

PROVINCETOWN CONSERVATION COMMISSION

Judge Welsh Room

December 3, 2019

6:30 P.M.

Members Present: Alfred Famiglietti, Nathaniel Mayo, Robert Brock, Oriana Conklin, and Joseph Cooper.

Members Absent: Brett McNeilly (excused) and Dani Niedzielski (excused).

Others Present: Tim Famulare, Conservation Agent and Ellen C. Battaglini, Permit Coordinator.

Chair Alfred Famiglietti called the Public Hearing to order at 6:33 P.M. briefly summarized the Commission's purview and reminded those present that, pursuant to Robert's Rules of Order, all questions to the applicant by the public have to be directed through the Chair.

1) **Public Comments:** on any item not on the agenda below: None.

2) **Public Hearings:**

a) **CON-19-081 0-Foot Gosnold Street (Ryder Street Beach)** (*continued from the meeting of November 5, 2019*)

Notice of Intent filed by the **Town of Provincetown**, pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131 §40) and the Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law to construct a coastal dune on Ryder Street beach; project to include removal of invasive species, installation of sand drift fencing and seasonal mats for pedestrian access, and a planting plan for the dune. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Coastal Dune. Mr. Famulare reminded the Commission that this was the project that he has spoken about in the past and for which the Town received a grant from the Massachusetts Office of Coastal Zone Management for the design and permitting of a dune enhancement project between Gosnold and Ryder Streets. He said he has been working on getting the permission of the various property owners of the area and, although not all have signed on, Town Counsel has advised him that the project could move forward. He added that there are no draft conditions yet, so the Commission will hear the presentation and then continue the matter until the next hearing when those conditions will be considered.

Presentation: Jan Greenwood, of Woodard & Curran, a consultant and project manager, and Mark Manganello, of LEC Environmental, appeared to present the application. Ms. Greenwood reviewed the proposed dune enhancement project with a PowerPoint presentation. She said the Town had developed a long-term resiliency strategy and this is the implementation of one of its resiliency planning actions. She said that the natural dune on the site will be maintained by the Dept. of Public Works and is not intended to be a permanent structure, but instead will move naturally with the wind and wave action. Consideration has been made to maintain public access to the beach and to the drainage outfall pipes. She reviewed some key terms, such as coastal resiliency, storm tide pathway, base flood elevation (100-year flood), and dune nourishment, or on-going maintenance, used in explaining the project. She reviewed a site plan of the area. The project will include importing sand to enhance the coastal dune on the Ryder Street Beach, the removal of invasive plant species in the area, the seasonal installation of Mobi Mats for pedestrian access to the public beach, the installation of a 4' tall sand drift fence, and a planting plan. Clean

compatible sand, about 4400 cu. yds., will be imported to build up the coastal dune. The project will improve the ability of the Ryder Street Beach to withstand storm events and improve coastal storm damage protection and flood control to adjacent residences, businesses, and infrastructure with the downtown area of Provincetown. She reviewed the research that went into the project in terms of determining the elevation of the dune. A report, generated by Woodard & Curran, documented the flood elevations associated with coastal inundation and identified areas within the community that were most vulnerable to storm surges and sea level rise projections. It also included adaptive strategies developed specifically to address the unique challenges within the community.

Mr. Manganello reviewed the environmental permitting for the project, including submitting applications to the Massachusetts Environmental Policy Act Office, to the Department of Environmental Protection for the Chapter 91 license, which is still pending, and to the Army Corp of Engineers.

Public Comment: An individual said that based upon her observation at another site where a similar project was completed, there was a possibility that children playing on the dune could do damage to it.

Commission Discussion: The Commission questioned Ms. Greenwood and Mr. Manganello. The point at which nourishment would be needed was discussed. The location of the sand fencing and the beach grass plantings were discussed. Mr. Famulare said he would have draft conditions for the Commission's consideration at the next hearing. *Nathaniel Mayo moved to continue CON-19-081 to the Public Hearing of December 17, 2019 at 6:30 P.M., Robert Brock seconded and it was so voted, 5-0.*

b) CON-20-013 193 Commercial Street (continued from the meeting of October 15, 2019) **Notice of Intent** filed by **Frank and Lea Club Ptown, LLC** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131 §40) and the Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law for the installation of 12 helical piles to repair an existing foundation. Work to take plan within Land Subject to Coastal Storm Flowage. There was a request to continue CON-20-013 to the meeting of December 17, 2019. *Nathaniel Mayo moved to grant the request to continue CON-20-013 to the meeting of December 17, 2019, Robert Brock seconded and it was so voted, 5-0.*

c) CON-20-027 66 & 72 West Vine Street **Notice of Intent** filed by **David Krohn** 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 construction of four dwelling units (three one-bedroom units, and one two-bedroom unit), construction of proposed septic system, reconfiguration/expansion of an existing gravel driveway, construction of retaining walls, re-alignment of existing fencing, associated utility upgrades and landscape improvements. Work to take place within a Buffer Zone to a Bordering Vegetated Wetland.

Presentation: Dave Krohn and Chris King, from Atlantic Design Engineers, Inc., appeared to present the application. Attorney Christopher J. Snow, representing an abutter to the project, raised a point of order. He stated that the project was ineligible to be heard or even opened by the Commission, as it had to obtain Zoning Board of Appeals relief first, according to the

Massachusetts Wetland Protection Act regulations. He explained that pursuant to Article 4, s. 4500 of the Zoning By-Laws, referencing allowed uses of land under or adjacent wetlands following a contour line of 2' above the outer wetland boundary of such areas, the project cannot be approved. He has submitted a written submission outlining his client's position to the Commission. He said that the Commission should recommend that the applicant withdraw without prejudice and seek ZBA relief before returning to the Commission. Mr. King said that Mr. Krohn has consulted with the Zoning Department and was informed that ZBA relief was not required.

Public Comment: Jerome Conlin, an abutter, commented that Attorney Snow should have raised his client's issue before the hearing, the Commission was letting him stall the meeting and that the Commission should allow all public comments to be heard.

Commission Discussion: The Commission questioned Mr. Krohn and discussed the issue with Mr. Famulare. The latter indicated that a decision from the Zoning Enforcement Officer as to whether the project needs zoning relief or not would resolve the issue. The Commission decided to continue the matter and recommended that Mr. Krohn obtain a written ruling from the Building Commissioner, who is also the Zoning Enforcement Officer, or Town Counsel as to whether zoning relief is needed. Mr. King requested that the Commission allow the applicant to continue in order to provide documentation pursuant to Article 4, s. 4500 of the Zoning By-Laws. Mr. King also said that the project had to resolve an issue raised by the Board of Health regarding the project's groundwater calculation and adjustment.

Nathaniel Mayo moved to continue CON-20-029 to the Public Hearing of December 17, 2019 at 6:30 P.M., Oriana Conklin seconded and it was so voted, 5-0.

d) CON-20-029 **6 Duncan Lane**

Notice of Intent filed by **Stephanie Cave and Haley Freeman** 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 a septic system upgrade and construction of an addition between existing structures. Work to take place within a Buffer Zone to a Bordering Vegetated Wetland. Nathaniel Mayo recused himself because of a conflict of interest.

Presentation: Jason Ellis, representing the applicant, appeared to present the application. He reviewed the project to install a septic system with an enhanced nitrogen removal capability. He said that there would be an addition constructed that would connect the existing structure to the garage as well.

Public Comment: Dennis Minsky, a direct abutter, had questions, which were answered by Mr. Ellis.

Commission Discussion: The Commission questioned Mr. Ellis. Mr. Famulare raised a jurisdictional issue as to whether the state wetland regulations apply and if the resource area is an isolated vegetated wetland or a bordering vegetated wetland. The state regulation only applies to bordering vegetated wetlands. Mr. Famulare further explained the issue and said he would change the project description to reflect the Commission's review under the local by-law only. Mr. Ellis reviewed the research he had done on the topic of the wetland classification.

Oriana Conklin moved to approve the Notice of Intent, CON-20-029, pursuant to the Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, for a septic system upgrade and construction of an addition between existing structures with the conditions as amended, Alfred Famiglietti seconded and it was so voted, 4-0.

3) **Requests for Certificates of Compliance:** Mr. Famulare said the following request would be tabled.

a) **CON-20-030** 1 Commercial Street (Foundation and walkway repair; railing replacement)

4) **Conservation Agent Update:** Mr. Famulare talked about forming a sub-committee to look at the Commission's Standard Order of Conditions and to tweak them to be more reflective of the types of projects that the Commission reviews. For this purpose, he has collected samples from other Towns. He has also copied sections from the MACC manual for the Commission's review. They contain the bases for approvals and denials and for conditioning projects. He asked for 2 volunteers from the Commission and would work with them on how the Standard Order of Conditions could be revised in the next couple of weeks and, after reading the handouts, the Commission could have a discussion. *Alfred Famiglietti moved to appoint himself and Oriana Conklin to form a sub-committee to review the Standard Order of Conditions, Nathaniel Mayo seconded and it was so voted, 5-0.*

5) **Approval of Minutes of November 19, 2019:**

November 19, 2019: *Joseph Cooper moved to approve the minutes as written, Nathaniel Mayo seconded and it was so voted, 5-0.*

6) **Any other business that shall properly come before the Commission:** The Commission discussed how issues that may not be understood clearly, or are under the jurisdiction of another Town Board, and that are raised in hearings should be dealt with by Commissioners. Mr. Famulare said those topics could be scheduled to be discussed at a subsequent Work Session. An issue about whether the matter that was continued earlier in the hearing was correctly dealt with or could have been heard by the Commission. Mr. Famulare commented on earth-moving and retaining wall installation at the site.

ADJOURNMENT: *Joseph Cooper moved to adjourn the Public Hearing at 8:45 P.M., Robert Brock seconded and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2019
Alfred Famiglietti, Chair