

**PROVINCETOWN CONSERVATION COMMISSION**  
**February 7, 2023**  
**6:00 P.M**

**Members Present:** Nathaniel Mayo, Oriana Conklin (left at 6:55 P.M.), Emma Fillion, and Mark Adams.

**Members Absent:** Alfred Famiglietti (excused) and Joseph Cooper (excused).

**Others Present:** Tim Famulare (Conservation Agent).

Mr. Famulare called the roll. He noted the Commissioners that were in the room, those excused, and those online.

Vice Chair Nathaniel Mayo called the meeting to order. He reviewed the purview of the Commission and said one of its charges is to implement the Massachusetts Wetlands Protection Act, G.L. c. 131, s. 40. The Act protects important water-related lands bordering wetlands and the sea. Examples include swamps, beaches, dunes, vegetated inland wetlands and wet meadows, floodplains, and vernal pools, all of which are protected from alteration or destruction. Most work performed in these areas requires permitting from the local Conservation Commission's Agent. Another charge of the Commission is to implement a Provincetown ordinance, the Provincetown Wetlands Protection By-Law, Chapter 12, which may, in some cases, be stricter than the state WPA.

Mr. Famulare explained how the public could participate in the hearing by phone or by using the Microsoft Teams app.

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 January 17, 2023)*

**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.

**Presentation:** Gordon Peabody, of Safe Harbor Environmental, and Richard Frost, the property owner, appeared to present the application. Mr. Peabody reviewed the submission materials. He said the project was in an area that is accreting material at about 4' per year. This had begun when East Harbor was closed off for the railroad, and the sand is being spread out over the area of Beach Point. He reviewed information from a letter written by Greg Berman, a Coastal Processes Specialist, regarding the site. Mr. Berman wrote that, "this site is one of the few areas on Cape Cod where there is such an abundant supply of sand that the dune is rapidly (for a dune) migrating towards the water." This activity is only happening about 585' away from the location of the active, primary dune. Mr. Berman also indicated that the area is not the primary coastal dune and is in a highly altered flattened state, and not displaying any typical dune vegetation. There are still performance standards that have to be met because this is a flood area. So, anything that is installed in this area should be on pilings, and not just any pilings, but helical pilings. This will

allow for only minimal excavation. He said the applicant is looking for a small bump-out on the existing building and wants to take an old shed and turn it into an artist's studio. He said they want to meet the relevant performance standards for the area. He reviewed the site plan showing the proposed addition and the location of the proposed studio. He said that the goal of the revegetation plan was for multiple amounts of the existing vegetation in order to mitigate the project. He reviewed the proposed revegetation areas noted that those will be planted with native species. He recommended drip lines, as the applicant did not want to excavate for dry well installation. Any vegetation that can be transplanted will be transplanted before anything is damaged. Any areas that are de-vegetated will be re-vegetated. The existing driveway and parking area will be used for material and demo storage and the limit of work is generous. The L.O.W. will be comprised of a half section of sand fencing, 24", and that is doubled, making two lines. As there is demolition occurring, contractor fencing will be installed as well outside the sand fencing. The latter will be comprised of 5' oak stakes, staked and stapled every 5'. The areas where the new structures are being proposed have been previously disturbed.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Mr. Peabody. Mr. Famulare reviewed the draft conditions. He noted Condition #7, that if the Building Commissioner determines that the structures have to be built in conformity with the flood plain building code requirements, those will be incorporated into the Order of Conditions. He reviewed the standard maintenance requirements, such as all driveways and parking areas shall consist of crushed stone or shell or other pervious material, that no fill shall be placed on the site to alter the existing elevations, that roof runoff shall be directed to drip line trenches or drywells, and that any hardscape materials shall be decks or dry-laid stone to promote infiltration in place. He added that the applicant shall adhere to the planting plan described in the Safe Harbor Environmental mitigation plan and that the plantings shall have a three-year survivability period. Mr. Peabody said that he had heard back from Natural Heritage, as a small area close to the beach is in its jurisdiction, and the reviewer at Natural Heritage determined that the project didn't need to be reviewed for compliance with rare wildlife species, as it didn't occur within estimated habitat of an endangered species.

***Oriana Conklin moved to approve the Notice of Intent, CON-22-40, 16 Hobson Avenue, and issue an Order of Conditions with the Special Conditions as drafted by staff, Emma Fillion seconded, and it was so voted, 4-0 by roll call.***

b) CON-23-7 587 Commercial Street

**Notice of Intent** filed by **Bradford Walker, Walker Architects, 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 to repair and supplement existing foundations, change driveway materials, and to replace a lawn with palletized decks. Work to take place within Land Subject to Coastal Storm Flowage, and a Buffer Zone to a Coastal Beach.

**Presentation:** Brad Walker, of Walker Architects, was in the meeting room and Cole Bateman, an engineer with Coastal Engineering, was online to present the application. Mr. Walker said that Mr. Famulare had drafted a preliminary Order of Conditions such that they can separate the application for the foundation work from the application for the palletized deck work. He asked if after hearing discussions related to the matter, they could determine if they would like to proceed on that route or ask for a continuance on the entire matter and return with a unified application, combining the issues. Mr. Walker said that he understood that there were issues with the portion

of the application dealing with the palletized deck that would not be satisfied this evening. Mr. Famulare explained that he had provided some comments to the applicant about concerns regarding the foundation for the proposed expanded palletized deck. He said that Mr. Walker then suggested that the scope of the project be separated. The Commission could approve the foundation repair and the driveway work and then file a separate NOI for the palletized decks after the engineer is able to address those concerns. In the draft Order of Conditions, he had a finding that it was only to approve the foundation work and to replace the driveway. He said that Mr. Walker wanted to get the concerns and questions of the Commission and then decide how to proceed. The issue is whether to proceed with the foundation work approval or continue the matter and gather more information about the palletized deck and submit a new NOI. Mr. Walker said that the structures on the premises are a single-family house and a cottage. The property has a substantial seawall that survived the most recent storm. The property owners are undertaking a renovation of primarily interior work on the house, but as part of that project an expansion of the deck is requested. The area has already been developed and no access will be needed from the beach, nor will any work be done from the beach side of the property. He reviewed the site plan showing existing conditions. The proposal includes supplementing and improving the foundations of both buildings. The main building is on a brick foundation and the work will include securing the wood parts of the foundation floor framing, and then re-point and parge the interior surface of that brick with a fiber-reinforced mortar to hold the bricks together. The guesthouse has a concrete block foundation for the most part and the wood framing will be buttoned together. There is a corner of that structure's foundation that needs repair, and the proposal is to reinforce that area with a single helical pile attached to the existing framing. Mr. Walker said that the driveway work will involve changing the shells to an un-grouted cobble or a Belgian block pervious material. The third part of the proposal involves a large deck adjacent to the seawall. The proposal is to remove it and rebuild and enlarge it, moving it away from the neighbor on the west elevation. The larger palletized deck is the element that he seeks to hear comments from the Commission about. It will be built on diamond pier foundations, is designed in segments to separate under extreme conditions, and not attached to the building. There will be native vegetation planted on the west elevation that is salt-tolerant and with strong roots and will serve to reinforce that area. This area will provide drainage if water comes over the seawall. Mr. Bateman spoke about the project and the structural and loading elements of designing a palletized deck, 8" above grade, in the velocity zone. It will affect the depth of the deck. He said the Building Code specifies that it be designed to anchor in place, or it be designed to break away. The deck has been designed to break away at the seams, during extreme wind and wave events, into less impactful sections to damage adjacent structures.

**Public Comment:** Not taken.

**Commission Discussion:** Mr. Famulare said he raised concerns about the expansion of the deck to the applicant's representatives, especially given the storm damage that occurred in December, both to properties where those decks were located and to adjacent structures. A lot of deck elements broke apart during the storm, became storm-borne debris, and caused considerable damage. He said the narrative described the palletized deck as being designed to break into smaller pieces. He didn't think that was wise for the Commission to approve it without further discussion in general as to whether palletized decks should be allowed in the velocity zone. He did speak with the Building Commissioner about the proposed foundation for the palletized deck, which are the diamond piers. They are not rated for resistance to uplift, which is vertical force of

stormwater that would theoretically pull the deck boards upward. He doesn't know whether there is some foundation support pile that would better calculate for that. He does have concerns about expanding a palletized deck in the velocity zone. Mr. Bateman responded and said that it would be impossible to design a deck to withstand all flood forces. He said a foundation could be designed to withstand uplift forces, but the deck is most likely going to break away. It could be designed with helical piles to withstand some forces of stormwater, such as buoyancy forces and hydrostatic forces, but perhaps not hydrodynamic forces, so it could break away. Mr. Famulare said he didn't know the Commission's appetite for turning a lawn into a patio that could create storm-borne debris during a severe coastal storm. He suggested that Mr. Bateman create a narrative that explains the processes more with respect to hydrostatic versus hydrodynamic forces, but he doesn't think it would be prudent to install a palletized deck in this location. Mr. Walker asked if the deck that exists could remain in place, and if so, is any enlargement of it possible. In addition, he asked if a bluestone terrace with open joints would be preferable. The Commission questioned Mr. Walker. The existing condition is a grassy lawn with pavers for walks and a palletized deck along a seawall. Mr. Walker said that the deck did not sustain any damage during the recent storm. The Commission discussed the issue. Mr. Mayo said he would be receptive to a permeable paved option, such as bluestone. He said that there would have to be a discussion with the Building Commissioner and Mr. Famulare about the use of diamond piers or helical piles for the deck foundation. Mr. Famulare recommended that the application be continued, and, in the meantime, a pre-application-type meeting could be held to discuss a modification to the design and the foundation. The Commission weighed in on the proposal to use a permeable surface rather than new deck material. Mr. Bateman commented that the existing situation did survive the most recent severe coastal storm. Mr. Famulare said that the crushed shell driveway would be replaced with cobblestone blocks with no mortar that would allow for permeability.

***Mark Adams moved to continue CON-23-7, 587 Commercial Street, to the Public Hearing of February 21, 2023 at 6:00 P.M., Emma Fillion seconded, and it was so voted, 3-0 by roll call.***

c) **CON-23-8 607, 605 & 609 Commercial Street**

**Notice of Intent** filed by **607 Condominium Trust**, pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General Bylaws Chapter 12, Wetlands Protection By-Law, to replace bulkhead, deck, and access stairs. Work to take place within Land Subject to Coastal Storm Flowage and Buffer Zone to Coastal Beach.

**Presentation:** Todd Turcotte, from Coastal Engineering, was online to present the application. The project includes a bulkhead replacement with fiberglass reinforcement that will connect to an adjacent timber bulkhead to form a uniform wall reducing the amount of storm flowage to the property and abutting properties. The replacement will occur seaward of the existing bulkhead and will wrap around the sides of the old one or attach to the neighbor's bulkhead. The area between the old and the new bulkhead will be filled with concrete. The proposed sheeting will be fiber-reinforced plastic. The existing steel sheeting had suffered significant corrosion and deterioration and allowed storm flowage to enter behind the existing bulkhead and under the residence. There will be an anchor system installed behind the new bulkhead to protect the foundation of the deck and to minimize erosion. The foundation of the house and the stairs to the beach will also be protected. The applicants include the two abutting properties to the east and west because the new bulkhead will create a uniform bulkhead along the three properties. He said

that most of the work will take place from the beach and upland whenever possible, although the latter space is tight between the properties.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Mr. Turcotte. Mr. Famulare said that since the project involves work to be performed below the mean high water mark, the application was sent to the Massachusetts Division of Marine Fisheries, which responded that it had no recommendations after reviewing the scope of work for sequencing, timing, or methods that would further avoid or minimize impacts to marine resources. He reviewed some of the Special Conditions for the project, including the need for a beach access permit, that as much work as possible should be conducted from the upland side of the bulkhead, that the replacement of the bulkhead should be constructed as close as possible to the footprint of the existing bulkhead, that the proposed replacement beach access stairs shall be removable aluminum stairs or stairs of some other material and design to facilitate easy removal, the access stairs shall be removed from, and secured landward of, the bulkhead at all times in advance of a coastal storm and otherwise at all times that the property is not occupied between October 1<sup>st</sup> and May 1<sup>st</sup> annually, and that the access stairs must be permanently labeled with the street address of the property for identification purposes in the event that components wash away in storm conditions (this is an on-going maintenance condition that shall not expire upon the issuance of a Certificate of Compliance). In addition, there are conditions that cover heavy equipment on the beach and the travel of heavy equipment on the beach and that care must be taken with fill material to be placed behind the new bulkhead, and the on-going maintenance condition that requires the owner to be responsible for proper and regular maintenance of the proposed bulkhead to prevent its degradation and loss of structural integrity. Mr. Mayo asked about any changes in the footprint of the bulkhead. Mr. Famulare said that the Conservation Agent shall be informed of any proposed changes from the approved plans or construction sequence which will require written Conservation Agent approval or the significant filing of a new application. Mr. Famulare asked Mr. Turcotte about any deviation and he responded by saying that sometimes obstructions are encountered that cannot be seen, but the footprint of the new bulkhead will be as close as possible to the footprint of the old. Those obstructions could be anywhere from 6-12” from the proposed location and is not uncommon in these situations. The fender piles, which provide a wave break, will be removed, and then reinstalled in the same places. Mr. Famulare added the Special Condition not noted previously, that any Chapter 91 authorization, such as a minor modification or a determination of non-applicability, would need to be submitted before a Certificate of Compliance was issued. Mr. Turcotte said they were clear from any Chapter 91 requirements. He said that the deck on the property was not damaged, however there were holes that go bigger in the sheet pile bulkhead. *Mark Adams moved to issuance an Order of Conditions for CON-23-8, 605, 605, and 609 Commercial Street, with the Special Conditions as drafted by staff, Emma Fillion seconded, and it was so voted, 3-0 by roll call.*

d) CON-23-9 312-314 & 318 Commercial Street

**Notice of Intent** filed by Lexvest 318 Commercial, LLC, and Lexvest 312-314 Commercial, LLC, 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 replace a grease trap. Work to take place within Land Subject to Coastal Storm Flowage.

**Presentation:** Bob Perry, of Cape Cod Engineering, Inc., appeared to present the application. He said the new tank is larger, about 4,000 gallons. The tank has to have locking covers and be anti-buoyant. The property is located in a mapped flood zone. Mr. Perry said that the project involves careful excavation to move the soil out of the area that is sandwiched between 322 and 314 and 318 Commercial Street. The area is very narrow and tight. The access will be from Commercial Street and the patio will be protected while the work occurs. The new tank will be located just above the groundwater with general earth work controls, such as a trench box, in place. The tank is in two pieces and is made anti-buoyant using helical anchors. The vegetation will be replaced in the area once the tank has been installed. Some touch-up work may need to be done to the patio, which was noted in the construction protocol submitted. Mr. Perry said that he had contacted the Health Dept. and noted variances on a plan that he gave to Mr. Famulare. Mr. Famulare reviewed the site plan.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Mr. Perry. He said the bottom of the new tank will be .5 to 1' above the static groundwater. Mr. Famulare reviewed the Special Conditions, several of which are standard. He noted #12 concerning the installation of the grease trap being in full compliance with the floodplain requirements of the MA State Building Code and FEMA requirements. Specific design requirements for construction in flood zones shall be determined by the Building Commissioner. The applicant shall ensure that its contractor takes photographs of the installation while in progress, specifically of the tie-downs for the new grease trap, and shall submit those photographs to the Conservation Agent, in order to demonstrate compliance with the aforementioned state and federal floodplain requirements. He noted Condition #13, stating that the cast iron covers of the grease trap shall be watertight and shall be shut and locked at all times when the grease trap is not being serviced, inspected, maintained, or repaired. This is an on-going maintenance conditions, which shall not expire upon the issuance of a Certificate of Compliance. *Moved to approve the Notice of Intent for CON-23-9, 312-314 and 318 Commercial Street, and to issue an Order of Conditions as drafted by staff, Mark Adams seconded, and it was so voted, 4-0 by roll call.*

e) CON-23-10 **505 Commercial Street**

**Notice of Intent** filed by **Alex Pysarets** 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 extend a bulkhead and replace a deck. Work to take place within Land Subject to Coastal Storm Flowage, a Buffer Zone to a Coastal Beach, and a Buffer Zone to a Coastal Dune.

**Presentation:** Todd Turcotte, from Coastal Engineering, was online to present the application. He said that the fiber-reinforced polymer bulkhead is no longer sufficient to protect the structure on the property, the timber deck, and the coastal beach. The bulkhead experienced wrap-around erosion on the northeast corner from storm tides and waves and has undermined deck supports and caused the timber deck to fail. The purpose of the project is to construct an extension of the existing bulkhead in the upland direction that would protect the deck supports, the dwelling foundation, and erosion of the coastal beach. Also included in the project would be a replacement of a portion of the existing deck and supports because of damage from previous storms. The bulkhead extension would also protect the residence's foundation and the abutting property's dunes from erosion and scouring. The repairs to the beach access structure and deck will allow these structures to maintain safe usage and extend their service life. He said that the abutting

property of 509 Commercial Street is a party to the application as well. The latter property lost its entire reconstructed dune in the most recent storm, causing substantial flooding in the neighborhood. He said that there have been discussions with that property owner about an option to tie into the bulkhead. The deck at 505 Commercial Street will be replaced in kind.

**Public Comment:** There were 4 letters in support of the application. James Vesper, who also wrote a letter, spoke in support of the application

**Commission Discussion:** The Commission questioned Mr. Turcotte, who reviewed the damage to the property at 505 Commercial Street, including damage to the deck boards and the walkway to the front of the structure. He said the applicant has not decided on how to rebuild the deck yet, such as building it with smaller boards, or just replace it in kind. He said there had been a discussion with the property owner regarding raising the building at some point in the future. For now, the owner just wants to get the property back to where it was for this up-coming summer, and then to create a longer-range plan for the structure. Mr. Turcotte said that he would suggest through-flow decking that would allow waves to come up through the deck boards and minimize the force of the water pushing up and ripping off the deck boards. This would be similar to what was constructed at 481 Commercial Street. The Commission discussed the project. Mr. Turcotte said that they haven't gotten into the details of replacing the deck yet and have yet to examine its foundation. Mr. Famulare mentioned that this project was reviewed by the DMF, which had no recommendations after reviewing the scope of work for sequencing, timing, or methods that would further avoid or minimize impacts to marine resources. Mr. Famulare said that the Special Conditions are the same as for 605 Commercial Street.

**Mark Adams moved to issue an Order of Conditions for CON-23-10, 505 Commercial Street, with the Special Conditions as drafted by staff, Emma Fillion seconded, and it was so voted, 3-0 by roll call.**

f) CON-23-12 963 Commercial Street, Unit 53

**(TO BE CONTINUED TO THE MEETING OF FEBRUARY 21, 2023)**

**Request for a Determination of Applicability** filed by Jeffrey Nason and Steven Sola 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 a covered patio. Work to take place within a Buffer Zone to a Coastal Dune. **Mark Adams moved to grant the request to continue CON-23-12 to the Public Hearing of February 21, 2023 at 6:00 P.M., Emma Fillion seconded, and it was so voted, 3-0 by roll call.**

3) **Emergency Certifications:**

a) **539 Commercial Street: Emergency bulkhead repairs:** Mr. Famulare said that this is Fanizzi's restaurant that was damaged during the recent storm. Cole Bateman was online to discuss the project. Mr. Bateman said that the project includes the replacement of the existing failed timber bulkhead, some replacement of fender piles damaged by the storm, and building repairs to the dining room. Pursuant to the requirements of an Emergency Certification, he said that he would consider the damage of potential harm to the public, such that there are residential units above the restaurant have been undermined. The bulkhead is leaching sand beneath it, as it was constructed to an insufficient depth. There are underground grease traps and septic tanks located further landward that could also become an issue if this scouring condition continues.

These structures are licensed under a current Dept. of Environmental Protection license for the bulkhead and that includes the restaurant. There are public access walkways on the property that are also licensed pursuant to Chapter 91. A new steel sheet pile bulkhead will be installed to a sufficient depth to account for continued beach erosion, as well as additional storm protection installed on top of the new bulkhead. He said they are looking to stabilize things at this time. He described the construction of the new bulkhead. All access for work performed will be through the parking lot and include the use of a crane and pile-driving equipment. The building repairs include replacing damaged first floor framing and the exterior walls of the dining room. He said the existing walls were designed to be break-away, which they did. Damaged and missing first-floor joists will be replaced, new joists will be secured to the existing foundation supports, damaged or missing exterior walls will be reconstructed and an existing failed exterior deck structure will be demolished. No work to the building is proposed below the superstructure. He said an NOI will be submitted for finishing work on the deck. He will be meeting with DEP to review the project and they are hoping for a timely turnaround. Mr. Famulare said that in the next two weeks, the steel piles will be installed, similar to the emergency repair being done at 491 Commercial Street. They will be installed and driven, but not cut, and the rest of the engineering work will be shown on plans that will be submitted with the NOI and followed up with an Order of Conditions.

***Mark Adams moved to ratify an Emergency Certification for emergency bulkhead repairs at 539 Commercial Street, Emma Fillion seconded, and it was so voted, 3-0 by roll call.***

4) **Work Session**

a) Discussion of policies regarding decks within Velocity Zones in a coastal floodplain and reconstruction of beach access stairs. Mr. Mayo suggested postponing this topic until more Commissioners were present.

5) **Approval of Minutes of January 3 and 17, 2023:** Postponed.

6) **Conservation Agent Update:** None.

7) **Information:**

a) CON-23-15 **529 Commercial Street** (replace damaged deck posts and footings): Mr. Famulare reviewed the projects, including replacing damaged deck posts and footings as a result of the storm. The excavation will be done by hand and new sono-tubes will be poured.

b) CON-23-16 **529 Commercial Street** (seawall repair): Mr. Famulare described the concrete seawall damage as two wing walls collapsing at the level of the patio. Hand-drilling will take place and new rebar installed with epoxying them back on. No impacts to the beach will occur.

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



***Mark Adams moved to adjourn the meeting at 8:20 P.M., Emma Fillion seconded, and it was so voted, 3-0 by roll call.***

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2023

Alfred Famiglietti, Chair