

PROVINCETOWN CONSERVATION COMMISSION

January 17, 2023

6:00 P.M

Members Present: Alfred Famiglietti, Nathaniel Mayo, Oriana Conklin, Joseph Cooper, Cody Sullivan (online and left at 7:13 P.M.), and Emma Fillion.

Members Absent: None.

Others Present: Tim Famulare (Conservation Agent).

Chair Alfred Famiglietti called the meeting to order at 6:00 P.M. Mr. Famulare noted the Commissioners that were in the room and those online. He explained how the public could participate in the hearing by phone or by using the Microsoft Teams app. He then called the roll.

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

2) **Public Hearings:**

a) **CON-22-40 16 Hobson Avenue** (*continued from the meeting of December 6, 2022*)

Notice of Intent filed by **Richard Frost** 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 expand an existing home and replace a storage shed with a studio structure. Work to take place within a Coastal Dune. Mr. Famulare said that he realized when preparing for the meeting that the applicant had not uploaded revised plans. There is a report from Greg Berman that has been added to the application. The applicant is requesting that the application be continued to the next meeting so the Commission can review the new material. He said the Commission may have to schedule a special meeting on January 31st and he would like to postpone a vote to continue until the end of the meeting when it can be determined if an additional meeting needs to be scheduled.

b) **CON-22-46 Herring Cove, Cape Cod Bay** (*continued from the meeting of November 15, 2022*) **(WITHDRAWN WITHOUT PREJUDICE)**

Notice of Intent filed by **Letts Trucking, Inc. – F/V Addy Rose** 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 conduct hydraulic dredging for surf clams. Work to take place within Land Under the Ocean and Land Containing Shellfish. Mr. Famulare said that this was withdrawn by the applicant. He said that he was in touch with the Director of the Massachusetts Division of Marine Fisheries, and he is looking to address the management issues around hydraulic dredging with the Fisheries Advisory Council to develop a strategic plan pending the publication of the study that was commissioned by the National Park Service and conducted by the Center for Coastal Studies. Until that time, the NOI has been withdrawn. He anticipates that the Commission will be in further discussions with the state on how to proceed with this issue.

3) Request for Certificate of Compliance:

a) CON-22-62 6 Duncan Lane (Local By-Law Permit): Mr. Mayo recused himself because of a conflict of interest. Mr. Famulare said that there is a complicated history attached to this project. There were two local by-law permits and there have been compliance issues associated with the work. The first permit was issued for a septic system, decking and a patio, but there was additional work done that was not permitted. The permit was amended with a new Order of Conditions that required some removal of fill that had been unauthorized, the re-alignment of some retaining walls and an additional planting plan. There will be two votes: one for the original permit and one for the amended permit. He showed an 'as-built' plan for the conformity of the septic system with the approved plans. He said there was excessive fill placed in an area on the site that was not approved. The amended plan allowed for the removal of some of the fill and a retaining wall to accommodate a parking space. There was also non-compliance in regard to the installation of some decks that wrapped around an existing garage, and a patio installed rather than a deck. A drain was installed to facilitate draining away from the structure. New surveyors, required by the amended permit, were hired to confirm the top of wall elevations for the retaining walls and to determine if those conformed to the plans approved by the Commission and the amended permit. The patio was redone without mortar and with a drainage system. A new drain was installed for the decks to facilitate drainage. He recommended a partial Certificate of Compliance for both permits because there were some required plantings, including five junipers, along the property lines. The Provincetown Conservation Trust property adjacent to the property had vegetation destroyed by construction vehicles. There is a three-year monitoring and maintenance requirement for new vegetation. The homeowner, who was online, was told that she would have to come back to the Commission in two years for that requirement to be fulfilled and for the file to be closed out. He said that the plantings didn't look healthy, but that may be because of the drought conditions that we have been experiencing. He suggested that the person who planted the vegetation take pictures in the spring and again in the fall.

Oriana Conklin moved to grant a partial Certificate of Compliance for CON-20-034, excepting the three-year monitoring and maintenance period for mitigation plantings, with no on-going conditions, Joseph Cooper seconded, and it was so voted, 5-0 by roll call.

Joseph Cooper moved to grant a partial Certificate of Compliance for CON-21-36, excepting the three-year monitoring and maintenance period for mitigation plantings, with on-going conditions, 2, 3, & 5, that driveways and parking areas be maintained as pervious surfaces, other crushed stone or pervious pavers, that roof runoff be directed to dry wells, and that all hardscape materials, such as driveway aprons and patios, be dry-laid stone or wood decks to promote infiltration in place, Oriana Conklin seconded and it was so voted, 5-0 by roll call.

4) Emergency Certifications:

a) CON-23-1 491 Commercial Street: Mr. Famulare said that this property was discussed at the previous meeting involving a collapsed seawall. This was a concrete bulkhead that had fallen on its side. He reviewed the Special Conditions attached to the Emergency Certification.

Nathaniel Mayo moved to ratify the Emergency Certification for CON-23-1, 491 Commercial

Street, as prepared by the Conservation Agent, Oriana Conklin seconded, and it was so voted, 5-0.

b) CON-23-2 **Route 6A (Commercial Street) at Snail Road:** Mr. Famulare said that Dave Pichette from Mass Dept. of Transportation Environmental was on the line to discuss this matter. During the December 23rd storm, there was significant erosion along Commercial Street and Route 6A, just west of the intersection with Snail Road. The shoulder was eroded, exposing the foundation posts for the guardrails, and it was beginning to jeopardize the roadway itself. He showed photographs of the scoured roadway damage. He had ordered an emergency certification for stabilizing fill with a filter fabric over it to be added with new riprap to be placed on top of that. Mr. Pichette said that the work has not yet been completed, but the materials have been ordered. The goal is to get the work done in the next week or two as soon as the material becomes available. Mr. Famulare reviewed the conditions.

Nathaniel Mayo moved to ratify the Emergency Certification for work on Route 6A at Snail Road as prepared by the Conservation Agent, Oriana Conklin seconded, and it was so voted, 5-0 by roll call.

c) CON-23-3 **449 Commercial Street**

d) CON-23-4 **451 Commercial Street**

e) CON-23-5 **453 Commercial Street:**

This Emergency Certifications will be substantively the same for these three properties. He reviewed photographs of the damage to the properties. Jed Hannon, of Atlantic Coastal Engineering & Surveying, was on the line to discuss the damage. The three properties have a contiguous concrete seawall and there was a lot of damage to decks and walkways behind it. The seawall collapsed backwards. He said the emergency repair has been delayed because of the unavailability of contractors. The damaged concrete will be removed, followed by drilling to install epoxy-coated rebar, and then concrete walls will be poured in the damaged areas. Mr. Famulare said he would attach the same conditions as the property located at 491 Commercial Street. The short-term fix can be undertaken, but an NOI has to be submitted within a year. A permanent repair is necessary. Mr. Hannon said that an existing unreinforced concrete seawall was damaged at these properties. The proposal was to drill and install two rows of epoxy-coated rebar, and form and pour concrete wall area in the same footprint of the existing wall to be repaired. This is just a temporary solution for the seawall. When the NOI is filed, it will propose a stronger solution.

Nathaniel Mayo moved to ratify the Emergency Certifications for CON-23-3, 449 Commercial Street, 23-4, 451 Commercial Street, and 23-5, 453 Commercial Street, Oriana Conklin seconded, and it was so voted, 5-0 by roll call.

f) CON-23-6 **629 Commercial Street:** Mr. Famulare said that the building on the property had extensive structural damage and has been posted as ‘unsafe for occupancy’. He reviewed photographs of the building. He said he had approved temporary shoring for stabilization of the building under the Emergency Certification. There was also filter fabric placed along the base of the bulkhead to prevent additional sediment from escaping and further undermining the building. An NOI will be submitted for a permanent fix.

Nathaniel Mayo moved to ratify the Emergency Certification for CON-23-6, 629 Commercial Street, Oriana Conklin seconded, and it was so voted, 5-0 by roll call.

5) **Work Session:**

a) Review and approve 2022 Annual Report: Mr. Famulare passed out the draft Annual Report and reviewed the changes he had made. The Commission reviewed the Report. *Nathaniel Mayo moved to approve the Annual Report upon finalization by the Agent with input from the Chair and Vice-Chair, Oriana Conklin seconded, and it was so voted, 5-0.*

b) Discussion of post-storm recovery protocols and policies: Mr. Famulare said that he has been allowing demolition and the removal of damaged decks and other such infrastructure along the waterfront to occur without review after the storm in December. He said there were a couple of scenarios that seemed to be repetitive following the cleanup that he wanted to call to the attention of the Commission. One has to do with decks that extend beyond the face of seawalls. He reviewed photographs of those situations. He is not sure if it is wise to permit those to be replaced as is, unless there is Chapter 91 license allowing it, or for decks to extend beyond the seaward face of a bulkhead in the velocity zone. This zone encompasses much of the east end. He suggested developing a regulation regarding this issue. The demolition would be allowed to occur, but he wanted an idea of what level of permitting should be permissible for decks to be replaced in these locations and whether they should be NOIs or Requests for Determinations of Applicability. The Commission discussed the issue. Mr. Famulare said that he saw a lot of damage to vinyl sheeting bulkheads, and he suggested the Commission generate a regulation to prohibit their use and suggested that composite, steel, or timber materials be used instead. Or, he wondered if there was a grade of vinyl acceptable that would be acceptable. And what kind of fascia should be required in front of vinyl.

Mr. Famulare raised the issue of beach access stairs, many which were destroyed or removed by the storm, and if the Commission should require that they be removable. He had some sample language from Dennis and Harwich regarding the issue. The language from Harwich states that the lower sections of beach access stairs should be made of aluminum, or other material approved by the Conservation Agent, and removed during the offseason, starting on December 1st. The Dennis language is similar but require the stairs to be permanently labelled with a DEP File No. in case they wash away. Mashpee has similar language, but, in addition, states that the address of the stairs has be etched into them for identification purposes. He would recommend that beach access stairs require an NOI and recorded against the deed and that the stairs have identification attached or carved into them. The Commission discussed the issue.

CON-22-40 16 Hobson Avenue (continued from the meeting of December 6, 2022)

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6) **Approval of Minutes of January 3, 2023:** *Nathaniel Mayo moved to postpone the approval of the minutes until the next meeting, Oriana Conklin seconded, and it was so voted, 5-0.*

7) **Conservation Agent Update:** Mr. Famulare said that the Town has received a \$40,000 grant from the Community Compact Best Practices, which is offered by the state through the Division of Local Services. It is to help municipalities achieve certain best practices. The one that the Town applied for is related to regionalization. The Town will work with three other outer Cape towns to look at ways to regionalize services in a more cost-effective fashion, particularly with respect to conservation and coastal resilience. This will involve working with staff and Commissions over the next nine months to look at how the Town might be able to better coordinate with other towns and possibly share resources, such as office space, staffing, legal services, and consultants, with the potential goal of creating a regional program or department with respect to Conservation and municipal services. The Town has engaged Urban Harbors Institute, which is affiliated with UMass Boston. They worked with the Harbor Committee to develop the municipal Harbor Plan.

Mr. Famulare said he had a site visit this morning at 66 West Vine Street.

He said that the position was advertised today for the Environmental Planner and Conservation Agent.

8) **Any other business that shall properly come before the Commission:** Mr. Mayo asked what role Mr. Famulare was now responsible for in addition to his Commission duties.

Mr. Famulare said there was a bid for the B Street Garden project that was way over budget. He said they can give a better price if they wait until the fall because they will have more space in their shop to pre-construct the garden frames, which would significantly reduce the price of the project. He said the gardeners could do the actual demolition and he will ask the Dept. of Public Works if they could dispose of the material. They will come back with a revised price. He will find out if the project will have to be re-advertised.

Nathaniel Mayo moved to adjourn the meeting at 7:25 P.M., Joseph Cooper seconded, and it was so voted, 5-0.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2023

Alfred Famiglietti, Chair