

PROVINCETOWN CONSERVATION COMMISSION
February 21, 2023
6:00 P.M

Members Present: Alfred Famiglietti, Nathaniel Mayo (online) (left at 6:30 P.M.), Oriana Conklin, and Mark Adams.

Members Absent: Joseph Cooper (excused) and Emma Fillion (excused).

Others Present: Tim Famulare (Conservation Agent).

Chair Alfred Famiglietti called the meeting to order at 6:00 P.M. Mr. Famulare called the roll. He 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-23-7 587 Commercial Street** (*continued from the meeting of February 7, 2023*)

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. Mr. Famulare said that both Mr. Famiglietti and Ms. Conklin, pursuant to the Mullin Rule, having watched the recording of the previous hearing, making them eligible to sit on the continued application.

Presentation: Brad Walker, of Walker Architects, Inc., and Cole Bateman, of Coastal Engineering Co., were online to discuss the application. Mr. Walker stated that the application will be separated, and the Commission will only be hearing about the proposed foundation work, the repair of the main and the guest houses, and a change in the driveway material, which is currently shell and proposed to be un-grouted cobblestone. He reviewed the proposed site plan. He said shown on the site plan is a palletized deck that was discussed at the previous hearing and the Commission was concerned about the possibility of uplift during heavy storm and wind conditions. He is not asking for approval of this element of the project. The applicant will return with an NOI for the deck/patio at some point in the future. He said the foundation work is simple and Mr. Bateman could answer any technical questions about that. He said the main house has a brick foundation and the proposed work includes repairing mortar joints and adding fiber-reinforced grout on the interior face of it to consolidate the bricks. On the southwest corner of the guest house, the foundation is a stacked pile of wood and concrete blocks, and the rest of the foundation is comprised of concrete blocks. That corner will be supplemented with a helical pile cap.

Public Comment: Chris Snow, an abutter, had a question and a concern about the guest house encroaching onto his property. Mr. Walker said he has asked the contractor to document and assess the condition of the guest house, as it is leaning over the lot line on the west elevation. Mr. Bateman will be consulted as to the best solution for the issue of straightening the building. He commented on the proposed shoring of the existing building corner, which will be done in place rather than to jack up the building and make it plumb and true. He emphasized that it is important

to document the existing conditions between this structure and the structure on Mr. Snow's property. Their proposed approach to the repair limits vibrations and any potential damage to abutting structures. He added that this is probably not the long-term solution to the problem, as it is in the flood zone, and this temporary fix is only to stabilize the building until a long-term solution, which is outside the scope of this application, can be found. Mr. Peabody, of Safe Harbor Environmental, commented on the bulkhead on the property. He said there was gravel behind the bulkhead that acted as a wave overload return to avoid damage.

Commission Discussion: The Commission questioned Mr. Walker and Mr. Bateman. Mr. Walker said that the applicant was considering a bluestone patio in place of the proposed palletized deck. Mr. Famulare reviewed the Special Conditions, including the fact that the palletized deck is not part of this Order of Conditions and will require the filing of a separate NOI, that conformance with any flood plain requirements is required, that no access to the project site via the beach will be permitted, that driveways and parking areas shall be comprised of pervious materials and there shall be no surfacing with asphalt and no additional fill shall be added to the site that would alter existing elevations or grades, and an on-going condition that prohibits the storage of chemicals or other hazardous materials below elevation 15.

Mark Adams moved to approve the issuance of an Order of Conditions for CON-23-7, 587 Commercial Street, Oriana Conklin seconded, and it was so voted, 4-0 by roll call.

b) **CON-23-12 963 Commercial Street, Unit 53** (continued from the meeting of February 7, 2023)

(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 Bylaws Chapter 12, Wetlands Protection By-Law, to enclose a covered patio. Work to take place with a Buffer Zone to a Coastal Dune.

Presentation: Steven Sola, one of the applicants, was online to present the application. He reviewed the request to enclose a covered terrace in order to use it year-round. Mr. Famulare reviewed the location of the unit and said it was not within a flood plain. He reviewed photographs of where the closed-in area would be located.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Sola. Mr. Famulare recommended a Negative #3 Determination, with conditions as drafted, which are the Commission's standard construction conditions.

Oriana Conklin moved to issue a Negative #3 Determination for CON-23-12, 963 Commercial Street, Unit 53, Mark Adams seconded, and it was so voted, 3-0.

c) **CON-23-17 629 Commercial Street**

Notice of Intent filed by **Jo Ann Hirshhorn** 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 a seawall deck and a rear foundation.

Presentation: Gordon Peabody, of Safe Harbor Environmental, was in the room, and Eric Larsen, an engineer and architect, representing the applicant, was online to present the application. Mr. Peabody said that the property was damaged during a winter storm in December of 2022. He said the project had not yet received a Department of Environmental Protection File Number, however

he wanted to get an idea of the Commission's thoughts, concerns, or issues about the project. He said that no beach access was necessary. Mr. Larsen said that after the storm in December, the foundation was undermined, and emergency repairs were done to shore up the building. Emergency bulkhead repairs were also done at that time. The center portion of the building foundation, which will be replaced, failed during the event. The existing deck structures failed as well and were washed out. He said the intent was to replace the foundation wall that was originally installed 24" below grade. It will be placed deeper into the ground, some fill added, and then a secondary wall on the south elevation will be added. The secondary wall will tie into the abutter's wall. The lack of the secondary wall is what added to the scour damage.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Peabody and Mr. Larsen. Mr. Adams asked if the applicant could submit a section through the foundation wall and the secondary wall showing the depths of the structures and the types of fill. Mr. Famulare said he did receive sections that day. Mr. Peabody said that any fill used would be clean, compatible fill and added that the property was in peril, and something needed to be done as soon as possible, as he considered it an emergency. Mr. Famulare asked about beach access or materials or equipment. Mr. Peabody said that beach access was unnecessary. Mr. Famulare said that an additional drawing should be submitted that would show a section through the building and seawall. Mr. Larsen said that the purpose of this request was to signal their intent in presenting the proposal, which is to repair the existing foundation and the house. The addition of the secondary wall will create a second barrier between the house and the existing bulkhead. He said the intent was to do this once, put back what was there, and to protect the property in the future. He said that access would be from Commercial Street, down the west side of the property. There would be some filling between the repaired foundation wall and the seawall, re-establishing the subgrade that was washed away. They will try to save two trees on the property and any vegetation removed will be replaced with native vegetation. Mr. Famulare requested that an enlarged cross-section be submitted to show the elevations of the proposed foundation wall, the floor of the house, and the secondary wall. Mr. Larsen said that he wanted the Commission to understand that concrete needs to be poured and that is in the best interest of saving the house to do so. Mr. Adams asked about the deck material and will it be adequate to withstand a future storm of the same magnitude. Mr. Famiglietti mentioned planting beach grass. Mr. Larsen said that there wouldn't be any room to plant vegetation unless more fill was used on site. Mr. Famulare said that the Commission would be looking for a new cross-section to include the foundation, the new secondary concrete wall, and the existing timber bulkhead, with elevations of each top of wall, as well as identifying the deck material. In addition, information as to how the frame is going to be secured to the deck foundation and how the decking is going to be secured to the joists. Mr. Peabody requested a continuance.

Oriana Conklin moved to continue CON-23-17 to the Public Hearing of March 7, 2023 at 6:00 P.M., Mark Adams seconded, and it was so voted, 3-0.

d) CON-23-18 641 Commercial Street

Request for a Determination of Applicability, filed by **John Jemerin**, 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 a deck. Work to take place within Land Subject to Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach.

Presentation: Eric Larsen and Gordon Peabody were present to discuss the application. Mr. Peabody said that the proposal was to replace the deck in kind. Mr. Famulare said that he had a concern about the elevation of the deck above the base flood elevation, but there was skirting beneath it, much of which was destroyed or damaged. He wanted to know if there was a plan to replace the skirting when it was rebuilt. Mr. Peabody said that the owner's intent was simply to repair it, however he said that blockages at that elevation were not a good idea. The owner may just have to repair it. This area beneath the deck was used for storage of beach/recreational stuff. Mr. Larsen described the scope of the project. The existing deck material is rotten and needs to be replaced. The existing deck in its current footprint will be removed, the stairs will remain, the framing will be demolished, along with the decking, the broken railings, and the girders, and then it will be rebuilt in kind where it sat. He said he would like to get it removed to avoid liability, as it is a safety hazard, and begin reconstructing it as soon as possible.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Peabody and Mr. Larsen about the skirting and how it could be re-designed to assist in buffering wave energy. Mr. Peabody said that spacing the vertical wooden members of the skirting farther apart might help to buffer wave energy. Mr. Larsen said that the skirting was passed its useful life, however the substructure that it is attached to is instrumental in keeping the pilings together. The skirting does have access points along the eastern side. It doesn't deal with primary wave energy, which the bulkhead takes, but with the splash over and maintaining the storage area, having a wider spacing of the vertical boards might be a good compromise to attenuate the wave energy. He suggested a thicker, stronger upright to replace the existing, such as a 3/4" by 6" treated wood. That, along with an increase in the gap between them, would help dissipate the wave energy. Mr. Peabody said that they didn't have plans showing the situation that was being discussed, and Mr. Famulare said he was not comfortable having the Commission approve a project without plans. He said the applicant could request that the Commission issue a Determination of Applicability for the other work and then return with the appropriate plans, which would allow the applicant to get started on the deck and railing repairs. The applicant could then return with an RDA for the skirting. Mr. Larsen agreed saying that the deck was currently a hazard. Any additional repair that they might find while replacing the deck and assessing the structure where it attaches to the house could be combined with the skirting RDA. Mr. Famulare reminded Mr. Larsen to include the cross-bracing and its dimensions for the skirting in that application. Mr. Larsen said that the deck cannot be rebuilt to be independent of the main structure without driving more pilings and increasing the scope of the application. Mr. Famulare had a concern about that and said he would need to speak with the Building Commissioner, Anne Howard, about it. He said unless a deck in the velocity zone is built above the design flood elevation, it cannot be attached to a structure. Mr. Larsen said he could get the flood elevation, but he thought it was above that flood elevation. Mr. Famulare said that he could allow demolition to proceed. Mr. Larsen will get the elevation certificate for the deck. The Commission discussed the issue. Mr. Famulare said he was going to recommend that the Commission issue a Positive Determination of Applicability because of this question of the elevation of the deck. He said he would discuss the issue with Mr. Larsen and Ms. Howard. He said that he could issue an Administrative Review tomorrow for the demolition work if Mr. Peabody wanted to withdraw the application and apply for an NOI, which would encompass all of the issues on the site. There was a request to withdraw CON-23-18.

Oriana Conklin moved to accept the request to withdraw CON-23-18, Mark Adams seconded, and it was so voted, 3-0.

e) CON-23-19 **645 Commercial Street**

Request for a Determination of Applicability, filed by **William H. Heron**, 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 a deck. Work to take place within Land Subject to Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach.

Presentation: Eric Larsen and Gordon Peabody were present to discuss the application. Mr. Larsen gave a brief overview of the proposed project. The existing deck structure and walkways were damaged, upturned, and destroyed by wave action and flooding. The existing substructure was mostly in place and viable in order to reconstruct the deck area. The structure and the component walkways require framing repairs and installation of new decking and railings. The existing pilings and undamaged framing will remain, and the replacement framing will be in the same footprint and height as it was prior to damage. Materials will be stored in the driveway or along Commercial Street, as far away from the resource area as possible. Deeded access rights will be honored.

Public Comment: None.

Commission Discussion: The Commission and Mr. Famulare questioned Mr. Peabody and Mr. Larsen. Mr. Famulare said that the upturned walkway, which he had allowed by an Administrative Review, was not built in compliance with that approval in that the walkway was not supported with pre-cast concrete blocks no deeper than 12", but with wooden posts instead. The posts were lifted up during the storm. He said he recommends that the homeowner use a removable mat along the front of the porch, or pavers that would not likely become storm debris. He asked what kind of piles were supporting the deck and did they function well in the storm. Mr. Larsen said that they were old creosote timber pilings, and they did perform well. He asked about the fasteners for the deck to the joists. Mr. Larsen said many of the fasteners had rusted out and will be replaced. Mr. Famulare said that the issue was the palletized elements of the walkway. Mr. Larsen suggested in order to prevent uplift of the walkways in the future, he would suggest attaching them to some sort of pre-cast form. The suggestion was briefly discussed. Mr. Famulare said that this application could be split up to allow for the deck replacement, but for the walkways and intermediate palletized decks, he would like to have a detail that showed a cross-section of the proposed foundation support/footings, specifically for the egress walkway and the walkway in front of the porch. He said a new RDA could be submitted for the remainder of the project, excluding the deck. They can replace existing decks and walkways supported by existing pilings and substructure in kind. Mr. Famulare pointed out which elements could be replaced, and which need to be included in another RDA. He added that demolition for all the elements could proceed. *Oriana Conklin moved to issue a Negative #2 and #3 Determination of Applicability for CON-23-1, 645 Commercial Street, with the Special Conditions as drafted and the revised scope that the Determination only applies to the decks and walkways that are to be supported by existing pilings, Alfred Famiglietti seconded, and it was so voted, 3-0.*

3) Work Session

a) Discussion of policies regarding decks within Velocity Zones in a coastal floodplain and reconstruction of beach access stairs. Mr. Famulare shared some information pertaining to the discussion, however the Commission will postpone the full discussion until more Commissioners are in attendance. The discussion will be posted on the next agenda. He would like to adopt policies now and eventually regulations regarding the topic. The Commission would need to go through the process of amending its regulations to incorporate these policies under the new Conservation Agent. He suggested prohibiting the use of vinyl steel pile bulkheads and palletized decks, unless they are designed to resist expected wind and water forces, for example secured by piles designed to withstand uplift, in areas subject to coastal storm flowage. He referred to FEMA language that states if an at-grade, structurally independent deck is to be constructed in a flood plain, a design professional must evaluate the proposed deck to determine whether it will adversely affect the building and nearby buildings, for example by diverting flows or creating damaging debris. Such a statement by a registered professional engineer will be submitted with the NOI. Another suggestion states that beach access stairs shall be removable aluminum stairs, or some other material designed to facilitate removal. They shall be removed from, and secured landward of, the bulkhead at all times in advance of any coastal storms, and otherwise at all times while the subject property is unoccupied between October 1st and May 1st annually. In addition, those access stairs should be permanently labeled with the street address for identification purposes in the event the components do wash away in storm conditions. Mr. Famulare said that originally, he had proposed an NOI for beach access stairs, but now thought it would be a burden for applicants. He is looking into requiring a recording of an acknowledgement of these conditions. This is so people know that they will be responsible for moving these access stairs prior to a coastal storm. He will be presenting this idea to a monthly meeting of the Cape and Islands Conservation Agents for their suggestions for an instrument that Town Counsel could approve. These ideas will be on the agenda for the next meeting.

Mr. Adams asked if there was a way to assist applicants in their document submissions to make sure all relevant information is uploaded. This will allow the Commission to decide without having to continue the application to the next hearing, putting the project on hold. Mr. Peabody said that he had written guidelines for Conservation applicants when he was Chair of the Commission and asked Mr. Famulare if he had those instructions. Mr. Famulare said he didn't have them, and Mr. Peabody said he would draft a set of guidelines.

Mr. Peabody mentioned flow-through decking as a new material to consider as a solution for deck damage during coastal storms. It has been approved in Eastham and Chatham and allows the air, the wind, and the water to go through it, preventing uplift or generation of debris. Sunlight can go through it as well, allowing for planting vegetation beneath decks.

4) Approval of Minutes of January 3 and 17 and February 7, 2023:

Approval of Minutes of January 3, 2023: Oriana Conklin moved to approve the minutes of January 3, 2023, Alfred Famiglietti seconded, and it was so voted, 2-0-1 (Mark Adams abstaining).

Approval of Minutes of January 17, 2023: *Nathaniel Mayo moved to approve the minutes of January 17, 2023, Alfred Famiglietti seconded, and it was so voted, 2-0-1 (Mark Adams abstaining).*

Approval of Minutes of February 7, 2023: Tabled.

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

6) **Information:**

a) CON-23-21 **573 Commercial Street** (deck repair): Mr. Famulare said that this was just a deck re-surfacing project.

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

Alfred Famiglietti moved to adjourn the meeting at 8:04 P.M., Oriana Conklin seconded, and it was so voted, 3-0.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2023

Alfred Famiglietti, Chair