

Approved
Wellfleet Conservation Commission
Meeting Minutes
October 21, 2020
Remote Meeting

Attendees: Deborah Freeman, John Portnoy, Michael Fisher, John Cumbler, Leon Shreves, Barbara Brennessel, John Portnoy, Agent Hillary Greenberg Lemos and Christine Bates, Committee Secretary.

4:00 - Business Meeting & Conservation Agent's Report
Mail / Discussion

Boat / Vessel Subcommittee: Michael Fisher reported they are talking individually with Audubon, Harbor Master, and people knowledgeable of regulations in neighboring towns. The subcommittee is exploring ways to legally expand environmentally safe places for racks for boats stored along the shoreline. Horsley Witten will be asked to make recommendations. They are drafting a report for a future meeting.

Salty Duck Pottery: Previously approved Jurisdictional Opinion. Maria Juster requested a temporary tent with sides on it to allow outdoor shopping during the pandemic. She stated the pandemic has slowed her sales down. She has to bring all merchandise inside on a daily basis and a tent with sides would allow her to leave her merchandise outside, inside the tent. The footprint of the tent is still the same. She would like to be able to utilize the tent until November 5, 2020. John Cumbler moved to approve the Jurisdictional Opinion with the condition the tent be removed November 5, 2020 with no further use in the future; seconded by Michael Fisher. VOTE: Barbara Brennessel aye; Leon Shreves aye; Ben Fairbank aye; Michael Fisher aye; John Cumbler aye, John Portnoy aye and Deborah Freeman aye. 7-0

Jurisdictional Opinion: Jeremy Young for: 1) Martin and Judith Bernstein , 25 H Street. Remove one storm damaged pine tree and another dead one at the rear of the property. Doug Guey-Lee made a site visit and agreed they should be removed. Michael Fisher abstained. John Cumbler moved to approve the Jurisdictional Opinion; seconded Barbara Brennessel: VOTE: Barbara Brennessel aye; Leon Shreves aye; John Cumbler; aye; John Portnoy no; Ben Fairbank aye; Deborah Fisher aye 5-1-1.

Jurisdictional Opinion: Jeremy Young for 2) Coser and Perrin – removal of two dead maple trees at front of property and pruning of maple tree in front, and 2 trees at rear of house. The Commission would like to make a site visit before voting on this and requested an explanation of type of pruning. Portnoy suggested that the Commission review our policy on dead or diseased tree removal; dead snags provide habitat for lots of wildlife and may be left in place if they don't threaten structures. Jeremy Young recommended bringing Bartlett Tree Service to the 11/18/20

meeting to discuss the rationale for tree removal. The Jurisdictional Opinion will be heard at the 11/4 meeting.

Jurisdictional Opinion: Wellfleet Harbor Condo Trust, one-to-one replacement of fence. Barbara Brennessel moved to approve the Jurisdictional Opinion; seconded by Leon Shreves. VOTE: Michael Fisher aye; Leon Shreves aye; Ben Fairbank aye; John Cumbler aye, John Portnoy aye, Barbara Brennessel aye, and Deborah Freeman aye. 7-0

Jurisdictional Opinion: 36 Wigwam St., replace 4 Russian Olive Trees with 8 5' to 6' tall native oak trees. The olives would be flush cut. Doug Guey-Lee made a sight visit and confirmed the project would be beneficial. Three trees are within the 100' buffer zone and 1 is close to salt marsh. Gordon Peabody stated the replacements would be black oaks moved from elsewhere on the property. Barbara Brennessel moved to approve the Jurisdictional Opinion; seconded Ben Fairbank. Vote: Ben Fairbank aye, Barbara Brennessel aye, Leon Shreves aye, Michael Fisher aye, John Cumbler aye, John Portnoy aye and Deborah Freeman. 7-0.

No mail

Meeting Minutes: John Portnoy moved to approve the amended October 7, 2020 meeting minutes. Seconded by Barbara Brennessel. VOTE: Barbara Brennessel aye; Ben Fairbank aye, Leon Shreves aye; Michael Fisher aye; John Portnoy aye and Deborah Freeman. John Cumbler abstained. 6-0-1

John Cumbler stated the Conservation Law Foundation has given a Notice of Intent to sue Barnstable and Mashpee to require advanced alternative septic systems within 300' of wetlands. This would include property transfers and repairs. The suit would require these towns to immediately begin installing advanced technology within the 300-ft buffer. Agent Hillary Greenberg-Lemos stated the BOH is moving ahead with requiring newer technology. This would require a new regulation for both the BOH and Conservation Commission. Deborah Freeman stated she would like to know what stages the BOH is at to allow the Conservation Commission to be at the same level for regulations. Barnstable and Mashpee are planning for town sewage at a later date, so there's concern that people may be forced to put in an I/A system and then be forced to contribute taxes for town sewerage. Agent Greenberg-Lemos read a letter from the Barnstable Clean Water Coalition stating that they had applied for a grant to install enhanced I/A systems for a particular pond area. The coalition had agreed to pay for the first set of advanced systems, and said that they will work with all partners to work on cleaner water for the Cape.

The Board of Health had a presentation of the Nitro system and will hear of the Nitrek systems. Under proposed new regulations, people will be forced to upgrade their system if it fails or they sell their property. Agent Greenberg-Lemos stated that Mashpee has been bickering over costs for town sewers and Barnstable has some town sewage going now. Agent Greenberg-Lemos will send the BOH draft regulations to the Conservation Commission.

John Portnoy questioned why we are dealing with small non-emergency projects during the pandemic. Barbara Brennessel stated there are so many real estate transactions going on now

and people want to make immediate improvements. Deborah Freeman stated she thought we were not going to get involved with difficult cases until we can meet in person to discuss the properties. Agent Greenberg-Lemos stated we can still make site visits in individual cars. Barbara Brennessel is concerned with backlogs if we delay consideration of small projects. Agent Greenberg-Lemos stated the applicants for shorefront protection are getting impatient. The Commission agreed to resume site visits at 10:00 am on Wednesdays of meeting dates.

John Portnoy moved to adjourn the business meeting; seconded by Leon Shreves. VOTE John Portnoy aye; John Cumbler aye; Barbara Brennessel aye; Leon Shreves aye; Michael Fisher aye; Ben Fairbank aye and Deborah Freeman aye. 7-0.

5:00 - Public Hearings:

McDavitt, 99 Holbrook Ave., Map 20, Parcel 136, RDA, construct deck off back of house and upgrade front porch (Cont'd) Gordon Peabody represented the McDavitt's and a new site plan was presented identifying the ACEC. The original plan was for decking in the back, but it's been moved to the side to reduce the amount of building within the setbacks. Native plants and native grasses will be placed above the slope. There will be screening plants on the side. John Cumbler identified the RDA as a Negative 2; seconded by Leon Shreves. VOTE: John Cumbler aye; John Portnoy aye; Ben Fairbank aye; Leon Shreves aye; Michael Fisher aye; Barbara Brennessel aye; and Deborah Freeman aye. 7-0. (listen to tape)

Town of Wellfleet, Maps 21 and 20, Parcels 114 and 31, NOI, Maintenance dredging of all Town managed channels and anchorages within the Harbor. Dan Robins and Alyssa Richard represented the Town. Robins identified the areas where work has been performed. Area 1 was dredged in 2001 including the area around the boat ramp and the town pier, Area 2 is the south anchorage and was approved by the Commission in 2016. They have been working with other Federal Agencies. The Order of Conditions expired in 2019, so this is a request for renewal of the permit. There is approval from the State and they are getting approvals from Army Corps of Engineers. Dredged materials will be removed and disposed in Cape Cod Bay. The Essential Fish Habitat Assessment and Appendix E will be made available to the Commission. Barbara Brennessel stated she had received the mitigation plan for diamondback terrapins. Agent Greenberg-Lemos read the letter from the Division of Marine Fisheries which outlines the project. It identified the habitat within the area to be dredged, the impacts and recommendations. Fishermen have removed harvestable shellfish from the dredging area. Alyssa Richard stated that she has been in contact with Shellfish Constable Nancy Civetta and the area is not a viable shellfish area. Some state funding may be available when the project is ready. Agent Greenberg-Lemos stated Kellers Corner is not part of the project. October, November and December would be the timeframe for the project due to restrictions with right whale and flounder activity. Mr. Robins stated there is a water quality certificate and sediment quality control through DEP. There were no comments from the public. Mr. Robins stated they would like to piggyback with the Army Corp of Engineers project. Joe Aberdale stated the present contractor could stay here and finish up the project which would save money for the town. Both Barbara Brennessel and John Cumbler would like to approve the NOI, in part to save the town money. Agent Greenberg-Lemos stated the information can be sent to her for the file. Barbara Brennessel moved to approve the NOI; seconded by Michael Fisher; VOTE: Barbara Brennessel

aye; John Cumbler aye; John Portnoy abstain; Leon Shreves aye; Ben Fairbank aye; Michael Fisher aye; and Deborah Freeman abstained. 5-0-2

Robicheau, 800 Ocean View Dr., Map 17, Parcel 5, Certificate of Compliance. Richard Robicheau stated this project was started in 2015. Hayden Builders was the house-moving company. He stated a request for a Certificate of Compliance was never filed. Replanting of beach grass is required and will take place as soon as the product is available. John Portnoy moved to approve the Certificate of Compliance; seconded by Barbara Brennessel. VOTE: John Cumbler aye; Barbara Brennessel aye; John Portnoy aye; Leon Shreves aye; Michael Fisher aye; and Deborah Freeman aye. 7-0.

Phillips / Kaupp, 7 Spence Way, Map 28, Parcel 40, Certificate of Compliance David Lajoie was the engineer and submitted a letter stating the project is in compliance. Michael Fisher moved to approve the Certificate of Compliance; seconded by John Portnoy. VOTE: John Cumbler aye; Barbara Brennessel aye; John Portnoy aye; Leon Shreves aye; Michael Fisher aye; and Deborah Freeman aye. 7-0.

Ostenson/Eldridge, 47 Sea Oaks Way, Map 36, Parcel 18, RDA, prune 2 trees close to house, prune dead branches, vista pruning, trim underbrush. There were no stakes or markings on the property to identify areas/plants to be treated. Joanne Eldridge stated she was not aware of having to stake. Barbara Brennessel moved to continue to 11/4; seconded by John Portnoy. VOTE: John Cumbler aye; Barbara Brennessel aye; John Portnoy aye; Leon Shreves aye; Michael Fisher aye; and Deborah Freeman aye. 7-0.

Silvetti, 35 Main St., Map 15, Parcel 125, RDA, install shed. There were no stakes to identify the location of the shed. Barbara Brennessel moved to continue to 11/4/20; seconded by Leon Shreves. VOTE: John Cumbler aye; Barbara Brennessel aye; John Portnoy aye; Leon Shreves aye; Michael Fisher aye; and Deborah Freeman aye. 7-0.

Mandell Family Realty Trust (c/o Marion Fontaine), 41 9th St., Map 40, Parcel 155, NOI, construct single family dwelling including septic system, well, underground utilities, driveway and grading. Attorney Jean Kampas, representing abutter, Mr. Thayer stated he was never notified of the original 2017 hearing for installation of new well and septic system. Agent Greenberg-Lemos stated this is a new hearing for the new dwelling, septic system, well and underground utilities. Stephanie Sequin represented the Mandell Family Realty Trust. She stated a test well was drilled under the current order of conditions which is still valid until Nov. 9. Agent Greenberg-Lemos reviewed the green cards from the 2017 filing and Mr. Thaler was the only returned card unsigned. The well and septic system are in the approved locations. Ms. Kampas stated the work being done now should stop. Ms. Sequin stated a test well was installed this week; the driller is no longer at the site; however, Barbara Brennessel was not notified as the Supervisor under the 2017 permit. Ms. Sequin gave an overview of the project identifying the property, the resource areas and buffer zones. The property is within the ACEC. The previous dwelling was destroyed by a fire and was removed. The septic system will have an I/A septic system. There is a 12-foot access easement. This will be a 3-bedroom, two-story dwelling, the deck is on the second story deck and elevated 9 feet above the ground, which will be vegetated and remain pervious. Ms. Sequin stated there will be a storage area with an enclosed screened

porch above it. Variances were granted by the Board of Health in 2017. The total disturbance on the lot will be 4,000 sq. ft. All construction materials will be placed outside of the 100' buffer zone. Native shrubs and ground cover will be utilized. This project will be going before the Zoning Board of Appeals. The Commission requested plans identifying the elevation height and a drainage plan. They would like details of the I/A septic system plans, which were not included in the current application. They also require a mitigation planting plan, with 3:1 replacement of plants that have been removed, and a copy of the MESA letter because this is diamondback terrapin habitat. The Commission also requested an alternatives analysis, quantification of the total area of disturbance and specification of materials to be used for the driveway.

The previously approved construction in 2017 was a cottage and a dwelling and this is one dwelling. Don Bliss said that the shed outside of the boundary will most likely be removed. Ms. Sequin stated NHESP received the plans in October. The previously approved plans were for a 1,324 sq. ft. dwelling. This proposal is for 1,620 sq. ft. resulting in 2,520 sq. ft. habitable space. Mr. Bliss stated they do not own the coastal banks, so cannot perform work there.

Attorney Jean Kampas stated Mr. Tayler has concerns with the magnitude of the project and effects of increased water use on groundwater quality (salt content) which will affect his property and other abutters. Kampas stated the prior cottage was 3 bedrooms built in 1880 totaling 554 sq. ft. It was a seasonal cottage. Kampas further said that the proposed project is 1998 sq. ft of footprint and the gross floor area is 4,000 + and is 7 times larger; therefore, there will be an intensified use of the property and ground water will be impacted. The easement on the coastal bank located at the east will affect Mr. Tayler's access area and be closer to the bank. Mr. Tayler was not contacted about the relocation of the easement, which requires his consent or a court order authorizing the proposed easement relocation. Ms. Kampas stated this is now a vacant lot and feels 3,000 of disturbance is more than enough. Mr. Tayler reiterated the issues with salty water will cause problems on 2 sides including his property and will not allow equipment to be able to get on his property. There was further discussion regarding the easement location. There are no water tests for the property in the files and Agent Greenberg-Lemos would like water tests of the abutting property as well. Christine Young is confused where the bank starts from the site plan and would like to join any planned site visit. She is concerned the bank will be disturbed. The plans submitted to the ZBA include the roof overhangs. Don Bliss stated the previous home was right on the bank and he plans on revegetating the presently denuded area. The Commission requested the following information: water test, septic specs, alternatives analysis, letter from NHESP, revegetation plan, building plans, permeable driveway material identified, 3,000 sq. ft. alteration. Agent Greenberg-Lemos stated it would be useful if the abutters provide water quality data for their wells. Michael Fisher moved to continue to 11/18/20; seconded by Ben Fairbank. VOTE: John Cumbler aye; Barbara Brennessel aye; John Portnoy aye; Leon Shreves aye; Michael Fisher aye; and Deborah Freeman aye. 7-0.

Wei, 40 Hiawatha Rd., Map 23, Parcel 176, NOI, (Marianne Thomas, property owner) NOI, refresh driveway surface. Michael Fisher recused himself. Damon Wei thanked the Commission and the DPW for documentation. A site plan of the property was provided and he provided a power point presentation identifying the driveway, cobblestone apron and garden area. Froggie Frazier, contractor, said that there is no t-base involved in the driveway. He stated

the footprint of the driveway, formerly deteriorated shell, has stayed the same. Barbara Brennessel stated a site plan from 1996 shows a smaller driveway. She stated that cobblestone within the 50-ft buffer is not allowed under current regulations. The Commission agreed to a \$600 fine for the contractor. There was an "L" shape incorporated since 1996. John Portnoy and John Cumbler stated removing the cobblestones may cause more damage; however, after further discussion, it was agreed to remove the cobble stones from the filter strip, to be replaced with ¾-inch native stone. Barbara Brennessel moved to approve the NOI; seconded by John Portnoy. VOTE: John Cumbler aye; Barbara Brennessel aye; John Portnoy aye; Leon Shreves aye; Michael Fisher recused himself; and Deborah Freeman aye. 6-0-1

Sheetz, 125 Marven Way, Map 21, Parcel 26, NOI, tree removal, repair walkways, expand deck, construct small platform, removal of trees and pruning for view corridor. Jeremy Young represented the applicant. David Lajoie from Felco, Inc. identified the resource areas. The existing patio will be replaced with permeable material, the deck platform will be where there is a bench, the cedar tree (apparently this is Leland Cypress, and not native -JP) will remain, there will be in-ground steps, expansion of deck to round off the fill-in area of the deck with no disturbance, in-ground steps replacing existing railroad ties and timbers which are eroding, 3 foot wide path that goes in front of house stabilize with ¾ inch stone. Trees to be removed: 3 pine trees at last set of steps to be removed, 2 pine trees located near new deck, 6 locust trees on side of property to be removed and replaced with 6 eastern cedars, by driveway 2 trees removed Also, the view corridor will be trimmed to limit vegetation height to five feet. Driveway will be refreshed with ¾-inch stone. Mitigation plantings SE of the house will comprise a 1,200 sq. ft. area. 400 sq ft vegetation area will be planted with bayberry. The current amount of disturbed area on the property is 370 sq ft. David Lajoie will have a discussion with the property owners regarding another area of the bank which appears will be eroding. The Commission requires the total amount of existing and proposed disturbance to be identified and requires specification of permeable materials. The tennis court is within the 50' buffer zone and is preexisting. The pruning of the trees will be selective. Portnoy pointed out that the tennis court, below 9 ft-NAVD88, within the 50-ft buffer and now subject to frequent tidal flooding, is almost as low as high-elevation salt marsh; therefore, he suggested that its removal and re-vegetation would comprise significant mitigation for this project. Lajoie suggested that the applicants need some time to consider this and other Commission comments before continuing. Michael Fisher moved to continue to 11/4/20; seconded by Barbara Brennessel. VOTE: Barbara Brennessel, John Portnoy, Ben Fairbank, Michael Fisher Leon Shreves and Deborah Freeman. 6-0.

John Portnoy moved to adjourn at 7:45 pm; seconded by Leon Shreves. VOTE: Barbara Brennessel, John Portnoy, Ben Fairbank, Michael Fisher Leon Shreves and Deborah Freeman. 6-0.

Respectfully submitted,

Christine Bates

Documents:

Jurisdictional Opinion requests from Martin and Judith Bernstein, Coser and Perrin, Wellfleet Harbor Condo Trust, and 36 Wigwam Street.

McDavitt: revised site plan

Town of Wellfleet: NOI application and back up materials

Robicheau: Certificate of Compliance request

Phillips & Kaupp: Certificate of Compliance request

Ostenson/Eldridge: RDA application and back up materials

Mandell Family Realty Trust (c/o Marion Fontaine) NOI application and back up materials

Wei: NOI revised site plan

Sheetz: NOI application and back up materials