

PROVINCETOWN CONSERVATION COMMISSION
CAUCUS HALL
March 21, 2017
6:30 P.M.

Members Present: Dennis Minsky, Mark Irving, Alfred Famiglietti, Nathaniel Mayo, Kiah Coble, Gregory Howe and Robert Brock.

Members Absent: None.

Others Present: Gloria McPherson (Town Planner) and Ellen C. Battaglini (Permit Coordinator).

PUBLIC HEARING

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

1) **PUBLIC COMMENTS:**
None.

2) **PUBLIC HEARINGS:**

a) CON-17-129: 76R Bayberry Avenue (*continued from the meeting of March 7th – no new information at the time of posting*)

Notice of Intent application by **Chris Wise** pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws Chapter 12, Wetland Protection By-Law, to dig trenches in roadways and campsites to bring electric, water and sewer connections to 183 campsites. Work to take place within NHESP Estimated and Priority Habitat, Bordering Land Subject to Flooding and the 100-foot Buffer Zone to a Bordering Vegetative Wetland. There was a request from the applicant to continue the matter to the April 18, 2017 Public Hearing at 6:30 P.M.

Alfred Famiglietti moved to grant the request to continue CON-17-129 to the April 18, 2017 Public Hearing at 6:30 P.M., Mark Irving seconded and it was so voted, 7-0.

b) CON-17-133 7 Duncan Lane (*continued from the meeting of March 7, 2017*)

Notice of Intent application by the **Bennett Environmental Associates, Inc.**, on behalf of **Thomas Boland** and **James Farley**, 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 demolish an existing dwelling and construct a new dwelling within the existing footprint, upgrade a septic system and associated site work and grading. Work to take place within the 100-foot Buffer Zone to a Bordering Vegetated Wetland. There was a request from the applicant to continue to the April 18, 2017 Public Hearing.

Mark Irving moved to grant the request to continue CON-17-133 until the April 18, 2017, Public Hearing at 6:30 P.M., Robert Brock seconded and it was so voted, 5-0-2 (Dennis Minsky and Nate Mayo abstaining).

c) CON-17-134 24 Ship's Way

Local By-Law Filing by Gordon Peabody, of Safe Harbor Environmental, on behalf of **Waterside Realty Trust**, pursuant to the Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, for the construction of a single-family house, driveway, parking area, septic system, retaining walls and associated site work, grading and vegetation removal. Work to take place within NHESP Estimated and Priority Habitat.

Presentation: Gordon Peabody and Lara Henry, both of Safe Harbor Environmental, appeared to present the application. Mr. Peabody explained that the lot is small and challenging with an abundance of trees on it. The applicant has endeavored to downsize in order to save as many of those trees as possible. Mr. Peabody has submitted a planting plan based on information from the previous Conservation Agent and supplemental information has been added. He reviewed the plan with the Commission. The plan showed the location, the square footage of coverage, number and sizes of the proposed plants and notes on the planting protocol. He indicated that the driveway would be constructed around a large tree on the property. Trees have been tagged on the site as to whether they will be saved or removed. He said that he has been in contact with several abutters and discussed the planting plan, including the removal of certain trees. The parking area and driveway will be composed of permeable material and re-grading of the lot will take place. A two-car garage is proposed to be located under the house.

Public Comment: Nicola Vichert and Alsonia Vallianos, abutters, spoke in support of the application. There was 1 letter of objection from an abutter about the removal of a tree on the property.

Commission Discussion: The Commission questioned Mr. Peabody about the process of construction and re-planting. Mr. Peabody said that the whole lot will be denuded and re-graded and then about 61% of the lot will be re-vegetated. Ms. McPherson commented that the grading plan submitted was incomplete and the proposed swale didn't function based upon the grading plan that was submitted. Mr. Minsky suggested a condition of the approval be that a more clarified and specific engineering plan be submitted. Mr. Peabody said he would submit an engineering plan in 10 days. The Commission briefly discussed the planting plan and requested a revised plan.

Mark Irving moved to approve the Local By-Law Filing pursuant to the Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, for the construction of a single-family house, driveway, parking area, septic system, retaining walls and associated site work, grading and vegetation removal at the property located at 24 Ship's Way with the Standard Order of Pre-Construction Conditions numbers 1-5, Construction Conditions numbers 1-7 and 9-12 and Post-Construction Conditions numbers 1-4 and with the Special Conditions that the Safe Harbor Management Plan be incorporated in this Order, that Safe Harbor is the agent of choice, and if there is any change in that situation that the Conservation Commission shall be informed, that an amended, more detailed planting plan be submitted, that the tree that is drawn in, the trees in the southeast corner of the lot and the oak in the northeast corner will be certified and noted on the plan that they will be saved and that a stamped plan is submitted showing the re-grading details of the driveway and swale, Alfred Famiglietti seconded and it was so voted, 5-0.

d) CON-17-135 94 Harry Kemp Way

Request for a Determination of Applicability by Coastal Engineering Co., on behalf of Heal, Inc., pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and

Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, for a boundary line determination of a Bordering Vegetated Wetland.

Presentation: Brad Mallow, of Coastal Engineering Co., Attorney Katharine Adams, representing the applicant, and Patricia Faass, an officer of the applicant non-profit corporation, appeared to present the application.

Public Comment: There was an affidavit from the owner of the property giving his permission for the applicant and Coastal Engineering Co. to represent him at the hearing. Attorney Christopher J. Snow, an abutter, objected to the wetland delineation markers encroaching upon his property.

Commission Discussion: The Commission discussed Attorney Snow's objection and the delineation. The Commission decided to exclude flags W12-14 and confirm flags W1-W11A on the delineation. Ms. McPherson noted that the legal ad had indicated the incorrect address, although the description of the project was correct, therefore she suggested that the matter would be re-advertised for the Public Hearing on April 18, 2017. Mr. Mallow explained that the only risk for appeal would be to the applicant, and the applicant is willing to take the risk, and that the Commission should move forward with the matter. The Commission proceeded to rule on the delineation.

Mark Irving moved to grant a 2A Positive Determination pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, for a boundary line determination of a Bordering Vegetated Wetland at the property located at 94 Harry Kemp Way and confirm flags W1-W11A, Dennis Minsky seconded and it was so voted, 5-0.

e) CON-17-136 **225 Commercial Street**

Notice of Intent application by **Robert Anderson** pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws Chapter 12, Wetland Protection By-Law, to expand a deck and lower the grade of an existing patio to achieve ADA compliance within the outside service area of a restaurant and to place temporary tables and seating beyond the seawall. Work to take place within a Coastal Beach, Coastal Dune and Land Subject to Coastal Storm Flowage.

Presentation: Ginny Binder and Rob Anderson appeared to present the application. Ms. Binder explained that the scope of the work originally requested in the Chapter 91 application for a license, for which the written determination from the Department of Environmental Protection is still pending, is being reduced. In 2012, the Commission heard and approved a request to increase the size of the building on the west and south sides and other alterations. The back porch is being extended and lowered for ADA compliance for the near back and seating is being increased in the far back of the property. She said that the applicant intends to demonstrate how they plan to mitigate any impact to the resource area with special consideration for the American beach grass located south of the new area of service that the applicant is attempting to permit. She explained how the flow of pedestrians would work on the site. She suggested to the applicant that he put up signage explaining the fragility of the American beach grass and he agreed.

Public Comment: None.

Commission Discussion: The Commission questioned Ms. Binder and Mr. Anderson. The Commission discussed conditions with the applicant. Mr. Anderson described the seating. The Commission discussed the fact that the DEP file no. is from 2012, SE-058-0504, and there has not

been a new one issued for the proposed filing.. Ms. Binder's understanding from the DEP is that there would not be a new one issued for this project because it was only a minor modification.

Ken Fields, present for another matter, clarified the issue based upon his experience with Conservation Commissions, and confirmed that the project would need a new file number. The Commission could not rule on the request because of the lack of a new DEP file no. Mr. Minsky said that the Commission is requesting from the applicant an accurate delineation, preferably done by a professional, of all the grassed areas, existing and proposed, the snow fencing depicted on the plan and a sign prototype. Mr. Minsky added that another condition would be to develop a protocol for policing the area for litter on a regular basis and making sure that the fencing stays intact. Ms. Binder said she would indicate the trash and recycling receptacles on the plan. The Commission discussed how to proceed with the application. A special meeting was proposed for April 4, 2017 at 5:30 P.M., before Town Meeting begins, and the amended plan would have to be submitted by March 29th. The applicant requested a continuance to April 4, 2017 at 5:30 P.M. Ms. Binder reiterated that she would submit information about the fencing, the delineation of grass areas and areas to be planted, a sign prototype, the protocol for the policing effort and the DEP file no. for the Commission's review before the April 4th meeting.

Nathaniel Mayo moved to grant the request to continue the hearing until April 4, 2017, at 5:30 P.M., Dennis Minsky seconded and it was so voted, 5-0.

f) **CON-17-138 176 Race Point Road (Airport)**

Notice of Intent application by the **Provincetown Airport Commission** pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws Chapter 12, Wetland Protection By-Law, for a vegetation management plan to maintain protected airspace free of vegetation. Work to take place within Bordering Vegetated Wetland, Coastal Dune and Land Subject to Coastal Storm Flowage.

Presentation: Butch Lisenby, Airport Manager and Mary Ann Magner and Irvin Baptiste, of Jacobs Engineering, appeared to present the application. Ms. Magner stated that a vegetation management plan was the reason for the presentation. The management plan covers on-going activity at the site and is a condition for the compliance with a water quality certificate variance issued for the Airport's recent CIP permitting process. She explained the permitting process, which has taken several years. All of the wetlands in the National Seashore are considered outstanding resource borders, which triggers a variance. She reviewed the plan, which applies to both the wetlands and the uplands, and explained how the vegetation is suited to an airport setting. She related the results of her yearlong wildlife study of the area. Mr. Lisenby reviewed the timeline for the project.

Public Comment: None.

Commission Discussion: The Commission questioned Ms. Magner.

Robert Brock moved to approve Notice of Intent application by the Provincetown Airport Commission pursuant to the Massachusetts Wetland Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws Chapter 12, Wetland Protection By-Law, for a vegetation management plan to maintain protected airspace free of vegetation at the property located at 176 Race Point Road with the Standard Order of Construction Conditions number 10 and with the Special Condition that the Conservation Commission be notified 48 hours before the use of herbicides, Alfred Famiglietti seconded and it was so voted, 5-0.

6) **Any other Business:**

Ken Fields, of Fort Point Associates, and Chuck LaGasse, the owner of Provincetown Marina, appeared to discuss an issue with the Commission. Mr. Minsky read a letter from Provincetown Marina to the Commission regarding the Army Corps of Engineer's issuance of a permit for the Marina's expansion. The ACE has requested that the Marina withdraw the harbor walk and the parking components of the application, as both are not yet ready for permitting due to impacts and mitigation decisions related to eelgrass beds, and considering the Marina's need to put floats and docks in the Harbor before the upcoming boating season. The Marina intends to amend the permit to include the harbor walk and the parking after the initial permit is issued. The Commission's Order of Conditions for the Marina project included a time of year (TOY) restriction for in-water silt-producing activities. The letter argues that pile driving is not one of those activities and the Marina seeks the Commission's concurrence for the vibratory driving of piles. The Marina proposes that construction begin as soon as the ACE issues its permit and proper notifications are made. There is also a TOY for dredging activities and the Marina requests that this Special Condition be waived. The letter states that a turbidity curtain will contain the dredge footprint. The floats and the dredge footprint tend to bottom out at low tide. That TOY was imposed to protect the winter flounder spawning activity, which the ACE argues is non-existent due to the significant seal population in the Harbor. The ACE has indicated that a TOY will not be included for dredging in its permit. The letter argued that the request did not need a public hearing. Mr. Fields updated the Commission on the progress of the Marina's project. The Commission discussed the issue.

Dennis Minsky moved to amend the Order of Conditions for the Provincetown Marina with a one time, temporary waiver for the time of year (TOY) restriction for dredging, with the conditions that the silt curtain be removed at high tide and that some sort of noise occur before the activity begins, Mark Irving seconded and it was so voted, 5-0.

g) In accordance with §2-2-1 of the Provincetown Charter, the Provincetown Conservation Commission will review and vote to determine the number of Commissioners in favor or opposed to Warrant articles, including any petitioned articles, concerning the Natural Environment for the April 3, 2017 Special and Annual Town Meetings.

STM Article 5: Mark Irving moved to recommend STM Article 5, Dennis Minsky seconded and it was so voted, 4-0-1 (Robert Brock abstaining).

STM Article 8, #7: Kiah Coble moved to not recommend STM Article 8, #7, Dennis Minsky seconded and it was so voted, 3-1-1 (Mark Irving opposed and Nathaniel Mayo abstaining).

ATM Article 26: Dennis Minsky moved to recommend ATM Article 26, Alfred Famiglietti and it was so voted, 5-0-0.

ATM Article 27: Dennis Minsky moved to recommend ATM Article 27, Mark Irving seconded and it was so voted, 4-0-1 (Nathaniel Mayo abstaining).

3) **Request for an Extension of Order of Conditions:**

CON-17-137 143 Commercial Street: There was a request to extend the Order of Conditions for one year. *Dennis Minsky moved to approve the request to extend the Order of Conditions for CON 17-137 for a period of one year, Mark Irving seconded and it was so voted, 5-0.*

4) **Conservation Agent Report:** None.

5) **Information:**

- a) Administrative Review Applications Approved by Agent: None at time of posting.
- b) Massachusetts Land Conservation Conference: March 25, 2017, at Worcester Technical High School in Worcester, MA.

7) **Approval of Minutes 2/21/17 & 3/7/17:** Tabled.

ADJOURNMENT: *Dennis Minsky moved to adjourn the Public Hearing at 9:45 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2017
Dennis Minsky, Chair