



## TOWN OF TRURO CONSERVATION COMMISSION

P.O. Box 2030  
Truro MA 02666-0630

### Conservation Commission Meeting Minutes: July 1, 2019

The meeting and public hearings were called to order at 5:30 P.M. at the Truro Town Hall. Commissioners Present: Deborah McCutcheon, Jack McMahon, Diane Messinger; Larry Lown; Linda Noons-Rose and Robert White; Others Present: Emily Beebe, Conservation Agent

### Minutes: 5/6/2019

**Motion:** Commissioner Lown moved to approve the May 6, 2019 minutes; seconded by Commissioner Messinger; the vote was unanimously in favor, 5-0-0.

### Minutes: 6/3/19

Commissioner Lown suggested minor revisions to the June 3<sup>rd</sup> minutes.

**Motion:** Commissioner McCutcheon moved to approve the June 3, 2019 minutes with the corrections; the vote was unanimously in favor, 5-0-0.

### Administrative Review Permits:

#### 5 Marshall Lane: "ATF" ("After-the-fact") for clearing

Mr. Chris Lucy came to the table to discuss work he conducted on behalf of the property owner; at the time of said work he was unfamiliar with how the 200' riverfront jurisdiction was measured. Mr. Lucy was under the impression that the jurisdiction extended from the edge of the channel, not the edge of mean high water and therefore, did not file for a permit with the Conservation Commission. The need for a permit came to his attention after the completion of the work. Mr. Lucy removed two pine trees and a locust tree that were wrapped in bittersweet and leaning toward the house; a brush mower was brought in to remove the vines. Mr. Lucy provided the Commissioners with pictures of the current state of the property. Mr. Lucy paid a fine, which was double the standard permit fee, and was asked to plant a tree as mitigation. Commissioner McCutcheon asked Mr. Lucy to choose a tree and location and to follow-up with the Agent.

**Motion:** Commissioner McCutcheon moved to approve the after-the-fact permit; seconded by Commissioner McMahon; the vote was unanimously in favor, 5-0-0.

#### 586 Shore Road: "ATF" driveway and landscape work

Mariellen Serena came to the table. Ms. Serena has an open Order of Conditions for work at the property. The existing gravel driveway was stripped and regraded, then re-edged with landscape timbers. Neither the work on the driveway, nor the replacement of the timbers were specified in the original Notice of Intent. Ms. Serena paid the fine, which was double the standard permit fee, and was asked to plant a tree as mitigation. Commissioner McCutcheon asked Ms. Serena to choose a tree and location and to follow-up with the Agent.

**Motion:** Commissioner Messinger moved to approve the after-the-fact permit; seconded by Commissioner McCutcheon; the vote was unanimously in favor, 5-0-0.

618 Shore Road: "ATF" completing utility work

5 Bearberry Lane: replace stair treads and railing

29 Perry Road: install fencing

218 Shore Road: Beach Raking

361 Shore Road: driveway maintenance

670 Shore Road: replace walkway with rollout sections, 1:1 post and rail fence replacement

**Motion:** Commissioner McCutcheon moved to approve all the above-noted Administrative Review Permits; seconded by Commissioner Messinger; Discussion occurred on the motion: Commissioner Lown asked if any of the permits involved dune fencing; the Agent confirmed they do not; the vote was unanimously in favor; 6-0-0.

*[Commissioner Noons-Rose joined the meeting at 5:55pm]*

**Emergency Certifications:** 17 Avocet Road beach stair post replacement

**Motion:** Commissioner Messinger moved the emergency certification; seconded by Commissioner White; the vote was unanimously in favor, 6-0-0.

**Requests for Certificates of Compliance:**

4 Heron Lane SE #75-186;

82 South Pamet SE 75-#1069;

445 Shore SE #75-450;

8 Atwood SE 75#-984

**Motion:** Commissioner Noons-Rose moved to issue all the above-noted Certificates of Compliance; seconded by Commissioner Messinger; the vote was unanimously in favor; 6-0-0

*[The Public Hearing began at 6:00pm]*

**Notice of Intent:** 6 Ryder Beach Way, Michael Alogian: SE# 75-1073 septic upgrade: Riverfront Area, Buffer Zone to a BVW. (Map 63, Parcel 12)

Keith Fernandes, P.E., of GFM Enterprises came to the table, representing the property owner. The existing septic system requires an upgrade; the house is currently served by two cesspools. The applicant has received approval from the Board of Health for the required variances.

**Motion:** Commissioner Lown moved to approve the Notice of Intent; seconded by Commissioner McCutcheon; The Agent requested a condition that a drought resistant grass be planted; Mr. Fernandes asked that the re-planting be done within the area being disturbed in the buffer zone. Commissioner McCutcheon clarified that the Notice of Intent is modified to require a drought resistant, native grass on disturbed areas of the buffer and so modified the motion has been made and seconded; the vote was unanimously in favor, 6-0-0.

**Notice of Intent:** 76 Ryder Beach Road, Charles & Priscilla Cornell: SE# 75-1072 addition, screen porch, deck; Buffer Zone to BVW, Land Subject to Coastal Storm Flowage. (Map 64, Parcel 20)

David Lajoie of FELCO, Inc. came to the table, representing the property owner. Mr. Lajoie requested a continuance to August 5, 2019.

**Motion: Commissioner McCutcheon moved to approve; seconded by Commissioner Noons-Rose; the vote was unanimously in favor, 6-0-0.**

**Notice of Intent: 218 Shore Road, Silva Family Heritage Trust; SE# 75-1076 replace bulkhead; Barrier Beach, Land Subject to Coastal Storm Flowage. (Map 17 Parcel 18)**

David Lajoie of FELCO, Inc. and the property owner, Al Silva came to the table. Mr. Lajoie described the project to include an existing timber bulkhead to remain with the new shore-guard bulkhead installed in front of the existing bulkhead. The new wall will be supported with helical tie-back anchors. There is an existing deck that will need to be removed and replaced to allow for the machinery to access the beach. Discussion occurred regarding the re-nourishment and re-vegetating of the dune, which is the Town's property. The Agent requested discussion about a "return", not shown on the plan, but mentioned by the owner as an add-on. The return described by Mr. Silva would be made of shore-guard sheeting and placed at an angle to the public access of the town landing. Mr. Silva stated that he had met with DPW Director Jarrod Cabral after Mr. Lajoie prepared the plan and described this concept to him; He also spoke with the Town Manager and the Agent before the hearing date.

The Agent was of the opinion that extending a shore-guard return further toward the landing would continue the scouring of the Coastal Dune further into Town property and suggested that a maintenance plan to address erosion between the Town and Mr. Silva be a special condition. If the area adjacent to the beach access is to be nourished and replanted regularly, addressing the damage should be conditioned. Commissioner Lown asked Mr. Silva if an angled wall would help mitigate some of the loss of sand. Mr. Silva spoke about the continual addition of sand replenishment and the loss of sand during storms. Commissioner McCutcheon requested that the applicant submit a plan comparing the two proposals; a maintenance plan and a revised application. Commissioner Noons-Rose asked the Agent if the Town has the responsibility, if Mr. Silva replaces the bulkhead, to maintain the Town area adjacent to the Silva's property. The Agent stated that the Town has a responsibility to have the conversation about on-going maintenance if it were to allow further encroachment onto Town property. At present, part of the existing bulkhead and decking and a concrete walkway are encroaching from the Topmast property onto the Town owned parcel to the east. The Agent expressed concern that there is scouring from the existing wall that has already caused damage to the coastal dune on the towns property and the return concept being discussed is not on the proposed plan. Mr. Lajoie agreed with the Agent that the option of a return changes the application. The Agent will consult with Greg Berman from Barnstable County to obtain a second opinion regarding the proposed plans, as well as input into a maintenance plan.

**Motion: Commissioner Lown moved to continue the matter to August 5, 2019; seconded by Commissioner Messinger; the vote was unanimously in favor, 6-0-0.**

**Notice of Intent: 7 Marshall Lane, Denise Miller; SE# 75-1074 septic upgrade & well installation; Riverfront Area, Buffer Zone to a Coastal Bank. (Map 50, Parcel 158)**

Jason Ellis of J.C. Ellis Design came to the table, representing the property owner. The proposed buyers of the property were present in the audience. Mr. Ellis discussed the proposed septic upgrade and well location. The existing cesspools will be pumped, filled-

in and abandoned. Commissioner Noons-Rose asked about the replacement of pavement after the upgrade; Mr. Ellis confirmed that the same area would be re-paved and there would be no expansion of the driveway. The Agent asked Mr. Ellis about the re-grading on the west side of the driveway; Mr. Ellis said he would provide the Agent with a grading detail via email. The Agent asked Mr. Ellis to utilize a conservation grass mix and jute netting on the disturbed slope; Mr. Ellis agreed to submit those items in a protocol detail.

**Motion:** Commissioner Messinger moved to approve the Notice of Intent as submitted, with the addition of a detail plan and grasses, which shall be submitted to the Agent for approval; seconded by Commissioner Noons-Rose; the vote was unanimously in favor, 6-0-0.

**Notice of Intent: 660 Shore Road, Unit:1, Maureen Pantos; SE# 75-1075 "ATF" filing for a deck; Barrier Beach, Land Subject to Coastal Storm Flowage. (Map 2, Parcel 6.1)**

**Motion:** Commissioner Lown moved to approve the Notice of Intent as submitted, with the condition that a letter is sent to the property owner notifying them of the Commission's jurisdiction and that any further work on their property requires a permit; seconded by Commissioner Noons-Rose; the vote was unanimously in favor, 6-0-0.

*[The Commission took a five-minute recess.]*

**Notice of Intent: 405 Shore Road, Kenneth Shapiro, SE# 75-1062; removal of garage, construction of dwelling, septic system and appurtenances; Barrier beach, LSCSF, Coastal Dune. (Map 10, Parcel 5) (continued from 6/3/2019)**

Attorney Benjamin E. Zehnder and Jason Ellis of J.C. Ellis Design came to the table, representing the property owner. Attorney Zehnder summarized the changes to the revised plan dated May 30, 2019. The changes, made at the request of the Commission, include a design change of the structure, the current proposal showing it built on piers. The Agent requested a participation waiver be signed for Commissioner McMahon as he was not present at the previous meeting; Attorney Zehnder signed the waiver. Attorney Zehnder noted for the Commission that on May 7, 2019 the Board of Health approved the septic system for the one-bedroom plan. Commissioner McCutcheon asked about the habitability of the second-floor of the proposed structure. Attorney Zehnder responded that the interior layout of the structure was approved by the Board of Health and the basement was removed at the request of the Commission. Commissioner McCutcheon stated that she is troubled by the decision of the Zoning Board of Appeals and stated that the building shouldn't be built at all under the performance standards. Commissioner McCutcheon then stated her opinion that the lot was unbuildable. Commissioner McCutcheon discussed the cumulative effect of a large new two-story building that is elevated and goes beyond what is appropriate for a coastal dune. Attorney Zehnder asked Commissioner McCutcheon if because Beach Point has been developed to this point, to this date, this one lot shouldn't be developed because of the cumulative effect of this one-bedroom house; Commissioner McCutcheon responded that she was not saying that, and asked Attorney Zehnder to address the performance standards for this house and to tell her how any part of the house meets the performance standards. Attorney Zehnder responded that the structure would be built on the landward side of Route 6A, a non-

migrating area with the smallest possible flow, and alternative treatment technology with Town water. The property has a structure on it. Commissioner Lown stated that the lot is not zoned as a buildable lot. Attorney Zehnder responded that the property is assessed as non-buildable, which is not the same as being zoned as non-buildable. Commissioner Lown asked if the issue came up with the Zoning Board; Attorney Zehnder said that the Zoning Board heard that testimony since the applicant had to go to the Zoning Board of Appeals for a permit to alter an existing, non-conforming lot. Commissioner McCutcheon expressed her concern and said that she would like further information from the Zoning Board. In response, Attorney Zehnder summarized the original appearance before the Commission in May of 2018, at which time the applicant was told that the Commission had questions about the lot being buildable and that the Commission wanted the applicant to go before the Zoning Board of Appeals; the property owner successfully obtained a permit from the Zoning Board of Appeals; no one appealed this permit. The Commission later requested the removal of the basement, which was done. Commissioner McCutcheon again asked Attorney Zehnder to provide his argument about why the property meets the performance standards. Attorney Zehnder said that there's no adverse impact on the environment and the building will meet the flood zone requirements. Commissioner McCutcheon again asked Attorney Zehnder how the property meets the performance standards; Attorney Zehnder responded that at the prior hearing, no one asked about the performance standards and the Commission told the applicant what to come back with. Commissioner McMahan asked the Agent about the boundaries of a wetland and if the parameters are applicable in the Beach Point area; the Agent responded that the area is a coastal dune, on a barrier beach and in a flood zone. Commissioner McMahan then asked about buffer zones; the Agent confirmed there are no buffer zones that apply to this particular lot. Commissioner McMahan asked Mr. Ellis about the slats shown on the plans, below the floor sill; Mr. Ellis replied that they were break-away panels; Commissioner McMahan asked why the panels are there as the sand can't move; Mr. Ellis responded that the panels can be removed. Commissioner McMahan asked the Agent, as far as Conservation is concerned, what are the primary regulatory concerns of the Commission; the Agent replied that the land subject to coastal storm flowage does not have performance standards under State or local regulations; but the performance standards for the coastal dune and the barrier beach both pertain to vegetation, and not disturbing vegetation, and that the Commission needs to ensure that the proponent is documenting how they will not disturb the vegetation and will not destabilize the dune. Commissioner McCutcheon again expressed her concern regarding the Zoning Board decision; Attorney Zehnder asked why the chair of the Conservation Commission cares whether the Zoning Board of Appeals made a proper finding or not; he then stated that what matters is if the applicant meets the Commission's requirements for an Order of Conditions. Attorney Zehnder also asserted that for any member of the Commission to say they are disinclined to approve the application because they don't agree with the Zoning Board is inappropriate. Commissioner McCutcheon responded that that was not her position and that the applicant hasn't met the performance standards. Attorney Zehnder commented that he was aware of another proposed project on Beach Point and felt that something had occurred to change the Commission's attitude toward the project. Commissioner Messinger responded that the Commission has been concerned about cumulative effects for a long time and the property is in a coastal dune; Attorney Zehnder reiterated that the foundation was removed, and the house was designed on piers

to address the concerns expressed by the Commission. Commissioner Messinger stated that the house still has an impact. The Agent commented that the proposal is for an entirely new structure; no work limit is shown on the lot, and therefore, the whole lot will be disturbed; no proposed grades are shown; and no arguments about meeting the performance standards have been made, and all the details of the proposal haven't been discussed. Commissioner McCutcheon again stated her desire to review the Zoning Board decision and felt the decision by the Zoning Board was deeply flawed. Attorney Zehnder suggested a revised plan reflecting proposed grades, a more detailed construction protocol explaining the pier and pilings system, an alternatives analysis and an explanation of the performance standards. Attorney Zehnder requested a continuance to September 9, 2019. Commissioner McCutcheon requested comments from the audience. Marcia Brill of 420 Shore Road came to the table to ask the Commission what a buildable lot is; the Agent stated that a determination as to buildability is a question answered through the review/permitting process with the regulatory boards. Discussion occurred regarding the classification of lots. Ms. Brill spoke about the impact of the proposed building on her neighboring lot. Annie Ditacchio of 412 Shore Road read from a prepared statement, a copy of which she provided to the Commission. Ms. Ditacchio's statement was addressed to the Select Board and discusses her concerns regarding her perceived failures by the Zoning Board of Appeals and Board of Health in enforcing local By-Laws. Ms. Ditacchio directed the Commissioners to her statements regarding the tax rate and square footage of the Shapiro's lot. Audre Cera of 372 Shore Road came to the table to speak on the matter. Ms. Cera spoke about her opposition to the proposed building.

**Motion:** Commissioner McCutcheon moved to continue the matter to September 9, 2019; seconded by Commissioner Lown; the vote was unanimously in favor, 6-0-0.

**Public Hearing on Proposed Amendments to the Truro Conservation Commission Policies, Procedures, and Regulations: Section II- Chapters 1, 2, & 7**

The Commissioners reviewed and discussed the proposed amendments one page at a time.

**Motion:** Commissioner Noons-Rose moved to accept the modified regulations in their entirety; seconded by Commissioner Messinger; Vote: 5-0-1.

**Motion:** Commissioner Lown moved to adjourn the meeting; the motion was allowed by Commissioner Messinger. The meeting adjourned at 8:14pm.

Minutes prepared by Michelle Fogarty

Site visits were held on July 1, at 1:00. Commissioners Larry Lown, Diane Messinger and Deborah McCutcheon met at Cobb library and proceeded to 76 Ryder Beach Road, 6 Ryder Beach Road, 7 Marshall Lane, and 218 Shore Road, where they met Al Silva who described his revetment replacement project; they also went to 660 Shore Road and returned to Cobb library by 3:15 PM.

