

PROVINCETOWN CONSERVATION COMMISSION

November 2, 2021

6:00 P.M

Members Present: Nathaniel Mayo, Oriana Conklin, Joseph Cooper (virtually), Brett McNeilly, Loretta Butehorn and Cody Sullivan.

Members Absent: Alfred Famiglietti (excused).

Others Present: Tim Famulare (Conservation Agent).

Vice Chair Nathaniel Mayo called the meeting to order at 6:00 P.M. He said the Conservation Commission was tasked with environmental resource protection pursuant to the Massachusetts Wetlands Protection Act, G.L. c. 131, s. 40 and the local Wetlands Protection By-Law, Chapter 12. He said that the scope of the Commission's authority included protection of public and private water supplies, pollution prevention, ground water protection, storm damage prevention, flood control, protection of fisheries, and protection of land containing shellfish.

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 always be muted, other than when speaking, and *6 will mute or unmute your phone.

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

2) **Public Hearings:**

a) CON-21-53 78 West Vine Street (continued from the meeting of October 19, 2021)

Request for a Determination of Applicability filed by **Angela Bonazinga** and **Catherine Lewis** 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 determine whether the subject property or a portion thereof is an area subject to the jurisdiction of the Massachusetts Wetlands Protection Act or the Provincetown Wetlands Protection By-Law. Pursuant to the Mullin Rule, Mr. Famulare stated that Loretta Butehorn, Oriana Conklin, and Joseph Cooper have attested to watching the video recording of the previous hearing of the matter for voting purposes.

Presentation: Theresa Sprague, from Blue Flax Design, appeared to discuss the application. She thanked the Commissioners who were present at the property for a site visit. She said the goal of the filing was to determine whether the property was located in a buffer zone to a wetland resource area, with the wetland in question being located on Town-owned property at 30 Creek Road. She has submitted data sheets and soil analyses and her determination based upon those was that the property was not meeting the wetland resource area definitions or criteria under the Massachusetts Wetlands Protection Act, but there was a question as to whether it meets the definition of an isolated wetland or an unvegetated wetland pursuant to the local by-law. She said

it may be difficult to make such a determination and they may need more information, such as more engineering studies, in order to do that. The applicants are seeking to manage invasive plant species, restore meadow habitat, and provide an area for their dog to use. She said given the circumstances, she thought the best path would be to withdraw the application for a Determination of Applicability as presented and to return to the Commission with an overall plan for the property and a determination would be made through that process. Mr. Famulare said he had met with several Commissioners on site to discuss treatment for the existing invasives. Given the scope of what applicants will propose, he thought that the project would qualify for an Administrative Review under the local by-law. When he receives the applicants' plan, he will consult with the Chair about whether to consider it as such. ***Oriana Conklin moved to grant the request to withdraw CON-21-53, Cody Sullivan seconded, and it was so voted, 5-0 by roll call.***

b) CON-21-62 **63 Shank Painter Road** (continued from the meeting of October 19, 2021) **Notice of Intent** filed by **Elizabeth Athineos** 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 construct a first-floor addition over an existing roof/deck, renovate a first floor, and construct an egress deck and stairs on the south side of an existing building. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to an Isolated Vegetative Wetland.

Presentation: Paul Shea, of Independent Environmental Consultants, and William N. Rogers, II, P.E., P.L.S., and Gary Locke, both engineers, presented the application. Mr. Shea said that the applicant had filed a Notice of Intent in 2016, which was approved by the Commission, for a much larger project on the property. The applicant did not move forward with the project however the Order of Conditions, SE 058-0556, was filed at the Registry of Deeds. Mr. Shea said he would be seeking to remove it as that project did not occur. He said the current proposal is for a smaller project. The project includes building a first-floor addition over an existing roof deck, renovating the first floor, and constructing an egress deck and stairs on the south side of the building. The property is located within land subject to coastal storm flowage. There is an isolated wetland in the front of the property directly adjacent to Shank Painter Road. He said there would be alterations in the buffer zone, but no alterations to the wetland itself. The Department of Environmental Protection File No. for this project is SE 058-0654. The proposed site alterations within land subject to coastal storm flowage will be 27 sq. ft. of deck and 81 sq. ft. of stairs for a total of 108 sq. ft., what he characterized as a very minor alteration. Mr. Famulare pointed out the relevant lines on the site plan, the elevation drawings, and photographs of the site.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Shea. Mr. Famulare reviewed the draft conditions.

Oriana Conklin moved to approve the Notice of Intent, CON-21-62, 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 construct a first-floor addition over an existing roof/deck, renovate a first floor, and construct an egress deck and stairs on the south side of an existing building at the property located at 63 Shank Painter Road, subject to the draft Order of Conditions as presented and discussed, Loretta Butehorn seconded, and it was so voted, 5-0 by roll call.

c) CON-21-63 24 Commodore Avenue (continued from the meeting of October 19, 2021) **Notice of Intent** filed by **Christine Bernardis** 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 construct a single-family home, accessory building, pervious surface parking area, and landscaping. Work to take place within Land Subject to Coastal Storm Flowage.

Presentation: Paul Shea, on behalf Christine Bernardis, William N. Rogers, II, P.E., P.L.S., and Gary Locke presented the application. Mr. Shea said that the parcel of land was undeveloped and contains land subject to coastal storm flowage. The applicant proposes to build a main house, which will have a pile foundation. A smaller accessory dwelling unit, also on a pile foundation, will also be constructed on the property, along with a pervious parking area. The total alteration of the site equals 3,063 sq. ft., which includes the pervious parking area. The DEP File No. issued to the project is 058-0655 and there were no comments.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Shea. Mr. Famulare said that the property is outside the buffer zone of any wetland resource area. He reviewed the elevation drawings and the site plan. He reviewed the draft conditions.

Oriana Conklin moved to approve the Notice of Intent, CON-21-63, 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 construct a single-family home, accessory building, pervious surface parking area, and landscaping for the property located at 24 Commodore Avenue with the conditions as proposed, Loretta Butehorn seconded, and it was so voted, 5-0 by roll call.

3) Requests for Certificates of Compliance

a) CON-21-67 243-249 Commercial Street (DEP File No. SE 058-0303): Mr. Famulare said that this property is the Crown & Anchor. After a fire in 1998, there was an Order of Conditions issued for the reconstruction of the building. A Certificate of Compliance was never issued after the completion of the project. He said there was a certification from William N. Rogers stating that the project was substantially complete in compliance with the approved plans. The request is for an issuance for a complete Certificate of Compliance. Mr. Murray, the property owner, who was present to discuss the request. He said that the property was being sold and before that could happen, the title needed to be cleared, and the Commission's issuance of the Certificate was part of that process. Mr. Famulare recommended that the Commission issue a full Certificate. ***Oriana Conklin moved to issue a full Certificate of Compliance for CON-21-67, 243-249 Commercial Street, Cody Sullivan seconded and it was so voted, 5-0 by roll call.***

4) Approval of Minutes:

October 5, 2021: Oriana Conklin moved to approve the minutes of October 5, 2021 as written, Cody Sullivan seconded, and it was so voted, 5-0 by roll call.

5) Other Business

A) LAND Grant Project Agreement for acquisition of 86R & 88 Atkins Mayo Road: Mr. Mayo recused himself and left the room because he had a conflict of interest. Mr. Famulare said

the Commission would have to nominate and elect an acting Chair. ***Cody Sullivan moved to nominate and elect Oriana Conklin as acting Chair, Bret McNeilly seconded and it was so voted, 5-0 by roll call.***

Mr. Famulare said that there were two articles related to open space acquisition at the Spring Town Meeting. The Town was only able to apply for a LAND grant to acquire one of the parcels and it was successful. The Town will receive \$154,000 towards the purchase price of \$300,000. This needs to be accepted by the Commission and signed by a majority of the members. He said that the Open Space Committee has worked hard to update the Open Space Plan before the grant was applied for and will be finalized before the grant is received.

Loretta Butehorn moved to accept the project agreement for the LAND grant related to the purchase of 86R Atkins Mayo Road, Cody Sullivan seconded and it was so voted, 5-0 by roll call.

6) **Conservation Agent Update:** Mr. Famulare said that he had no filings for the November 16th hearing yet, but a filing may come in between now and then.

7) **Information:**

a) **CON-21-61 78 West Vine Street** – management of invasive Japanese knotweed: Mr. Famulare said that this project was discussed at a previous hearing, and he did endorse the plan to treat the invasives.

b) **CON-21-66 3 Allerton Street** – replace an existing deck: Mr. Famulare said that this property was greater than 100’ from the Harbor, but still within land subject to coastal storm flowage. The footings will be replaced on a deck that will be in the same footprint.

8) **Any Other Business that shall properly come before the Commission:** Loretta Butehorn asked about the surveying of Site Y. Mr. Famulare said that the Open Space Committee was interested in conserving the area and had engaged the Horsley Witten Group to do an environmental survey. It has been in touch with NHESP, as the area is a designated habitat for endangered species, to identify what species that are present. Horsley-Witten has delineated the wetlands and it has engaged a surveyor to map the extent of the property. He said the land was Town-owned. It is unclear whether it was subject to protection along with the adjacent nature trail.

Oriana Conklin moved to adjourn the Public Hearing at 6:51 P.M., Loretta Butehorn seconded, and it was so voted unanimously.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2021
Nathaniel Mayo, Vice Chair