

**PROVINCETOWN CONSERVATION COMMISSION
VIRTUAL MEETING**

June 16, 2020

5:30 P.M.

Members Present Virtually: Alfred Famiglietti, Robert Brock, Oriana Conklin (left at 7:42 P.M.), Brett McNeilly and Thomas Skinner.

Members Absent: Nathaniel Mayo (excused) and Joseph Cooper (excused).

Others Present: Tim Famulare (Conservation Agent).

Conservation Agent Tim Famulare introduced the remote participation meeting, called the roll and determined that a quorum was present.

Chair Alfred Famiglietti called the Public Meeting to order at 5:30 P.M. and reviewed the purview of the Commission.

Mr. Famulare explained how applicants and the public can view the meeting on PTV and participate by calling a number that will be shown on the screen. He reviewed the protocol of the meeting and requested that all phones be muted unless the individual is speaking. Mr. Famiglietti requested that no cross-talk occur amongst the meeting participants and that each identify themselves before speaking in order to avoid confusion.

1) **Work Session:**

a) **429 Commercial Street** – Review and approve proposed installation of temporary deck for outdoor dining to allow for compliance with the Town of Provincetown Board of Health Rule and Order on Use of Outdoor Space for On-Premises Dining effective May 28, 2020. Work to take place within Land Subject to Coastal Storm Flowage and a Coastal Dune.

Mr. Famulare reviewed the request for the Mews restaurant. He said that on June 2nd, the Commission delegated the review and approval of seating plans with respect to the coastal beach to the Agent. Because of restrictions at this particular property, it is difficult to accommodate seating on the beach. The owners of the restaurant are requesting to install a temporary deck for seating on the coastal dune adjacent to the restaurant. Since the issue is outside the scope of the delegation of the authority of being reviewed and approved by the Agent, this situation has been brought to the entire Commission.

Presentation: Ed Teo and Ron Robin, owners of the Mews, were present in the meeting to discuss the request. Mr. Teo said that in order to socially distance diners, the restaurant would lose 60 indoor seats. As the Commercial Street, or north, elevation of the property only has a small amount of space, the owners were looking for alternatives on the south elevation. The temporary deck would allow for approximately 24 seats outside on the south elevation of the property. In order to do this pursuant to state and local wetlands regulations, the owners have consulted with Gordon Peabody, of Safe Harbor Environmental, in order to protect the resource area properly. If necessary, Mr. Peabody will transplant and move beach grass in order to accommodate the deck, and after the deck has been disassembled, return the grass to the beach in order to re-vegetate the dune. Mr. Teo said the proposed temporary deck will measure 10' by 40', just under the length of the building on the site, as shown on the site plan submitted to the

Commission. This location will accommodate a server aisle of 6', and the width of the tables, which is 4'.

Commission Discussion: The Commission questioned Mr. Teo. Mr. Famulare recommended that the Commission approve the request with conditions, including that the deck would need to be able to be removed 24 hours in advance of a coastal storm, that any dune grass within the area of the deck be transplanted farther out on the dune, and that once the deck is removed, the area be replanted with beach grass. He said that in addition, photographic evidence must be submitted prior to the removal of the beach grass and then again after the replanting in the fall. Mr. Teo said that Mr. Peabody told him that replanting the beach grass farther out on the dune is not a good idea, as it is summer, however Mr. Peabody said that he would replant the beach grass in a safe area where it will be maintained to ensure its survival for replanting in the fall.

Public Comment: Simie Maryles, the operator of a gallery on the property abutting 429 Commercial Street to the east, commented on the proposal and her concerns about rats in the area. John Meulendyk, the owner of the adjacent building, spoke of his concern about the rats in the area and suggested that the owners of the restaurant come up with a plan to control the rats, such as constructing a cold storage area to house the trash, as it is a public health problem. He said the issue has not been resolved as yet by the owners of the restaurant, notwithstanding their purchase of garbage containers with lids. He recommended the installation of a metal deck that is removed nightly.

Commission Discussion: Mr. Teo responded that all of the trash receptacles have secure lids and the trash area has been secured with a locked door. He said that renovations to be undertaken in the fall will allow the trash area to open on the north side. All receptacles have been replaced and all employees have been asked to make sure all garbage is double-bagged and a pest control person comes in monthly to monitor the situation. The latter says that the situation is not out of the ordinary. Mr. Famulare said that refrigerating the trash is not a condition that can be required by the Commission and is not within its purview. He said that he would contact the Health Agent about the issue. Mr. Teo said that the deck will be constructed of pressure-treated wood.

Public Comment: William Ashmore, a contractor working on the adjacent property, commented on the proposal and asked if it was considered whether the deck could be built in sections that can be removed nightly. The idea was discussed by the Commission and Mr. Famulare agreed with Mr. Ashmore that building the deck in sections would be ideal in case it had to be removed before a storm event. Mr. Ashmore volunteered his services to design a deck in order to help the owners of the restaurant. Mr. Famulare said that the applicants should consider Mr. Ashmore's proposal. Mr. Teo said that this option was considered and rejected for safety reasons and for the immense work and effort involved in having to remove the booths that will be used for seating on the deck every night. He said that the furniture and accessories could be removed in case of a storm, however he thought it was a hardship to have to remove them nightly. They will be secured on a nightly basis. Mr. Famulare said that the Commission could approve the proposal and encourage the applicants to reach out to a contractor, such as Mr. Ashmore, to explore options for nightly removal of the deck.

Oriana Conklin moved to approve the proposal for a temporary deck for seating at the property located at 429 Commercial Street with the conditions as discussed, Robert Brock seconded and it was so voted by roll call, 5-0.

2) **Public Comments:** None.

3) Public Hearings:

a) CON-20-065 99 Commercial Street

Notice of Intent filed by the **Siobhan Carew, Trustee, Nathaniel Hopkins Condominium Trust at Union Wharf**, 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 installation of cribs for support under the existing building and structural repairs. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach. Mr. Famiglietti said public comments would be limited to 5 minutes and should not be repetitive.

Presentation: Ginny Binder, Paul Shea, Michele Cudilo, and Deb Paine were present in the meeting to discuss the application. Mr. Shea updated the Commission on requested revisions to submitted materials. These included revisions to the Outermost Land Survey site plan for existing conditions and Ms. Cudilo's temporary shoring plan, a drawing labeled S5. He reiterated that the project had a Dept. of Environmental Protection file number, SE 058-0635, and DEP had no comments regarding it. He noted that Mr. Famulare had submitted an email summarizing his meeting with Greg Berman about the project to the Commission. The upshot of the email was that the cribbing/shoring project will have no impact on the existing coastal wetland resource areas, including the coastal beach. What the Commission is considering in this application, according to Mr. Shea, is a Phase 1 project, a temporary shoring plan for the building at 99 Commercial Street, where all work will be done by hand with no need for beach access, as all materials will be brought in via the street. A second NOI will be submitted for the next phase of the project, which will be for the installation of permanent structural solutions. This project is just for the installation of temporary shoring utilizing a total of ten 3' by 3' wooden cribs primarily under the dining area. Ms. Binder noted a brief synopsis of the project she had created. A presentation containing all information requested gathered in one place, including sketches of the work detail, the S5 plan, photos appropriately labeled, and work that Mr. Shea previously described such as the temporary shoring plan and the construction protocol, had been prepared for the Commission's consideration if it so chose to review it.

Mr. Famulare reviewed the discussion points from his site visit with Mr. Berman, a coastal processes specialist, on June 10th. He said that the bulkhead that wraps almost 3 sides of the building under the foundation does not bear any weight, but does extend about 3-4' high. There are 6 cribs proposed to be placed landward of it, however the bulkhead, according to Mr. Berman, would significantly dissipate wave energy and the cribbing would therefore have no impact on coastal processes on the coastal beach. The 4 cribs proposed to be located directly seaward of the bulkhead would not likely exacerbate erosion of the coastal beach during a storm or otherwise significantly impact coastal processes because there is a dense field of piles seaward of this that would greatly dissipate wave energy before reaching the 4 most seaward cribs. In fact, it was Mr. Berman's opinion that the cribbing structures may even diminish the reflective energy of wave action against the otherwise vertical face of that timber bulkhead and would potentially reduce the effect of erosion seaward of them that would occur if the cribbing were not present. Mr. Berman had suggestions on how to avoid the timber elements of the cribbing becoming water-borne debris during a storm, including recommending that the timbers be securely fastened to each other and

individually marked with the address of the site in case they were to break up. He added that the applicant has proposed, in their plan details, to fasten the timber elements of the cribbing together. Regarding monitoring protocol, Mr. Berman suggested that elevations be taken of the existing beach contours before work is commenced, which is something that the applicant's contractor had proposed at the last hearing. At the same time similar elevations of beach contours be taken at the same time at adjacent properties, such as 97 or 103 Commercial Street, that have vertical timber bulkheads such as this site has. That way, in the event of a storm, the relative change in beach elevation could be monitored to determine if the cribbing might have had some significant effect on erosion in the area. Mr. Famulare said that a regular monitoring protocol is incorporated into the draft conditions for the project. He said during the period of time that the cribbing was in place, if there was settling of the cribbing, additional timber elements or shims could be added or replaced to restore the function of the cribbing if erosion were to take place

Commission Discussion: The Commission questioned Mr. Shea, Ms. Binder, Ms. Paine, and Ms. Cudilo. Mr. Famulare reviewed the draft conditions. The Commission was concerned about whether the date of December 1, 2020, for the removal of the cribbing could be met and questioned Mr. Shea and Ms. Cudilo regarding the schedule. Mr. Shea reviewed the uncertainty of the phased schedule for installing the helical piles as it relates to both the hurricane and the nor'easter timelines. He said that it would depend upon whether the NOIs were appealed by an abutter or not, and that in addition to the weather, was a situation outside the control of the applicant and the Commission. The team was intent upon moving as quickly as they could throughout the process. Hopefully, he said, they would be able to make the date as conditioned. Ms. Cudilo noted that the contractor, Glen Maynard, and his schedule needed to be taken into account in terms of meeting the timeline in the draft conditions. Ms. Binder said that the team has contacted another contractor in case Mr. Maynard was not available. She stressed that these were issues that were outside the control of the applicant and the team. Mr. Famulare said that the applicant could make a request for an extension for completing the order of conditions if the deadline could not be met.

Public Comment: Attorney Alan Lipkind, representing an abutter, spoke in opposition to the project. David Berarducci, a unit owner in the condominium, had concerns, such as access and the water line to his unit, about the project and the lack of information about the entire project.

Commission Discussion: Mr. Shea said that the cribbing could be put together before it was brought to the site and would negate the need for a temporary work station as stated in the draft conditions and said access for other unit owners with structures located on the pier would not be blocked. Ms. Cudilo agreed with his statement and read from the written proposal describing the means and methods for the project. Mr. Famulare said that condition #11 could be stricken and rewritten to plan for some minor cutting of timber. Ms. Paine said that the owners of 97 Commercial Street have offered their parking area as a material storage and larger items that would not be placed in the staging area at 99 Commercial Street. She guaranteed that access would be open for all other unit owners at 99 Commercial Street. Mr. Famulare gave the Commission the chance to change the date of the deadline for the removal of the cribs. The Commission briefly discussed the issue. Mr. Famulare said that he had revised the draft conditions to read that the temporary cribbing had to be removed by November 1, 2020, provided that the applicant shall report to the Commission the status of permitting of the permanent foundation work and the condition of the temporary cribbing no later than the Commission's first

meeting in September at which time the Commission may consider a request to extend the deadline. The Commission agreed to that condition.

Robert Brock moved to approve the Notice of Intent, CON-20-065, 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 installation of cribs for support under the existing building and structural repairs with the conditions as discussed, Oriana Conklin seconded and it was so voted by roll call, 5-0.

b) CON-20-042 361 Commercial Street (continued from the meeting of April 21, 2020) **Notice of Intent** filed by **Todd Perry** 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 replace existing timber pile supports beneath an existing structure, renovate and elevate an existing structure, and to replace an existing deck and beach access stairs. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Dune, a Coastal Beach, and a Buffer Zone to a Coastal Dune and a Coastal Beach. There was a request from the applicant to continue the matter to the July 7, 2020 Public Hearing. **Robert Brock moved to continue CON-20-042 to the Public Hearing of July 7, 2020 at 6:00 P.M. Brett McNeilly seconded and it was so voted by roll call, 3-0-0. Thomas Skinner recusing himself from the matter.**

4) **Request for Certificate of Compliance:**

a) CON-20-069 219 Commercial Street: Mr. Famulare said that he has not done a site visit at this property, upon which the Post Office sits. He will report on the project at the next meeting.

5) **Conservation Agent Update:**

a) Review and approve B Street Garden expenses. Mr. Famulare said that there was about \$2,000 left in the budget before the June 30th deadline. He said that he would be purchasing mulch, as well as new hoses, nozzles, and hose hangers before that date. Mr. Famiglietti asked if a hand dryer could be put next to the soap station. Mr. Famulare said that gardeners could bring their own towels. Mr. Famiglietti also asked if a solar-powered light sensor could be placed on the side of the shed. Mr. Famulare said there was a battery-operated one there already, but it needed new batteries.

Town elections will take place on June 30th and Board elections have to take place at the first meeting after that date. Commission elections would take place on July 7th.

6) **Approval of Minutes of May 19, and June 2, 2020:**

May 19, 2020: Robert Brock moved to approve the minutes as written, Brett McNeilly seconded and it was so voted by roll call, 4-0.

June 2, 2020: Robert Brock moved to approve the minutes as written, Brett McNeilly seconded and it was so voted by roll call, 4-0.

7) **Information**

a) CON-20-070 46 Shank Painter Road (tree limb removal) – Mr. Famulare has approved this request by Administrative Review.

b) CON-20-071 145 Commercial Street (fence replacement and deck repair) – This project was completed before an Administrative Review was undertaken by the Agent, so Mr. Famulare said that he would be taking some enforcement action and will report back to the Commission regarding that action.

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

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

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2020
Alfred Famiglietti, Chair