



Town of Duxbury  
Conservation Commission

Approved 6/7/2016

TOWN CLERK  
2016 JUL -7 AM 9:02  
DUXBURY, MASS.

Minutes of April 26, 2016

The Conservation Commission met on Tuesday, April 26, 2016 at 7:00 PM in the Mural Room at the Duxbury Town Hall.

**Members Present:** Acting Chairman Tom Gill; Sam Butcher; Robb D'Ambruoso; Dianne Hearn; Holly Morris (arrives 7:05)

**Members Absent:** John Brawley, Corey Wisneski

**Staff Present:** Joe Grady, Conservation Administrator; Susan Ossoff, Administrative Assistant

The meeting was called to order at 7:00 PM

**PUBLIC HEARING; TOFFOLINI; 32 MAPLE POND ROAD; GARAGE  
SE18-1728**

The applicant described the project which is a 32' x 28' unattached garage more than 50' from the wetlands. Joe Grady said the project conforms to the Commission's rules and regulations in terms of coverage and setbacks.

On a motion by Dianne Hearn, seconded by Sam Butcher, it was voted 5-0-0 to issue Orders of Conditions for SE18-1728, 32 Maple Pond Road.

**CONTINUATION OF PUBLIC HEARING: STARR, JR. TTE; 326 POWDER POINT AVE;  
ANRAD (RESOURCE AREA DELINEATION)  
SE18-1727**

Joe Grady reported that the applicant has requested a continuance because they are still working on the delineation.

On a motion by Sam Butcher, seconded by Robb D'Ambruoso, it was voted 5-0-0 to continue the hearing for SE18-1727 until May 10 at 7:22 pm.

**CONTINUATION OF PUBLIC HEARING; PATEL; 20 BRADFORD ROAD; REVETMENT  
SE18-1698**

This hearing was opened.

Tom Callahan, attorney for Mr. Patel at 20 Bradford Road, said the dune plan that was submitted was being withdrawn. He asked that the Commission proceed with the revetment plan and issue Orders of Conditions.

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 5471; Fax: 781-934-1137

The mission of the Town of Duxbury is to deliver excellent services to the community in the most fiscally responsible and innovative manner while endeavoring to broaden our sense of community and preserve the unique character of our town.

Robb D'Ambruoso asked for the rationale for changing the plan. Mr. Callahan said the dune plan was only supposed to show the dune in front of Mr. Baker's property, not the entire length of the two properties.

Gene Guimond, attorney for Mr. Baker at 30 Bradford Road, referred to the recently permitted project at 30 Spring Street in which the commission allowed a portion of the revetment to occur on the coastal beach. The Commission has said that for the 20 & 30 Bradford Road projects, no part of the revetment can be on the beach. Mr. Guimond believes this is unfair. In addition, the replenishment requirements for 30 Spring Street are totally different than the requirements being discussed for this project and in fact the same plan as approved for 30 Spring Street was rejected by the Commission for use on the Bradford Road projects. Therefore they rescind the drift fence project and want to return to a revetment project.

Mr. Callahan said the revetment at 20 Bradford Road is not on the beach. There was further criticism of the length of time the Commission has taken to hear this case as compared to 30 Spring Street and he stated that the applicants are not being treated fairly.

At this point the hearing for 30 Bradford Road was opened; the discussion for the projects continues under 30 Bradford Road below.

**CONTINUATION OF PUBLIC HEARING; BRADFORD ROAD REALTY TRUST; 30 BRADFORD ROAD; REVETMENT SE18-1697**

The 30 Bradford Road hearing was opened and this hearing was held concurrently with the 20 Bradford Road hearing.

Sam Butcher, in response to Mr. Callahan's criticism of the length of time the hearings has gone on, explained there has been a challenge with the quorum for these projects. The applicants were advised that opening the project right before two commission members were leaving (due to the end of their terms) could create issues with the quorum but they chose to proceed. On two occasions during the summer of 2015 there were issues with the quorum; the other continuances were requested by the applicants and sometimes the requested continuances were for up to 3 months. Another continuation occurred when the applicant at 30 Bradford Road failed to fund the consultant. Mr. Butcher believed it is disingenuous to say the Commission has delayed the project when in fact many of the delays were at the applicant's request or when the applicant failed to act in a timely manner.

Mr. Callahan, counsel for Mr. Patel, said that the delays have caused further erosion at this property. Sam Butcher pointed out that an emergency order was issued last summer allowing work to be performed to address the erosion but that no work had been done; Mr. Callahan commented on the cost of the work.

Joe Grady said the project at 30 Spring Street was not similar to the Bradford Road projects. There is no house in a resource area and it is not a coastal bank. Spring Street is an armored structure above the 100-year flood elevation and in fact the project is really to armor an upland area in a buffer zone to a coastal dune and to replenish a dune. 30 Bradford Road is a house on a beach and a revetment or dune in front of it would be constructed on the beach itself. The only thing that is the same at 30 Spring Street is that there are ongoing conditions, and Town Counsel's input was obtained about implementing ongoing conditions.

Joe Grady continued that the recently received letters (distributed at this hearing) written to the commission by the applicants implied that the project was being treated differently because of Mr. Baker's father having issues on Clark Island where Mr. Grady's in-laws also have property. Mr. Grady asked that the conflict please be explained and challenged the suggestion in the letter that he should not be assisting the Commission for these projects.

Gene Guimond, attorney for Mr. Baker, said their engineer said there was a coastal beach and dune at 30 Spring Street. He said the projects are similar in size, but the Commission did not hire a consultant for the Spring Street project. He said his client has been treated differently the entire way through the hearing process. He did not want to elaborate but referred to issues at Clark's Island that involved Joe Grady back many years ago.

Joe Grady said that he has not been involved in any litigation with the Baker family on Clarks Island. It has no relevance to these projects and the allegations are without basis. Gene Guimond said that he (Mr. Guimond) can say whatever he wants at a public hearing.

Sam Butcher said he was frustrated, he thought the project was getting close to an acceptable resolution at the last hearing. The discussion was about where recent erosion had occurred and where the wall could therefore be placed. The Commission requested a line to be delineated showing where the beach was before the latest erosion events.

Sam Butcher continued that at this point, they have one applicant, 20 Bradford Road, requesting that the hearing be closed, and the other applicant, at 30 Bradford Road, requesting that the hearing be continued. There are still issues to be addressed. He was pleased to see the sand dune option and the Commission's consultant said it was a good plan and he expected the hearing could be closed; now that option has been taken off the table.

Robb D'Ambruoso said that in the interest of judicial economy, he is concerned with the delays that have occurred as things have been put on the table and then taken off. The applicants have expressed displeasure with the process yet have requested multiple continuances, have changed the plans, and have submitted materials at the last minute (referring to letters to the Commission that did not come in according to the Commission's deadlines).

Stan Humphries of LEC, the Commission's consultant, explained that the stringent local bylaw does not allow any change in the volume of the beach. The State regulations require a minimum adverse effect. The footprint of the revetment needs to be reduced below the beach. For 30 Bradford road, a previous boundary for the beach is shown but not for 20 Bradford Road which makes it difficult for the Commission to rule. If the applicant can show the previous boundary then the Commission can reconsider the adverse effect issue. If the hearing is closed at this point, nothing has changed and the beach volume is being changed which is not acceptable.

Sam Butcher asked if the 20 Bradford Road hearing is closed, so only a portion of the proposed structure is allowed to be built, how the wall will be tied in to the rest of the existing shoreline. Tom Callahan said the point of asking for Orders of Conditions is to get it done; the two properties have been engineered together and it makes sense to continue that way and he is not opposed to continuing the hearing, but not if it is going to go until the summer, there has to be finality.

Gene Guimond asked if May 24 is a doable date for continuance of the hearings. He then referred to 30 Spring Street; he said the local standards say the introduction of something onto the coastal dune has the same performance standards as for a coastal bank. Sam Butcher said

CONSERVATION MINUTES

April 26, 2016

Page 4

*Approved 6/7/2016*

the bylaw does not allow for the loss of coastal beach and you can't replace a beach with stone. There is no restriction like this for the coastal bank or coastal dune. Gene Guimond said he thinks the language is similar; Sam Butcher said he thinks the language is similar but not the same.

Joe Grady asked if the Commission is willing to consider where the bank was prior to the recent storms as the edge of the beach. The regulations allow permits to armor the coastal bank; the issue is that in this case the armor is on the beach. He suggested revisiting the old resource lines and perhaps the revetment may be in the bank area and be able to be permitted.

Tom Gill suggested a final plan be provided in a timely way before the next hearing and that Joe Grady review it to minimize confusion. The materials should be provided to the office by May 10 at noon.

Sam Butcher said he believes a covenant is not needed to preserve the required ongoing nourishment of sand. It can be handled with ongoing conditions and he said Town Counsel advised the covenant could be redundant.

Joe Grady said in other areas Gabion baskets are used under dune areas; these are stone filled baskets. Stan Humphries said there is limited space here and the baskets dissipate wave energy and will protect the foundation. They can go under the deck and no beach is lost seaward of the deck.

Sam Butcher said no loss of beach beyond the deck is acceptable;; some loss of beach under the deck may have to be allowed. There is no solution where the house is preserved and some beach is not lost. Mr. Baker said the deck is 3 feet wide; Mr. Grady said the pan shows a deck 4-6 feet wide.

Gene Guimond said the conditions at 30 Spring Street are different than all other Orders of Conditions on file.

Sam Butcher said the Commission looks at each project on its own. This situation involves a house on a beach and two properties and the projects are different regardless of the fact that they both involve a wall to control erosion. The projects are not comparable, and the Commission looks at each project on its own merits – one project does not set a precedent for another.

Gene Guimond said he has to convince his client that the projects are not the same. Sam Butcher said that based on the tone of the letters received by the Commission this night, nothing will convince the client that he hasn't been treated unfairly.

Stan Humphries suggested using drift fence only in front of the structure at 30 Bradford Road. Holly Morris asked for a clarification about the stone ramp to the beach at the 30 Bradford property. As designed, there is a loss of beach.

From the audience, Tony Kelso said he was concerned that the ramp should not be stone because there will be scouring of the beach.

Tom Gill said he wanted to address the comments in the letters received by the Commission and clarify that the Commission does not take direction from the applicant. He also took exception to the attorney's referencing events from back in the 1990's (regarding a dispute involving Mr.

CONSERVATION MINUTES

April 26, 2016

Page 5

*Approved 6/7/2016*

Baker's father) and said the only discussion that takes place is what is in front of the Commission now, not past events. The tone of the letters was confrontational and this is not acceptable.

On a motion by Sam Butcher, seconded by Dianne Hearn, it was voted 5-0-0 to continue the hearing for SE18-1698, 20 Bradford Road, to Tuesday May 24 at 7:10 pm.

On a motion by Sam Butcher seconded by Robb D'Ambruoso, it was voted 5-0-0 to continue the hearing for SE18-1697 until May 24 at 7:11 pm.

**CONTINUATION OF PUBLIC HEARING; WATSON; 282 POWDER POINT AVE.; POOL AND GARAGE  
SE18-1729**

Paul Brogna described the revised plan that was submitted. The landscaping plan was revised with more mitigation areas. The site coverage was reduced from 4165 square feet with the original proposed plan to 3794 square feet. The pool size and decking was reduced, a walkway was reduced. They are now above the allowable coverage by 140 square feet.

Brad Holmes addressed the Riverfront regulations. For a previously degraded location a 1:1 area of proposed mitigation is required, this project is at 1:3.2 for mitigation. Additional native plantings have been added and grass removed. He mentioned that pools and patios are considered exempt minor activities under the Riverfront regulations but they are counting them in for this project.

Paul Ripley, the landscape architect, said the pool deck will be 18" x 18" bluestone pavers with grass seams. The walkways will be shells instead of bluestone slabs. One stone walkway is being removed and two more mitigation areas added - #3 and #4 which are near the dock and the beach. The driveway will be shells.

Sam Butcher said the applicant has come a long way towards what was requested by the Commission. He is troubled by the ill-defined starting point for coverage. The existing coverage is 5192 square feet of which 3692 square feet was permitted. They are proposing 3794 square feet, which is close, and Mr. Butcher is inclined to allow the excess coverage for this project because this project is unique in that the amount of existing permitted coverage is in dispute. He clarified that this case does not set any precedent for future projects; for this project the starting point of coverage and what was permitted was difficult to determine.

On a motion by Holly Morris, seconded by Dianne Hearn, it was voted 5-0-0 to write Orders of Conditions for SE18-1729m 282 Powder Point Ave.

**ADMINISTRATIVE MATTERS**

**MINUTES:**

On a motion by Sam Butcher, seconded by Dianne Hearn, it was voted 5-0-0 to approve the minutes of March 22, 2016.

**CERTIFICATES OF COMPLIANCE**

**SE18-933; 111 Bolas Road:** Joe Grady has inspected the property, the required documentation has been submitted, the project conforms to the Orders of Conditions and he recommends Certificates of Compliance be issued. On a motion by Sam Butcher,

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

seconded by Dianne Hearn, it was voted 4-0-0 to issue Certificates of Compliance for SE18-933; 111 Bolas Road.

**CERTIFICATES OF COMPLIANCE**

**SE18-1199; 111 Bolas Road:** Joe Grady has inspected the property, the required documentation has been submitted, the project conforms to the Orders of Conditions and he recommends Certificates of Compliance be issued. On a motion by Sam Butcher, seconded by Dianne Hearn, it was voted 4-0-0 to issue Certificates of Compliance for SE18-933; 111 Bolas Road.

**EXTENSION ORDER**

An Extension Order has been requested for SE18-1642, 212 Powder Point Ave. and is recommended by Joe Grady. On a motion by Sam Butcher, seconded by Dianne Hearn, it was voted 4-0-0 to issue Extension Orders for Se18-1642.

**CHANGES TO PLAN: 38 OCEAN AVE: SE18-1711**

The applicant has requested some minor changes to the approved plan which involves moving the project slightly closer towards the wetlands. Joe Grady explained the changes fall within the existing Orders of Conditions and he recommends accepting the changes.

On a motion by Robb D'Ambruoso, seconded by Dianne Hearn, it was voted 4-0-0 to approve the changes to the plan for 38 Ocean Ave, SE18-1711; this later plan now becomes the plan of record for this project.

**CONSERVATION FUND EXPENDITURE**

**Open Space Plan**

On a motion by Robb D'Ambruoso, seconded by Sam Butcher, it was voted 4-0-0 to approve the expenditure of \$1,000 from the Conservation Fund for Graeme Groombridge for preparation of the Open Space Plan (doing layout).

**REPRESENTATIVE FROM COMMISSION TO CPC**

On a motion by Tom Gill, seconded by Dianne Hearn, it was voted 4-0-0 to appoint holly Morris as the Conservation Commission's representative to the Community Preservation Committee.

**Adjournment:** On a motion by Sam Butcher, second by Robb D'Ambruoso, it was voted 5-0-0 to adjourn the meeting at 8:12 pm.

**MATERIALS REVIEWED AT THE MEETING**

NOI materials for SE18-1728; SE18-1727; SE18-1698; SE18-1697; SE18-1729  
SE18-1711 revised plan