

Town of Wareham
Conservation Commission – Minutes
June 21, 2023

Location: Wareham Multi-Service Center, 48 Marion Road, Wareham, MA, Room 320.

The following record pertains to a meeting held by the Wareham Conservation Commission at 6:00 PM local time. A video recording of this meeting is available for viewing. The record of the proceedings includes the videotape of the meeting, the resolutions passed, and any document presented during the course of the meeting.

PRELIMINARY BUSINESS

Present: Chairperson, Sandy Slavin, Ms. Schulz, Michael Mercier, Kwame Bartie, Carol Malonson, Autumn Wood
Associate member Paulajean O'Neil

Absent: Jessica Parr

Conservation Administrator, Joshua Faherty was also present.

PUBLIC HEARINGS: 6:30 PM

Request for Determination of Applicability (RDA)

1. **Brilliant Solution Inc., 5 Bartlett Lane, Wareham MA** – To upgrade a septic system with work within the buffer to a BVW

Mr. Bartie read the advertisement for the record.

David Klenert, Engineer was present via Zoom. He explained the trench was the only thing to the buffer within the BVW. He said there would be erosion control, shed corner to the house corner, and over approximately 40'. He said the system is an existing utility easement on paper, but no longer serves a purpose. He said the Board of Health is aware and was fine with it.

Mr. Faherty reviewed the project and recommended a Negative 3 with the condition for erosion control. He stated there were other issues with the property, and that no vegetation should be cut (a tree was partially removed, a third of the tree was cut and then stopped).

Ms. Schulz did have concerns about the tree and stated if it were to come down with this process it needs to be replaced.

There was no public comment.

Motion to close: Ms. Schulz made a motion to close the hearing and was seconded by Ms. Malonson. The motion passed unanimously. (6-0-0).

Motion to approve: Ms. Schulz made a motion to accept the RDA as a Negative 3 with the conditions that the erosion control stay in place until the project is complete and that a one-year check to the tree that it is still living, if not it would need to be replaced. The motion was seconded by Ms. Malonson and passed unanimously. (6-0-0).

Notice of Intent (NOI)

1. **Terry L & Katherine E. Edwards, 50 Winship Avenue, Wareham, MA** – To construct a 6-foot wide, stamped concrete walk from the existing concrete walk to an existing pier

Mr. Bartie read the advertisement in for the record.

On behalf of the applicant, Brian Grady of GAF Engineering with Mr. Edwards, the property owner.

Mr. Grady reviewed the project; a stamped concrete patio is proposed to access the pier. He says will take the golf cart on the lawn to the area as well. He stated no impact to the wetlands. He stated there are no comments from DEP.

Mr. Faherty stated the issue was the work was within the 30' no activity zone.

Ms. Schulz stated that they do not allow work in the activity zone and it goes against their bylaws. Mr. Bartie agreed.

Ms. Slavin asked about the 8' wide path and stated they would be disturbing the area. Ms. Slavin said she doesn't believe it's a safe path with wet grass. She said she believes their by-law gives them the opportunity to give them a 5' path.

By-law states "If in its judgment such a reduction is necessary to accommodate reasonable access, by path or other least intrusive means of access, to other portions of a property or the shoreline, as long as there is no other alternative means of accessing the other portions of the property, and that such alteration does not exceed a 5' naturally surfaced path, or an elevated boardwalk, not to exceed 3' in width, within the 5' pathway. Such alterations may require wetlands applications."

Ms. Schulz stated it was a no-work zone and clear on either side, not covered by trees.

Mr. Bartie said he would be open to seeing a new plan, but currently is concerned about it being in the 30' work zone.

There was no public comment.

Ms. Schulz made a motion to continue to July 5, 2023, and was seconded by Ms. Malonson. The motion passed unanimously. (6-0-0)

- 2. Dos Amigos Realty, LLC 10 Squirrel Island Road, Wareham, MA** – To construct a new single-family dwelling with a rear deck and front porch, paved driveway, title V septic system, associated utilities and grading.

Mr. Bartie read the advertisement for the record.

Sam Lamele from JC Engineering reviewed the project for a single-family home and paved driveway. He said the portion would be within the 100' buffer. He said they have the property staked out and erosion control would be put down.

Mr. Faherty reviewed his staff report. He reviewed drywells and 30' signage be required for the tree line.

Ms. Schulz asked for permanent fencing and signage.

Mr. Mercier asked about species in the area.

No Public Comment was given.

Motion to close the hearing: Ms. Schulz made a motion to close the hearing which was seconded by Ms. Malonson. The motion passed unanimously. (6-0-0).

Motion to approve: Ms. Schulz made a motion to accept the project with standard conditions and drywells, approved signage and proof of no endangered species as well as permanent fencing in the area to identify the no activity zone within the 30'. Ms. Malonson seconded the motion and it passed unanimously. (6-0-0).

CONTINUED PUBLIC HEARINGS: 6:45 PM

Request for Determination of Applicability (RDA)

Notice of Intent (NOI)

1. **Luz Maria Corkery, 10, 14, and 16 River Terrace, Wareham, MA** – To repair the foundation of the boat house and repair/improve the erosion control structures across three properties.

Ms. Malonson made a motion to continue to July 19, 2023 per the applicants' request and was seconded by Ms. Schulz. The motion passed unanimously. (6-0-0).

2. **Pinehurst Beach Association, Beach Road off of Pinehurst Drive, Wareham, MA**

Kevin Murphy, Trustee. Members of the association were present, and they discussed the remaining issues. The wall and the stairs and the proposed location of the rebuild, will be to the right-hand side of the steps.

Mr. Faherty reviewed his staff report. He did advise recommendation with an order of conditions. Ms. Schulz asked about the steps.

Mr. Faherty said he would meet with Mr. Menard on-site and determine the best way to move forward with the steps for safety and then perhaps the order of conditions can be issued.

Mr. Murphy said it was their intention to bring back sand to the project as well eventually.

Motion to close: Ms. Schulz made a motion to close the hearing and was seconded by Ms. Malonson. The motion passed unanimously. (6-0-0).

Motion to approve: Ms. Schulz made a motion to approve the project with an order of conditions that included a discussion for access, a discussion with Mr. Faherty and Mr. Menard in regard to a fence. Regarding 10.27 of the Performance Standard regulations for jetties, adding 250-500 lb boulders which would prevent vehicles from driving over the edge. Maintenance and repair would be up to the applicant. And finally, that Mr. Faherty be able to review and move forward with the conditions set forth. With those conditions, Ms. Malonson seconded the motion and it passed unanimously, with Ms. O'Neil abstaining. (5-0-1).

3. **Jonathan and Vanessa Sharkey, 19 Over Jordan Road, Wareham, MA** –

Brian Wallace of JC Engineering was present for the applicant. Mr. Wallace reviewed the project and stated they did receive comments from the DFM and Harbormaster. They did do a shellfish survey, per comments from the Harbormaster. He said there were concerns with quahogs and razor clams.

Mr. Faherty reviewed his staff report. He said the bylaw does read that a shellfish habitat survey be required. He also said the commission has denied docks in this area historically.

Ms. Schulz said she reviewed quite a bit over the weekend and that she feels it's important for consistency in their reviews. She reviewed projects that were historically denied in this area. Ms. Schulz stated she felt the project should be denied.

Ms. Schulz will forward a copy of what she read with her research and recommendations to the record with the minutes.

No further questions from board members.

Ms. Slavin reviewed when the hearings first began and advised the commission members needed to make sure they were present in order to sign any document.

Mr. Faherty advised the committee members can not miss two meetings or more

Mr. Wallace stated they opened the public meeting on April 5th and there was no discussion until this evening. He said at that meeting he remembers that only Mr. Bartie was not present. He reviewed what was discussed by Ms. Schulz, in reference to the denial of projects in this area (which he feels past projects have been denied that were in close proximity of each other). He stated he felt this is more of an open area that doesn't have close proximity to other docks/piers in the area. He said the dock has been designed to be higher than others so that paddles and kayaks can go under it. He didn't think there would be any characteristic value to the recreation value of the area.

Ms. Schulz stated they have previously denied 15 Over Jordan Road as well as 17 Over Jordan Road and that consistency is very important, especially in this area.

Scott Sylvia asked about the shellfish survey that was discussed.

Motion to close the public hearing: Ms. Schulz made a motion to close the hearing and was seconded by Ms. Malonson. The motion passed unanimously. (6-0-0).

Motion to deny: Ms. Schulz made a motion to deny the project based on her overview and research and legal precedent in this area and based on the documents received by DFM and the Harbormaster regarding the shellfish. Ms. Malonson seconded the motion. Via roll call vote, the motion passed unanimously to deny. (5-0-1).

ENFORCEMENT ORDERS

EXTENSION REQUESTS

CERTIFICATES OF COMPLIANCE REQUESTS

OTHER BUSINESS/DISCUSSION AND/OR VOTE/BILLS

1. Discussion: 120 Cromesett Road Conservation Restriction

Nancy McHale, Treasurer of the Wareham Land Trust was present. She asked if the Commission would hold the restriction for this property. She said they are looking for an agreement to hold the conservation restriction and a letter to go with that. She said they would also go in front of the Selectboard as well for approval.

Mr. Faherty stated he sees no issue with the request.

Ms. Schulz asked if the path would be handicap accessible. Ms. McHale said it is her hope.

Associate member, Ms. Wood asked about parking in the area.

The commission members agreed to hold the conservation restriction as presented and to have a letter written. (6-0-0)

2. Reorganization: Chair, Vice Chair, Clerk

Ms. Malonson made a motion that the Chair, Vice Chair and Clerk remain the same into the next fiscal year. Chairperson, Ms. Slavin; Ms. Schulz as Vice Chair and Clerk Mr. Bartie. Ms. Schulz seconded the motion and passed unanimously. (6-0-0).

3. Review and accept minutes - June 7, 2023

Mr. Bartie made a motion to accept the minutes with corrections as presented and was seconded by Ms. Malonson. The motion passed unanimously. (6-0-0).

4. Bills, Appointments, Interviews & Reappointments

Mike Mercier and Carol Malonson were reappointed by the Selectboard. Autumn Wood and Paulajean O'Neil confirmed they were sworn in by the Town Clerk.

Date Signed: 7/24/23

Attest: S S Slavin

Sandy Slavin, Chairperson

WAREHAM CONSERVATION COMMISSION

Date copy sent to Town Clerk: 07/24/2023

WAREHAM TOWN CLERK
2023 JUL 24 AM 10:50

Sunset Cove Dock NOI

Prepared by Denise Schulz

19 Over Jordan Road, Wareham, Ma

4/15/2023

The importance of Consistency in our decisions cannot be emphasized enough. The integrity of this Commission relies on it.

This body of water has been historically denied for New Docks:

15 Over Jordan

17 Over Jordan

17 Lydias Island

9 Lydias Island

4 & 6 Shell Lane (Lot 1032B)

Each of those projects was deemed to inhibit and is detrimental to the recreational value of this area.

Historically this small area of shoreline is active with recreational use by the surrounding neighborhoods and is open to both commercial and recreational shell fishing.

While each project was evaluated on its own merit, our commission needs to keep an eye on the health and well-being of our community and environment as a whole.

The recreational value of this area is important. Additionally, there are 5 docks in this bay.

Per the April 3, 2023 letter from Division of Marine Fisheries (DMF):

"Sunset Cove is mapped as shellfish habitat for northern quahog, soft shell clam, American oyster and bay scallops." ... Land containing shellfish is deemed significant to the interest of the Wetlands Protection Act (310 CMR 10.34) and the protection of marine fisheries.

Sunset Cove acts as winter flounder spawning habitat. ...The Atlantic State Marine Fisheries Commission has designated winter flounder spawning habitat as a "Habitat area of Particular Concern (HAPC). ... Given the new status of the winter flounder stock, every effort should be made to protect the species and its spawning habitat."

"... While some of these impacts can be avoided or reduced with best management practices, others are unavoidable and will result in permanent impacts to shellfish habitat and associated fisheries access. ... The support piles, float, and adjacent footprints will likely not be accessible to commercial or recreational fisheries."

This body of water has already been through litigation and citing Gray vs. Wareham Conservation Commission:

"The court must give substantial deference to the commissions factual findings and its reasonable interpretation of its regulations." (p.5)

Concerning Arbitrary and Capricious: "A claim that the commission did not consider an individual application on its merits but rather, acted pursuant to an unstated campaign against further development is "more easily made than proved" (p.6)

"Section VII (1) of the By-Law state in relevant part that in issuing or denying an Order of Conditions, the commission should consider whether the proposed activities "are likely to have a significant individual or cumulative effect upon the resource area values protected by this bylaw" and "may take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities." (p.7)

"Section VII (2) of the By-law empowers the commission to deny an Order of Conditions "for failure to meet requirements of this bylaw ...for failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area values protected by this bylaw; and where not conditions are adequate to protect those values." (p.8)

As stated previously, the DMF letter clearly state that Sunset Cove is mapped as shellfish habitat and lands containing shellfish is deemed significant to the interests of the Wetlands Protection Act (310 CMR 10.34.

"... Gray's motion for judgement on the pleadings is denied and the commissions cross motion is allowed."

Based on that decision and the cited letters and by-laws I believe there is not just a justification for denial but legal precedence.