



CONSERVATION COMMISSION PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Wednesday, July 17, 2019

4 Fairgrounds Road, Training Room – 5:00 p.m.

Commissioners: Ashley Erisman (Chair), Ian Golding (Vice Chair), Ernie Steinauer, David LaFleur, Joe Topham, Seth Engelbourg, and Maureen Phillips

Called to order at 5:01 p.m.

Staff in attendance: Jeff Carlson, Natural Resources Coordinator; Joanne Dodd, Natural Resources Office Administrator; Terry Norton, Town Minutes Taker

Attending Members: Erisman, Steinauer, LaFleur, Engelbourg, Phillips

Remote Participation: Per 940 CMR 29.10, Phillips is participating remotely due to distance.

Absent Members: Golding, Topham

Early Departure: Phillips, 6:46 p.m.

Agenda adopted by unanimous consent

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment – None

II. PUBLIC HEARING

A. Notice of Intent

1. Town of Nantucket – Jetties Beach, Jetties Beach Playground, the end of Jefferson Avenue & Children’s Beach (29-1, 29-2, Road Layout, 42.4.2-9) SE48-3200

Sitting: Erisman, Steinauer, LaFleur, Engelbourg, Phillips

Documentation: Site and topographical plans, photos, requisite departmental reports and correspondence.

Representative: None

Public: None

Discussion (5:01): None

Staff: We were waiting for Massachusetts Natural Heritage determination; they have 4 conditions to include in the Order of Conditions and have authorize this for 5 years.
Have everything needed to close.

Motion: **Motion to Close.** (made by: LaFleur) (seconded by: Steinauer)

Voice Vote: Carried: unanimously //Phillips-aye; Erisman-aye; LaFleur-aye; Engelbourg-aye; Steinauer-aye

2. A & B Realty Trust – 14 & 20 Shawkemo Road (43-2.1 & 179) SE48-3219

Sitting: Erisman, Steinauer, LaFleur, Engelbourg, Phillips

Documentation: Site and topographical plans, photos, requisite departmental reports and correspondence.

Representative: Art Gasbarro, Nantucket Engineering & Survey

Julie Jordin, Garden Design Company

Public: None

Discussion (5:03): **Gasbarro** – Reviewed a letter and revived plans submitted as requested by the commission. Within the 25-foot buffer, they’ve restricted the removal of trees of 4 inches diameter or more; asked for an exception for Pitch Pine trees.

Engelbourg – Pitch Pine is a nesting tree for bats; asked for a time of year restriction on cutting those.

Jordin – Most Pitch Pine stands are in areas that were left on their own.

Erisman – She would prefer the Pitch Pines remain; looks like they are getting rid of more than they should and it’s a valuable habitat.

Gasbarro – He’ll accept restrictions on cutting Pitch Pine. Included a list of species and the biodiversity initiative brochure; that’s what they will ultimately pick plants from.

Staff: Have everything needed to close.

Motion: **Motion to Close.** (made by: LaFleur) (seconded by: Steinauer)

Vote: Carried: unanimously //Phillips-aye; Erisman-aye; LaFleur-aye; Engelbourg-aye; Steinauer-aye

3. *James M. Godec – 40 Squam Road (13-27) SE48-3218
 Sitting Erisman, Steinauer, LaFleur, Engelbourg, Phillips
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Brian Madden, LEC Environmental
 Jeff Blackwell, Blackwell & Associates
 Public R.J. Turcotte, Nantucket Land Counsel (NLC)
 Rick Atherton, 48 Squam Road
 Discussion (5:11) **Madden** – This is for construction of a pool, pool house, garage and related appurtenances located outside the 50-foot buffer; some regrading is proposed due to high groundwater, which is at elevation 9.4. Resource boundaries were approved previously. Requesting a waiver for pool separation from groundwater. Roof runoff is being redirected to subsurface infiltration systems in the driveway.
Phillips – Confirmed the pool house crawl space doesn't need waivers.
Steinauer – Asked if there will be a trail or path.
Madden – The brush cutting is for the septic force main; there is proposed infill of native vegetation. The construction access will be left open.
Erisman – If the pool needs to be drained, a truck would need access to it.
Phillips – The 2-foot separation for the pool, feels the waiver should be given for something that improves the area; a pool isn't a critical item and with the patio will cover a lot of open ground.
Erisman – She agrees with Ms. Phillips about granting waivers for pools.
Madden – The waiver is under no adverse impact/no reasonable alternative; deeper pools have been permitted; the revised plans get it above groundwater and looks at flood control storage and groundwater discharge and recharge and management of roof run off.
Blackwell – Squam Road provided the basis historically for the adoption of this waiver requirement for the purpose of providing provisions to allow excavation a temporary holding area in areas of high groundwater.
Turcotte – If dewatering is necessary, there are a lot of sensitive areas and the commission can require it be outside ConCom jurisdiction. As far as the pool is concerned, the waiver indicates no reasonable alternative; this pool is a luxury item that could have negative impact on the area around it. The pool house, wants to know what the existing capacity of the septic.
Blackwell – The septic is for 4 bedrooms; the dwelling is 3 bedrooms.
Steinauer – It has never been in our purview to judge if something is or is not needed.
Madden – We will accept all typical requirements.
Engelbourg – Nesting season for Harriers on Nantucket is later and asked work be restricted from March through August rather than July.
Atherton – He's aware of the number of abutters who have expressed concerns were but not prepared to comment. Asked this be held open to allow others a chance to comment. When he deals with filling grade to meet separation requirements, he questions how much fill should be allowed, how much is too much. There have been issues with flooding of Squam Road in the past due to the proximity of the swamp and drainage; wants to know how the pool will be managed under those circumstances. Sometimes the commission asks for an independent review of the wetland boundary; thinks it is important to ensure the boundary is properly configured.
Madden – Waiting to hear from Massachusetts Natural Heritage; asked for two-week continuance.
 Staff Read an email from Howard Blitman, 54 Squam Road, in opposition. Pointed out that the applicant met the abutter notification requirements.
 We reviewed the RDA from when the boundaries were established and are comfortable with it.
 Motion Continued to July 31 by unanimous consent.
 Vote N/A
4. *MLR3, LLC – 45 Shawkemo Road (27-18) SE48-3221
 Sitting Erisman, Steinauer, LaFleur, Engelbourg, Phillips
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Brian Madden, LEC Environmental
 Public None
 Discussion (5:34) **Madden** – This is to permit brush cutting on a 10-acre lot; resource areas are: three isolated vegetated wetlands; north of the road is a bordering vegetated wetland which transitions to salt marsh; and an abutting coastal bank. The pruning is to allow people to drive into the site, to open it up for marketing purposes. We need a waiver for cutting within the buffer.
Steinauer – Confirmed there would be no soil disturbance.
Erisman – Confirmed the big trees will be left since at this time there is no plan for a house.
 Staff In sites like this, the whole site is considered Massachusetts Habitat, there are anti segmentation provisions; these projects often show a larger work area than will be needed.
 He will prepare an order of conditions for the next hearing.
 Motion Continued to July 31 by unanimous consent.
 Vote N/A

5. *Gisela Leinhard – 11 Jonathan Way (75-42) SE48-3217
- Sitting Erisman, Steinauer, LaFleur, Engelbourg, Phillips
- Documentation Site and topographical plans, photos, requisite departmental reports, BOH septic permit, 2018 NCL water Quality Report, and correspondence.
- Representative Jeff Blackwell, Blackwell & Assoc.
- Public R.J. Turcotte, NCL
Claire Seaquist 10 Jonathan way
- Discussion (5:41) **Blackwell** – This is for residential development and a MicroFAST® I/A septic. There is a bordering vegetated wetland in the middle of the property. A waiver is requested for the 100-foot setback from the wetland for the septic under no adverse impact/no reasonable alternative; it’s placed as far away as possible. 1990 groundwater mapping shows the water flows southerly from the proposed leach field toward Jonathan Way, away from the wetland. Meets the no-disturb setback requirements.
Steinauer – If this is seasonal, sometimes tight tanks are permitted.
Blackwell – He believes it will be a year-round home. Board of Health (BOH) and DPW consider tight tanks a system of last resort.
Erisman – Asked if the house will require a separation from groundwater.
Blackwell – Yes; if dewatering is required, there will be a temporary infiltration basin. The BOH has approved this.
Erisman – She is uncomfortable with waivering a new septic.
Engelbourg – He feels the same way; doesn’t feel this is the type of project normally permitted.
Phillips – Agrees; it is a slippery slope issuing waivers for land that now would not be considered buildable.
Blackwell – The BOH has issued a permit; he feels he’s demonstrated no adverse impact due to groundwater flow and the MicroFAST® system. He believes specific questions be presented to which he can respond so they can move forward. He’s willing to respond to those questions today or continue for further presentation. There is a precedence to support permitting this.
Turcotte – Referenced a 2018 water quality report; explained why Tom Nevers Pond has some of the highest phosphorous levels of all Island ponds. MicroFAST® doesn’t address phosphorous. Southeast is the direction toward the wetland surrounding Tom Nevers Pond. In 2012 an almost identical project was denied on similar grounds.
Blackwell – Tom Nevers Pond is much farther away from this septic to the east; feels there will be no impact to the pond or surrounding wetlands.
Seaquist – Has concerns about this project.
Steinauer – Wants to see Mr. Blackwell’s documentation on the groundwater flow.
Phillips – Questions if a 1990s groundwater map is still valid. Would like to see the remapping done sooner rather than later.
Blackwell – Asked for a two-week continuance.
- Staff Asked Mr. Blackwell to send the water quality report to the office for the record.
The 46 Wauwinet Road denial was issued as a split permit; it was compliant under the State Act. Reminded the commissioners about how the grandfathering works. Something we lose track of the qualifier for the no-reasonable-alternative waiver which is to allow the project to proceed in compliance with the regulations.
The Horsley Witten maps are the legal standards used by BOH; the Town is talking about doing an update.
Also waiting for Massachusetts Natural Heritage.
- Motion Continued to July 31 by unanimous consent.
- Vote N/A

III. PUBLIC MEETING

C. Minor Modifications

1. Norris – 31 Pilgrim Road (41-97) SE48-3078
- Sitting Erisman, Steinauer, LaFleur, Engelbourg, Phillips
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative Paul Santos, Nantucket Surveyors
- Public None
- Discussion (6:02) **Santos** – 2018 Order of conditions issued for construction of a small section of a pool and patio in the buffer to a bordering vegetated wetland. This is for placement on the southeast property corner a post and rail fence abutting Nantucket Islands Land Bank and along the northerly line to use privet instead of Leland Cyprus. Looking to validate the as-built changes.
- Staff None
- Motion **Motion to Approve the minor modification.** (made by: Steinauer) (seconded by: LaFleur)
- Vote Carried: unanimously //Phillips-aye; Erisman-aye; LaFleur-aye; Engelbourg-aye; Steinauer-aye

D. Certificates of Compliance

1. Norris – 31 Pilgrim Road (41-97) SE48-3078

Sitting Erisman, Steinauer, LaFleur, Engelbourg, Phillips
 Staff With the approval of the minor modification, this is in compliance.
 Discussion (6:06) No concerns.

Motion **Motion to Issue.** (made by: Engelbourg) (seconded by: LaFleur)
 Vote Carried: unanimously //Phillips-aye; Erisman-aye; LaFleur-aye; Engelbourg-aye; Steinauer-aye

2. Town of Nantucket – Hummock Pond Road – Milk Street to Cisco Beach (66-129) SE48-2437

Sitting Erisman, Steinauer, LaFleur, Engelbourg, Phillips
 Staff There were 3 areas of drainage concern; as of today, those areas have been raked out, repaired, and reseeded. There are still knotweed stands that need to be treated and removed. Work done today wasn't done under the permit but an enforcement order.

Discussion (6:06) **Steinauer** – If they could treat knotweed as soon as it pops up, that would be good. We usually look at more than two weeks to ascertain plant survival.

R.J. Turcotte, NCL – We hold a conservation restriction on the bank in question; NCL's concern is that if the certificate is issued, there is no incentive to finish the work.

Engelbourg – If we close, we can move forward with an enforcement order should it happen again. From a jurisdictional framework we have more standing to close and use enforcement if necessary.

Motion **Motion to Issue.** (made by: LaFleur) (seconded by: Steinauer)
 Vote Carried: unanimously //Phillips-aye; Erisman-aye; LaFleur-aye; Engelbourg-aye; Steinauer-aye

3. Pokoik – 21 Washing Pond Road (31-31) SE48-2041

Sitting Erisman, Steinauer, LaFleur, Engelbourg, Phillips
 Staff They didn't do the work and the permit expired; seeking to invalidate the order.

Discussion (6:15) None

Motion **Motion to Accept the invalidation of the order of conditions.** (made by: Steinauer) (seconded by: Engelbourg)

Vote Carried: unanimously //Phillips-aye; Erisman-aye; LaFleur-aye; Engelbourg-aye; Steinauer-aye

4. Orders of Condition

1. Town of Nantucket – Jetties Beach, Jetties Beach Playground, the end of Jefferson Avenue & Children's Beach (29-1, 29-2, Road Layout, 42.4.2-9) SE48-3200

Sitting Erisman, Steinauer, LaFleur, Engelbourg, Phillips

Documentation Draft Orders of Conditions

Staff The only condition that we recommend is that work between April 1 and August 31 requires a monitor to be on the beach.

Discussion (6:16) None

Motion **Motion to Approve as amended.** (made by: Steinauer) (seconded by: LaFleur)

Vote Carried: unanimously //Phillips-aye; Erisman-aye; LaFleur-aye; Engelbourg-aye; Steinauer-aye

2. A & B Realty Trust – 14 & 20 Shawkemo Road (43-2.1 & 179) SE48-3219

Sitting Erisman, Steinauer, LaFleur, Engelbourg, Phillips

Documentation Draft Orders of Conditions

Staff Reviewed changes reflective of discussion: Condition 20 referring to tree removal; add Condition 21 restricting cutting of pine tree; old Condition 21 becomes Condition 22.

Discussion (6:18) None

Motion **Motion to Approve as amended.** (made by: Engelbourg) (seconded by: LaFleur)

Vote Carried: unanimously //Phillips-aye; Erisman-aye; LaFleur-aye; Engelbourg-aye; Steinauer-aye

5. Extension Requests

1. Nantucket Conservation Foundation Inc – Medouie Creek (20-25) SE48-2915

Sitting Erisman, Steinauer, LaFleur, Engelbourg, Phillips

Staff This is the Medouie Creek phragmites removal project; asking to extend for 3 years.

Discussion (6:21) None

Motion **Motion to Approve the extension.** (made by: LaFleur) (seconded by: Phillips)

Vote Carried: unanimously //Phillips-aye; Erisman-aye; LaFleur-aye; Engelbourg-aye; Steinauer-aye

6. Other Business

1. Approval of Minutes

a. 07/03/2019: **Phillips** – The “S” in her name got dropped on. Approved as amended by unanimous consent.

b. 06/17/2019 SBPF: **Approved by unanimous consent:**

2. Monitoring Reports: none

3. Regulation Update Discussion:

Carlson – The regulations are overdue for review and update. Looking to have special meetings in the Fall to review them. Asked for specific items to discuss.

Phillips – There are a lot of little items that could be cleaned up to make the regulations more enforceable.

Erisman – She wants to look at what qualifies as a structure: pools, bluestone patios, etc.

Engelbourg – Wants to look at pools, invasive species removal, private organizations opening to the public, and enforcement.

Steinauer – Wants to look at performance standards for handicapped accessibility through resource areas since that will be coming up more.

Carlson – We've been thinking a lot about use of public lands; ADA access comes up a lot. We want to be careful how we do that. We don't want people to use it as a loophole and should have strict standards for what qualifies.

Erisman – Feels Massachusetts Natural Heritage doesn't always thoroughly review projects; wants to talk about jurisdictional habitat reviews.

Carlson – It would be good to do that but there are issues with conflicting with Massachusetts Natural Heritage's regarding restrictions they might put on a project. Explained how he would like to get the resource boundary lines on the GIS maps by parcel.

Paul Santos, Nantucket Surveyors – Asked if certain projects could be streamlined to be administrative approvals such as for decks outside the buffer; doesn't know if the State Act allows that.

Carlson – Under the State Act, there are a group of minor activities that don't require an NOI; those activities are specific. The Land Bank has approached us about similar things: installing posts to prevent parking on their property; they also want to talk about view-shed management and what that would be.

Phillips – Would like to see some legalization of view-shed management.

Engelbourg – Confirmed that ConCom has jurisdiction over plants going into buffer zones and can prohibit cultivars.

Carlson – We should have a condition incentivizing bio-retention as related to impervious surfaces and dealing with the water. Thought about creating a situation where you require a level of infiltration that can't be waived; if you can't meet the waiver requirements, you must install a bio-retention system.

Engelbourg – Should look at square footage of the impervious surface and structures to ascertain the amount of bio-retention that would be necessary.

Carlson – Wants to tackle separation to ground water when applying for a waiver. No one has ever been denied the waiver and it's never been challenged. Mr. Golding would like to discuss coastal engineering structure and qualification for them.

Asked that if anyone has information to share, send it to the office; they want to create a web resource area.

4. Reports:
 - a. CRAC, LaFleur – First meeting later this month.
5. Commissioners Comment
 - a. State of the Harbor presentation tomorrow at GHYC
6. Administrator/Staff Reports
 - a. None

Adjourned at 7:03 p.m. by unanimous consent.

Submitted by:
Terry L. Norton