

PROVINCETOWN CONSERVATION COMMISSION
JUDGE WELSH ROOM
December 19, 2017
6:30 P.M.

Members Present: Dennis Minsky, Alfred Famiglietti, Nathaniel Mayo (arrived at 6:37 P.M.), Robert Brock, Kiah Coble and Gregory Howe.

Members Absent: None.

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

Chair Dennis Minsky called the Public Hearing to order at 6:32 P.M.

1) **Public Comments:**
None.

2) **Public Hearings:**

a) CON-18-019 **157A Commercial Street and 0 Atlantic Avenue Foot** (*continued from the meeting of December 5, 2017*)

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. Dennis Minsky, Nathaniel Mayo, Kiah Coble and Gregory Howe sat on the case.

Presentation: Attorney Jamy Madeja, representing the Trustees of the applicant 157-A Commercial Street Condominium Trust, and Jay Norton, of Coastal Engineering, representing the homeowners, appeared to discuss the application. Attorney Madeja explained that the Trust which holds the property was the applicant, as it owned the foundation and all other common areas on the property. She identified herself as an environmental permitting attorney and stated that the building at 157A Commercial Street faces a grave safety risk. She reviewed the environmental situation at the property and the history of the property's attempt to stem the erosion of the coastal dune in the area. She said that the project involved installing a vinyl bulkhead along the width of the property, the reconstruction of a stairway and a tie-in at the east edge with an existing extensive bulkhead at The Boatslip. Also included was the restoration of some 20-30 cu. yds. of sandy material and the planting of American beach grass or other native vegetation. She explained that the bulkhead would protect the dwelling and suggested that given the failure of previous soft solutions in this area, there was a pressing need now for a hard solution. The coastal dune has now eroded down to 4' 8" in distance from the seaward edge of the decks, what she characterized as a near emergency condition. She briefly summarized coastal geologist Greg Berman's 2017 report on the issue, which predicted the total erosion of the coastal dune down to the beach level, leaving it touching the dwelling's foundation. He concluded that the dune would not re-form naturally under the current conditions, as there would be an absence of accretion due to the lack of space for sand to accumulate given the highly-developed area to the north. She said that the applicant, in order to address the Wetlands Protection Act, is requesting that the Commission

make a finding based on the Berman report and the opinion letter from Jay Norton on factual conditions that he has observed on the property. This finding would indicate that the record makes a clear showing that this coastal dune is no longer significant to the interests of storm damage prevention, flood control or the protection of wildlife habitat, which is language from the Wetlands Protection Act regulations that would allow the Commission to permit the bulkhead. The applicant is also asking for a positive Order of Conditions permitting the work. She concluded that it is no longer possible for anything save a bulkhead to preserve this area from storm events and there is a benefit in that a private party, the applicant, to the Town's benefit, is willing to bear the costs of the project. Mr. Norton reviewed the technical design of the bulkhead and reviewed the timeline of events to mitigate the erosion issue and the proposed plans.

Public Comment: Attorney Christopher J. Snow, representing The Boatslip, stated that a reasonable accommodation had been reached with the applicant regarding the project and that his client was in support of the project.

Commission Discussion: The Commission questioned Mr. Norton and Attorney Madeja. Mr. Famulare reviewed the draft special conditions and findings regarding the presumption of significance regarding the resource area and the importance of the coastal dune to the interests of the Wetland Protection Act, which he also reviewed along with Mr. Berman's 2017 report. His conclusion was that the finding requested by the applicant was appropriate given the specific conditions of the property. Attorney Madeja requested that the Commission add a sentence to the effect that the findings and conditions should not be read as a presumption that the bulkhead is the cause of subsequent scouring on adjacent properties. She requested this to protect her client from civil liability risk by abutting property owners. The Commission discussed and revised several conditions, including the requirement that upon completion of construction that a beach profile be done 5' to the west of the property line and then continuing on an annual basis over a five-year period and changed the date for completion of the project from May 15th to June 15th in 18a, and from April 1st to June 1st in 18b, and required the planting of beach grass in the area seaward of the bulkhead and second-tier drift fence. The Commission discussed Attorney Madeja's request to add a statement that the findings and conditions should not be read as a presumption that the bulkhead is the cause of subsequent scouring on adjacent properties. She said that if the Commission chose not to include the request that the oral record does not suggest that its absence is a presumption. The Commission decided that it was not necessary to add the statement requested by Attorney Madeja. The Commission discussed benchmarks and required that the applicant return with proposed monitoring protocols to be approved by the Conservation Agent.

Nathaniel Mayo moved to approve CON-18-019, 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 at the property located at 157A Commercial Street with the conditions as discussed and amended and to adopt the draft findings as presented, Dennis Minsky seconded and it was so voted, 4-0.

3) **Request for Certificate of Compliance**

a) **CON-18-049 – 52 Creek Road** (continued from the meeting of December 5, 2017)
Request for Certificate of Compliance by Michael Miller/3 Cottages, LLC for the Local By-Law Order of Conditions (Case # CON-16-007), dated May 3, 2016, for the demolition of three cottages and a shed, construction of two 2-family dwellings, enlarging parking area, and

installation of a Title 5 septic system. Dennis Minsky recused himself because of a conflict of interest.

Presentation: Michael Miller appeared to request the Certificate. He reviewed the project.

Commission Discussion: Mr. Famulare added more background information about the project. He recommended that the Commission grant a partial Certificate of Compliance with Special Condition #4 as an on-going condition for three years after the completion of the planting. Plantings on the site will be checked in the spring.

Nathaniel Mayo moved to approve a partial Certificate of Compliance for CON-18-049, for Michael Miller/3 Cottages, LLC pursuant to the Local By-Law Order of Conditions (Case #CON-16-007), dated May 3, 2016, for the demolition of three cottages and a shed, construction of two 2-family dwellings, enlarging parking area, and installation of a Title 5 septic system at the property located at 52 Creek Road, Gregory Howe seconded and it was so voted, 5-0.

4) **Conservation Agent Update:** Mr. Famulare announced that there would be no meeting on January 2, 2018.

5) **Approval of Minutes of November 21 and December 5, 2017:**

November 21, 2017: Gregory Howe moved to approve the language as written, Alfred Famiglietti seconded and it was so voted, 4-0-2 (Dennis Minsky and Robert Brock abstaining).

December 5, 2017: Dennis Minsky moved to approve the language as written, Kiah Coble seconded and it was so voted, 4-0-2 (Nathaniel Mayo and Gregory Howe abstaining).

6) **Information:**

Administrative Review application approved by Agent:

a) **CON-18-052 8 Winston Avenue** – installation of a shed. Mr. Famulare reviewed the project that is located within 100' of a coastal dune and also within Flood Zone A and would require an RDA or NOI, however Mr. Famulare explained that he mistakenly told the applicant that an Administrative Review was appropriate. He decided to issue an Administrative Review anyway as such a long period of time had elapsed since the application was submitted.

7) **Any other business that shall properly come before the Commission:**

Alfred Famiglietti reviewed a meeting of the B Street Garden Advisory Group. They discussed beehives in the garden and their placement and the fee and qualifications for beekeeping on the property. Another issue discussed was the feasibility of hiring a manager for the growing season to do work that needed to be done at the site.

Gregory Howe thanked Dennis Minsky for all of his hard work and leadership over the years he has been on the Commission, as it was his last meeting. Mr. Famulare said that the Town extended its thanks and gratitude for his service.

ADJOURNMENT: *Nathaniel Mayo moved to adjourn the Public Hearing at 7:50 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2018
Alfred Famiglietti, Chair