



CONSERVATION COMMISSION

PUBLIC MEETING

131 Pleasant Street
Nantucket, Massachusetts 02554
www.nantucket-ma.gov

Thursday, December 2, 2021 – 5:00 p.m.

This meeting was held via remote participation using ZOOM and YouTube.

Commissioners: Ashley Erisman (Chair), Ian Golding (Vice Chair), David LaFleur, Seth Engelbourg, Maureen Phillips, Mark Beale, and Linda Williams

Called to order at 5:00 p.m. by Ms. Erisman

Staff in attendance: Jeff Carlson, Natural Resources Director; Terry Norton, Town Minutes Taker

Attending Members: Erisman, Golding, Engelbourg, Phillips, Beale

Absent Members: LaFleur, Williams

Late Arrivals: None

Earlier Departure: None

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment – None

II. PUBLIC HEARING

A. Notice of Intent

1. Lower Pocomo Nominee Trust – 88 Pocomo Road (15-42) SE48-3432 (**Cont. to 12/16/21**)
2. Pocomo Point Realty Trust – 90 Pocomo Road (15-43) SE48-3438 (**Cont. to 12/16/21**)
3. Kane – 12 Pond Road (56-295) SE48-3473

Sitting Erisman, Golding, Engelbourg, Phillips, Beale

Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.

Representative Brian Madden, LEC Environmental
Joe Topham, Topham Design

Public None

Discussion (5:45) **Madden** – The connector to the proposed addition will be floating.

Topham – Without a foundation, any upland water would flow under the connector. The side-yard setback is a parameter we're trying to work within. The foundation is a crawl space. After living in the neighborhood 40 years, he's never seen any adverse impact of this house on the resource area. He'll go to Historic District Commission (HDC) to get this out of the 50' buffer. Expects to be able to come back in January.

Erisman – We recognize the constraints of the site; however, she still has issues with new construction within the 50' buffer. It would be great to get any new construction out of the 50' buffer.

Engelbourg – He shares the concerns of Ms. Erisman about the added structural footprint; you are further restricting the movement of water and compacting the soil. Appreciates the creative design.

Golding – The 50' line is set in stone creating an awkward situation in this case.

Beale – Agrees about going back to HDC for another design.

Madden – Asked to continue to January 27, 2022

Staff Meeting dates in January are the 6th and 27th.

Motion Continued to January 27, 2022

Roll-call Vote N/A

4. 8 Walsh, LLC – 8 Walsh Street (42.4.1-83) SE48-3474

Sitting Erisman, Golding, Engelbourg, Phillips, Beale

Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.

Representative Art Gasbarro, Nantucket Engineering & Survey

Public Charles Phillips 4 Swain Street

R.J. Turcotte, Nantucket Land Council

Discussion (5:12) **Gasbarro** – He revised the proposal to rebuild a small cottage atop the existing foundation. This is a low-elevation area, and he feels using the existing foundation has no negative impacts on the area.

C.Phillips – This is still a non-conforming setback in a no-build zone, and he is against furthering the encumbrance by adding a 2nd floor.

Golding – Asked if Mr. Phillips' concern on the setbacks is beyond our purview. It's being rebuilt within the existing footprint. He doesn't see how the structural changes would adversely impact the resource area.

Erisman – We have historically allowed an individual to rebuild in the same footprint; as far as our interests, it's hard to find an adverse impact.

	M. Phillips – The issues Mr. Phillips raises are ones that the HDC would address – the appropriateness of adding the 2 nd -floor.
	Turcotte – Asked if there had ever been a similar case in adding bedrooms above the existing roof line that was denied. The local regulations do have a definition of habitable space; though it's not relevant to the resource areas we are talking about. As long as it has standard conditions, there is no reason to deny this request.
Staff	Golding – This is a new structure, and it could be detrimental to land subject to coastal storm flowage. Zoning setbacks are outside our purview, but he believes Mr. Phillips was referring to our resource area setbacks. The discussion would be related to whether or not the change in the structure would negatively impact the resource area. What's tricky is we don't regulate use within the structure; we regulate whether or not it's a structure and where it is in relation to the resource area.
	They have to meet code requirements for building within the flood zone.
	Have everything needed to close.
Motion	Motion to Close. (made by: Beale) (seconded)
Roll-call Vote	Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye
	5. 11Woodbury Lane Realty Trust – 11 Woodbury Lane (41-550) SE48-3481
Sitting	Erisman, Golding, Engelbourg, Phillips, Beale
Documentation	Site and topographical plans, photos, requisite departmental reports, and correspondence.
Representative	Brian Madden, LEC Environmental
Public	None
Discussion (5:04)	Madden – Reviewed the wetlands boundary based upon soil conditions. The change puts all proposed structures outside the 50' buffer. There is a waiver for 2' separation from groundwater for the basement footings.
	Phillips – There was a discussion about whether or not this could be grandfathered; asked if the boundary change makes that discussion moot.
Staff	Beale – Confirmed Mr. Carlson witnessed the soil sampling.
	Reviewed what he and Mr. Madden did in the field to ascertain the wetland boundaries; there is a very clear break between the hydric soils and parent soils.
	We no longer require waivers for the structures being in the 50' setback; however, revegetation work still requires a long-term net-benefit waiver.
	The current basement is a full foundation; they are changing that to a crawl space.
	Have everything needed to close.
Motion	Motion to Close. (made by: Engelbourg) (seconded)
Roll-call Vote	Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye
	6. Land Bank – 1,3,5,7,9,11,13,15,15A Miacomet Road (67-49,345,346,679,680,681,682) SE48-3480 (Cont. to 12/16/21)
	7. Spencer – 3 Fulling Mill Road (27-27) SE48-3483 (Cont. to 12/16/21)
	8. NIR Retail, LLC – 4 Harbor Square (42.2.4-1) SE48-3486 (Cont. to 12/16/21)
	9. *ACK East Lincoln, LLC – 1 East Lincoln Avenue (42.4.1-12) SE48-3488
Sitting	Erisman, Golding, Engelbourg, Phillips, Beale
Documentation	Site and topographical plans, photos, requisite departmental reports, and correspondence.
Representative	Steven Hollister
Public	None
Discussion (5:28)	Hollister – This is to add a covered porch within an area of existing turf within LSCSF.
Staff	The plan of record shows air-conditioning units on the western side; those need to be elevated above the flood plain.
	Have everything needed to close.
Motion	Motion to Close. (made by: Golding) (seconded)
Roll-call Vote	Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye
	10. * 58 Walsh, LLC – 58 Walsh Street (29-97) SE48-3487
Sitting	Erisman, Golding, Engelbourg, Phillips, Beale
Documentation	Site and topographical plans, photos, requisite departmental reports, and correspondence.
Representative	Paul Santos, Nantucket Surveyors
Public	R.J. Turcotte, Nantucket Land Council
Discussion (5:30)	Santos – For a single-family dwelling within land subject to coastal storm flowage and the 100' buffer to an isolated vegetated wetland; the wetland exists on the property to the north. Work is outside the 50' buffer to the isolated vegetated wetlands. Seeking a waiver for the isolated vegetated wetlands. This is outside any mapped Natural Heritage Endangered Species Protection (NHESP) areas. Explained the foundation's construction; we can't have a full foundation in this area. The bottom of the footing will be less than 1' above high ground water. The foundation is the standard being used throughout Brant Point – footings on a stone base.
	Engelbourg – He's concerned that with sea-level rise, that will push ground water up; it's less than 1' now and by about 2050, the footing will be wet on a daily basis. We need to look at the engineering of foundations in areas like this. Confirmed the requested waiver is for no reasonable alternative/no adverse impact.
	Erisman – Agrees; an engineer might offer us suggestions on how to prepare the regulations for sea-level rise.
	Beale – Asked if the foundation will be a concrete slab or gravel (gravel based).

Staff **Turcotte** – Asked if there is information on how these types of foundations will perform if inundated.
 Motion Have everything needed to close.
 Roll-call Vote **Motion to Close.** (made by: Golding) (seconded)
 Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye

B. Amended Order of Conditions

1. Scannell – 119R Eel Point Road (33-17.1) SE48-3378
 Sitting Erisman, Golding, Phillips, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
 Representative Paul Santos, Nantucket Surveyors
 Public R.J. Turcotte, Nantucket Land Council
 Discussion (5:56) **Santos** – The focus of the last discussion was around the beach stairs; the plan is to eliminate the aluminum stairs and construct a 3'-wide stairway across the top of the coastal bank and dropping to the beach. The lawn area is outside the 50' buffer to the coastal bank and expands the previously approved about 25' toward the bank. Will add dimensions to the plan to be incorporated into the Order of Conditions. If the stairway is approvable without the platform bumpout, so be it; let's move forward without it. The size of this bank requires multiple connected pieces of aluminum stairs.
Golding – He couldn't find where it states the width of the stairs.
Phillips – As she recalls, the area at the top of the bank was initially wider and longer (yes).
Beale – Most stairs we approve are down a bank or bluff; in this case there's stairs up, a walkway across and then down to the beach. He doesn't see the need for the walkway across the top of the bluff; that's more structure leading up to and on the bank.
Erisman – Doesn't see why the platform needs to widen at the top of the bank (did that for storage). She's concerned using that area for storage will impede what's going on with that dynamic landform, which is trying to move.
Turcotte – The owner is guaranteed access to the water, but the commission ensures that access is the minimum necessary. Concerned about detrimental impact with excessive structure.
Erisman – Most commissioners are concerned about the over-top platform.
Phillips – Thinks it would be safer to have the wood walkway but remove the bumpout.
Golding – The old-school approach is not what this structure is about. Asked why removable stairs aren't acceptable, what will happen to windblown sand, and why this doesn't qualify as a dune. Asked if there will be a rail on the walkway portion (unknown at this time); suggested conditioning against a handrail.
Erisman – It's not a dune because it doesn't contact the beach resource area.
 Staff In the Permit Overview we reference the plan of record excluding the platform bumpout; and Condition 25 stating the stairs would not exceed 3' wide and Condition 26 prohibiting a handrail on the walkway.
 Motion **Motion to Approve the Amended Order.** (made by: Phillips) (seconded)
 Roll-call Vote Carried 4-0//Beale, Erisman, Golding, and Phillips-aye; Engelbourg recused

III. PUBLIC MEETING

C. Minor Modifications

1. Wallace ACK, LLC – 45 Hulbert Avenue (29-16) SE48-3331
 Sitting Erisman, Golding, Engelbourg, Phillips, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
 Representative Jeff Blackwell, Blackwell & Associates
 Discussion (6:17) **Blackwell** – This is the planting details worked out since the Order of Conditions; reviewed the plants to be used. Also, we're proposing a reduction in the parking area and installation of a pressure treated walkway at grade.
Engelbourg – The planting schedule for the 25' buffer is great; however, he has concerns about non-native species in the 50' buffer. Recommends only native plants within the 50' buffer.
Golding – Looking at the proposed dewatering area and pump, asked why it isn't going out near Hulbert Avenue and if it is temporary or permanent and what will stop chemicals.
Blackwell – These have been previously approved under an Amended Order; the dewatering area is temporary and connected with the installation of an underground tank adjacent to the parking area. The dewatering shouldn't be more than 2 days with only groundwater being pumped out of the basement; there should be no chemicals.
Erisman – Agrees about the non-native, ornamental plants being out of the 50' buffer.
 Staff Recommend issuing the Minor Modification.
 Motion **Motion to Issue the Minor Modification amended to exclude ornamentals in the 50' buffer.** (made by: Beale) (seconded)
 Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye
 2. Formela – 8 Old Westmoor Farm Road (41-822) SE48-3353
 Sitting Erisman, Golding, Engelbourg, Phillips, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
 Representative Paul Santos, Nantucket Surveyors
 Discussion (6:27) **Santos** – This is to show the new location of the garage outside the no-build areas. There is a vernal pool located off site designated through NHESP. No waivers are necessary. He would oversee the work.

Phillips – Asked if it is part of our conditions to ensure those doing the work will be aware of the tight quarters so nothing slips into forbidden territory.
 Staff Recommend issuing.
 Motion **Motion to Issue the Minor Modification.** (made by: Golding) (seconded)
 Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye
 3. Michalowski – 34 Dukes Road (56-187) SE48-3196
 Sitting Erisman, Golding, Engelbourg, Phillips, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
 Representative Jeff Blackwell, Blackwell & Associates
 Discussion (6:32) **Blackwell** – This is to extend the previously approved retaining walls about 40'; it's still outside the 50' buffer.
 Staff Recommend issue.
 Motion **Motion to Issue the Minor Modification.** (made by: Beale) (seconded)
 Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye

D. Certificates of Compliance

1. Cunningham – 105 Eel Point Road (32-5) SE48-0257
 Sitting Erisman, Golding, Phillips, Beale
 Staff Constructed in compliance.
 Discussion (6:34) None
 Motion **Motion to Issue.** (made by: Phillips) (seconded)
 Roll-call Vote Carried 4-0//Beale, Erisman, Golding, and Phillips-aye; Engelbourg recused
 2. Cunningham – 103 Eel Point Road (32-6) SE48-2424
 Sitting Erisman, Golding, Phillips, Beale
 Staff Constructed in compliance.
 Discussion (6:35) None
 Motion **Motion to Issue.** (made by: Golding) (seconded)
 Roll-call Vote Carried 4-0//Beale, Erisman, Golding, and Phillips-aye; Engelbourg recused
 3. Great State Properties, LLC – 92 Washington Street Ext. (42.2.3-22) SE48-2870
 Sitting Erisman, Golding, Engelbourg, Phillips, Beale
 Staff Constructed in compliance.
 Discussion (6:36) None
 Motion **Motion to Issue.** (made by: Engelbourg) (seconded)
 Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye
 4. Folberth Family Nominee Trust – 58 Walsh Street (29-97) SE48-2212
 Sitting Erisman, Golding, Engelbourg, Phillips, Beale
 Staff Work wasn't done; asking to invalidate this.
 Discussion (6:37) None
 Motion **Motion to Invalidate SE48-2212.** (made by: Phillips) (seconded)
 Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye
 5. Delaney – 16 Plover Lane (12-52) SE48-3025
 Sitting Erisman, Golding, Engelbourg, Phillips, Beale
 Staff Work completed in compliance.
 Discussion (6:38) None
 Motion **Motion to Issue.** (made by: Golding) (seconded)
 Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye
 6. Green – 19 Front Street (73.1.3-95) SE48-1751
 Sitting Erisman, Golding, Engelbourg, Phillips, Beale
 Staff Work completed in compliance.
 Discussion (6:39) None
 Motion **Motion to Issue.** (made by: Beale) (seconded)
 Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye

E. Orders of Condition

1. ACK Sandy, LLC – 6 Sandy Drive (29-76) SE48-3479
 Sitting Erisman, Golding, Engelbourg, Phillips, Beale
 Documentation Draft Order of Conditions
 Staff Closed this last time; added the new fill condition and 2 conditions for yearly reports and conditioned it for permanent markers delineating the lawn.
 Discussion (6:40) None
 Motion **Motion to Issue as drafted.** (made by: Phillips) (seconded)
 Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye

2. 8 Walsh, LLC – 8 Walsh Street (42.4.1-83) SE48-3474
 - Sitting Erisman, Golding, Engelbourg, Phillips, Beale
 - Documentation None
 - Staff Didn't draft this asked for input.
 - Discussion (6:41) **Erisman** – She's okay with a positive order with lighting conditions.
 - Motion Continued
 - Roll-call Vote N/A
3. 11 Woodbury Lane Realty Trust – 11 Woodbury Lane (41-550) SE48-3481
 - Sitting Erisman, Golding, Engelbourg, Phillips, Beale
 - Documentation Draft Order of Conditions
 - Staff Included the condition for fill and yearly report on area in back; can take out the section in the waiver about water-dependent structures.
 - Discussion (6:42) None
 - Motion **Motion to Approve as amended.** (made by: Golding) (seconded)
 - Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye
4. ACK East Lincoln, LLC – 1 East Lincoln Ave. (42.4.1-12) SE48-3488
 - Sitting Erisman, Golding, Engelbourg, Phillips, Beale
 - Documentation Draft Order of Conditions
 - Staff He doesn't have any conditions for this.
 - Discussion (6:45) **Phillips** – Asked if a lighting condition should be added.
Erisman – This is within land subject to coastal storm flowage, so lighting isn't really applicable.
 - Motion **Motion to Issue as drafted.** (made by: Golding) (seconded)
 - Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye
5. 58 Walsh, LLC – 58 Walsh Street (29-97) SE48-3487
 - Sitting Erisman, Golding, Engelbourg, Phillips, Beale
 - Documentation Draft Order of Conditions
 - Staff Added Condition 21 will direct exterior lighting away from the isolated vegetated wetlands. Changed Condition 19 to reference "any fill" and addresses it's coming to the site. The site is small so there might not be space to store soil but he can urge best efforts be made to keep all soil on site. He can change Condition 20 to state no fill is allowed.
 - Discussion (6:47) **Phillips** – Asked for a lighting condition.
Engelbourg – The draft is confusion regarding fill. Asked that all excavated soil remain on site. Given this conversation, in the future we should change "fill" to "soil conditions."
Beale – To him, Condition 19 and Condition 20 are contradictory.
Erisman – We should add what fill is to our regulation upgrade.
 - Motion **Motion to Issue as amended.** (made by: Phillips) (seconded)
 - Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye

F. Other Business

1. Approval of Minutes 11/18/2021:
 - Motion **Motion to Approve as drafted.** (made by: Phillips) (seconded)
 - Roll-call Vote Carried 4-0//Beale, Engelbourg, Erisman, and Phillips-aye; Golding abstain
2. Monitoring Reports - None
3. Reports:
 - a. CRAC, Golding
 - b. CPC, Beale
 - c. NP&EDC, Phillips
4. Commissioners Comment
 - a. Golding – Asked what can be done about getting to the update of the regulations.
 Erisman – She's been talking with Mr. Carlson to get this onto the 2022 meeting schedule.
 Carlson – He has meeting dates put together for off-days; we can have meetings on Saturday, so he's picked out a few through May.
 Phillips – She hopes we will be able to meet in person; that personal back-and-forth is helpful.
 - b. Erisman – Asked what happened with the Pocomo project where they drove the machines onto the beach.
 Carlson – We were in contact with them and resolved the situation; told them to come to the December 16th meeting to discuss that with us.
 - c. Phillips – At the last meeting, Mr. Turcotte brought up materials a member of the public brought him regarding SBPF.
 Carlson – We've inspected the material and collected the sediment reports, and we have a quality assurance run through by the University of Massachusetts Lab. He'll send that to commissioners tomorrow. We haven't found non-compliant soil. They will also send a report on how samples were collected and done.
 Turcotte – He doesn't think the sand is 11% fines. He will get the information to the commissioners.
 - d. Golding – Regarding the Executive Session, we didn't get separate IDs for that.
 Carlson – He's carrying that on the agenda in the event we get anything from Counsel regarding the removal order. We haven't been served yet. They have to serve us by December 20th.

5. Administrator/Staff Reports

- a. Ms. Dodd's position was posted for availability today; hope to have someone picked to start after the Christmas break.
- b. Morgan Sayles will be at the next beginning of the next meeting.

G. Adjournment

Motion **Motion to Adjourn at 7:15 p.m.** (made by: Engelbourg) (seconded)

Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye

Submitted by:

Terry L. Norton