

PROVINCETOWN CONSERVATION COMMISSION

August 17, 2021

6:00 P.M

Members Present: Alfred Famiglietti, Nathaniel Mayo (via phone), and Brett McNeilly.

Members Absent: Oriana Conklin (excused), Joseph Cooper (excused), and Loretta Butehorn (excused).

Others Present: Tim Famulare (Conservation Agent).

Chair Alfred Famiglietti called the meeting to order at 6:00 P.M. Mr. Famulare explained that even though the public hearing was being conducted in person, there were procedures for public participation in this hybrid-style public meeting. The meeting will not be suspended or terminated if there are technical difficulties interrupt the virtual broadcast, unless otherwise required by law. He reviewed how to use the Microsoft Teams app for public participation or how to participate if using the phone number provided on the agenda. He asked that all members of the public wanting to comment on a particular application state their names. Cell phones should be muted at all times other than when speaking and *6 will mute or unmute the phone.

Chair Alfred Famiglietti reviewed the purview of the Commission, which is the Massachusetts Wetlands Protection Act, G.L. c. 131, s. 40 and the local Wetlands Protection By-Law, Chapter 12. He briefly reviewed its areas of jurisdiction. He asked that all public comment requests go through the Chair and that there be no crosstalk amongst public participants or the public and the applicant.

1) **Public Comments:** None.

2) **Public Hearings:**

a) **CON-21-45 463 Commercial Street**

Request for Determination of Applicability filed by **Peter John Petas Living Trust** 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 enclose an existing deck area and to remove an existing roof and walls of an enclosed portion of an existing building on a wharf. Work to take place within a Coastal Beach and Land Subject to Coastal Storm Flowage.

Presentation: Don Munroe, of Coastal Engineering and Peter Petas, the property owner, appeared virtually to present the application. Mr. Munroe reviewed the proposal, which involves exchanging roughly the same square footage for two separate areas. An area that is landward will be enclosed and the area that is seaward, a roof will be removed. The latter will be converted to a deck that is open to Provincetown Harbor. He said there would be no need for heavy equipment use because even though the building is in a coastal beach area, it is elevated above that elevation. Most of the work to be performed to remove the existing roof and walls of the seaward portion of the wharf and then enclose the landward area will be done above the beach. The area of the existing roof and walls to be removed is 321 sq. ft., and the area to be enclosed will be 298 sq. ft. He reviewed the site plan showing the two areas in question, which were identified by hatch marks on the plan. He said that the Chapter 91 license would have to be amended because the removal of a roof and walls and the proposed reconstruction, albeit with the same square footage,

doesn't meet the definition of a non-structural change or a minor modification. Mr. Munroe said that there would be no changes to the foundation of the building and a structural engineer has reviewed the proposal and determined that there was adequate support. He added that the Department of Environmental Protection reviews any project that is below the historic high waterline.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Munroe. Mr. Famulare asked about means and methods of the demolition and rebuild phase of the project. Mr. Munroe said that a contractor has not been hired, but when one is, that a construction protocol will be submitted. Mr. Munroe said that he agreed with the draft conditions as compiled by Mr. Famulare. Mr. Famulare said that the Division of Marine Fisheries had no comments regarding the project. He then reviewed some of the special draft conditions, including an addition he has made to condition #6, stating that if the construction protocol were to require vehicle access on the adjacent beach, the applicant would have to obtain a beach access permit, an addition to condition #7 requiring the contractor to monitor tidal heights and not conduct work over the beach when the tidewaters of the Harbor are within 10' seaward of the limit of work, an addition that would require a lift truck, if necessary, were to travel to the site that it would need to maintain a path of travel at least 5' from the level of the tide, condition #8 requiring all equipment, materials, and debris to be stored in the work area and not on the beach, and requiring the contractor to monitor the beach under the work areas and promptly remove any debris that falls onto it, and condition #11 requiring the applicant to submit a copy of whatever Chapter 91 authorization is received for the work.

Nathaniel Mayo moved to grant a Negative #2 Determination of Applicability, CON-21-45, 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 enclose an existing deck area and to remove an existing roof and walls of an enclosed portion of an existing building on a wharf at the property located at 463 Commercial Street, Brett McNeilly seconded and it was so voted, 3-0 by roll call.

b) CON-21-47 43 Commercial Street

Request for Determination of Applicability filed by **John Foster** 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 remove and reconfigure an exterior stair, remove a hot tub, and remove and reconfigure deck pavers and walkways. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to a Coastal Beach.

Presentation: Ted Smith appeared to present the application. He reviewed the site plan, stating that the site had two structures, one on the street and one on the water side, and the area in question is between the two, which is located in the buffer zone. He said that the project involved removing and re-configuring items in that particular area, such as a hot tub, an exterior stair, deck pavers, and walkways. A second-floor exterior stairway will be moved to the east so it doesn't exit into the middle of the courtyard. He reviewed photographs of the area. Some pavers will be reconfigured and vegetation added. He said that the existing area has a total of 184 sq. ft. of permeable surface and 809 sq. ft. of impermeable surface. The proposed area will increase the permeable to 346 sq. ft. and decrease the impermeable to 657 sq. ft. He said that the overall permeability of the lot will be improved. Mr. Smith pinpointed out the areas that will be

impermeable and permeable. He said that the native plantings have not yet been chosen, but would be submitted to the Conservation Agent for his approval at a later date.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Smith and discussed the project. Mr. Famulare reviewed the draft conditions.

Nathaniel Mayo moved to grant a Negative #2 and #3 Determinations of Applicability, CON-21-47, 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 remove and reconfigure an exterior stair, remove a hot tub, and remove and reconfigure deck pavers and walkway at the property located at 43 Commercial Street subject to the conditions as presented, adding the planting language as discussed, as well as the additional language for condition #9, Brett McNeilly seconded and it was so voted, 3-0 by roll call.

3) **Approval of Minutes:** A quorum was not available for approval of the minutes of the August 3, 2021 Public Meeting.

4) **Conservation Agent Update:** Mr. Famulare said that Conservation matters were slow at this time of the year.

5) **Any Other Business that shall properly come before the Commission:** Mr. Famiglietti said that he would be in Europe for three months. The Commission briefly discussed Commissioners' availability for that period of time.

Nathaniel Mayo moved to adjourn the Public Hearing at 6:42 P.M., Brett McNeilly seconded and it was so voted, 3-0 by roll call.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2021
Alfred Famiglietti, Chair