

The Falmouth Conservation Commission
MEETING MINUTES - WEDNESDAY, JULY 15, 2020, 7:00 P.M.

In accordance with the Governor's Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20, relating to the 2020 novel Coronavirus outbreak emergency, **the July 15, 2020 public meeting of the Falmouth Conservation Commission shall be physically closed to the public to avoid group congregation.**

Alternative public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Falmouth Community Television.
2. Real-time public comment can be addressed to the Conservation Commission utilizing the Zoom virtual meeting software for remote access. This application will allow users to view the meeting and send a comment or question to the Chair via the Chat function. Submitted text comments will be read into the record at the appropriate points in the meeting.
 - a. Zoom Login instructions:
 - i. Instructions and the meeting link for this specific meeting can be found at the following web address:
<http://www.falmouthmass.us/1092/Conservation-Commission>
 - ii. Please plan on 10-15 minutes of preparation time to log in though it may be less if you have previously used Zoom on the device you will use to access this meeting.
3. Additionally public comments may be sent in advance of the meeting to concom@falmouthma.gov at **least 5 hours prior** to the beginning of the meeting. Documents and audio or video files may also be submitted via email. Submitted email comments and documents will be made a part of the meeting record and may be read into the record, summarized or displayed during the meeting at the discretion of the chair.
4. Applicants, their representatives and individuals with enforcement matters before the Conservation Commission may appear remotely and are not required to be physically present. Applicants, their representatives and individuals with enforcement matters before the Conservation Commission may contact the Conservation Department to arrange an alternative means of real time participation if unable to use the Zoom virtual meeting software. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to concom@falmouthma.gov so they may be displayed for remote public access viewing.

A G E N D A

Present: Jamie Mathews, Chair
Russell Robbins, Vice-Chair
Betsy Gladfelter
Maurie Harlow-Hawkes
Courtney Bird

Mark Gurnee
Steve Patton
Kevin O'Brien, Alternate
Peter Walsh, Alternate
Pat Harris, Alternate
Jennifer Lincoln, Administrator
Kevin Newton, Agent

Mr. Mathews opened the meeting at 7:00 p.m.

Mr. Mathews instructed the public on how to use the Chat function for questions or comments on any of the hearings.

VOTE MINUTES

7/01/2020

Ms. Gladfelter: Move to adopt the minutes as written.

Mr. O'Brien: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

REQUEST FOR A CONTINUANCE UNDER A NOTICE OF INTENT

Dana Brown, 17 White Pine Lane, East Falmouth, MA – For permission to raze an existing single family dwelling and to reconstruct a new single family dwelling and new Title V septic system.

Ms. Lincoln: The applicant has requested a continuance until August 5, 2020.

Ms. Gladfelter: At the request of the applicant I move to continue the hearing until August 5, 2020.

Mr. Bird: Second.

Mr. Mathews: This has been continued a number of times. Why?

Ms. Lincoln: They sent in their revised plan on Monday but there wasn't time to get it to you for this meeting.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

REQUESTS FOR DETERMINATION OF APPLICABILITY

James O'Connor, 221 Sippewisset Road, Falmouth, MA – For permission to maintain a vista corridor, as permitted over the years.

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to a coastal bank and within flood zone. Property has had multiple vista pruning permits in the past. All work has been done according to regulations and guidelines set forth by FWR 10.18(10)(b). Applicant is requesting a new permit to maintain existing vista corridor. Staff met onsite with applicant to review proposed

work. Staff recommends a negative 2 (under the State and bylaw). Resource area boundaries are not confirmed by this RDA.

Mr. Bird: Move to accept staff's recommendation.

Ms. Harlow-Hawkes: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Richard Taylor, 9 Hotel Street, East Falmouth, MA – For permission to raze an existing detached garage and construct a new detached garage in the existing footprint.

Mr. Newton: Jurisdiction: within flood zone AE12. RDA is to demolish an existing detached garage and to construct a new detached garage in the same footprint. No increase in impervious surfaces proposed. No mitigation required. Staff recommends a negative 2 (under the State and the bylaw). Resource area boundaries are not confirmed by the RDA.

Mr. Bird: Move to accept staff's recommendation.

Ms. Harlow-Hawkes: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Gerard and Mar-Cia Testa, 19 Ocean Avenue, East Falmouth, MA – For permission to increase the height of the existing retaining wall by two feet, to remove existing Rugosa Rose and replace it with 660 square feet of native plantings, to reconfigure and rebuild existing patio, and to add a set of spiral stairs.

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to land under ocean, coastal bank, land subject to coastal storm flowage (flood zone VE 15). RDA is to increase the height of an existing retaining wall which is located behind a licensed sea wall. Proposal is to heighten the wall by 2 feet. This proposal also includes the removal of existing Rugosa rose and replacement with native plantings. (Includes black chokeberry, inkberry, sweet pepperbush, and Virginia rose). The existing patio is proposed to be reconfigured. A spiral staircase is proposed to the side of the house. Staff recommends a negative 2 (under the State) and a negative 3 (under the bylaw). Resource area boundaries are not confirmed by the RDA.

Mr. Bird: Move to accept staff's recommendation.

Ms. Harlow-Hawkes: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Russ and Elise Phillips, 105 Coonamesset Circle, East Falmouth, MA – For permission to trim back brush that is covering an existing trail, to replace rotted steps with wooden steps, and to add a rope back, creating a handrail.

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to an inland bank, land under water body, and within zone 2 of a public water supply. This RDA is to cut back vegetation growing over an existing 4-ft wide trail and to replace rotted steps. Steps will be replaced in kind with new timber steps. A rope hand rail will be added to existing posts. All work to be done by hand without the use of machinery. Applicant has received permission from the Association to conduct

work on their property. Staff recommends a negative 2 (under the State) and a negative 3 (under the bylaw). Resource area boundaries are not confirmed by this RDA.

Mr. Bird: Move to accept staff's recommendation.

Mr. Patton: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

The Jon and Pamela Kjellman Living Trust, 29 Pondlet Place, Falmouth, MA – For permission to remove an existing wood deck and step, to construct and maintain a 6'x12.8' porch and step, to remove an existing brick entry and balcony, to add a step, and to demolish and remodel a wall.

Mr. Newton: Jurisdiction: within flood zone AE 12. This RDA is to remove an existing deck and to construct a new deck within the flood zone. The application also includes demolishing and construction of an existing wall. Work is proposed within the flood zone only; no other resource areas located within 100 ft of proposed project. No mitigation is required. Staff recommends a negative 2 (under the State and the bylaw). Resource area boundaries are not confirmed by this RDA.

Mr. Bird: Move to accept staff's recommendation.

Mr. Walsh: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Andrew and Andrea Lowe, 18 Lowe Way, West Falmouth, MA – For permission to construct a swimming pool and hot tub, with associated patio, shed, and fence.

Mr. Newton: Jurisdiction: within flood zone AE 12. This RDA is permit the construction of a swimming pool within flood zone AE 15. No other resource areas are located within 100 ft of the proposed project. No mitigation required. Staff recommends a negative 2 (under the State and the bylaw). Resource area boundaries are not confirmed by this RDA.

Mr. Bird: Move to accept staff's recommendation.

Mr. Walsh: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Grace Lands By the Sea, LLC, 39 Juniper Point Road, Falmouth, MA - For permission to place a 30 foot removable stairs on the western coastal bank and attach it to a cable anchoring system.

Mr. Newton: Jurisdiction: within 100 foot resource area buffer zone to a coastal bank, coastal beach, land under ocean, BVW, and within flood zone VE15/AE13. RDA is to permit the placement of removable pre-manufactured aluminum stairs on a coastal bank. The stairs will be attached to a fixed point landward of the top of the bank. The stairs are proposed to be removed during hurricane and or severe nor'easter warning. No vegetation is proposed to be removed. Staff recommends a positive 3 (under the State) and a positive 5 (under the bylaw). Resource area boundaries are not confirmed by the RDA.

Mr. Bird: Move to accept staff's recommendation.

Ms. Gladfelter: Second.

Mr. Bird: They can come back for an NOI?

Ms. Lincoln: Yes, I explained my concerns about handling this as an RDA and then agreed to come back with an NOI.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Richard & Patricia Torre, 57 Cape Codder Road, West Falmouth, MA- For after the fact permission to install a water service to the dwelling and rebuild a section of stone wall.

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to coastal bank and within flood zone AE 15. Applicant constructed a home at the end of Cape Codder Road. Received OOC under DEP #25-4364. Applicant removed vegetation within a private road easement in order to connect to the Town water main at the end of Beccles Road. This work was done without the permission of the abutting home owner or from Conservation. BSS design has submitted a restoration plan. Plantings to consist of staghorn sumac, chokeberry, arrowwood, beach plum and speckled alder planted 6 feet on center. A shallow trench that has formed from settling shall be graded and drought tolerant grass seed mix will be spread over bare areas. Staff recommends a negative 2 (under the State) and a negative 3 (under the Bylaw). Resource area boundaries are not confirmed by this RDA.

Mr. Bird: Move to accept staff's recommendation.

Mr. Walsh: Second.

Mr. Bird: This was continued for a number of times also.

Ms. Lincoln: Yes, it took some time for all involved to come together.

Mr. Mathews: Should this be an NOI?

Ms. Lincoln: No.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

CONTINUED HEARINGS UNDER A NOTICE OF INTENT

Dana Brown, 17 White Pine Lane, East Falmouth, MA – For permission to raze an existing single family dwelling and to reconstruct a new single family dwelling and new Title V septic system.

The hearing is continued until August 5, 2020.

Anastasios Parafestas, Trustee, 160 Penzance Road, Woods Hole, Falmouth, MA- For permission to install a 12' x 20' pool, stone pool terrace, stone retaining walls, stone steps, pool utilities, lighting, fencing, drainage, and all associated clearing, excavation, grading, irrigations, landscaping, and mitigation plantings.

Quorum: Jamie, Russ, Betsy, Maurie, Courtney, Steve, Kevin

Ms. Lincoln promoted Michael McGrath to a participant.

Michael McGrath (Holmes & McGrath) At the last hearing I was asked to recount the permitting history on this property. OOC 25-4116 (4116) is still outstanding and part of OOC 25-1884 (1884) is included in the description of 4116. The restoration of the buffer and wetland areas are complete and LEC has filed reports about them. Why are the existing conditions different from

what was permitted? According to the plan on the OOC the specific area of buffer and wetland has been restored by the owner. The trees are much bigger than required in the OOC and a crane had to be brought in to plant them. The access has been altered and will be corrected. The applicant has done more than required in compliance with the OOC. The number of buffer plants was short and they will be planted. (audio problem) We do not agree on the actual edge of land under the ocean. The seawall is a vertical seawall and was approved by this Commission. It is not an actual edge. It is impervious and was built in accordance with this section with piles underneath. It has a concrete core and a veneer on the ocean side. It is an impervious wall and has overcome your presumptions. Mr. McGrath read a portion of FWR 10.18 that pertains to this. The wall minimizes runoff and the discharge of nitrates into the ocean. There is no green algae or symptoms of nitrogen in the water. I am asking you to approve the pool because there will be no adverse effect on the resource area. The wall will absorb anything and the pool is 42-ft back from the face of the wall. There will be a dry well for runoff from the pool. There is crushed stone on both sides of the wall. There will be no significant adverse effect on the waters of Great Harbor. I have always urged the Board to require denitrifying systems and this property has a Ruck system on the property. The Board should acknowledge that the pool has no adverse effect and we have overcome the presumption that the pool cannot be permitted since the location is not closer than 75-ft. The applicant was also donated to Ducks Inc. who is responsible for the three culverts by the bike path.

Ms. Lincoln: This doesn't meet our regulations. It is closer to the resource area. Our decisions are never personal with a property owner.

Mr. Newton: These are the same stats we've held all along.

Mr. Robbins: I'm with staff on this.

Mr. Patton: Staff recommendations are clear and I support them.

Ms. Gladfelter: I would like to include DEP – 4116 into the record. You all have the memo I sent today. The culverts have nothing to do with this project. Three culverts were proposed but only one was built. I agree with staff. You are fixated on the wall. It probably keeps runoff from the ocean but there could be one day in 1,000 or 5,000 when a Category 4 hurricane will send water over the wall. I like the vegetated buffer which is also an important wildlife habitat.

Mr. McGrath: The pool is closer than the main structure. In the OOC the finding was integral with the structure and could go forward. You didn't use the word no.

Mr. O'Brien: No questions or comments.

Ms. Harlow-Hawkes: No questions or comments.

Mr. Mathews: Any public comments?

Ms. Lincoln: No.

Mr. McGrath: It should be understood that this parcel has a unique shape. A large portion of the site is already set aside as wetlands and buffer. The Ruck system is beneficial. I'll be disappointed if you won't consider these things.

Ms. Gladfelter: Move to close the hearing and take it under advisement.

Mr. Bird: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Patton, aye; O'Brien, aye. Unanimous, so moved.

Margaret and Alvydas Mikulskis, Mikulskis Realty Trust – 2019, 9 Darylane, North Falmouth.

MA – For permission to construct and maintain a concrete wall and steps, to reconfigure an existing patio, to relocate the existing septic system, to remove existing stairs and stone riprap, to install fill and all associated demolition, excavation, grading, and landscaping.

Quorum: Russ, Betsy, Maurie, Courtney, Mark, Steve, Kevin, Peter, Pat (Jamie recused)

Ms. Lincoln: Mr. McGrath is still with us.

Michael McGrath (Holmes & McGrath) At the least hearing the Board asked for a more complete planting plan on the seaward side. There were also questions about the construction access route. You have the revised plan. The construction access is basically on the southwest side of the house. It is 15-ft wide. You have a better description of the work to be done. The plants are by Francisco Tavares. The planting plan shows how the stabilization of the slopes will be done. The stones and boulders will be removed and stockpiled. They will fill in with 12” compacted layers and use some of the boulders with compact fill in between for stabilization. There will be no adverse effect on the resource area. The project meets your performance standards.

Ms. Lincoln: No questions or comments.

Mr. Newton: No questions or comments.

Ms. Gladfelter: I’m glad thought was given to the stabilization.

There were no more questions or comments from the Commissioners.

Mr. Mathews: Any public comments?

Ms. Lincoln: No.

Mr. Bird: Move to close the hearing and take it under advisement.

Ms. Gladfelter: Second.

Mr. Mathews: Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O’Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

VOTE ORDER OF CONDITIONS

Louis T. Falcone Jr., 31 Point Road, North Falmouth, MA

Quorum: Jamie, Russ, Betsy, Maurie, Courtney, Mark, Steve, Kevin, Peter, Pat

Ms. Lincoln: This is the expansion of the patio that is in the footprint of the original structure. It’s an amended Order. Theresa Sprague added more plants for mitigation.

Mr. Bird: Move to adopt the Order of Conditions as discussed.

Mr. Walsh: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O’Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

New Silver Beach Association, Inc., 0 Moses Road, Parcel/Lot Number 000, 93A-93E, 96, 97, 98, North Falmouth, MA

Quorum: Jamie, Russ, Betsy, Courtney, Kevin, Steve, Peter

Ms. Lincoln: This is the beach maintenance project. There was a question about the location of the life guard chairs and that was taken care of. It should be a condition. We received a revised plan. Staff must approve of and meet with the contractor. 10% of the rack line is to remain. The machine to be used must not change the composition of the beach. No cobble is to be removed. There was a question about how often they could clean the beach and the Board should discuss

that.

Ms. Gladfelter: We also discussed the delineation of the dunes. They might not have to clean the beach weekly unless a storm comes. They should clean the beach only if it is necessary and not each week.

Mr. Mathews: So it can't be done more than once a week?

Ms. Lincoln: Right.

Ms. Gladfelter: They are also supposed to notify staff by email when they are going to do it.

Ms. Lincoln: When I meet with the contractor I will make that clear.

Mr. Mathews: Have you seen the equipment they are going to use?

Ms. Lincoln: Not yet.

Mr. Mathews: Will that be a condition?

Ms. Lincoln: Yes.

Mr. Gurnee: Do these machines dig deep or are they are raked?

Ms. Lincoln: I don't know yet. There is a machine that does dig the cobbles out. We had a problem with that last year.

Mr. Gurnee: A rake is what they need.

Ms. Gladfelter: Move to adopt the Order of Conditions as discussed.

Mr. Bird: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Bird, aye; Patton, aye; O'Brien, aye; Walsh, aye/ Unanimous, so moved.

Les Chernauskas, 69 Paola Drive, East Falmouth, MA

Quorum: Jamie, Russ, Betsy, Courtney, Steve, Kevin, Peter

Ms. Lincoln: This is the raze and rebuild. There is a planting plan by Theresa Sprague. She is using smaller plants because of all the oaks. A lot of digging would damage their roots. Usually I wouldn't be happy about the size of the plants but in this case I have no concerns.

Mr. Newton: I agree.

Mr. O'Brien: Is a single rail fence standard or do we require it specifically?

Ms. Gladfelter: We discussed it at the first hearing.

Mr. O'Brien: Okay, I'm fine.

Ms. Gladfelter: Will you add it as a special condition?

Ms. Lincoln: Yes.

Ms. Gladfelter: Move to adopt the Order of Conditions as discussed.

Mr. Bird: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Bird, aye; Patton, aye; O'Brien, aye; Walsh, aye; Unanimous, so moved.

Ms. Gladfelter: I have a question. The quorum votes the Order of Conditions but everyone that was at the hearings can make a comment during the discussion. Correct?

Mr. Mathews: That's an Irie question.

Ms. Lincoln: I will check.

Mr. Bird: Move to adjourn.

Mr. Patton: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Bird, aye; Patton, aye; O'Brien, aye; Walsh. Unanimous, so moved.

The meeting adjourned at 8:10 p.m.

Respectfully submitted,

Susan Cronin, Recording Secretary