

**APPROVED MINUTES - CONSERVATION COMMISSION
TUESDAY, NOVEMBER 20, 2018 7:00 p.m., HEARING ROOM 2
TOWN HALL, 870 MORaine ST., MARSHFIELD, MA**

APPROVED: 3-5-19 5-0-0

MEMBERS PRESENT – Frank Woodfall (FW), Bert O'Donnell (BO), James Kilcoyne (JK), Art Lage (AL), Rick Carberry (PC), Bill Grafton, Conservation Administrator (BG).

MEMBERS NOT PRESENT – Robert Conlon, Chairman (RC)

CALL TO ORDER – FW makes a motion to open the meeting at 7:00 pm. BO second. Approved 5-0-0.

MINUTES

FW makes a motion to accept the minutes of the 12/5/17 meeting as written. AL second. Approved 5-0-0.

PUBLIC HEARINGS

18-47 Rinehart, 97 Duck Hill Lane (Tree Removal).....NEW (Frank)

- FW reads the legal ad and, as Hearing Officer, confirms administrative requirements are complete.
- Applicant Rinehart not present; BG speaks on his behalf. Rinehart came to him to discuss the removal of several large trees, 90-100 ft tall oaks & pines. BG advised him he was within conservation jurisdictional boundaries and would need to file Request For Determination of Applicability (RDA), which he prepared and submitted, along with a site plan showing the location of the trees to be removed and a quote from an arborist. BG has no issues.
- FW asks for comments from Commissioners and public; none.
- FW makes motion to close and issue a Determination of Applicability, Neg. # 3 with special conditions drafted by BG. BO second. Approved 5-0-0

18-48 Wolforth, 11 Middle Street (Deck & Stairs).....NEW (Art)

- FW reads the legal ad. Hearing Officer AL confirms administrative requirements are complete.
- Applicant Edward Wolforth (EW) proposes adding a second-level deck to be used as an egress. He has a ZBA special permit. The stairs go out and in the direction of the sea wall. The lot and house are non-conforming, so the deck follows suit as a non-conforming deck within the existing setbacks.
- JK confirms with applicant and BG that the stairs are in the resource area. He also notes that under new guidance from Town Counsel, new building in this area can be where it is but can't go closer to the resource area, and asks for Commissioner comments. AL feels this is a good question to consider as the entire house seems to be in the resource area. BG indicates the house is in barrier beach, coastal dune, and flood zone, but notes that applicant needs the egress for public safety interest.
- JK comments that there are a lot of properties similar to this in Marshfield, and asks if it's possible for the bottom four steps to turn and stay out of the 75 ft buffer. BO notes that the entire property is already in the resource area no matter where the stairs go.
- BG states that EW originally came forward with a building permit; he requires an RDA for any projects in resource areas that go sub-surface, so he suggested that applicant file an RDA. PC feels that applicant's safety considerations would trump any concerns as to impacts. EW points out that the setbacks are the same as the adjacent properties.
- AL asks if there were stairs in the same area before. EW states that the original builder proposed these steps when the house was built in 2003-2004, but the house was never actually completed. Original builder's proposed deck was much bigger than the one he is proposing here, which does stay within the setbacks.

- BG clarifies to EW that the Commission is discussing Conservation Commission setbacks and not ZBA setbacks, and comments that he doesn't think this decision will necessarily be precedent-setting. BG feels this project is a good example of a possible minor activity or exemption to be included in revised regulations.
- FW suggests possibly removing the risers so they don't impede the flow of water. EW would like the risers for looks and safety, but is willing to eliminate them.
- JK comments that he only raised issues at this hearing because the Commission has received new guidance from Town Counsel on how to evaluate projects, and rotating the last four steps would cause the structure to stay outside the 75 ft. FW notes that this project has been in design for several months and requiring a redesign would impose a hardship.
- AL asks the Commissioners whether they view a favorable decision on this project as setting a precedent. The Commission does not view this decision as precedent-setting.
- AL asks for comments from the public; none.
- AL makes a motion to close and issue a Determination of Applicability, Neg. # 3 with special conditions as drafted by BG. FW second. Approved 4-1-0, JK having voted no.

18-49 DPW, 200 Joseph Driebeck Way (Wastewater Garage).....NEW (Jim)

- FW reads the legal ad. Hearing Officer JK verifies administrative requirements are complete.
- Paul Tomkavage (PT) presents for DPW. The project concerns construction of an open-faced, pre-engineered garage erected on interlocking block walls. Below this the Town will prepare and install a concrete footing. Town will handle site work and grading, and install a silt sock for erosion control. The proposed work is located in a previously altered area; closest point of alteration will be 84 ft from BVW, and closest point of the structure will be 92 ft from the BVW. No stockpiled material will be kept within the 100 ft buffer. They have already obtained ZBA approval.
- JK asks from comments from the Commissioners or public; none.
- JK makes a motion to close and issue a Determination of Applicability, Neg. # 3 with special conditions drafted by BG. PC second. Approved 5-0-0.

18-50 Armstrong, 192 Fairways Edge Drive (Septic).....NEW (Rick)

- FW reads the legal ad. Hearing Officer PC verifies administrative requirements are complete.
- Applicant Peter Armstrong (PA) advises the existing leaching field is 77 ft away from the wetland and the new one will be placed in the same location. An as-built plan from an engineer will be submitted upon completion. He has talked with BG, who requested that conservation markers on posts be installed along wetland line. PA states that BG saw some green waste during his site visit; this has since been removed. PC states that John Zimmer has flagged the wetland. The work is outside the 75 ft buffer and looks straightforward to him. BO would like to make it clear that the new family will probably have to come to the commission for any work in back of the property.
- PC asks for comments from the public; none.
- BG comments there were conservation permits on the property previously; he feels the property falls within the state's exemption for Title V. BG suggests that having regulatory minor activities or exemptions in the Town wetlands regulations for beneficial projects in the 50 to 100 ft buffer would reduce the workload of the Commission and applicants.
- JK asks about projects where the septic is moved as part of Title V. BG states an RDA might be required in such cases. JK states that such exemptions would be something he would be open to because septic upgrades are an upgrade to the environment by definition, as long as the systems are not moved. BG suggests that As-Built plans showing the wetland line could be required as a condition of permitting.
- PC makes a motion to close and issue a Determination of Applicability, Neg. # 3 with special conditions drafted by BG and Pos. # 2A confirming the wetland delineation. JK second. Approved 5-0-0.
- After the vote, PA suggests that the Commission educate itself as to Title V regulations, as Title V is the controlling factor for septic projects.

- 2767 Walker, 24 Marion Street (Addition & Deck).....NEW (Frank)**
- FW reads the legal ad and, as Hearing Officer, confirms administrative requirements are complete.
 - Brendan Kling (BK), Grady Consulting, presents for applicant. The project proposes construction of a 180 sq. ft. addition on back of home and 120 sq ft shed in LSCSF. The addition will have two flood vents; there is no new bedroom being added and no need for a septic upgrade. The crawlspace will allow the storm flowage to go through.
 - FW asks for comments from Commissioners and public; none.
 - FW makes a motion to close the hearing and issue Orders of Conditions with special conditions drafted by BG. AL second. Approved 5-0-0.
- 2766 Stone, 18 Constellation Road (After-The-Fact Paver Patio & Fence).....NEW (Bert)**
- FW reads the legal ad. Hearing Officer BO confirms administrative requirements are complete.
 - Terry McGovern (TM), Stenbeck & Taylor, presents for applicant. Subject filing is an ATF NOI for the construction of a paver patio and fence which was put up after a storm the previous winter. TM states Mr. Stone had been advised by the Building Department that he did not need any other permits, and provides photos to the commission.
 - BO asks for comments from Commissioners and the public; none.
 - BG comments that property owner was cooperative once he realized he had to file, and he had no other issues.
 - BO makes motion to close the hearing and issue Orders of Conditions with special conditions as drafted by BG. FW second. Approved 5-0-0.
- 2765 Loughheed, 470 Ocean Street (Driveway Improvements).....NEW (Art)**
- FW reads the legal ad. Hearing Officer AL verifies administrative requirements are complete.
 - Terry McGovern (TM), Stenbeck & Taylor, presents for applicant. Applicant is looking to replace the pavement in a shared driveway with 476 Ocean. There is no increase in impervious area.
 - AL questions why applicant is not making the surface pervious. JK states he would like to see the area become permeable if possible. TM states the area is subject to water washing and scouring. He feels there is a funneling effect in that area, and paving stones would get washed out.
 - JK notes that TM is the engineer and would tend to agree with his assessment. TM feels a pervious driveway would be feasible if the area were more sheltered, but not here, where there are direct surf impacts. AL feels the driveway, no matter the surface, will eventually wash out. FW notes the area is a velocity zone, and feels that pavers would be ripped out. JK questions whether all structures in a velocity zone have to be impermeable. TM feels that the difference with this site is the two houses being so close together creates an additional funneling effect.
 - BG comments that he likes to encourage the use of pervious materials where possible, but notes that it's a difficult site, the area is previously disturbed, and the impervious area is not being increased.
 - Bill Duggan (BD), 476 Ocean, states the deck and driveway were damaged in the storms, and notes that the driveway between the two homes had been there for longer than he owned the home, about 30 years. He feels that that stone or pavers would not work due to the conditions in the area.
 - JK comments this seems to be a chance to make a barrier beach sand dune work as it's supposed to, and the proposed project would armor it all over again. TM comments that the area is a coastal bank, not a dune.
 - BG reads email from Town Engineer Rod Proccacino confirming that running the driveway into the sidewalk is a common practice, and providing specifications and instructions to preserve the sidewalk's ADA compliance.
 - AL makes a motion to close the hearing and issue Orders of Conditions with special conditions drafted by BG. FW second. Approved 3-2-0, AL and JK having voted no.
- 2764 Duggan, 476 Ocean Street (Driveway Improvements, Deck Repair, Stone).....NEW (Art)**
- FW reads the legal ad. Hearing Officer AL verifies administrative requirements are complete.

- Terry McGovern (TM), Stenbeck & Taylor, presents for applicant. Applicants are looking to do the same driveway work as previous applicant, as well as repair a pervious paver patio and footings for the deck that was damaged in the storms last winter. The applicant also added revetment stones placed in the area of the storm damage and scouring.
- AL comments again that he would prefer the use of pervious pavers for the driveway instead of asphalt.
- JK inquires if the applicant applied for emergency cert for placement of the stones at the time of the March 2018 storms; TM indicates they did not. He adds that, in keeping with the previous discussions, they did not want to increase the pervious surface on the lot.
- AL asks for comments from the public; none.
- AL makes a motion to close the hearing and issue Orders of Conditions with special conditions as drafted by BG. FW second. Approved 4-1-0, AL having voted no.

2763 Flashner, 206 Carolyn Circle (After-The-Fact retaining wall/parking).....Cont from 10/30/18 (Art)

- FW reads the legal ad. Hearing Officer AL confirms administrative requirements are complete.
- Terry McGovern (TM) presents for applicant. The filing is an ATF NOI for construction of a retaining wall and parking area near a two-story garage in an area of existing driveway. When the construction of the garage was approved, applicant stated there would be a 3-to-1 slope next to the garage. Rather than have the slope as indicated, the homeowner put in a retaining wall and graded the area flat without notifying the Commission. TM observed the limit of work; it is stable and the grass is growing. The structure is outside of the setback. BG noted on his site visit there was a recently installed septic tank cover showing. The tank had been recently pumped, and the septic company had to dig down 4 to 5 ft to get to the tank to allow for pumping. The company suggested adding a cover to grade, allowing for future access to the pump chamber without disturbance. BG also noted a white pipe running from the garage, within the setback to the BVW; TM stated this pipe runs to an under-drain below the end of the wall, allowing for the water to flow beyond the stone wall. TM believes the additional work has not done more damage to the site, and noted the work does not violate any setbacks. BG notes that the Commission declined to permit this additional work through an Amended NOI. Once these orders have been issued and recorded, a COC for the previous NOI can be issued; this will be a special condition in the OOC.
- AL indicates that he has no issues with the project and asks for comments from Commissioners and public; none.
- AL makes a motion to close the hearing and issue Orders of Conditions with special conditions drafted by BG. BO second. Approved 5-0-0.

2754 Hanlan, 72 Bay Avenue (Raze & Rebuild SFH).....CONTINUED.....Cont from 9/11/18 (Bert)

2742 St. Ours, 84 Bay Avenue (Raze & Rebuild SFH).....Cont from 9/11/18 (Art)

- Continued Hearing; Hearing Officer AL verifies administrative requirements are complete.
- BG notes that AL and JK missed the previous hearing. AL has reviewed the video of the previous hearing and signed a Mullin affidavit. JK recused; leaves the room as he had not reviewed the video of the previous hearing.
- Brendan Kling (BK), Grady Consulting, presents for applicant. At the previous hearing, the Commission requested that the plan be amended to show impervious coverage. The amended plan shows a 483 sq ft reduction in total impervious area. The gray area is existing impervious surface (2356 sq ft) and the yellow on the plan is proposed (1856 sq ft).
- AL asks whether applicant has applied for all other necessary town permits. BK indicates that it looks like they applied for a special permit with the ZBA in July.
- BG notes that he wants to ensure a reduction of impervious area in the area, as concrete and impervious surfaces aggravate flooding. He feels the homeowners in the area should take their fair share of the water that flows due to storm surge rather than accelerate and deliver it to neighboring properties. This project will result in a significant reduction in impervious material.

- AL would like to know if the patio is attached. BG feels it should be a condition that the property be inspected to verify that neither the patio nor any other structures are attached to the seawall. Mr. St. Ours indicates he is unsure if the patio is attached to the seawall. BG points out that the town bylaws prohibit any structures from being attached to a seawall; the Building Commissioner has indicated that attached structures cause seawalls to break down prematurely.
- AL asks for comments from the public; none.
- AL makes a motion to close the hearing and issue Orders of Conditions with special conditions as drafted by BG. FW second. Approved 4-0-0, JK having recused.

JK returns to the public meeting at the conclusion of 84 Bay Avenue public hearing.

2769 Mainini, 341 Plymouth Ave (Raze & Rebuild).....NEW (Frank)

- FW reads the legal ad and, as Hearing Officer, confirms administrative requirements are complete.
- David Santos (DS), Prime Engineering, presents for applicant. The project concerns the demolition of an existing SFH and construction of a three-bedroom raised SFH. The existing dwelling violates zoning bylaws, and is 7.7 ft from the wetlands line. The proposed dwelling complies with zoning bylaws and FEMA flood regulations. The new home will be further away from the wetland and will be raised on pilings above the FEMA flood elevation. The project was presented to the Commission three years ago and received an OOC that lapsed in September; DS states this proposal contains the exact same design, building footprint, and grading as the previous plan, with just a change in elevation to comply with the new flood plain elevation.
- In response to queries from FW, DS states the new foundation will be wooden driven pilings. The existing and proposed building footprints are roughly the same distance from the wetland, but the existing deck is about 7 ft away from wetland and the proposed new deck will be 10 ft away from wetland.
- JK asks when the original home was built; DS states it was built in 1954.
- FW asks for comments from the public; none.
- FW makes a motion to close the hearing and issue Orders of Conditions with special conditions drafted by BG. AL second. Approved 5-0-0.

2727 Digan Jr., 1327 Union Street (Pier & Dock).....CONTINUED.....Cont from 6/5/18 (Jim)

- BG advised that a new site plan was received earlier today at the Conservation Office.

2772 Snyderman, 26 Littles Lane (Pier, Ramp & Float).....CONTINUED.....Cont from 10/2/18 (Jim)

- BG advised that a site walk with the harbormaster is set for the 16th; DEP and DMF need additional information.

2760 Papas, 133 Meadowview Street (New SFH).....Cont from 10/16/18 (Rick)

- Continued Hearing. Hearing Officer PC confirms administrative requirements are complete, and advises that the project concerns the raze and rebuild of an existing lot and structure.
- Attorney Steve Guard (SG) representing the applicant, put together a packet about the 25 and 50 ft setback, Section 505-10(B), and the associated performance standards, as well as previous determinations by the Commission over the past 15 years.
- PC comments that this appears to be a complicated case. He has walked the site with BG. The area is tangled with invasives, and the home is dilapidated and presents a possible danger to people should they enter. He has also discussed the Section 505-10(B) performance standards with Town Counsel, Bob Galvin (TC), and heard from neighbors who would like to see improvements made to the property as soon as possible.
- Bob Rego (BR), Riverhawk Environmental, presents for applicant. Based on feedback from the previous hearing, modifications made were to the site plan, including moving the driveway out of the 75 ft buffer; he proposes planting native species in the area overrun with invasives. A small portion of the deck remains in the 50 ft buffer.

- PC notes that the driveway has moved away from the resource area, plantings for mitigation have been added and the new home is being built in the same footprint, but goes into the 75 ft buffer by 13 ft, and a deck intrudes 12 ft for an additional 25 feet of movement into the buffer zone. He notes that this is inside the 75 foot setback to the resource area and suggests that the application of the regulations needs to be fair and consistent. He would like to know if there are alternatives. Could the home be moved out of the 50 ft buffer zone or if the deck can be removed, asks whether the Commission should ask for more mitigation such as additional plantings and if a variance letter accepting the proposed work is necessary. He further notes that the current home will be razed and wonders if the Commission considers this new or existing. PC opens up the discussion to the Commission.
- JK feels the first thing to consider is whether this home is “new” or “existing” under the bylaws. To him, the home is existing and seems to have been built prior to 2002. SG confirms that the existing home was built before 2002. JK therefore feels the 25 ft setback applies, and the deck which is a structure located in the 50-foot setback is the only problematic area.
- BO asks about the construction of the deck. SG states that the deck will be built on a support beam and will be the only part touching the ground. JK notes that the proposed deck is closer to the resource area and located in 50-foot which is defined as no-build and this applies even to cantilevered decks.
- AL asks whether structures have to stay in the same footprint in order to be considered “existing.” JK does not feel a new structure has to be built in the same footprint provided it goes no further into the buffer zone. SG states his understanding is that, for structures built prior to 2002, a strict 25 ft no-disturbance zone applied, and points out that the home is already in the 75 ft buffer zone, 65.4 ft to the wetlands.
- TC states that the Commission has to decide whether the home is a new construction or an existing structure. He feels an argument can be made that they’re not saving any portion of the existing structure. If applicants were looking to reconstruct what they had, their argument for a 25 ft buffer would be stronger, but in this case applicants are razing the existing structure entirely and adding a new foundation. He reiterates the Commission can decide either way, but the decision will be precedent-setting. TC comments that in addition to cases SG discussed that there are cases where razing and rebuilding were not permissible and others where it was not automatically permissible.
- In response to a query from BO, TC indicates the bylaw does not specify whether proposed new construction has to match the previous structure’s foundation, and this is a policy decision the Commission can make.
- JK cites a previous hearing at 52 Island, in which a house was built on a different section of a previously disturbed lot closer to the resource area, as an example of a new structure. JK recalls this hearing resulted in a split vote. BG concurs with JK’s assessment of the new structure.
- SG comments that, if you read the 2002 minutes, it sounds like “new construction” to a layperson would have images of a nine-lot subdivision with new homes would clearly be subject to the 75-foot setback and no matter when they were built after 2002 could no longer be considered existing. He feels that “B1” was added by the prior Commission with then Town Counsel, Bob Marzelli present to preserve the 25 ft buffer for people with existing buildings on existing lots. AL states that a new home that is sold to new owners who want to construct a deck is introducing new construction. SG replies that it would be onerous to require such owners with dilapidated homes such as 133 Meadowview to only build on existing structural footprints; therefore, he feels the proposed home is not new construction but rather is reconstruction of an obsolete SFH for modernization and economic feasibility reasons. SG concurs with TC that the Commission will have to make the policy determination on what is new construction and what is not. SG introduces the analogy with Zoning. TC states that Zoning is not a good parallel.
- BO states, as a practical matter with raise and rebuilds and so many homes requiring elevation, he feels it makes sense for the applicant to be able to start anew and not require maintaining one wall. He would not consider such a SFH as a new structure. AL asks BO if this would apply, even when the existing footprint is expanded. BO states yes in some cases. AL offers a scenario for clarification where a proposed project is expanding into a resource area so is this okay because it is brand new? BO states we are not going into the resource area. BG states that in the case of 52 Island you did have expansion closer to the resource area. TC comments that, in Marshfield as of April 2018, the buffer zone is considered a resource area in and of itself,

which wasn't the case prior to 2002, and the Commission has treated wetlands buffer zones as resource areas for many years. JK asked TC to explain that subtlety. TC stated that as SG said is slightly incorrect in that the Buffer Zone is not a Resource Area. As of April 2018 in Marshfield, the Buffer Zone is a Resource Area in and of itself. BG states it's protected. TC states that as long as the Marshfield Commission has had regulations, it has treated the Buffer Zone as though it was protected.

- BG states that in the case of 52 Island it is further within a flood zone due to the fact that JK brought it up and it is relevant. BG states that TC and SG met and discussed Richard Street (vacant land) and 52 Island (existing lot/existing structure). Both TC and BG agreed that 52 Island moved closer to the resource area and this required a variance and conditions to be permitted. BG feels that going closer to the resource area should not be approved without a variance and conditions, and that when a building is knocked down and moved, the replacement structure is a new structure...the old structure is not there anymore. BG reiterates that it is a process so if a structure is knocked down and you wait 1, 2, 3 or more years then it's the same and the built structure is new. BG states that 52 Island was in a flood zone and moved closer to the resource area within the Buffer Zone. BG agrees with TC's position.
- FW questions how much of an existing structure has to remain for a rebuild to be considered "new structure." JK feels use of the existing foundation and footprint is controlling. AL does not have a problem if a proposed new home is in the same footprint.
- FW asks TC whether, if this home is a new structure, it has to have the new setbacks. TC indicates the Zoning has setbacks, and this project would probably be permitted with a special permit; he does not see this as an issue in Zoning. TC states that Zoning and Conservation two different regulations. Most communities do not afford "grandfathering" under wetlands regulations.
- SG feels that B1 is what the Commission back when wanted to "grandfather in" to protect existing homeowners, and a denial of this permit request would render B1 meaningless. JK reads B1 for the record. SG feels the proper criteria for the 25 ft buffer is "existing lot with existing building," and reads excerpts from meeting minutes from 2002, including an opinion by Bob Gavin that the new bylaw would eliminate the ability of most people to add porches and houses, as well as Commissioner concerns the bylaw regulations would render certain "grandfathered" lots unbuildable. SG states that B1 was drafted in response to these concerns. PC states as a new Commissioner he is frustrated by the ambiguity of the existing language. TC states that he did not draft the current language. SG states Bob Marzelli drafted the language and does not see the ambiguity.
- JK asks whether the Commission has to follow the original intent from 2002 or can make its own policy decision? TC believes the 25 ft setback zone literally relates to existing lots with existing structure, so if applicant wanted to add a porch to the existing house, they could do so. However, he feels B1 does not apply to this specific case, in which the entire existing structure is being torn down. TC adds that the front of the lot has re-vegetated and has not been maintained for years, and therefore may no longer be a disturbed area.
- Jeff Howard (JH), a realtor, investor and developer with property at 22 Cove Street, feels that B1 was drafted to protect people who had investments in homes in the town prior to 2002, whose interests would have been damaged substantially without the provision. JK counters with a hypothetical scenario where a home built in the 1950's in the 100-foot setback is proposed to be razed, trees cut and relocated 25 feet from the wetlands. Would that scenario be considered new or existing? AL states this is obviously new. FW states that this is new. He differentiates when a portion of the original structure remains then it is existing.
- TC suggests granting a variance if applicant has given clear and convincing evidence that the project as proposed will not substantially harm the interest being protected.
- PC asks what's the demeanor of the applicant? SG states that the homeowner is willing to enhance the area with native plantings right up to the back of the deck if the Commission wishes, and states the rebuilding of the home is also a benefit to the area as it will be to code. SG states that the mitigation plantings and upgrade of the house condition with modern materials meets the criteria for clear and convincing evidence.
- Paul Armstrong (PA), 12 Sea Street, a builder and resident, states that most of the public buildings codes changed after the 1991 storm, and the old rule of saving walls/foundations of existing structures is no longer effective. The new building codes have to bring the cottages or homes into compliance.

- Terry McGovern (TM), Stenbeck & Taylor, comments that much of Marshfield is in a flood zone and sometimes a home needs to be elevated or be constructed anew to bring the home into compliance. The need for conformance with the new building codes is also a reason structures are often enlarged.
- PC asks if there are other measures to consider from a mitigation stand point? JK inquires about the large cedar trees? SG states that they are coming down. JK ask why they have to come down? SG states that they are aged. FW notes that, if the Commission is accepting the home as a preexisting structure, a variance would not needed and they would vote to approve with conditions; the Commission then discusses additional mitigation options.
- PC suggests that applicant add trees and come back with a more expansive planting plan as mitigation. BG suggests that the Commission grant a variance as to buffer zone, but require a more robust planting plan right up to the property line, including trees, plus sequencing in which the plantings are done first, before the house. FW concurs with a robust planting plan, but notes sequencing would add a significant delay to the house construction given the time of year, and TC concurs.
- BG comments that robust planting plans on paper tend not to get done. JK responds the Commission can hold the COC until the planting plan is implemented and verified. SG indicates he has already spoken with the homeowner about the plantings and need to keep them alive for two successive growing seasons.
- JK feels there is a way to grant a variance on this proposed project due to the net benefit associated with removing the invasive on the lot, but comments the Commission has to be clearer on where it stands with this bylaw regulations so as to not put the applicant through these long discussions.
- SG suggests that this may not be the project to have the defining debate over B1 because he feels it does meet the criteria for a variance; BG feels the 50/75 standard applies here, but the Commission would allow work with a variance. SG clarifies he is not changing his stance on the buffer but agrees that a variance is in order.
- The Commission discusses as to whether to continue the matter for a more robust planting plan or approve a variance with conditions. SG indicates they would be agreeable to whatever conditions they wish to impose on the south side of the house. BG indicates he would like to see the planting plan before voting. After further discussion, applicants assent to a doubling of the vegetation, the addition of three conversation markers (two at the property lines, one in the middle).
- BG expresses concern that not granting a variance effectively sets a precedent regarding the applicability of the bylaw regulations, and suggests granting a variance and issuance of an OOC.
- TC suggests that the planting plan not specify a doubling of vegetation, but rather expanding it further up the slope, and reads the following proposed motion: to grant the variance allowing construction of the home as proposed, and issue an OOC subject to the provision of a more robust planting plan, with additional plantings closer to the deck.
- JK comments that by approving this project with a variance, the Commission avoids setting a precedent applicable to future projects. AL comments that he looks at variances on a case by case basis, and concurs that projects approved by variance are not precedent-setting. FW feels that no variance is required to approve the project because of Section B1; BO concurs, indicating he does not feel this particular case is unique, and is concerned the Commission could end up considering a lot of variances for similar projects. BG feels the risk is justified in this case by the substantial mitigation offered. JK feels that granting a variance for this project will buy the Commission time to refine its position on the bylaw regulations.
- FW would like to avoid setting a precedent by granting a variance; JK counters that the Commission would be setting a precedent by approving the project without a variance. BG comments that the Commission needs clearer rules that still allow flexibility when appropriate, and feels there needs to be a clean break from the B1 and B2 exceptions so that all parties know the rules in advance.
- TC suggests that pending a majority position that the Commission grant a variance as proposed and issue an Order of Conditions allowing it subject to the provision of a more robust planting plan acceptable to the Commission or the Conservation Administrator. AL looks at the variance on a case-by-case basis and this will not set a precedent. BO does not see this as a rare and unusual case so there potentially will be many variances in the future. JK states not if the Commission resolves the underlying reason why it is required. TC states if the

Commission feels that the applicant has made a clear and convincing showing that the proposed work will not have an adverse effect on the interests protected under the bylaw then the Commission can grant a variance. BO asks about rare and unusual criteria? TC states that the Zoning concept. JK states that there is a clear argument that the proposed home is new as per the bylaw regulations.

- The Commission is polled as to granting a variance: JK, AL, PC yes; FW, BO no.
- PC makes a motion to close the hearing, grant the variance allowing construction of the home as proposed and issue an Order of Conditions subject to the provision of a revised planting plan acceptable to BG, installation of conservation markers, and additional special conditions drafted by BG. AL second. Approved 5-0-0.

REQUESTS FOR CERTIFICATES OF COMPLIANCE & EXTENSIONS

2367 Cote, 26 Foster Ave. [COC]

2759 John J. Peterson Trust, 219 Ridge Road [COC]

- FW makes a motion to issue COCs for 2367 and 2759. AL second. Approved 5-0-0.

SE42-491 - 176 Beach Street [COC]

- BG states that a sale of the property is pending. There are two recordings with the Plymouth County Registry of Deeds one closed out; the other COC needs to be filed so the second recording can be lifted. The attorneys for the applicant have requested that the current Commission issue and sign a COC to allow for this; BG has drafted a COC per asks for a motion to accept the COC.
- FW makes a motion to accept the COC for 176 Beach Street as written by BG. PC second. Approved 5-0-0.

2590 McKinnon, 658 South River Street [EXT]

- Applicant will work with BG to put up conservation markers.

2586 Marshfield Yacht Club, 11 Ridge Road [EXT]

- FW makes a motion to issue an extension to the OOCs for 2590 and 2586. JK second. Approved 5-0-0.

ENFORCEMENT ORDERS

Smith, 38 Liberty Street **(11/15/18 KS & BG Nov site visit)**

Mahaney, 46 Preston Terrace **(11/15/18 meeting on 12/4 TC&BG)**

Drosopoulos, 7 Lady Slipper Lane **(08/15/18 TC Final Notice)**

White, 180 Atwell Circle (Escalation letter in Process)

Digan, 1327 Union Street **(11/15/18 Awaiting rev rest plan)**

Tamara Macuch, 237 Webster Avenue

Levangie, 3 Cove Creek (Communication in Progress)

New Owner, Winslow Avenue Ext.

Stifter, 102 Bartlett's Island (unpermitted revetment wall)

Bednarz/ Nouza, 65 Ireland Road (Unpermitted Cutting <= 50 ft)

Jogi's Liquor Store, 915 Ocean Street **(11/8/18 Rec'd restoration plan)**

BUSINESS

B1 Updating fees as per vote on Conservation Permit and Certification of Compliance Checklist – Bill Grafton

- BG advises that the old permit fees are on the checklist and conservation permits, and will be updated to reflect the new fees as recently approved. The Commission assents to these updates.

B2 Performance Standards -25 foot existing lot/existing structure & 75/50 foot new construction – Commission & Town Counsel

- Discussion tabled.

B3 Discussion and Potential Approval of an Estoppel Certificate for 10 Village Green Way – Town Counsel

- Town Counsel, Bob Galvin (TC) explains Welch Care was approved with an Order of Conditions and a CR was placed on property. Welch Care is refinancing and needs an estoppel certificate stating they are not in violation of the Conservation Restriction. The Commission previously signed a similar certificate back in 2013 with TC's recommendation. BG spoke to Jay Wennemer about this and he did not raise any concerns. TC is recommending that the Commission sign the current estoppel certificate. The Commission signs the estoppel certificate.

B4 Cove Street Land / N05-03-02, buried foundation inquiry – Matt Creighton/BSC Group & Town Counsel

- Investor Jeff Howard (JH) discusses a proposal to build a parking lot on the subject lot. JH notes that he purchased the property as land, and acknowledges he may not receive a building permit for the proposal. The assessors have the lot listed as buildable and are taxing him as such, and the lot was sold as a buildable lot. He is requesting a letter from the Commission stating the lot is not buildable, or some indication that his proposal could be permitted.
- The Commission reviews the lot's location; JH feels that a parking lot would alleviate the significant parking issues in the area, often requiring police attention, with spaces possibly being leased to neighbors. A permeable surface is proposed in Mr. Creighton's plan. They would agree to not put a building on the lot.
- BG notes that natural features include coastal dune, natural vegetation, and invasive, and advises that the Commission could state it would not permit a project on the lot, as opposed to specifying the lot as not buildable.
- AL states he is familiar with the area and feels parking is not an issue most of the time. JK doesn't see how the Commission can state that a lot can't be built on without a filing. FW notes that this would incur significant expense for a project likely to be denied. FW suggests that JH donate the property to the town; JH is willing to sell the lot to the town, and states he was advised by the seller's attorney that the town had interest in purchasing the lot.
- All parties discuss the history of the property. Town Counsel Bob Galvin (TC) states that the parcel is 7700 sq ft, and at one point had a structure on it; he acknowledges the lot is assessed as if it were developable. BO notes that the deed from 1945 just lists lands and no improvements, and in 1969 an inheritance tax was paid listing no improvements. JH adds that the lot was taxed as a non-buildable lot for many years. TC notes that JH has the ability to ask the Assessors for an abatement, but JH states that the Assessor told him he needed documentation of some sort indicating the lot was not buildable.
- TC suggests that JH submit a project that the Commission denies in order to permit to get something in hand. BG notes that if applicant files for an RDA and the Commission issues a positive determination that would force applicant to file a NOI at significant expense. TC notes that the Commission functions to consider actual projects rather than give advisory opinions as to buildability, but indicates the Commission could opt to provide a letter stating it has denied a similar request. BG cites a recent denial of a project at Richard Street as a possibility.
- BG notes that he and Attorney Galvin have agreed that the lot, although previously disturbed, has reverted back to "new" for the purposes of the bylaw.
- JH requests the Chair to take a poll of the Commission regarding support for his proposed projects. FW polls the Commission- PC-no; JK-no; BO-no; AL-no; FW-no.
- Commission does not feel the proposed construction will be feasible. BG to issue a letter documenting this poll of the Commission.

B5 45 Bay Avenue / Storm surge mitigation – Bruce Feodoroff

- Bruce Feodoroff (BF) advises that he has been getting flooding in his garage, which has never been an issue in the past. The garage door was breached in January and March of 2018. The land on the adjacent property

was recently raised 16 or 17 inches, with significant addition of cement, which he feels directs the storm surge to the garage. The Commission reviews photographs he has provided of the flooding.

- BF would like to add some barriers to protect the garage. PC notes he has addressed a similar issue on his own property by leaving his garage door slightly open. BF adds that a dwelling behind his garage has also experienced flooding this past winter for the first time ever.
- BG notes that the conservation interest is flood control, but feels possibly the barriers will impede flood flow and impact a neighbor. He notes there seems to be a lot of activity in the neighborhood, some possibly unpermitted.
- FW suggests that the Commission allow BF to put in temporary barriers for the storm season to test them. BO has no issue with a temporary barrier but notes the force of the water may push back the barriers and damage BF's garage. PC questions whether the raising of the lot next door really caused all this damage. BF feels the raising of the abutting property has to have been the cause of the water damage.
- JK agrees with FW that the homeowner should be allowed to put the barriers in this winter, and that the Commission should observe the abutting property over the winter to see what the impacts are, but notes this is a temporary fix at best.
- BG notes that if the Commission allows BF to put up barriers, this effectively permits him to redirect water to another neighbor. JK comments that the Commission can't solve this issue before storms hit, so the Commission has to allow people to protect their property on a temporary basis. This would allow time to evaluate the impacts of the work on the neighboring property.
- BG sympathizes with BF's situation but feels the Commission cannot allow him to place these barriers due to potential adverse impacts on neighboring properties. Town Counsel Bob Galvin (TC) notes that the area is barrier beach, and property owners are not allowed to erect any new barriers on barrier beaches, including those that would redirect floodwater or limit movement of sediment. The seawall in place can be repaired, but additional barriers that may redirect floodwater or sediment to other properties are not allowed, so a barrier is not something the Commission can legally permit.
- FW asks whether the proposed barrier is a "structure" under the town bylaw. TC indicates that any type of a barrier would be a structure. BG agrees with TC.
- JK notes that the issues may have originated with illegal activity by another party, and asks whether the Commission can issue an emergency certificate to allow for erection of the barrier while they pursue a longer-term solution. TC notes that the solution is probably to elevate the house and add slats to the garage.
- BF notes that the primary cause is the elevation of the neighboring property; TC indicates if such is the case, BF may have a cause of action against the neighbor. BF adds that elevating his property will cause stormwater to impact the property behind him. TC states the Town has a pending action against a resident in Rexhame who did what BF is proposing to do. BG reiterates that the Commission categorically cannot permit any sort of armoring that may result in redirection of floodwater; he suggests that the Commission observe the neighboring property to see if BF's claims as to redirection are valid, and that BF consider installing flood vents or possibly elevating the structure.
- BF indicates he only wants to protect his property. JK notes that this is what happens when the Commission doesn't take opportunities to make surfaces in the area permeable. TC suggests that BG accept this a complaint and go out to look at the neighboring property.
- JK notes that, as difficult as it is when people appear in front of the Commission to discuss flooding issues, the Commission has to allow the beach and dunes to migrate.

B6 Mass DOT / RT139 Berm Removal-exemptions – Bill Grafton

- Discussion tabled.

B7 1354 Union Street, use of mats and equipment, modification to permit – Paul Armstrong

- Paul Armstrong (PA), South Shore Pile Driving, appears before the Commission to discuss a modification to the OOC issued for construction of a pier at the referenced address. He would like to use a vibratory machine to drive in four piles in the tidal area instead of trying to navigate a barge through the North River.
- PA distributes a sketch plan showing where the work will take place. The machine would be rolled out to the site on interlocking 7 by 14 feet mats that would protect the marsh and upland meadow area. The machine is low-ground-pressure, at about 8 pounds per sq inch, and the mats can take up to 600 pounds per sq inch. This setup will minimize impacts to the marsh and meadow, while allowing them to drive in the piles from the land instead of using a barge.
- PA states that the mats flatten the marsh area temporarily but cause no damage. He used this machine for a similar project in Kingston, and has provided a letter from Kingston's Conservation Agent for the file. They would like to do the work now while the marsh is dormant, but there are also time-of-year constraints. The piles need to be driven in before February.
- JK would like to have a letter from Dave Hill from MassDEP in response to PA's suggestions. PA states that Mr. Hill has no issue with the use of this equipment and is willing to ask him for a letter.
- BG notes that the OOC specifies no vehicles on the marsh, and feels that PA should obtain a minor deviation from MassDEP plus a response letter from Mr. Hill.
- The Commission discusses whether the proposal can be permitted without consultation with MassDEP. FW comments that the Commission usually evaluates minor deviations on its own. JK questions whether the Commission can effectively change the MassDEP's permit. PA states that the MassDEP permit doesn't specify construction methods or equipment. JK suggests that the Commission approve the deviation subject to receipt of a letter from DEP approving the use of the machinery and mats, and PA agrees to provide the letter.
- FW makes a motion to issue a minor deviation to the OOC upon receipt of a letter from DEP indicating use of the proposed machinery and mats is acceptable. AL second. Approved 5-0-0.

AJOURNMENT – FW makes a motion to close the meeting at 10:50 pm. JK second. Approved 5-0-0.

Respectfully submitted,
Liz Anoja, Conservation Administrative Clerk
Marshfield Conservation Commission

Bill Grafton, Conservation Administrator
Robert Conlon, Chairman
Frank Woodfall
Rick Carberry

Bert O'Donnell
James Kilcoyne
Art Lage