

MEMBERS PRESENT – Robert Conlon, Chairman (RC), Frank Woodfall (FW), Bert O'Donnell (BO), James Kilcoyne (JK), Rick Carberry (PC), Bill Grafton, Conservation Administrator (BG)

MEMBERS NOT PRESENT – Art Lage (AL)

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

MINUTES

- The minutes for the 7/24/18 meeting were distributed and reviewed.
- RC makes a motion to approve the 7/24/18 minutes as amended. PC second. Approved 5-0-0.

BUSINESS

B1 Harbormaster Bylaw Language – Harbormaster Mike DiMeo

- Tabled until April.

PUBLIC HEARINGS

On / After

2652 Zeiny Development LLC, 308 Ocean St. (Amended permit for 2 concrete pads).....cont from 3/05/19 NEW(Art)

- RC reads the legal ad and, as hearing officer, confirms administrative requirements are complete. RC notes the matter concerns a request for an amended OOC.
- Joe Webby (JW), Webby Engineering, presents for applicant, who constructed two concrete pads underneath a building without a permit. The project resulted in the creation of more impervious area than originally proposed, but due to the removal of a large paver driveway, there was still a net reduction in impervious area on site.
- The building will take up most of the pad area, and a drywell will be installed to handle roof runoff. BG asks for JW for the difference in pervious/impervious area on the site; it looks like an overall reduction of about 1538 sq ft impervious area on site but an increase of 252 sq ft impervious area from the approved plan.
- BG notes that the drywell in the back was to fulfill one of the original conditions to tie off the roof runoff into downspouts. FW asks what part of the roof the existing drywell is serving; JW indicates it will serve all of the roof to his knowledge, and he will make sure that such is the case.
- PC asks JW about the purpose of the new pads; JW states that they will serve as a landing point for the stairwell coming out of the building; it also provides a flat, level surface for the placement of trash barrels.
- RC asks for comments from the public; none.
- BG indicates that the same special conditions of the previous OOC will apply, and notes there is a corner of the property that needs to be revegetated.
- RC motions to close the hearing and issue amended Orders of Conditions with special conditions drafted by BG. FW second. Approved 5-0-0.

2791 DeMeo, 76A Marginal (Raze & Rebuild SFH).....NEW(Bert)

- RC reads the legal ad. Hearing Officer BO confirms administrative requirements are complete.
- Applicant John DeMeo (JD) present; Rick Servant (RS), Stenbeck & Taylor, arrived later in the hearing. JD purchased the property last May with the intent of renovating the existing home, but found it not to be feasible due to its age. He would like to raze and build a new SFH on pilings. The existing concrete pad close to the marsh will be removed. He is also proposing to construct a deck supported by steel beams instead of pilings into the ground.

- BO visited the site yesterday and feels the plan is straightforward as presented. FW asks about the square footage of the new house compared to the old house; BG notes this is already given on the plan. In response to a query from JK, JD indicates the old house is about 600 sq ft and the new house will be 1400 sq ft on two stories; the area underneath the new house will be open and pervious (sand). BO feels the plan will result in an overall improvement given the removal of the pad.
- BG would like a special condition to ensure the footprint of the subsurface remains open or that they use pervious coverage only; JD indicates agreement and may use sea shell for the driveway; he will not use asphalt or concrete in the area.
- BO asks for comments from the public; none.
- BO makes a motion to close the hearing and issue Orders of Conditions with special conditions drafted by BG. RC second. Approved 5-0-0.

2776 Murphy, Brewster Road (New SFH).....cont from 12/18/18 (Bert)

- Continued hearing; BO hearing officer.
- Terry McGovern (TM), Stenbeck & Taylor, presents for applicant. TM notes that their instructions from the 12/18/2018 meeting were to provide a new wetland delineation; they have done so using Art Allen and adjacent property owner, Mark Ochs' (MO) consultant, Brad Holmes (BH) ECR. All parties met late in January, delineated the site, and furnished a new report, which extends the line with six new flags along the southern border. This establishes a consistent wetland line delineated by one methodology.
- TM, BO, and BG subsequently observed the flagging on site, and noted that the well had been moved upgradient, away from Brewster Road. TM pointed out to MO that some material in his back yard seems to have created an embankment along the edge of the tree line that may be causing drainage issues.
- All parties discussed possibly preserving some cedar and red maple trees and other native plants, and doing some supplemental plantings. Applicant agreed to provide about a dozen trees as replication. The site plan includes a drainage swale about 25 ft away from the Ochs well, which will take water away from the area. The plan has been updated to remove a berm from the pavement so water can freely flow over the driveway. They have also changed the driveway coming underneath the house to crushed stone to reduce impervious area.
- TM notes that the house is proposed to be on concrete piers and elevated, so any surface water coming under the house and runoff will pass through and go out the other side of the yard. Roof runoff will be captured in drywells at the corners of the house. They have also moved the proposed septic system farther away from the Ochs property. There will be a membrane around the system, and a MicroFast wastewater treatment unit will provide treatment on-site.
- TM has met with Director of Public Health Peter Falabella (PF) regarding pivoting the septic system; PF advised them to try to keep the system at least 60 ft away from the wetland line. The new site plan shows the system to be 61 ft away from the line. They are appearing before BOH next Monday; TM requests that this hearing be continued pending the BOH decision, and then closed at the next Commission meeting. He does not anticipate any issues with BOH.
- TM states since the new wetland has been moved north, they would be asking for variances for a portion of the proposed structure being within the 75 ft setback, as well as the septic within the 100 ft setback.
- PC comments that there doesn't seem to be a way to move the structure out the 75 ft setback. TM feels it could be moved slightly closer to the property line, but they kept it where it was to accommodate Mr. Ochs. There will be some grading associated with the septic system, extending 5-6 feet into the 50 ft setback at a 3:1 slope; they will install conservation markers as shown on the site plan to be installed immediately at the toe of the slope. TM feels there will also be some slight disturbance near the site of the well.
- In response to a question from JK, TM thinks between 50%-60% of the structure is in the 75 ft setback. JK comments that other projects are coming in front of the Commission that are going to have a preponderance of the structure within the 75, and either the Commission will have to start approving every variance they receive, or they need to instruct applicants not to build within the 75. Therefore, he would be a no vote in principle on granting a variance when more than half of a structure is in the 75 ft setback.
- BG states that the conservation interests applying to this project include an X/Flood Zone meeting an AE/Flood Zone, as well as buffer zone to the resource area. TM notes that the house is elevated, with finished floor at 20

ft and top of piers at elevation 18. They could push the house up to 7 ft further north to lessen the percentage in the setback, but this would put the house closer to Mr. Ochs' property.

- JK feels that granting a variance in a situation where more than 50% of a structure is in the 75 ft setback would be precedent-setting regardless of whether it is raised or not. PC agrees it would be a different situation if a smaller portion of the house were in the setback. BO is also opposed to the variance because it is a coastal resource and the septic, which cannot be raised, will also be susceptible to rising sea levels. FW notes he is also opposed to the variance given the amount of structure in the 75 ft buffer.
- Attorney James Creed Jr. (JC), representing applicant, points out that the applicant has already gone beyond the Town Bylaws in order to do soil sampling as opposed to vegetation, which is what forced the line further north. BO notes the Commission can consider soils if the area has been disturbed; BG indicates this is correct and is part of the statutory definition of a wetland. JC indicates the area hasn't been disturbed yet, but BH points out it's been cut. JC replies that the cutting along the former wetland line was requested by the former conservation agent Jay Wennemer so he could walk the line; TM concurs.
- JC contends that the Commission went outside its Bylaws in re-delineating the wetland line, and is now seeking to apply its Bylaws to deny the variance. He also states that the lot is a grandfathered residential lot of record and feels denial of the variance essentially takes the property, as there is no other use for it. BG reads an excerpt from local Regulations Chapter 505-14(C)(2), stating no variance shall be granted until the Commission receives from Town Counsel (TC) a written opinion that enforcement of the regulations would constitute an unconstitutional taking without compensation; based on this reading, he believes TC review will be required.
- Attorney Gene Guimond (GG), representing Mr. Ochs, asks BG to confirm the matter will be continued. BG's understanding is the BOH needs a wetland line from the Commission, and without one, it will be hard for BOH to grant their variance. GG asks if there has been any inquiry with ZBA or the Planning Board about their street determination policy, which may require more pavement on the roadway and therefore change the project; also about the possibility of a variance as to frontage requirements. TM indicates not at this point.
- BO makes a motion to continue the hearing to April 2, 2018. FW second. Approved 5-0-0.

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

- Continued hearing. Hearing Officer JK confirms administrative requirements are complete.
- Attorney Gene Guimond (GG) appears on behalf on applicants, who were unable to attend. Also present are Jed Hannon (JH), representing Mayflower Engineering, and Brad Holmes (BH), ECR. GG first got involved in the project in January of this year to help finish out the project permitting and address an enforcement issue in another area of the property. He would like to keep the enforcement piece separate and concentrate on the dock project.
- GG met with BG and JK to go through the issues on the site, including the depth of the proposed float. Applicants initially proposed a depth of 1.3 ft on the landward side, but at a site visit on 3/11/2019 at which JK, PC, BG, and Harbormaster Mike DeMeo were present, it was confirmed that the depths were actually between 2.8 to 3.1 feet; GG feels this removes concerns as to shellfish habitat, as the Harbormaster had commented there were none in that area.
- GG characterizes the scope of work area as being limited to about 744 sq ft, including ramps, the pier, and float. He also states the project is exempt from setback requirements under the Marshfield wetlands regulations, and has exemptions from the Riverfront Protection Act under 310 CMR 10.58(6)(j), as the project is located in a scenic river protection area and is a Chapter 91 project. There seems to be confusion between DMF and North River Commission regulations relative to separation of the saltwater grass and the height of the pier: DEP guidelines have a 1:1 ratio of separation as to height and width while DMF looks for a 1.5:1 separation. NRC has a 5.5 height above mean high water. Since they are at a 4.3 mean high water elevation, they can only go to a 9.8 ft pier height under NRC guidelines, but this results in a separation of 1.45 ft.
- JK advises that the path to the work area is flagged and he observed no additional cutting. He also comments that Harbormaster DeMeo had no issues with the project as to navigable waterway or shellfish habitat. Applicants appear to have the depth on the float needed for a power boat.
- The Commission discusses establishing a consistent wetland line on the site. JK notes that at previous hearings, there seemed to be a feel in the Commission that the wetland lines should be tied together in order to establish

a wetland line based on the Marshfield Bylaw. BG distributes site plans for Commissioners to review [Wetland Delineation Overlay prepared by ECR], and notes that BH re-delineated the site in June 2018. BH states that the updated plan is accurate as to location of the proposed pier, ramp, float, and BVW line, and there are no possibilities of an additional vegetated wetland under the Marshfield Bylaw definition in this area of the wetland delineation line; JK and BG concur.

- With respect to the June 2018 site plan, BH states he would not support the yellow lines, which represent the wetland line using the Marshfield Bylaw definition, as being a wetland due to there being no wetland soils or hydrology, and therefore these areas cannot function as a wetland. He adds that there seems to be an inconsistency in which wetland line is applied, Marshfield Bylaw or state, depending on the project, and feels this could cause issues with DEP. BG states that in most cases there are not significant deviations between the Marshfield and state wetland lines. BH also notes that the Marshfield Bylaws provide no definition of bordering vegetative wetland, which causes issues when trying to delineate according to the Bylaw.
- GG comments that the Town regulations require that plans show the “site,” defined as the limit of work within the project locus, which he believes is what was shown in the latest plan. If applicants are proposing further work in another area of the property, they would provide delineation lines for that area which the Commission would then approve. BG notes that this is how the site plan was defined for the recent Marshfield Airport project, in which the focus was on the limit of work.
- JK comments that it seems clear that the property as a whole is within Commission jurisdiction, and therefore any additional work done on the property will come to its attention beforehand. GG agrees that any additional work on the property other than the dock will likely require another filing with the Commission.
- JK recommends that the dock project that is the subject of this hearing be approved as proposed. BG reads the proposed special conditions into the record, including that rope, rather than metal chains, be used to secure the pier components; 1 inch spacing between boards on catwalk and dock; no grounding of barges, floats, or boats on river bottom; access path to be routed around any large trees and will be the sole path to the dock; posting of a “no wake” sign if acceptable to the NRC.
- JK makes a motion to close the hearing and issue Orders of Conditions with special conditions drafted by BG. PC second. Approved 5-0-0.

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

- No response to Additional Information Request by 12 Noon, Friday before Public Meeting.

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

- No response to Additional Information Request by 12 Noon, Friday before Public Meeting.

REQUESTS FOR CERTIFICATES OF COMPLIANCE & EXTENSIONS

None

ENFORCEMENT ORDERS

Smith, 38 Liberty Street **(11/19/18 KS will set early Dec visit)**
Drosopoulos, 7 Lady Slipper Lane **(08/15/18 TC Final Notice)**
New Owner, Winslow Avenue Ext.
Mahaney, 46 Preston Terrace **(12/12/18 BG met with TC)**
White, 180 Atwell Circle (Escalation letter in Process)
Bednarz/ Nouza, 65 Ireland Road (Unpermitted Cutting <= 50 ft)
Tamara Macuch, 237 Webster Avenue
Levangie, 3 Cove Creek (Communication in Progress)
Stifter, 102 Bartlett’s Island (unpermitted revetment wall)
Seoane, 84 Bartlett’s Island (3/13/19 Awaiting Restoration Plan)

BUSINESS (Continued)

B2 Business Discussion/MACC Annual Conference (LSCSF & Bio-Engineering) – Bill Grafton & Jim Kilcoyne

- Tabled until next meeting.

B3 Streamlining of OOC/ WPA Form 5 – Bill Grafton

- BG notes for the record he has received multiple requests for reductions to the state and town OOCs; Bob Galvin, Town Counsel (TC) does not approve of this. BG and previous agents have been issuing two separate orders and will continue this practice.
- RC comments that the two orders seem to be essentially the same and are just being recorded twice. BG agrees but identifies there's a possibility of confusing the two docs. TC feels there is a risk of confusion in situations where state and town docs overlap; the separation is for cleanliness and to facilitate the appeals process. BG would like to have less paperwork but agrees with TC about the existing process.

B4 158 Foster Ave/SE42-231- Knight (sp. condition: breakaway panels vs. smart vents) – BG & Rick Servant

- Rick Servant (RS), Stenbeck & Taylor, present for property owner. RS notes that the house on the property has breakaway panels. They have since met with Building Commissioner Jim Folkard, who has stated that under the updated building code, smart vents are needed as opposed to breakaway panels.
- RS provides a marked up plan showing proposed locations for smart vents under the house. They would like to use nine smart vents, five seaward and four on the street side. Total area of enclosure is 1750 sq ft, and each smart vent can treat 200 ft of area. RS states the existing breakaway panels will not be covered over or removed and notes that they don't function the way they should as currently installed. RC adds that the building code was changed last year to require the use of smart vents with the breakaway panels.
- BG advises that JF had contacted him and relayed the same information; BG then asked RS for a marked-up plan, as well as an As-Built plan once the vents are installed. BG notes that smart vents were not available when the updated OOC was issued in 1994; the vents will be in lieu of the breakaway panels, which was the specific language of the special condition in the OOC. BG also advises he has received a deed restriction restricting the lower level to non-habitable space, as required for the COC, and the new owners are being compliant. RC adds that this restriction was referenced in the original 1983 OOC; he would like the Commission to review the language of the restriction and confirms that the owner accepts the restriction.
- BG asks the Commissioners whether TC should review the deed restriction; Commissioner consensus is that TC review is not needed, and installation of the smart vents can proceed. Applicants will file an As-Built plan once installation is complete.
- RC makes a motion to accept the deed restriction for the property at 158 Foster Avenue and allow the installation of smart vents as noted in the updated site plan, within 1 ft of grade. BO second. Approved 5-0-0.

B5 Enforcement Orders Status Review & Commission Direction – Bill Grafton & Commission

EO19-01/Courchene-18 Creek Road; EO19-03

- Brent Courchene (BC), 18 Creek, present to discuss the restoration plan for the property. Four of the five proposed restorations are done, with only the planting to remain. He would like to get the Commission's feedback on the planting. BG notes that he let BC start on the restoration because the house is for sale.
- BC notes that the planting season starts in mid-April; he would like to get the plants in the ground before he sells the property. JK notes that he visited the property on Sunday and everything looks great.
- BG notes that BC has pulled up the patio and some of the fire pit area to get him out of the immediate wetlands. JK adds that the posts and markers are up, and the debris on the site removed.
- BC notes that the planting sites are temporarily covered in hay. He would like Commission approval to proceed with the planting. Commissioner consensus is that the planting can proceed. BG asks that BC provide pictures of the completed plantings to the Conservation Office; BC should notify the new owners that the new plants will have to survive for two successive growing seasons at 75% growth. BG will need details as to amount of plants and location, and qualified wetland scientist will need to monitor the plantings.

EO19-02/Storach-45 Avon Street

- Brad Holmes (BH), ECR, present. BH notes that the Storachs received an OOC in 2014 for house improvement work. They would like to get a restoration plan approved so they can subsequently receive a COC.
- BH distributes photos showing that the property was 100% lawn, to the edge of the wetland line, prior to 2014, and the old plan of record showed a shed and lawn up to the property line. After the home improvement work, the shed was removed, and owners brought in crushed stone and cobble, creating a patio with fire pit and walkway with flag stones. They also placed some larger stones along the wetland line, which BH characterized as movable boulders as opposed to revetment.
- The proposed restoration plan will move the stones back from the wetland line and create a vegetated buffer strip using coastal vegetation. BH feels that gravel and stone is preferable for this back yard as opposed to a lawn that may require fertilization and maintenance. BH feels that the plan will result in an improvement over the conditions existing in the area prior to 2014.
- RC agrees that gravel and stone is preferable in the back yard for the reasons BH mentioned. BG points out that the pathway and fire pit would be considered an unpermitted structure inside the 75 ft setback without a variance; he also feels that the stones along the wetland line constitute revetment due to their size, and could lead to further armoring by neighbors in the area. BG adds that the site is in/near LSCSF, riverfront, coastal dune, barrier beach, and setback to the marsh.
- BH notes that no change in elevation was done or is being contemplated. He can see why people in the area would bring in fill, because their yards get washed out by flooding, but the stone and gravel will prevent the need for future re-loaming. Restoring to the previously existing conditions would bring lawn back to the edge of the wetland; he would prefer to work with what is on the site and add a vegetated buffer strip.
- BG is not sure whether there was lawn on the site previously, or salt marsh grasses. BH states that the site was delineated prior to issuance of the OOC in 2014.
- JK feels that the plan will result in an improvement over what previously existed on the site, but doesn't like keeping the large stones on the site, as he feels it is still a form of armoring that could be reinforced in the future. Since a driveway is considered a structure under the regulations, he feels that a walkway would also be, and notes that the walkway is in the 25 ft setback. BH feels the work on site was essentially re-landscaping within previously maintained lawn area.
- JK notes that weeds tend to grow in gravel areas, and is concerned this could lead to herbicides being used on the lot. BH is willing to accept a restriction on their use on the site. BG feels the proposed vegetated buffer is too small.
- BG notes that previous homeowner, Courchene (18 Creek) was willing to pull back his patio and fire pit area, and would like to see the same standards applied to all property owners looking to resolve enforcement orders. JK would like the Storachs to pull back the structures in the 25 ft setback and remove the revetment stones. BH feels the Commission has to rule on projects on a case-by-case basis, and the burden on applicants is to show that the benefits of work in the buffer outweigh the impacts.
- BG references an e-mail from BG to BH dated March 11, 2019, which mentions trees and shrubs that appear to have been removed before the revetment stones were placed. BH responds that the image in question is from 2005.
- BG notes that the property owners told him that previous agent, Jay Wennemer (JW) had given them an OK to make improvements on the site within reason. BG called Wennemer after inspecting the site, JW did not feel the unpermitted work was reasonable. BG would prefer that the restoration area be at the 25 ft buffer line. JK suggests a compromise where they remove the stones and get the structure out of the 25 ft buffer. BH is willing to remove the stones, but he would like the Commission to allow the work done up to the edge of the bluestone.
- BG would like to see all structures pulled back to the 25 ft buffer and conservation markers posted along the buffer. JK would also like this, but feels the plan as proposed is better than what existed in 2014. As a compromise, he would like the revetment stones out, the patio moved out of the 25 ft buffer, and conservation posts placed along the buffer.

- All parties discuss the placement of the markers. BG would like two markers on the property edge and 1-2 in the middle. BH objects that this would result in a marker being in the middle of their landscaped area. BG notes that the markers are for future owners who may perform further unpermitted work activities.
- After BH steps out to confer with the Storachs, the Commission discusses removal of the bluestone out of the 25 ft setback. FW would like to leave the bluestone if it's minimal. JK feels the stones are easily moved and are a structure in the 25 ft buffer. RC notes that applicants have an open OOC that they didn't follow, so he would like to get something back in exchange for ultimately issuing the COC; PC agrees.
- After BH and the Storachs return to the hearing room, BH indicates they would be agreeable to the placement of additional conservation markers in return for being able to keep the portion of the bluestone patio in the 25 ft buffer, as moving the patio back would be a complicated process. BG notes that moving the patio would leave a large area of exposed soil, all Commissioners concur approval of BH's proposal.
- After further discussion, all parties agree to the following additions to the proposed restoration plan: removal of revetment stones from the site, posting of three conservation markers along the edge of the vegetated buffer, and no more structures in the 25 ft buffer.

Seoane-84 Bartlett's Is. Way

- BG advises BH he has received the NOI for this property, and the hearing will be scheduled for April 2. The deck, stone wall, and proposed coastal enhancements will be discussed.

AJOURNMENT – RC makes a motion to close the hearing at 8:50 pm. PC second. Motion 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