



TOWN OF

HARWICH

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CONSERVATION COMMISSION PHONE (508)-430-7538 FAX (508)430-7531

HARWICH CONSERVATION COMMISSION - MINUTES

WEDNESDAY AUGUST 19, 2020 - 6:30 P.M.

Commissioners and Staff Present Remotely: Chairman Brad Chase, John Ketchum, Stanley Pastuszak, Ernest Crabtree and Conservation Administrator Amy Usowski

Applicants and Audience Present Remotely: Charleen Greenhalgh, Martha Hevenor, Dan Croteau, Rick Judd, David Michniewicz, Andrew Singer, Tom Mulcahy, Don Munroe, Richard and Judy Lappin, Ann Frechette

CALL TO ORDER

By Chairman Brad Chase

Public Presentation

West Harwich Special District Implementing Regulations

Presented by Charleen Greenhalgh, Town Planner, and Martha Hevenor, Cape Cod Commission.

Charleen states that the Board of Selectmen nominated the West Harwich quarter of Route 28 from the Harwich Port town line to the Herring River as a District of Critical Planning Concern, or DCPC. Under the Cape Cod Commission mechanisms, a district that the community feels is particularly special can be nominated as a DCPC. The nomination was approved by the Barnstable County Commissioners on December 4, 2019, and the Town has one year from that date to establish Zoning by-laws for this area. These regulations have been worked on diligently by the Town Planner and Cape Cod Commission for the past several months, and they were recently supported by the Planning Board at their meeting on August 11, 2020, the Board of Selectmen at their meeting on August 17, 2020 and was added to the Warrant for the Annual Town Meeting, and the Harwich Board of Health at their meeting on August 18, 2020. As part of the DCPC process, there is a requirement that this go before the Conservation Commission to inform the Commissioners of the proposed implementing regulations and give them the opportunity to comment on them. No vote or action is required on this matter, unless the Commission feels that they would like to, for instance a vote to support the Zoning By-law. This By-Law was created by the Town Planner and Cape Cod Commission, but has been reviewed

numerous times by the Planning Board, as well as a group of community members, and all parties feel that it meets the Implementing Regulations. There will be a Public Hearing before the Planning Board on September 22, 2020, and will be voted on by the Cape Cod Commission on September 3, 2020. Charleen states that she is happy to go into more specifics of the By-Law itself, but warns that it is quite lengthy, and offers to answer any questions that the Commission may have.

Chairman Brad Chase asks Conservation Agent, Amy Usowski, if there are any impacts of this By-Law on Conservation specifically. Amy states that there are a few portions of the area that are close to the river or are under Conservation jurisdiction due to floodplains, but that she does not see any portions of the By-Law which will affect Conservation regulations. Charleen confirms that any regulations having to do with floodplains or conservation will not change with this By-Law. Chairman Brad Chase then roll calls the Commissioners for their questions or comments. Stanley Pastuszak asks Charleen to summarize key points of the By-Law. Charleen explains that if you have a historic structure, or anything that is on the Town's historic list of structures, as well as a handful more that meet the Massachusetts Historical Commission standard, this streamlines the approval process for additions or improvements. If the change is under 250 square feet, it would be approved administratively by the Town Planner. If the change is 250-1,000 square feet, there would be a review through the Planning Board under the waiver provision. She goes on to explain that the goal of the By-Law is to maintain some of the historic homes within the District, including the Captain's Row homes. Ernest Crabtree states that he attended a few of the Public Hearing that stemmed this proposed change, and asks whether this By-Law would give the Planning Board more authority to object to proposed plans. Charleen states that it would, and explains that Site Plans cannot be denied under Massachusetts General Law, but under this provision any retail space over 1,000 square feet would be a special-use permit and so if the proposed project does not meet the markers laid out by this provision, then the Planning Board can deny the application. John Ketchum states that he does not feel that this will weigh on any Conservation measures. Chairman Brad Chase asks whether support from the Conservation Commission would be helpful, and Charleen responds that a sign of support would be fantastic.

Chairman Brad Chase moves that the Conservation Commission show support for the West Harwich Special District Implementing Regulations. Stanley Pastuszak seconds. The motion passes by unanimous vote, 4-0.

HEARINGS

Requests for Determination of Applicability

Michael Daly, 58 Schooner Dr, Map 16 Parcel W8-15. Renovate the existing elevated deck and replace two existing deck sections with a porch and breakfast room.

Dan Croteau from Moran engineering presents the project for his clients Michael and Carol Daly. He explains that his clients would like to replace two existing deck sections, including one 5.7x11.3 enclosed porch addition, and one 8x11 enclosed breakfast nook. Both structures would be on posts similar to the existing deck. While the project itself is relatively straight forward,

Dan explains that there were some complications due to some landscaping that was done by one of the owners who was not aware of the wetland regulations, so at that point they decided to bring it to the Commission as an RDA.

Amy Usowski reiterates Dan's overview of the project, adding that it is a second story deck and the additions would have the same posts and foundation as the existing deck. There was some clearing done and a retaining wall built in 2015, which is 56 feet from the wetland at the closest. Amy reminds the Commission that there was no 60-foot no-new-structure rule in place at this time. Some of the clearing would have been considered precautionary as the trees were likely hazardous, and she believes that the Commission would likely have a rd. When visiting the site with the Commissioners and the owners, approved this work as an RDA in 2015. The property is pretty natural, and the abandoned cranberry bog which makes up the wetland could be overlooked very easily due to overgrowth. The owners have offered to do extra planting beyond that wall and agreed to comply with no chemical application. For these reasons, Amy does recommend approval of the plan with a negative 3 determination.

Chairman Brad Chase asked for Commissioner comments and whether the Commissioners feel that there should be a fine. Stanley Pastuszak asks whether there was approval from the Conservation Commission when the house was originally built. Dan Croteau responds that the house was originally approved and built around 1990. Stanley states that he agrees with Amy's comments as long as the house was in compliance. Amy confirms that the house was originally approved. Ernest Crabtree states that he has no comments on the plan and reiterates that he completely believes that the homeowner did not know that there was a wetland behind the property when constructing the wall, so he does not feel that a fine is needed in this situation. John Ketchum agrees with the previous comments and adds that he suggested to change out the ornamental roses near to wall since they will not be able to apply chemicals or fertilizers, which should be included in the conditions on the Determination of Applicability. Chairman Brad Chase states that he would be in favor of a fine to deter future similar infractions, but hearing three Commissioner opinions against the fine, he asks for a motion.

Stanley Pastuszak moves that the Request for Determination of Applicability is approved as is with a negative 3 determination and a condition against chemical applications. Ernest Crabtree seconds the motion. The motion passes unanimously, 4-0.

Rick Judd, 22 Sunrise Lane, Map 26 Parcel E2-3. Seeking after-the-fact approval for work the previous owner did without permit. This includes an existing garage, shed, and retaining walls. Work within the 100' buffer zone to the Top of Coastal Bank and 200' Riverfront Area. They would like to alter the garage as part of this application with no change in footprint and add a new septic tank.

Rick Judd from Moran engineering presents the project. Dan explains that the existing garage, retaining wall, and shed were not permitted through Conservation – there is a timeline issue for the garage, and the second issue is that the owners are looking to make the second floor of the

garage livable which would require a septic system be added to the upper corner of the yard connected to the leaching field which would not change, in addition to a Water Service Line around to the South portion of the property and the addition of two dormers on the North side of the existing garage. Rick goes on to state that he has not handled an after-the-fact before and is not certain of the procedure but will try to answer any questions the Commission may have.

Amy explains that it was the previous owners of the property who did the original work without Conservation approval – including the garage in 2001, the shed in 2003, and the retaining wall sometime between the two. Normally the new work on the garage would have been handled administratively but seeing that there was no permit issued for the original structure, the other changes need to be put on record. The closest that the structure comes to the wetland is about 90 feet from the top of the coastal bank to the Red River. Most of the garage is outside the 100-foot buffer, but within the 200-foot ‘outer riparian’ riverfront area. Amy states that this is likely something that would have been approved if applied for previously, and so recommends an approval with a negative 2 and 3 distinction, with conditions that the area beyond the retaining wall becomes a no-mow zone and no chemical applications are used.

Chairman Brad Chase asks for comments from the Commissioners. Stanley Pastuszak has no comments. Ernest Crabtree asks if the addition above the garage would be used as rental space. Rick Judd explains that he is not sure through the owners if it will be but knows that it did go through the Zoning Board of Appeals. Ernest Crabtree asks a clarifying question about the proposed septic tank. Rick explains that he chose the Infiltrator poly-septic tank because it is a bit more light duty and so will be less impact on the surrounding area for installation and is available locally, and explains that for a two structure house, like this one, a two-compartment septic tank or two tanks in series is needed per the Board of Health. John Ketchum has no further comments. Chairman Brad Chase asks what year the riverfront regulations came into play. Amy responds that they were in place when this work was done, either 1996 or 1999, and that the house was permitted, it was only the garage, shed and wall that were not. Seeing no further comments and none from the audience, Chairman Brad Chase asks for a motion.

Ernest Crabtree moves that the Request for Determination of Applicability is approved, with a negative 2 and 3 determination and the conditions for a no-mow zone beyond the retaining wall and no chemical applications. Stanley Pastuszak seconds the motion. The motion carries unanimously, 4-0.

Amended Order of Conditions

Wychmere Harbor Real Estate LLC, 23 Snow Inn Rd, Map 8 Parcel P2, SE 32-2383.

Alterations to the previously approved buildings, landscaping and utilities.

David Michniewicz presents the proposed amendments, and the other engineers on the project are on the call as well. The proposed changes include changes to the Beach Grille with additions marked in green and reductions marked in pink on the shared plan. On the north side of the building the octagon shape has been extended to the North in an area that had been built on

previously or had been approved for hardscape so the alteration to the plan would not impact any green areas of the site. On the southwest corner of the building, the proposal is to pull the west face of the building back from what exists and what was approved for this project, which would be about 500 square feet of building area that would be pulled back. In the southeast corner of the building, they propose about 380 square feet of building to square up the shape of it. This is a net reduction of about 126 feet of building. Another change is in the pool reception building which was made smaller by about 136 square feet. The final change is in the Coastal Bar area which was shifted a couple of feet to the East, with no change to the proposed building area. David states that they feel that the reduction of overall building footage and the deck that runs alongside the Beach Grille would be pulled back a few extra feet from the dune area. There were also some grading and minor layout changes to the pool area, and to the approach driveway from the turnaround circle to the west property line, which would allow for more native plantings in the previous area.

Tom Mulcahy presents the landscaping plan, stating that the plan has been fine-tuned but overall there have not been any substantial changes from the original landscape design plan. The entrance has been reoriented since the previous plan was approved. By reorienting the entry drive to be more centered on the circle it is not only more aesthetically pleasing, but it also pulls it back from the west property line and dune so more native planting can take place as a buffer along the dune. There are both natives and nonnatives on the plan as this is a tough area for all plantings due to wind, and in the pool area, in order to create separation between areas, they had to use a mix of natives and nonnatives, but they are happy to work with Amy if there are any issues with the proposed plants.

Conservation Agent, Amy Usowski, gives her summary, stating that the color coded plan helps a lot but that they had received a coverage comparison calculation sheet on August 14, 2020, and is not sure that the calculations given by David in his presentation take into account all changes or only those changes that fall under Conservation jurisdiction. David states that the proposed coverages are correct, and that when he looked at the approved building coverage it is slightly more than what was listed on the sheet that Amy had received. The proposed August 2020 coverages for the building, amenities, and site coverage are correct for what is here in the work limit area. Amy asks for him to provide the revised table. Amy also recommends against ornamental or invasive roses to native roses. Finally, Amy mentions that the Health Director, Meggan Eldredge, stated that infinity edge pools may not be able to be approved, and if this comes back before the Commission again, it would not need to be a full amendment just a change in plan. Amy recommends approval of the Amendment.

Chairman Brad Chase calls for questions from the Commissioners. Stanley Pastuszak asks how many more amendments they can expect for this project. Attorney Andrew Singer responds that for this Beach Club redevelopment the owners are hoping to start construction in the next few weeks so this will likely be the last amendment for this specific Beach Club redevelopment, but there will likely be other changes in the future. Ernest Crabtree refers to the general landscape plan and notes, and states that there are some practices listed that have already been prohibited

by the Commission, including using organic fertilizer and establishing a fertilizer program, laying sod, landscape irrigation, weeding and plant maintenance. These would not be allowed within the Conservation jurisdiction. Tom Mulcahy refers to the planting plan included in the set, and states that that should not have been included in the set, but on the planting plan the conservation notes are listed, and those are the notes that are being followed. Andrew Singer offers to remove the sheet that lists those practices before approval of the project. Ernest Crabtree agrees with that suggestion. John Ketchum brings up the over 300 privet plants on the plan. Amy responds that the previous plan was approved with the privet on the plan which is why it was not commented on at this meeting. Andrew Singer responds that the replacement of the section of lawn by the channel has already been started so the approvals and recommendations of the Commission are taken into consideration and they are completing those recommendations. John Ketchum states that his other concern is the overwhelming use of ornamental plants in the plan, and he is not sure they will be able to maintain them without the use of fertilizer and wants to be sure that this will be closely monitored to ensure compliance. David responds that when this project was originally approved, they were told that they would have to meet the fertilizer regulations, or come back with a fertilizer program. Andrew elaborates that two aspects of the fertilizer program they came up with are the replacement of the lawn with Players Best and also two small sections of turf, and that they are continuing to work with the Commission to meet current fertilizer regulations moving forward. John Ketchum responds that within Conservation jurisdiction no chemical application will be allowed, including not only on grass but on all plants. Andrew Singer asks Amy to check the original Order of Conditions, as he believes that is already a condition. Amy confirms that the no chemical application condition was added in February. Chairman Brad Chase states that he has no further comments and asks for additional comments from the audience or commissioners.

John Ketchum moves to approve the Amended Order of Conditions with the elimination of the incorrect practices, replacement of Rose of Sharon with native species, and submission of the revised coverage table. Ernest Crabtree seconds the motion. The motion carries unanimously, 4-0.

Notice of Intent

Steve Hassett, 46 Indian Trail, Map 34, Parcel K3-2. New Dwelling with appurtenances.

Amy states that they have asked for a continuance to the September 2, 2020 meeting. Chairman Brad Chase moves that they continue the NOI for 46 Indian Trail to September 2, 2020. Ernest Crabtree seconds the motion. The motion carries unanimously, 4-0.

Request for Extension of Order of Conditions

Francis Zarette, 11 Harbor Way, Map 1 Parcel H3.

Don Munroe from Coastal Engineering presents the extension. Don states that they are asking for the extension because the owners of the property still need to plant the salt marsh and remove the concrete under the boat house. Don Munroe asked Nick Crawford to submit a construction

protocol and Amy felt that it would be good to discuss tonight. Amy Usowski comments that they are asking for a 3-year extension, and reminds the applicant that in addition to the salt marsh planting and removal of concrete, they are also required to remove the fish weirs and do more planting toward the upland in order to get a Certificate of Compliance. Amy recommends that they approve a one-time three-year extension, with the condition that the marsh will be planted within the year to allow a two-year buffer to ensure that the plantings have established.

Chairman Brad Chase asks for comments. John Ketchum confirms with Amy that the change in configuration of the deck was approved. Amy confirms that it was. Ernest Crabtree asks why the extension is three years, and Don Munroe reiterates that this is to make sure that the salt marsh takes and that they have the ability to replant if needed. Brad Chase asks if there was a condition on plant survival rates. Amy states she will check. Hearing no other comments from the Commission or audience, Chairman Brad Chase asks for a motion.

Ernest Crabtree moves that they approve the 3-year Extension of the Order of Conditions with the additional condition that the salt marsh planting takes place within the first year of the extension. Stanley Pastuszak seconds the motion. The motion carries unanimously, 4-0.

Discussion and Possible Vote

Modifications to pier structure at 10 Fiddler's Landing

Amy Usowski explains that the owners of the property reached out to chat about modifications to their existing permitted raised walkway. It is a raised walkway that ends in a ladder. It was permitted in the 1980s, and there was a lot of discussion over it originally as it extends over a lot of marsh. As a result there is no float portion. The owners asked Harbormaster John Rendon and Amy to check what options they may have, including a staircase to replace the ladder. Amy recommended that they discuss it with the Commission to see what they may lean toward, and recommends that the Commission advise the owners on whether they would prefer an RDA or NOI. The stairs would not extend any further than the existing end of the walkway. Richard and Judy Lappin explain that it is becoming more dangerous to get down to their kayaks from the ladder as it is quite slippery and dangerous, so they would like to do this with seven steps going down to the water and no increase to the footprint of the existing walkway.

Chairman Brad Chase asks for comments from the Commissioners. Stanley Pastuszak states that since the proposed change is within the footprint of the existing pier, it will not disturb the area any further. Stanley is in favor of a removable staircase that can be pulled out in the off-season. Ernest Crabtree thanks Richard and Judy for the pictures that they included and asks how the staircase will be attached or removed in the off-season. Richard explains that they are looking at something that will weigh around 350 lbs and they will build a mechanism so they can be slid up on to the pier in the off-season and they are looking into a non-slip surface for safety. Ernest confirms that really all that is happening is the last section of pier is being removed and the stairs would replace it, and he thinks this could potentially even be handled under an Administrative Review. Amy explains that since it is a water dependent structure in a resource area, she does not

feel comfortable doing it as an Administrative Review but recommends that it is handled as an RDA. Brad Chase agrees that he thinks it should be an RDA. John Ketchum asks how they handle getting their kayaks in and out of the water. Richard responds that the intent is to let the kayaks slide down the staircase. John Ketchum's last comment is that at a minimum they stairs would have to come out of the water in the off-season, and Richard assures them that that would be the main objective. Brad Chase states that he thinks an RDA is appropriate.

Discussion on use of Styrofoam for dock floats

Amy explains that Ann Frechette came to her with a concern about the use of Styrofoam on dock floats in a specific pond, but that Amy felt this is an important conversation to have in general. This would include swim floats and dock floats as well. The Harbormaster John Rendon was made aware of the concern. Amy recommends that perhaps this would be a good regulation change. Ann Frechette explains that she lives on John Joseph's Pond and this has been a concern of hers since she bought the house which had a Styrofoam dock which she immediately removed. She now utilizes a more environmentally friendly dock which many people have moved to in recent years. But some people who have not changed their old Styrofoam docks on the pond are impacting the pond and their neighbors as the Styrofoam disintegrates and washes up on their property. The problem is that there is no regulation to force the removal or replacement of these older Styrofoam docks once they are disintegrating. Other towns on Cape have banned these styles of docks so Ann is asking that the wildlife is protected and there is action taken to address this problem.

Chairman Brad Chase asks for Amy's opinion on how this should be handled. Amy states that she thinks the specific docks on the pond that have been identified as problematic should be removed/replaced as they are detrimental to the wetland, and that there should be a regulation about the materials used on swim floats and docks to ensure that this is not a continuing problem. Brad Chase asks if this could be included in the update of the dock regulations which had been previously discussed. Amy states that she thinks that would be a good plan. Stanley Pastuszak is in favor of these changes, as well as Ernest Crabtree who adds that any Styrofoam in the ponds should be limited, and John Ketchum is in favor as well, but asks if the docks are permitted. Amy responds that she believes that one is not permitted and is not sure about the others, but regardless if there is detriment occurring to the wetland area they can require that it is changed or removed.

Orders of Conditions

David Scott Sloan, 49 Snow Inn Rd, Map 15 Parcel N2. Raze and replace dwelling.

Chairman Brad Chase asks for comments on the Order of Conditions. Hearing none, Chairman Brad Chase moves that they approve the Order of Conditions. Stanley Pastuszak seconds the motion. The motion carries unanimously, 4-0.

Minutes

June 3, 2020

Chairman Brad Chase moves that they approve the minutes for the June 3, 2020 meeting of the Conservation Commission. John Ketchum seconds the motion. The motion carries unanimously, 4-0.

January 22, 2020

Ernest Crabtree makes one correction to a typo on page 3 of the minutes which Amy notes. Chairman Brad Chase moves that they approve the minutes for the January 22, 2020 meeting of the Conservation Commission. Ernest Crabtree seconds the motion. The motion carries unanimously, 4-0.

New Business

John Ketchum has organized some trail work at Red River from 9-11 am on Monday, August 24, 2020. There will likely be a second session if anyone else would like to attend.

Amy found that there was more work being done than had been approved at 47 and 52 North Rd and issued a stop work order. He asked how to move forward, and Amy states that she thinks an Amended Order would be sufficient. Amy asks that the Commissioners send her their thoughts via email to state whether they agree that an Amendment would suffice, and states that she will send them the Plan and Order of Conditions.

Ernest Crabtree asks what the process or procedure would be for moratoriums on docks. Amy recommends that this is included during a normal meeting session as a discussion point. Chairman Brad Chase agrees that this discussion should be brought up later in the fall and that the regulations do need to be addressed.

ADJOURNMENT

Chairman Brad Chase moves to adjourn the regular session of the Conservation Commission meeting of August 19, 2020, moving into Executive Session and not to return to regular session. Ernest Crabtree seconds the motion. The motion carries unanimously, 4-0.

The regular session of the August 19, 2020 Conservation Commission Meeting is adjourned at 8:18PM.

Executive Session

Pursuant to M.G.L. Ch.30A, Sec.20(a)(6), to consider a purchase, exchange, lease or value of real property if the Chair declares that an open meeting may have detrimental effect on the negotiating position of the Board on property at 0 Headwaters Drive, Harwich.

Update on King case, 30 & 34 Lothrop Avenue

Respectfully submitted,

Melyssa Millett