

PROVINCETOWN CONSERVATION COMMISSION
JUDGE WELSH ROOM
July 18, 2017
6:00 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), Tim Famulare (Conservation Agent) and Ellen C. Battaglini (Permit Coordinator).

Chair Dennis Minsky called the Open Session to order at 6:01 P.M.

1) **Executive Session:**

Executive session pursuant to G.L. c. 30A, §21(a)(3), to discuss litigation strategy in the following matters: Aqua King Fishery, LLC v. Conservation Commission, Barnstable Superior Court, C.A. No. 2015-00064; Conservation Commission v. Stellwagen Bank Fisheries Corp., Barnstable Superior Court, C.A. No. 2015-00387; Conservation Commission v. Patricio Palacios, Barnstable Superior Court, C.A. No. 2015-00386; and the Request for Superseding Determination of Applicability filed with the Massachusetts Department of Environmental Protection by David Kelley regarding commercial fishing operations for surf clams utilizing Hydraulic fishing gear off Herring Cove.

Chair Dennis Minsky declared that an Open Session might have a detrimental effect on the Town's litigating position with regard to these matters. He called for a motion to go into Executive Session pursuant to M.G.L. c. 30A, s. 21A (3).

Alfred Famiglietti moved to go into Executive Session pursuant to M.G.L. c. 30A, s. 21A (3), Nathaniel Mayo seconded and it was so voted by roll call vote: Mark Irving: Yes; Alfred Famiglietti: Yes; Nathaniel Mayo: Yes; Kiah Coble: Yes; Gregory Howe: Yes; Robert Brock: Yes; and Dennis Minsky: Yes.

The Commission returned to Open Session at 6:17 P.M.

2) **Work Session**

a) Update on B Street Garden activities: Alfred Famiglietti reviewed the activities. He said the Advisory Group had met to discuss tasks that needed to be done on a voluntary basis. The Commission discussed the issue.

b) Approval of Sharon Bunn as member of B Street Garden Advisory Group: Ms. Bunn voiced her ideas for improving the operation of the Garden and explained why she wanted to join the Advisory Group. *Dennis Minsky moved to approve the appointment of Sharon Bunn to the Advisory Group of the B Street Garden, Alfred Famiglietti seconded and it was so voted, 7-0*

3) **Public Comments** on any item not on the agenda below:
None.

4) **Public Hearings:**

a) CON-17-129 **76R Bayberry Avenue** (*continued from the meeting of June 20, 2017*)
Notice of Intent by **Christopher Wise** pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and 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-ft. Buffer Zone to a Bordering Vegetated Wetland.

Presentation: Attorney Lester J. Murphy and Chris Wise appeared to discuss the application. Attorney Murphy said that the applicant had received Mr. Famulare's draft conditions for the project. He commented on conditions #5 and #7. Mr. Famulare reviewed the conditions, recommending an additional phrase be added to condition #3.

Public Comment: None.

Commission Discussion: The Commission discussed the conditions with Attorney Murphy and Mr. Wise.

Mark Irving moved to approve the Notice of Intent, CON-17-129, by Christopher Wise pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and 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 193 campsites at the property located at 76R Bayberry Avenue, with the all the Standard Order of Pre-Construction Conditions, all Construction Conditions and all Post-Construction Conditions and the Special Conditions as discussed, Dennis Minsky seconded and it was so voted, 5-0.

b) CON-17-163 **74 and 76R Bayberry Avenue** (*continued from the meeting of June 6, 2017*)

Notice of Intent by **Coastal Acres Properties, LLC**, pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law for seasonal leaf collection management plan for the campground area. Work to take place within NHESP Estimated and Priority Habitat and the 100' Buffer Zone to a Bordering Vegetated Wetland. There was a request from the applicant to continue the matter to the August 1, 2017 Public Hearing at 6:30 P.M. *Dennis Minsky moved to grant the request to continue CON-17-163 to the August 1, 2017 Public Hearing at 6:30 P.M.*

c) CON-18-001 **17 Point Street**

Local By-Law Filing by **Louis Lima, et. al.**, pursuant to the Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law for the installation of a proposed septic system, proposed retaining wall and proposed stone walls with appurtenances. Work to take place within NHESP Estimated and Priority Habitat.

Presentation: William N. Rogers, II and Louis Lima appeared to present the application. Mr. Rogers reviewed the project. The project includes a structure built on piers with a stone retaining wall in the rear of the site. The structure will be narrow to keep it away from the hill on the property. He reviewed several of the Commissioners' requests voiced at a site visit.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Rogers and Mr. Lima. The Commission requested a more defined design for the retaining wall and its returns, the submission

of a planting plan for the east and south elevations and the indication of the limit of work on the site plan. There has been no response from MESA about the project. The applicant requested to continue to the August 1, 2017 Public Hearing at 6:30 P.M.

Nathaniel Mayo moved to grant the request to continue to the August 1, 2017 Public Hearing at 6:30 P.M., Dennis Minsky seconded and it was so voted, 5-0.

d) CON-18-002 **58-60 Bradford Street**

Notice of Intent by **MEILLI, LLC**, pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law for elevating and renovating existing structures on FEMA-compliant foundations and associated site improvements. Work to take place within Bordering Land Subject to Flooding or Land Subject to Coastal Storm Flowage.

Presentation: Attorney Lester J. Murphy and Stacy Kanega, of Coastal Engineering Co., appeared to present the application. Ms. Kanega reviewed the project and the site features. A small portion of the site is located in land subject to coastal storm flowage, in FEMA flood zone AE, with a base flood elevation of 9'. As a result, both structures on the property will be elevated in place to raise them out of the flood zone. She indicated that the project will meet the performance standards for both bordering land subject to flooding and land subject to coastal storm flowage. In addition, the project will include filling and extending the parking area to accommodate the dwelling units on the site. Grass pavers for the parking area and a shell drive are proposed, which would decrease the percentage of asphalt on the site. Decks and associated landings and stairs to access will be added to the building. She added that the site has been designed to meet the standards of the Mass. Stormwater Handbook.

Attorney Murphy briefly reviewed the project. The structures on the property have to be brought into compliance with the FEMA flood zone regulations because the cost of the renovations are greater than 50% of the market value of the structures, which triggered compliance with current floodplain management standards. About 2000 sq. ft., or 220 cu. yds., of fill will be brought in. Mr. Famulare reviewed a flood zone map to locate areas covered by both bordering land subject to flooding and land subject to coastal storm flowage and reviewed the issue. Ms. Kanega voiced her interpretation of the issue. The Commission discussed the topic. Mr. Famulare stated his proposed finding that because the property was not adjacent to Shank Painter Pond and the proposed promotion of rainwater infiltration through the addition of porous pavers, the shell parking area and the capture of roof runoff, that the placement of fill on the site would not cause an increase in the horizontal extent and level of flood waters during peak flows.

Public Comment: None.

Commission Discussion: The Commission questioned Attorney Murphy and Ms. Kanega. ***Nathaniel Mayo moved to approve the Notice of Intent, CON-18-002, by MEILLI, LLC, pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law for elevating and renovating existing structures on FEMA-compliant foundations and associated site improvements at the property located at 58-60 Bradford Street, subject to the finding by the Conservation Agent and with the Standard Order of Pre-Construction Conditions numbers 1, 2, 4 and 5, Construction Conditions numbers 1, 3, 4-7 and 10-12 and Post-Construction Conditions 1-4, Dennis Minsky seconded and it was so voted, 5-0.***

e) CON-18-003 **94 Harry Kemp Way**

Notice of Intent by **Heal, Inc.**, pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law for the removal of portions of gravel parking areas to be replaced with mitigation plantings and the installation of a bike rack, walkways, handicapped parking and related site improvements. Work to take place within NHESP Estimated and Priority Habitat and the 100-foot Buffer Zone to Bordering Vegetated Wetland.

Presentation: Attorneys Katherine Adams and Robin B. Reid, representing the applicant, Brad Malo, with Coastal Engineering Co., Trish Faass, an owner of the applicant corporation, and Phil Cheney, a landscape architect, appeared to present the application. Mr. Malo said that since the site plan had been submitted to the Commission, an irrigation well had been located on the property, so a revised plan was distributed to Commissioners. He said that the well would assure that any new plantings could be kept watered and therefore healthy. He gave a brief overview of the site and reminded the Commission that a resource delineation had been done in the spring. The driveway is a hard gravel surface and there is a vegetated wetland to the north and west of the property. The proposal includes the removal of existing gravel parking surfaces and the addition of two light poles, a bike rack and a walkway. A mixture of native plantings, including ground cover, grasses, trees and shrubs and which are delineated on a planting plan, will replace the area of the gravel driveway removed. All activities within the 50-ft. buffer zone along the edge of the driveway are elements that will protect and enhance the wetland interests. He reviewed the planting plan. He pointed out that the applicant seeks to plant trees in the right-of-way on Harry Kemp Way, however permission is required from the Board of Selectmen and that has not yet occurred.

Public Comment: Jerry Cassese, an abutter asked about the reduced parking on the site.

Stephanie Page, an abutter, had a point of clarification regarding the right-of-way proposal.

Commission Discussion: The Commission questioned Mr. Malo, Attorneys Adams and Reid and Mr. Cheney. Mr. Malo described the gravel driveway removal process.

Alfred Famiglietti moved to approve Notice of Intent by Heal, Inc., CON-18-003, pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law for the removal of portions of gravel parking areas to be replaced with mitigation plantings and the installation of a bike rack, walkways, handicapped parking and related site improvements at the property located at 94 Harry Kemp Way with the Standard Order of Pre-Construction Conditions numbers 1-5, all Construction Conditions except number 5 and all Post-Construction Conditions, Dennis Minsky seconded and it was so voted, 5-0.

5) **Emergency Certification**

a) CON-17-172 **315A-319 Commercial Street (Lopes Square)**

Ratification of Emergency Certification issued to Luco Realty, Inc., dated June 26, 2017, for the demolition of structures damaged by fire within Land Subject to Coastal Storm Flowage and the 100-foot Buffer Zone to a Coastal Beach. Mr. Famulare reviewed the issue.

Dennis Minsky moved to ratify the Emergency Certification, CON-17-172, 315A – 319 Commercial Street issued to Luco Realty, Inc., dated June 26, 2017, for the demolition of

structures damaged by fire within Land Subject to Coastal Storm Flowage and the 100-foot Buffer Zone to a Coastal Beach, Mark Irving seconded and it was so voted, 5-0.

6) **Request for Certificate of Compliance**

a) **CON-17-155 321 Commercial Street**

Request for a Certificate of Compliance filed by 321 Commercial Street, LLC, for the Order of Conditions (DEP File No. SE 058-05), dated June 7, 2017, to permit a crawlspace beneath the flooring of the existing building to accommodate future utility inspections/work. Mr. Famulare reviewed the request regarding the Lobster Pot restaurant.

Nathaniel Mayo moved to grant the request for a Certificate of Compliance, CON-17-155, filed by 321 Commercial Street, LLC, for the Order of Conditions (DEP File No. SE 058-05), dated June 7, 2017, to permit a crawlspace beneath the flooring of the existing building to accommodate future utility inspections/work, Dennis Minsky seconded and it was so voted, 5-0.

7) **Approval of Minutes of June 20, 2017:** Tabled.

8) **Information**

a) Administrative Review applications approved by Agent:

CON-18-004 179 Commercial Street – Replacement of gate in alley, replacement of a privacy fence, removal of a chain-link fence and removal of a tree embedded in a chain-link fence. Mr. Famulare reviewed the project.

b) Superseding Amended Order of Conditions:

101 Commercial Street – Issuance by Department of Environmental Protection of Superseding Amended Order of Conditions, affirming the Conservation Commission’s approval of the construction of a 14” high landscaping retaining wall within Land Subject to Coastal Storm Flowage and the 100-foot Buffer Zone to a Coastal Beach. Mr. Famulare reviewed the issue.

9) **Any other business that shall properly come before the commission:** Mr. Minsky said the he, Mr. Famulare and Ms. McPherson met with the Assistant Director of the Dept. of Public Works to discuss the efficacy of a bio-retention pond/swale for the outfall pipe at the B Street Gardens. Two consulting firms have been interviewed to develop a management action plan for the B Street and the Shank Painter uplands conservation areas.

ADJOURNMENT: *Dennis Minsky moved to adjourn the Public Hearing at 8:30 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2017
Dennis Minsky, Chair