

PROVINCETOWN CONSERVATION COMMISSION
TOWN HALL AUDITORIUM
January 3, 2017
6:35 P.M.

Members Present: Dennis Minsky, Mark Irving, and Nathaniel Mayo.

Members Absent: Alfred Famiglietti (excused) and Gregory Howe (excused).

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

PUBLIC HEARING

Chair Dennis Minsky called the Public Hearing to order at 6:35 P.M.

1) **PUBLIC COMMENTS:**

None.

2) **PUBLIC HEARINGS:**

a) Case # CON-17-092: **4 Maple Court**

Notice of Intent application by the **Paul R. Schofield and Andrew Jorgensen** pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetlands Protection By-Law, to remove an existing deck and replace it with an addition and new deck. Work to take place within the 100-foot Buffer Zone to a Bordering Vegetated Wetland and within NHESP Estimated and Priority Habitat.

Presentation: Tim Brady and Ezra Ambrose appeared to present the application. Mr. Brady said that the project consisted of the construction of a third story and a remodel of an existing two story dwelling with no expansion of the footprint. Mr. Brady said that there will be a well-defined and restrictive limit of work on the property. There is sufficient area adjacent to the proposed addition to allow construction and maintenance without impact on the buffer zone beyond the limit of work line. The proposal has been reviewed by Natural Heritage and the Commission has a copy of the letter that determines that the project will not result in a 'take'. Demolition and construction debris will go by chute directly into a dump truck located in a driveway and taken off site for disposal. Once the initial construction is complete, either a dump truck or dumpster will be on-site in the driveway. Some excavation will be necessary to complete the project and one white oak tree will be removed. New construction material will be delivered to the driveway and the adjacent lawn area within the limit of work line. A crane may be located within the driveway to lift building materials over the structure to the area of construction. A silt fence will be placed along the limit of work line as a physical barrier. The closest point that the deck will be located to the resource area is 52'. The DEP File no. is 058-0560.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Brady and Mr. Ambrose. The Commission discussed mitigation with Mr. Brady for the removal of vegetation on the site. The

Commission requested that a meeting with the Conservation Agent take place on site before the mitigative vegetation is planted.

Mark Irving moved to approve the Notice of Intent application pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetlands Protection By-Law, to remove an existing deck and replace it with an addition and new deck at the property located at 4 Maple Court with the Standard Order of Pre-Construction Conditions numbers 1-5, Construction Conditions numbers 1-11 and Post-Construction Conditions numbers 1-4, and that the trees that are removed shall be replaced on a three-to-one basis subject to an on-site review, Dennis Minsky seconded and it was so voted, 3-0.

b) Case # CON-17-094: **119R & 129R Bradford Street Extension**

Local By-Law Filing by **Edward G. MacLean and Steven Avruch** pursuant to the Provincetown General By-Laws Chapter 12, Wetland Protection By-Law, to rebuild decks, install timber and boulder retaining walls, construct a parking area and stone steps, install landscape plantings, relocate the driveway and re-grade. Work to take place within NHESP Estimated and Priority Habitat.

Presentation: William N. Rogers, II and Ed MacLean appeared to present the application. Mr. Rogers said that the proposed project consists of the installation of boulder walls, a permeable relocated driveway with a proposed timber wall, stone steps, plantings and minor grading. Mr. Rogers explained the grading to be done on the property. Mr. MacLean said that the property would be getting about 300 new plantings.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Rogers and Mr. MacLean. The permeable pavers that will be used for the project were discussed. Mr. MacLean said that all disturbed areas will be replaced according to the planting plan submitted.

Mark Irving moved to approve the Local By-Law application pursuant to the Provincetown General By-Laws Chapter 12, Wetland Protection By-Law, to rebuild decks, install timber and boulder retaining walls, construct a parking area and stone steps, install landscape plantings, relocate the driveway and re-grade at the property located at 119R & 129R Bradford Street Extension, with the Standard Order of Pre-Construction Conditions numbers 1-5, Construction Conditions numbers 1-4 and 6-11, minus the first sentence of number 8 and Post-Construction Conditions numbers 1-4, Nathaniel Mayo seconded and it was so voted, 3-0.

c) Case # CON-17-095: **793 & 795 Commercial Street**

DEP File #058-0561

Notice of Intent application by the **Jason Shinder Trust** pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetlands Protection By-Law, to install a new Title 5 septic system for an existing 4-bedroom condominium. Work to take place within the Coastal Dune, Coastal Beach and 100-foot Buffer Zone to a Coastal Beach, Land Subject to Coastal Storm Flowage and NHESP Estimated and Priority Habitat.

Presentation: David LaJoie appeared to present the application. He explained that the leach area of the new system will be located in the area of the coastal dune. The project area is situated on the north region of the property and lies within the 100' buffer zone to a resource area. Access for equipment, including a front-end loader, and materials will be via the beach adjacent to 749

Commercial Street. He said that a large quantity of vegetation will be removed during the project. One of the goals of the project is to revitalize the site's native plant community and to improve the habitat value and food source for nesting shore birds following construction. The survivability of newly planted material will be ensured throughout the open Order of Conditions. He indicated that there would a 30-foot section of walkway elevated over a portion of the leach area. He said that in response to a concern about that walkway at a site visit, he is offering the suggestion that it could either be located landward of the system or be constructed as an at-grade timber walkway with no piling supports in the same or a new location. The applicant submitted a planting plan.

Public Comment: Gordon Peabody suggested any winter activity on the beach should utilize turtle-stranding protocols. He will send the Commission and Mr. LaJoie a copy of Safe Harbor's protocols.

Commission Discussion: The Commission questioned Mr. LaJoie. The construction process will involve the coastal dune and beach, which was of concern to the Commission. It stipulated that equipment should not be stored on the beach overnight, but rather on the property within the work limit. The Commission was also concerned that tire ruts left on the beach by the heavy equipment would disrupt bird nesting areas and requested that the beach be re-graded to mitigate that concern. Ms. Albenberg reviewed the conditions from NHESP and suggested that they should be incorporated into the Commission's Order of Conditions. The Commission requested that the period of time that work could take place in order to protect endangered species' nesting areas should be extended through September and not at the end of August, as suggested by Natural Heritage.

Mark Irving moved to approve the Notice of Intent application pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetlands Protection By-Law, to install a new Title 5 septic system for an existing 4-bedroom condominium at the property located at 793 & 795 Commercial Street with the Standard Order of Pre-Construction Conditions numbers 1-5, Construction Conditions numbers 1, 3, 4 and 6-11 and Post-Construction Conditions numbers 1-3 and with the Special Conditions recommended by NHESP, except that work shall not take place from April 1st through September 30th, and the incorporation of Safe Harbor's turtle-stranding protocols, to be provided by Gordon Peabody, Dennis Minsky seconded and it was so voted, 3-0.

d) Case # CON-17-097: **21 Dewey Avenue, Unit 9**

Request for a **Determination of Applicability** by **Timothy Scott and Patrick Rorke** pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetlands Protection By-Law, to remove an existing roof on the southern side of the property and replace it with a flat roof and second story deck. Work to take place within the 100-foot Buffer Zone to a Coastal Dune. Mr. Irving had to recuse himself because of a conflict of interest leaving the Commission with no quorum to hear the matter. The Commission postponed the matter to the January 17, 2017 Public Hearing at 6:30 P.M. **Dennis Minsky moved to postpone Case #CON-17-097 until the January 17, 2017 Public Hearing at 6:30 P.M., Nathaniel Mayo seconded and it was so voted, 3-0.**

e) Case # CON-17-102 **457 Commercial Street**

Administrative Review application by **Seth Kaplowitz** pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12,

Wetlands Protection By-Law, to remove a honey locust on the street side of the property and replace it with a dogwood. Work to take place within the 100-foot Buffer Zone to the Coastal Beach and Land Subject to Coastal Storm Flowage.

Presentation Chris Lucy appeared to present the application. Mr. Lucy explained that the tree needs to be removed because of its proximity to the house and the electrical wires and because of damage sustained during the construction processes both on the site, including the installation of a gas tank at its base, and on the street.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Lucy. The Commission required a three-year survivability for the dogwood and requested that the Conservation Agent is consulted and that the site is cleaned up.

Mark Irving moved to approve the Administrative Review application pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetlands Protection By-Law, to remove a honey locust on the street side of the property and replace it with a dogwood at the property located at 457 Commercial Street with the conditions that the site be cleaned up immediately following the project's completion, that the newly planted dogwood have a three-year survivability requirement, that the Conservation Agent be consulted and that all access be from the street or parking area, Nathaniel Mayo seconded and it was so voted, 3-0.

f) Case # CON-17-103 **247 Commercial Street**

Administrative Review application by **Richard Murray** pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetlands Protection By-Law, to use a portion of the private beach to install a dance floor, truss and performance stage for a function to take place on July 3, 2017. Work to take place on a Coastal Beach and Land Subject to Coastal Storm Flowage.

Presentation: The applicant did not appear. Ms. Albenberg reviewed the request. She said the request is the same as last year for a similar event.

Mark Irving moved to approve the Administrative Review application pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetlands Protection By-Law, to use a portion of the private beach to install a dance floor, truss and performance stage for a function to take place on July 3, 2017, at the property located at 247 Commercial Street with the conditions that all access to the event area shall be from the parking area, patio area or deck, material shall be stored properly to avoid the creation of wind-blown debris, all debris shall be controlled and removed at the end of the event and clean-up of the site shall occur immediately following the event, Dennis Minsky seconded and it was so voted, 3-0.

g) Case # CON-17-104: **288 Bradford Street**

Notice of Intent application by the **Provincetown Tennis Club** pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetlands Protection By-Law, to re-surface the lower tennis court, replace steps and landscape timbers, and build a new storage shed and new bio-retention swale along the northern side of the tennis court. Work to take place within the 100-foot Buffer Zone to a Bordering Vegetated Wetland, Bordering Land Subject to Flooding and within NHESP Estimated and Priority Habitat.

Presentation: Gordon Peabody, Lara Henry, project manager, and Peter Deveney, of Provincetown Tennis Club appeared to present the application. Mr. Peabody explained that the project included the removal of several creosoted railroad ties, correcting unsafe access steps to the lower court, installing stormwater mitigation as part of the court re-surfacing process and the installation of a green roof on the storage shed. No trees will be removed. He requested that the Commission incorporate the Safe Harbor Management Plan in its conditions. He reviewed the low-profile, gravity-driven bio-retention swale that will mitigate run-off inside the court. The DEP File no. is 058-0562.

Public Comment: Sherry Dranch and Mike Miller spoke in favor of the application. There were 4 letters of support for the application.

Commission Discussion: The Commission questioned Mr. Peabody.

Mark Irving moved to approve the Notice of Intent application pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetlands Protection By-Law, to re-surface the lower tennis court, replace steps and landscape timbers, and build a new storage shed and new infiltration trench along the northern side of the tennis court at the property located at 288 Bradford Street, referencing the site plan of record, revised 12/29/16, with the Standard Order of Pre-Construction Conditions numbers 1-5, Construction Conditions numbers 1-4 and 6-11 and Post –Construction Conditions numbers 1-4 and with the Special Condition that the Safe Harbor’s Management Plan is incorporated, Dennis Minsky seconded and it was so voted, 3-0.

h) Case # CON-17-106: **149A Commercial Street, Building C**

Request for a **Determination of Applicability** by **Michael J. McCabe** pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetlands Protection By-Law, to construct two dormers. Work to take place within the 100-foot Buffer Zone to a Coastal Beach.

Presentation: William N. Rogers, II appeared to present the application. The applicant seeks to open up the second floor for more headroom.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Rogers.

Mark Irving moved to issue a Negative #3 Determination pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Law, Chapter 12, Wetlands Protection By-Law, to construct two dormers with the Standard Order of Pre-Construction Conditions numbers 1, 3 and 4 and Construction Conditions numbers 1, 2, 4 and 9-11, Dennis Minsky seconded and it was so voted, 3-0.

3) **Administrative Matters:**

a) Discussion of the proposed **Tree By-Law** to be presented to the Board of Selectmen for submission for the Town Warrant. The Commission briefly discussed the By-Law with Ms. McPherson. As it had additional questions, the topic was tabled and will be placed on the next Agenda. Rich Waldo, Department of Public Works Director and Margaret Murphy, one of the proponents of the By-Law, will be invited to attend.

b) Follow-up discussion regarding the **Long Point Dike Ecosystem Restoration Project**: 30-day public comment period ends January 11, 2017. Ms. Albenberg will write the letter of comment, based upon Commission suggestions, and send to the ACOE and BOS.

c) Foundation excavation at **76 Commercial Street** in the 100-foot Buffer Zone to a Coastal Beach without Conservation Commission review: Paul Bannon appeared to discuss the project. He explained how the project was being done. He said he had only recently learned that the front yard of the property was in the 100-foot buffer zone to a coastal beach, so he asked the Commission what conditions it would impose. The Commission questioned Mr. Bannon about where the materials for the project were being stored and discussed conditions. It requested that Mr. Bannon put up a silt fence around the storage area.

4) **Conservation Agent Report:**

- a) 350 Bradford St.: None.
- b) 225 Commercial St.: None.

5) **Information:**

a) Administrative Review Applications Approved by Agent with Standard Order of Conditions

i) Case # CON-17-100 **555A Commercial St.** Install 2 windows in-kind and 1 larger window requiring a new opening to be framed.

ii) Case # CON-17-107 **262 Bradford St.** Add a second story on the northeast rear corner of a single-family dwelling on a fully-developed site.

iii) Case # CON-17-108 **36 Shank Painter Road, U20** Replace shingles on a wall and replace a window in-kind.

iv) Case # CON-17-109 **73½ Commercial St.** Replace 2 asphalt roofs, an entry door slab, a double-hung window and install 2 skylights.

v) Case # CON-17-110 **259 Commercial St., U1** Remove and replace 27 windows.

vi) Case # CON-17-111 **45 Commercial St., U2** Replace 4 windows.

vii) Case #CON-17-112 **324 Bradford St.** Remove and replace windows and re-shingle.

viii) Case #CON-17-113 **14 Sandy Hill Lane** Install solar panels on a roof

ix) Case #CON-17-115 **262A Bradford St., U1** Install egress window.

b) MassDEP on-site meeting for Superseding Order of Conditions for **101 Commercial St.** DEP File No. 058-0533: Tuesday, January 17, at 11:00 A.M. Ms. Albenberg reviewed the issue.

c) **MACC Annual Conference:** Saturday, March 4th at the College of Holy Cross, Worcester, MA.

d) **2017 Meeting Schedule**

6) **Approval of Minutes 12/6/16:**

Dennis Minsky moved to approve the minutes of December 6, 2016 as amended, Mark Irving seconded and it was so voted, 2-0-1 (Nathaniel Mayo abstaining).

7) **Any other Business:**

Dennis Minsky thanked Lynne Martin, who has left the Commission, for all of her years of service.

Mr. Minsky and Ms. McPherson will meet with the Finance Director to review the three Commission accounts and report back to the Commission.

Mr. Minsky reminded the Commission that the hydraulic dredging by-law needed revising. He suggested putting it on the next Agenda

Mr. Minsky said that he witnessed the illegal removal of trees at the property located at 262A Bradford St. He asked the company removing the trees, Bartlett Tree Service, if they had permits and they did not. Ms. Albenberg joined him on site and it was determined that it was in the 100-foot buffer to a resource area and in a MESA habitat area. He said that it was a violation and Ms. Albenberg has drafted an Enforcement Order for the Commission to issue. There is no fine associated with it. He recommended that the EO be issued and that the property owner, Robert Nicolson, be asked to attend the next Commission meeting. The Commission discussed the issue. *Dennis Minsky moved to approve the Enforcement Order for the cutting of a tree in the buffer zone to an isolated land subject to flooding to cease and desist the activity and request the property owner's appearance at the next Conservation Commission meeting, Mark Irving seconded and it was so voted, 2-0-1 (Nathaniel Mayo abstaining).*

ADJOURNMENT: *Dennis Minsky moved to adjourn the Public Meeting at 8:46 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2017
Dennis Minsky, Chair