

**PROVINCETOWN CONSERVATION COMMISSION
COMMUNITY DEVELOPMENT CONFERENCE ROOM &
AUDITORIUM
March 19, 2019
6:00 P.M.**

Members Present: Alfred Famiglietti, Nathaniel Mayo, Robert Brock, Joseph Cooper and Brett McNeilly.

Members Absent: Kiah Coble (excused) and Oriana Conklin (excused).

Others Present: Greg Corbo (Town Counsel), Tim Famulare, Conservation Agent, and Ellen C. Battaglini, Permit Coordinator.

COMMUNITY DEVELOPMENT CONFERENCE ROOM

Chair Alfred Famiglietti called the meeting to order at 6:02 P.M.

1) Executive Session:

The Conservation Commission will convene in Open Session and then vote to enter into Executive Session pursuant to G.L. c. 30A §21(a)(3), to discuss litigation strategy in the following matters: Conservation Commission v. Stellwagen Bank Fisheries Corp., Barnstable Superior Court, C.A. No. 2015-00387; Conservation Commission v. Patricio Palacios, Barnstable Superior Court, C.A. No. 2015-00386; and the Request to Superseding Determination of Applicability filed with the Massachusetts Dept. of Environmental Protection by David Kelley regarding commercial fishing operations for surf clams utilizing hydraulic fishing gear off Herring Cove; if discussing the matters in Open Session will have a detrimental effect on the Town's litigating position and the Chair so declares.

Nathaniel Mayo moved to enter into Executive Session for the reasons stated by the Chair, Joseph Cooper seconded and it was so voted by roll call: Alfred Famiglietti: Yes, Robert Brock: Yes, Nathaniel Mayo: Yes and Joseph Cooper: Yes; and Brett McNeilly: Yes; unanimously.

AUDITORIUM

Chair Alfred Famiglietti called the Public Hearings to order at 6:32 P.M. and briefly summarized the Commission's purview.

2) Public Comments on any item not on the agenda below: Ed Miller, of 145 Commercial Street, commented on the beach erosion issues that have affected the Town in the last couple of years. He stated that he believed they are caused by the presence of the West End breakwater, which blocks water and marine life from the moors returning to the bay. Mr. Famulare volunteered to send Mr. Miller a report by the Army Corps of Engineers on the proposal to open up the breakwater, which Town Meeting had rejected in 2017. Mr. Miller declined the offer. Mr. Famulare said that the Commission had no authority to effect the change, as the breakwater was under the jurisdiction of the Army Corps of Engineers, which would be the controlling entity for such a project. The Commission briefly discussed the issue.

3) **Public Hearings:**

Nathaniel Mayo moved to take CON-19-060 out of order, Joseph Cooper seconded and it was so voted, 5-0.

f) **CON-19-060 3 Heathers Way**

Local By-Law Filing by **Robert Sheehan**, pursuant to the Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, for limited excavation and construction of timber steps and retaining walls to provide basement access. Work to take place within a Buffer Zone to an Isolated Vegetated Wetland.

Presentation: Glen Fontecchio presented the application. He reviewed the proposed project, which involves the construction of pressure-treated basement access stairs and a doorway at an existing window well.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Fontecchio. Mr. Famulare reviewed his draft conditions for the project.

Nathaniel Mayo moved to approve the Local By-Law Filing, CON-19-060, pursuant to the Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, for limited excavation and construction of timber steps and retaining walls to provide basement access at the property located at 3 Heathers Way subject to the Conservation Agent's Order of Conditions, Joseph Cooper seconded and it was so voted, 5-0.

Nathaniel Mayo moved to take CON-19-061 out of order, Joseph Cooper seconded and it was so voted, 5-0.

g) **CON-19-061 8D Commercial Street, Unit A**

Notice of Intent by **Joanne Cancro** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law to lift an existing dwelling, pour a flood-compliant foundation and, add a deck with stairs for access. Work to take place within a Buffer Zone to Bordering Vegetated Wetlands.

Presentation: Dan Ojala presented the application. He explained that the structure will be raised out of the flood zone and a newly-designed, higher foundation will replace the existing. Access stairs and a small deck will be added to the east elevation. A staked silt fence will be placed along the limit of work as shown on the site plan and will connect to existing fences on the property to contain construction activity and materials. All excavated material will be taken off the site and no fill or re-grading will be undertaken. A construction protocol was submitted.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Ojala. Mr. Famulare reviewed the special conditions for the project. Mr. Ojala was asked about a shed on the site and if it contained any hazardous materials. The Commission discussed the project and the draft conditions and agreed to two revisions suggested by Mr. Famulare, including that if any mature trees need to be removed the applicant will consult with the Conservation Agent about replacing them and that no storage of hazardous material shall occur in the shed.

Nathaniel Mayo moved to approve the Notice of Intent, CON-19-061, pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-

Laws, Chapter 12, Wetlands Protection By-Law to lift an existing dwelling, pour a flood-compliant foundation and, add a deck with stairs for access at the property located at 8D Commercial Street, Unit A, subject to the special conditions as amended, Robert Brock seconded and it was so voted, 5-0.

Robert Brock moved to take CON-19-059 out of order, Joseph Cooper seconded and it was so voted, 4-0-1 (Nathaniel Mayo abstaining).

e) CON-19-059 74 Atkins Mayo Road

Local By-Law Filing by **Trudy Wood**, pursuant to the Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, for a septic system upgrade to include pumping and filling or removal of an existing leach are, trenching and excavating for proposed leach field and pump chamber. Work to take place within a Buffer Zone to an Isolated Vegetated Wetland. Nathaniel Mayo recused himself because of a conflict of interest.

Presentation: Jason Ellis presented the application. He explained that the septic system was in failure because it was currently located in the groundwater table. He reviewed the proposed installation and said that the existing tank will be re-used. He said that straw wattles will be placed along the limit of work.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Ellis about the plantings on the site. Six trees will be removed during the process of construction. The Commission discussed vegetative mitigation for the removal of the trees. Mr. Ellis described a conservation grass seed mix that he customarily uses. Mr. Famulare suggested that condition #9 be revised to state that the applicant will only mow the grass once a year, as an on-going requirement that would survive a Certificate of Compliance and that six Clethra alnifolia, sweet pepper bush, be planted along the roadway in the vicinity of the leach field to mitigate for the removal of the six trees on the site. Mr. Ellis suggested that it be done in the fall.

Robert Brock moved to approve the Local By-Law Filing, CON-19-059, pursuant to the Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, for a septic system upgrade to include pumping and filling or removal of an existing leach are, trenching and excavating for proposed leach field and pump chamber at the property located at 74 Atkins Mayo Road with the Order of Conditions as amended and it was so voted, 4-0.

a) In accordance with §2-3-g-1 of the Provincetown Charter, the Provincetown Conservation Commission will review and vote to determine the number of Commissioners in favor or opposed to the articles concerning Natural Environment on the warrant of the April 1, 2019 Annual and Special Town Meetings.

Article 9: *Nathaniel Mayo moved to recommend Warrant Article 9, Robert Brock seconded and it was so voted, 5-0.*

Article 15: *Nathaniel Mayo moved to recommend Warrant Article 15, Joseph Cooper seconded and it was so voted, 5-0.*

Article 21: *Alfred Famiglietti moved to recommend Warrant Article 21, Nathaniel Mayo seconded and it was so voted, 5-0.*

Article 22: *Nathaniel Mayo moved to recommend Warrant Article 22, Alfred Famiglietti seconded and it was so voted, 5-0.*

b) **CON-19-052 493, 495 & 495A Commercial Street** *(continued from the meeting of March 5, 2019; TO BE CONTINUED TO THE MEETING OF APRIL 16, 2019)*

Notice of Intent filed by the **Bay Shore Realty Trust**, pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law for proposed repair of an existing steel sheet-pile wall. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach and a Buffer Zone to a Coastal Beach. There was a request to extend the matter to the meeting of April 19, 2019 at 6:30 P.M. *Nathaniel Mayo moved to grant the request to continue CON-19-052 to the Public Hearing of April 16, 2019 at 6:30 P.M., Joseph Cooper seconded and it was so voted, 5-0.*

c) **CON 19-055 565 Commercial Street** *(continued from the meeting of March 5, 2019)*
Notice of Intent filed by **Russell and Elizabeth Gaudreau** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law for the removal and replacement of a lower level deck. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to a Coastal Beach. There was a request to extend the matter to the meeting of April 16, 2019 at 6:30 P.M. *Nathaniel Mayo moved to grant the request to continue CON-19-055 to the Public Hearing of April 16, 2019 at 6:30 P.M., Joseph Cooper seconded and it was so voted, 5-0.*

d) **CON-18-089 151A Commercial Street**
Request to Amend an Order of Conditions (DEP File No. SE 058-0595) filed by **Joseph Smith and Scott A. Popkowski**, pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, to change the western alignment of the previously-approved vinyl sheetpile wall. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach. There was a request to extend the matter to the meeting of April 16, 2019 at 6:30 P.M. *Robert Brock moved to grant the request to continue CON-18-089 to the Public Hearing of April 16, 2019 at 6:30 P.M., Joseph Cooper seconded and it was so voted, 5-0.*

4) **Conservation Restriction**

a) **56 Snail Road** – Review and acceptance of proposed conservation restriction (1.86 acres). Mr. Famulare reviewed the McCabe property. The restriction will be held by the Provincetown Conservation Trust and the Provincetown Conservation Commission to make sure the land is held in perpetuity for conservation purposes. *Nathaniel Mayo moved to accept the grant of the Conservation Restriction for the property located at 56 Snail Road, Alfred Famiglietti seconded and it was so voted, 5-0.*

Nathaniel Mayo moved to certify that the proposed Conservation Restriction is in the public interest in that it lies 100% within a Massachusetts NHESP biomap 2 core habitat area and a Massachusetts NHESP priority habitat for rare species, contains three Massachusetts Dept. of Environmental Protection wetlands, including a wooded swamp and a mixed trees and shrub swamp, abuts and is located across the street from Town-owned conservation land and contains both prime forestland and prime farmland soils, Alfred Famiglietti seconded and it was so voted, 5-0.

5) **Approval of Minutes of March 5, 2019:**

Nathaniel Mayo moved to approve the minutes as written, Robert Brock seconded and it was so voted, 5-0.

6) **Information**

Administrative Review Applications Approved by Agent:

a) **CON-19-062 411 Commercial Street** – deck replacement. Mr. Famulare reviewed the project.

7) **Any other business that shall properly come before the Commission:**

ADJOURNMENT: *Nathaniel Mayo moved to adjourn the Public Hearing at 8:00 P.M., Robert Brock seconded and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2019
Alfred Famiglietti, Chair