



Meeting Minutes - Edgartown
Conservation Commission
November 29 2023 (4 pm)

Commissioners present (5): Peter Vincent (Chair), Lil Province, Geoff Kontje, Jeff Carlson, Robert Avakian

Commissioners Absent (2): Christina Brown, Max Gibbs

Staff: Jane Varkonda (Agent), Kara Shemeth (Assistant)

Public in attendance (63): 15085600921, Alexis Colantonio, Ann Brine, Ann Floyd, Becky Ross, Bill Brine, Bob, Bob Hurst, Brooke Kushwaha, Charlotte Hall, Chloe Dahl, Chris Alley (SBH), Chris Kennedy (MVBAG), Darci Schofield (TTOR), Darran Rubins (Breese Architects), Douglas Hoehn (SBH), Dylan Sanders, (TTOR), Elizabeth Mcdonough (TTOR), Erin Harizi, Fred Condon, George Melendick, George Sourati (Sourati Engineering), Harrison Kisiel (MVLB), James Clabby, Jane Bradbury, Joanne Brine, Joe Delory, John Brittain, John Conforti, Jonathan Herman (MVBAG), Josephine Brennan, Judy Murphy, Karen Osler, Katherine Ellsworth, Katie Ryan, Kellie Clabby, Leslie Self, Lisa Lichtenfels, Lucy Dahl, Mary Dettloff, Michael Hirschfeld, Morgan Herman, Patrick Ahearn (Ahearn), Pete Taft, Peter Baumann, Peter Fletcher (Ahearn), Peter Sliwkowski (MVBAG), Peter Rodegast, Rachel Self, Reuben, Roderick Lichtenfels, Russell Hopping (TTOR), Sarah Jane Hughes, Susan Catling, Teri Carilli, Timothy Moriarty (Brush, Flanders & Moriarty, llc), Tom Burke, Tracey Jones, Tracey Smith (SBH), Victor Colantonio, William Gazaille, Win Self

Commissioner Robert Avakian chaired the meeting

Discussion Items:

Wind Connector:

Action: A motion was made, and seconded, to refer the application to the MCV.

Discussion: Commissioners asked the applicant that when they return to the Edgartown Conservation Commission provide detail on:

- Any incidental harassment authorizations, including tables related to "takes"
- Definition of level A and B harassment and the mammals they apply to

- Information on prysmain cable (the applicant confirmed cable for this project will be made here in Southern MA)
- Information on recent cable failures (Scotland, Block Island) and how it happened and how it was resolved
- Utility constraint and procurement payments, is that paid by the developed or transferred to the public
- Is there a bond for the decommissioning of these cables for their decommissioning and will a waiver be applied for for the bond (similar to the one Vineyard Wind was recently granted)

Passed unanimously via roll call vote of members present

Extension of TTOR's local Order (the DEP Order is a 3 year permit)

Kara explained that while an extension to 1/1/24 was voted on (and passed) at the previous meeting (11/8/23), there was concern from members of the public as it had come up under unanticipated items and was not an agenda item. It was added to today's agenda so it may be discussed further.

Commissioner comment: Commissioners asked for classification on what a denial of the extension would mean and asked TTOR why they wanted to extend the Order.

Darci Schofield explained that while it isn't as busy, there are still visitors coming to access the beach and surfcasting and recreational shellfishing are still going on. Darci asked if there was no valid Order in place, would OSVs still be allowed on the beach. Commissioners asked if the trail nourishment would be able to move forward if the Order wasn't extended. Dylan Sanders asked the Agent to confirm that the nourishment is taking place under a separate permit and Jane Varkonda noted that it became a gray area. Darci noted that TTOR planned to have Keane do a majority of the work with TTOR doing a small portion of the work where the dredge pipe is located.

Public comment:

William Gazaille - Hypothesized that a contractor building a pool who consistently does not meet conditions would not be given an extension, these continuations would not be allowed by other applicants, why here.

Rachel Self - Noted that the perceived ambiguity is black and white in her opinion. She referred to extension guidelines (under MGL in reference to the DEP Order) and that extensions granted by the issuing authority can be denied where new information not available at the time the Order was issued has become available and it indicates that the Order is not adequate to protect the interests identified or when work has been done in violation of the Order. She stated that her position is that TTOR coming out and saying they didn't own the access point (Dike Bridge/ bulkhead) is a significant change from when the Order was issued.

She read her e-mail regarding clarification of if the special conditions trump the DEP Order of Conditions, and said the Order did not state that it could be extended and commented that the Special Permit from the Planning Board was never recorded and the monitoring by the Planning Board never happened. She agreed with Atty. Sanders that the dredge work would be covered and the work could continue in that regard.

Victor Colantonio - How can one replenish trails and allow OSV access simultaneously? Encourage TTOR to be constructive not destructive, and extension doesn't make sense.

Darci Schofield - Noted that Cape Poge will be closed to non-resident OSV travel for the next two weeks while the dredge/ trail work is done. She objected to assertions that TTOR is in violation of their Order of Conditions.

Peter Slikowski - Noted that the Order in question covers Leland AND Cape Poge and if there is no extension then access to the state owned beach (Leland) would be stopped. He asked for clarification on non-compliance as his understanding is that the OSV trails not being appropriately staked was the only non-compliance.

Jane Varkonda noted that on Aug 2, 2023 Conservation Staff did a site inspection and found the OSV trails to not be staked and a lack of signage in regards to non-compliance. This was then brought up at a public meeting.

Commissioner Kontje spoke to the Commission being in the middle of a new hearing and when the new Order is either issued or denied the current Order will be moot. The Agent noted that there are no regulations for extending an Order under the Local Bylaw. She also noted that TTOR does not have a letter of authorization from NHESP so it is very unlikely that the hearings will be closed in December. She also noted that extensions are not usually voted on or subject to public comment.

Action: A motion was made, and seconded, to extend the current Order to Dec 6, 2023 (TTOR only meeting) and continue the discussion then. Passed unanimously via roll call vote of members present.

Mary H. Traves Inter Vivos Deed of Trust - RDA

Representative: Chris Alley (SBH) & Peter Rodegast

Location: 21 Oakdale Drive (AP 13-26 & 21-7.4)

Project: The proposed project involves additions to and existing dwelling, upgrading a septic system, possibly replacing a well, and associated site work.

Documents shared: Site Plan, aerial, architectural plans

Chris Alley presented the project and reviewed the resource areas. He stated that the pond in question is likely man made. The septic system is proposed in the corner of the property just outside the coastal zone and over 100' from the pond with the reserve area on a second property under the same ownership. The existing well is in the basement of the house and will not meet separation requirements with the new septic so the new well is proposed west of the house, an adequate distance from the proposed septic system. He noted that the septic and well design will not impact the Clabby project coming before the Commission momentarily.

Commissioner Comment: Commissioners asked if the addition could be moved to be further from the pond. Peter Rodegast explained that this addition is an enclosed porch on 8 sonotubes in an established lawn and will have minimal impact on the resource. He noted that this is a camp that currently has 820 sq ft with these additions each adding 200 sq ft. The bedroom addition is 16'x16' with a crawlspace foundation.

Public Comment: None

Action: A motion was made, and seconded, to find a negative determination and directed the applicant to install construction fencing to contain any debris and define the limit of work.

Passed unanimously via roll call vote of members present.

68 Turkeyland, LLC - RDA

Representative: Christopher Alley (SBH)

Location: 68 Turkeyland Cove Road (AP 37-111)

Project: The proposed project involves upgrading a cesspool to a Title V septic system.

Documents shared: Site Plan, aerial of site

Chris Alley reviewed the property and the resources areas noting that this septic upgrade is replacing/abandoning a cesspool and installing a septic tank and pump by the pool with a leaching field out by the road achieving well and groundwater separation.

Commissioner Comment: Commissioner asked about the cesspool and Chris explained that it will be filled with the spoils from the digging for the new tank. Chris also noted that there is an exemption for the septic upgrades within NHESP jurisdiction.

Public Comment: None

Action: A motion was made, and seconded, to find a negative determination.

Passed unanimously via roll call vote of members present.

James W. Clabby III & Mary K. Clabby – NOI SE20-1709

Representative: Sourati Engineering Group LLC, Darran Rubins (Breese Architects)

Location: 20 Oakdale Drive (AP 13-27)

Project: The proposed project involves the demolition of an existing single-family residence and the construction of a new single-family residence and sewage disposal system with associated utilities. Also proposed is the relocation of an existing shed, the proposed work all located within 100' of two man-made ponds.

Documents shared: Site Plan, aerial

George Sourati reviewed the site which abuts the 21 Oakdale RDA that was previously presented by SBH. He noted that that the applicant recently purchased the property and after presenting to the ZBA, the best path forward was to demo the existing house and rebuild within the setbacks rather than try to renovate a pre-existing, non conforming structure. The septic system will also be upgraded. The new design meets ZBA setbacks and is 51' from the manmade pond and the proposed deck will be 39' from the pond. The existing shed will be moved or rebuilt to fit within the ZBBA setbacks. The first floor footprint is around 1200 sq ft, Darran Rubins noted that the setbacks have mandated that they design a very modest house.

Commissioner Comment: A site visit was suggested given the amount of development and the resources in the area.

Public Comment: None

Action: A motion was made, and seconded, to continue the hearing to January 10, 2024 to allow for a site visit.

Passed unanimously via roll call vote of members present.

Goldeneye, LLC – NOI SE20-1704

Representative: Doug Hoehn (SBH), Peter Fletcher (Patrick Ahearn)

Location: 81 South Water St (AP 29B-14)

Project: Seeking permission for additions and renovations to an existing dwelling with a new foundation, construction of an exercise spa, landscaping and related site activities

Documents shared: Site Plan, aerial of site, architectural plans

Doug Hoehn explained the timeline and why the details regarding the full foundation was significant enough of a change in the eyes of the DEP and Con Com to warrant a new application with further detail regarding the basement renovations.

Doug noted the grade in the back will drop to meet the existing grade for the pool/spa patio and there is now a fence shown around the pool/spa. Doug noted how he determined the top of coastal bank based on a function of the FEMA flood zone and the slope per DEPs guidelines.

Peter Fletcher from PATrick Ahearn's office reviewed teh architectural plans noting that they had requested a determination of visibility from the Historic District

Commission (HDC) and that was being scheduled. He reviewed the foundation plan and noted that they had not been able to get into the basement during the site visit to show Commissioners the basement as requested.

During the site visit, it was noted by Conservation Staff that the resource area that the applicant had been directed several times not to mow, was continuing to be mowed. Peter expressed his and Patrick Ahearn's disappointment that it had been mowed and Peter mentioned that he had discussed the Staff's suggestion that any Order contain a condition that granite/ stone or cedar posts be installed to delineate a no mow area. Peter expressed that felt that it should be implemented to allow the area to return to its natural state. He acknowledged that they would need some sort of boardwalk to access the dock and beach and that he would reach out to Jane regarding those specifications. Patrick Ahearn mentioned that members of the Conservation Commission on site agreed that the pool was not visible. Commissioners disagreed on this point. The Agent noted that that was not at all the case and that applications are not discussed during site visits and no decisions are made on site visits. The Commissioners did not look at the site from the water and in no way could make that determination without doing so.

Commissioner Comment: None

Public Comment:

John Brittain - Asked for clarification regarding the spa and asked that the applicant be clear, will they be adhering to the security fence as required by the BOH. The applicant responded that they will be adhering to the Edgartown BOH rules requiring a security fence as shown on the recently submitted plan and confirmed their agreement to adhering to the BOH rules.

Mr. Brittain called attention to the flooding and raised concerns about the excavation of the basement and that by his calculations it would likely require the removal of 20,000 cubic feet of material for the basement and another 1800 for the spa/ pool. He also asked about the Con Com's purview over the historic views and vistas and the Agent confirmed that the view from the water is an interest protected by the Edgartown Conservation Bylaws. He asked about further HDC determinations and Peter Fletcher confirmed that they had submitted to the HDC.

Lucy Dahl - Spoke of the water brought in by a recent storm and explained that this property drains much slower than surrounding properties and stated that according to a landscaper familiar with the property for 30+ years (Rueben Irons) the property has underground springs that affects the flooding. She noted that there are likely 14+ plants protected by the WPA in the area in question and raised concerns about the excavation of this property and its effect on that resource. She also explained that while in line for the ferry on the Chappy side she could clearly see the foundation of 81 South Water Street and a pool in front would change the historic vista.

Sarah Jane Hughes - Expressed her support for the previous speakers and letter writers and added her concerns regarding the proposed excavation of the “water feature” and the full basement. She noted that it is a fragile area and felt that the application was being put forth in a piecemeal fashion and asked that the Commission ask for a single application with details and a single set of drawings of what exactly is proposed.

Action: A motion was made, and seconded, to continue the hearing until January 10, 2024.

Passed unanimously via roll call vote of members present.

Continued Public Hearings

Martha's Vineyard Land Bank - SE20-1676

Location: 28 Litchfield Road (AP 30-233)

Project: The proposed project involves the creation of a trailhead, universal access trails, a boardwalk and associated site work & accessories

Continued from 10/25/23 Eligible Commissioners: All

Documents shared: Site Plan, aerial

Harrison Kisiel summarized the application

Commissioner Comment: Commissioner on the site visit noted that the first part, the path from the parking to the overlook was fine. The second part which proposes to traverse a thickly vegetated coastal bank was questionable. Commissioners felt that it is important for people to have access to the property but this bluff is not a good spot for that as it invites people to then traverse the saltmarsh which is a resource protected by the WPA and the Edgartown Bylaw. Commissioners felt that carrying kayaks down the bluff would be Herculean and felt that it is important to maintain the look and habitat and not interrupt the bluff by inviting traffic across it. They did note that the dead trees that were observed at the site visit could be taken out.

Public Comment:

Sarah Jane Hughes - Spoke in favor of preserving Caleb's Pond as naturally as possible.

Action: A motion was made, and seconded, to approve the plan for the trailhead and trail to the overlook, a possible future bench and removal of dead trees noted on the site visit and nothing further.

Passed unanimously via roll call vote of members present.

The earthen steps down the bank to the edge of the marsh are NOT approved at this time.

Action: A motion was made, and seconded, to continue Soverns (SE20-1697) to January 10, 2024. The hearing will be re-noticed and re-advertised to allow more Commissioners to be eligible.

Passed unanimously via roll call vote of members present.

Action: A motion was made, and seconded, to approve the 10/25/23 and 11/08/23 minutes as presented.

Passed unanimously via roll call vote

Unanticipated Items:

Jane Varkonda: Warrant articles (\$) are due Dec 15.

Commissioners would like the staff to look at possible articles for property maintenance and land acquisition and possible funds for sand moving.

With nothing further to discuss, the meeting was adjourned at approximately 6:04 PM