

**PROVINCETOWN CONSERVATION COMMISSION**  
**JUDGE WELSH ROOM**  
**November 1, 2016**  
**6:00 P.M.**

**Members Present:** Dennis Minsky, Mark Irving and Alfred Famiglietti.

**Members Absent:** Lynne Martin (excused).

**Others Present:** Gloria McPherson (Town Planner), Deb Albenberg (Conservation Agent) and Ellen C. Battaglini (Permit Coordinator).

**WORK SESSION**

Chair Dennis Minsky called the Work Session to order at 6:13 P.M.

1) **Review Provincetown Wetlands Protection Regulations regarding recording Local By-Law filings with Registry of Deeds:** Ms. Albenberg asked if the Commission wanted to make a policy that permits issued pursuant to the local by-law be recorded in the Barnstable County Registry of Deeds. If so, she said, the local by-law filing form would have to be issued on a recordable document. The Commission briefly discussed the subject and confirmed that all local by-law filings should be recorded at the Barnstable County Registry of Deeds.

2) **Discussion regarding 67 Harry Kemp Way phragmites removal project:** Ms. Albenberg reported that she had scheduled a meeting with Demetrios Daphnis, the owner of the property, tomorrow morning to review the eradication project. She had a question about the paradox in the Commission's Order of Conditions for the site in that it was stated that the use of herbicides for the elimination of the invasive was not permitted, yet the recommended method for removal was the cut and drip method, which uses an herbicide. She said that as a consequence of this confusion, Mr. Daphnis ended up not using an herbicide. The Commission discussed the issue. Mr. Minsky will join Ms. Albenberg for the meeting with Mr. Daphnis who is looking for a reimbursement of funds that he has spent in the removal of phragmites. A letter was submitted by Paul Shea attesting to the progress of the three-year project at the site.

3) **Proposed changes to MESA By-Law Performance Standards:** The Commission would like Town Counsel to review the draft performance standards that have been discussed at previous work sessions. Ms. McPherson suggested that more work on the draft needed to be done before a Town Counsel review. She made some general suggestions for revisions. Mr. Minsky said that the Commission would spend more time on the performance standards at a future work session.

4) **Approved plant list comparison for consideration:**

- a. **Native plants suitable for Cape Cod landscape**
- b. **Acceptable plantings for buffer zone resource areas**
- c. **Trees & shrubs for coastal environment and fresh water resource buffer zones**

Mr. Minsky said he wanted to make sure that the native plants list was for vegetation that was suitable specifically for conditions on the Outer Cape. The Commission did not discuss the issue further.

Mr. Minsky mentioned an agenda addendum regarding working on an information pamphlet. He said that an AmeriCorps volunteer could work on it.

Chair Dennis Minsky adjourned the Work Session at 6:30 P.M.

## **PUBLIC HEARING**

Chair Dennis Minsky called the Public Hearing to order at 6:30P.M.

1) **PUBLIC COMMENTS:**

None.

2) **PUBLIC HEARINGS:**

a) Case # **CON 17-029** (*continued from September 6th*)

**Local By-Law filing** application by **Diana Prideaux-Brune and Anne E. Mahoney** pursuant to the Provincetown Wetlands Protection By-Law, Chapter 12, regarding demolition of two existing structures and replacing them with a single-family residence, septic system and associated site work at the property located at **226B Bradford Street**. The work will take place within NHESP Estimated and Priority Habitat.

**Presentation:** Gordon Peabody and Kayla Anderson, both of Safe Harbor Environmental, appeared to present the application. Mr. Peabody reviewed the Safe Harbor revised submission package, which he said contained changes made to the project per the Commission's recommendations, including the reduction in the area of work activity by over 10,000 sq. ft., a change in the location of the house to a previously disturbed area and a change in the location of the septic system components, saving 11 trees, a reduction in site use due to the proposed storage of excavated materials off site, a reduction in site impact by the removal of a proposed retaining wall in the back of the property, a reduction in the decks of 58 sq. ft., a reduction in tree removal by having 2 trees grow through a deck and the removal of drain infrastructure. He noted that the proposed pool was only going to be excavated to a depth of 4'. He also reviewed the revised plans submitted. He suggested that the Commission include the Safe Harbor revised environmental management plan in the Order of Conditions.

**Public Comment:** Celine Gandolpho, on behalf of the Provincetown Conservation Trust, spoke in opposition to the project.

**Commission Discussion:** The Commission questioned Mr. Peabody and Ms. Anderson about the project and the change in the limit of work. The total existing footprint of the developed area is 965 sq. ft. The proposed structure is 3650 sq. ft., which includes a covered garage and a screened-

in porch area. The pool will cover 800 sq. ft. The total coverage of the site will be 6691 sq. ft., including decks, buildings and pool.

Tim Klink, a contractor with Coastal Land Design, and Stacy Kanega, of Coastal Engineering, joined the discussion. The Commission questioned Mr. Klink. Mr. Klink said that any tree less than 8" dbh was not considered significant and not included in his tree calculations. Mr. Peabody said that Safe Harbor would monitor the site for 10 years and would involve the Conservation Agent with the situation, along with submitting reports to the Commission regarding the site. Mr. Minsky made a statement and clarified a misstatement made by Mr. Peabody that the Commission did not have a role in generating any of the alternatives analysis for the project, as had been stated in the revised submission package. He also said that, in his opinion, two of the alternatives analyses were inadequately described and not realistically explored and that the neighbors' concerns spoken about by Mr. Peabody and Mr. Klink, were not within the purview of the Commission. Mr. Peabody and Mr. Klink both defended the alternative analyses. Mr. Minsky also added that he thought the pool would have a greater impact on the resource area than the house, as it is proposed to be built in the lushest, interesting and most vibrant area on the property and asked if that element of the project was negotiable.

Attorney E. James Veara, representing the property owners, joined the discussion. He encouraged the Commission to develop and clarify its performance standards for the local by-law filing. He argued that there is nothing in the Commission's regulations that prevents his clients from installing a pool on the site and that they have worked hard to meet the Commission's standards, have tightened the limit of work and scaled down the project to make it more environmentally sensitive.

***Mark Irving moved to approve the local by-law filing, Case CON #17-029, pursuant to the Provincetown Wetlands Protection By-Law, Chapter 12, regarding demolition of two existing structures and replacing them with a single-family residence, septic system and associated site work at the property located at 226B Bradford Street with the Standard Order of Pre-construction Conditions numbered 1-5, for Construction Conditions numbered 1-11 and for Post-Construction Conditions, numbered 1-4, and with the Special Conditions that Safe Harbor's revised environmental management plan, pages 2-10, be included in the Order, that the contractor provide tree protection detail with 2 by 4s and orange construction fencing, that notification of the Conservation Agent and the Conservation Commission occurs before major site activities, such as clearing and grubbing, digging of the foundation, etc. are performed and that Safe Harbor Environmental be involved in the environmental management of the project, notifications and site inspections and if any change takes place in that regard, that the Conservation Agent and the Commission are notified, Alfred Famiglietti seconded and it was so voted, 2-1 (Dennis Minsky opposed).***

b) Case # **CON 17-061**

**Notice of Intent** application by **Elizabeth Athineos** pursuant to the Massachusetts Wetlands Protect Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law to construct a second floor addition to the existing building, adding new decks, a patio and stairway. The proposed site work includes the removal of storage trailers,

parking area re-grading and the installation of a retaining wall along the east side of the parking area at the property located at **63 Shank Painter Road**. (Isolated Land Subject to Flooding and 100' Buffer to an Isolated Vegetated Wetland).

**Presentation:** William N. Rogers, II, Paul Shea and Liz Athineos appeared to present the application. The proposed project includes renovations to an existing building, redesign of a parking area, wall construction for a parking area, landscaping improvements and new plantings around an existing building. There is a small man-made wetland located in the southwest corner of the property. Mr. Shea said that the site is developed and the wetland is an isolated vegetated wetland subject to flooding. He said that because the site is in a flood zone, a DEP filing has been made and its file number is 058-0556. A filing has also been made to Natural Heritage. Storage trailers on the site will be removed. The proposed new parking areas will have a pervious surface and the existing impervious material that forms the driveway will be converted to a pervious material. A new concrete retaining wall will be constructed east of the proposed parking areas. He said that there would be no changes that will affect the wetland area.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Mr. Shea, Mr. Rogers and Ms. Athineos. Mr. Minsky noted concerns in regard to the retaining wall being located in the flood zone and the re-grading that would occur next to the wetland. He suggested that the parking area be re-graded away from the wetland. He also said that knotweed was growing around the rim of the wetland. The Commission discussed the idea of requiring the applicant to remove the knotweed. As an alternative mitigation, Mr. Shea suggested that since two trees will be removed on the site, that two new trees of a similar species could be planted on the north side of the wetland. He proposed American beech trees to which the Commission agreed.

**Mark Irving moved to approve the Notice of Intent pursuant to the Massachusetts Wetlands Protect Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law to construct a second floor addition to the existing building, adding new decks, a patio and stairway and including the removal of storage trailers, parking area re-grading and the installation of a retaining wall along the east side of the parking area at the property located at 63 Shank Painter Road with the Standard Order of Pre-Construction Conditions numbered 1-5, Construction Conditions numbered 1-11 and Post-Construction Conditions numbered 1-4, and with the Special Conditions that two American beech trees are planted on the north side of the wetland and that the parking area be re-graded to prevent runoff into the wetland, Dennis Minsky seconded and it was so voted, 3-0.**

c) Case # **CON17-066** (request to postpone to December 6, 2016)

**Determination of Applicability** application by **James Farley and Tom Boland** pursuant to the Massachusetts Wetlands Protect Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law to remove 5 trees at the property located at **1 Duncan Lane** and 1 tree at **7 Duncan Lane**. (Isolated Land Subject to Flooding and 100' Buffer to an Isolated Vegetated Wetland). There was a request from the applicant to postpone the application to the December 6, 2016 Public Hearing. **Alfred Famiglietti moved to postpone Case # CON-17-066 to the December 6, 2016 Public Hearing, Mark Irving seconded and it was so voted, 3-0.**

3) **Enforcement Order**

Case #ENFCON-17-009

Ratification of an EO issued for oil and grease release onto sand as a result of the overflow of a grease trap under the deck. Discharge released onto Land Subject to Coastal Storm Flowage and Buffer to a Coastal Beach. Property owner ordered to excavate contaminated sand, apply 5% chlorine bleach, test remaining soil and backfill with clean, compatible sand. The Commission briefly discussed the subject. *Mark Irving moved to ratify the Enforcement Order Case #ENFCON-17-009, Dennis Minsky seconded and it was so voted, 3-0.*

4) **Conservation Agent Report:**

**31 Point Street Update:** Ms. Albenberg said that the slope was still stable. Mr. Peabody reviewed photographs of the conditions at the site. The Commission briefly questioned Mr. Peabody.

5) **Information**

**Administrative Review Applications Approved by Agent** with Standard Order of Conditions:

- a) Case #CON 17-064 at **21 Dewey Ave., Unit 9** to install new windows;
- b) Case #CON-17-065 and CON 17-070 at **535 Commercial Street** to re-shingle west side of building, remove and replace deck boards, repair and replace joists and rotted material; and
- c) Case #CON-17-071 at **10 Commercial Street, #16** to renovate the interior and install 3 new windows and 1 sliding glass door.

6) **Approval of Minutes: October 18, 2016:** *Dennis Minsky moved to approve the language as written, Mark Irving seconded and it was so voted, 3-0.*

7) **Any Other Business:**

Ms. Albenberg discussed an Emergency Certification for a repair of the revetment at Herring Cove Beach. Mr. Minsky signed it and the Commission will review regulations regarding the issue of Emergency Certifications at the next meeting.

*Dennis Minsky moved to nominate Alfred Famiglietti to represent the Commission on the Community Preservation Committee, Mark Irving seconded and it was so voted, 3-0.*

**ADJOURNMENT:** *Dennis Minsky moved to adjourn the Public Meeting at 8:45 P.M. and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2016  
Dennis Minsky, Chair