



CONSERVATION COMMISSION MINUTES

131 Pleasant Street
Nantucket, Massachusetts 02554
www.nantucket-ma.gov
Thursday, June 27th 2024 – 5:00 p.m.

This meeting was held via hybrid participation using ZOOM, YouTube, and in person in the community room, 4 Fairgrounds Rd.
<https://youtube.com/live/AItnhUURFCw>

Commissioners: Ian Golding (Chair), Seth Engelbourg (Vice Chair), Mark Beale, Tim Braine, Mike Misurelli, Joe Plandowski, and Linda Williams

Called to order at 5:00 p.m. by Chair Golding

Staff in attendance: Jeff Carlson, Natural Resources Director, Will Dell’Erba, Conservation Agen

Attending Members: Golding, Engelbourg, Beale, Braine, Misurelli, Williams, and Plandowski

Absent Members:

Members Left Early: -

I. PUBLIC HEARING - Discussion of Revision and Potential Adoption of the Town of Nantucket Wetland Protection Regulations (Chapter 390)

Representative	Jeff Carlson – Presented Changes – Gave summary of updated regulations ○ Updated Fees ○ Resiliency added as a protected interest ○ Definitions-Minimum wetland size and structure were revised ○ Procedures-Local conservation plan, minor activities, and new waiver criteria were revised/added ○ New Fees ○ Land under the ocean – updated description ○ Coastal beach-updated and expanded performance standards #2&7 ○ Coastal Bank-same as beach ○ Salt marsh-buffer zone ○ Salt pond-updated #2 ○ Land Subject to Coastal Storm Flowage-New #5 and #5 ○ Inland banks and beaches-updated #3 ○ Bordering vegetated wetland-Updated #1, new #2 ○ Inland water bodies-New #2 ○ Great Pond Area-New ○ Appendix C – Swimming Pool Guidelines ○ Appendix D-Viewshed Managment
Discussion	Williams – Board of Health sent a document – Waivers for lots not able to meet conformance standards, such as preexisting vacant lots – Questioned the gains of the extra 25ft on Nantucket – Would be more comfortable with adoption of waivers – Concerned with expansion from 200 ft

	Engelbourg – Explained the 200 ft buffer to the great pond area is meant to be more of an education opportunity – If applied, must put minor activity permit in place and discuss with staff to craft a project to create natural habitat linkage – Opportunity to encourage wildlife corridors Misurelli – Concerned about timing of implementation – Wants to consider extended implementation for one full year Beale – Questions if the challenge lot issue, if the commission has waiver abilities Carlson – Explains the only area subjected to buffer zone enhancement is new structures – Explains if it's currently an undeveloped lot, you are still able to build structure to 50ft, but between 25 and 50, you will need to provide that buffer zone compensation – Explains the different waivers already available Williams – Questioned if the performance standards would be changed Carlson – Explains the 25 ft buffer zone is unchanged and the new buffer zone of 25-50-75 would be altered, explains enhancement of 50-25 Williams – Questions if one does not have ability to enhance, would there be a provision to enhancement on some other property Carlson – Explains this would most likely be a waiver rather than an implementation on a separate property – Potential other net benefits Golding – Explains the commission is not trying to keep people from building on their lots rather they are trying to increase protection for the resources the conservation commission protects – Expands that there is always the waiver process Engelbourg – Explains that offsite mitigation is not allowed through the Wetlands Protection Act
Public Comment/discussion	Steven Cohen – Questioned if the dry laid patios provided a benefit, requests this language gets deleted – Believed there was no benefit from going from 50 to 75 feet, and this change created a burden rather than an enhancement – Questioned if it would be allowed to restrict an area rather than revegetate, or if both would be allowed Carlson – Explained there will already be a preference to existing natural area rather than restoring an area – Minimal disturbance is the preferred option Engelbourg – Agrees that the restriction on an area not developed would fall into that mitigation requirement

	– Committee would be wise to require applicants to delineate these plans – Explains the justification for the dry laid stone patio, although they are permeable in theory, most have limited spacing between pavers and there tends to be a compaction overtime of patio which significantly reduces permeability – Explains the whole point is to allow for better infiltration or recharge
	Cohen
	– Requests instead of a ban of a structure, the allow permeability through drainage or spacing
	Amy Keohane
	– Grateful for the commission and advisory committee – Urges commission to adopt changes without delay
	Gary Bellar
	– Urges the finalization and improvements – The non-taxpayers committee is in favor as well, as mother nature does not discriminant against taxpayers and on-taxpayers – Upset with the ill-considered developments on brant point – Urges to update he plans
	Peter Brace – chairman of coastal resiliency advisory committee
	– Reads letter from committee – Unanimous support for the proposed amendment bylaw with regards to buffer zone – Believes the expanse recognizes changes to areas impacted by climate change – Believes that because Nantucket is at a critical point in seal level rise, the changes to buffer zone is warranted and warns that the changes may require a shift inland sooner than anticipated
	Ann Duez
	– Expressed questions from select board if the commission has done studies to see if other communities to see if this level of restriction has been undertaken – Stated Carlson did not answer the question directly – Wonders why we would care what other communities do if it is as restrictive or less restrictive – States this proposal is for Nantucket, and what is best for our fragile environment – Urges commission to accept the regulation updates – Thanks commission and Ian Golding
	Burton Balkind – Nantucket Coastal Conservancy
	– Appreciates Ian Goldings work – Expresses support for regulation updates as well as the implementation of the 1st of the year
	Andy Lowell
	– Expresses concern with the 50–75-foot zone, as his property has a pond dead center – Questions the 200ft buffer zone
	Golding
	– Explains the 200ft buffer zone is for minor work around long ponds, nothing to do with buildings. – No desire on part of any commissioners to remove property rights, only desire is to protect wetlands – Explains a waiver may cover situation if building is impossible
	Lowell
	– Expresses that for the landowner it can be seen s restricted property rights

	– Expresses that he is thrilled with the jurisdiction of 200 ft. – Explains his potential is decreased without mitigated circumstances closer – Proceeds to discuss 200ft buffer even though he has been told it does not pertain to him – Expresses desire for more protection from debris on his property, and asks for a grace period of 10 years
	Golding
	– Expresses this is not the reason for these updates
	Lowell
	– Understands the mitigation but is upset that this was not a thing historically
	Golding
	– Explains this is the reason for waivers and the commissions job is to protect the resource
	Lowell
	– Asks if it is common for the Commission to issue waivers
	Golding
	– States they do issue waivers
	Lowell
	– States that waivers do not seem like something to gamble on “in Vegas”
	Will Dell’Erba
	– Expresses that as staff, they have known the regulations are changing – Explains that the waivers apply to the buffer zones well – Believes things will look slightly different
	Engelbourg
	– Understands the concern about every project being a waiver project, and explains that although the regs have not been updated in over ten years, they have already committed to doing significantly more updates on a frequent bases to respond to changes – If there are regs that do not make sense/do not work, this will be realized and changed – Expresses they do issue waivers on a regular basis – Expresses point of update is to enhance buffer zones while retaining flexibility for a better protect of wetland resource areas
	Williams
	– States Cohen’s desire to change word for patio to permeable as opposed to not allowing it would be desirable – Upset about a publics comment that she is opposed to the buffer zone, she is concerned about it rather than opposed and is now less concerned as they continue to talk
	Henry Muller
	– In favor of the regulations – Expresses reasons he is in favor of the new regulations – Is concerned about the robustness of the waiver process, but urges the commission to adopt changes with the January 1st deadline
	Engelbourg
	– Expressed that the commission did have a discussion for the permeable restriction on dry-stone patio, and determined that it would create a lot of confusion and burden, and it was not theoretically feasible – Expresses desire for regulation pass and if it is an issue, it can be revised later

	Katie Barnicle-Wetland Scientist – Questioned definition of isolated wetlands specifically minimum of 500 square feet and definition mentions but also adds performance area for wetlands under 500 sqft – Could not find terms for isolated vegetative wetland in bylaws or regulations, and expresses they are not defined and wishes for clarification – Suggests adding a sentence that defines a vegetated wetland – Concerned with using the Mass flood risk model and wishes to change wording from shall to may – No objection for increasing buffer zones – “Outstanding resource area” was not defined and recommends it to be defined Dell’Erba – The MCFRM has been updated with one reference to it, but it is now worded as “lasted available” Carlson – Explains for the minimum wetland size, there is no minimum size. If one meets the criteria for a wetland, it is within jurisdiction – Town council was happy with where regulations and definitions sit Williams – Agrees that if you’re using terms they need to be defined Carlson – States it is solely in the definition section to define it Dan Malloy – Stated no one is paying him to be here – Questions if the commission would consider a requirement if pervious patios would be able to be drained – Questions if a patio could be allowed but to add a requirement for drainage – Questions what science is available that a pool could get a waiver, but a house can't for the 2ft ground water separation – Believes the 2 ft separation rule needs review – Questions if a review or study has been conducted on Nantucket itself for the buffer zone expansion Carlson – Gives history of 2ft separation of groundwater – Gives information on ground water for building and intrusion and expresses there is not a lot of literature available which is why they deal with it as an existing performance standard Williams – Expresses that the phrasing of the 2ft ground separation should be changed Motion to withhold the 2ft ground water separation and approve the rest of the regulations (Made by Williams) (Seconded by Misurelli) Engelbourg – Believes Williams comments have already been considered with the rewriting of the performance standards – Reads current wording – States that this allows for the flexibility being discussed – Does not see how Williams proposed changes are burdensome – Agrees with Carlson about pools, specifically for chemically treated water to go into ground water
--	---

	– Points out that sea level rise is causing ground level water to be pushed to the surface – Requests wording to see it remain in regulations Williams – Clarifies it is the 2ft “arbitrary thing that was thrown out” “that did not have any basis”. – More concentration on the way it was done rather than giving the flexibility to the staff Carlson – Points out it is a public hearing so they would need to close to make final vote – Motion could be made to the single performance standard before closing the entire hearing Gary Beller – Urges commission to not changes rules now Williams withdraws motion, Misurelli withdraws second Matin McKerrow – Expresses that without a harbor, the island has nothing and protecting the water resources are very important – Urges the commission to pass the regulations Paul Santos – Nantucket Surveyors – Questions if the commission would be comfortable on a preexisting lot that condition A would be able to be waived, with the current waivers Carlson – States that when placing these rules, they looked at previous projects for a short answer of yes, the waivers that currently exist will cover what Santos is concerned about with a slight increase in the 4th waiver with the resource area outside of the applicants control – Feels very comfortable with proper justification being able to apply those Santos – Questions if there is a consensus from the commission on when regulations would be implemented
Motion	Motion to close public hearing. (made by: Beale) (Seconded by: Braine)
Vote	Carry: 7:0 Beale, Briane, Engelbourg, Misurelli, Plandowski, Williams, Golding (aye)
Discussion cont. After public hearing closed	Carlson – Has one suggested clarification, to add the sentence that “pervious surfaces are not structures” on the patio section – Believes they are trying to avoid a patio being turned into a roof ADOPTED BY UNANIMOUS CONSENT Misurelli – Gave suggestion for waiting on regulation implementation due to volume and government speed Carlson – States 1 full year falls on July 1st, so two dates are January 1st or July 1st Plandowski – Disagrees with July 1st for the implementation date – Agrees with January 1st, 2025 Carlson – Explains voting process for effective date

	MOTION: Adopt the regulation with the new setbacks on July 1 2025 (Made by Misurelli) (Seconded by Williams) Vote: Defeated 4:2 Beale (no) Braine (no) Engelbourg (abstained) Misurelli (aye) Plandowski (no) Williams (aye) Golding (no)
Motion	Motion to adopt the regulations effective January 1 st , 2025 (Made by: Beale) (Seconded by: Williams)
Vote	Carried: 6:1 Beale, Braine, Engelbourg, Plandowski, Williams, Golding (aye) Misurelli (no)

II. PUBLIC MEETING

A. Public Comment - None

B. Certificate of Compliance

1. Low Shimmo Nominee Trust – 42 Shimmo Pond Road (43-74&146) SE48-741 and SE48-801

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski, Williams
Recused:	-
Representatives:	Will Dell'Erba Presented item
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion:	There was no discussion
Motion:	Motion to approve certificate of compliance as written. (Made by: Misurelli) (Seconded by: Plandowski)
Vote:	Carried:// 7:0 Beale, Braine, Engelbourg, Plandowski, Williams, Golding (aye)

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski, Williams
Recused:	-
Representatives:	Will Dell'Erba Presented item
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion:	There was no discussion
Motion:	Motion to approve certificate of compliance as written. (Made by: Misurelli) (Seconded by: Plandowski)
Vote:	Carried:// 7:0 Beale, Braine, Engelbourg, Plandowski, Williams, Golding (aye)

III. PUBLIC HEARING - none

IV. COMMISSIONER COMMENTS

Williams – Expresses pleasure having worked with Golding and commends and applauds him for his dedication and compassionate efforts

Misurelli – Thanks Golding as well

Golding – Thanks all commissioners

Carlson – Thanks Golding for his time and service and everyone for their time energy and effort

Dell'Erba - Thanks Golding for shepherding through the commission in the final stages of this

Williams – Thanks Ashley

MOTION TO ADJOURN: (MADE BY MISURELLI) (SECONDED BY PLANDOWSKI)

Vote: Carried:// 7:0 Beale, Braine, Engelbourg, Misurelli, Plandowski, Williams, Golding (aye)

Submitted by:

Morgan Nelson