential structure. Work will take place within an AE flood zone.

Zac Basinski, P.E. represented on behalf of the applicant Keith Galizio. Mr. Basinski explained that the location is an existing developed commercial lot, and the former Asacks shoe store. They proposed to raze the existing building for mixed use. Mr. Basinski explained the resource area is the AE flood zone only. The first floor will consist of a commercial development and comply with FEMA flood code. The residential component will be on the next two floors. He also explained they will be installing a new storm water management system to mitigate the increase recharge on site and mitigate roof runoff. There is one minor modification on the plan to the street scape out in front and they added some additional parking along Main Street. The proposed project will include an increase in trees, and they have met with the Design Review Committee for proposed treescapes around the property.

Agent comment: Ms. Fitch said the new building meets the FEMA flood code and storm water standards. Ms. Fitch said it's a great revitalization of the down town. No concerns with the proposed project.

Member comment: Mr. Berman asked if there are any existing storm water concerns, or any portions of the road that tends to flood. Mr. Basinski said there are the typical inlet catch basins but nothing that sits there prolonged.

No public comment.

Motion made by Mr. Holmes to close the hearing and seconded by Mr. Szwed.
Roll call: Mr. Holmes-yes, Mr. Ligor- yes, Mr. Szwed-yes, Mr. Berman-yes, Mr. Palumbo-yes, Chm. Gray-yes. All in favor. **Motion carried. 6-0-0**

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, 10, 12, 15, 19, 27, 28 and 29.

Special conditions pursuant to the Bourne bylaw article 3.7 include: 5, 6, and 7.

Motion made by Mr. Holmes to move the draft into the final Order and seconded by Mr. Ligor.

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

Chm. Gray returned to chair.

3. Applicant: Cape Club Building, Inc. DEP File Number: SE7-2172
Representative: Cape & Islands Engineering, Inc.
Project Address: 96 Megansett Road, Cataumet
Proposed Project: Construction, licensing and maintenance of an access ramp leading to a walkway, pier, ramp and float in the waters of Squeteague Harbor.
Continued from 09/15/2022.

Mark Dibb, P.E. from Cape & Islands Engineering represented along with Matthew Watsky Esq., counsel for the applicant. Mr. Dibb said they are back tonight for the pier proposal and asked the chairman if the Commission would first like an update on the house filing SE7-2171 for the 96 Megansett Road property. Once the order of conditions was issued, they appealed the decision and by way of the appeal it created a State action. If it were granted a superseding order of conditions it would need to go through MEPA because it met a threshold of disturbance on a coastal bank. They filed an environmental impact report and per comments from MEPA went through some site changes. They received a secretary certificate that stated they complied with MEPA on October 31st, 2022.

Mr. Dibb gave a brief description of the site plan changes. They moved the tennis court to the opposite side along the roadway and much further away from the coastal bank. The entire house, pool and patio were moved off the coastal bank, towards where the tennis court was originally proposed. There is minor regrading of the bank with 5:1 mitigation and expanding the vegetative buffer between the development and resource areas. An additional component was a proposed platform with no vertical components (deck), located where there was an existing house by the water. The platform will be about half the foot print of the existing structure and will be the starting point of the pier. All the revisions have been met by MEPA criteria and the project is now back with DEP waiting approval for the superseding order of conditions, which will be based on the revised plans completed by the MEPA review. Mr. Dibb gave an update on the proposed revisions to the pier based on the BWR 1.16 July 21, 2022 revised regulations. They feel they meet the criteria to allow the pier to be in the velocity zone. They have relocated the pier about 100 ft. to the NW and further up into the main body of water, to meet the water depth requirements. He also explained based on the shellfish study it is not a significant habitat for shellfish. Mr. Dibb explained the design of the pier and dimensional requirements. The one item requirement they do not meet is the distance to moorings, being 100 ft. Mr. Dibb said they measure at 72.4 ft. and that a dock was previously licensed years ago to this property and they have removed any dredging from the project. He also noted that this pier was included on the MEPA process and reviewed at the State level. Matthew Watsky spoke on the revised location of the float. He stated that it is shifted to a better location and the water body is wider than where the dock was proposed previously and meets the dimensional requirements. He also said on the proximity to moorings, that there are no other moorings in the area licensed by DEP which means that any mooring out there is subject to an annual permit issued by the Harbor Master, and that's a matter that any mooring that gets permitted in the upcoming seasons could have plenty of room to relocate by 28 ft. to meet the 100 ft. requirement.

Agent comment: Ms. Fitch said she previously discussed the 72 ft. with Mr. Dibb and reviewed how there really is no language for variances or waivers in the regulations and said if they can't meet the 100 ft. setback it cannot be permitted based on the regulations. Secondly, she defined the

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confusion with water depth vs. clearance definition, and that there is 18" water depth but not 18" clearance required by the regulations. Ms. Fitch said that Mr. Dibb can explain how the bottom of the float sits. Mr. Watsky followed up on the pending proposed amendments which has a provision for float stops and that Mr. Dibb has contemplated adding float stops, so that the float never actually sits completely on the bottom. Mr. Dibb explained that he will incorporate float stops that would keep the bottom of the float never any closer than 18".

Chm. Gray asked about the soundings in the vicinity of the float that are 1.5 depth, 1.7 depth and is there any reason they did not extend out Westerly of the float position where the depths are 2.1-2.3. Mr. Dibb said it's a matter of all different calculations and they are as far as they can go. A discussion of the project statistics continued between the members.

Chm. Gray said they will not close on this tonight, and that water depth is an issue. He further asked them to consider if there is a way to get the float positioned over deeper water, without running into conflicts with other provisions of the bylaw. Chm. Gray liked the fact that they considered the float stops because that could solve the problem in the present location, but if they could get some deeper water without running into any other provisional conflicts.

Member comment: Mr. Berman said the pier starts at a fairly narrow portion of the river and it ends at the widest portion. He explained you will have a very different 1/5 difference at the end of the pier than at the beginning of the pier. Where do they judge the 1/5 from? Mr. Dibb said there were a couple design criteria's, one was to tie the pier into the platform structure but it is not a requirement by any means. He said there is an existing path and small remainder of beach on that rocky intertidal area. They were trying to stay out of that area and he discussed other possible repositions. Mr. Watsky said where they have that location coming to the land it is already a disturbed area. They focused on having the pier start there, rather than having a new clearing further to the North. They could certainly extend it out further into the water but it would create a new path and alteration. The Commission members discussed and requested revisions along with review of the shellfish reports.

Public comment:

1. John Carroll from Pocasset, kayaks in the area down towards Amrita. It is his understanding he is free to paddle under the pier and he asked if there is a clearance regulation. Chm. Gray said it looks like it will vary and the furthest point, at mean high water the clearance appears to be 5ft.
2. John York questioned why the review of the pier was included in the review by MEPA, which is a different filing than the decision on the order of the house. His question was did the MEPA review include all comments that were submitted for the record to the Bourne Conservation Commission regarding the pier. Mr. Dibb said they did not provide any Town of Bourne comments during the initial discussion of the pier to MEPA. Mr. Dibb said it was an open hearing at the time and Ms. Fitch did include a comment letter for the house portion. The MEPA review for the pier was based on the different requirements for the departments that reviewed at the time. The two filings received comments from CZM and DEP and he can provide a copy of the certificate. Mr. York also said that moorings are not transferable and whatever mooring was permitted to this property no longer exists. He had a thorough question about the determination of the length of the pier and distance regulation from the channel and that all of those requirements should be considered. Mr. York reads the definition of a salt pond and feels that Squeteague Harbor meets the definition. He further read 310 CMR 10.33. Land Under Salt Ponds and would like that regulation considered.

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Member comment: Mr. Berman said that he would be surprised if DEP classified it as a salt pond because it is classified as a River. If it was classified as a salt pond they would need DEP to weigh in. Mr. Watsky will respond to that comment at the next meeting.

This public hearing continued to December 1st, 2022.

Request for Certificate of Compliance

1. Application: Louis Costa DEP File Number: SE7-2113
Representative: JC Engineering, Inc.
Project Address: 25 Main Street, Buzzards Bay
Proposed Project: Proposed addition to an existing commercial building in the AE flood zone.

Ms. Fitch made a site visit on November 2nd and recommends the issuance of the COC. Motion made to issue the certificate of compliance by Mr. Holmes and seconded by Mr. Palumbo.

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

Discussion/Business

Enforcement – 134 Wings Neck Road.

Ms. Fitch gave an update on 134 Wings Neck Road. She said in 2018 the Commission issued an order of conditions for the property owner to manage invasive phragmites. The salt marsh was divided into two sides, East and West of a walkway to a beach. This property also came before the Commission a few weeks ago looking for an order of conditions to nourish a dune, which has been continued to January 19th 2023. The reason for the site visit was based on the newer application. Ms. Fitch was joined by the circuit rider from DEP, CZM and the engineer/representative. The visit was to discuss the delineation of the salt marsh over the dune. DEP made a note and mainly focused in some change of elevation of the walkway out to the beach and you can see a major discrepancy between the elevations of the salt marsh from the West side to the East side. In October 2021 the previous Conservation agent did a follow up site visit to extend their order of conditions. He noticed they were mowing the wrong side of the property. The Commission gave permission to mow the East side and instead he was mowing the West side. Turf grass had crept toward the salt marsh and salt marsh had been converted to turf grass and now looking at it, there is a question as to whether fill was brought in. As the ground looks more elevated compared to former photos, which now matches the elevation of the walkway, instead of the Eastern side of the salt marsh. DEP encouraged that they go forward with enforcement while the order is still valid and ask that the property owner submit a restoration plan. They need to show how they will pull up the turf grass and show how fill has been added and removed. Additionally in the order from 2018 they had a 4 ft. wide path out to the coastal beach and it now measures between 7 ½ ft. – 9 ½ ft. and it's a cleared grass walkway. Ms. Fitch shared photos comparing from 2018-2021. The owner has responded to some of the agents concerns in 2021 and they have stopped mowing the Western side. The turf grass is still growing and they need to take the restoration plan a step further and return the salt marsh vegetation. The homeowner has been very communicative and Ms. Fitch encouraged the enforcement order to

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make it very clear what the Commission is looking for to close out their order of conditions and receive the COC. Chm. Gray recommended using the plan of record from 2018 that had a defined salt marsh boundary and reset all the original stakes that represent the flagging points depicted on the 2018 plan. That would be the exact delineation of salt marsh that the Commission reviewed in 2018. There would be no guess work with the restoration plan using the original approved plan, and require borings and permanent markers. The restoration order needs to be filed in December before the order expires in January 2023.

Motion made to move the enforcement order by Mr. Ligor and seconded by Mr. Berman.

Roll call: Mr. Holmes- yes, Mr. Ligor- yes, Mr. Szwed- yes, Mr. Berman- yes, Mr. Palumbo- yes, Chm. Gray-yes. All in favor. **Motion carried to ratify the vote. 6-0-0**

Mr. Ligor excused himself from the meeting via Zoom.

Discussion on amendments to the BWR 1.16.

The Commission continued the discussion on eelgrass. Ms. Fitch read definitions and recommendations by DMF and the DEP on eelgrass beds:

DMF: Notwithstanding the provisions of BWR 1.16(1)(a) through (g), new piers must maintain a 25' setback from the terminal float and any associated anchors or piles to the edge of existing or historically mapped eelgrass (*Zostera marina*).

DEP: Avoidance is especially critical over existing or historically present eelgrass beds and in Land Containing Shellfish. When there is no alternative to building over current or historical eelgrass beds, floats (or if no floats, the seaward end of the pier) should be at least four (4) feet from the bottom at low tide.

Ms. Fitch said the setback requirements are based on the negative impacts of shading. Ms. Fitch has researched other Town's regulations on Cape Cod and they have a similar setback to the current 50 ft. setback of the Bourne Wetland Regulations. The proposed language is 25 ft. or up to 25 ft. and if they go forward with that setback, they would want to capture the intent of the Bourne Wetland Regulations and the intent of DMF. Chm. Gray recommended the language to include "up to" and that 25 ft. is from the terminal float. DMF will provide feedback when the projects are submitted.

Public comment: 1. Chip Coen, resident of Cataumet is interested in pursuing a pier. He has done an extended amount of research on eelgrass. He presented data on eelgrass in quantities significant to shellfish habitat. He read there is a percentage analysis to consider of each site, and if eelgrass is declining, there are factors such as: water level rising, temperature changes, or if people are anchoring there as temporary visitors. Eelgrass identified in categories by density: dense, sparse and questionable. Mr. Coen identified other research he did in the area and further discussed water depth in Land Containing shellfish. Mr. Coen commented on the impact of eelgrass and how important it is, he talked about the septic system impact and looked into other factors that kill eelgrass meadows. He has also looked into low impact shading. 2. Jamy B. Madeja, Esq. said the most protective thing to do in the context of small residential (<600 sq. ft.) docks, would be to provide more protection because people aren't mucking through from the water's edge. There is no regulatory control over people walking in and out of the water and by providing an access point you are minimizing the harm to any present eelgrass. She said Land Under the Ocean is what the Wetlands Protection Act is trying to protect. She emphasized on having the definition of eelgrass beds clarified in the regulations. 3. John York expressed his concern of crop scour regarding shellfish and a better definition of eelgrass bed.

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A general discussion continued regarding the preservation of eelgrass. Continued to the next hearing.

Vote to excuse absent members

Motion made by Mr. Palumbo to excuse absent members and seconded by Mr. Holmes.
All in favor. **Motion carried. 5-0-0**

Minutes differed to the next hearing.

Motion made to adjourn by Mr. Palumbo and seconded by Mr. Holmes.
All in favor. **Motion carried. 5-0-0**

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