

TOWN OF HULL
CONSERVATION COMMISSION
Meeting Minutes
April 11, 2023

Members Present: Paul Paquin (PP), Chair, Sam Campbell (SC), Lou Sorgi (LS) Tammy Best (TB), Danielle Dolan (DD)

Members Absent: Katherine Jacintho (KJ),

Staff Present: Ian MacDonald (IM), Administrator; Chris Krahforst (CK), Director; Renee Kiley (RK), Clerk

Staff Absent: none

AGENDA

6:30 PM

- a. Call to Orders
- b. Review of Agenda, Overview of Hearings Procedure

1. Notices of Intent

- a. **51 Harborview Road. Map 56/Lot 028 (SE35-1735) Continuation** of a Public Hearing on the **Notice of Intent** filed by **Thomas P. Fitzgerald** for work described as: **Complete slope stabilization project for a portion of the northerly slope. Abutter Notification:** *proof provided*. **Resource Areas:** **Coastal Bank:** (Storm damage prevention and flood control); **Coastal Dune** (storm damage protection and flood control, likely wildlife habitat); **Land Subject to Coastal Storm Flowage:** **FEMA VE 20'** (Storm damage, pollution prevention, and flood control). **Site visits done:** many times.
Representatives: none
Abutters/Others: none
Documents: none

Motion to continue until 4/25 by LS by 2nd by DD. Roll call: LS-aye PP-aye, SC-aye, KJ-aye

- b. **18 Bayview Street. Map 03/Lot 064 (SE35-1747) Continuation** of a Public Hearing on the **Notice of Intent** filed by **Kenan Connell** for work described as: **After-the-fact installation of fill for driveway maintenance. Abutter Notification:** *proof provided*. **Resource Areas:** **Salt Marsh, Buffer to salt Marsh, Vegetated Wetlands** **Land Subject to Coastal Storm Flowage:** **AE 10. Site visits done:** 02/26. *On 03/25, the applicant requested a continuance to 04/25.*
Representatives: none
Abutters/Others: none
Documents: none

Motion to continue until 4/25 by LS 2nd by SC. PP-aye, SC-aye, TB-aye, DD-aye, LS-aye

- c. **631 Nantasket Ave. Map 20/Lot 002 (SE35-1758) Opening** of a Public Hearing on the **Notice of Intent** filed by **Edvaldo DaSilva** for work described as: **After-the-fact installation of storm drain system, wall, and fence. Abutter Notification:** *proof provided*. **Resource Areas:** **Barrier Beach** (storm damage protection, flood control, and wildlife habitat); **Subject to Coastal Storm Flowage:** **AE 11. Site visits done:** 4/4. *On 04/5, the applicant requested a continuance to 04/25.*
Representatives: none
Abutters/Others: none
Documents: none

Motion to continue until 4/25 by LS, 2nd by SC. Roll call: TB-aye, DD-aye, LS-aye. Sc-aye, PP-aye.

- d. **16 Q Street. Map 13/Lot 153 (SE35-1756) Opening** of a Public Hearing on the **Notice of Intent** filed by **Mary Murray** for work described as: **Remove existing deck, and install new deck approx. 210 ft². Abutter Notification:** *proof provided*. **Resource Areas:** **Barrier Beach** (storm damage protection, flood control, wildlife habitat); **Possible Coastal Dune** (storm damage protection and flood control, likely wildlife habitat); **Land Subject to Coastal Storm Flowage:** **AE 10.** (Storm damage, pollution prevention, and flood control). **Site visits done:** 4/4
Representatives: none
Abutters/Others: none

Documents: proposed plan

IM: Remove existing deck and Install new deck per the applicant's plans. The Deck will increase in size. Motion to issue order of conditions by LS, 2nd by DD. Roll call: TB-aye, DD-aye, LS-aye, PP-aye, SC-aye.

- e. **3 F Street. Map 16/Lot 049 (SE35-1755) Opening** of a Public Hearing on the **Notice of Intent** filed by **David & Helen Cross** for work described as: **Construct new chicken coop approx. 24 ft². Abutter Notification: proof provided. Resource Areas: Barrier Beach** (storm damage protection, flood control, wildlife habitat); **Land Subject to Coastal Storm Flowage: AE 10.** (Storm damage, pollution prevention, and flood control). **Site visits done: 4/4**
Representatives: Helen Cross, David Cross
Abutters/Others: Rosemary, next door
Documents: Proposed Plan

Commissioner: Any changes from what is shown on the drawing? Cross: No. Commissioner: What is the chicken coop foundation going to be? Cross: The chicken coop will have a poured concrete slab. Reason for concrete is to be good neighbors; we want to keep it very clean, it is a small coop. The concrete slab will also keep it rodent proof. Commissioner: Do you intent to let the chickens out? You don't have a fence. Cross: No it is illegal in this town. They are also many predators. We will have a run around the coop. We will use hardware cloth with smaller openings in the wire and covered on top. Commissioner: It looked like there is a 2nd shed on the property. It was closer to F Street than what appeared on the plan. Cross: That is a recycling shed for storing our recycling. Commissioner: The property is in an area subject to Coastal Storm flowage; we are concerned about water flooding the property. Cross: The chickens would stay out of water. In any severe weather, we will remove the birds from the coop. Commissioner: No survey was completed for this project. Please maintain the same distance away from the house as the shed sits today. It should not go further north than the shed. Cross: I understand.

Motion to issue an order of conditions with the special condition that the coop as constructed be no further north than the shed on the property by LS, 2nd by SC. Roll Call: DD-aye, LS-aye, SC-aye, PP-aye, TB-aye.

- f. **64 E Street. Map 17/Lot 108 (SE35-1757) Opening** of a Public Hearing on the **Notice of Intent** filed by **Steven Jasa** for work described as: **Install asphalt driveway 580 ft², 380 ft² of pavers, and replace 200 ft² of paving. Abutter Notification: proof provided. Resource Areas: Barrier Beach** (storm damage protection, flood control, wildlife habitat); **Land Subject to Coastal Storm Flowage: AE 10.** (Storm damage, pollution prevention, and flood control). **Site visits done: 4/4**
Representatives: Steve Jasa
Abutters/Others: Jaqui Frongleio 66 E st
Documents: Proposed plan

Jasa: The plan is to put in a driveway approximately 48 feet long. It will be 3 feet from our house. Asphalt will be 4 feet off of the house. Pavers will replace the old concrete. 18" of crushed stone will be placed off to the side. The driveway will pitch towards the street. Drainage will go onto the street.

Commissioner: The Issue on hand is that the Conservation Commission must comply with the zoning bylaws. IM: This area was not previously a driveway. The zoning bylaws do apply. Jasa: Driveway will be 8' wide. IM: There is a zoning requirement from the building department. Dolan: Would you consider crushed stone or pervious pavers. Commissioner: Average width of car is 5.8 feet. IM: What about locating the proposed driveway to the opposite side of the house? Jasa: The door (we use to enter the house) is on the side of the proposed driveway. Commissioner: 3 feet from the house is required per zoning bylaw. Jasa: We would like the bricks to match. The neighbor has an asphalt driveway. Commissioner: He (the neighbor) has a foot and a ½ of grass, then he has the pavers, and then there is their asphalt driveway. Jasa: I have quotes; I need 8 feet of pavement to bring in the machine. If not, it needs to be done by hand. It won't have a good pitch. I want the water to pitch towards the street. Commissioner: The zoning bylaws are a building department issue; crushed stone can be a problem. Frongleio (abuttter): We're not opposed to the project. We're concerned with the drainage. We don't want water to flow under our fence. The other side is grass and pavers; crushed stone is along the side of the house. Commissioner: Think about just paving just where the wheels go. Jasa: No thank you.

Motion to continue to 4/25 (to get from the building department clarification as to zoning requirements for driveways) by LS, 2nd by DD. Roll Call: LS-aye, PP-aye, SC-aye, TB-aye, DD-aye.

2. Certificates of Compliance

- a. 1092 Nantasket Ave (SE35-1255)
IM: Existing House was damaged by a fire and demolished.
Motion to issue a Certificate of Compliance by LS 2nd by DD. Roll call: PP-aye, SC-aye, TB-aye, DD-aye, LS-aye.
- b. 50 B Street (SE35-1597)
IM: From the deck that was built, there was a concern about the placement of stairs. The stairs were moved to the rear to comply with building code (but the Order of Conditions was not amended as such).
Commissioner: Should we accept the 3D drawing (plan of deck and stairs as was built) in place of a surveyed (topographic) As-Built plan? Another Commissioner: The 3D As-Built site plan should be sufficient. Anyone have any issues? Commissioner: No issues.
Motion to issue a Certificate of Compliance by LS, 2nd by DD. Roll call: SC-aye, TB-aye, DD-aye, LS-aye, PP-aye.

3. Potential Violations

- a. 33 Malta Street- Non-permitted patio, alteration of adjacent dune.
CK: It is a duty of mine to report any potential violations (to the Commission). The area where the patio is located in the dune across Beach Ave from 33 Malta St was dug out and dune sand was removed from the patio area activities (conducted without an Order of Conditions). I sent a letter of noncompliance to the people that use and cleared the patio. Commissioner: In light of the letter we just received from Town Counsel, I don't know if we should be discussing this matter. CK: Town Counsel wrote a letter and asked to be shared to the Commission. The Commission asks CK to read the letter into the record. CK: "Dear Members of the Commission, I understand you have on your agenda for this evening an item concerning a patio that is in the dune area alongside the paved portion of Beach Avenue and across from 33 Malta Street. As you know, the Town has received a Superseding Order of Conditions from the MassDEP to continue the Town's project of dune work. You likely also know that the property owner of 33 Malta Street has opposed this project, at least in part, because it will result in the removal of the patio in the street/dune. They have acknowledged removing sand from the patio in their attorney's April 7, 2023 letter to the Town's outside counsel representing the Town in Land Court litigation about the ownership of Beach Avenue. It is well known that the Town's long-standing position is that, separate from any beach ownership issues, the Town owns the land known as Beach Avenue, which includes portions of the dune system. The patio, regardless of how long it may be claimed to have been in existence, is not permitted by the Town to be on Town Land. My understanding is that the Conservation Commission has not permitted that patio, either. The Commission need not dwell this evening on the issue of who owns Beach Avenue, the patio, or the primary coastal dune. Conservation Commissions do not decide or deal with property ownership issues, and this is no exception. The land that makes up Beach Avenue and the dune within Beach Avenue is property owned by the Town. Any disputes of ownership will be addressed not by the Commission, but in another forum, and, in fact, is being addressed by the Land Court. I trust that this communication is helpful to you. Sincerely, James B Lampke" Commissioner: We should issue a violation and let it stand. Adam Brodsky: I represent Robert McEvoy Trustee of the 33 Malta St. 2015 Realty Trust. Mr. Lampke has omitted several key facts that the Commission should be aware of. I have no intention of speaking about the ownership issue. This concerns an alleged violation of the Wetlands Protection Act. In connection with the permitting to the town's dune restoration project, my client did not oppose that project. They opposed removal of their patio from the dune which they have had since the 1930's. We suggested that the dune restoration project be redesigned to include patio. The Town and the Conservation Commission rejected that position which resulted in my client having to enforce ownership of patio. In Land court, my clients filled a preliminary injunction to allow them to continue do what they have done for 100 years- which is to sweep off patio, put patio furniture on it, and use it. At the towns suggestion, we entered into a standstill agreement that gave my client the legal right to sweep sand off the patio and that would not constitute an alteration. This spring my client swept the patio in conformance to the standstill agreement and put the furniture up. We received a letter from outside counsel accusing my client of breaching the (standstill) agreement by sweeping more sand that was referenced in the standstill agreement. My client denies that they did more than what was directed in the written standstill agreement. This is a matter for land court. This whole dispute is completely unnecessary. My client wants to maintain the patio from the 1930s. We have to go through this due to the Town's reluctance to change its project. My clients denied that they did anything other than what they were permitted to do under the standstill agreement. If there is a violation of the standstill agreement, that is an issue for the land court. We believe that the Town is not acting in good faith. My client is prepared to testify in land court. The sweeping of sand is not an alteration subject to regulation. I have had this issue in other towns, where clients have been accused of sweeping sand off decks and patios. I've had

Commissioner's alleged that is an alteration of a coastal dune and would be a violation. Sand migrates on to decks, roadways. Towns plow and push sand back onto the dunes without Order of Conditions. These are routine activities that don't constitute a violation of the Wetlands Protection Act. This is a battle to be addressed in land court. If the Commission issues an Enforcement Order it will be appealed in court. I would like to minimize conflict. This whole dispute can be avoided and resolved with a little flexibility by the Town. I don't know why we have to fight this to the death but that is apparently the case.

Commissioner: I can go with the idea of issuing an Enforcement Order. Does the town have anything to gain by issuing an Enforcement Order now? I was unaware of the standstill agreement. Commissioner: An EO may complicate the situation. CK: To be transparent, I'm working on a project to restore the coastal dune in this area. I'm going to defer to the Commission to decide what action is needed for these non-permitted activities. Putting aside the standstill agreement and the ownership issue, the question is: Is this an activity that requires a permit and is this activity affecting the public's interest in this resource? Photos are shown before and after the patio was cleaned. CK: The dune is migrating and functioning as a dune. I had an issue when the standstill agreement was first discussed between the attorneys and the Town. I didn't initially agree with the fact that attorneys could craft an agreement that potentially violates the Wetlands Protection Act. The standstill agreement states clearly that no more than 2 inches of sand be swept off. This value was selected as it is possibly at a *di minimus* level and may fall below the threshold for the Commission's consideration. The owner's activity appears to exceed that (threshold). I believe more material than 2 inches was removed and that it was shoveled off, not swept. Also, any proposed standstill agreement concerning any activity in WPA resource areas should engage the Commission.

Commissioner: We only have a couple of choices, issue an EO or put it off for 2 weeks. We can decide if the standstill agreement is under our purview. We can better consider what is before us. Another Commissioner: I'm not sure I agree. There is a cut out of an existing dune, regardless of the length of time it's been there. I think that it is critical that we restore the dune and prevent any other damage to it.

Commissioner: I agree with the previous Commissioner's position of the lack of compliance to the Act. The work to get the dune restored won't happen until the land court issue is resolved. It would be a good idea to look at the standstill order. Brodsky: I am surprised that you haven't seen the standstill agreement. Unless I am mistaken, when this patio was installed there wasn't a coastal dune. The dune has been nurtured by my clients. My clients testified of their efforts to do all of the plantings. They believe that the dune provides an important function and I believe that in this area you actually have a functioning dune. This patio isn't cut out or into a dune. It was built before the dune was created. In this area, there is a functioning dune now; although the patio was there before the dune. I can provide photos from the 30's without a dune. My clients planted all the vegetation on the dune form. They did not use a shovel to remove sand. They used a broom and they did not sweep more than 2 inches as agreed by the parties in the land court agreement. I think that this should be resolved in the land court. I agree that the town can't go forward with its dune project. I know that there was some question about the funding. If and when the funding for the project was available; it cannot go forward for the foreseeable future, it was the point of the standstill agreement was to preserve the status quo of the coastal dune. Commissioner: The Commission was aware of the standstill agreement. Commissioner: Does anyone want to move on this? Another Commissioner: I would like to have the photos from the 30's made available.

4. Minutes

- a. Approval of Minutes – March 14, 2023 motion to approve minutes as amended by LS, 2nd SC. Roll call: TB-aye, DD-aye, LS-aye, PP-aye, SC-aye.
- b. Approval of Minutes March 28, 2020 motion to approve minutes as amended by LS, 2nd by DD. Roll call: DD-aye, LS-aye, PP-aye, SC-aye, TB-aye

5. Old/New Business

Commissioner: Driveways are becoming the new fence issue. We shouldn't be redesigning driveways. Without written regulations or by laws, we may want to continue the hearing to the building department or zoning if we don't have a written bylaw.

7:53 PM

6. Adjourn

Motion by LS 2nd by DD. Roll call LS-aye, DD-aye, TB-aye, SC-aye, PP-aye 7:53pm