

PROVINCETOWN CONSERVATION COMMISSION
JUDGE WELSH ROOM
September 5, 2017
6:30 P.M.

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

Members Absent: Robert Brock (excused) and Kiah Coble (excused).

Others Present: Tim Famulare, Conservation Agent, and Ellen C. Battaglini, Permit Coordinator.

Chair Dennis Minsky called the Public Hearing to order at 6:31 P.M.

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

Robert Casper appeared to talk about his petition, entitled 'Sailing For All', to the Harbor Committee. He said that he is seeking cross-departmental support from the Commission. The petition is about a sailing program that is seeking funding from the Harbor Access Gift Fund to subsidize a feasibility study. He reviewed the proposal, which involves locating a space for the installation of a waterfront hoist that runs on vegetable oil. He identified several proposed suitable locations in Town that were being considered. He explained the sailing program, which is for adults and would not compete with the West End Racing Club, which is for children. The petition is at change.org if anyone is interested in signing it. The Commission briefly questioned Mr. Casper about the project.

Roger Chauvette stated that he had collected data from three previous summer seasons concerning the volume of traffic that passed through the intersection at the corner of Bradford and Conwell Streets. He said that the traffic has increased 10-15% in the last two years and he was willing to share it with the Commission.

2) **Public Hearings:**

i) In accordance with §2-2-1 of the Provincetown Charter, the Provincetown Conservation Commission will review and vote to determine the number of Board members in favor of or opposed to the petitioned articles concerning the Natural Environment for the September 13, 2017 Special Town Meeting.

Mr. Famulare reviewed the STM warrant articles and asked if the Commission wanted to comment on any of them. He said that in his opinion none of the articles were related to the natural environment. He had three letters from the public in support of the article to change the zoning district for the location of medical marijuana treatment centers, however he didn't think it was within the purview of the Commission and therefore should not be voted on.

Stephanie Page urged the Commissioners as private citizens to support the article related to medical marijuana treatment centers.

a) CON-18-020 **806** and **820 Commercial Street**

Request for Determination of Applicability filed by **Mark Legere**, 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 water and electric utility lines within an existing dirt driveway. Work to take place within a Buffer Zone to a Bordering Vegetated Wetland.

Presentation: Kieran Healey, a land surveyor with the BSC Group, appeared to present the application. He said that the proposal for the site is to construct a single-family dwelling with additional appurtenances, which will be built outside of any wetland buffer zones. The proposed water and electric utilities will be located within an existing shared driveway of the dwellings and within a 100' wetland buffer. All excavated material will be stockpiled outside the 100' wetland buffer. All excess material not needed for backfilling will be removed from the site.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Healey. Mr. Famulare explained that the proposed work is not subject to the state Wetlands Protection Act as the installation of utilities is considered an exemption and not under the jurisdiction of the Commission. He reviewed the exemption and his draft conditions.

Alfred Famiglietti moved to grant a Negative #5 Determination 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 water and electric utility lines within an existing dirt driveway at the properties located at 806 and 820 Commercial Street, CON-18-020, with the Standard Order of Pre-Construction Conditions numbers 1-4, Construction Conditions numbers 5-13 and the Post-Construction Condition number 15 stating that erosion controls shall be removed only upon written receipt of the Conservation Agent approval and the erosion controls as discussed would be determined at the pre-construction meeting, Dennis Minsky seconded and it was so voted, 5-0.

b) CON-18-021 **75 Province Lands Road**

Request for Determination of Applicability filed by **Hatches Harbor 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 replace a timber retaining wall, remove non-native vegetation and re-vegetate disturbed areas with dune grass and beach rose. Work to take place within a Buffer Zone to a Salt Marsh.

Presentation: Irfan Ali appeared to present the application. He explained that an upper retaining wall, built with marine-grade pressure-treated lumber, will replace an existing retaining wall of the same size. A lower retaining wall will be straightened and stabilized with added supports. After the upper retaining wall is installed, the construction area will be backfilled and planted with beach grass and *Rosa rugosa*. The yucca located in an adjacent area will be removed by hand and the area will also be replanted with beach grass and *Rosa rugosa*. No other vegetation will be removed.

Public Comment: None.

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

Mark Irving moved to grant a Negative #3 Determination 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 replace a timber retaining wall, remove non-native vegetation and re-

vegetate disturbed areas with dune grass and beach rose at the property located at 75 Province Lands Road, CON-18-021, with the Standard Order of Conditions as discussed, Dennis Minsky seconded and it was so voted, 5-0.

c) CON-18-014 **77A Commercial Street** (*continued from the meeting of August 15, 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.

Presentation: Roy Okurowski appeared to present the application. He reviewed the project, which includes the construction of a timber pier and walkway running from a bulkhead seaward. The pier material is rotted and needs to be replaced. Some of the existing deck boards will be re-used. A skid steer will be used to move material around the job site. The access will be from public landings adjacent to Cap'n Jack's and the water. Heavy equipment will be stored on the owner's property above mean high water when not in use. No barge is being proposed for the work. Mr. Okurowski had submitted an alternatives analysis for the proposed work and a construction protocol. The Division of Marine Fisheries has reviewed the project, as the site lies within mapped shellfish habitat for bay scallops and quahog, and its comments were provided via a letter.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Okurowski. The Commission was concerned about sawdust being dispersed and contaminating the water leading to potential negative impacts as described in the DMF letter and Mr. Okurowski advised that tarps will be used when the cutting of wood takes place. He assured the Commission that the contractor will use good faith efforts to mitigate the situation.

Nathaniel Mayo moved to approve the application 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 on the property located at 77A Commercial Street, CON-18-014, with the Standard Order of Conditions and with Special Conditions, Pre-Construction number 6 regarding consultation with the Shellfish Constable and modification of Construction Conditions number 2, for access location at the West Vine Street Town Landing, and numbers 6-10 as discussed and Post-Construction Condition number 12, Dennis Minsky seconded and it was so voted, 5-0.

d) 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, of East End Engineering, appeared to discuss the application. A DEP File number has been assigned to the project, SE 058-0578. He said he had reviewed the revised draft conditions and was in agreement with them.

Public Comment: None.

Commission Discussion: There were no questions by the Commission.

Alfred Famiglietti moved to approve the draft Special Conditions for CON-18-010, 501 Commercial Street, as revised, Dennis Minsky seconded and it was so voted, 4-0.

e) CON-17-092 **4 Maple Court**

Request to Amend Order of Conditions (DEP File No. SE -58-0569) filed by Paul R. Schofield and Andrew Jorgensen, pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, to reconstruct and expand an existing ground level deck and to enlarge a deck addition which was approved under the current Order of Conditions. Work to take place within a Buffer Zone to an Isolated Wetland (previously identified as a Bordering Vegetated Wetland). Nathaniel Mayo recused himself because of a conflict of interest.

Presentation: Tim Brady, of East Cape Engineering, appeared to present the application. He submitted a revised site plan showing the approved conditions and that highlighted proposed changes. He explained that the proposal includes the reconstruction and expansion of an existing ground level deck on the southern end of the structure and the enlargement of a deck addition approved under the current Order of Conditions. All new work will be located farther from the existing resource area, the limit of work will remain unchanged in the vicinity of the resource area and it has been modified slightly in the area of the expanded ground level deck to extend around an existing stone wall and patio.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Brady. Mr. Minsky reviewed the requirements for an Amended Order of Conditions and indicated that he thought the application met them.

Mark Irving moved to approve the request to amend the Order of Conditions for CON-17-092, 4 Maple Court, with Attachment A for the Special Conditions, Dennis Minsky seconded and it was so voted, 4-0.

f) CON-18-017 **67 Harry Kemp Way**

Local By-Law Filing by **Demetrios Daphnis** pursuant to the Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law, for the construction of four residential buildings, walkways, driveway, parking spaces, septic system, grading, landscaping and native plantings. Work to take place within a Buffer Zone to an Isolated Vegetated Wetland.

Presentation: Attorney Lester J. Murphy, William N. Rogers, II, Demetrios Daphnis and Paul Shea appeared to present the application. Attorney Murphy briefly reviewed the background of the project. The project includes the construction of four residential buildings, a septic system, a driveway, parking spaces, grading, landscaping and native plantings. Proposed construction activities will be located within the 100' buffer zone to a small isolated vegetated wetland. The project had been previously approved by the Commission, however the Order of Conditions has expired. The proposed site plan indicates a limit of work set farther away from the edge of the resource area and proposed less site alterations within the 50' buffer zone as compared with the previously-approved project. The majority of the site alterations will be located within upland areas located outside the 100' buffer zone. A silt sock will be installed at the limit of work lines closest to the edge of the resource area to protect from sedimentation impact from the project. The

project includes the planting of new native plant species on the property, which will be monitored for health and survival. Mr. Famulare gave a brief synopsis of the permitting history of the project. Mr. Shea reviewed his participation in the project, including a report on the applicant's efforts to eradicate the invasive *phragmites* on the property. He indicated that it had been a difficult process, as the *phragmites* in the area seemed to be re-seeding itself, and recommended that the Commission consider the use of the cut and drip method of eradication.

Public Comment: Scott Scott, an abutter, had questions about the project. The applicant will meet with Mr. Scott to review the project.

Commission Discussion: The Commission questioned Attorney Murphy, Mr. Shea, Mr. Daphnis and Mr. Rogers and discussed the project. The Commission had a concern with the location of Building 5, however did not see an issue with Buildings 2 and 4. Moving Building 5 farther away from the slope, or removing a 20' by 9' section of the building, in order to save more trees from being removed from the site and to avoid cutting into the slope behind the structure was discussed. Mr. Famulare recommended that the applicant request a continuance and endeavor to re-design the project to address the Commission's concerns. Attorney Murphy indicated that other permitting would be impacted by any changes and would have to be revisited. Mr. Minsky said that the Commission would research the cut and drip procedure to eradicate the invasives. He said that it is not a process that has been applied to other eradication efforts in Town and, he thought, public sentiment was opposed to its use. He also requested more information about the type and quantity of fill that will be brought onto the site and to quantify the vegetation to be replanted. Attorney Murphy requested a continuance to the October 3, 2017 Public Hearing at 6:30 P.M.

Nathaniel Mayo moved to grant the request to continue to the October 3, 2017 Public Hearing at 6:30 P.M., Gregory Howe seconded and it was so voted, 5-0.

g) CON-18-018 **53 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 raze an existing building and to construct two proposed buildings pursuant to FEMA regulations and associated site improvements. Work to take place within Land Subject to Coastal Storm Flowage and Buffer Zone to a Coastal Beach

Presentation: Mark Hammer, Don DiRocco, both of Hammer Architects, and Stacy Kanega, of Coastal Engineering, appeared to present the application. Ms. Kanega reviewed the existing site conditions, including the buildings, the hardscape and the landscaping, and reviewed the 3 different flood zones that cross over the site. The proposed project includes the removal of an existing dwelling and three sheds and the construction of two new buildings elevated to raise the lowest finished floor 2' above the highest adjacent grade as required by the Massachusetts Building Code. The northernmost building is proposed as a three-bedroom cottage and the southernmost cottage is proposed as a three-bedroom condominium unit. Site work will include the construction of a gravel driveway and cobble aprons, dry-laid stone walkways and patios, proposed decks and stairs, fences and gates, lawn and landscaping. Two existing decks will remain. Roof run-off will be managed through the installation of gravel trenches along roof drip lines. Access will be from Commercial Street and no access is proposed from the beach. The landscape design will consist of a mixed pallet of trees, flowering shrubs and flowering perennials and will transition to all native plantings at the harbor end of the property. A planting plan and vegetation list has been submitted for the site. Ms. Kanega said that there was an effort to reduce

the large area of lawn that is on the site. She said that there would be an increase in impervious surfaces on the site due to the increase in the size of the structures. A planting plan for 51 Commercial Street was submitted pursuant to the request of the Commission at its last meeting.

Public Comment: None.

Commission Discussion: The Commission questioned Ms. Kanega, Mr. DiRocco and Mr. Hammer and discussed the project. Mr. Famulare reviewed his draft conditions for the project.

Mark Irving moved to approve the Notice of Intent, CON-18-018, 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 raze an existing building and to construct two proposed buildings pursuant to FEMA regulations and associated site improvements at the property located at 53 Commercial Street with the draft Order of Conditions, and it was so voted, 3-2 (Nathaniel Mayo and Gregory Howe opposed).

h) **CON-18-019 157A Commercial Street and 0 Atlantic Avenue Foot Notice of Intent by Alfred P. Famiglietti & James M. Staniscia and 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 to construct a vinyl bulkhead and an access stairway to the beach. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Dune and a Buffer Zone to a Coastal Beach. Alfred Famiglietti recused himself because of a conflict of interest. There was a request from the applicants to postpone to the September 19, 2017 Public Hearing at 6:30 P.M. **Nathaniel Mayo moved to approve the request to postpone CON-18-019 to the September 19, 2017 Public Hearing at 6:30 P.M., Gregory Howe seconded and it was so voted, 4-0.**

3) **Emergency Certification**

CON-18-022 561 Commercial Street

Ratification of Emergency Certification issued to Marcey Oil Company, dated August 23, 2017, for remediation of a release of fuel oil and site restoration work within Land Subject to Coastal Storm Flowage and the 100-foot Buffer Zone to a Coastal Beach. Nathaniel Mayo recused himself because of a conflict of interest. Mr. Famulare reviewed the issue concerning a release of fuel oil at 561 Commercial Street and said that the Commission has requested that a representative from Marcey Oil and River Hawk Environmental, LLC attend the September 19, 2017 Public Hearing to discuss the status of the remediation work and to inform the Commission of how the release happened and what steps will be taken to avoid similar releases in the future. **Dennis Minsky moved to ratify the Emergency Certification issued to Marcey Oil Company, dated August 23, 2017, for remediation of a release of fuel oil and site restoration work at the property located at 561 Commercial Street, Mark Irving seconded and it was so voted, 4-0.**

4) **Conservation Agent Update**

Mr. Famulare reviewed a notice of appeal for the RDA regarding 99 Commercial Street for the reconstruction of a deck. The Department of Environmental Protection will be holding a site visit on September 20. The Commission re-signed Orders of Conditions for 225 Commercial Street.

5) **Approval of Minutes of August 15, 2017:** The Commission discussed the public comment about the spraying insecticides by the Mosquito Squad. Mr. Famulare will add some language concerning the discussion.

6) **Information:**

Administrative Review applications approved by Agent:

a) **CON-18-23 6 Winston Avenue** – replace existing pressure-treated decking with ipe wood decking.

7) **Any other business that shall properly come before the commission:** Mr. Minsky said that it was reported to him that someone was living illegally in the woods near Shank Painter Pond. Mr. Famulare will investigate the situation.

ADJOURNMENT: Gregory Howe moved to adjourn the Public Hearing at 10:00 P.M. and it was so voted unanimously.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2017
Dennis Minsky, Chair