



CONSERVATION COMMISSION

PUBLIC MEETING

131 Pleasant Street
Nantucket, Massachusetts 02554
www.nantucket-ma.gov
Thursday, June 9, 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 5:00 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, Phillips, Beale, Williams

Absent Members: LaFleur

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment –

Carlson – Burton Balkind stated that according to the Structure & Operations for Conservation Commissions, their instructor mentioned that all commissioners should have operable cameras and have them on so they are clearly visible to attendees and observers. He thinks it’s important for transparency

II. PUBLIC HEARING

A. Notice of Intent

1. 13 Commercial Street, LLC – 13 Commercial Wharf (42.2.4-10) SE48-3501 (**Cont. 6/23**)
2. Brant Point Club, LLC – 6,8 North Beach Street/ 4 Dolphin Court (42.1.4-65;65.1;65.2) SE48-3518 (**Cont. 6/23**)
3. Kane – 12 Pond Road (56-295) SE48-3473 (**Cont. 6/23**)
4. Lehrman Dynasty Trust – 18 Washing Pond Road (31-18.1) SE48- 3534

Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams

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

Representative Mark Rits, Site Design Engineering
Dan Bailey, Pierce & Atwood
Dan Mulloy, Site Design Engineering

Public None

Discussion (5:05) **Rits** – At the last hearing, there was discussion about stairs for a platform over the groin, reviewed versions for platform stairs.

Golding – He was out there today; 2 hours before low tide, the water was knee deep at the eastern end of the bulkhead, which is 11’ tall. There was a noticeable high tide line at 4’ all along the bulkhead. The plan dated April 16, 1992 submitted for Chapter 91 certification shows the mean low water (MLW) mark about 10’ below the eastern end of the groin and the mean high water (MHW) mark about 9’ from the eastern end. In July 2002, MLW as touching the end of the eastern groin and MHW touching the bulkhead. A recent plan shows the MHW as the same now as in 2002. The eastern reconstruction is now different from when it was permitted in 1992; due to the change in water level, asked if they should have to reapply for the Chapter 91 license. In terms of statutory access, a stair would have to be provided over the stone gabions.

Bailey – A Chapter 91 License is good for a set number of years with no requirement to get a new one based upon conditions.

Engelbourg – Asked where the pedestrian stairs lead to for traversing the groin.

Rits – Explained the pedestrian passage along the groin.

Engelbourg – He still has concerns about the eastern stairways; they are proposed below MHW putting it in the land-under-the-ocean resource area. our local regulations require no non-water-dependent structures be allowed in land under the ocean. It is a concern because of the negative impact on marine wildlife and habitat.

Rits – We could fix the stairs to the groin with the bottom step at the MHW elevation and above the sand surface.

Phillips – She agrees with Mr. Engelbourg’s analysis. So much time has passed since a protectable structure existed on this lot, asked if Town Counsel has reviewed that and if this structure would be grandfathered.

Golding – Referenced documents attached to an email dated May 14 2022. The original building was removed in 1994; the new building was signed off on July 16, 1996, with a completely different footprint. Still wants Town Counsel’s ruling on that.

Erisman – They aren’t arguing that the structure deserves protection; the bulkhead is pre-1974.

Phillips – If they have a pre-1978 structure, it deserves protection. When a structure doesn’t meet that requirement, you have a bulkhead that puts a burden on the public while it protects nothing. You are allowed

to maintain a bulkhead for a pre-1978 house. Once the link between protected structure and what is now an obstruction is broken, she finds it non-sensical to allow the coastal erosion structure (CES) to remain and cobble together public access.

Bailey – He believes the discussion of public access is misplaced because ConCom doesn’t have jurisdiction over that; It’s a Waterway’s issue. Read the local bylaw regarding grandfathering. We are not proposing to extend or modify the structure, nor has it been abandoned for 5 years.

Golding – Of course it’s a case-by-case basis; that’s why we ask for waivers. Read from Town of Nantucket Wetland regulations for coastal beaches which he feels supports public access being in our purview. We’ve asked for a formal request for a Town Counsel ruling. Conditions have changes so completely, we need a judgement from requisite authorities about whether or not we should allow this structure to be rebuilt.

Engelbourg – He agrees with much Mr. Bailey said, but there are still questions salient to this: definition of normal maintenance, the existing system has been modified and will be modified further, and even grandfathered structures follow our performance standards. In general, he agrees with Mr. Bailey but needs some technical points to be interpreted. Attaching the stairs to the groin seems reasonable but he wants to see that plan attached to the file.

Golding – He would not personally approve the stairs at the eastern end because they will be under water almost the entire tide cycle.

Erisman – We are still waiting for answers to outlying questions; asked if our questions might be addressed within the next 2 weeks.

Rits – Asked for a 2-week continuance.

Staff recomm. As for what Chapter 91 requires, he would have to defer to Massachusetts Waterways. He has completed the required steps for Town Counsel review; it’s slow going. Hopes Town Counsel will get to this soon.

Motion Continued to June 23.

Roll-call vote N/A

5. Ack Hang Ten, LLC – 21 Meader Street (42.2.3-44) SE48-3539 (**Cont. 06/23**)

6. Waterfront Pocomo, LLC – 17 Laurretta Lane (14-10.2) SE48-3542

Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams

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

Representative Art Gasbarro, Nantucket Engineering & Survey

Public None

Discussion (5:42) **Gasbarro** – This is the 2nd hearing for a residential redevelopment. Reviewed supplemental information and revised survey and site plans as previously requested.

Erisman – Appreciates scaling back features within the 50’ buffer.

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, Phillips, and Williams-aye

7. *Nantucket Whale’s End II, LLC – 43 & 45 Squam Road (13-23;24) SE48-3544

Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams

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

Representative Brian Madden, LEC Environmental

Public None

Discussion (5:46) **Madden** – This is for reconstruction of crawlspace foundations to existing dwellings outside 50’ buffer; resource areas are coastal dune and bordering vegetated wetlands. Assessor’s record dates the house to 1930s; it might have been a move onto this lot. No work will be within 25’ buffer. Asked for a waiver for 2’ separation from groundwater.

Golding – There doesn’t seem to be any mention of a proposed pool; asked about that.

Madden – The pool was approved last year; it was designed to meet the 2’ separation.

Staff recomm. Have everything needed to close.

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

Roll-call vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, Phillips, and Williams-aye

8. *Crenshaw – 24 Almanack Pond Road (25-37) SE48-3543

Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams

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

Representative Brian Madden, LEC Environmental

Public None

Discussion (5:50) **Madden** – We’re doing active vegetative monitoring of a previously cut area and will be submitting a secondary monitoring report. This is for reconfiguration of the driveway, addition to the existing pool house outside the 50’ buffer, reconfigure existing pool outside the 100’ buffer, and a patio. The resource area is bordering vegetated wetlands. The pool addition is partially within the mapped flood zone. Proposed office-barn is slab construction outside the 50’ buffer. No waivers are required.

Golding – The plan says the pool is proposed and that the pool patio will be removed. Questions the accuracy of the plan.

Madden – A new pool will replace the existing; it’s outside the 100’ buffer. The patio is at elevation 23.5 with ground water around elevation at 12. Asked for a 2-week continuance.

Staff recomm. None
Motion Continued to June 23
Roll-call vote N/A

B. Amended Order of Conditions

- 1. Philips, Trustee – 19 East Tristram Avenue (31-4.1) SE48-3304 (**Cont. 6/23**)

III. PUBLIC MEETING

C. Requests for Determination of Applicability

- 1. Ceruzzi – 5 Grant Avenue (30-143)

Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams
Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
Representative Art Gasbarro, Nantucket Engineering & Survey
Public None

Discussion (5:57) **Gasbarro** – They’re seeking to confirm resource area boundaries and that there are no jurisdictional areas on this property. Explained why the bank is not a jurisdictional bank.

Staff recomm. We agree there are no on-sight resource areas and feel confident it can be a Negative 1 as not an area of protection.

Motion **Motion to Issue as Negative 1.** (made by: Beale) (seconded)
Roll-call vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, Phillips, and Williams-aye

D. Minor Modifications

- 1. Westmoor Club, LLC – 105 & 109 West Chester Street (41-805,806) SE48-3463

Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams
Representative Paul Santos, Nantucket Surveyors
Staff recomm. Recommend issuing as a minor modification.

Discussion (6:00) **Santos** – This is for relocation of the infiltration bed for run off from the Pickleball Court. Courts are at elevation 25 with the wetland at 15; the infiltration bed is about 2’. Outfall is outside ConCom jurisdiction.

Motion **Motion to Issue the Minor Modification.** (made by: Phillips) (seconded)
Roll-call vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, Phillips, and Williams-aye

E. Certificates of Compliance

- 1. ACK007 Properties, LLC – 46 Walsh Street (29-1011) SE48-3346

Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams
Representative Art Gasbarro, Nantucket Engineering & Survey
Staff recomm. For residential redevelopment within the flood zone. Work is in compliance.

Discussion (6:04) None
Motion **Motion to Issue.** (made by: Williams) (seconded)
Roll-call vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, Phillips, and Williams-aye

- 2. 1 James Street Trust – 53 Walsh Street (29-60) SE48-2927

Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams
Representative Paul Santos, Nantucket Surveyors
Staff recomm. For additions to existing structures; work is in compliance. Recommend issue.

Discussion (6:05) None
Motion **Motion to Issue.** (made by: Beale) (seconded)
Roll-call vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, Phillips, and Williams-aye

F. Orders of Condition

- 1. Waterfront Pocomo, LLC – 17 Lauretta Lane (14-10.2) SE48-3542

Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams
Documentation Draft Order of Conditions
Staff Included general conditions banning use of chemicals within the 50’ buffer. Will add Condition 24 to address monitoring to prevent demolition debris being blown around.

Discussion (6:06) **Golding** – Condition 20, should read as straw wattles.
Erisman – She’s concerned about debris; when the house comes down it should be done on a low wind day.
Engelbourg – Suggested 10 MPH or less winds.

Motion **Motion to Approve as amended.** (made by: Williams) (seconded)
Roll-call vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, Phillips, and Williams-aye

- 2. Nantucket Whale’s End II, LLC – 43 & 45 Squam Road (13-23;24) SE48-3544

Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams
Documentation Draft Order of Conditions
Staff Pretty straight forward. The waiver request is included.

Discussion (6:11) None
Motion **Motion to Approve as drafted.** (made by: Golding) (seconded)
Roll-call vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, Phillips, and Williams-aye

G. EXTENSION REQUEST

- 1. Johnson – 25 Old North Wharf (42.3.1-262) SE48-3210
- Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams
- Representative None
- Staff recomm. Was for replacement of foundation pilings; requesting three 1-year extensions for completion.
- Discussion (6:13) **Engelbourg** – Asked if this was covered by the COVID acts of 2020 (yes).
- Motion **Motion to Issue three 1-year extensions.** (made by: Williams) (seconded)
- Roll-call vote Carried //Beale, Engelbourg, Erisman, Golding, Phillips, and Williams-aye

H. Other Business

- 1. Approval of Minutes 05/26/2022:
 - Motion **Motion to Approve as drafted.** (made by: Williams) (seconded)
 - Roll-call vote Carried 4-0//Beale, Engelbourg, Erisman, and Williams-aye; Golding & Phillips abstain
- 2. Discussion of Regulatory Update (6:16)
 - Carlson** – We’ve received and compiled a lot of suggestions. Asked if they want to schedule a separate meeting to go through all those changes. Mr. Tymann has requested an executive session for next week – Tuesday or Wednesday; we could start that meeting with the regulations to get a start. As long as no formal action is taken, discussion of the regulation changes can be in any open meeting.
 - Discussion about the best day for the meeting: Wednesday, June 15th at 4 with executive session at about 5.
- 3. Enforcement/Potential Enfor actions
 - a. 87 Eel Point Road – Still looking into that driveway.
- 4. Reports:
 - a. None
- 5. Commissioners Comment
 - a. Golding – Asked to what extent we have to rely on out-of-date information.
Carlson – He will send Mr. Golding the information and discuss it out of the meeting.
 - b. Erisman – Asked for an update on the Lily Street appeal.
Carlson – We’ve met all our administrative requirements and are now waiting for feedback from the court.
 - c. Golding – Expressed concern about what he felt were fictitious comments.
Discussion stopped due to it regarding a project under consideration.
- 6. Administrator/Staff Reports
 - a. At the first meeting in July (7/14), the Commission will have to redesignate committee representatives and officers.

I. Adjournment

- Motion **Motion to Adjourn at 6:31 p.m.** (made by: Williams) (seconded)
- Roll-call vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, Phillips, and Williams-aye

Submitted by:
Terry L. Norton