

PROVINCETOWN CONSERVATION COMMISSION

Judge Welsh Room

November 19, 2019

6:00 P.M.

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

Members Absent: Nathaniel Mayo, Oriana Conklin, and Dani Niedzielski (all excused).

Others Present: Tim Famulare, Conservation Agent, Ellen C. Battaglini, Permit Coordinator and Attorney Gregg Corbo (via telephone).

1) Executive Session:

Chair Alfred Famiglietti called the meeting to order at 6:00 P.M. He declared that the Commission would vote to go into Executive Session.

Robert Brock moved to go into Executive Session pursuant to G.L. c. 30A, s. 21(a)(3) to discuss litigation strategy in the following matters: Conservation Commission v. Stellwagen Bank Fisheries Corp., Barnstable County Superior Court, C.A. No. 2015-00387, and the Request for Superseding Determination of Applicability, filed with the Massachusetts Department 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 litigation position and to then return to Open Session, Joseph Cooper seconded and it was so voted unanimously by roll call: Alfred Famiglietti: Yes; Robert Brock: Yes; Joseph Cooper: Yes; and Brett McNeilly: Yes.

Chair Alfred Famiglietti called the Public Hearing to order at 6:33 P.M.

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

3) **Public Hearings:**

a) **CON-20-052 493, 495 & 495A Commercial Street**

Request to Amend Order of Conditions (DEP File No. SE058-0611) filed by **The Bay Shore Realty Trust**, 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 proposed removable access stairs. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach.

Presentation: Charlie Agro, of Coastal Engineering, appeared to present the application. He reviewed the proposal, which involves a project that had been approved by the Commission in June and issued an Order of Conditions. He is requesting the conditions be amended to reflect the fact that the access stairs will now be removable. The change has been approved as a minor modification by the Dept. of Environmental Protection on the property's Chapter 91 license. The original license had the condition that the stairs be accessible to the public at all times.. Mr. Famulare reviewed the original Chapter 91 license for year-round safe passage of the public to the beach. It states that pedestrian accessway to the beach from Commercial Street must be maintained for public use during daylight hours only. In addition, the property owner is obligated to keep the access way clear of all obstacles and debris in order to allow for year-round safe

passage by the public. He reviewed some of the Commission's prior conditions regarding removable stairs and the revised Order of Conditions for this project.

Public Comment: None.

Commission Discussion: The Commission discussed the request and when the stairway should be removed, in other words, how the applicant would know that a coastal storm was approaching. The Commission decided to change 'shall' to 'may' in the first sentence of Special Condition #2, given the property's Chapter 91 mandate of public access to the beach. Mark Kinnane, of Cape Associates, joined the discussion. The Commission questioned Mr. Kinnane.

Joseph Cooper moved to approve the Request to Amend Order of Conditions (DEP File No. SE058-0611), CON-20-052, 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 proposed removable access stairs at the property located at 493, 495 & 495A Commercial Street with the condition that the word 'shall' be replaced with 'may' in the first sentence regarding the removal of the stairs in Condition #2, Robert Brock seconded and it was so voted, 4-0.

b) CON-20-027 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 Bordering Vegetated Wetland. Mr. Famulare said that there was a request from the applicant to continue the matter to the December 3, 2019 hearing. *Joseph Cooper moved to grant the request to continue CON-20-027 to the Public Hearing of December 3, 2019 at 6:30 P.M., Robert Brock seconded and it was so voted, 4-0.*

4) **Enforcement Orders:**

a) ENFCON-20-002 467 Commercial Street

Dumping and/or maintaining trash, debris, lumber, wood scraps, and other solid waste, and placing rocks within Land Subject to Coastal Storm Flowage, a Coastal Beach and a Buffer Zone to Coastal Beach.

William N. Rogers, II and Hale Bryant appeared to discuss the Order. Mr. Famulare reviewed the issue that prompted the Enforcement Order, adding that in addition to the construction and other debris, rocks had been placed along the eastern boundary of the property, within the same resource areas and without the approval of the Commission. He reviewed complaints he had received about the property from abutters. Mr. Rogers reviewed the situation and said he had been engaged by the property owner to design a new bulkhead for the property, and on which he is still working. He said that the replacement of a bulkhead was a long process, as it had to go through DEP Chapter 91 approval. He explained that the existing bulkhead is dilapidated and there was a storm incident recently that impacted the abutter's property to the east. A temporary solution was worked out to fix the bulkhead in the southeast corner to prevent more damage. Both the property owner and the abutter have agreed to the proposed fix and Mr. Rogers has been directed by Mr. Bryant to file a Request for a Determination of Applicability for the work. He reviewed his plan

for cleaning out the area behind the bulkhead, while the Chapter 91 process continued. Mr. Famulare weighed in on the issue and agreed with his strategy as long as there was a plan to better stabilize the shoreline. He suggested that, at this point, the stone in the area be kept and the construction and other loose debris be removed to stabilize the sand until the new bulkhead can be installed. He said that the applicant should develop a restoration plan for the removal of debris with the Conservation Agent on or before December 3rd, submit an RDA for the interim repair of the southeast corner, and file an NOI for the new bulkhead within 6 months.

Joseph Cooper moved to ratify the Enforcement Order ENFCON-20-002 with the conditions as discussed, Alfred Famiglietti seconded and it was so voted, 4-0.

b) **ENFCON-20-003 8D Commercial Street, Unit D**

Unauthorized elevation of an existing structure to be FEMA compliant in Land Subject to Coastal Storm Flowage.

Mark Kinnane, on behalf of Derik Burgess, appeared to discuss the Order and said that an NOI filing was in the process of being completed. He discussed the issue with the Commission. Mr. Famulare said that this would be an After-the-Fact NOI, as the work has already been completed. He questioned Mr. Kinnane about the project and asked for an ‘as built’ plan. He will give Mr. Kinnane some examples of the types of plans that the Commission would like to see. The Commission requested an NOI filing by December 3rd.

Joseph Cooper moved to ratify Enforcement Order ENFCON-20-003 with the conditions as discussed, Brett McNeilly seconded and it was so voted, 4-0.

5) **Conservation Agent Update:** Mr. Famulare said that the CZM Coastal Resiliency Grant for the Center for Coastal Studies to develop an intermunicipal shoreline management plan was approved by the Select Board last night and would now be going to the other participating Towns’ Select Boards for approval.

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

November 5, 2019: *Joseph Cooper moved to approve the minutes as written, Alfred Famiglietti seconded and it was so voted, 3-0-1 (Robert Brock abstaining).*

7) **Information:**

Administrative Review applications approved by Agent: Mr. Famulare briefly reviewed the project.

a) **CON-20-027 16 Holway, #2** – revised planting plan

7) **Any other business that shall properly come before the Commission:** Mr. Famiglietti said that he and Mr. Famulare had discussed forming a subcommittee of the Commission, comprised of 2 Commissioners, to work with Mr. Famulare regarding strengthening or modifying the standard conditions. He will put it on the next Work Session agenda.

ADJOURNMENT: Joseph Cooper moved to adjourn the Public Hearing at 7:30 P.M., Robert Brock seconded and it was so voted unanimously.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2019

Alfred Famiglietti, Chair