

**PROVINCETOWN CONSERVATION COMMISSION
VIRTUAL MEETING**

April 6, 2021

6:00 P.M

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

Members Absent: Brett McNeilly (excused) and Loretta Butehorn (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 Work Session to order at 6:04 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.

Chair Alfred Famiglietti reviewed some rules and regulations, including the Commission's purview of protecting the environment. This includes enforcing the state Wetlands Protection Act and the local wetlands protection by-law. He added that all members of the public need to go through the Chair in order to speak and there is no crosstalk or talking over anyone. Any member of the public can speak for 3 minutes.

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

2) **Public Hearing:**

a) **CON-21-1 479, 481 & 485 Commercial Street** (*continued from 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.

Presentation: Charlie Agro, of Coastal Engineering Co., was in the meeting to present the application on behalf of the Chandler House condominium. Mr. Agro reviewed the project, which includes augmenting the existing concrete seawall with an FRP sheet pile wall installed directly seaward it. This project was before the Commission about a year and a half ago for emergency repairs to the west end of the concrete wall. The emergency repairs were completed during the winter of last year. Now the rest of the wall needs to be addressed due to some cracking and deformation of the existing concrete wall. There are several well-occupied buildings on the site and a deck on the landward side of the bulkhead. He said that it is a tight site, the wall abuts two property lines. He has received written authorization from, and has consulted with, abutters on the west and east sides. On the east side, a concrete footing that protrudes out from the concrete wall,

and encroaches over the property line, will be partially removed. To reduce the amount of encroachment, part of the concrete footing will be chipped out and helical anchors will be installed to underpin the footing. This will allow the sheet piles to be driven in right up against the wall, on the seaward side, and next to the existing structure. The new sheet pile wall will be installed as close to the seaward toe of the existing wall as possible. Mr. Agro noted the cross sections shown on the site plan. He said that there were several cracks along the wall and it was only a matter of time before the wall gives way. Another aspect of the project is the relocation of the beach access stairs, which are currently a solid stack of aluminum stairs that go from the deck down to the beach. These stairs are seasonally removable. The proposal is to rotate them 90 degrees so that they are parallel to the shoreline as shown on the site plan. This will situate them parallel to the long shore current, perpendicular to the current, and protect them during higher high tides or when water is forced up against the wall. This will also make them easier to be removed on a seasonal basis. The relocation of the stairs will benefit the coastal beach, as they will not protrude into the beach and interrupt the flow of water around the stairs. An existing groin will be partially deconstructed and then reconstructed as part of the installation of the sheet piles, as the groin intrudes into the area where the piles will be driven. Mr. Famulare reiterated that the existing stairs extend perpendicular to the existing seawall and go down to the beach. They will be relocated to run parallel along the bulkhead, flush with the deck level, to make them less susceptible to coastal storm damage. Mr. Agro said that the groin itself will provide extra stability for the stairs. Mr. Famulare reviewed the rest of the site plan, saying that rip-rap will be placed at the bottom of the wall. He recommended the use of pressure-treated wood instead of green heart wood.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Agro. He explained how the materials and equipment could be moved down a path on the west side of the property and the work would be done from the middle of the property, north of the deck in the gravel area, and the material craned over an existing building. An alternate option proposed is for beach access if smaller equipment is needed or if there are any issues with access from Commercial Street. In that case, the beach access would be from Atkins Lane and the equipment would traverse across the beach in front of the Ice House. A temporary work area above mean high water line would be set up in front of the neighboring sheet pile bulkhead. However, he said that the ideal option would be to stage on the middle of the property. He described how the concrete could be pumped from the truck, if necessary, from Commercial Street, as concrete trucks have quite a long reach. Mr. Famulare reiterated Mr. Agro's important points and noted the staging area on the site plan. He reviewed the draft conditions, specifically the Special Conditions that are particular to this project, including designating the Town Landing that would be used if necessary, which would be Atkins Lane, and the requirement for a beach access permit. He said that he had received a comment letter from the MA Division of Marine Fisheries in January. He reviewed the comments and briefly discussed them with Mr. Agro and said that all of the concerns raised in the letter have been addressed by the applicant.

Oriana Conklin moved to approve the Notice of Intent, CON-21-1, 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 at the property located at 479, 481 & 485 Commercial Street as amended, Nathaniel Mayo seconded and it was so voted, 5-0 by roll call.

b) CON-21-10 419 Commercial Street

Notice of Intent by **Christine Barker** 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 demolish an existing building and construct a new structure compliant with FEMA floodplain regulations. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to a Coastal Dune.

Presentation: Paul Shea, from Independent Environmental Consultants, was in the meeting to present the application. He gave a brief overview of the project, which includes demolishing an older structure and building a new flood-compliant structure in the 100-year flood zone. The new structure will allow for flood waters to flow beneath it, to protect it and abutting structures by not interfering with the path of storm surges. He noted that the site plan, dated April 1, 2021, is from Schofield Brothers and shows the coastal wetland resource areas. The property borders on Provincetown Harbor, there is a coastal beach and a coastal dune, and land subject to coastal storm flowage in the area. The property is in the AE zone with an elevation of 13' and is in the 100-year flood zone. He said that the applicant has requested that the demolition work be done as early as possible, given the time of year and the imminence of the busy season. The reconstruction part could then be done in a less pressing manner at a slower time of the year. The Department of Environmental Protection has issued a file number, SE 058-0645, with no comments. He said that other members of the team working on the project are in the meeting to answer questions. 99% of the demolition work will be above the 100-year flood zone.

Mr. Famulare said that he had not received the proposed site plan and the construction protocols until Thursday night and he hasn't had the chance to review them all. As a result, he does not have draft conditions prepared for the project. He will recommend the application be continued to the next hearing, however it is a good idea to open the hearing tonight, as he does have concerns about missing information on the site plan. The applicant will be revising the site plan to include missing features and give some more details about the reconstruction of the rear ground-level deck, as part of it is in the velocity zone. Mr. Famulare did speak with Mr. Shea about allowing the demolition to proceed. He would like the applicant to walk the Commission through the demolition protocols and its sequence. He said the Commission's threshold for permitting does allow administrative review determinations for some demolitions and he does recommend a request for determination of applicability for demolitions within a buffer zone, but that is flexible. He would like to hear more about the staging of the demolition. He said there is a letter from the project's structural engineer about temporary shoring along the street and he would like to know at what point that would need to be installed. He would like to hear about the reconstruction process and the design of the new structure.

Lars Jensen, the structural engineer, said that the shoring would have to be installed before any demolition can begin to keep Commercial Street intact. An outline of the proposed system was provided in his letter. The proposed shoring system is a driven steel pile system with lagging in between and can be installed with a minimum of disturbance. The demolition will be controlled and occur on the structure from the top down. The shoring system will stay in place once that is done to allow for the new construction. Mr. Famulare questioned Mr. Jensen about the shoring system sequencing. Mr. Jensen said that the front foundation wall is retaining the soil and shoring

the grade towards the street. The point of the shoring system is to maintain the street. It will be installed between the existing building and the street. Soldier piles are driven first, installed 6' on center, with a vibratory hammer, which will minimize impact. After the piles are installed, the soil is excavated from the top down., foot by foot. Timber lagging beams are lodged in between the steel pilings as the soil is removed and serve to shore the grade. The advantage of the system is that it is a soft solution and will stabilize the soil with minimal top deflections, which would create cracks in the road. The system also allows for more careful excavation. The system would remain in place to allow for the construction of new foundation walls.

Mr. Famulare confirmed the location of the soldier piles and the sequence of the demolition. He requested that the site plan be revised to show where the 50- and 100-foot buffer zones end and to delineate where the coastal dune ends. He said that the wall will be within the buffer zone. He requested that a diagram or sample of what the shoring will look like be submitted and that the wall and the location of the dumpster be delineated on the site plan as well.

Public Comment: None.

Commission Discussion: The Commission and Mr. Famulare questioned Mr. Jensen and discussed the dumpster location. Russell Perry, the project's contractor, spoke about the demolition process. He said a dump truck, not a dumpster, will be used to gather debris to minimize the disruption of Commercial Street. Greg Morris, of GFM Enterprises, will be the demolition contractor and his trucks will be used. Once the shoring is in place, about a third of the roof will be taken down by hand and the street will not have to be blocked. A small excavator is proposed to be brought in via the Town Landing on Johnson Street, along the beach, and then up to the rear of the property. This would only happen once to help with the demolition of the rear of the building. He added that the demolition debris would be stacked inside the building and taken away by an excavator later.

Mr. Famulare requested more information about the possible use of a small excavator and how the damage to beach grass along the proposed rear pathway from the beach would be minimized. Mr. Perry said that no debris would be removed via the beach. Ms. Barker clarified that the use of a small excavator would lessen the time there would be a dump truck parked on Commercial Street and could, as well, travel along a public access pathway that runs from Commercial Street to the beach. She emphasized that this would only occur once and the beach grass could be protected, possibly by employing a ramp. Mr. Famulare said that he was uncomfortable handling the demolition phase as an administrative review, as the applicant was still uncertain as to how the small excavator might access the property. An administrative review determination would not be appropriate even if the excavator would be driven onto the property even once from the beach. He would like to expedite the process as much as possible, but he would also like to see the demolition protocols more developed. He added that the fact that the summer season was imminent should not figure into the Commission's consideration of the applicant's request. The Commission agreed with Mr. Famulare's assessment. If the demolition was going to be entirely staged from Commercial Street, Mr. Famulare said that he may be willing to consider authorizing it under an administrative review. Mr. Shea proposed continuing the application hearing until the next meeting on April 20th and over the next day or two, have Mr. Perry and Mr. Morris get together to discuss the demolition process. He said that if staging is done solely from Commercial Street, an administrative approval would be requested, however if the applicant decides that beach

access was necessary, she would not request an administrative approval, in which case a more detailed plan for accessing the property, via the beach, including crossing through the resource area, would be developed. Mr. Famulare said that if the applicant could propose a demolition plan, sequence, and schedule that has all work staged from Commercial Street, without equipment having to be brought in from the beach, an administrative review determination would be acceptable. In that situation, a standard order of conditions would be issued, including debris control on the site. A mark-up of the site plan would still be needed showing demolition staging, and the location and extent of the temporary shoring, specifically whether it would be needed on the sides of the structure. If equipment from the beach were needed, an administrative review approval would not be appropriate.

Oriana Conklin moved that the application be continued to the Public Hearing of April 20, 2021, and that the Commission authorize the Conservation Agent to issue an administrative review determination at his discretion for the demolition of the structure provided that it proceeds entirely from the Commercial Street side of the property, Thomas Skinner seconded and it was so voted, 5-0 by roll call.

3) **Enforcement Order:**

a) **225 Commercial Street** – Unauthorized filling and altering of a coastal beach by placement of sand for beach nourishment; unauthorized removing and altering of land subject to coastal storm flowage, and within 100 feet of a coastal beach, by excavation for, and installation of, an underground propane tank.

Mr. Famulare introduced the violations. He said that he had noticed that the property owners had imported sand to nourish the rear seating section, located on a coastal beach, and which had been done without a permit. In addition, a new propane tank was installed behind the building, landward of the low seawall, which is in the flood plain and within a buffer zone of a coastal beach. In the EO, he had initially misunderstood the scope of some additional work being done on the side of the building, along the walkway. He had thought that propane tanks had been removed from that area and a new French drain system had been installed. This, however, had not occurred. He subsequently had issued 5 citations related to the violations at the property. He recommended that the Commission rescind 2 of those citations; #2090 and #2091, as those citations pertain to work being done in the walkway. The 3 other citations were issued for the importation of sand to nourish the area, which affects the coastal beach, and for a new underground propane tank that was installed in land subject to coastal storm flowage and a buffer zone to a coastal beach. In addition, the EO specified requirements to attend the hearing tonight and for the submission of an After-the-Fact Notice of Intent with plans to understand the scope of work that occurred. Gordon Peabody, representing the property owners, spoke about the work. He said that subcontractors installing the underground propane tank did not realize that they needed a permit to do the work. He said the After-the-Fact NOI had been submitted today, with doubled submission fees, and assured the Commission that the property owners were humbled by the situation. He asked if some of the citation fines could be modified. He also noted that the imported sand showed a 5% grain compatibility with the existing sand on the beach when it was tested. The sand delivery person also was not aware that he needed a permit. The property owners have accepted full responsibility for the mistake. Mr. Famulare spoke about EO and said that the

citations, which are \$300 apiece, could be issued to any person, in this case the property owners, pursuant to the local by-law. The property owners, if they chose to, could take up the issue of the fines with their contractors. He said an enforcement action could be pursued against the contractors if the Commission so chose. He said that the new After-the-Fact NOI could include an Order of Conditions with on-going maintenance protocols that would carry forward into perpetuity. Mr. Famulare said that both he and the Chair have met in the past with the property owners to discuss various issues and proposed projects under the Commission's jurisdiction that have occurred on the property. He said that in his opinion, the property owners were aware of the Commission's jurisdiction. In this case, he said, a phone call to the Conservation Agent would have been in order. The Commission discussed the issue. Mr. Famulare said that the installation of propane tanks in flood zones are problematic, as they are susceptible to collapsing, becoming buoyant, and potentially rupturing and leaking gas, and they need special considerations regarding their installation. He recommended having a discussion with the fuel companies in Town that install propane tanks to discuss their installation in flood zones and to come up with an expedited way to review them. He said that the tanks must comply with FEMA standards for tank type and installation, including the need for a concrete base, the need for securing the tank with specific types of fasteners to keep it from lifting when flooded, and the use of a specific type of tank that can meet pressure demands if surrounded by water-saturated soils. He has asked the applicant to submit these specifications. He said that he has also asked Mr. Peabody for suggestions as to how often nourishment of a beach can occur, such as once a year or once every two years, what would be an acceptable amount in that situation, and what size grain of sand would be acceptable. He had asked for a sieve analysis of the old sand and the newly deposited sand on this property and had asked the property owners to halt the deposition of the sand until the analysis had been completed. The Commission discussed the citations.

Nathaniel Mayo moved that the Commission ratify the Enforcement Order of March 26, 2021, and rescind two of the five citations that were issued, Oriana Conklin seconded and it was so voted, 5-0 by roll call.

4) **Work Session:**

a) Town Meeting Articles - Discussion of the articles relating to the natural environment on the warrant of the May 1, 2021 Annual and Special Town Meetings, in preparation for the Commission's public hearing to be held on April 13, 2021, to make recommendations on articles relating to the natural environment.

Mr. Famulare reviewed the item. He asked if any Commissioner had questions regarding the warrant articles. He suggested reviewing Articles 9, 10, the 2 articles from the Open Space Committee regarding the acquisition of 2 open space parcels using Land Bank funds, Article 18, 20, and 29. He may change his opinion upon closer reading of the warrant.

5) **Conservation Agent Update:** Mr. Famulare said that the Conwell Street improvements are underway. He said that 30 Shank Painter Road has also begun work and 14 Thistlemore Road will soon be underway. Ms. Butehorn is taking one of the fundamental MACC courses.

6) **Information:**

a) CON 21-15 4 Bayberry Ave. – construct small front porch on concrete footings. Mr. Famulare said that this project changed a stoop into a small porch, which is located about 95’ from the resource area. There was no loss of vegetation or habitat and the expansion was over a manicured lawn.

b) CON-21-17 491 Commercial Street – replace/repair existing deck in same footprint. Mr. Famulare said that there was a three-level deck that was in disrepair. It will come down and be rebuilt in kind.

c) CON-21-18 225 Commercial Street – replace concrete walkway with timber frame walkway. Mr. Famulare said that the applicant did begin to rip up the concrete walkway from Commercial Street to the rear of the property and removed existing above-ground propane tanks. He reviewed the plans for a new timber walkway, including expanding it and improving drainage by removing some impervious surfaces and adding gravel.

7) **Any other business that shall properly come before the Commission:** Mr. Famiglietti suggested holding a work session to discuss guidelines for property owners and contractors related to understanding the Commission’s jurisdiction. Mr. Famulare said that he had met with regional Agents to find out what their respective Town’s had for policies with respect to enforcement.

Nathaniel Mayo moved to adjourn the Public Hearing at 8:10 P.M., Oriana Conklin seconded and it was so voted, 5-0 by roll call.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2021
Alfred Famiglietti, Chair