

PROVINCETOWN CONSERVATION COMMISSION

Judge Welsh Room

August 20, 2019

6:30 P.M.

Members Present: Alfred Famiglietti, Nathaniel Mayo, Brett McNeilly, and Dani Niedzielski.

Members Absent: Robert Brock (excused), Joseph Cooper (excused), and Oriana Conklin (excused).

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

Chair Alfred Famiglietti called the Public Hearing to order at 6:32 P.M. and briefly summarized the Commission's purview.

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

2) **Public Hearings:**

a) **CON-20-008 963 Commercial Street, Unit 6**

Request for a Determination of Applicability filed by **Carol Wells & William Brown** pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and the Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law to elevate an existing cottage and add a concrete foundation and new first floor. Work to take place within a previously developed Barrier Beach and a Land Subject to Coastal Storm Flowage.

Presentation: Carol Wells and William R. Brown appeared to present the application. Ms. Wells stated that the project included raising the building, adding a new concrete foundation and a new first floor. The footprint of the new structure will be similar to the existing. She said that all vegetation that is disturbed will be replaced and what can be saved will be. The builder didn't anticipate a big disturbance in the vegetation on the site.

Public Comment: Maria Kuliopulos, an abutter, spoke in opposition to the application. Paul Shea clarified an issue raised by Ms. Kuliopulos regarding the sequence of submission of a Chapter 91 license and an Order of Conditions.

Commission Discussion: The Commission questioned Mr. Brown and Ms. Wells. The staging area for heavy equipment will be across the driveway in an open area. Mr. Famulare reviewed the draft conditions.

Nathaniel Mayo moved to grant a Negative #2 Determination of Applicability for CON-20-008, pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and the Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, to elevate an existing cottage and add a concrete foundation and new first floor at the property located at 963 Commercial Street, Unit 6, with the draft conditions as discussed, Brett McNeilly seconded and it was so voted, 4-0.

b) **CON-20-009 21 Kimberly Lane**

Local By-Law Filing by **Alan Smith** pursuant to the Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law for the construction of a proposed in-ground swimming pool, pool equipment, patio, and landscaping. Work to take place within a Buffer Zone to an Isolated Vegetated Wetland.

Presentation: Paul Shea, of Independent Environmental Consultants, appeared to present the application. He said that the isolated vegetated wetland was not on the property, but at the back of the property, down a slope and across Ice House Road. The rear of the property has a stockade fence delineating the lot line. The proposed pool would be located within the 50' buffer zone. He said that the applicant would like to also do a landscaping project to include installing pervious pavers around the salt water pool and a pervious paver walkway down to the stockade fence, a portion of which will be replaced with new fencing. The house is outside the 100' buffer zone to the isolated vegetated wetland. Work is necessary in the 50' buffer zone for the walkway, which is already a cleared pathway. He said that Mr. Famulare had requested that the storage of the pool equipment, which was proposed to be located between the 50' and 100' buffer zone and in the flood zone, be located outside the 100-year flood zone. He said that the applicant would be amenable to that proposal.

Public Comment: Jacob Murray, a direct abutter, had questions about the project, including whether there would be grading changes, about invasives in the area, the location of the new fence, and lighting around the pool area.

Commission Discussion: The Commission questioned Mr. Shea. Mr. Famulare asked that a revised site plan showing any new plantings and the new location of the pool equipment shed be submitted. He reviewed the draft special conditions.

Dani Niedzielski moved to approve CON-20-009 pursuant to the Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, for the construction of a proposed in-ground swimming pool, pool equipment, patio, and landscaping at the property located at 21 Kimberly Lane with the draft conditions as discussed, Nathaniel Mayo seconded and it was so voted, 4-0.

c) CON-20-006 **90 Race Point Road** (continued from the meeting of August 6, 2019)

Local By-Law Filing by NSTAR Electric, d/b/a Eversource Energy, pursuant to the Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, for the construction of a lithium-ion battery storage system; the installation of a water line within the transfer station access road; and the installation of an underground electrical distribution line within the transfer station access road, Race Point Road, and Route 6. Work to take place within NHESP Estimated and Priority Habitat and a Buffer Zone to an Isolated Vegetated Wetland.

Presentation: Brian Bosse and Colin Duncan appeared to discuss the application. Mr. Duncan gave a quick review of the status of the project, which would have no impact on any wetlands or buffer zones, however the site is within NHESP jurisdiction. The installation of the electrical distribution line down to the end of Race Point Road and Route 6 would be the only buffer zone activity related to the project and that is an exempt activity under the Wetlands Protection Act. He said that the removal of trees has been discussed. A water line will be installed under the access road to the site. He said that the applicant has received a letter from Natural Heritage regarding the status of the project, stating that even though the activity is taking place within the habitat areas under its jurisdiction, the project can proceed as a 'no take'. The conditions placed on the project include the preparation of a turtle protection plan and requirements that the property is swept for turtles prior to construction and an exclusion fence set up to keep them off the property. He briefly reviewed the draft turtle protection plan that had been prepared, including a condition that contractors be trained about protocol in case a turtle is found on the site during the construction phase. As to the tree removal, a count has been done and options for an in lieu fee have been discussed with the Town. Mr. Duncan said that Eversource has hired an arborist to do

a site visit and prepare an estimate of the cost of the lost trees based upon a standard formula. Mr. Famulare has been exploring other options for mitigation. Mr. Duncan indicated that the range of cost for tree mitigation is between \$10,000 and \$15,000. He said that he has reviewed Mr. Famulare's draft conditions and has no issues with them.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Bosse and Mr. Duncan. The latter described the fire suppression system. Mr. Famulare said that this project introduced an interesting jurisdictional situation for the Commission because the area where the storage facility is proposed to be located is only in a Natural Heritage habitat area, not in a wetland or buffer zone, and thus not protected by the WPA, however it is within the jurisdiction of the local by-law. He said that the area at the intersection of Race Point Road and Route 6 is a bordering vegetated wetland and the kind of activity proposed is exempt under the WPA, but not under the local by-law. Mr. Duncan clarified and discussed the tree formula with the Commission. Mr. Famulare reviewed the draft conditions.

Nathaniel Mayo moved to approve the Local By-Law Filing, CON-20-006, pursuant to the Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, for the construction of a lithium-ion battery storage system on the property located at 90 Race Point Road; the installation of a water line within the transfer station access road; and the installation of an underground electrical distribution line within the transfer station access road, Race Point Road, and Route 6 subject to the draft conditions as discussed, Alfred Famiglietti seconded and it was so voted, 4-0.

3) **Requests for Certificates of Compliance:**

a) CON-20-007 157A Commercial Street (construction of bulkhead) (*continued from the meeting of August 6, 2019*):

Alfred Famiglietti recused himself because of a conflict of interest. Mr. Famulare said that he still had not received the required information. He said that the project would be removed from the agenda until such time as he has received it.

4) **Requests for Extension of Order of Conditions:**

a) CON-17-014 806 Commercial Street

Request to Extend Order of Conditions, issued September 20, 2016, filed by Mark Legere for the construction of a single-family residence, septic system, deck, porch, retaining walls, driveway, and associated site work and grading. Mr. Famulare reviewed the project.

Nathaniel Mayo moved to extend the Order of Conditions for CON-17-014, 806 Commercial Street for a period of three years, Alfred Famiglietti seconded and it was so voted, 4-0.

5) **Conservation Agent Updates:** Mr. Famulare said that there was an incident that occurred on August 13th, at the Harbor Hill property, involving a hydrant being struck and broken by a subcontractor during work. Clean water was subsequently discharged from the hydrant and into a wooded wetland in the area before it was shut off. The water also traveled under a wall and some material was washed into the wetland. The area voided by the water was filled the next day with on-site material to prevent further damage and to make the area safe for pedestrians. He did a site visit the next day to review the situation and had asked that some knotweed be removed from the site. The environmental consultant on the Harbor Hill project will do a site visit, evaluate the

situation, and render an opinion as to how to stabilize and re-vegetate the slope. In addition, an engineer will be engaged to assess and render an opinion about the structural integrity of the wall. Mr. Famulare pointed out the area on a map online.

6) **Approval of Minutes of August 6, 2019:**

August 6, 2019: *Nathaniel Mayo moved to approve the minutes of August 6, 2019 as written, Brett McNeilly seconded and it was so voted, 4-0.*

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

ADJOURNMENT: *Nathaniel Mayo moved to adjourn the Public Hearing at 8:00 P.M., Brett McNeilly seconded and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2019
Alfred Famiglietti, Chair