



Town of Barnstable Conservation Commission

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MINUTES – CONSERVATION COMMISSION HEARING

DATE: November 12, 2024 @ 6:30 PM

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3. Applicants, their representatives and individuals required or entitled to appear before the Conservation Commission may appear remotely and are not permitted to be physically present at the meeting, and may participate through the link or telephone number provided above. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to Darcy.Karle@town.barnstable.ma.us, so that they may be displayed for remote public access viewing.

Public comment is also welcome by emailing Darcy.Karle@town.barnstable.ma.us. Comments should be submitted at least 8hrs prior to the hearing.

The meeting was called to order at 6:30 p.m. by Chair F. P. (Tom) Lee. Also, in attendance were: Vice-Chair Louise Foster, Clerk Angela Tangney, Commissioners Hearn, and Abodeely. Commissioner Sampou arrived at 6:38 p.m.

I. REQUESTS FOR DETERMINATION

- A. Town of Barnstable – Department of Public Works.** Demolish and replace concrete slab and walkway across front and sides of building in existing footprint to provide ADA accessibility at 857 Craigville Beach Road, Centerville as shown on Assessor's Map 225 Parcel 006. **DA-24056**

The applicant was represented by Mark Marinaccio of Barnstable Department of Public Works.

Issues discussed:

- Any vegetation disturbed will be replaced in kind.
- There is no vegetation being removed.

Public comment: None

A motion was made to approve the project as a negative determination.

Seconded.

Aye – Abodeely, Foster, Hearn, Lee, Tangney

Nay – none

Sampou – abstain

II. NOTICES OF INTENT

- A. Laura Beth Trust, Trustee, 364 Wianno Avenue Realty Trust and Stuart R. Levey, Trustee, 508 Wianno Avenue Nominee Trust.** Vegetation management to include removal of invasive, aggressive, and non-native plant species (including phragmites) at 271 East Bay Road, Osterville as shown on Assessor's Map 163 Parcel 005 and 408 Wianno Avenue, Osterville as shown on Assessor's Map 140 Parcel 154-002. **SE3-6226**

The applicant was represented by John O'Dea, P.E. of Sullivan Engineering and Consulting.

Issues discussed:

- The NHESP letter confirmed it was not in their jurisdiction.
- On going maintenance is requested.
- The required CERP has not yet been determined.

Public comment:

Arunas Vaitiekaitis - 254 East Bay Road – They share a driveway with 271 East Bay. He does not have any problem with the project.

A motion was made to approve the project subject to receipt of the name of the Certified Ecological Restoration Professional submitted to Conservation staff for review and approval with a written protocol of the vegetation management plan and an ongoing condition for maintenance of the invasive removal.

Seconded.

Aye – Abodeely, Foster, Hearn, Lee, Tangney, Sampou

Nay – none

- B. Robert & Elizabeth Nahill.** Demolition of existing 3-bedroom dwelling, replacement with 4-bedroom dwelling with septic system, decks, and gravel driveway at 190 Harris Meadow Lane, Barnstable as shown on Assessor's Map 280 Parcel 001. **SE3-6225**

The applicant was represented by Matthew Eddy, P.E. of Baxter Nye Engineering & Surveying.

Issues discussed:

- An IA septic system was recommended to the representative.
- There are 64 plants going in as mitigation.
- The mitigation species are all low growing.
- To improve the area a more robust mitigation area is requested.
- The mitigation plan will be reviewed. They would not want to put in any higher growing vegetation that may disturb the view.
- Red Juniper Cedars would be a great benefit to wildlife.
- Darcy would like the size of the pasture rose increased and a few more plants.
- There should be demarcation of the mitigation area.

Public comment:

Jacob Angelo – He fishes Barnstable Harbor a lot. The nitrogen problem has not been a problem in the past, but it is becoming an issue currently.

A motion was made to approve the project subject to receipt of a revised plan showing the revised mitigation plantings for staff to review and add the demarcation line.

Suggestions for plantings were discussed, maybe beach plum, northern bayberry, low bush blueberry. No cedars are required.

Seconded.

Aye –Abodeely, Foster, Hearn, Lee, Tangney, Sampou

Nay – none

III. AMENDED ORDERS

- A. Town of Barnstable** – To amend Order of Conditions to replace 570 linear feet of existing water lines to reestablish water services to the pier and install 570 linear feet of empty electrical conduit for future electrical services from the pump house to the piers, and replace the existing utility pedestals on the piers located at Bismore Park on Hyannis Inner Harbor at 180 Ocean Street, Hyannis as shown on Assessor’s Map 326 Parcel 068. **SE3-6206**

The applicant was represented by Jeramy Packard of Foth Infrastructure and Environment.

Issues discussed:

- There was a water line leak for the line that feeds the piers.
- The Town is requesting to include this work as part of the current Order of Conditions.
- There were no questions from Commissioners.
- Some spare conduit could be added just in case it is needed in the future.

Public comment: None

A motion was made to approve the amended order as requested.

Seconded.

Aye –Abodeely, Foster, Hearn, Lee, Tangney, Sampou

Nay – none

IV. CONTINUANCES

- A. Kenneth & Priscilla Rondeau.** Proposed foundation and addition to existing single-family house, rebuild retaining walls, add drainage structures for driveway and roof runoff, construct stairs and walkways at 95 Huckins Neck Road, Centerville as shown on Assessor’s Map 252 Parcel 015. **SE3-6213 Continued from 10/01/24 WC Form received.**

The applicant was represented by Danny Gonsalves, P.E. of Down Cape Engineering.

A revised plan dated 10/30/2024 was submitted.

The NHESP letter dated 09/27/2024 was received.

Issues discussed:

- There was continued discussion on the deck being counted as hardscape.
- The deck was included in the calculations.
- There is another large, cantilevered deck. Normally only what is touching the ground is counted as hardscape.
- This plan is significantly better than the original.
- The mitigation calculations were reviewed.
- There is a net decrease in hardscape with this project.

Public comment: None

A motion was made to approve the project as submitted with the revised plan dated October 30, 2024

Seconded.

Aye –Abodeely, Hearn, Lee, Sampou

Nay – Foster, Tangney

- B. U.S. Coast Guard.** To remove riprap to a minimum depth below MLLW to reduce the navigational hazard at Collier Ledge, a naturally shoaled area of Nantucket Sound in Barnstable, and to remove the toppled spindle tower, foundation, and riprap at Southwest Rock Daybeacon to a minimum depth below MLLW to reduce the navigational hazard near the south coast of Barnstable in Nantucket Sound. **SE3-6216 Continued from 10/01 and 10/29/24. WC Form received.**

Commissioner Foster is not part of the quorum for this project and left the meeting.

The applicant was represented by Christine Perron of McFarland-Johnson, Inc. and Dan De Tufo of Appledor the project Engineer.

Issues discussed:

- The DMF recommendations from the October 28, 2024 letter were reviewed.
- The NHESP letter dated 09/27/2024 was read into record.
- The Harbor Master email was acknowledged.
- Nine comment letters not in support of the project were received from the public.
- Two letters of support were received.
- There are 10 different projects incorporated into this NOI.
- Only four of the locations needed to be submitted with this NOI.
- A question of installing a Day beacon at Colliers ledge instead of removing it was raised.
- Quotes from Connor Rogan were read into record.
- If the Commission denies the project, they will lose the ability to condition it.
- It could be required that the rock taken out will be used to augment an existing habitat.
- This is a voluntary filing.
- A question was raised, what percentage of the existing habitat is being removed.
- A question was raised if the Coast Guard looked into putting in additional navigational markers rather than removing the habitat.
- The project engineer was not aware if any additional navigational markers were considered.
- This filing is under the State regulations, not under the Town regulations.
- There is precedence of the Coast Guard submitting these projects to towns for State approval.
- The coast guard is willing to consider and will continue to discuss the location of the removed habitat.
- This is not an easy decision to make. The navigational safety issue is a main concern but under the State Wetland Protection Act the Commission has limited flexibility in terms of the authorization. If the Commission denies the project and it goes to appeal, we will lose and also lose the ability to condition it.
- Commissioner Hearn stated the creation of artificial reefs is a common practice. He feels the applicants narrative does not adequately address the question of the potential impacts to Marine Fisheries habitat.
- Commissioner Hearn reviewed a memorandum he is submitting for the record.
- Commissioner Hearn submitted and referenced four reports and guidelines on the subject.
 1. Black Sea Bass Life History & Habitat Characteristics
 2. Harrison and Rousseau 2020. Artificial reefs in Nantucket Sound
 3. Marine Artificial Reef guidelines
 4. Tautog Life History – National Marine Fisheries Service technical memorandum
- The Mass DMF letter stated they recommend Colliers Ledge and the day beacon remain in place and noted if removing them is necessary they recommend removing only the top section.
- The responsibility of boaters' navigational responsibilities and abilities was discussed.
- Bill Hearn stated this is a significant resource.
- The wave wash profile of Colliers ledge and the Southwest Rock day beacon provide important sediment free cavities for juvenile fish and marine invertebrates.
- Collier's ledge is getting wave turbulence, keeping it free of sedimentation. If it is taken down to 7 ft. there will be an increase in sedimentation.

- A question was asked why the Coast Guard decided on removing the height of the reef to 7 ft. below mean low, low water.
- The Coast Guard deemed that a safe level for most boats was 7 ft. below 7 feet below mean low, low.
- A question was asked if they would consider 4 feet instead of 7 feet.
- Wayne Kurker was consulted on the depth. For most of the small boats 7 feet is adequate but larger boats require more depth. He has towed many larger boats from Colliers ledge.
- There are a lot of strikes at that location. Wayne had suggested 8 feet to the Coast Guard.
- There are areas within a mile where they could build some additional reefs in deeper water.
- Wayne would volunteer to share his chart of where other reefs could go with the Coast Guard.
- David Lawler - Both sides are seeking something good. Most boats now only require 1 ½ - 2 ft. Most larger vessels would not be running up and down the coast in that close location to shore.
- The larger boats would be coming in and out of the channel.
- Balancing of the harms – is what needs to be determined here.
- Can the harm be made less.
- Much of the material received has not been reviewed by the Coast Guard. Maybe the questions could be proposed to the Coast Guard to install some significant buoys or permanent structure including a beacon instead of removing it.
- A continuance could be requested to get the information from the Coast Guard.

Public comment:

Jacob Angelo – Markers are about 100 yards away from the actual rock pile. They are not at a good location. He stated there are no large boats hitting this. They are all small boats.

Joseph Huckemeyer – Has concerns about taking the rock pile out. It is a scup and squid spawning area. There are lobster on the rocks. It has been there since 1857. They are not the only rocks that get hit. By taking the ledge to a shallower depth it will still need a buoy on it because on a choppy day the 7 ft. can easily become 3 ft. If moved it could go a little further south in deeper water but it should stay relatively close to the current location. Not many people know about this project. He only knows because he got a call from DMF asking for his input. His vessel has a 7 ft draft. He still could not go over it after the project is completed. He will hate to lose the habitat.

Wayne Kurker – Has removed many vessels from the area. He feels it should be removed to a deeper area. He has asked the Coast Guard to move the buoys closer and add buoys. It is such a large area it gets hit. Southwest rock is in the path from Hyannis to two ports on the vineyard. He feels the goal of the Coast Guard is to have less and less buoys in the future.

Jacob Angelo – If people really knew about this there would be a lot more people at this meeting. Why not just put a day beacon in there? No matter how much they take it down, no one should try to go over it.

Craig Ashworth - 205 Old Jail Lane, Barnstable - He has been a boater for over 60 years. He finds it interesting that the level of the Commissions involvement in protecting the 50' and 100' buffer from a wetland in backyards when this project, actually in the ocean, removing habitat, is even being considered. People need to educate themselves when operating a boat. There is a lot to lose by removing this habitat.

David Lawlor would like to see the project brought back to the Coast Guard for further consideration.

Commissioner discussion continued:

- It is absolutely clear that this is a safety issue. It is also absolutely clear that this is a necessary habitat that needs to be preserved. This is a voluntary filing and comes under a different set of criteria.
- When trying to balance two conflicting issues, there is not enough evidence on the record from the Coast Guard.
- There are several significant questions that need to be answered.
- This does not appear to be a time sensitive issue.
- The representative supports a continuance to get the questions answered.
- They feel two weeks, November 26, would be enough time.

- A day beacon is something placed into the ground. It is not a floating buoy. Could they ask why a day beacon could not be installed. It will cost a lot less than dredging out all the materials.
- The depth of the removal of habitat should be looked at.
- The Division of Marine Fisheries letter states it should remain in place.

A motion was made to continue the project to November 26th.

Seconded.

Aye –Abodeely, Hearn, Lee, Tangney, Sampou

Nay – none

V. CERTIFICATES OF COMPLIANCE

(ez = no deviations, staff recommends approval) (* = on-going conditions)

A. SE3-5852	William Swift 32 Bow Lane, Barnstable	(COC, ez*)	Culvert replacement. Driveway construction.
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A motion was made to approve A.

Seconded.

Aye –Abodeely, Hearn, Lee, Tangney, Sampou

Nay – none

V. MINUTES

A. October 29, 2024

A motion was made to approve the minutes as submitted.

Seconded.

Aye –Abodeely, Hearn, Lee, Tangney, Sampou

Nay – none

A motion was made to accept the minutes as submitted.

Seconded.

Aye –Abodeely, Hearn, Lee, Tangney, Sampou

Nay – none

The time was 8:40 p.m.