



CONSERVATION COMMISSION

PUBLIC MEETING

131 Pleasant Street
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Thursday, August 11, 2022 – 5:00 p.m.

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

Commissioners: Ashley Erisman (Chair), Ian Golding (Vice Chair), Seth Engelbourg, Mark Beale, Linda Williams, Mike Misurelli, and Joe Plandowski

Called to order at 5:00 p.m. by Ms. Erisman

Staff in attendance: Jeff Carlson, Natural Resources Director; Lisa Graves, Administrative Specialist

Attending Members: Erisman, Golding, Beale, Williams, Misurelli, Plandowski

Absent Members: Engelbourg

Late Arrivals: Williams, 5:07 pm

Earlier Departure: None

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment

1. **Burton Balkind** – Coastal Conservancy requests an agenda item as soon as possible on the status of the soft installation on the public beach below the ‘Sconsset Bluff.

Carlson – He will schedule it for the next meeting and get the information to everyone in advance.

II. PUBLIC HEARING

A. Notice of Intent

1. Brant Point Club, LLC – 6,8 North Beach Street/ 4 Dolphin Court (42.1.4-65;65.1;65.2) SE48-3518 (**Cont. 9/8**)

2. Airack, LLC – 14 Gosnold Road (30-83) SE48-3550

Sitting Erisman, Golding, Beale, Misurelli, Plandowski

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

Representative David M. Haines, Haines Hydrogeologic Consulting

Public None

Discussion (5:04) **Haines** - This is for a pool outside the 50’ buffer and will be expanding the 25’ vegetative buffer to 50’ in some areas. Received Massachusetts Natural Heritage letter of no take. The plan was changed for no work within the 50’ buffer.

Golding – Asked about the proposed path.

Haines – A gravel path with a couple of dry-laid steppingstones.

Staff recomm. Have everything needed to close.

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

Roll-call vote Carried 5-0//Beale, Erisman, Golding, Misurelli, and Plandowski-aye

3. *Town of Nantucket – 98, 100 & 104 Washington Street (55.1.4-9.2, 9.1 & 104) SE48- (**Cont. 8/25**)

4. *The Sachem Trust – 8 Sachem Road (30-239) SE48-3561

Sitting Erisman, Golding, Beale, Williams, Misurelli, Plandowski

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

Representative Brian Madden, LEC Environmental

Public Ken Wise, abutter

Discussion (5:09) **Madden** – This is for a new garage, shed, pool, patio, decking, driveway reconfiguration, and landscaping updates. Maintaining same level of disturbance between 25’ and 50’ buffer. Will provide restoration activities into 25’ buffer for relocated driveway. Shed and garage are outside the 50’ buffer. The 100’ buffer cuts through the pool; will maintain 3’ separation from groundwater. No structural work within the 50’ buffer. Asking for a waiver for restoration work within the 25’ buffer.

Beale – Asked the extent of the entry gate; he doesn’t want it to qualify as a structure.

Madden – It will be a simple, swinging wood gate with support posts.

Erisman – Between 25’ and 50’, asked the percentage being altered.

Madden – Existing condition is 62%; proposing to maintain that with some tradeoff by expanding the vegetative buffer for parking-turnaround area.

Erisman – Would like that to shift toward 50% with more extensive restoration. Asked when that work was done.

Madden – The wetland boundary was further down-gradient when that was done. The perimeter is currently bush honeysuckle. There might be some minimal opportunities to get it closer to 50%.

Misurelli – Asked if the driveway hedge is existing or to be planted.

Madden – There is a row of ornamental trees along the west side of the driveway. We would replace that edge in kind.

Erisman – We would need a native species in that restoration area.

Golding – Confirmed the change in wetland delineation is the reason the porch is now within the 50’ buffer. Agrees with Ms. Erisman about bringing the alteration work closer to 50%.

Wise – Referenced his letter to Staff regarding a 1990s deed restriction against additional habitable area outside the main area built on the property. The landscape plan indicates a guesthouse in the location of the former garage which is in violation of the deed restriction.

Erisman – We only look at wetland-applicable regulations. Asked if we could include in our order that no further development is allowed.

Williams – No board has any jurisdiction over private deed restrictions unless they are given right of enforcement. This particular deed restriction does not have an enforcement agency. A private deed restriction is good only for 30 years.

Golding – Suggested Mr. Wise get a second opinion.

Madden – We can look at bringing work closer to 50% asked for a 2-week continuance.

Staff recomm. We can’t regulate private deed restrictions and other permit restrictions.

Concurred Ms. Williams comments regarding the deed restriction.

Motion Continued to August 25th.

Roll-call vote N/A

5. *Luxury Brands, Inc – 100 Low Beach Road (75-27) SE48-_____

Sitting Erisman, Golding, Beale, Williams, Misurelli, Plandowski

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

Representative Brian Madden, LEC Environmental

Public None

Discussion (5:28) **Madden** – This is for structural renovation to the main dwelling, no footprint or foundation changes; all work is vertical. Have Historic District Commission (HDC) approval. Some work is within the 50’ buffer to a coastal bank and coastal dune. We did request a waiver if it’s required. All work will be defined by erosion-control barriers. 75 sf decking will be replaced by dry-laid patio within the 50’ buffer.

Golding – This is still increasing mass within our jurisdiction and will negatively impact the wetland scenic view.

Madden – The existing vegetation is robust and only the top of the roof line is visible, not the ocean.

Erisman – Asked if there is a construction protocol to keep vehicles and equipment out of resource areas.

Madden – Yes. Whatever best-management practices (BMP) conditions the ConCom wants to implement will be appropriate.

Staff recomm. Have everything needed to close.

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

Roll-call vote Carried 6-0//Beale, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

6. *Nantucket Islands Land Bank – 19 Wauwinet Road (20-35) SE48-3560

Sitting Erisman, Golding, Beale, Williams, Misurelli, Plandowski

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

Representative Brian Madden, LEC Environmental

Rachel Freeman, Nantucket Islands Land Bank

Public None

Discussion (5:35) **Madden** – This is for removal of existing storage building, pool, patio, retaining wall, fence, gazebo, and deck and add-on to the Heifer Barn. The concrete parking will be converted to pervious surface. All the privet will be removed. The timber walls and brick patio will be rehabbed in place and upgrade of the existing foot bridge will be under an amended order. Proposing to remove board-plank path and allow to revegetate. Portions of the work occur within the 25’ buffer so have requested a waiver.

Misurelli – It seems like it’s all net improvements; however, it seems like there’s a lot going on from a wetland point of view. Asked if they will be coming with a detailed landscape plan regarding pathways, etc.

Madden – The future landscaping plans will get into the level of detail. The goal is to make Eat Fire Spring more accessible to the public.

Staff recomm. Have everything needed to close.

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

Roll-call vote Carried 6-0//Beale, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

7. *Murphy/ Foundyller – 8 Massachusetts Avenue (60.2.4-1) SE48-3559

Sitting Erisman, Golding, Beale, Williams, Plandowski

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

Representative David M. Haines, Haines Hydrogeologic Consulting

Public None

Discussion (5:44) **Haines** – This property is within land subject to coastal storm flowage; salt marshes are off site with no buffers on the property. This is for a garage/boathouse with gravel floor or slab and a gravel drive with minor grading and no fill. The building will be designed to meet flood standards. Flood elevation is 9. Other work is brush hogging and seeding with conservation-wildlife mix; there will be seasonal mowing to help establish a meadow.

The vegetation out there is very dense bayberry, scrub oak and pitch pine saplings, rosa rugosa and some Russian olive. No waivers are required and not within Massachusetts Natural Heritage. Any foundation will be well above the water table.

Golding – It’s nowhere near the water, asked how it will be a boat house.

Haines – It’s for storage of a boat; he’s not going for a water-dependent use.

Beale – Asked if you can build a stand-alone structure that is not residential.

Williams – Yes, that bylaw was changed to allow ancillary structures on lots by themselves.

Staff recomm. Have everything needed to close.

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

Roll-call vote Carried 5-0//Beale, Erisman, Golding, Plandowski, and Williams-aye; Misurelli recused

8. *13 Commercial Street, LLC – 13 Commercial Wharf (42.2.4-10) SE48-_____

Sitting Erisman, Golding, Beale, Williams, Misurelli, Plandowski

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

Representative Paul Santos, Nantucket Surveyors

Ann Desruisseaux, owner

Public None

Discussion (5:50) **Santos** – This was renovated in 2008 to comply with flood zone regulations at that time. This is within land subject to coastal storm flowage and 50’ buffer to a coastal beach, not within priority habitat. Current 1st-floor elevation is 8; covered porch to be infilled and increase 2nd-floor space, an addition toward Commercial Street and elevation into compliance with current flood-zone regulations. It is shown within a velocity zone; that impacts the final required elevation of the structure. AE zone elevation puts 1st-floor at flood elevation plus 1’; a velocity zone is plus 2’. Looking into filing under AE zone versus velocity zone; this plan shows the velocity zone requirement. This requires waivers. Work has been approved by the HDC.

Erisman – She feels the addition can’t be approved within the no-build zone of a resource area; she’s willing to allow this to meet flood compliance.

Desruisseaux – This 8’ bumpout would align this with the rest of the streetscape in a well-developed area. The HDC wants this addition to improve the street view.

Erisman – We are here to consider the wetland protection act and our local bylaw; we don’t consider the streetscape. The ConCom had asked that the structure be lifted and moved closer to the street; it’s important to be as far from the resource areas as possible.

Golding – Agrees with Ms. Erisman; it goes against our regulations to have any new construction, and he sees no mitigating circumstances.

Williams – Asked if the work triggers raising the house or if it’s voluntary.

Santos – Because of the 2009 renovation, we have no historic exemption, and we are triggering the compliance threshold. All work is within the 25’ and 50’ no-build zone.

Williams – Asked if any work on the water side is within the 25-50 is within existing footprint.

Desruisseaux – Not on the water side. Appreciates concerns, but we would have to attach additional stairs and doors to meet resiliency guidelines.

Williams – If all they do is raise the house, they still have to address the issue of access.

Erisman – We have approved increase in structure to allow extra stairs for work within a flood plain. IN our regulations, we don’t allow building in this location. We have new construction within the no build without any mitigation. If it were strictly to raise to come into compliance, it would be easier to approve.

Golding – There is no reason not to extend the existing stairs as the building is raised; both by precedent and regulations, there should be no addition.

Beale – Support Mr. Golding and Ms. Erisman’s comments. The extension is a no-go from his point of view. We haven’t discussed enclosing the porch.

Santos – The porch enclosure is on the street side. There’s also some 2nd-story work. The addition is the main concern with commissioners.

Erisman – She’d be okay with enclosing the porch.

Williams – She agrees enclosing the porch would be okay.

Santos – Asked for a 2-week continuance.

Staff recomm. N/A

Motion Continued to August 25th.

Roll-call vote N/A

B. Amended Order of Conditions

1. Philips, Trustee – 19 East Tristram Avenue (31-4.1) SE48-3304 (Cont. 8/25)

III. PUBLIC MEETING

C. Requests for Determination of Applicability

1. None

D. Minor Modifications

1. Archer – 41 Monomoy Road (54-79.1) SE48-3536
 - Sitting Erisman, Golding, Beale, Williams, Misurelli, Plandowski
 - Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
 - Representative Ryan Maxwell, Bracken Engineering
 - Public None
 - Discussion (6:20) **Maxwell** – This is to shift all the structures 90’ right and outside the 50’ buffer.
 - Staff recomm. Have everything needed to issue.
 - Motion **Motion to Issue.** (made by: Williams) (seconded)
 - Roll-call vote Carried 6-0//Beale, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

E. Certificates of Compliance

1. Nantucket Islands Land Bank – 158 Orange Street (55-61.1) SE48-3248
 - Sitting Erisman, Golding, Beale, Williams, Misurelli, Plandowski
 - Representative Rachel Freeman, Nantucket Islands Land Bank,
 - Staff recomm. Formerly the Backman property. Reviewed completed work, which is in compliance. Recommend issue.
 - Discussion (6:22) None
 - Motion **Motion to Issue.** (made by: Williams) (seconded)
 - Roll-call vote Carried 6-0//Beale, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
2. Nantucket Islands Land Bank – 63 Madaket Road (41-480.1) SE48-3122
 - Sitting Erisman, Golding, Beale, Williams, Misurelli, Plandowski
 - Representative Rachel Freeman, Nantucket Islands Land Bank,
 - Staff recomm. South of the Animal Hospital. Reviewed completed work, which is in compliance. Recommend issue.
 - Discussion (6:24) None
 - Motion **Motion to Issue.** (made by: Beale) (seconded)
 - Roll-call vote Carried 6-0//Beale, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
3. Nantucket Islands Land Bank – 16 East Creek Road (55-58) SE48-2955
 - Sitting Erisman, Golding, Beale, Williams, Misurelli, Plandowski
 - Representative Rachel Freeman, Nantucket Islands Land Bank,
 - Staff recomm. Behind Our Island Home. Reviewed completed work, which is in compliance. Recommend issue.
 - Discussion (6:25) None
 - Motion **Motion to Issue.** (made by: Misurelli) (seconded)
 - Roll-call vote Carried 6-0//Beale, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
4. Nantucket Islands Land Bank – 70 Washington Street (42.2.3-6) SE48-1473
 - Sitting Erisman, Golding, Beale, Williams, Misurelli, Plandowski
 - Representative Rachel Freeman, Nantucket Islands Land Bank,
 - Staff recomm. This is to close out an old Order of Conditions; work is in compliance. Recommend issue.
 - Discussion (6:26) None
 - Motion **Motion to Issue.** (made by: Golding) (seconded)
 - Roll-call vote Carried 6-0//Beale, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

F. Orders of Condition

1. Lehrman Dynasty Trust – 18 Washing Pond Road (31-18.1) SE48-3552
 - Sitting Erisman, Golding, Beale, Williams, Misurelli, Plandowski
 - Documentation Draft Order of Conditions
 - Staff This was for replacement of pre-existing groin; he drafted a positive order. Reviewed Findings, 2, 3, and 4. Reviewed project conditions for groins and bulkheads; included a requirement for photos every 2 months and for a quarterly report on condition of groin and location of mean high water. Condition 23 addresses requires potential remedies should the system not work correctly. He doesn’t think photos are hard to get for representation of changing situations. Site Design would submit the reports, which could be conditioned in the Order of Conditions; the permit is for 3 years. Whether or not the stairs are in water depends upon the tide. That is why he asked for additional monitoring. Added construction of 2 sets of stairs under the project overview and Condition 21 regarding time-marks on the photos as well as the tide cycle.
 - Discussion (6:27) **Golding** – Asked what the advantage of photos every 2 months versus quarterly with the report.
Erisman – Confirmed this doesn’t require a waiver because of water dependent use.
Misurelli – Asked who does the quarterly report. Asked how long they would submit the reports.
Beale – Findings 3 & 4 mention stairs. He tried to encourage the stairs be in different locations. Asked if the public’s feet will get wet.
Golding – On the eastern end, the stairs are well below mean-high tide. We should specify photos are taken and low and high tide.
Beale – We need to be clear that the stairs provide access to the top of the bulkhead, not just over the groin. The eastern side is the problem area.
 - Motion **Motion to Approve as amended.** (made by: Golding) (seconded)
 - Roll-call vote Carried 5-1//Beale, Golding, Misurelli, Plandowski, and Williams-aye; Erisman-nay

- 2. Airack, LLC – 14 Gosnold Road (30-83) SE48-3550
 - Sitting Erisman, Golding, Beale, Williams, Misurelli, Plandowski
 - Documentation Draft Order of Conditions
 - Staff Has the standard set of pool conditions. Conditioned no fertilizer or cultivars.
 - Discussion (6:42) None
 - Motion **Motion to Approve as drafted.** (made by: Beale) (seconded)
 - Roll-call vote Carried 5-0//Beale, Erisman, Golding, Misurelli, and Plandowski-aye; Williams abstain
- 3. Luxury Brands, Inc – 100 Low Beach Road (75-27) SE48-_____
 - Sitting Erisman, Golding, Beale, Williams, Misurelli, Plandowski
 - Documentation Draft Order of Conditions
 - Staff Reviewed the Order of Conditions; the reference to the waivers for coastal banks include the codification of the new numbers. Will change Condition 20 regarding storage of materials.
 - Discussion (6:43) **Golding** – Asked to be more specific to ensure nothing is put on the coastal dune. Looking at the plot plan, the 50’ buffer is so close to the building, he’d like to specify the north of the structure.
 - Motion **Motion to Approve as amended.** (made by: Golding) (seconded)
 - Roll-call vote Carried 6-0//Beale, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
- 4. Nantucket Islands Land Bank – 19 Wauwinet Road (20-35) SE48-3560
 - Sitting Erisman, Golding, Beale, Williams, Misurelli, Plandowski
 - Documentation Draft Order of Conditions
 - Staff It’s important to note landscaping plans will come back so that wasn’t included. Addressed fill and no fertilizer within the 50’ buffer and requiring native species and monitoring of restoration areas. Added Finding 2 regarding the future submission of a landscape plan.
 - Discussion (6:48) **Misurelli** – Asked if they ever have to put in that the landscape plan is coming back. He wonders how they will weave in and out of the 25’- 50’ buffers.
Erisman – We can condition that they must come back with a landscape plan showing an all-native planting plan.
 - Motion **Motion to Approve as amended.** (made by: Beale) (seconded)
 - Roll-call vote Carried 6-0//Beale, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
- 5. Murphy/Foundryler – 8 Massachusetts Avenue (60.2.4-1) SE48-3559
 - Sitting Erisman, Golding, Beale, Williams, Plandowski
 - Documentation Draft Order of Conditions
 - Staff Has the standard conditions. He will add Finding 2 regarding no fertilizer and irrigation
 - Discussion (6:52) **Erisman** – They indicated they won’t be using fertilizer or irrigation.
 - Motion **Motion to Approve as amended.** (made by: Williams) (seconded)
 - Roll-call vote Carried 5-0//Beale, Erisman, Golding, Plandowski, and Williams-aye; Misurelli recused

G. EXTENSION REQUEST

- 1. Fader – 36 Liberty Street (42.3.4-83) SE48-3206
 - Sitting Erisman, Beale, Williams, Misurelli, Plandowski
 - Representative None
 - Staff recomm. This came during the Brock Court project. Ms. Fader has been doing maintenance and clean up work; there have been no further incidents of noncompliance. Ms. Fader is asking for three 1-year extensions. We can make sure the photo monitoring continues.
 - Discussion (6:55) **Erisman** – Asked if there is a requirement to submit photos of the maintenance.
 - Motion **Motion to Issue the three 1-year extensions.** (made by: Williams) (seconded)
 - Roll-call vote Carried 5-0//Beale, Erisman, Misurelli, Plandowski, and Williams-aye; Golding recused

H. Other Business

- 1. Approval of Minutes 07/28/2022:
 - Motion **Motion to Approve as drafted.** (made by: Williams) (seconded)
 - Roll-call vote Carried 6-0//Beale, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
- 2. Supplemental Letter – Pocomo Realty Trust
 - Sitting Erisman, Golding, Beale, Williams, Misurelli, Plandowski
 - Discussion (6:58) **Carlson** – We’ve never had a request like this. We have enquired of both Counsel and DEP if we can do it. The applicant is willing to carry forward to August 25th to allow time for those responses. Also the party is not here.
Erisman – She’s worried that with major erosion control projects, we’ll see more like this.
 - Motion **No action at this time.**
 - Roll-call vote N/A
- 3. Discussion of Regulatory Update
 - Sitting Erisman, Golding, Beale, Williams, Misurelli, Plandowski
 - Discussion (7:00) **Erisman** – Mr. Carlson sent out dates for discussing this. She is not available September 1st.
Carlson – Asked people to send him dates they aren’t available; he can recirculate that trying to get as close to the beginning of September as possible. Later in September will be the review of SBPF report; Mr. Berman can get his comments to us September 18th.
Williams – She’s not available September 15th.

Golding – His up-coming knee surgery will preclude him from getting to the Trailer for these discussions until later.

Carlson – We could also have Mr. Golding remote into the meetings.

4. Enforcement Actions/Potential Enforcement Actions

a. 121 Eel Point Road

Sitting Erisman, Golding, Beale, Williams, Misurelli, Plandowski

Discussion (7:05) **Carlson** – Today, an irrigation line on a Wilkinson Array broke; our inspector caught it and Mr. Gasbarro addressed it immediately to clean up the little bit of scour. Problems were avoided.

Erisman – Asked if we can start checking up on removal of irrigation.

Carlson – Yes; our inspector is actively checking sites.

Motion No action at this time.

Roll-call vote N/A

5. Reports:

a. None

6. Commissioners Comment

a. Golding – Asked Mr. Carlson send out the information about compatible beach sand. Confirmed we've addressed reducing groundcover within the 25' and 50' buffers.

7. Administrator/Staff Reports

a. He was asked to put together a letter to Massachusetts DEP and Massachusetts Waterways requesting very specific information about triggers and area changes. He sent the draft around.

Golding – He thinks it's an excellent draft. Asked to add the question regarding status of bulkheads when the original structure to be protected no longer exists. If there hadn't been a pre-1978 structure, the bulkhead wouldn't be there.

Carlson – The requirement for pre-1978 is a Wetlands Protection requirement, not Chapter 91. Read his question regarding addressing Mr. Golding's concern.

Erisman – She feels confident in the letter.

Motion **Motion to Authorize sending the letter.** (made by: Golding) (seconded)

Roll-call vote Carried 6-0//Beale, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

I. Adjournment

Motion **Motion to Adjourn at 7:14 pm.** (made by: Williams) (seconded)

Roll-call vote Carried 6-0//Beale, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

Submitted by:

Terry L. Norton