

Minutes of a Conservation Commission Meeting – 9 September 2020

Members present: Peter Vincent – Chairman, Jeff Carlson, Lil Province, Stuart Lollis, Bob Avakian, Christina Brown

Absent: Geoff Kontje

Staff: Jane Varkonda, Lisa Morrison

Public Hearings:

GREENHILL (81 PFW TRUST) NOI for the installation of a swimming pool. George Sourati was present for the applicant, as were Fred Fournier and the landscape architect. Sarah Greenhill, owner, was also in attendance. Sourati explained that the pool is just outside the shore zone and is 66-feet from the edge of the wetland. Also proposed is a small shed for the pool equipment and storage. There is a small fenced in area attached to the shed that will be used to store kayaks.

Vincent asked if there was a drywell to handle any pool overflow. Sourati said that he will add it to the plan. Vincent asked where the drywell would leach to. Brown said that it will likely flow towards the wetlands. Sourati noted that groundwater is 7-feet below grade; the pool will be shallow – only 4-feet deep.

Vincent asked whether the pool would use chlorine or salt. Lauren Cronin, landscape architect, replied that it would be a saltwater system.

After some further discussion, Brown made a motion to continue the hearing to the next meeting - September 23rd for a site visit and revised plans, including a cross-section showing depth to groundwater and the leaching pit. A plan for handling the groundwater during construction should also be included. Vincent seconded the motion. Unanimously approved by roll-call vote.

KAPLAN (Continuation) NOI to construct new dwelling, pool, septic, view channels, etc. – Oyster Pond Road. [Vincent abstaining]. Doug Hoehn was present for the applicant. Fred Fournier and architect John Dvorsack were present. Leonard Kaplan, the owner, was also in attendance. Jeff Carlson gave a brief report of the site visit. The site is heavily wooded, and the house is set back on the site so that it will not be visible to neighboring properties.

The agent reported that the habitat assessment from Dick Johnson has been received and looks to be fine. Natural Heritage has also signed off on the property.

Architect John Dvorsack noted that the elevation of the house from mean natural grade is 26'4" (maximum ridge height) and the garage 24'.

Brown asked how tall the trees were between the house and the water. Fournier replied that some of the oaks are 30'. Additionally, because of the slope, the trees between the house and the pond are effectively higher. Fournier commented that the story pole they put up could not be seen from the

water. Hoehn commented that because the house will be built on a curve, the entire face of the structure is not visible from any one point.

A final landscape plan and proposed view channels will be submitted after construction is substantially complete.

The agent asked that a plan showing a maximum lawn size of 2500 sq. ft. be submitted.

Attorney Jessica Wall of Anderson Kreiger, who is representing the Bresslers – abutters to the south, said she was not notified of the site visit. The agent replied that the date of the site visit was announced at the prior meeting. She said that her client was concerned about noise and preserving the buffer between the properties.

The agent pointed out that noise from the pool equipment and private views were not in the purview of the Commission and might be more properly addressed during the Planning Board hearing for the swimming pool. Brown said that she would like to see the specifications for the type of sound attenuating material that will be used in the pool shed.

Leonard Kaplan commented that his job in the navy was to soundproof nuclear subs so he will make sure that the pool equipment will not be heard. He said his intent is to disturb the land as little as possible.

Carlson made a motion to approve the project as presented with the following conditions: a 25-foot construction zone on the water side of the property, minimal clearing of vegetation to the south and towards the water. Landscape, view channels, and exterior lighting to be reviewed after construction has commenced. Brown seconded the motion. Unanimously approved by roll-call vote by all voting members [Vincent abstained from the hearing].

32 OCEAN VIEW AVENUE – (continuation) NOI for the construction of a driveway, retaining walls, etc. [Lil Province abstaining]. Don Sullivan and his attorney Michael Bonner were present as were Doug Hoehn, and landscape architect Tim Lee. Abutters Bo and Caroline Reily and their counsel, Tim Moriarty, were also present.

Carlson reported that he did not see any real problems on the site visit. He said that the applicant had planted a lot of trees on the property boundary with the Reilys, most of which appeared to be thriving. He said he doubted that the Reilys would be able to see much more than trees from their property. Avakian noted that views from private property are not in the purview of the Commission.

Attorney Moriarty expanded on his letter to the Commission of 19 August 2020 where he outlined his clients' objections. Moriarty alleged that the Commission lacks jurisdiction to even hold the hearing because all the necessary permits required for the project have not been obtained. Moriarty said that Sullivan required – at the very least – a variance and a special permit for the activities described in the NOI. Mr. Moriarty also alleged that Mr. Sullivan requires a floodplain permit from the Zoning Board of Appeals.

Moriarty said that the construction of the retaining wall and driveway have had a detrimental effect on the resource area and have increased run-off onto the Reily property. Moriarty alleged that run off from the hardscape on Mr. Sullivan's property has made portions of the Reily property unusable.

Moriarty said that removal of trees and vegetation have negatively impacted the Reilys' views of Edgartown Harbor. Moriarty noted that by overdeveloping an undersized lot and poor planning the Sullivans' have created a situation where trucks entering their property use vegetated areas of the Reily property to turn around – destroying the natural vegetation and creating a *de facto* parking lot on the Reilys' property. In addition, trucks are required to back up the entire length of Ocean View Ave, beeping the entire way and destroying the Reilys' quiet enjoyment of their property.

Moriarty said that the Sullivans submitted incomplete and misleading plans to the Commission and the Planning Board.

In his letter dated 9 September 2020, Mr. Moriarty expressed dismay that the Commission did not choose to include a visit to the Reily property at their site visit so that the Commission could view the project from the Reilys' yard and patio. Attached to Mr. Moriarty's letter were a series of photographs of the Sullivan property as viewed from the Reily property. [For additional details see Moriarty letters of 9 September and 19 August in file].

Don Sullivan said that all the issues raised by Mr. Moriarty have been covered many times over. He said that Mr. Moriarty's objections have zero merit and are both inaccurate and incomplete. He said that he finds it odd that Mr. Moriarty submits his objections on the day of the hearing so that no one has a chance to fully review them prior to the hearing. He said he would like to clarify a few points: the driveway is permeable – made of gravel and sand. He said that there is no drain that diverts run off onto the Reily property. [The agent confirmed this on the site visit.] Mr. Sullivan took issue with a number of the photographs submitted saying that photo of Mr. Reily standing next to the wall was taken before the wall was backfilled making it look significantly higher than it is. He also took issue with the aerial before and after photo, saying that the before photos were taken in the late spring when the vegetation was full and the after photo taken during the winter.

Mr. Sullivan said that many of the allegations are nothing but 'red herrings' – the Zoning Board has never issued a special permit for work in the flood zone and the building/zoning inspector has determined that one is not necessary. Sullivan said that he has replanted many trees and the vast majority of them are thriving.

Doug Hoehn noted that, contrary to Mr. Moriarty's allegations, traditionally the Conservation Commission is the first stop in the permit process. In fact, the Planning Board prefers that the Commission hold its hearings prior to theirs. He said that he has been in close contact with the building inspector regarding the height of the wall and it is not clear at this point that there is a zoning violation. His crews have been in the field measuring the wall to determine if any portion is, in fact, over 6-feet. He said that the method for measuring the height of structures is clear, but that is not true of measuring walls. Mr. Hoehn took issue with Mr. Moriarty's insinuations that he or his firm attempted to slide something past the Commission or the Planning Board and said that he takes that allegation as a

personal insult. Mr. Hoehn confirmed Mr. Sullivan's statement saying that in his entire professional career, a special permit from the Zoning Board of Appeals has never been issued or required for work in the flood zone.

Caroline Reily commented that, in her opinion, the trees Mr. Sullivan planted will be knocked out in the next Nor'easter. She told the Commission that Mr. Sullivan has overdeveloped his property. She said that the noise is unimaginable.

Bo Reily said that Mr. Sullivan has created an illegal parking area by placing gravel over a 75-foot wide area on the Reily property and using it as his own personal construction staging area and parking lot. He said that Mr. Sullivan is taking advantage of both the Commission and the town of Edgartown.

Mr. Vincent asked the width of the easement to the Sullivan property. The historically traveled surface is 8.5-feet.

Mr. Sullivan said that he has never placed any gravel on the Reily property. Again, he said the issue is another 'red herring' as it is outside the Commission's jurisdiction. Mr. Sullivan said that he has abided by all the requirements agreed to in mediation with the Reilys. He said he is happy to plant grass in that area, and suggested that the Reilys could put up a fence if they want to make sure that no vehicle ever crosses onto that section of their property. He said he has secured a mailbox in town to cut down on UPS and FedEx deliveries. He said he finds the Reilys' accusations both inflammatory and offensive.

Mr. Avakian commented that many of the issues raised by Mr. Moriarty are not in the Commission's jurisdiction. He said the primary issue that seems to be of concern to the Commission is whether or not there is run off from the Sullivan property onto the Reilys'. Landscape architect Tim Lee commented that the driveway is designed in such a way to keep the water on the Sullivan property.

Avakian noted that any retaining wall requires some drainage holes to relieve hydrostatic pressure on the wall. Usually those drainage holes are covered up when a wall is backfilled.

Mr. Sullivan said that there is no run-off from his property onto the Reily property. The drainage holes in the wall are below the surface. He said that the Reily's have submitted no evidence of any run-off from his property.

Caroline Reily disagreed and urged the Commission to take a look for themselves. She also said that had the Commission been aware of what was planned for the property, they never would have approved it. [In fact, the Commission acted on a Request for a Determination of Applicability filed by Mr. Sullivan for the identical project currently being reviewed. The Commission issued a negative determination for the project. That determination was appealed by the Reilys.] Avakian commented that he has history with the Reily property and spent a good deal of time there in the past. He said that historically the area has always been wet.

Agent Varkonda asked to clarify the site visit issues raised by Mr. Moriarty. She noted that she had been informed by Mr. Sullivan's attorney that the Reilys were not welcome on the property. In addition, the

Commission generally does not go to neighboring properties. She said she used her best judgment and determined that the visit was not pertinent to the Commission's review.

Avakian said that, in his opinion, the issue before the Commission is to determine if – in fact – there is any run-off from the Sullivan property onto the Reily property. It was suggested that someone like Doug Cooper could do some soil boring to determine if there has been any change in the amount of water on the property.

Tim Lee again explained how the design of the driveway is such that the water is directed onto the Sullivan property. He said he has never seen any water collecting on the gravel surface of the driveway and noted that the grade of the driveway is such that the water doesn't flow down it, but is absorbed into the substrate.

Avakian suggested that the Commission could approve the project with the conditions that a study be done to determine if, in fact, there is a run-off issue. He suggested that any such run-off problem could be solved by the addition of a dry well or some other collection devise. Carlson seconded the motion and added the condition that soil testing on the Reily property could also be conducted, which could potentially clear up a number of theories.

Brown said that she was reluctant to approve the project until the study and soil testing was done. She said she thinks the Commission needs the advice of an expert to determine whether or not the Sullivan project has exacerbated a preexisting condition on the Reily property. She suggested that the hearing be continued until the next meeting.

Doug Finn, assistant to the Planning Board, suggested that the issue be sent to peer review, where an independent third party is hired to study the issue and make a determination. Mr. Sullivan said that he was willing to pay for such a study.

Avakian amended his original motion and voted to continue the hearing to the next meeting, 23 September, for peer review - as stated above. Carlson seconded the motion. Unanimously approved by roll-call vote by all those members voting [Province abstaining].

Mr. Moriarty asked to be notified when the testing takes place.

BRESSLER (Continuation) [Vincent abstaining] – view channels, Oyster Pond Road. Lorraine Bressler was present for the hearing. The agent reported that Doug Cooper submitted the additional information on the view channel width, and confirmed that the channels are in compliance with what was approved and with what is shown on the plan. Carlson made a motion to approve the project as presented. Province seconded the motion. Unanimously approved by roll-call vote by all voting members.

McCOURT Restoration update and request to amend portions of the landscape plan. Kate Devane of Donaroma's was present for the applicant. At the agent's request, the update was continued to the next meeting, 23 September, for a site visit. Unanimously approved by roll-call vote.

VINEYARD WIND Agent will submit a comment letter echoing what DEP requested as part of the monitoring plan.

LANDRY Conversion of tennis court to pickle ball court, Plantingfield Way. Mark Manganello was present for the applicant. Court is in the flood plain. 4 ½ inches of concrete will be covered with a polymer coating. Surface is impervious. Manganello pointed out that even though the tennis court is surfaced with clay, it is hard packed and virtually impervious as well. There were questions regarding the composition of the polymer coating and its expected lifespan. Continued to the next meeting, September 23rd.

FISHERMAN'S LANDING Agent reported that the landing has become very difficult to manage. At least six locks have been stolen and the chain has been cut on several occasions. Agent is hoping to meet with the Marine Advisory Committee and work out some more regulations. People have been storing kayaks on the property and they can't be removed until some regs are approved. [See agent's notes for more information].

FOLLIARD Cars have not been parking in the designated area away from the Pagoda tree roots and the owner refuses to put up a 'No Parking' sign.

KATAMA ASSOCIATION Agent will set up a meeting with representative from the Commission and the Association to discuss the general situation out at Katama Farm. Steve Steinberg from the Katama Association was present and said he appreciates the opportunity to communicate with the Commission.

The Commission also discussed setting up an advisory committee with between 7 and 9 members to discuss the best way to find potential tenants for the farm. Agent will propose a list of candidates from the agricultural community.

The Commission voted unanimously to approve the minutes of 5 August and 19 August. An order of conditions for Rosenberg was approved as was a certificate of compliance for Salloway.

There being no further business, the meeting adjourned at 6:45 p.m.

Approved: