

PROVINCETOWN CONSERVATION COMMISSION
JUDGE WELSH ROOM
November 15, 2016
6:00 P.M.

Members Present: Dennis Minsky, Mark Irving and Alfred Famiglietti.

Members Absent: Lynne Martin (excused).

Others Present: Deb Albenberg (Conservation Agent), Gloria McPherson (Town Planner) and Ellen C. Battaglini (Permit Coordinator).

WORK SESSION

Chair Dennis Minsky called the Work Session to order at 6:04 P.M.

- 1) **Development of MESA Performance Standards:** The Commission reviewed Mr. Minsky's revisions, discussed exemptions and the definition of wildlife. He will continue to work on the draft.
- 2) **Proposed plant list:** Ms. Albenberg said that she would work on a plant list that was specific to Provincetown. The Commission reviewed the lists that she passed out. She will consult with Steve Smith and, as the Commission liked the Truro list, she would ground truth it and determine its accuracy for conditions in Provincetown.
- 3) **Update on AmeriCorps activity:** Mr. Minsky said that one of the Americorps volunteers would be working on the identification of vernal pools in Provincetown, endeavoring to certify them with the State. The other would be working on managing conservation land and working on a conservation brochure.

Chair Dennis Minsky adjourned the Work Session at 6:30 P.M.

PUBLIC HEARING

Chair Dennis Minsky called the Public Hearing to order at 6:30 P.M.

- 1) **PUBLIC COMMENTS:**
None.
- 2) **PUBLIC HEARINGS:**
 - a) Case # CON-17-066: **1& 7 Duncan Lane** (*postponed until December 6, 2016*)

Request for a **Determination of Applicability** by James Farley and Tom Boland pursuant to the Massachusetts Wetland Protect Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetland Protection By-Law, to remove five trees located at 1 Duncan Lane and one tree at 7 Duncan Lane. (Isolated Vegetated Wetland and Isolated Land Subject to Flooding).

b) Case # CONLGY- 17-002: **101 Commercial Street**

Request for an **Amended Order of Conditions** by Greg Connors pursuant to the Massachusetts Wetland Protect Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetland Protection By-Law, to construct a retaining wall on the north and west sides of the dwelling and a granite landing and steps. Work to take place within the 100-ft. Buffer to a Coastal Beach and within Land Subject to Coastal Storm Flowage.

Presentation: Roy Okurowski, of Land & Sea Engineering, LLC, and Don DiRocco, of Hammer Architects, appeared to present the application. Mr. Okurowski said that there was an existing landscape brick retaining wall 14” high by 8” wide at grade, fronting the property on Commercial Street and running along the west side of the property. The Commission had asked the applicant to have an engineer review the project because of its location in a V Flood Zone. The proposed wall has been designed to use half the amount of mortar as in a standard brick wall, which will allow it to break apart into individual bricks under a load of 3000 psf. The grout will break apart at around 1000 psf, in case of flooding. There is concern that the wall will also channelize the flow between this and the abutting property at 99 Commercial Street. The elevated foundation of the structure was designed and constructed with breakaway walls. He mentioned that the project includes the installation of an at-grade granite walkway from the bottom of the stairs to Commercial Street and minor grading will be done to bring sand up to pre-construction heights. All masonry work would be done by hand and a small bobcat would be used to bring in additional sand to backfill. He said that the project as proposed would not have any significant adverse impacts on the coastal beach.

Public Comment: None.

Commission Discussion: Mr. Minsky said that the Commission had to determine if the request is appropriate and then decide on its merits. He read from the regulation regarding the process for granting an amended order of conditions. The Commission would need to determine if the project involves a minor change, in which case an amendment to the existing Order of Conditions can be made, or if the scope of the project is increasing, in which case the applicant would be required to file a new Notice of Intent. Mr. Okurowski explained why the purpose of the project had not changed and the scope had not increased. He reviewed how the project met the performance standards for its resource area. He reiterated that the flow pattern of water would not be altered on land subject to coastal storm flowage and there would be a lessening of erosion because of the breakaway panels on the foundation and the breakaway nature of the brick wall, and reiterated that there would be no negative impact on the coastal beach. The Commission questioned Mr. Okurowski and Mr. DiRocco about grading on the site. The Commission requested that no new fill be brought onto the site. Ms. Albenberg reported on her conversation with the Department of Environmental Protection regarding the project.

Mark Irving moved to approve the request for an Amended Order of Conditions pursuant to the Massachusetts Wetland Protect Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetland Protection By-Law, to construct a retaining wall on the north and west sides of the dwelling and a granite landing and steps at the property located at 101

Commercial Street with the stipulation that all conditions in the original Order of Conditions are in full force and effect, that a flood vent shall be installed on the south side return of the wall and the north side directly opposite it, that all re-grading utilize material on the site with no new fill to be brought onto the site, Dennis Minsky seconded and it was so voted, 3-0.

c) Case # CON-17-068: **577 Commercial Street**

Notice of Intent application by the **Provincetown Condominium** pursuant to the Massachusetts Wetland Protect Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetland Protection By-Law, to upgrade the sewer pump system and increase the depth of the crawl space. Work to take place within the 100-ft Buffer to a Coastal Beach and within Land Subject to Coastal Storm Flowage.

Presentation: Jay Norton, of Coastal Engineering Co., on behalf of the Provincetown Condominium, appeared to present the application. He explained that a force main on the property had ruptured allowing sewage to spill out into a crawl space. The proposed project involves upgrading the existing sewage disposal system to conform to current regulations. The pump system will be upgraded to a duplex system that utilizes two pumps. The existing concrete cesspool will be removed and replaced with a watertight tank that will act as a wet well for the pump system. The 2" diameter force main will be routed under an existing deck to the main line that connects to the sewer system and runs under the center of the building. The crawl space would be widened and enhanced to allow for better access to utilities located under the building. The design includes excavating a 4' deep by 3' wide wall with CMU blocks to retain the soil and create a pathway under the center of the building to where the garage is located. Access for the project would be from the northeast side of the property and a mini-excavator will be used for digging. He argued that the project will enhance the resource area and all disturbed areas will be restored to their pre-construction conditions.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Norton.

Alfred Famiglietti moved to approve the Notice of Intent application by the Provincetown Condominium pursuant to the Massachusetts Wetland Protect Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetland Protection By-Law, to upgrade the sewer pump system and increase the depth of the crawl space at the property located at 577 Commercial Street with the Standard Order of Pre-Construction Conditions numbers 1, 4 and 5, Construction Conditions numbers 1-3, 6, 8 and 9-11 and Post-Construction Conditions number 4 and the Special Condition that a planting plan of native species be submitted and approved by the Conservation Agent, Dennis Minsky seconded and it was so voted, 3-0.

d) Case # CON-17-069: **539 Commercial Street**

Notice of Intent application by the **Beach Condominium Association** pursuant to the Massachusetts Wetland Protect Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetland Protection By-Law, to install new piles and replace existing timber retaining walls. Work to take place within the 100-ft Buffer to a Coastal Beach and within Land Subject to Coastal Storm Flowage.

Presentation: Jay Norton and Cole Bateman, of Coastal Engineering Co., appeared to present the application. Mr. Norton said that the project involves the upgrading of an existing support system for the structure on the site by installing new piles, replacing existing plywood retaining walls

with timber retaining walls, replacing and sistering existing grade beams and replacing hangers. The proposed new piles are helical piles that will be encased in concrete. Two existing plywood retaining walls will be replaced with structural timber retaining walls, and existing grade beams will be sistered or replaced with new drop beams. The existing pilings have deteriorated because the mean high water line extends beneath the sub-structure, so the timber piles are constantly inundated with salt water. This has caused a structural sagging in the interior floors and walls. Temporary cribbing had been installed in the summer to prevent any further structural damage. Access will be from the east side of the building on the beach using the Kendall Lane Town Landing. The east abutter to the property has given permission for access across that property. A mini-excavator will be needed to access the underside of the structure.

Public Comment: None. There was 1 letter in the file in support of the application.

Commission Discussion: The Commission questioned Mr. Norton and Mr. Bateman.

Mark Irving moved to approve the Notice of Intent application by the Beach Condominium Association pursuant to the Massachusetts Wetland Protect Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetland Protection By-Law, to install new piles and replace existing timber retaining walls at the property located at 539 Commercial Street with the Standard Pre-Construction Conditions numbers 1-5, the Construction Conditions numbers 1-6 and 9-11 and the Post-Construction Conditions numbers 3 and 4, and with the Special Conditions that sand displaced by excavation work be put back under the structure, that all access to the work area be from the existing parking area or on the beach via the Kendall Lane Town Landing, that any crane and concrete truck used during the work be located only in the existing parking lot, that equipment at Kendall Lane Town Landing not block access to the beach and that no heavy equipment be parked on the beach overnight, Dennis Minsky seconded and it was so voted, 3-0.

e) Case # CON-17-079: **10 George's Path**

Administrative Review application by Patrick Flaherty and John Jay Wooldridge pursuant to the Provincetown General By-Laws Chapter 12, Wetland Protection By-Law, to extend the existing timber retaining wall by 50'. Work to take place within NHESP Estimated and Priority Habitat.

Presentation: James Kneeland, of Kneeland Landscaping, appeared to present the application. Mr. Kneeland said that all work would be done with shovels and rakes. The wall will be six timbers high, the same height as the existing. A 6" by 12" wide trench will be dug and 3' of invasive bamboo would be removed on both sides of the trench.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Kneeland about how he would be removing the invasive Japanese knotweed.

Alfred Famiglietti moved to approve the Administrative Review application by Patrick Flaherty and John Jay Wooldridge pursuant to the Provincetown General By-Laws Chapter 12, Wetland Protection By-Law, to extend the existing timber retaining wall by 50' at the property located at 10 George's Path with the condition that the Japanese knotweed be disposed of in black plastic bags after its removal, Dennis Minsky seconded and it was so voted, 3-0.

3) **Enforcement Order**

Case # ENFCON-17-003: **963 Commercial Street**

Discussion of possible changes to an Enforcement Order issued on 7/19/16 to the Beach Point Club for beach grass removal relative to an easement held by the Beachfront White Sands at 706 Shore Road in Truro. Ms. McPherson reviewed the issue at the site and explained the abutter's easement agreement related to the property. She recommended that all poles and strings blocking the easement be removed and that the EO be modified to state that the Beach Point Club refrain from pulling beach grass in the future and that its representative return to the Commission with a proposed plan for a walkway to the beach. She said that Beachfront White Sands could continue to maintain the area as is, but should not pull additional beach grass in an effort to widen the existing, maintained access. The Commission discussed the issue and whether to modify the EO or retract it.

Dennis Minsky moved to modify the EO to state that the Beach Point Club must refrain from enlarging the already-cleared area while respecting the easements that exist on the property, Alfred Famiglietti seconded and it was so voted, 3-0.

4) **Emergency Certification**

Case #CON-17-083: **Herring Cove Beach**

Request by the Cape Cod National Seashore to remove 1200 square yards of asphalt from the existing revetment and clean the beachfront of fragments of broken bituminous pavement. 50% of the asphalt will be placed back in the revetment and compacted to repair breach areas in the north parking lot. The reason for the emergency is to stabilize the dune area directly in front of the bathhouse and help mitigate ongoing erosion and asphalt debris occurring due to the revetment. This issue was discussed at the last meeting.

Mark Irving moved to grant the Emergency Certification by the Cape Cod National Seashore to remove 1200 square yards of asphalt from the existing revetment and clean the beachfront of fragments of broken bituminous pavement at Herring Cove Beach, Dennis Minsky seconded and it was so voted, 3-0.

5) **Request for Refund: 67 Harry Kemp Way** DEP File No. 058-0414

Request by Demetrios Daphnis for third and final refund payment from the existing escrow account for the completion of the third and final phase of Phragmites removal from the property in accordance with the Order of Conditions. Mr. Minsky and Ms. Albenberg had made a site visit to the property. The Commission has received a letter from Paul Shea indicating that the work was done and an invoice from Mr. Daphnis requesting the final payment from the escrow account.

Mark Irving moved to issue the refund from the existing escrow account for the third and final refund payment for Phragmites removal at the property located at 67 Harry Kemp Way, Dennis Minsky seconded and it was so voted, 3-0.

6) **Conservation Agent Report:**

350 Bradford Street: Ms. Albenberg reported that demolition has started at the site and the cherry trees would be going to Julia Perry's property.

7) **Information:**

a) Administrative Applications Approved by Agent with Standard Order of Conditions

- i) Case # CON-17-073 **75A Howland St.** Remove and replace deck and landing in existing footprint;
 - ii) Case # CON-17-075 **539 Commercial St.** Remove and replace windows, window trim and cedar siding;
 - iii) Case # CON-17-076 **23 Commercial St.** Remove and replace window in front of house;
 - iv) Case # CON-17-077 **65B Commercial St.** Replace garage roof, siding and trim;
 - v) Case # CON-17-078 **24 Pilgrim Heights** Install dormer window;
 - vi) Case # CON-17-080 **157 Commercial St.** Replace back deck and shingles;
 - vii) Case # CON-17-081 **331 Commercial St.** Repair second level deck; and
 - viii) Case # CON-17-082 **437 Commercial St.** Replace windows on west side of rear wharf.
- b) 2017 Meeting Schedule (in packets): The Commission briefly reviewed the schedule.
 - c) Long Point Dike Ecosystem Restoration Project: PowerPoint presentation and Report. Ms. Albenberg said that there would be a Public Hearing held by the Board of Selectmen on December 12th about the breakwater project. Ms. McPherson recommended that Commissioners attend, if possible.

8) **Approval of Minutes 11/1/16:**

Mark Irving moved to approve the minutes of November 1, 2016 as written, Alfred Famiglietti seconded and it was so voted, 3-0.

9) **Any other Business:**

Mr. Famiglietti mentioned the water bill for the B Street Garden and whether it was the concern of the Commission if the application fee were raised to cover it.

ADJOURNMENT: *Dennis Minsky moved to adjourn the Public Meeting at 8:30 P.M. and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2016
Dennis Minsky, Chair