



## TOWN OF TRURO CONSERVATION COMMISSION

P.O. Box 2030  
Truro MA 02666-0630

### Conservation Commission Meeting Minutes: December 3, 2018

The meeting and public hearings were called to order at 5:15 P.M. in the Selectman's Meeting Room. Commissioners Present: Jack McMahon; Larry Lown; Henry Lum; Diane Messinger; Linda Noons-Rose; Chair, Deborah McCutcheon; Others Present: Emily Beebe, Conservation Agent

**Notice of Intent: 2 Kill Devil Rd: Martha Wright Crouch/Lorin Wright; SE #75-1052;** (Map 42, Parcel 303) new dwelling, extend shell driveway, install split rail fence, trenching & piping to existing well and septic system. Jason Ellis of JC Ellis Design, Jim O'Connell of Coastal Advisory Services represent the applicant Fran Zarette, Trustee of the Farm View Realty Trust. The construction of a new single-family dwelling is proposed for the lot. There is an existing Title 5 septic system on the property that served the former cottages. Mr. O'Connell was retained by the applicant to identify what coastal resources are on the site, and to provide his opinion about compliance with the DEP and Truro Wetlands Protection regulations. Mr. O'Connell submitted three reports, the initial report and two supplemental reports. Mr. O'Connell discussed the resource area mapping by the DEP, sediment testing and provided his opinion on the existence of a Coastal Bank on the seaward slope. Mr. O'Connell also discussed the FEMA flood maps and concluded there may be an incorrect flood line delineation. Mr. O'Connell does not believe that the subject parcel should be classified as a Coastal Dune. Mr. O'Connell felt that if the area was determined to be Coastal Dune, the building as proposed would be landward of FEMA's 100-year flood line, and therefore, the interests of storm damage prevention and flood control are not affected by the building because they are not in the coastal flood plain. Mr. O'Connell also noted that because the building will be on piles, the sand will be allowed to migrate. Sean Reilly, P.E., of Coastal Engineering Company was present for the applicant and spoke about the flood zone relative to the property based upon MA Wetlands Regulations. Next, Graham Giese of the Center of Coastal Studies presented his opinion. Mr. Giese was not engaged by any party; he prepared his report independently. Mr. Giese is of the opinion that the area is in fact a Coastal Dune and he discussed the methodology employed in making his determination. Mr. Giese investigated the effect of the construction on a Coastal Dune. Commissioner Lown posited that it would be helpful to hire an independent third-party to assess the reports of Mr. O'Connell and Mr. Giese. Mr. Zarette, the proposed buyer and applicant, stated for the Commissioners that he based the plans for the proposed house on the prior existing cottages and took into consideration the sizes of the neighbors' homes as to fit in with the neighborhood. Commissioner Messinger inquired about the placement of the proposed home considering the issue of erosion. Commissioner McCutcheon suggested they might adjourn the matter until a third-party report is completed, and the Commission would hold a separate hearing for the matter in mid-February in a larger venue such as the Truro Community center. The

Commissioners discussed the varied opinions of Mr. O'Connell and Mr. Giese, acknowledging their respective expertise, but noting that their opinions differed. Attorney Chip Nyland representing the owner of the property approached. Attorney Nyland provided the Commissioners with a copy of the decision from a previous Kline case that was similar in nature to the matter at hand. The decision states that you cannot have both a Coastal Dune and a Coastal Bank, it must be one or the other. Attorney Nyland further discussed Coastal Bank erosion and Coastal Dunes. Next, Attorney William Riley representing the abutters approached. Attorney Riley spoke to the migration of the land and upland at the property. Attorney Riley referred to the survey compiled in 2007 by Chet Lay and stated that while the property may well have been compliant with the requirements for land area in order to subdivide the lot, their calculations of the property area at present time shows 31,000sf of bank and upland. This falls short of the required 33,750 required for a buildable lot.

**Motion that the Commission direct the proponent of the project to act under the By-Law to allow the Commissioners to hire a qualified individual to act as the Commission's expert in this matter; and the Commission will direct the Conservation Agent to meet with the buyer and seller to determine whether a survey of the property is necessary to illuminate the Commission's decision by Commissioner Lown; seconded by Commissioner McCutcheon; the vote was unanimously in favor, 6-0-0.**

Mr. Ellis requested a formal continuance to February 11, 2018, or as soon thereafter as may be practical. Commissioner Lown asked a question on the motion: Mr. Lown requested examples of case law relative to coastal dunes. Commissioner McCutcheon has case law examples and will obtain additional materials for review. Several audience members requested clarification on the original motion. Commissioner McCutcheon confirmed that the independent expert will be a peer review and that a survey will also be compiled by a qualified individual on behalf of the Commission.

**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). This matter was continued from the November 5, 2018 hearing, and was continued to January 7, 2019

**Administrative Review Permits:**

**4 Kill Devil Road: replace 2 footings for existing beach stair**

**Motion to approve by Commissioner Lown; seconded by Commissioner Messinger; the vote was unanimously in favor, 5-0-0.**

**15 Uncle Irv's Way: snow fencing in buffer to coastal bank**

**Motion to approve by Commissioner Messinger; seconded by Commissioner Lum; the vote was unanimously in favor, 5-0-0.**

**488 Shore Rd: replacing timber on wood bulkhead**

**Motion to approve by Commissioner Messinger; seconded by Commissioner Lown; the vote was unanimously in favor, 6-0-0.**

**2 Marian Lane: limbing oak trees; removal of manure from paddock; buffer to Coastal Bank** Motion to approve by Commissioner Messinger; seconded by Commissioner Lown; the vote was unanimously in favor, 5-0-0.

**23 Great Hills Road: remove Russian Olive replace with bayberry** Motion to approve by Commissioner Messinger; seconded by Commissioner McCutcheon; the vote was unanimously in favor, 5-0-0.

**Certificate of Compliance: 21 Crestview Circle (#075-0731 & 075-0810)** Motion to approve by Commissioner McMahon; seconded by Commissioner Noons-Rose; the vote was unanimously in favor, 6-0-0.

**Notice of Intent: 81 Slough Pond Rd, Stephen Reilly & Emily Bingham; SE# 75-1056;** construction of two accessory cottages and deck; Buffer Zone to Slough Pond. (Map 61, Parcel 61) This matter was continued from November 5, 2018.

John O'Reilly and Malachi Connolly approached. Mr. O'Reilly and Mr. Connolly revised the plans based on the feedback from the commissioners at the previous meeting. The structure has been moved back 10 feet, which puts the structure outside the 100' buffer zone, but leaves the deck in the buffer zone, approximately 90 feet away from the resource. The mitigation area has been enlarged. **Motion to approve the Notice of Intent as revised, including the specifics of the mitigation area and the location cottages, per the revised plan dated 11/26/2018 by Commissioner Lown; seconded by Commissioner Messinger; the vote was unanimously in favor, 6-0-0.**

**Notice of Intent: 5 Great Hills Ln, Kevin & Helene Wise; SE #75-1053; construction of a pile supported garage, swimming pool & equipment, deck extension, fence, air compressor and generator; Barrier Beach, LSCSF, Coastal Dune. (Map 53, Parcel 1)** (Continued from November 5, 2018)

Jason Ellis of JC Ellis Design and Ryan Weber were present to discuss the amended proposal. The swimming pool and the deck extension proposed at the previous meeting have been removed. The application now includes a fenced in area for a dog, removal of the paved driveway and addition of the elevated garage. There was discussion regarding the proposed garage to replace the existing garage under the house. The new structure would be located in the footprint of the existing driveway. Mr. Ellis noted that he is in receipt of the DEP number and a response from MESA. The Agent spoke regarding the MESA approval. The Town of Truro shore bird monitoring program administered by the Massachusetts Audubon reported shorebird nesting sites in proximity to this property. The Agent requested that the email reports from the Audubon be entered into the record. Discussion occurred regarding the emergency generator at the property and how the noise from the generator service start-ups may impact the bird habitat.

**There was a motion to accept the Notice of Intent as submitted and plan revised 11/26/2018 incorporating the notes from the plan and adding a provision that**

**requires the owner to operate the generator no more frequently than once a week for 10 minutes, and no more frequently than once a month during nesting season, April 1<sup>st</sup> – August 15<sup>th</sup>. Motion by Commissioner Lown. There was no second. The motion died.**

Discussion occurred: Commissioner Messinger expressed concern regarding the garage being constructed on a coastal dune. Mr. Ellis provided details of the garage construction. The garage will be in a disturbed area and will not be constructed on undisturbed land. The Agent stated that the project could not meet the performance standards as it is located within a coastal dune. Commissioner Lown asked if it would be a hardship on the owner to not have a garage. Mr. Ellis stated it would be. The Agent read from a section of the regulations that were included with the application that stated that a project accessory to an existing building may be permitted, "such as a small shed"; and pointed out that the proposed garage was not a small shed. The Agent suggested that an independent consultant would be beneficial to conduct a peer review of the application to evaluate how the project meets the performance standards. Discussion occurred regarding the commission's ability to allow additional structures within a coastal dune. **Motion to continue to January 7, 2019 as agreed to by Mr. Ellis on behalf of the property owner.**

**Notice of Intent: 670 Shore Rd U:9, John Mignaro & Darlene Millman; SE# 75-1054; reconstruction of existing deck and proposed deck expansion; Barrier Beach, Coastal Dune, Land Subject to Coastal Storm Flowage. (Map 2, Parcel 12.9)**

This matter was continued from the November 5, 2018 hearing. Jason Ellis of JC Ellis Design approached. Because of discussion at the last meeting, Mr. Ellis has included additional mitigation to the project proposal. Mr. Ellis designated the entire exclusive use area of the unit to be mitigated area and planted with American beach grass. The Agent asserted that the property is located within several resource areas and felt that the expansion of the deck did not meet performance standards. Commissioner McMahon was in favor of replacing the deck, but not for the expansion. **Motion to accept the revised plan dated 11/27/2018; to refuse the approval of the extension of the existing deck; and to require the mitigation set forth in the Notice of Intent by Commissioner Messinger; seconded by Commissioner McMahon; the vote was unanimously in favor, 6-0-0.**

**Notice of Intent: 588 Shore Rd, Ellen & Emily Lanigan; SE# 75-1055; construction of an addition within footprint of existing concrete porch, construction of addition on footprint of existing deck. Barrier Beach, Coastal Dune, Land Subject to Coastal Storm Flowage. (Map 5, Parcel 20).**

This matter was continued from the November 5, 2018 hearing. As this matter requires a special permit from the ZBA Jason Ellis of JC Ellis Design requested a continuance to January 7, 2019. **Motion to join with the applicant in a motion to continue to January 7, 2019 stipulated with the commission by Commissioner McMahon; second by Commissioner Messinger; the vote was unanimously in favor, 6-0-0.**

**Notice of Intent: 13 Joseph's Road; James & Elizabeth Williamson; SE #75-1059; septic upgrade, new well, electric line; Riverfront & Buffer Zone to a Bordering Vegetated Wetland. (Map 46, Parcel 21)**

Jason Ellis of JC Ellis Design represented the owner who proposes a voluntary upgrade from a cesspool. **Motion to accept the plan as presented by Commissioner Lown; seconded by Commissioner Lum; the vote was unanimously in favor, 6-0-0.**

**Request for Determination of Applicability: 660 Shore Road; Bay Point Condominiums; replace retaining wall and fencing; LSCSF, Barrier Beach and Coastal Dune (Map 2, Parcel 6)** Debbie Cavalier represented the Condominium association. The Agent stated that per discussions with the applicant once the existing retaining wall was taken up that the property line would be staked by a registered land surveyor.

**Motion to approve the Negative 3 RDA by Commissioner Lown; seconded by Commissioner Messinger; the vote was unanimously in favor, 6-0-0.**

Ms. Cavalier was presented with the letter of agreement reflecting the special conditions agreed upon.

**Request for Determination of Applicability: 1 Moorings Way; James Sloman & Nora Devlin; cutting & removing vegetation; Buffer to Coastal Bank and Riverfront. (Map 46, Parcel 113)**

Tim Dickey emailed a request to continue the hearing until January 7, 2019.

**Request for Determination of Applicability: 68 Depot Road; Dorothy Blumberg; septic upgrade and new well; Riverfront and buffer to a Coastal Bank (Map 50, Parcel 27)**

David Lajoie of FELCO, Inc. was present to discuss the proposed work. The Agent inquired about saving the tree at the property; Mr. Lajoie confirmed the tree will remain.

**Motion to accept the Negative 3 Determination for the filing by Commissioner Lown; seconded by Commissioner Lum; the vote was unanimously in favor, 6-0-0.**

**Notice of Intent: 4 Kill Devil; Peter & Nancy Rhoades; SE #75-1057; deck/rinsing station; Coastal Dune, Land Subject to Coastal Storm Flowage. (Map 42, Parcel 304)**

Peter and Nancy Rhoades described their proposal for a new elevated deck; this would create an area for tenants and visitors to be able to congregate outside that won't disturb the environment. A picnic table was previously used, but it was determined that the picnic table was located on the abutters land. Commissioner Messinger was concerned about the location of the deck. Commissioner McMahon also expressed the same concern about disturbing a well-vegetated area. Discussion occurred regarding the outdoor shower, the proposed location of the deck and if the project meets the performance standards. Further discussion occurred regarding the propane tank located at the property. **Motion to approve the Notice of Intent as submitted by Commissioner Lown; seconded by Commissioner McCutcheon; Vote: 3-3-0, motion does not carry.**

Post-motion discussion occurred wherein Mr. Rhoades asked the commissioners what types of revisions would be preferable. The Rhoades' will follow-up with The Agent

regarding potential revisions.

**Notice of Intent: 402 Shore Road; Kevin Shea;** dwelling, septic system & associated site work; Barrier Beach, Land Subject to Coastal Storm Flowage. (Map 10, Parcel 22);  
**Notice of Intent: 402 Shore Road; Kevin Shea; SE #75-1058;** bulkhead; Barrier Beach, Land Subject to Coastal Storm Flowage. (Map 10, Parcel 22)

Both of these projects were heard together; although they were filed separately, the DEP assigned one number. Kevin Shea and Judith Richland, property owners, and William N. Rogers approached the table. The bulkhead will be constructed first, and when the bulkhead is completed Mr. Shea will request a partial certificate of compliance; upon completion of the house a final certificate will be requested. Mr. Shea has been working with his neighbors, the McDermott's, for consensus on the bulkhead design. What has been discussed addresses the different elevations between the Shea bulkhead (proposed) and the McDermott bulkhead which exists; also, the proposal does not join the 2 walls. Mr. Shea presented the commissioners with emails from the McDermott's. Mr. Shea and The Agent requested additional information about the gap wall. Mr. Shea discussed the various elevations. Mr. Rogers discussed the helical pilings being used in the foundation. At about 8:30 Commissioner Lown left the meeting. The Agent inquired about methods for preserving the resource area during the construction. Mr. Shea indicated that there will be minimal disturbance to the area during construction. The Agent suggested that an agreement in narrative form, that addressed establishing a work limit around the dune, be created during the pre-construction walk-through.

**Motion to accept the plans as submitted with the most current revision date by Commissioner McMahon; seconded by Commissioner Noons-Rose; the vote was unanimously in favor, 5-0-0.**

**Motion to adjourn the meeting by Commissioner Noons-Rose; seconded by Commissioner McMahon. The meeting was adjourned at 8:45.**

Minutes prepared by Michelle Fogarty

**Site Visits were held at 1 PM on December 3.** Commissioners Lown, Lum, Messinger and McCutcheon met at the Cobb library and proceeded to:  
2 and 4 Kill Devil Road; 1 Moorings way; 68 Depot Road; 13 Kinnikinnic Road; 402 and 660 Shore Road.  
Site visits concluded at 3:15 PM

