

**PROVINCETOWN CONSERVATION COMMISSION
VIRTUAL MEETING**

July 7, 2020

5:30 P.M.

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

Members Absent: Oriana Conklin (excused).

Others Present: Tim Famulare (Conservation Agent).

Conservation Agent Tim Famulare as the moderator introduced the remote participation meeting, called the roll, determining that a quorum was present.

Chair Alfred Famiglietti called the Work Session to order at 5:32 P.M. and reviewed the agenda item to be considered.

Mr. Famulare explained why a virtual hearing was being conducted and how applicants and the public can view the meeting on PTV and participate by calling a number that is shown on the screen. He reviewed the protocol of the meeting, including not speaking until recognized by the Chair, and requested that all phones be muted unless called on to speak by the Chair. He explained how to unmute a phone and requested that all speakers state their names prior to speaking.

1) **Work Session:**

a) Election of Chair and Vice-Chair:

Nathaniel Mayo moved to nominate and elect Alfred Famiglietti for the position of Chair of the Conservation Commission, Robert Brock seconded. Mr. Famiglietti accepted the nomination. *It was so voted by roll call, 6-0.*

Alfred Famiglietti moved to nominate and elect Nathaniel Mayo for the position of Vice-Chair of the Conservation Commission, Joseph Cooper seconded. Mr. Mayo accepted the nomination. *It was so voted by roll call 6-0.*

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

a) CON-20-064 493, 495 & 495A Commercial Street (repair of steel sheetpile seawall). Mr. Famulare reviewed the project and said that the work had been completed. As the existing seawall was corroding so quickly, a composite sheetpile seawall was first installed just seaward of the existing one. The stairs were then re-installed. The only on-going condition is in the amended Order of Condition that allows a staircase to be installed and that can be lifted out of harm's way in case of a coastal storm. The latter is required because of the Chapter 91 license for the property that requires 24/7 access to the beach. The on-going condition includes not only that the staircase be capable of being lifted in case of a coastal storm, but that it be returned to its position for public access within 48 hours of the passing of the storm. He recommended a complete Certificate of Compliance with that on-going condition. *Nathaniel Mayo moved to issue a*

complete Certificate of Compliance for CON-20-064, Robert Brock seconded and it was so voted by roll call, 6-0.

b) CON-20-069 219 Commercial Street (reconstruction of parking lot; new drainage system): Mr. Famulare said that the parking lot was re-surfaced and a stormwater drainage system was installed to infiltrate runoff before it drained into an outfall pipe. He had a letter from the engineer on the project stating that the work had been completed in conformance with the plans. The on-going conditions include #19 and #20, which incorporate the long-term operation and maintenance plan for the stormwater management system and certain maintenance conditions related to the use of the lot. Mr. Famulare recommended a complete Certificate of Compliance. *Nathaniel Mayo moved to issue a complete Certificate of Compliance for CON-20-069 with on-going conditions # 19 and 20, Thomas Skinner seconded and it was so voted by roll call, 6-0.*

c) CON-20-075 29 Point Street (invalid Order of Conditions): Mr. Famulare explained that the owner of the property asked for a Certificate of Compliance for the construction of a structure on the property. However, the area is no longer within the jurisdiction of the Commission, as the NHESP map has been revised to exclude it. There was then a second application because the structure had to be moved away from a sloped area on the lot and brought closer to the front of the property. A Certificate of Compliance was already issued for the second application. This request is to clear up the lapsed Order of Conditions. He recommended issuing a Certificate of Compliance for an invalid Order of Conditions. *Nathaniel Mayo moved to issue a Certificate of Compliance for an invalid Order of Conditions, CON-20-075, Thomas Skinner seconded and it was so voted by roll call, 6-0.*

6) Approval of Minutes of June 9 and 16, 2020:

June 9 2020: *Nathaniel Mayo moved to approve the minutes as written, Robert Brock seconded and it was so voted by roll call 6-0.*

June 16, 2020: *Nathaniel Mayo moved to approve the minutes as written, Thomas Skinner seconded and it was so voted, by roll call 6-0.*

7) Information

a) CON-20-072 58 Harry Kemp Way: Mr. Famulare said that this was an Administrative Review application for the removal of 4 pine trees, located at the edge of a buffer zone, which were encroaching on an existing structure and deemed hazardous by an arborist. The property owner is required to replace them with native shrubs to stabilize the berm upon which the trees sat.

5) Conservation Agent Update: Mr. Famulare had an update regarding seating on the beach. He has issued approvals for seating on the beach for Tin Pan Alley, Way Downtown and the Harbor Lounge, all of which are complying with the Commission's conditions for temporary seating on the beach during the COVID-19 emergency. He said that the project at The Mews was moving forward. Mr. Famulare also said that on July 1st, Governor Baker had lifted part of his

Executive Order that extended permitting deadlines during the state of emergency or that had expired during the state of emergency. This means that he has 45 days from July 1st to issue any permits tolled during the state of emergency. He said he would need signatures from several Commissioners.

Chair Alfred Famiglietti called the Public Hearing to order at 6:00 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 of participants be muted unless they are speaking. Mr. Famiglietti requested that no crosstalk occur amongst the meeting participants and the Commission and that each speaker state his or her name before talking in order to avoid confusion.

2) **Public Comments:** None.

3) **Public Hearings:**

a) **CON-20-076 216B Bradford Street**

Administrative Review application filed by **Mischa Richter** pursuant to 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 dismantle an existing structure and store building components on site and remove a foundation. Work to take place within Land Subject to Coastal Storm Flowage. Mr. Famulare explained why this Administrative Review was being presented for the Commission's approval. He said that according to the Commission's regulatory matrix, which determines what level of permitting is appropriate for what types of work in resource areas, this project, which includes demolition within a flood plain, needs an approval as an Administrative Review by the full Commission.

Presentation: Casey Clark and Nate McKean, from McKean Artisan Builders, were in the meeting to present the application. Mr. Clark reviewed the project. He explained that for this phase of the project, they are proposing to remove the walls of the existing structure and store them on the site, and then tear out the foundation and remove it from the property. This will get the property ready for the subsequent installation of pilings or a foundation that would be flood-zone compliant. Mr. Famulare informed the Commission that the applicant had submitted an Notice Of Intent application for the next hearing for the construction of a building that will replace the existing one. Mr. Clark said that the walls taken off the existing structure would be used for the new structure, which will be a two-story building.

Public Comment: Michela Carew-Murphy spoke in favor of the application.

Commission Discussion: The Commission questioned Mr. Clark and Mr. McKean. Mr. Famulare reviewed the draft conditions. Mr. Clark and Mr. McKean had no questions about the draft conditions.

Nathaniel Mayo moved to approve an Administrative Review, CON-20-076, 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 dismantle an existing structure and store

building components on site and remove a foundation with the conditions as drafted, Thomas Skinner seconded and it was so voted by roll call, 6-0.

b) CON-20-042 **361 Commercial Street** (continued from the meeting of June 16, 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. Thomas Skinner recused himself because of conflict of interest.

Presentation: Steve McKenna and Todd Perry were in the meeting to present the application. Mr. McKenna reviewed the proposed project to renovate and replace an existing structure and timber pilings supporting it. He said that the project would be a great improvement over the existing conditions. The building will be elevated 2' above base flood elevation. By elevating the structure, storm energy from waves refracting off the existing building will be reduced and allow the beach and dune area to migrate as they should as outlined in the performance standards of the Wetlands Protection Act. Also reduced would be the potential for building damage and a subsequent break-up of material, which could become destructive flotsam, during a storm event. Improvement to habitat in the resource area will occur, as more light will penetrate the area under the existing structure.

Public Comment: None. Mr. Famulare reviewed a letter from the condominium association and stated that he had shared the plans with its unit owners, however the concerns expressed in the letter were not within the purview of the Commission.

Commission Discussion: The Commission questioned Mr. McKenna and Mr. Perry. Mr. Famulare said that this project had been postponed from February in order to deal with condominium issues. However, there is no DEP file number assigned to the project yet. Elevation drawings were shown on the screen and discussed. A new staircase will be installed to allow access to the deck in its new, higher location. Mr. Famulare questioned Mr. McKenna and Mr. Perry about the north elevation of the structure, given the higher elevation of the entire building. There was some confusion about what plans that been submitted and what plans the Commission should be reviewing. Mr. McKenna said that the project has gone through several iteration as discussions with unit owners in the condominium have taken place over the last several months. Mr. Famulare explained what needed to be revised on the plans, including showing the stairs and the elevated deck. The Commission continued the application to the next hearing. The revised plans should be submitted at least a week before the scheduled meeting.

Nathaniel Mayo moved to continue CON-20-042 to the Public Hearing of July 21, 2020 at 6:00 P.M., Robert Brock seconded and it was so voted by roll call, 5-0.

c) CON-20-073 **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 permanent structural repairs, including the installation of 15 helical piles,

for support under and within the existing building (Sal's Restaurant). Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach, including the coastal beach.

Presentation: Ginny Binder, Paul Shea, Deborah Paine and Michele Cudilo were present in the hearing. Mr. Shea reviewed the proposed project. He said that the first phase of the project includes the installation of temporary cribbing, which will be removed by November 1st, prior to the winter storm season. This next phase involves the installation of 15 helical piles underneath the existing dining room area for safety reasons. He explained that the application, filed on June 22nd, and the plan, S5, are the same as the last NOI submitted for the temporary cribbing. The previous NOI did mention the 15 helical piles and showed where they would be located. The applicant is now requesting a separate Order of Conditions to install the piles. The piles will be installed by hand, with limited disturbance, only an area of 10-12 sq. ft., to the coastal beach and with no travel across the coastal wetlands or the beach. They will be installed from inside the existing structure. Mr. Shea said that a letter, dated July 3, 2020, from the Dept. of Marine Fisheries had been received regarding this project and had no recommendations. The DEP has not yet issued a file number, but he expects it to be forthcoming and thinks that it may have been held up by the holiday weekend and the pandemic restrictions. He said, however, that the DEP has the DMF letter indicating no recommendations, already. He said that time is of the essence due to the condition that the cribbing be removed by November 1st. He said that an abutter had appealed the previous Order of Conditions, but the DEP has not scheduled a site visit. It is possible that DEP is aware of the appeal and should there be an appeal of this NOI, which the applicant is anticipating, the DEP may want to schedule just one site visit to hear both appeals. Mr. Shea said that there is a need to shore up the building and he has had conversations to that effect with the Building Commissioner. Ms. Cudilo said that most construction projects have temporary shoring as part of their process. She reviewed the project of installing the helical piles.

Commission Discussion: Mr. Famulare and the Commission questioned Ms. Cudilo, Ms. Binder and Mr. Shea. Mr. Shea said they had an Order of Conditions for the installation of the temporary cribbing and said that the DEP, with the information that it had for the first Order of Conditions, would most likely issue a superseding Order of Conditions to proceed with the installation of the shoring. There was no environmental reason, in his opinion, that the DEP could not issue a superseding Order of Conditions for both phases of the project; the temporary cribbing and the helical pilings to shore up the building. Mr. Shea reminded the Commission that it could close hearing without a DEP file number and the issuance of an Order of Conditions, to be recorded, could be contingent upon the receipt of a number. He said that could be made a condition at the hearing. The Commission discussed procedural issues given the particular circumstances of the project and the lack of a DEP file number and how, and whether, it could move forward. An off-schedule meeting was suggested.

Public Comment: Attorney Alan Lipkind, representing an abutter, spoke in opposition to the application and encouraged the Commission not to move forward without a DEP file number. He also said that the building may have to be lifted out of the flood zone and the Commission should not move forward until that issue was resolved. Thom Biggert spoke in support of the application. Mark Walsh, a unit owner in the condominium, expressed his concerns about access to his unit and the safety of the utility lines during the construction process. He requested that the location of those lines be indicated on the site plan for anyone working on the project to see. David Berarducci, another unit owner, agreed with the concerns of Mr. Walsh. The applicant agreed to

indicate the utility lines on the site plan and to make sure that access is always available to other unit owners in the condominium. Mr. Famulare suggested that the contractor for the project submit a plan to protect the utility lines from disruption during construction.

Commission Discussion: Mr. Famulare reminded the Commission that the issue of raising the building would be under the purview of the Building Commissioner. The Commission discussed holding a special meeting to continue the application, given Mr. Shea's opinion that an issuance of a DEP file number was imminent. Mr. Famulare reviewed the draft conditions and the Commission made comments. Ms. Paine commented that she had been very adamant, and had made clear, at the last hearing that unit owners would be guaranteed access during construction and that and the location of the utility lines would be put on the site plan.

Nathaniel Mayo moved to continue CON-20-073 to July 14, 2020 at 2:30 P.M., Thomas Skinner seconded and it was so voted by roll call, 6-0.

8) **Any other business that shall properly come before the Commission:** None.

ADJOURNMENT: *Nathaniel Mayo moved to adjourn the Public Hearing at 8:30 P.M., Thomas Skinner seconded and it was so voted by roll call, 6-0.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2020
Alfred Famiglietti, Chair