



CONSERVATION COMMISSION

PUBLIC MEETING

131 Pleasant Street
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Thursday, August 26, 2021 – 5:00 p.m.

*This meeting was held via remote participation using ZOOM and YouTube,
Pursuant to Governor Baker’s March 12, 2020 Order Regarding Open Meeting Law*

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; Terry Norton, Town Minutes Taker

Attending Members: Erisman, Golding, LaFleur, Engelbourg, Beale, Williams

Absent Members: Phillips

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment –

II. PUBLIC HEARING

A. Notice of Intent

1. Land Bank – Island Wide Land Bank Properties (Various) SE48-3337 **(Cont. to 10/7/2021)**

2. *NISDA – 55 Wauwinet Road (14-23) SE48-3441 **(Cont. to 09/23/2021)**

3. Auburn Cottage, LLC – 46 Easton Street (42.4.1-22) SE48-3458

Sitting Erisman, Golding, LaFleur, Engelbourg, Beale

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

Representative Brian Madden, LEC Environmental

Don Bracken, Bracken Engineering

Dan Bailey, Pierce Attwood, L.P.

Public None

Discussion (5:05) **Madden** – The new dwelling in the northeast corner was slid over to accommodate wetland scenic views.

Golding – Appreciates their taking his concern into account.

Engelbourg – He requested follow up confirmation on the costal dune on the west side; asked if that had been done.

Madden – We restaked the dunes.

Erisman – Her concerns were the basement and photos confirm her concerns; the upgrade will change how water moves. Asked them to consider a pier foundation that close to the dune.

Madden – It will be on pier supports with breakaway panels.

Bracken – The piers will be on helical piles.

Beale – Asked for clarity on the slab issue; currently there’s a cellar with a concrete floor.

Bracken – It will be a new slab at grade and water will be able to go through the building.

Staff We went out after the dune was reflagged and agree with the boundaries.

Have everything needed to close.

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

Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and LaFleur-aye; Williams recused

4. George C. & Diane D. Metcalfe – 11 Alliance Lane (39-24.1) SE48-3457

Sitting Erisman, Golding, LaFleur, Beale, Williams

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

Representative Brian Madden, LEC Environmental

Don Bracken, Bracken Engineering

Public None

Discussion (5:12) **Madden** – We are still waiting for Massachusetts Natural Heritage letter so will have to request a continuance. Their 30-day deadline is tomorrow.

(6:23) **Madden** – The Massachusetts Natural Heritage letter just came through; asked if this could be reopened.

Motion to reopen. (Williams) (seconded)

Carried Erisman, Gold-aye, ; Beale-nay, and Engelbourg recused.

Madden – Reviewed the Massachusetts Natural Heritage rulings and conditions.

Discussion on the motion to close.

Beale – He’s concerned people, who might have wanted to speak, have left the meeting and now don’t have the opportunity to comment.

Golding – He stands with Mr. Beale. Also, this structure is shoehorned into the lot. He’s not ready to close. Discussion about whether or not a 3-2 vote is sufficient to pass the motion.

Staff **Carlson** – Any time we get a Massachusetts Natural Heritage letter with conditions, we attach it to our Order of Conditions since their conditions are so extensive. Now we have everything needed to close.

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

Roll-call Vote Carried 3-2//Erisman, LaFleur, and Williams-aye; Golding and Beale-nay; Engelbourg recused

5. Nantucket Whales End II, LLC – 43 & 45 Squam Road (13-23 & 24) SE48-3460 (**Cont. to 09/23/2021**)

6. *Warrens Landing N.T. – 40 Warrens Landing Road (38-45) SE48-3466 (**Cont. to 09/09/2021**)

7. *Hubbard – 28 Dukes Road (56-190) SE48-3464

Sitting Erisman, Golding, LaFleur, Engelbourg, Beale, Williams

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

Representative Brian Madden, LEC Environmental
Don Bracken, Bracken Engineering

Public None

Discussion (5:13) **Madden** – This is for installation of a pool and patio outside the 50’ buffer to a bordering vegetated wetland and 2 isolated vegetated wetlands. The pool will have an autocover and maintain 2’ separation from groundwater. No waivers are requested or required.
Williams – Confirmed the pool is inside the 100’ buffer and that the boundaries were updated. She’s not comfortable with it where it’s located. This is a very wet lot. If it were on the other side, it would be farther from the wetlands.
Erisman – Structures are allowed outside the 50’ buffer unless there are other circumstances. Asked if staff confirmed the wetland boundaries.
Golding – He takes Ms. Williams point about the wetness; in another case, we added some precautions. He sees the point of moving it to the other side. In this location, if they want to empty the pool, it will have to be into a pumping tank.
Engelbourg – Regarding the areas of interest to be protected, it’s important to craft conditions so it meets our performance standards.
Williams – Asked if this location was approved by the Historic District Commission (HDC). She also noticed there are some invasive species; asked if those will be addressed.
Bracken – He believes HDC approved this; projects usually are before they get to us to go to ConCom.
Madden – Any invasive species management would have to be a multi-property project; he’ll convey that idea to the owner.

Staff We have confirmed the wetland boundaries this summer; explained how wetlands are delineated. We can encourage them to take on the invasive species but not require it under this application. Have everything needed to close.

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

Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, LaFleur, and Williams-aye

8. *Anchialine Properties, LLC – 19 East Creek Road (55-60) SE48-3465

Sitting Erisman, Golding, LaFleur, Engelbourg, Beale, Williams

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

Representative Paul Santos, Nantucket Surveyors
Joe Paul, BPC

Public None

Discussion (5:26) **Santos** – Building renovation plans have HDC approval. This is for construction of additions to the structure and landscaping; the property is within land subject to coastal storm flowage and there is work within the buffers to wetlands, a saltmarsh, and a policy coastal bank. Reviewed application history of the property. Repair of the dock is not part of this application. The site was removed from the Massachusetts Endangered Species Act (MESA) map. We have asked for waivers. He spoke with Mr. Ken Goldberg, owner of the property to the south; he has said he has no issues with this proposal. Our Island Home (OIH) has not corresponded with us on this application; but nothing we are doing impacts their view.
Paul – Reviewed the HDC approved work on the structure. He did a pane-by-pane comparison of clear-glass area; we have a net reduction in glass of 13.68sf on the east, a 6.77sf increase on the south, and a 11.87sf increase on the north elevation. Most of the increase in glass happens on the sides, not facing the Creeks.
Williams – She was concerned about fenestration and light-scatter on the Creeks side; she’s happy glass is being reduced on that side. Asked if they considered non-reflective glass; it also reduces light scatter.
Erisman – We do ask to minimize light toward the wetlands.
Paul – He has never used reflective glass, but it sounds more compelling versus reducing the glass even less; he thinks his client might be open to it.
Engelbourg – From his training as an avian ecologist, any increase in glass is detrimental for birds; any glass should have approved deterrents to keep birds from hitting those windows. He’s concerned about the increase in structural areas; adding the pergola and additional areas isn’t productive for the wetland resource areas. This is an opportunity for them to reduce the length of the timber retaining wall to just around the house and keep it outside the 25’ buffer to the saltmarsh.

Erisman – The pergola concerns her. Outdoor living space could be contained within the fairly large deck. Asked about construction protocol: where will vehicles park, will a dumpster be left there, etc. It needs to be clear that no material ends up in the resource area.

Santos – He can provide a construction protocol to staff; that can be conditioned.

Golding – Pleased they are not raising the ridge. On the west elevation, they are adding to the roof mass and adding a floor over the garage. He’s leaning toward approving this. He looks at the pergola as an open framework. He’s pleased with the reduction in glass and would support use of non-reflective glass.

Williams – She would support this because of the reduction in hardscaping. She agrees with Mr. Golding about the pergola.

LaFleur – He too agrees. This is a world of difference over the last application. The reflective glass would be good.

Beale – Asked about the material for the surface of the patio and under the pergola.

Paul – It’s a bluestone patio; it’s not set on a slab. He hasn’t discussed stone size with his client, but he’s open to that being conditioned to achieve the more permeability.

Beale – He supports comments on using non-reflective glass facing the Creeks.

Engelbourg – The non-reflective glass is a window spec; he’s talking about technologies applied to the windows to prevent bird strikes.

Golding – Asked if a catchment basin would be necessary and should we see it in a design.

Erisman – There area is tough for a catchment basin.

Santos – Could have a shallow area under the patio to direct water into.

Engelbourg – Our job is to make sure the application meets the performance standards for resource areas under our jurisdiction, not based upon it’s being better than prior applications. The pergola and added structure don’t fit with the performance standards; the client need to look at alternative analysis on those.

Erisman – She agrees with Mr. Engelbourg; this proposal increases living space.

Beale – Asked what the offset would be for granting the waiver.

Erisman – The waiver was for no reasonable alternative; normally there is an offset calculation.

Santos – The waiver is requested based upon no adverse impact and no reasonable alternative. This structure is existing; only 55sf is being added to the footprint on the back side. The pergola isn’t “building area”; it’s an open framework and doesn’t add to the building structure.

Paul – Currently mechanicals are below the flood plain in the garage; the addition raises them out of the flood plain. We can define the cross pieces of the pergola, which is an open-air structure.

Erisman – It looks like this structure was dropped into the Creeks. The pergola does make a difference in the wetland scenic views, especially on a lot that probably shouldn’t have been developed.

Engelbourg – A pergola is defined as a structure under our regulations and could negatively impact flood waters. The burden of proof is on the applicant to show there is no reasonable alternative and no negative impact and how impact will be minimized. He’s not comfortable with this until that is done.

Beale – To him, no reasonable alternative is a threshold question; allowing them to expand within a troubled area with granting the waiver could allow them to come back for more.

Williams – With the garage no longer being used to house a vehicle, it means no car is going across that area.

Santos – That is a positive component to this project. Materials were stored in the garage that could have caused an adverse impact in the event of a flood.

Engelbourg – It would be an important condition that the storage space not have chemicals and fuel.

Carlson – R.J. Turcotte, Nantucket Land Council, Inc. asked that the commission request an alternative analysis be provided because it’s unusual to allow construction within the 25’ buffer.

Santos – Asked for a continuance to provide additional information.

Staff None
 Motion Continued to Sept 9.
 Roll-call Vote N/A

B. Amended Order of Conditions

1. Nester – 4 East Lincoln Avenue (42.4.1-49) SE48-3367

Sitting Erisman, Golding, LaFleur, Engelbourg, Beale, Williams
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Don Bracken, Bracken Engineering
 Brian Madden, LEC Environmental
 Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP

Public None
 Discussion (6:17) **Bracken** – This is to reduce the main structure by about 350sf and propose an in-ground pool. The resource area is land subject to coastal storm flowage. Pool and surrounding patio will be at grade.
Golding – We don’t know if the pool will have 2’ separation from groundwater.
Bracken – Dewatering will be required; that’s a Department of Public Works application with a signoff from ConCom; there is a catch basin in front of this site.

Staff Have everything needed to issue.
 Motion **Motion to Issue with standard pool conditions.** (made by: Williams) (seconded)
 Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, LaFleur, and Williams-aye

III. PUBLIC MEETING

C. Certificates of Compliance

1. Seth D & Kim M. White – 47A West Chester Street (41-227.1) SE48-3117
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Beale, Williams
 - Staff This is in compliance. Recommend issuing with on-going Condition 19.
 - Discussion (6:31) None
 - Motion **Motion to Issue witg on-going Condition 19.** (made by: Golding) (seconded)
 - Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, LaFleur, and Williams-aye
2. ACK Blue Shutters LLC – 4 Hulbert Avenue (42.1.4-2) SE48-3298
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Beale, Williams
 - Staff This is in compliance and recommend issuing.
 - Discussion (6:32) None
 - Motion **Motion to Issue.** (made by: Golding) (seconded)
 - Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, LaFleur, and Williams-aye
3. Freeman – 93 Baxter Road (48-21) SE48-2984
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Beale, Williams
 - Staff This was in response to an enforcement order; the site is now in compliance. Recommend issuing.
 - Discussion (6:33) None
 - Motion **Motion to Issue.** (made by: Williams) (seconded)
 - Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, LaFleur, and Williams-aye
4. Freeman – 93 Baxter Road (48-21) SE48-2089
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Beale, Williams
 - Staff This was for relocation of the structure; it is in compliance. Recommend issuing.
 - Discussion (6:35) None
 - Motion **Motion to Issue.** (made by: Golding) (seconded)
 - Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, LaFleur, and Williams-aye

D. Orders of Condition

1. Auburn Cottage, LLC – 46 Easton Street (42.4.1-22) SE48-3458
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Beale
 - Documentation Draft Order of Conditions
 - Staff Reviewed the conditions he had included. He’ll add the “as shown on the label” to Condition 20.
 - Discussion (6:37) **Engelbourg** – Condition 20, any herbicide should be applied in accordance with the label instructions by a licensed applicator.
Golding – He wants Condition 19 to remain because it’s specific.
 - Motion **Motion to Issue as amended.** (made by: Golding) (seconded)
 - Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and LaFleur-aye; Williams recused
2. George C. & Diane D. Metcalfe – 11 Alliance Lane (39-24.1) SE48-3457
 - Sitting Erisman, Golding, LaFleur, Beale, Williams
 - Documentation Draft Order of Conditions
 - Staff He’ll attach the Massachusetts Natural Heritage conditions.
 - Discussion (6:42) None
 - Motion **Motion to Issue as drafted.** (made by: Williams) (seconded)
 - Roll-call Vote Carried 3-2//Erisman, LaFleur, and Williams-aye; Beale and Golding abstain and Engelbourg recused
3. Hubbard – 28 Dukes Road (56-190) SE48-3464
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Beale, Williams
 - Documentation Draft Order of Conditions
 - Staff He has the standard pool conditions. He’ll add a Condition 24 regarding fill per Mr. Engelbourg’s comments.
He can add Condition 25 that straw waddle be installed along the silt fence.
We have a tolerance for grading within a few of inches; if they grade substantially more than the permit plan, they are not in compliance and we can ask them to remove that grading.
 - Discussion (6:45) **Williams** – Asked if removal of invasive species could be conditioned here.
Erisman – Invasive species removal was not agreed to or a request of the permit.
Engelbourg – There will be some regrading; he wants to see a condition on fill, as he previously mentioned, be included. Asked if staff could do a review for a list of contaminants we can include: chemicals and metals.
Williams – If they are excavating at the top of the hill, she doesn’t think the silt fence will be sufficient. Asked if ConCom can regulate grade change; she would be more comfortable with a condition against any change in grade.
 - Motion **Motion to Issue as amended.** (made by: Golding) (seconded)
 - Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, LaFleur, and Williams-aye

E. Extension

- 1. Nantucket Conservation Foundation – Shimmo Pond Road (43-155) SE48-3090
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Beale, Williams
 - Staff Asking for three 1-year extensions on the Pesthouse Pond project.
 - Discussion (6:56) **Engelbourg** – They are asking to extend to 2023; that’s only 2 years.
 - Motion **Motion to Issue two 1-year extensions.** (made by: Williams) (seconded)
 - Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, LaFleur, and Williams-aye

F. Other Business

- 1. Approval of Minutes 08/11/2021 & 08/12/2021:
 - Motion **Motion to Approve as drafted.** (made by: Beale) (seconded)
 - Roll-call Vote Carried //Beale, Engelbourg, Erisman, Golding, LaFleur, and Williams-aye
- 2. Monitoring Reports – Nantucket Conservation Foundation, Shimmo Pond Road, Pesthouse Pond
 - Discussion (6:59) **Carlson** – If anyone has questions, they can forward them to me and I’ll pass them on to Nantucket Conservation Foundation.
- 3. Reports:
 - a. CRAC, Golding
 - Discussion about taking near-shore sand impact on surfing, scallops, and near-shore fishery habitats.
 - b. CPC, Beale
- 4. Commissioners Comment
 - a. Golding – We need to get to work on the regulations updates.
 - Carlson – We were trying to get past some of SBPF to where we could focus on it. We’ll have to advertise the public hearings. By the end of next week, he’ll send out the draft of what was done; we can decide from there.
 - Erisman – Mr. Carlson will send out the draft then we can look at the open meeting space for additional regulation meetings.
 - Engelbourg – Putting regulations in place is the most important work we can do; it makes the permitting process easier.
 - b. Erisman – She read an article where Chief Murphy talked about beach fires and was shocked to read that NFD permits aren’t required for small beach fires. We need to put something in our regulations or speak to Chief Murphy because of charred wood in areas we don’t want it.
 - Engelbourg – There are regulations, but the question is if people follow those regulations; feels another layer would be helpful.
- 5. Administrator/Staff Reports
 - a. For extra meetings, asked if people have a preference for Wednesday or Thursday; he’ll aim at 4 on Thursdays.
 - b. He’ll have everything in everyone’s mail box for digital signing tomorrow.

G. Adjournment

- Motion **Motion to Adjourn at 7:14 pm.** (made by: Williams) (seconded)
- Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, LaFleur, and Williams-aye

Submitted by:
Terry L. Norton