

PROVINCETOWN CONSERVATION COMMISSION
JUDGE WELSH ROOM
August 15, 2017
6:00 P.M.

Members Present: Dennis Minsky, Alfred Famiglietti (arrived at 6:28 P.M.), Nathaniel Mayo, Robert Brock and Gregory Howe.

Members Absent: Mark Irving (excused) and Kiah Coble (excused).

Others Present: Tim Famulare, Conservation Agent, Gloria McPherson, Town Planner (left at 6:27 P.M.) and Ellen C. Battaglini, Permit Coordinator.

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

1) **Work Session:** Update on changes to Natural Heritage & Endangered Species Program's Estimated and Priority Habitat Maps. Mr. Famulare reviewed the revisions. The Commission questioned Mr. Famulare and Ms. McPherson and discussed the topic.

4) **Approval of Minutes of August 1, 2017:**
Gregory Howe moved to approve the minutes of August 1, 2017 as amended, Dennis Minsky seconded and it was so voted, 3-0-1 (Robert Brock abstaining).

2) **Public Comments** on any item not on the agenda below:

Tom Donegan appeared to call the Commission's attention to the use of mosquito pesticides and the issue of chemical trespass in Town. He voiced his concern about insecticide spraying by the Mosquito Squad in his neighborhood of Thistlemore Way. He alleged that the chemical adversely affected his husband and his pets. He suggested that the Town begin to address the issue. The Commission briefly questioned Mr. Donegan. Mr. Famulare reviewed his and the Town's Health Agent, Morgan Clark's, discussions with their Wellfleet and Truro counterparts about the issue. He explained that the regulations of the Massachusetts Pesticide Board regarding pesticide application preempts the ability of municipalities to regulate pesticide use under the state's Wetlands Protection Act, but he will inquire with Town counsel to determine if the Town can regulate pesticide use under the local Wetlands Protection Bylaw. The Commission agreed that it was issue that needed to be addressed.

3) **Public Hearings:**

a) **CON-18-013 24 Race Point Road**

Request for Determination of Applicability filed by the **Town of Provincetown**, 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 installation of a 1" PVC underground utility conduit within the driveway and yard of the Highway Department garage. Work to take place within NHESP Estimated and Priority Habitat and Buffer Zone to a Bordering Vegetated Wetland.

Presentation: Steven Wlodkowski, Deputy Director of the Dept. of Public Works, appeared to present the application. He reviewed the project, which includes construction of a cable conduit to support the installation of video cameras on the site of the Town's Highway Department. The

cameras will allow monitoring of the front gate, the oil depository and the gas island in order to curtail the unauthorized use of those facilities or drop-offs at the entrance to the site.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Wlodkowski. Mr. Famulare reviewed the draft conditions for the project.

Nathaniel Mayo moved to grant a Negative #3 Determination for the application by the Town of Provincetown, CON-18-013, 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 installation of a 1" PVC underground utility conduit within the driveway and yard of the Highway Department garage at the property located at 24 Race Point Road with the Standard Order of Pre-Construction Conditions numbers 1-4, Construction Conditions numbers 5-13 and no Post-Construction Conditions, Dennis Minsky seconded and it was so voted, 5-0.

b) CON-18-005 **401½ Commercial Street** (continued from the meeting of August 1, 2017)

Request for Determination of Applicability by **David Gluck**, 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 installation of a seasonal kayak rack, adjacent to the Washington Avenue Town Landing. Work to take place within a Coastal Beach and Land Subject to Coastal Storm Flowage.

Presentation: David Gluck appeared to present the application. His intention is to construct a seasonal kayak rack in an effort to keep kayaks off the beach grass and to plant more beach grass in the area.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Gluck.

Alfred Famiglietti moved to grant a Negative #2 Determination for the application by David Gluck, CON-18-005, 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 installation of a seasonal kayak rack, adjacent to the Washington Avenue Town Landing at the property located at 401½ Commercial Street with the Special Order of Conditions that may or may not apply depending upon whether the applicant will be pouring concrete and the Standard Order of Pre-Construction Conditions numbers 1 and 2, Construction Conditions numbers 3, 4, 5, and 6 (if applicable) and 7-10 and Post-Construction Conditions regarding re-planting of beach grass pursuant to the Chapter 91 license for the property, Dennis Minsky seconded and it was so voted, 5-0.

c) CON-18-016 **49A Commercial Street**

Request for Determination of Applicability filed by **Peters Property Management**, 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 replacement of beach access stairs. Work to take place within a Coastal Beach and Land Subject to Coastal Storm Flowage.

Presentation: Laurie Ferrari, of Peters Property Management, appeared to present the application. Ms. Ferrari said that the project included the replacement of 13 steps of beach access stairs attached to the bulkhead that were lost in a storm last winter.

Public Comment: None.

Commission Discussion: The Commission questioned Ms. Ferrari. Don DiRocco, from Hammer Architects, said that there would be no alteration of the bulkhead at 51 Commercial Street, responding to a concern raised by Mr. Famiglietti.

Alfred Famiglietti moved to grant a Negative #2 Determination for the application filed by Peters Property Management, CON-18-016, 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 replacement of beach access stairs at the property located at 49A Commercial Street with the Standard Order of Pre-Construction Conditions numbers 1 and 2, Construction Conditions numbers 3-5, 6 and 8-10 and no Post-Construction Conditions, Gregory Howe seconded and it was so voted, 5-0.

d) CON-17-163 **74 and 76R Bayberry Avenue** (continued from the meeting of August 1, 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.

Presentation: Gordon Peabody appeared to discuss the application. He reviewed the revised biomass management plan that he had submitted to Natural Heritage, which determined that 'no take' would occur as a result of the activity.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Peabody. Mr. Famulare reviewed the plan and the Commission discussed it.

Nathaniel Mayo moved to approve the Notice of Intent application, CON-17-163, 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 at the property located at 74 and 76R Bayberry Avenue with the biomass management plan, dated 7/24/17, as amended and discussed, Dennis Minsky seconded and it was so voted, 5-0.

e) CON-18-010 **501 Commercial Street**

Notice of Intent by the **Ice House Condominium** 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 repair the wave curl and seal the face of an existing seawall and to remove existing concrete platform and stairs and replace the same with a timber platform and stairs. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach and a Buffer Zone to a Coastal Beach. Nathaniel Mayo recused himself because of a conflict of interest.

Presentation: Tim Brady appeared to present the application. He reviewed the project and said that some repairs will take place now and some at a later date. All equipment will be staged in the parking lot. Some work has to be done from the beach. A tarp will be placed on the beach while the deteriorating sections of the seawall are disassembled by jackhammer. The concrete rebar will be cut out and the new rebar tied into or welded to the existing rebar. Demolition of the existing concrete stairway will be done from the top of the wall using a small excavator. All debris will be

removed daily from the beach. The proposed stairway will be constructed with wood pilings installed from the top of the wall.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Brady. Mr. Famulare said that no DEP File No. has been issued yet. Mr. Brady requested a continuance to the September 5, 2017 Public Hearing. Mr. Famulare reviewed the comments of the Division of Marine Fisheries. No significant shellfish resource lies within the area according to the Shellfish Constable, Steve Wisbauer. He then reviewed proposed conditions. The conditions were discussed with Mr. Brady and revised. Mr. Minsky reviewed the revised proposed conditions.

Gregory Howe moved to grant the request to continue to the September 5, 2017 Public Hearing at 6:30 P.M., Dennis Minsky seconded and it was so voted, 4-0.

f) CON-18-011 **5 Harbour Drive**

Notice of Intent by **Jennifer Davidson** and **Tara Sandler** 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 renovation of an existing garage, construction and maintenance of a proposed garage, terraces, decks, rinse station, bike rack, trellis, driveway configuration and all associated utility installation, excavation, grading and landscaping. Work to take place with Land Subject to Coastal Storm Flowage, NHESP Estimated and Priority Habitat and a Buffer Zone to a Coastal Beach.

Presentation: Raul Lizardi-Rivera appeared to present the application. He reviewed the proposed project. There will be a reduction in terraced area on the site and there will be a net reduction in impervious surfaces in the buffer area within 80' of a dune. New plantings, including beach grass and bearberry, will be installed next to the pool where there is now a gravel pavement area. Even though there is some construction within 80' of a resource area, it is all being done in an already-developed space. The new structure will be built outside the Commission's jurisdiction.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Lizardi-Rivera. Mr. Famulare said that the Commission would have vote to grant a variance for the new deck within the 80' buffer zone and he recommended that it do so because of the loss of the patio space and the parking area within the 80' zone and because the area has been previously developed.

Nathaniel Mayo moved to approve the Notice of Intent application, CON-18-011, 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 renovation of an existing garage, construction and maintenance of a proposed garage, terraces, decks, rinse station, bike rack, trellis, driveway configuration and all associated utility installation, excavation, grading and landscaping at the property located at 5 Harbour Drive with the conditions as modified and discussed, including the preservation of beach grass in perpetuity, Dennis Minsky seconded and it was so voted, 5-0.

g) CON-18-012 **51 Commercial Street**

Notice of Intent by **Jay Anderson** 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 modify two existing buildings pursuant to FEMA regulations, convert to three proposed buildings

and construct associated site improvements. Work to take place with Land Subject to Coastal Storm Flowage and a Buffer Zone to a Coastal Beach.

Presentation: Don DiRocco and Stacy Kanega appeared to present the application. Ms. Kanega reviewed the existing site conditions and reviewed the 3 different flood zones that cross over the site. The improvements include elevation, renovation and re-location of the two structures on the site. She emphasized that the site has been extensively developed. No access is proposed from the beach, but will be from Commercial Street and the driveway of 53 Commercial Street. She said that the goal of the project was to bring buildings into conformity with flood plain requirements of the state building code. The foundation will have vents to allow floodwaters to flow beneath the structures. New hardscapes on the site will promote infiltration. Run-off will be controlled with the installation of gutters to downspouts to splash pads.

Public Comment: Artemis Pinkerson, an abutter, commented on moving the rear building 15' farther away from the water and the fact that, according to the Zoning By-Laws, it had to be located 6' from her property line on the west elevation. Mr. DiRocco and Ms. Kanega confirmed that this would be the case.

Commission Discussion: The Commission and Mr. Famulare questioned Mr. DiRocco and Ms. Kanega. Mr. Famulare said he had discussed that a planting plan for 51 and 53 Commercial Street be submitted. The Commission agreed that native plantings should be planted in the 50' buffer zone included in the conditions.

Nathaniel Mayo moved to approve the Notice of Intent application, CON-18-011, 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 modify two existing buildings pursuant to FEMA regulations, convert to three proposed buildings and construct associated site improvements at the property located at 51 Commercial Street subject to the standard and modified conditions discussed, including Standard Order of Pre-Construction Conditions numbers 1-5, Construction Conditions numbers 6-19 and Post-Construction numbers 1-4 and with the added condition that only native vegetation be planted within the 50' buffer zone of the resource area in the rear of the property, Dennis Minsky seconded and it was so voted, 5-0.

h) CON-18-012 **77A Commercial Street** (to be continued to the meeting of September 5, 2017)

Notice of Intent by Cynthia Newberry Martin 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 replacement of an existing licensed pier. Work to take place with Land Subject to Coastal Storm Flowage, Land Under the Ocean, Land Containing Shellfish and a Coastal Beach. There was a request from the applicant to continue the matter to the September 5, 2017 Public Hearing. *Nathaniel Mayo moved to grant the request to continue CON-18-012 to the September 5, 2017 Public Hearing Gregory Howe seconded and it was so voted, 5-0.*

5) **Information:**

Administrative Review applications approved by Agent:

- a) **CON-18-015 23-25 Commercial Street** – removal of two dead Japanese pines from a raised bank on the street side of property, replace with two indigenous trees.

6) **Any other business that shall properly come before the commission:** None.

ADJOURNMENT: *Gregory Howe 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