

PROVINCETOWN CONSERVATION COMMISSION

Judge Welsh Room

January 7, 2020

6:30 P.M.

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

Members Absent: 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 6:36 P.M. briefly summarized the Commission's purview pursuant to the state Wetlands Protection Act and the Provincetown wetlands by-law.

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 December 17, 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 requested a continuance, as he is still working on the draft conditions, until the January 21, 2020 Public Hearing. *Nathaniel Mayo moved to grant the request to continue CON-19-081 to the January 21, 2020 Public Hearing 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 December 17, 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. Joseph Cooper, pursuant to the Mullin Rule, signed a document attesting to the fact that he had reviewed a video recording of the previous hearing of the matter and was qualified to sit on the case.

Presentation: Bob Perry, of Cape Cod Engineering, and Frank Christopher appeared to present the application. Mr. Perry reviewed the project, which involves providing interim support for the building foundation as has been done previously to accommodate minor beach and ground level changes. The beach level responds to tide and storm wave action with the potential to undermine the concrete footing. The proposal includes a helical pile-supported girder arrangement with a superior bracing cap ability provided by the crib support itself. He said that it was a stop gap measure to ensure the stability of the foundation and not a full fix, as the applicant will be not be replacing the foundation at this time. This option will have to await a more significant level of

building alteration where the piles must be passed through the building's interior. He added that the beach level will be lowered slightly, about 2' and localized, by hand excavation and a small machine will be employed to get enough access to use a portable torque apparatus to screw down the helical piles. The sediment will be replaced. He said that the level of the beach will be documented, using elevations, before any work is commenced. He has no objections to the draft conditions by the Conservation Agent and is willing to provide nourishment in the form of sand and beach grass to the beach in the area. No significant lowering of the deck will occur. He said that there will be 16 helical pilings installed. He said that in 1992, there was foundation work done, similar to what is being proposed now. He had submitted an old photograph from 1993, showing new foundation cribbing with new foundation timbers, but the helical pilings are old and the old deck is visible with old posts and horizontal railings. He reviewed the 1993 photograph with a more recent photograph of the area. Mr. Famulare commented on the color of the timbers that were used at that time and how they contrasted with what is used now.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Perry. The Commission was concerned about changing the contour of the beach. Mr. Famulare compared the project to that of the Bull Ring Wharf project with similar conditions being required.

Nathaniel Mayo moved to approve the Notice of Intent, CON-20-013, 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 16 helical piles to repair an existing foundation at the property located at 193 Commercial Street, subject to the conditions as drafted by the Conservation Agent, Brett McNeilly seconded and it was so voted, 5-0.

c) CON-20-035 **429 Commercial Street**

Request for a Determination of Applicability filed by **New Hop Holdings, 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 proposed addition and renovation of an existing building. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to a Coastal Dune.

Presentation: Billy Rogers, Paul Shea and Ron Robin appeared to present the application. Mr. Shea reviewed the project, all of which is contained within a previously disturbed area. He said that the restaurant and structure on the site will undergo renovations and that there was a coastal dune adjacent to the property to the south and the structure is located in the 100' buffer zone to that dune. The proposed site alterations will occur within upland areas of land that have been altered in the past. The proposed addition, fence and egress stairs will be located within the 100' buffer zone of a coastal dune. The proposed dormer and deck will be located within the 100' buffer zone of the coastal dune and within land subject to coastal storm flowage. No alterations are proposed within the coastal dune. There will be an addition to be installed over an existing deck to store kitchen equipment, a proposed fence and a new egress stairway for access to the residential unit and a new stairway to access the restaurant. In addition, a dormer will be added and a new deck on the south elevation. Additional seating will be added to the restaurant and a new bar area will be located on the second floor. No work will be from the beach, primary access will be from the street.

Public Comment: William Ashmore, a contractor working on the adjacent property, had concerns, including the footings/sono-tubes that will have to be dug to support the deck on the east elevation and the uplift and downward forces that the structure would be subject to, alleging that it since the deck was on the east lot line, the sono-tubes would encroach on the adjacent property and that it would block the view corridor to the beach that was created on the abutting property. In addition, the trash area be closed to avoid any rodent infestation. He ended by stating that he was in support of the project.

Commission Discussion: The Commission questioned Mr. Rogers and Mr. Shea. Mr. Famulare expressed his and the Commission's concern about debris and sand from activity done last month in basement being deposited on the beach on an abutting property. Mr. Shea said that the activity was not related to this project and that a contractor had been hired to take out sediment and debris from under the building. It happened to have been deposited on the coastal dune and the adjacent property. Mr. Shea said that a letter was sent that the property owner of 429 was aware that it was deposited without authorization or a permit and it would be restored to its former condition, prior to the alteration. He said that they would be willing to bring the beach down to its original grade and elevation and, in addition, add beach grass. He said only a small area had been altered and it would be a very easy clean-up to bring it back to its former condition and that it could be made a condition of the Negative Determination if the Commission saw fit. Mr. Famulare questioned Mr. Rogers about the east elevation changes. Mr. Rogers rebutted Mr. Ashmore's argument regarding the location of the deck. He said that the structural design plans will not be finalized until the discretionary permitting has been complete. Mr. Famulare reviewed several of the Special Conditions. He said that the Commission wanted to add a Condition requiring the applicant to remove any unauthorized sediment and any trash or debris on the dune located at 429 and 435 Commercial Street before construction associated with 429 Commercial Street begins. Mr. Famulare recommended no later than one week from the date of issuance of the Order of Conditions. In addition, as a pre-construction condition, the Commission added that the Conservation Agent shall be contacted after removal of debris is complete to confirm that the condition of the areas has been restored to its original condition.

Nathaniel Mayo moved to grant a Negative #2 and #3 Determination for CON-20-035 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 proposed addition and renovation of an existing building at the property located at 429 Commercial Street subject to the draft conditions as discussed and with the added pre-construction condition stipulating a time frame for the clean-up and debris removal from the properties at 429 and 435 Commercial Street prior to any construction at the subject property, Joseph Cooper seconded and it was so voted, 5-0.

d) CON-20-036 467 Commercial Street

Request for a Determination of Applicability filed by **M.L. Bryant, 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 removal of unauthorized construction debris and the repair of an existing timber bulkhead at the southeast corner. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to a Coastal Beach.

Presentation: Billy Rogers and Paul Shea appeared to present the application. Mr. Shea said that this application was the result of an enforcement action. There is an existing old wooden

bulkhead on the property and unauthorized construction debris that needs to be removed. A coastal bank is located within the property, landward of the existing bulkhead. The project includes the restoration of coastal wetland resource areas within the property, the removal of unauthorized construction debris and materials (wooden timbers, telephone poles, planks of wood, a concrete structure, concrete blocks, boulders, rocks and other debris, located landward of the old wooden bulkhead and on the sloped coastal bank feature. The unauthorized debris will be removed by an excavation machine and moved off the property to a proper location by a dump truck. The area will be cleaned, as a new bulkhead will be installed at a later date and an NOI submitted. In addition, a section at the far eastern edge of the existing timber bulkhead at one corner will be repaired. Mr. Rogers reviewed the project and described how the damage to the corner of the bulkhead occurred as the result of a recent storm flowage and the fact that it is not performing it should. He is in the process of designing a new bulkhead. He reviewed the site plan, the design of the repair and the restoration plan.

Public Comment: Gene Tartaglia, a part-time resident of the abutting property, was concerned about the conditions damage to the bulkhead on the west side that had sustained damage and whether the work would be completed by the applicant. Mr. Rogers reassured him that the work will be completed.

Commission Discussion: The Commission questioned Mr. Shea and Mr. Rogers. Mr. Famulare reviewed and commented on the draft conditions. He suggested a revision to #17 to modify the six months from the issuance of the Determination to submit the NOI for the permanent repair of the seawall to the date agreed upon at the hearing for the first Enforcement Order, which was six months from that date. The temporary repair shall be done within a month of the issuance of the Determination and if not, the Conservation Agent shall be notified.

Robert Brock moved to grant a Negative #2 and #3 Determination for CON-20-036 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 removal of unauthorized construction debris and the repair of an existing timber bulkhead at the southeast corner of the property located at 467 Commercial Street with the draft conditions as discussed, Joseph Cooper seconded and it was so voted, 5-0.

e) CON-19-071 21 Commercial Street

Request to Amend Order of Conditions (DEP File No. SE 058-0616) filed by **Brian Stevens, 21 Commercial Street, 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 removal of an existing sewage tanks, pump and ballast, and the replacement with a new grinder pump system. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to a Coastal Beach.

Presentation: Charlie Agro and John Schnaible appeared to present the application. Mr. Agro reviewed he project, which includes replacing existing tanks and pump that remove sewage effluent from the house to the Town sewer. During construction of a new seawall, the wooden deck will be removed. The existing septic components will be pumped and removed along with a concrete ballast. A new grinder pump system will be installed and reconnect to the existing sewer line and force main. The area where the installation is proposed will be backfilled with clean fill and sand and the deck reconstructed with a hatch to provide access for servicing the sewer pump. The grinder pump system will occur after the new seawalls have been installed and

prior to the deck being replaced. Mr. Famulare said that the applicant was allowed to install a temporary work platform for storage of the crane during high tides and the exact location will be determined in the field and with confirmation by the Conservation Agent. It will be between the property at 19 and 21 Commercial Street. Mr. Agro updated the Commission on his submission of the minor modification of the Chapter 91 license. Looking to get authorization for 19 Commercial Street in order to do both properties at once.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Agro and Mr. Schnaible about how the equipment would be staged and the construction protocol.

Nathaniel Mayo moved to approve the Request to Amend the Order of Conditions (DEP File No. SE 058-0616), CON-20-071, 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 exterior renovations of an existing dwelling, construction of an addition, reconstruction of elevated decks, and replacement and relocation of an accessory shed structure at the property located at 21 Commercial Street, Robert Brock seconded and it was so voted, 5-0.

f) CON-20-038 66 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 one 4-bedroom dwelling, hardscape patios, sewer system, gravel driveway, and retaining walls; re-alignment of existing fencing; and 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 appeared to present the application. Mr. King said that the site plan submitted had been simplified to get rid of non-relevant engineering and septic information, adds color to the buffer zone lines, and shows the location of the four-bedroom single-family house. He reviewed the project. The lot includes 4.05 acres and is currently in a developed and disturbed state and is operating as an agricultural farm. There is a portion of an existing house ring, stone retaining walls, stone “horse steps” portions of an existing gravel driveway and bins/planting beds associated with the agricultural operation. The wetland area is characterized by a low-lying meadow grass with hydrology and hydric soils as dominant indicators. The construction includes a proposed septic system, a gravel driveway, retaining walls, re-alignment of existing fencing, associated utility upgrades and landscape improvements. Erosion and sediment controls are proposed along the limit of work. All work is within previously disturbed areas and there are no structures are proposed within 80’ of the resource area. A portion of a deck/palletized patio and landscape retaining walls, which are less than 4’ in height, will be located in the 80’ buffer zone. Grading will be minimal and limited to fill material as required to meet the separation from ground water at the proposed septic system location and additional material along the proposed driveways with short-step landscape retaining walls to limit disturbance along the southern edge of the development area. The gravel driveway will be constructed of pervious materials and runoff will follow the existing contours and mimic existing runoff patterns and characteristics. Roof runoff will be directed to gravel-filled drip-line trenches. Hardscape materials proposed for the site will be wood decks and dry-laid stone walkway and patio areas in order to promote infiltration in place and by allowing stormwater to flow between

the joint of the materials. All proposed buildings will be slab construction and not require deep-hole excavations. New residences are located 80' from the wetland and no native vegetation will be removed for the house. The proposed septic system and applicable components have been located outside the 100' buffer zone. All work will be outside the 50' buffer zone.

Public Comment: None. There were 4 letters in opposition to the project.

Commission Discussion: The Commission questioned Mr. Krohn and Mr. King. The Commission was concerned about possible contamination of the resource area by the raised leaching field, suggesting that a water quality monitoring program of some sort could be implemented to guard against it. The Commission asked for assurance that the wetland will not be impacted. The issue was discussed with Mr. King argued that it wasn't necessary and that it would constitute an undue burden, both with respect to time and money, on Mr. Krohn. He said that if any contamination did occur, it could realistically come from the numerous condominium buildings in the neighborhood, the contributory area, and could not be pinpointed as coming necessarily from Mr. Krohn's property, which consists of one single-family house. How would you isolate the origin of the contaminated water?

Mr. Famulare updated the Commission after a meeting between the Dept. of Community Development staff and Mr. Krohn. The two projects are considered as one lot and require discretionary permitting by the Planning Board and an issue was raised by the Health Dept. regarding the location of the leaching fields for each septic system in that because the leaching field for 72 West Vine is located on the 66 West Vine lot and that is not allowed for new construction and whether a horse paddock can be located over a leaching field. The Health Agent cannot approve a plan with any component raised, so the proposal must go the Board of Health for approval. Mr. King said that he was aware of the Health Dept. issue and he and Mr. Krohn were dealing with it. The extreme permeability of the soil required a greater distance from groundwater. The concern is about nutrient leaching into the groundwater. The Commission may want to look into whether a septic system should be allowed in such close proximity to a wetland area. The Commission discussed monitoring the vegetation to look for any kind of change that would indicate contamination with a survey on an annual or bi-annual basis and what could be done for mitigation if it were to occur. He said that there had been no study of the neighborhood to find out how contaminated water could flow onto Mr. Krohn's property and into the wetland as opposed to it coming from the septic systems on the site. He said that the project was in full compliance with the interests of the Wetlands Protection Act. The Commission requested that a letter from an environmental scientist regarding the likelihood that any contamination would occur and how best to monitor the situation. It was suggested that an environmental scientist submit a writing to explain the dynamics and hydrology of the site and further verify that this is a viable issue of concern for the Commission. The Commission discussed the issue and wanted to continue the matter. Mr. King argued against the continuance. He said that the project was still before the BOH for a revised septic system, which was previously approved as a raised system, and said that the potential contribution of a single-family house having an effect on a wetlands system in regard to nitrogen loading is *de minimus* in relation to the surrounding contributory area. He would agree to provide confirmation, or an opinion, by a qualified wetlands scientist that the project will not adversely impact the wetlands based upon the interests of the WPA and that the approval of the Commission could be contingent upon that writing. The Commission further discussed the issue. Mr. King said he would research the issue further, with the help of the

applicant's wetland scientist, and submit additional relevant information to Mr. Famulare who will then disseminate it to the Commission and it can be commented on by the Commission and then any of its issues with the information can be discussed at the next hearing.

Joseph Cooper moved to continue CON-20-038 to the Public Hearing of January 21, 2020 at 6:30 P.M. with the stipulation that the applicant submit a writing by a wetlands expert addressing the Commission's concerns as discussed, Robert Brock seconded and it was so voted, 4-1 (Nathaniel Mayo opposed).

3) **Requests for Certificates of Compliance:** Mr. Famulare reviewed the Requests.

a) **105 Provincelands Road** (DEP File No. 058-132 – installation of septic system); This permit has expired. **Nathaniel Mayo moved to approve a Certificate of Compliance for an invalid Order of Conditions for DEP File No. SE 058-132, Joseph Cooper seconded and it was so voted, 5-0.**

b) **105 Provincelands Road** (DEP File No. 058-215 – installation of septic system); **Nathaniel Mayo moved to issue a complete Certificate of Compliance for DEP File No. SE 058-215, Alfred Famiglietti seconded and it was so voted, 5-0.** and

c) **579 Commercial Street** (DEP File No. 058-567 – raise and modify single-family home). **Nathaniel Mayo moved to issue a complete Certificate of Compliance for DEP File No. SE 058-567, Joseph Cooper seconded and it was so voted, 5-0.**

4) **Conservation Agent Update:** Mr. Famulare said that after checking with David Gardner, the start of the Commission's hearings can now be moved to 6:00 P.M.

5) **Approval of Minutes of December 17, 2019:**

December 17, 2019: Nathaniel Mayo moved to approve the minutes as written, Joseph Cooper seconded and it was so voted, 5-0.

6) **Any other business that shall properly come before the Commission:** Mr. Famiglietti mentioned the Annual Report. Mr. Famulare said he will circulate a draft to Commissioners for comments and it can be discussed at the next hearing

ADJOURNMENT: Nathaniel Mayo moved to adjourn the Public Hearing at 10:00 P.M., Brett McNeilly seconded and it was so voted unanimously.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2020
Alfred Famiglietti, Chair