



CONSERVATION COMMISSION

PUBLIC MEETING

131 Pleasant Street
Nantucket, Massachusetts 02554
www.nantucket-ma.gov

Thursday, September 22, 2022 – 5:00 p.m.

This meeting was held via remote participation using ZOOM and YouTube.

Commissioners: Ashley Erisman (Chair), Ian Golding (Vice Chair), Seth Engelbourg, Mark Beale, Linda Williams, Mike Misurelli, and Joe Plandowski

Called to order at 5:00 p.m. by Ms. Erisman

Staff in attendance: Jeff Carlson, Natural Resources Director; Lisa Graves, Administrative Specialist; Terry Norton, Town Minutes Taker

Attending Members: Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski

Late Arrivals: Beale, 5:05 pm

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment – None

II. PUBLIC HEARING

A. Notice of Intent

1. Brant Point Club, LLC – 6,8 North Beach Street/4 Dolphin Court (42.1.4-65; 65.1; 65.2) SE48-3518 (**Cont. 10/6**)
2. Sunset House, LLC – 15 Hallowell Lane (30-10) SE48-3570

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski

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

Representative Mark Rits, Site Design Engineering

Public None

Discussion (5:02) **Rits** – This is for repair of a timber groin and bulkhead within coastal beach and land under the ocean. Commissioners requested Town Counsel input on grandfathering status of the bulkhead and a request of 3rd-party review.

Williams – She agrees with the applicant that this is a grandfathered structure; it predates the bylaw. Department of Environmental Protection (DEP) has seen this before. She doesn't feel we need to wait.

Misurelli – Concurs with Ms. Williams.

Staff recomm. Filed request for Legal services, which is under review. Sent this off the 3rd-party review and waiting on response. Spoke to DEP and Coastal Resources on how other commissions handle these projects; they said either something similar with steel driven in front or converted to sloped-stone revetment. Have everything needed to close.

Motion **Motion to Close.** (made by: Williams) (seconded)

Roll-call vote Carried 6-0//Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye; Beale abstain

3. Boathouse Realty Trust – 52 Warrens Landing Road (38-28 &29) SE48-3579

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski

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

Representative Edward Lahey

Public None

Discussion (5:08) **Lahey** – This is for beach nourishment, about 50' eroded because of inappropriate boat storage over the winter; needs new sand and grass. He has not seen the Massachusetts Natural Heritage (MNH) letter.

Engelbourg – Before we go to approve this, we need more protocol information: equipment, volume, grain size, species list, planting plan.

Lahey – Asked for a 2-week continuance.

Staff recomm. A concrete retaining wall fronts the house; the wall is intact but the sand covering it has washed away. MNH sent back a couple of questions that need to be resolved.

Motion Continued to October 6.

Roll-call vote N/A

4. Goodnow – 37 Massachusetts Avenue, Unit 1 (60.3.1-1) SE48-3573
 Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
 Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
 Representative Brian Madden, LEC Environmental
 Public None
 Discussion (5:14) **Madden** – This is for reconstruction and a tight tank within buffer to a coastal dune and coastal beach and land subject to coastal storm flowage. Reviewed the revised plan per previous comments and concerns. Did get the MNH letter.
Erisman – Appreciates the change to the plans to include the shed.
 Staff recomm. Have everything needed to close.
 Motion **Motion to Close.** (made by: Williams) (seconded)
 Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
5. Rabbit Run Road, LLC – 26 Rabbit Run Road (28-9) SE48-3574
 Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
 Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
 Representative Brian Madden, LEC Environmental
 Public None
 Discussion (5:17) **Madden** – This is for renovation, revegetation, septic, and appurtenance within buffer to a coastal bank, bordering vegetated wetlands, salt marsh, and land subject to coastal storm flowage. Reviewed the plan revised per previous comments and concerns. An ample habitat corridor will be maintained west of the structure. We are proposing to plant Tupelo or Sassafras rather than Cedars; existing Cedars will be maintained.
Golding – Appreciates the changes.
Engelbourg – The cantilevered overhangs and decks, previously we required they maintain adequate spacing for rain infiltration; he'll be requiring that as a condition.
 Staff recomm. Have everything needed to close.
 Motion **Motion to Close.** (made by: Beale) (seconded)
 Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
6. *Jeffrey H. Johnston Trust – 131 Wauwinet Road (12-5) SE48-3578
 Sitting Erisman, Golding, Engelbourg, Beale, Misurelli, Plandowski
 Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
 Representative Brian Madden, LEC Environmental
 Don Bracken, Bracken Engineering
 Public None
 Discussion (5:22) **Madden** – This is to elevation a structure onto a helical-pier foundation system entirely within a coastal dune, barrier beach, and land subject to coastal storm flowage. Currently the house is on a cinder-block foundation. The driveway-parking was previously constructed; the fiber-grate boardwalk has yet to be installed but are proposing to extend 11 linear feet to connect directly to the stairs and are eliminating 487 square feet of at-grade boardwalk and decking and restoration of those areas. Site access is limited through the parking area, which will alter the wetland and coastal dune; a request for access authorization from the north neighbor has been unanswered. Propose to place swamp-mat style planking over the resource area to eliminate wheel-to-ground contact. All equipment will be relocated with no over-night storage within the resource areas. Erosion control barriers will be installed around the limit of work. The wetlands will be revegetated.
Golding – If it's lifted to 4', the boardwalk will require a railing.
Madden – The boardwalk will be only 12" to 18" above grade. The stairs are being extended to meet the boardwalk.
Golding – The Order of Conditions should be so provisioned.
Misurelli – Asked how the piers are installed.
Bracken – A bobcat attachment will drill them in.
Engelbourg – Asked how long the construction might take and if the mats will be removed nightly.
Madden – The mats can be stockpiled in the driveway. Construction will take several months.
Beale – Asked if they will be able to get under the house or if they house will have to be lifted over 8' (yes).
 Staff recomm. Have everything needed to close.
 Motion **Motion to Close.** (made by: Golding) (seconded)
 Roll-call vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, Misurelli, and Plandowski-aye; Williams recused
7. Nantucket Islands Land Bank – 16 East Creek Road (55-58) SE48-3580 (Cont. 10/6)
B. Amended Order of Conditions
 1. Philips, Trustee – 19 East Tristram Avenue (31-4.1) SE48-3304 (Cont. 10/6)

2. Lloyd Realty LLC – 7 Heather Lane (30-24.2) SE48-3478

Sitting	Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
Documentation	Site and topographical plans, photos, requisite departmental reports, and correspondence.
Representative	Paul Santos, Nantucket Surveyors
Public	None
Discussion (5:36)	Santos – This amended order is to submit supplemental plans reflecting changes to the dwelling footprint and hardscaping component per Historic District Commission (HDC) approval. A spa, which wasn't shown on the original plans is outside the 50' setback. Engelbourg – Asked that the traditional spa-pool conditions be included.
Staff recomm.	Have everything needed to issue.
Motion	Motion to Issue. (made by: Engelbourg) (seconded)
Roll-call vote	Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

III. PUBLIC MEETING**C. Requests for Determination of Applicability**

1. None

D. Minor Modifications

1. EPR RGH, LLC – 119 Eel Point Road (33-17.2) SE48-3437 (Santos)

Sitting	Erisman, Golding, Beale, Williams, Misurelli, Plandowski
Documentation	Site and topographical plans, photos, requisite departmental reports, and correspondence.
Representative	Paul Santos, Nantucket Surveyors
Public	None
Discussion (5:40)	Santos – This is for relocation of aluminum beach stairs more to the center of the property. Basic components are still the same. Golding – Confirmed the left stairs shown on the plans will not be constructed. Erisman – where the new stairs line up, they will meet up to American Beach grass; asked if they are shifting the entry point (yes).
Staff recomm.	Have everything needed to issue.
Motion	Motion to Issue. (made by: Golding) (seconded)
Roll-call vote	Carried 6-0//Beale, Erisman, Golding, Misurelli, Plandowski, and Williams-aye; Engelbourg recused

E. Certificates of Compliance

1. 12 North Road Trust – 12 North Road (43-82) SE48-3022 (Wilkinson)

Sitting	Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
Representative	None
Staff recomm.	This project was for removal of debris behind a bulkhead; reviewed work restoration that had been done. The site is now in compliance.
Discussion (5:43)	Erisman – She's glad this is now compliant.
Motion	Motion to Issue. (made by: Misurelli) (seconded)
Roll-call vote	Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
2. 11 Hulbert Avenue, LLC – 11 Hulbert Avenue (29.2.3-2) SE48-3455 (Bracken)	
Sitting	Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
Representative	Don Bracken, Bracken Engineering
Staff recomm.	Reviewed the scope of within the flood zone. Work is in compliance.
Discussion (5:47)	None
Motion	Motion to Issue. (made by: Williams) (seconded)
Roll-call vote	Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

F. Orders of Condition

1. Murphy/Foudyler – 9 Massachusetts Avenue (60-83) SE8-3568

Sitting	Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
Documentation	Draft Order of Conditions
Staff	Read Finding 3 and Finding 4. Explained why he prefers “will allow.”
Discussion (5:48)	Golding – In Finding 3, asked that rather than “will allow” use “will necessitate”; he'll defer to Mr. Carlson's preference.
Motion	Motion to Approve as drafted. (made by: Beale) (seconded)
Roll-call vote	Carried 6-0//Beale, Engelbourg, Erisman, Golding, Plandowski, and Williams-aye; Misurelli recused
2. Steven L. Cohen, Trustee – 6 & 11 East Hollowell Lane (30- 17 & 98) SE48-3570	
Sitting	Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
Documentation	Draft Order of Conditions
Staff	This was the repair of the groin; there is no bulkhead. Read Finding 2; have normal conditions. He included conditions included for photo monitoring as added to 18 Washing Pond as well as an evaluation requirement to ensure sand is properly collecting and depositing.
Discussion (5:52)	Engelbourg – Asked that there be a timeline for documenting accumulation; suggested 3 consecutive surveys.
Motion	Motion to Approve as amended. (made by: Williams) (seconded)
Roll-call vote	Carried 7-0//Beale, Engelbourg, Erisman, Golding, Plandowski, and Williams-aye

3. Sunset House, LLC – 15 Hallowell Lane (30-10) SE48-3570

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
 Documentation none
 Staff If there is a concern about old chemicals such as creosote, he can pull information together in the next 2 weeks.
 Discussion (5:55) **Erisman** – She’s concerned about what chemicals the old bulkhead might contain; doesn’t know what testing there is.
Engelbourg – He’s not comfortable with this and will vote in opposition because the applicant hasn’t met the burden of proof that there are no alternatives.
Williams – Asked what type of testing Ms. Erisman would want; she’s okay with including that.
Erisman – A lot of conditions for 6 & 12 Hallowell could be transferred over to this.
Beale – He agrees with Mr. Engelbourg; feels we didn’t have a fair hearing on alternatives. He’ll vote in opposition to this without that information.
Golding – He also has reservations.
 Discussion about who will and will not be able to attend the October 6 meeting.
Engelbourg – Asked for a negative order as well.
Erisman – Suggested adding this to the September 29th special meeting agenda so more commissioners will be available for the vote.

Motion Continued to September 29th
 Roll-call vote N/A

4. Goodnow – 37 Massachusetts Avenue, Unit 1 (60.3.1-1) SE48-3573

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
 Documentation Draft Order of Conditions
 Staff Has the normal fill conditions.
 Discussion (6:03) None
 Motion **Motion to Issue as drafted.** (made by: Williams) (seconded)
 Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

5. Rabbit Run Road I, LLC – 26 Rabbit Run Road (28-9) SE48-3574

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
 Documentation None
 Staff None
 Discussion (6:05) **Engelbourg** – Asked for the adequate spacing for cantilevered element and infiltration.
Erisman – Asked for photo monitoring of survivability of the plantings.

Motion Continued to September 29th
 Roll-call vote N/A

6. Jeffrey H. Johnston Trust – 131 Wauwinet Road (12-5) SE48-3578

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
 Documentation None
 Staff He’ll draft the three Order of Conditions for SE48-3570, SE48-3574, and SE48-3578 and add them to the September 29th agenda to “knock them out.”
 Discussion (6:06) **Engelbourg** – We should include removal of the mats and equipment nightly.
Golding – Wants a condition for no handrails.
Erisman – Also survivability of the plants.

Motion Continued to September 29th
 Roll-call vote N/A

G. EXTENSION REQUEST

1. 37 Starbuck, LLC-37 Starbuck Road (60-37) SE48-3104

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
 Representative Paul Santos, Nantucket Surveyors
 Staff recomm. None
 Discussion (6:08) **Santos** – This is for 2 years; the building is being moved off an eroding bank. The order expires in November.
 Motion **Motion to Issue the 2 1-year extensions.** (made by: Engelbourg) (seconded)
 Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

H. Other Business

1. Approval of Minutes 09/08/2022:

Motion **Motion to Approve as drafted.** (made by: Williams) (seconded)
 Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

2. Pocomo Monitoring Report

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
 Discussion (6:10) **Carlson** - They asked to continue this to change the owners’ names on the orders.
Erisman – Asked if we’ve heard from Town Counsel on the other property.
Carlson – We had to kick that over the DEP and are waiting for a response. Hopeful they’re on a track for resolution.

Motion No action at this time.
 Roll-call vote N/A

3. Discussion of Regulatory Update

Erisman – It would be nice to schedule this. Asked if October 13th is okay. We need to get enough of a quorum to get this moving with setting the public hearing.

Carlson – Suggested October 20th; we have a 3-week gap in October.

Engelbourg – Requested that meeting be in person if possible.

4. Enforcement Actions/Potential Enforcement Actions

a. Brocks Court

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski

Discussion (6:18) **Carlson** – That got sent out and the clock is ticking. Their Order of Conditions had retroactive punitive action; he sent that off to get an opinion on if it's okay to be acted upon.

5. Reports:

a. CPC, Beale

b. NP&EDC, Engelbourg

6. Commissioners Comment

a. None

7. Administrator/Staff Reports

a. None

I. Adjournment

Motion **Motion to Adjourn at 6:22 p.m.** (made by: Williams) (seconded)

Roll-call vote Carried 6-0//Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

Submitted by:

Terry L. Norton

PROPOSED