

PROVINCETOWN CONSERVATION COMMISSION
VIRTUAL MEETING
February 2, 2021
6:00 P.M

Members Present Virtually: Alfred Famiglietti, Nathaniel Mayo, Oriana Conklin, and Thomas Skinner.

Members Absent: Joseph Cooper (excused) and Brett McNeilly (excused).

Others Present: Tim Famulare (Conservation Agent).

Conservation Agent Tim Famulare, as the moderator, introduced the remote participation meeting and called the roll, determining that a quorum was present.

Chair Alfred Famiglietti, called the meeting to order at 6:02 P.M.

Mr. Famulare explained why a virtual hearing was being conducted and how applicants and the public can view the meeting on PTV and participate by calling a number that is shown on the screen and then entering a conference ID number. He asked that all participants keep their phones on mute when not speaking.

Mr. Famiglietti reviewed the purview of the Commission and explained the protocol of the meeting, including not speaking until recognized by the Chair, and requested that all phones be muted unless called on to speak by the Chair. He explained how to unmute a phone and requested that all speakers state their names prior to speaking.

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

2) **Public Hearings:**

a) CON-21-1 479, 481 & 485 Commercial Street *(to be continued to the meeting of March 2, 2021)*

Notice of Intent filed by **Cape Associates, Inc.** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws Chapter 12, Wetlands Protection By-Law for a proposed bulkhead reconstruction Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach. Mr. Famulare said that the applicant requested to continue to the meeting of March 2, 2021.

Nathaniel Mayo moved to postpone CON-21-1 to the meeting of March 2, 2021, Thomas Skinner seconded and it was so voted, 4-0 by roll call.

b) CON-21-3 449 Commercial Street

Request for a Determination of Applicability filed by **McKean Artisan Builders** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws Chapter 12, Wetlands Protection By-Law, to build a deck in the front and side yards, landward of an existing bulkhead. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to a Coastal Beach.

Presentation: Nate McKean was in the meeting to present the application. He reviewed the project. He said that the yard is basically all sand between the structure and the bulkhead and then the beach. He said the intent was so create more of a “dock”, or “old wharf” kind of a feel in the yard facing the beach and along the side of the building by putting in helical piers, 4” by 6” marine grade timber for girders and reclaimed heart pine 3” by 8” decking. This will not disturb the sand but keep it from blasting that side of the building and from being tracked into the building.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. McKean. Mr. Famulare said that the deck would have to be designed to allow rainwater to infiltrate it. He recommended a Negative #2 and #3 Determination with draft conditions. He called out the conditions that are particular to this project; that the supports for the proposed deck shall be helical piles or sono-tubes, and the applicant shall notify the Agent in writing of which method has been selected, that the decks shall be structurally independent of the existing building and shall be constructed using flood-resistant materials, that all fasteners be made of corrosion-resistant materials and be specifically designed to resist lateral and up-lift loads between the deck frame and the concrete deck supports, pursuant to the state Building Code, and that the hardscape materials be designed in such a way to promote infiltration in place by allowing stormwater to flow between the joints of the constructed materials. Several of the conditions are pursuant to the state Building Code.

Nathaniel Mayo moved to grant a Negative #2 and #3 Determination of Applicability, CON-21-3, pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws Chapter 12, Wetlands Protection By-Law, to build a deck in the front and side yards, landward of an existing bulkhead at the property located at 449 Commercial Street, Oriana Conklin seconded and it was so voted, 4-0 by roll call.

3) **Requests for an Extension of Order of Conditions:**

a) CON-18-38 (formerly CON-18-056) **315A Commercial Street** (reconstruction and renovation of Surf Club restaurant building). Mr. Famiglietti identified the property and the project. Mr. Famulare said that Jim Fagan was in the meeting to explain the status of the project. Mr. Fagan said that the project has plans that have been submitted to the Building Department in order to obtain a building permit and he mentioned some other hurdles encountered by the project, such as how much could be spent on the project before the building would have to be raised pursuant to FEMA regulations, which would not be in the best interest of the applicant. He believes that the project could come in under the FEMA limit and be completed before the summer season. He is requesting an extension of three years. ***Nathaniel Mayo moved to grant a three-year extension of CON-18-38 for the property located at 315A Commercial Street, Oriana Conklin seconded and it was so voted, 4-0 by roll call.***

b) CON-18-43 (formerly CON-18-068) **795 Commercial Street, Unit 2** (raze and replace existing structure and make existing foundation compliant with FEMA floodplain requirements). Mr. Famiglietti identified the property. Gordon Peabody, of Safe Harbor, was in the meeting to request the extension. He briefly explained why the request is being made, including situations that had slowed down the project’s progress, such as lowering the height of the building and Covid pandemic issues with workers. He said that Safe Harbor’s role was erosion control and

native vegetation. He said that the plantings had been monitored and managed and he was happy with the result. The architect indicated that insulation and drywall work was just getting underway. He is requesting a two-year extension. *Nathaniel Mayo moved to grant a two-year extension for CON-18-43 for the property located at 795 Commercial Street, Unit 2, Oriana Conklin seconded and it was so voted, 4-0 by roll call.*

4) **Approval of Minutes of January 19, 2021:**

January 19, 2021: *Nathaniel Mayo moved to approve the minutes as written, Oriana Conklin seconded and it was so voted, 3-0-1 (Nathaniel Mayo abstaining) by roll call.*

5) **Conservation Agent Update:** Mr. Famulare said that he needed one more signature.

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

7) **Executive Session:**

The Conservation Commission will move to enter Executive Session pursuant to G.L. c. 30A, s. 21(a)(3) and (7) to review and approve minutes from prior Executive Sessions from April 18, 2017, June 20, 2017, July 18, 2017, September 19, 2017, November 7, 2017, March 14, 2018, May 15, 2018, December 18, 2018, and March 19, 2019, and to discuss litigation strategy in the following matters: Aqua King Fisher, 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; if discussion the matters in open session will have a detrimental effect on the Town's litigation position and the Chair so declares.

Thomas Skinner recused himself from the Executive Session.

Nathaniel Mayo moved to enter Executive Session pursuant to G.L. c. 30A, s. 21(a)(3) and (7) to review and approve minutes from prior Executive Sessions from April 18, 2017, June 20, 2017, July 18, 2017, September 19, 2017, November 7, 2017, March 4, 2018, May 15, 2018, December 18, 2018, and March 19, 2019, and to discuss litigation strategy in the following matters: Aqua King Fisher, 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; if discussion the matters in open session will have a detrimental effect on the Town's litigation position and the Commission will not reconvene in open session, Oriana Conklin seconded and it was so voted, 4-0 by roll call.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2021
Alfred Famiglietti, Chair