



## TOWN OF TRURO CONSERVATION COMMISSION

P.O. Box 2030  
Truro MA 02666-0630

### Conservation Commission Meeting Minutes: November 5, 2018

The meeting and public hearings were called to order at 6:00 P.M. in the Selectman's Meeting Room. Commissioners Present: Jack McMahon; Larry Lown; Henry Lum; Chair, Deborah McCutcheon; Others Present: Emily Beebe, Conservation Agent

Notice of Intent for 449 Shore Road: Cousins Family Revocable Trust; SE #75-1026; proposal for a dwelling, septic system and driveway; Coastal Dune, Barrier Beach; Land Subject to Coastal Storm Flowage and buffer zone of a Bordering Vegetated Wetland. (Map 8, Parcel 15) (Continued from September 10, 2018)  
This matter is continued to the December 3, 2018 meeting.

Notice of Intent: 2 Kill Devil Rd; Martha Wright Crouch/Lorin Wright; SE #75-1052; new dwelling, extend shell driveway, install split rail fence, trenching & piping to existing well and septic system; Buffer Zone to a Coastal Bank, Land Subject to Coastal Storm Flowage. (Map 42, Parcel 303) (continued from October 1, 2018)  
This matter is continued to the December 3, 2018 meeting.

Request for Determination of Applicability: 6A & 6B Ocean Bluff Ln; Ken Kuchin; driveway improvements; Buffer Zone to a Bordering Vegetated Wetland. (Map 37, Parcel 5) Tim Brady of East Cape Engineering and Patrick Coffey of Pratt Construction presented the details of their proposal. There were 2 proposed projects, the utility lines along the North side of the property would be trenched underground and the poles removed and the access road would be improved for the wear and tear of construction trucks in winter. The site plan shows the utility locations and access road details. Commissioner McCutcheon inquired about the landscaping plan previously approved by the board. Mr. Coffey indicated that the seed used was a late blooming fescue. Mr. Coffey added that the harmony mix approved by the Conservation Commission would not take hold this late in the season. Commissioner McCutcheon asked if Mr. Coffey had applied for an amendment to the original Order of Conditions. Mr. Coffey indicated that they are still in the process of re-vegetating the site, and as they have 3 years, are in compliance with the Order of Conditions. Mr. Coffey stated that the plantings will stabilize the environment; they will return in the spring to plant the approved mix. Mr. Brady argued that the landscaping work was just getting underway. Commissioner McCutcheon emphasized the need for the project managers to communicate with The Agent. Mr. Brady reiterated that the matter before the commission was regarding the driveway improvement. Mr. Coffey briefed the commission on the proposal to lay additional gravel to help improve the road and erosion. The Agent asked Mr. Brady about the proposed retaining wall on top of the culvert. Mr. Brady stated that the wall would help support the road; Mr. Coffey updated the plans to reflect a concrete base with timber

on top. Commissioner McCutcheon requested, given the history of violations, that Mr. Brady provide a written summary/agreement to confirm the driveway improvements. Commissioner Lown inquired about communication with the Cape Cod National Seashore regarding the road; Mr. Coffey indicated that the property owner has been in contact with them.

**Motion to accept a settlement letter from Mr. Brady, edited as needed by the Conservation Agent to resolve the matter within the context of a negative 3 determination by Commissioner Lown; seconded by Commissioner McMahon; the vote was unanimously in favor, 4-0-0.**

**Administrative Review Permit: 21 Crestview Circle: revegetation of coastal bank**

Gordon Peabody of Safe Harbor Environmental was present. The Agent noted that there was a request for certificates of compliance for two projects: a stairway and the repair of drift fence on the beach dune. Within the Order of Conditions is the standard condition that the work be completed in compliance with local regulations for planting. In that regard, it is not ready for a certificate of compliance. The requirement was that the coastal bank be re-vegetated, which hasn't been completed. Mr. Peabody has been engaged to re-stabilize the coastal bank to whatever degree possible with native vegetation and jute netting.

**Motion to issue the Administrative Review Permit while the Certificates of Compliance remain open until fulfilled; Motion by Commissioner McMahon; seconded by Commissioner Lum, the vote was unanimously in favor, 4-0-0.**

**Request for Determination of Applicability: 1 Carrs Ln; Art & Susanne Salem-Schatz; regrading; Riverfront Area. (Map 50, Parcel 140)**

Tim Dickey was present. A Notice of Intent was issued during the original construction of the property several years ago, and the certificate of compliance issued. The earth has subsided around the property and the basement now tends to flood. Mr. Dickey proposes to re-grade around the house, about 6'-8' within the foundation, to get the water to flow away from the house. Most of the work will not be conducted in the buffer zone.

**Motion to find for a negative 3 determination and permit the work to commence as long as it is limited to 6'-8' from the foundation; Motion by Commissioner McMahon; seconded by Commissioner Lum, the vote was unanimously in favor, 4-0-0.**

**Notice of Intent: 81 Slough Pond Rd, Stephen Reilly & Emily Bingham; SE# 75-; construction of two accessory cottages and deck; Buffer Zone to Slough Pond. (Map 61, Parcel 61)**

John O'Reilly and Malachy Connelly were present and provided the Commission with a description of their proposal. The applicants have filed a Notice of Intent to add two structures: a living space with a kitchen and living area, and a detached structure with two bedrooms. The structures will be connected by a deck and portico system. The structures will be situated about 20' within the 100' buffer zone to Slough Pond. The architect (Mr. Connelly) has sited the building as to avoid removal of trees. The structures will be connected to the septic system, which has the adequate size. The encroachment in the buffer zone will be about 560sf, which includes the small portion of the proposed cottage and deck. Plantings of indigenous shrubs are proposed in an area

that is currently lawn. Commissioner McCutcheon noted that if the buildings were moved slightly, the project would be outside of the Commission's jurisdiction. Mr. O'Reilly stated that the owners would like to take advantage of the vistas of the pond without excessive vegetation removal. Commissioner McMahon inquired about the change in grade. Mr. O'Reilly replied that the cottage closest to the pond will have an elevation as to not have to scrape the grade down. Commissioner McCutcheon asked Mr. O'Reilly if he had compiled any alternative plans. Mr. O'Reilly indicated that he had not. Commissioner McMahon felt that given the acreage at the property, there is no hardship that would compel the location of the structures as proposed and expressed concern about introducing a disturbance so close to a resource area. Mr. O'Reilly felt that the re-vegetation of the lawn created a more environmentally sound proposal. Commissioner McCutcheon would like to see an alternative plan. Malachy Connelly indicated that the owners are willing to do additional mitigation if necessary. Commissioner Lown stated that, per the Wetlands Protection Act, the buffer zone should not be encroached upon unless there is no other choice, which is not the case with this property. The commissioners discussed possible siting alternatives. **Motion to continue to December 3, 2018 by Commissioner Lown, seconded by Commissioner McMahon, the vote was unanimously in favor, 4-0-0.**

**Enforcement: 660 Shore Rd – (Continued from August 2018)**

Kerry Hennessy of 660 Shore Road, Unit 1, approached. Ms. Hennessy stated that when she purchased her condominium unit she was granted permission within the Purchase and Sale Agreement to construct a deck. The deck was constructed without any review or permit from the Commission. Ms. Hennessy stated that she was unaware that any conservation approval was required since she was building the same deck that existed at another unit within the condo association. The Agent was investigating the construction of a deck without permits at another unit in the association when it was discovered that the construction of the deck at Unit 1 was not permitted. The Agent recommends that either the deck is removed, because it's in a flood zone, or the Commission should require a filing after-the-fact. Discussion commenced regarding deck standards and how the Commission should handle enforcement of non-permitted decks. Commissioner McCutcheon stated that the larger issue at hand needs to be addressed independently. Paul and Mary Broder, owners of Unit 3, approached. Mr. Broder discussed the construction of their deck. Commissioner McMahon requested that the Broder's deck be weighted down for the winter. The Broder's indicated that they will do that. **No motion was made regarding this matter, but it is to be continued at a later meeting.**

**Notice of Intent: 5 Great Hills Ln, Kevin & Helene Wise; SE #75-; construction of a pile supported garage, swimming pool & equipment, deck extension, fence, air compressor and generator; Barrier Beach, Coastal Dune. (Map 53, Parcel 1)**

Jason Ellis of JC Ellis Design and Ryan Webber, contractor, were present. The existing dwelling has a drive-under garage. The property owners have been having flooding issues in the basement due to rain water. The owners would like to fill-in the area where the garage door is with a concrete wall, put a regular door there and a timber stairwell going down. The owners would like to build a new garage on the landward side of the house.

The proposed garage would be on concrete piles. The owners have included a request to install a lap pool within the deck area. The commission discussed the location of the proposed pool. Commissioner Lown stated that the proposed location of the pool within the dune area would not allow for the movement of sand. The Agent referred the commissioners to several letters submitted by abutters. The Agent suggested the hiring of a consultant to review the application to address the performance standards. Steven Grossberg and Tobin Gerhart approached and presented the commissioners with correspondence from neighbors. Mr. Grossberg read from the correspondence, expressing the opposition of neighbors to the installation of the swimming pool and their concerns regarding the impact on the environment. There is not yet a file number for this project. **Motion to continue to the December 3, 2018 meeting by Commissioner Lown; seconded by Commissioner McMahon, the vote was unanimously in favor, 4-0-0.**

**Notice of Intent: 670 Shore Rd U:9, John Mignaro & Darlene Millman; SE# 75-; reconstruction of existing deck and proposed deck expansion; Barrier Beach, Land Subject to Coastal Storm Flowage. (Map 2, Parcel 12.9)**

Jason Ellis of JC Ellis Design was present. The owners have an existing deck and would like to extend it eight feet. The existing deck would be re-built to meet new building code standards. The existing deck is a permanent structure attached to the house. The property is in a flood zone and is located on a barrier beach. Richard Wood, owner of Unit 5 and trustee of the condominium, approached. Mr. Wood spoke to the commissioners about the various decks located at other units. Mr. Wood informed the board that the condominium association voted to approve the proposed deck expansion for Unit 9. Commissioner Lown stated his support of the deck being re-built but was concerned about the expansion. The Agent noted that there is no mitigation offered and that there will be removal of vegetation in the area of the proposed work. The Agent felt that the proposed work did not meet performance standards. The Agent will have additional discussions with Mr. Ellis regarding mitigation and meeting the performance standards. The project had not been issued a DEP file number at the time of the meeting, **Motion to continue to the December 3, 2018, as agreed upon by the applicant, by Commissioner Lown; the vote was unanimously in favor, 4-0-0.**

**Notice of Intent: 588 Shore Rd, Ellen & Emily Lanigan; SE# 75-; construction of an addition within footprint of existing concrete porch, construction of addition on footprint of existing deck. Barrier Beach, Land Subject to Coastal Storm Flowage. (Map 5, Parcel 20)**

Jason Ellis of JC Ellis Design and Brian Hopkins of Augustus Construction approached. The Agent asked Mr. Hopkins about the foundation as she was unable to determine from the plans how much new foundation will be added. Mr. Hopkins clarified the location of the new foundation. The Agent noted that there is no mitigation proposed and that the protocol is minimal. The Agent requested a more extensive protocol. Discussion commenced regarding the plans provided by Mr. Ellis and Mr. Hopkins, however the project had not been issued a DEP file number at the time of the meeting, therefore it was continued.

**Motion to continue to December 3, 2018 by Commissioner Lown; seconded by Commissioner McMahon, the vote was unanimously in favor, 4-0-0.**

**Enforcement: 544 Shore Rd – (continued from September, 2018)**

David King, President of the Bay Beach Townhomes Condominium was present. Mr. King discussed the exclusive use areas at the condominium and the change in topography over the years relative to accretion and shifting dunes. Mr. King apprised the commissioners about the access easement benefitting the property at 539 Shore Road. According to Mr. King, Mr. Bashian (of 539 Shore Road) has manipulated the dune by putting items in the dune, such as the Adirondack chairs, this past summer, to allow for the use of the area. Commissioner McCutcheon asked if a copy of the easement is available. The Agent stated that the exclusive use area in question creates a zone where people are encouraging the depletion of the grass. In order to protect the area, the coastal dune needs to grow. The Agent would like to create a plan with association to avoid future issues. Richard Bashian of 539 Shore Road approached. Mr. Bashian discussed the use of the dune, as opposed to the beach area, by the condominium owners and guests. Commissioner McCutcheon informed Mr. Bashian that he has no legitimate right to instruct the owners of the condominium as to the use of the property. Mr. Bashian argued that he has an easement right to use a portion of the area. Mr. King reiterated for the commissioners that Mr. Bashian was digging with a shovel in the dune while acting on behalf of a condominium unit owner. Commissioner McCutcheon stated that the majority of the concerns raised by Mr. King and Mr. Bashian do not fall under the jurisdiction of the Conservation Commission.

**Motion by Commissioner Lown to move that the parties resolve the problem on their own; if the commission finds out that someone is damaging the dune, then fines will be levied; seconded by Commissioner Lum.**

Discussion occurred regarding the motion. The Agent stated that the proposed work on the dune requires an Administrative Review Permit. The Agent will meet with Mr. King to discuss the proposed work. The Agent reiterated for the commission that this matter was referred as an order to enforce due to the chairs being placed in the dune and the alleged digging work/removal of vegetation. Commissioner Lown asked who the enforcement order is against. The Agent stated that she did not witness a violation, but photographs had been submitted. Commissioner McCutcheon indicated that the commission cannot enforce use issues of this type.

**Commission Lown called for the question. The vote was unanimously in favor, 4-0-0.**

**Administrative Review Permits: 542 Shore Rd: snow fencing; 503-522 Shore Rd: snow fencing; 596 Shore Rd: septic repair; 41 Bay View Rd: remove tree, plant beach grass & beach plums. Motion by McCutcheon to accept the Administrative Review Permits as submitted by the applicants; seconded by Lown; the vote was unanimously in favor, 4-0-0.**

**Certificates of Compliance: 408 Shore Rd (SE# 075-0991); Motion to approve the Certificate of Compliance by Commissioner McCutcheon; seconded by Commissioner McMahon; the vote was unanimously in favor, Vote: 4-0-0.**

**Motion to adjourn the meeting at 8:56pm by Commissioner Lown; meeting adjourned.**

**Site visits 1 PM Monday November 5, 2018. Commissioners Lum, Lown, McMahon and McCutcheon met at the Cobb library and proceeded with the Agent to 81 Slough Pond Road, 1 Carrs Lane, 5 Great Hills Lane, 588, 660, and 670 Shore Road to view the proposed projects.**  
**Site visits ended at 3:15 PM.**

Minutes prepared by Michelle Fogarty

