



# CONSERVATION COMMISSION

## PUBLIC MEETING

131 Pleasant Street  
Nantucket, Massachusetts 02554

[www.nantucket-ma.gov](http://www.nantucket-ma.gov)

Thursday, May 26, 2022 – 5:00 p.m.

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

**Commissioners:** Ashley Erisman (Chair), Ian Golding (Vice Chair), David LaFleur, Seth Engelbourg, Maureen Phillips, Mark Beale, and Linda Williams

Called to order at 5:01 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, Engelbourg, Beale, Williams

Absent Members: Golding, LaFleur, Phillips

\*Matter has not been heard

### **I. PUBLIC MEETING**

#### **A. Announcements**

#### **B. Public Comment – None**

### **II. PUBLIC HEARING**

#### **A. Notice of Intent**

1. 13 Commercial Street, LLC – 13 Commercial Wharf (42.2.4-10) SE48-3501 **(Cont. 06/09)**
2. Brant Point Club, LLC – 6,8 North Beach Street/4 Dolphin Court (42.1.4-65;65.1;65.2) SE48-3518 **(Cont. 06/23)**
3. Kane – 12 Pond Road (56-295) SE48-3473 **(Cont. 06/09)**
4. Meyer – 307 Polpis Road (25-39) SE48-3517

Sitting Erisman, Engelbourg, Beale, Williams

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

Representative Art Gasbarro, Nantucket Engineering & Survey

Public None

Discussion (5:05) **Gasbarro** – This was continued for supplemental information on groundwater and type of foundation; changed found to crawl space with 2’ separation from groundwater. Massachusetts Natural Heritage (MNH) requested a survey for St. Andrew’s Cross; we found no occurrences and received MNH signoff. He feels this represents an overall improvement.

Staff recomm. Have everything needed to close.

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

Roll-call vote Carried 4-0//Beale, Engelbourg, Erisman, and Williams-aye

5. Nantucket Islands Land Bank – 17 Aurora Way (56-458) SE48-3529

Sitting Erisman, Engelbourg, Beale, Williams

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

Representative Mark Rits, Site Design Engineering

Public None

Discussion (5:09) None

Staff recomm. Land Bank has withdrawn this application.

Motion **Motion to Accept the withdrawal.** (made by: Beale) (seconded)

Roll-call vote Carried 4-0//Beale, Engelbourg, Erisman, and Williams-aye

6. Lehrman Dynasty Trust – 18 Washing Pond Road (31-18.1) SE48-3534

Sitting Erisman, Engelbourg, Beale, Williams

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

Representative Mark Rits, Site Design Engineering

Dan Bailey, Pierce Attwood

Dan Mulloy, Site Design Engineering

Public None

Discussion (5:10) **Rits** – We have the go ahead for stairs over the array but don’t have the final design for those.

**Beale** – Asked if we resolved the issue of the structure being wholly rebuilt after 1978.

**Mulloy** – That was a question for Town Counsel.

**Erisman** – As she recalls the structure doesn’t qualify for protection, but the coastal engineering structure (CES) is old enough to be grandfathered.

**Bailey** – The CES is grandfathered under the existing bylaw.

**Engelbourg** – The CES was built before the adoption of our Wetlands Protection Act or local regulations; however, under local regulations, the Performance Standards for Coastal banks says, “Bulkheads and groins may be rebuilt only if the Commission determines there is no environmentally better way to control an erosion

problem, including, in appropriate cases, moving of a threatened building.” The protected building was effectively removed. Based upon that, he believes the CES is not eligible to be rebuilt.

**Beale** – Asked Mr. Bailey to clarify his comment that the CES does and doesn’t qualify.

**Bailey** – He believes it is grandfathered.

**Williams** – The foundation of the house did not move and it’s the same footprint. She thinks that needs to be considered by Town Counsel as well.

**Erisman** – The building records would be helpful in this case.

**Engelbourg** – Disagrees with Mr. Bailey. Thanked Mr. Rits for the alternative analysis. You are seasonally trapping sands with groins; however, he thinks it would be better to build up the beach with nourishment in front of the bulkhead to minimize the peninsula affect.

**Rits** – Explained how there is bypass when there is seasonal entrapment. It’s been determined that any expansion of the structure or nourishment would result in an adverse impact to shellfish. We can only nourish between the two groins and slightly to the sides. We face the challenge of having to work from properties outside of our control.

**Beale** – Under Chapter 91, asked if they are allowed to do improvements on the east and west flanks. You’re losing ground on the west side.

**Bailey** – We’d have to go back to Chapter 91 for permission to extend it.

**Engelbourg** – It’s important to remember that decisions by past Commissions don’t bind the existing Commission. “Use and Normal Maintenance” needs a legal opinion until it’s covered in our regulations.

**Erisman** – Asked what the ultimate end of these structures is because they won’t survive into the future. There will eventually need to be an alternative in this location. Given the grandfathering and stairs over the structure, she sees the validity of this application. We are still waiting on an opinion from Town Counsel.

**Engelbourg** – He wants to see the schematic for the stairs before we close. Mr. Beale agrees.

**Rits** – Asked to continue for 2 weeks.

Staff recomm. Regarding the Town Counsel request, there is a checklist of things he has to do before submitting it: see if there are similar decisions made locally and reach out to other communities. The Conservation Agent Complex for the Cape and Island concluded the CES could be maintained as long as there is no expansion, and it is being maintained in kind to the original design; he sent that information in with the legal request. Also, what’s there has been reviewed and approved as recently as 2007. Waiting to hear back.

Motion Continued to June 9<sup>th</sup>.

Roll-call vote N/A

7. Ack Hang Ten, LLC – 21 Meader Street (42.2.3-44) SE48-3539 **(Cont. 06/09)**

8. \*Waterfront Pocomo, LLC – 17 Laurretta Lane (14-10.2) SE48-\_\_\_\_\_

Sitting Erisman, Engelbourg, Beale, Williams

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

Representative Art Gasbarro, Nantucket Engineering & Survey

Public None

Discussion (5:32) **Gasbarro** – Residential redevelopment and associated landscaping within buffer to bordering vegetated wetlands coastal bank & beach and within land subject to coastal storm flowage. Feels the proposal represents a significant net benefit. Reviewed the scope of work. Reviewed additional information presented at the table regarding restoration of currently disturbed areas and increase of the buffer zones. Requested a waiver for work within the 25’ buffer to remove existing structures and materials under long-term net benefit. A second waiver is for 2’ separation from groundwater under no reasonable alternative; we will be using crawlspace.

**Engelbourg** – The overall intent is appreciated; he reviewed the landscape plan and found it good. Asked about the northwest raised patio details or schematics to determine if it meets our definition for structure. For the outdoor shower, that is basically a wooden floor with walls; asked if there is a non-structural solution.

**Gasbarro** – Doesn’t know if a simple curtain rod would be desirable to his client; it’s just a wood deck with a wall. The raised patio section within the 50’ buffer is very small. Structural square footage within the buffer is being reduced by about 2,000sf; the southwest corner would have to be retained about 1’.

**Engelbourg** – It would be good to see what the patio looks like; he agrees it represents a net benefit but it’s very close in places.

**Beale** – He supports the waiver for the removal of the existing. The raised patio is troubling until we have the plans for the retaining wall. Asked the dimensions for the outdoor shower; it looks to be at least 6’X8’.

**Williams** – All showers she’s done are 6’X6’ at 6’ tall; the Building Department doesn’t consider them structures but as fences. Doesn’t think the shower is problematic. Okay with this as presented.

**Erisman** – Under ConCom regulations, the shower is considered a structure.

**Gasbarro** – The shower is 8X10 on a deck attached to the house; he thinks it qualifies as a structural element. The area we are asking for the waiver falls within the location for the existing cottage.

**Engelbourg** – If a lot of showers are 36sf, this is almost double that; he hopes they consider redesigning it.

**Erisman** – Burton Balkind indicated concern about amount of disturbance within the 25’ and 50’ buffer. There might be wind conditions blowing debris into the wetlands and that needs to be addressed.

**Gasbarro** – We show siltation fencing around the structures indicating the limit of work. Requested a 2-week continuance.

Staff recomm. None

- Motion Continued to June 9<sup>th</sup>.  
 Roll-call vote N/A
9. \*Nantucket Islands Land Bank – 231 Polpis Road (26-28) SE48-3540
- Sitting Erisman, Engelbourg, Beale, Williams  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Rachel Freeman, Nantucket Islands Land Bank,  
 Public None
- Discussion (5:55) **Freeman** – This is to treat invasive species – Sweeping Love Grass, Scotch Broom, and Bamboo – in an area surrounded by vegetated wetlands and a pond on the property. We propose using glyphosate by direct application to the plants to minimize any runoff.  
**Engelbourg** – It’s important to note that the Massachusetts Invasive Advisory Group has listed Scotch Broom and Sweeping love grass as invasive and are looking to put them on the prohibited list. They might need a waiver for removing a tree within the 25’ buffer but he doesn’t think they need it for invasive species removal.  
**Erisman** – Standing dead trees are important habitat for birds who make cavity nests; she’d like to see it remain with education signage about its importance.  
**Freeman** – Dead trees in public areas lose limbs and become public safety hazards. We are hoping to replace it in kind; this is an Atlantic White Cedar.  
**Engelbourg** – This is one of the most productive woodpecker locations on the Island without the snag; there is other snag activity away from the ponds, so the habitat opportunity already exists on this site. They are asking for a waiver for replacement of a non-native species; this property has been designated as an arboretum. We would want them to have educational signage.
- Staff recomm. Have everything needed to close; though the work area isn’t within MNH area; they are supposed to file and wait for their response.
- Motion **Motion to Close.** (made by: Beale) (seconded)  
 Roll-call vote Carried 4-0//Beale, Engelbourg, Erisman, and Williams-aye
- B. Amended Order of Conditions**
1. Philips, Trustee – 19 East Tristram Avenue (31-4.1) SE48-3304 (**Cont. 06/09**)
- III. PUBLIC MEETING**
- C. Minor Modifications**
- D. Requests for Determination of Applicability**
- E. Certificates of Compliance**
1. Snowdon – 11 Massachusetts Avenue (60-80) SE48-3148
- Sitting Erisman, Engelbourg, Beale, Williams  
 Representative Jeff Blackwell, Blackwell & Associates  
 Staff recomm. We’ve reviewed this and recomm issue without on-going conditions.  
 Discussion (6:06) **Blackwell** – The Order of Conditions was issued for renovation of a structure and an amendment issued for a walkway. Work is completed per the Order of Conditions.  
**Engelbourg** – Confirmed it was constructed without a handrail or cable.  
 Motion **Motion to Issue as drafted.** (made by: Engelbourg) (seconded)  
 Roll-call vote Carried 4-0//Beale, Engelbourg, Erisman, and Williams-aye
2. Peticari – 11 Hummock Pond Road (56-58) SE48-2145
- Sitting Erisman, Engelbourg, Beale, Williams  
 Representative Brian Madden, LEC Environmental  
 Staff recomm. We agree the restoration is growing correctly and recommend issuing.  
 Discussion (6:08) **Madden** – This is from 2008 for mitigation; plantings are robustly in good shape. An amended ordered expanded the mitigation area. It’s in substantial compliance.  
**Engelbourg** – Doesn’t think this made it into our packet.  
 Motion **Motion to Issue.** (made by: Williams) (seconded)  
 Roll-call vote Carried 4-0//Beale, Engelbourg, Erisman, and Williams-aye
- F. Orders of Condition**
1. Meyer – 307 Polpis Road (25-39) SE48-3517
- Sitting Erisman, Engelbourg, Beale, Williams  
 Documentation Draft Order of Conditions  
 Staff We don’t need to grant a waiver for 302(b)1 - 2’ separation from ground water. He has the standard conditions but asked for photo monitoring of the restoration.  
 Discussion (6:11) None
- Motion **Motion to Issue as drafted.** (made by: Beale) (seconded)  
 Roll-call vote Carried 4-0//Beale, Engelbourg, Erisman, and Williams-aye

- 2. \*Nantucket Islands Land Bank – 231 Polpis Road (26-28) SE48-3540
- Sitting Erisman, Engelbourg, Beale, Williams
- Documentation Draft Order of Conditions
- Staff Permit overview: calls out Section 503 for invasive species removal; have normal suite for invasive species removal. Changed Condition 21 per the recent Linda Loring application regarding disposal of material. Put in photo monitoring of regrowth; has the waiver for removal of the white cedar. Will add a Finding 2 about the standing dead tree and Finding 3 requiring signage for the trees.
- Discussion (6:15) **Erisman** – Asked for a finding about the snag since it has habitat value.  
**Engelbourg** – Related to disposal of plant materials, should add best practices are allowed through approval by Commission staff. Wants a Finding 3 regarding appropriate signage because of the designation of the property as an arboretum.
- Motion **Motion to Approve as amended.** (made by: Williams) (seconded)
- Roll-call vote Carried 4-0//Beale, Engelbourg, Erisman, and Williams-aye

**G. EXTENSION REQUEST**

**H. Other Business**

- 1. Approval of Minutes 05/12/2022:

- Motion **Motion to Approve.** (made by: Williams) (seconded)
- Roll-call vote Carried 3-0//Beale, Erisman, and Williams-aye; Engelbourg abstain

- 2. Regulatory update  
**Carlson** – Asked if they want to schedule a review.  
**Erisman** – Put it on the June 9<sup>th</sup> meeting.
- 3. Enforcement Actions/ Potential Enforcement Actions  
a. Nothing at this time.
- 4. Reports:  
a. CPC, Beale
- 5. Commissioners Comment  
a. Engelbourg – Asked if there is an update on Sacacha Pond. Asked if the benthic barriers were installed.  
**Carlson** – There were questions on widgeon grass as it relates to the benthic area. Reviewed the methodology used to identify it. As soon as he has that, he'll forward it to Commissioners. The benthic barriers were installed; if they need to, they can come out easily.
- 6. Administrator/Staff Reports  
a. In-person meetings – The Governor hasn't extended the July 1 remote meeting order. He has ConCom booked for remote meetings through June. We'll probably have to be in person in July. The questions is where the meetings will be held: the trailer at 131 Pleasant Street or the 4 Fairgrounds Road Community Room. All participation would be done in person since the board isn't interested in hybrid.  
Discussion about the preferred location for future meetings. Mr. Carlson is willing to provide a tour of the trailer at 131 Pleasant Street.

**I. Executive Session**

- Motion **Motion to go into Executive Session Pursuant to MGL C. 30A § 21(A) for Purpose 3: To Discuss Strategy with Respect to Litigation with Regard to Siasconset Beach Preservation Fund (SBPF) Geotextile Tube Project Removal Order (SBPF v Nantucket Conservation Commission), where an Open Meeting May have a Detrimental Effect on the Litigation Position of the Conservation Commission. And, to Discuss Strategy related to the proposed Memorandum of Understanding between the Town of Nantucket Select Board and Siasconset Beach Preservation Fund with Respect to Litigation with the Siasconset Beach Preservation Fund (SBPF) Geotextile Tube Project Removal Order (SBPF v Nantucket Conservation Commission), where an Open Meeting May have a Detrimental Effect on the Litigation Position of the Conservation Commission at 6:33 pm. with no intent to return to open session.** (made by: Williams) (seconded)
- Roll-call Vote Carried 4-0//Beale, Engelbourg, Erisman, and Williams-aye

Submitted by:  
Terry L. Norton