

MINUTES January 21, 2009

The Selectmen's Meeting Room 549 Main Street

7:00 PM Hearings & Continued Hearings

**Present:** Chairman Paul Chamberlin, Vice Chair Jay Putnam, Carol Scott, Corinne Johnson, John Geiger, Barbara Waters, Billie Bates, Associate Members Keith Hutchings, DeeDee Holt and Peter Donovan, Conservation Agent Kristin Andres and Secretary Mary Fougere. The full Commission and Associates were in attendance.

**150 Stage Island Road, DMD Properties LLC, SE 10-2167:** The hearing was re-opened for a request to Amend Existing Order under SE 10-2167 to include the removal of the existing building via barge and to flush cut existing pilings below existing grade at 150 Stage Island Road. David Doherty of E Melson Webster's office represented the applicant. The Commission had requested the following at the previous hearing:

- ♣ Work Protocol- Robert Cummings of EMS Services submitted a Work Protocol, dated January 14, 2009. Mr. Doherty noted that the 50-ft by 180-ft barge will enter the shoreline bow first-the smaller dimension will be parallel to the shoreline
- ♣ Comment from the Harbormaster – Stuart Smith, Harbormaster, supplied a handout showing the location of the adjacent moorings in Stage Harbor. He stated that the flat-bottom barge was similar in size to the county dredge "Currituck" and that he felt confident that the work could proceed as proposed without damage to the mooring field. He would remind the crew of the barge that the pilings from the old railway were cut off, not removed, but this should not affect the work. Mr. Smith stated he will be present when the building is moved.

**It was moved, seconded and unanimously voted to approve the amendment request.**

**94 (Lot 7A) Uncle Albert's Drive, John Schumacher, SE 10-2396:** The hearing was re-opened for a request to amend existing Order under SE 10-2396 to include proposed revisions to the footprint of the proposed dwelling and proposed addition of on-going maintenance mowing to meadow areas and pathway to Oyster Pond at 94 Uncle Albert's Drive. David Clark/ Clark Engineering LLC represented the applicant. He stated that the site plan has been revised to show the proposed mowing area that is reflected on the landscape plan by Hawk Design. The amount of permanent disturbance in the outer AURA from the BVW has been reduced from what was previously approved. Although the dwelling is larger, the old driveway will be re-vegetated and restored with native plantings.

Discussion ensued regarding the landscape plan; the Commissioners expressed that the plan was difficult to read. The Commission questioned whether the area (part of the old driveway) on the north- eastern side of the proposed dwelling would be part of a formalized planting plan. Mr. Clark stated that the landscape contractor would work with the Agent to select native plantings for that area. Commissioner Bates continued to question whether an 8-inch oak and two cedars had been removed from the No-Disturb Zone (NDZ) recently. The plan shows the location of the tree outside the limit of work, however there is no sign of it in the field. The Commission questioned whether the applicant would include additional trees in the plantings.

In a letter dated January 8, 2009, abutter John Richards expressed his dis-approval of the proposed amendment. Michael Princi, Esquire, representing abutter BFR Realty Group, expressed his clients' desire to deny the proposed increase. The abutters feel that the increase of the size of the dwelling and moving it back on the lot is not sufficiently mitigated by elimination of an old driveway in the outer AURA. He referenced a colorized site plan supplied by Mr. Richards and a calculation sheet showing percentages of disturbance in four different resource areas of the site. The Chair explained that the percentages of disturbance

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shown on that plan may be inaccurate due to the method of calculation, which included only a portion of the AURA within the limit of work.

The applicant agreed to pull the limit of work on the west side out of the NDZ. Drywells would be replaced with drip line trenches and to move the pool fence to the lawn edge around the pool.

**It was moved and seconded to approve the amendment request. Commissioners Waters, Bates and Geiger were opposed; Commissioners Scott, Johnson, Putnam and Chamberlin were in favor of the motion. The motion to approve was passed by a 4-3 vote.**

**52 Tisquantum Road, Frank/Roberta Schultz, SE 10-2521:** The hearing was opened for a Notice of Intent (NOI) for the proposed construction of a driveway and proposed removal of existing driveway at 52 Tisquantum Road. David Clark/Clark Engineering LLC represented the applicant and returned the abutter notification cards. In their efforts to re-finance, the applicants have been required by banking institutions to construct a legal access to their property where currently there is none. The existing access is located on the abutter's property; although the applicant is related to the abutter, the abutter is refusing to grant a legal easement over their property. This forces the applicants to construct a driveway through the panhandle portion of their lots to access the dwelling at 52 Tisquantum.

The lot is impacted by a substantial wetland and to the south. Senior biologist Don Schall of ENSR found vernal pool species in November 2008. The wetland is likely a vernal pool and is presumed to be in the Chatham Wetlands Protection Regulations. Under the local regulations, the NDZ to a vernal pool is 100-ft. There is another substantial BVW to the west of the dwelling which has an outlet to Stage Harbor. The proposed work area is not within the 100-ft AURA to this BVW. The proposed driveway is located almost completely in the NDZ to the vernal pool; most of the work is within the 50-100- AURA to the vernal pool.

Mr. Clark stated that the proposed driveway is situated as far to the north on the lot as possible. Due to the steepness of the re-contouring, the applicant would like to pave the area; however the applicant is considering alternative materials for the surface. Drainage structures are shown on the plan; new utilities will be installed since the current services are under the existing driveway. Those lines will be cut and capped.

The Commission had concerns regarding the potential negative impact through changes in hydrology by paving and directing stormwater away from the vernal pool.

In a letter dated January 20, 2009, John Idman, detailed the Schultz need to construct the driveway.

The Commission discussed the importance of an Alternatives Analysis that reflected the following considerations:

- ♣ Location of the driveway as far from the wetland as possible, with possible grading construction on the abutting property with a retaining wall
- ♣ Directing storm waters to the foot of the road versus a pervious surface
- ♣ Mitigation for the removal of trees and the permanent disturbance in the NDZ. It was suggested that the west side of the property could benefit from understory vegetation
- ♣ Relocation of limit of work line
- ♣ Consideration of a shared driveway along the property line

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The hearing was continued to March 4, 2009 for receipt of the following:

- ♣ Rebuttal to the Idman letter
- ♣ Alternatives analysis
- ♣ Mitigation proposal/plan

**175 Balfour Lane, Norman Stein, SE 10-2468**: The hearing was re-opened for an NOI for the proposed demolition of existing dwelling and proposed replacement of a single family dwelling within the same footprint and proposed associated site work at 175 Balfour Lane. Michael Ford, Esquire represented the applicant. He explained that the original project before the Commission involved the raising and replacement of the existing dwelling on the same footprint. The culvert was to remain. After a hearing with the Zoning Board of Appeals (ZBA), several members felt that the ½ story was undesirable and the dormer facing White Pond was detrimental to the neighborhood. Further, the ZBA would like to have the applicant consider expansion of the footprint of the dwelling to keep the structure as a single story.

Mr. Ford stated that the applicant was looking for some direction from the Commission during the hearing process. There is a shed on the property and it was suggested that the applicant could utilize the footprint of the shed for expansion. The applicant felt this option would require an additional shed elsewhere on the property as there is little storage in the existing structure. The Commissioners suggested having the dormer face the Black Pond and possibly expanding over the existing deck area in lieu of footprint expansion.

Except for a small portion of upland, the entire site is within the 50-ft NDZ of the Adjacent Upland Resource Areas to the bordering vegetated wetland and two ponds. The Commission was reluctant to encourage expansion of the footprint on such an environmentally sensitive lot.

**Mr. Ford noted that the applicant has filed with the Historic Commission; the Conservation hearing was continued to March 18, 2009.**

**112 Stage Island Road, Dianne/Paul Doherty, Jr, SE 10-2509**: The hearing was re-opened for an NOI for the proposed installation of swimming pool and landscaping at 112 Stage Island Road. Landscape Designer Phil Cheney represented the applicant. He had provided revised landscape plans prior to the hearing. The plans reflect the following:

- ♣ The pool and pool apron have been reduced in size
- ♣ Calculations showing the amount of square footage of disturbance in the resource areas are included on the plan
- ♣ Additional mitigation area has been shown on the plan to the north corner; Mr. Cheney stated that the applicant has given up additional lawn area as mitigation. The Chair reminded Mr. Cheney that the pool fence also sequesters a lot of area leaving it inaccessible to wildlife

The Commissioners expressed the following:

- ♣ The Commissioners have asked the applicant to reduce the hardscape, including the existing patio at previous hearings, to date the applicant has not responded
- ♣ There is increased mitigation planting proposed in areas where it doesn't seem appropriate; the Commissioners questioned the durability of the mitigation plantings given the potential for obstructing view and overall practicality of the plantings in the proposed location. It seemed unlikely that the proposed planting mitigation would be left to naturalize in the living areas. It was noted that prior mitigation plantings for an earlier project had not been done.

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- ♣ Possible re-location of the pool and pool deck & fence to remove it from the NDZ

The proposal must be reviewed by the Zoning Board of Appeals; to date the applicant has not filed an application. **The Conservation hearing was continued to April 1, 2009.**

**335 Old Queen Anne Road, Barbara/Stuart Holden-applicants, Barbara Holden-owner, SE 10-2520:** The hearing was re-opened for an NOI for the proposed removal of existing septic system and proposed installation of a new septic system at 335 Old Queen Anne Road. No one was present to represent the applicant. The project obtained approval from the Board of Health on Jan 12, 2009; **it was moved, seconded and voted to close the Conservation hearing.**

**64 Far End Lane, Deep End Property Inc-owner, c/o Christopher W Rogers, Grubb & Ellis Co, SE 10-2517:** The hearing was re-opened for an NOI for the proposed re-location of existing boathouse; proposed driveway improvements and proposed beach nourishment at 64 Far End Lane. David Lyttle of Ryder & Wilcox/William Riley, Esq. represented the applicants. Commissioner Corinne Johnson was recused from the hearing. Mr. Lyttle had provided revised plans dated January 11, 2009 and a Driveway Section showing the following:

- ♣ Astronomical high--tide documentation –photographs dated January 11, 2009 taken on days of observation
- ♣ New, proposed driveway grades

The boathouse, currently anchored to a slab, will be raised and moved to elevation 10.5 ft on twelve new pilings. This elevation will be three feet above the proposed, new driveway grade. The old slab will be removed and a new, seasonal ramp will be hinged so that it can be hitched to the boathouse when not in use. The Commission questioned whether the boathouse could be moved more easterly to get it further away from the salt marsh.

The driveway is the sole means of access to the dwelling. The applicant's would like to raise the driveway and parking area to 7.5 ft, which is .2/ft lower than the Linnell Lane project. In a handout, Mr. Lyttle has shown the details of the proposal. The existing driveway will be the toe of the slope. The new drive would be graded away from the marsh to create a slight slope. A siltation fence will be installed as a visual barrier during the construction phase. After looking at the wrack distribution on the site, The Chair suggested possibly moving the fill line to the east closer to the SAS where parking area is currently located. Tapering the grade from a more easterly point would eliminate a whole section of fill near the salt marsh, thus allowing the salt marsh to migrate landward, in compliance with Flood Plain regulations.

The existing fiber rolls at the end of the revetment have failed and will be removed. The applicant would like the ability to re-nourish the beach once the fiber rolls are removed.

**The applicant has filed with ZBA for the relocation of the boathouse; the Conservation hearing was continued to February 18, 2009.**

**Lot 1A Mill Hill Road, Christopher Jepsen, SE 10-2518:** The hearing was re-opened for an NOI for the proposed construction of single family dwelling at Lot 1A Mill Hill Road. David Clark-Clark Engineering LLC represented the applicant and returned the abutter notification cards. He noted that the project had been staked for viewing. The proposal is a re-application for construction of a three bedroom dwelling; the Title 5 septic system is already in the ground. The existing permit for the project has expired. The proposal before the Commission also includes the construction, in the future, of a barn/workshop with an apartment above. A portion of the new dwelling will be in the outer AURA to Duane's Pond, all of the future

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addition is in the outer AURA to the pond. The Commission felt that the delineation of the Inland bank and the resulting 50-ft and 100-ft setbacks to the bank were accurately depicted on the plan. In the field, the bank delineation was clear.

From the audience, Nalinee Torres and father Lance Murphy, stated that her family had a right of way over the Jepsen property on the western side and had documentation proving their claim. Although the right of way is shown on the Clark plan, it appears that the new driveway and house are proposed over the existing right of way area. They are willing to discuss the issue but had not been approached by the applicants. Mr. Clark noted that the applicant intends to move the right of way closer to the north side of the property but will not eliminate it.

The hearing was continued to February 18, 2009 for receipt of the following information:

- ♣ Calculations of the sq footage and percentage of disturbance in the resource areas
- ♣ Re-vegetation plan that will minimize lawn and adequately fill the outer AURA to the pond with native species
- ♣ Elimination of cul-tec drainage structures
- ♣ Resolution of the abutters right-of-way claim

**14 Periwinkle Lane, Stello Construction-applicant, William/Denise McDonough-owners, SE 10-**

**2511**: The hearing was re-opened for an NOI for the proposed trimming and topping of vegetation to re-establish view at 14 Periwinkle Lane. David Clark/Clark Engineering LLC represented the applicant. Several Commissioners met on site with the contractor and the representative to determine the extent of view pruning. Revised photographs were submitted showing the results of the discussions.

The applicant would also like to do some maintenance trimming; the Commission agreed that maintenance pruning could be completed after a consultation with the Agent.

**It was moved, seconded and voted to close the hearing; Commissioner Bates abstained from the vote.**

**Pcl R5 Uncle Albert's Drive, Byrne-Ford Associates, II, Simone Byrne & Preston Ford, SE 10-**

**2514**: The hearing was re-opened for an NOI for the proposed continuation of construction on existing dwelling foundation & deck and proposed construction of a guesthouse and Title 5 subsurface sewage disposal system at Pcl R5 Uncle Albert's Drive. David Clark /Clark Engineering LLC represented the applicant; he had provided revised site plans dated December 10, 2008. A landscape plan by Rich Carey, dated December 10, 2008 had been submitted prior to the hearing.

Mr. Clark reminded the Commission that this application had been previously approved but the permit expired. This application has been filed under the new regulations reflecting the NDZ and the inner and outer AURA's to the BVW, delineated by Don Schall of ENSR. The guest house has been moved as close to the drainage easement as possible. The landscape plan should be revised to show the following:

- ♣ Less lawn area in the outer 50-ft between the house and the guesthouse; native plant material should be densely planted and made contiguous with the existing vegetation
- ♣ The NDZ comes right up to the back corner of the house; additional plantings are necessary along the hay bale line, only allowing a pathway around the perimeter of the dwelling

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From the audience, Jim Gable asked that view pruning and maintenance of view windows, as shown on the landscape plan, is included in the proposal with direction from the Conservation Agent. Mr. Gable stated that the pruning had been completed almost two years on this lot and the growth has not obstructed the view, to date.

**The hearing was continued to February 18, 2009 for a revised landscape plan.**

**Lot 106 Stage Island Road, DMD Properties, SE 10-:** The hearing was re-opened for an NOI for the proposed construction of a seasonal pier & walkway at Lot 106 Stage Island Road. The plan of record was prepared by Clark Engineering LLC and dated December 27, 2006 revised December 23, 2008. William Riley, Esquire and David Clark represented the applicants. The float at the end of the proposed pier has been re-oriented in order to meet depth of water at the north end. In response to questions from the Commissioners regarding the location of the proposed pier in the old launch way footprint, Mr. Riley stated that the applicant could not meet the depth of water at 80-linear feet required under the zoning bylaw. Additionally, he alleged that the Homeowners Association did not want the new pier and float in the launch way footprint.

In letters read into the record at the last hearing, the Shellfish Constable, South Coastal Harbor Plan Committee and the Shellfish Advisory Committee objected to this new proposal. Mr. Riley felt that access to 100% of the bottom area is not required 100% of the time. The Chair noted that the regulations address "access that is impeded" and the experts in town from the aforementioned committees have addressed this issue.

In a letter dated December 15, 2008, the Division of Marine Fisheries addressed several concerns. Mr. Clark stated that the comment letter had not been based on the revised plans; he would send a copy of the new plan and wait for additional comment.

The Commission noted that there were no spot elevations on the plan since the proposed float has been re-oriented, verifying 2.5 + feet at MLW. The applicant did not supply an eelgrass survey, however Mr. Clark observed that there was no eelgrass in the area when he completed the soundings for the previous plan; he had added a note on the plans to this effect. A copy of the 1994 Eelgrass Survey by MA DEP was submitted to the record.

The proposal will require a Special Permit from the ZBA; the applicant is scheduled on the ZBA agenda for February 26, 2009. **The Conservation hearing was continued to March 4, 2009.**

**123 Geo Ryder Road So, McGillvray/Spencer, SE 10-2164:** A Certificate of Compliance was issued for the completion of work at 123 George Ryder Road.

**324 Shore Road, Chatham Bars Inn, SE 10-2270:** The applicant has filed an Administrative Review for minor changes to the approved hard-scape/landscape plan for 324 Shore Road. The changes are slight and will result in less hard-scape than what was approved.

The Commission agreed that the work could proceed under an Administrative Review and that no additional filing was necessary.

**Ryder's Cove Boatyard, Alan Cohen:** Contractor Mark Welch has filed an Administrative Review application to trim the existing Poplar hedge, in the Flood Plain at the boatyard

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property. This work is periodically completed to keep the hedge growth away from the overhead utility wires. The debris would be trucked off-site.

The Commission agreed that the work could proceed under an Administrative Review; no additional filing would be necessary.

**43 Holway St, Habib:** The Zoning Board of Appeals had requested comment on the proposal for 43 Holway Street; the Commission did not change the content of their letter written June 2008 since there were no changes in the proposal before the Commission.

**Reminder:** There is a meeting scheduled for Monday, January 26, 2009 at 7:00 PM to review the Land Management plans for the Captain Harding lot in West Chatham and the Forest Beach Conservation Property in South Chatham.

The meeting is open to the public and has been advertised.

**Adjournment:** It was moved, seconded and voted to adjourn the meeting at 10:15 PM.

Respectfully submitted,  
Mary Fougere, Secretary