

PROVINCETOWN CONSERVATION COMMISSION

June 6, 2023

6:00 P.M

Members Present: Alfred Famiglietti, Joseph Cooper (online), and Mark Adams.

Members Absent: Oriana Conklin (excused), Nathaniel Mayo (excused), and Emma Fillion (excused).

Others Present: Melyssa Millett (Conservation Agent).

Chair Alfred Famiglietti called the meeting to order at 6:00 P.M.

Conservation Agent Melyssa Millett called the roll. She then explained how members of the public could participate in the meeting remotely. She said that those who are in attendance in the room should speak clearly if rendering an opinion on any application on the agenda or if making a public comment. Remote participation is via the Microsoft Teams app or by calling into the meeting by phone. The information is listed on the agenda. To mute a phone, press *6.

1) **Public Comments:** None.

2) **Public Hearings:**

a) **CON-23-67 61A Commercial Street**

Notice of Intent filed by **Tarak Shah** 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 raze and replace an existing dwelling, bulkhead, and deck, to install a pool, and to repair decking. Work to take place in Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach. **Applicant has requested a continuance to the June 20, 2023 meeting. Mark Adams moved to grant the request to continue CON-23-67, 61A Commercial Street, to the Public Hearing of June 20, 2023 at 6:00 P.M., Alfred Famiglietti seconded, and it was so voted, 3-0 by roll call.**

b) **CON-23-70 535 Commercial Street**

Request for a Determination of Applicability filed by **Cape Associates, 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 replace beach access stairs. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach.

Presentation: Josh Piper, from Cape Associates, Inc., was online to present the application. He requested to amend the application. The Commission discussed whether the proposed stairs could be wood or had to be metal and removable. Ms. Millett said that the Commission had a height limit and that the stairs in question were tall. Mr. Piper said that the seawall was 5' tall. She said that most of the wood stairs that the Commission has been approving have been shorter, between 5 and 6 treads between the beach and the top of the seawall. Mr. Piper said he was hoping to get an approval for temporary wood stairs, just to get through the summer season, as the seawall also needs to be replaced. He said that construction of a new seawall and more permanent stairs would

be forthcoming. Ms. Millett said that the Commission could only consider what was in the application before it. Mr. Piper said that the stairs were lost in the December 2022 storm and the temporary stairs would just be a replacement in kind. Michael Kelley, a unit owner in the condominium asked the Commission to approve the request for temporary stairs, as the unit owners have put a lot of time and money into this project already. Ms. Millett said that the Commission would need to see plans, submitted a week in advance of a meeting, for the temporary wood stairs in order to consider them. She said she could speak to Mr. Piper tomorrow about finding a solution for temporary stairs. She suggested continuing until the June 20, 2023 Public Hearing. John McGill, another unit owner in the condominium, asked what would be needed for the next meeting. Ms. Millett said that she was willing to talk to Mr. Piper, or any unit owner in the condominium, about what the Commission is looking for in wooden stairs.

Mark Adams moved to continue CON-23-70, 535 Commercial Street, to the Public Hearing of June 20, 2023 at 6:00 P.M., Alfred Famiglietti seconded, and it was so voted, 3-0 by roll call.

c) CON-23-77 147 Commercial Street

Notice of Intent filed by **Fisherman's Cove** 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 deck and beach access stairs. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach.

Presentation: Laurie Ferrari, of Peters Property Management, appeared to present the application. She said that the project includes replacing a deck and raising it 6" on diamond piers as footings. Also, the stairs will be replaced with a smaller set. 20 yards of clean beach sand will be added under the deck and 20 yards of clean beach sand will be added to the right of the deck. She said the deck needs to be rebuilt and it currently sits on a dune, adding that a snow fence will be installed to keep animals from getting under the deck. Ms. Millett said that the applicant has an application in with the Dept. of Environmental Protection for Chapter 91 approval for the fence. She said that she had a condition in the Order to allow the property to reinstall the fence for now, awaiting the decision of the DEP. The fence is proposed to be installed in the same footprint as the existing one. Ms. Millett said that the project did not yet have a DEP File No., so she cannot issue the permit if the Commission chooses to approve it this evening and can do so when a File No. is issued by the DEP.

Public Comment: Phyllis Allison, an abutter, had a question about the Chapter 91 access to the bay and when the original deck was built. Ms. Millett said that the deck was permitted and rebuilt five times. Angela Brown, a Trustee at the property, said she had photographs that show parts of the deck in the 1980s. Larry Hyer, a unit owner, spoke in support of the application. There were 13 letters of support in the file.

Commission Discussion: The Commission questioned Ms. Ferrari. The location of the footings will remain the same, just the type will change, and the footprint for the deck will not change. Ms. Millett said she included a condition about the addition of compatible beach sand only. No vehicle access is needed. Ms. Ferrari said she may need an access permit for the sand nourishment aspect of the project, although she would prefer to move the sand to the beach from the driveway area. She will contact Ms. Millett about when that will happen. Ms. Millett said that Ms. Ferrari would have to request approval if any additional nourishment is needed in the future and why. She said that the standard conditions for beach access stairs and deck replacement are included in the Order, that the deck and stairs be constructed with flood-resistant materials, that all fasteners

be made of corrosion-resistant hardware, and that the deck be designed to resist uplift and lateral loads. In addition, Ms. Millett said that the contractor should consider making the spacing between deck boards wider to allow for more water to come up through them in case of intense wind and wave action during a storm. She reminded Ms. Ferrari that the access stairs must be permanently labelled with the property address, and the applicant would be responsible for ongoing maintenance of the deck and stairs to make sure they remain in good condition. She added that the Certificate of Compliance would be issued contingent upon any Chap. 91 authorizations. *Alfred Famiglietti moved to approve the Order of Conditions for CON-23-77, 147 Commercial Street, as discussed, including for dune nourishment, pending the issuance of a Chapter 91 authorization and a DEP File Number, Mark Adams seconded, and it was so voted, 3-0.*

d) CON-23-78 445 Commercial Street

Request for a Determination of Applicability filed by **Mike Czyoski** 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 beach access stairs. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach.

Presentation: Mike Czyoski appeared to present the application. He said that the project was to replace a set of stairs that were washed away in a winter storm. They will be made of pressure-treated wood with 2" x 12" stringers and 2" x 10" treads and will be inlaid to make them stronger so they will not come apart in a storm. There will be a landing on top of the bulkhead.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Czyoski. He said that there will be one or two treads buried below the sand on the beach. Ms. Millett requested two or three treads be buried to prevent uplifting. Mr. Czyoski said that with the extra treads buried, as much as 3' of stringer will be buried. A piece of angle iron will bolt the stairs into the bulkhead. Ms. Millett said that the stairs needed to be labelled with the property address and that the property owner will be responsible for the regular maintenance of the stairs, so they do not lose structural integrity.

Mark Adams moved to issue a Negative #2 and #3 Determination of Applicability for CON-23-78, 445 Commercial Street, subject to the conditions as discussed, Alfred Famiglietti seconded, and it was so voted, 3-0.

e) CON-23-79 595 Commercial Street

Notice of Intent filed by **Paul Carter** 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/rebuild a bulkhead. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach.

Presentation: Jed Hannon, with Atlantic Coast Engineering, was online to present the application. He said that this property had incurred a lot of damage from the storms of the winter of 2022-2023. He reviewed photographs of the damage. The existing grade in the rear is about 11'. There was a lot of damage to the outermost pilings, as well as the decking. It is in the FEMA VE 15 Zone. The existing wall that was previously permitted by the Commission and Chapter 91 back in 2008 is substantially lower than where it should be to minimize any risk exposure when significant coastal storms blow through, as they have over the last several years, and the increase

in sea levels. The proposed project is a bulkhead rehabilitation. The existing wood elements, such as the pilings and the decking, will be demolished. The existing concrete wall will remain but will be raised up, with drilled and epoxied rebar. New piles will be driven, and new walers and a tie-back system will be installed, the latter of which will help with the potential overturning of the wall. There will be no changes to the footprint of the decking, all wood will be pressure-treated and will recommend to the property owner that stainless hardware be used. He added that no beach access stairs are being proposed.

Public Comment: Gordon Peabody, of Safe Harbor Environmental, representing a direct abutter to the east, had several questions for Mr. Hannon. Mr. Hannon agreed to recommend to the property owner that deck planks be spaced wider apart to relieve the pressure of wave action beneath it, pursuant to a request by Mr. Peabody.

Commission Discussion: The Commission questioned Mr. Hannon. He said that the work will be tidal-dependent, and a barge will be used to drive the piles and remove demolished material from the site. Ms. Millett said she would revise the Order to note the use of a barge and remove the vehicle access clause. She will add the standard condition for deck construction, as to materials and hardware. Ms. Millett reviewed the changes to the Order, including adding conditions regarding deck construction, the barge, and that beach grass be replaced, if needed, after construction was completed.

Mark Adams moved to issue an Order of Conditions for CON-23-79, 595 Commercial Street, with the changes as discussed, Alfred Famiglietti seconded, and it was so voted, 3-0.

3) Other Business:

a) **Provincetown Public Art Foundation** – Seeking input from the Commission in preparation for a temporary sculpture installation at 467 Commercial Street: Sam Tager, representing the Provincetown Public Art Foundation, talked about the proposed artwork. The Foundation supports the development and installation of site-specific artworks. It also has a priority of developing a series of sites that would create opportunities for artists to develop and display work on a temporary basis. The Foundation was invited by the property owner to install a temporary artwork for the summer. He reviewed the proposed platform, or support structure, that would have to be installed in order to display the artwork. The artwork in question is a wind-driven drawing machine. Tim Famulare informed Mr. Tager at a pre-application hearing with the Dept. of Community Development, that the project would require a Determination of Applicability or a Notice of Intent. The Commission questioned Mr. Tager. He said it will be to the east and south of the Angel Foods building and reviewed his drawings of the installation. The sculpture base will be at grade, with a slight slope towards the new bulkhead, and will utilize sonotubes or five-gallon buckets of cement for stabilization. Ms. Millett said that using either sonotubes or diamond piers would disturb the buffer zone in which it is located. She would be comfortable with requiring an RDA. She recommended building the platform with enough spacing, 1/2" - 3/4", between the boards for light penetration to allow vegetation to grow underneath it, even though there is just sand there now. Mr. Tager said that solar lights would be installed to prevent tripping on the platform in low light conditions.

b) **Elect** – Representative for the Shank Painter Road Committee: Joseph Cooper volunteered to be the representative.

4) **Approval of Minutes of May 16, 2023:**

a) **May 16, 2023:** *Mark Adams moved to approve the language of the minutes of May 16, 2023 as written, Alfred Famiglietti seconded, and it was so voted, 3-0.*

5) **Administrative Permit Information:** Ms. Millett said she would send brief updates to Commissioners regarding these projects.

a) CON-23-75 **485 Commercial Street** – Reinstall beach fence as permitted by COC SE 058-0496: Ms. Millett said that the property owners were permitted to maintain their beach fencing in front of the bulkhead. It will be installed in the same footprint.

b) CON-23-76 **451 Commercial Street** – Re-secure beach access stairs to a seawall. Ms. Millett said that the beach access stairs had survived the winter storm season, however they did come away from the wall. The property owner will be re-attaching them with stronger hardware.

c) CON-23-81 **107 Commercial Street** – Replace decking and railing in kind (as needed): Ms. Millett said that a few pieces of decking and railing needed replacing and will be replaced in kind. No structural components are involved.

d) CON-23-82 **617 Commercial Street** – Replace two treads on beach access stairs: Ms. Millett said that only two treads needed replacing.

6) **Conservation Agent Update:**

a) CON-1 **487 Commercial Street** – Enforcement for Repair of Sea Wall: Ms. Millett said the property owner did hire a contractor and they are preparing to install the temporary solution. She has given them an extension and they will be submitting a Notice of Intent.

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

Mark Adams moved to adjourn the meeting at 7:30 P.M., Alfred Famiglietti seconded, and it was so voted, 3-0.

Respectfully submitted,

Ellen C. Battaglini

Approved on June 20, 2023

Alfred Famiglietti, Chair