

## PROVINCETOWN CONSERVATION COMMISSION

July 18, 2023

6:00 P.M

**Members Present:** Alfred Famiglietti, Oriana Conklin, and Mark Adams.

**Members Absent:** Nathaniel Mayo (excused), Joseph Cooper (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-23-98 555 Commercial Street**

**Request for Determination of Applicability** filed by **Olga Golub**, after-the-fact, 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 in Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach.

**Presentation:** Olga Golub appeared to present the application. She apologized for not contacting the Conservation Agent before replacing the beach access stairs. Ms. Millett said that she had visited the site and the stairs had been rebuilt in compliance with what the Commission would have required. She said a concern of hers was that the stairs were originally secured at the bottom with two concrete blocks, however a block was damaged during the winter storm that removed the stairs requiring a repaired concrete block to be poured during the replacement process. She said that concrete on the beach was not permitted. Since the stairs had already been re-built, she doesn't have an issue with it remaining as is since the stairs are in the same footprint as the previous one, however if the stairs are ever re-built again, those blocks would have to be removed and replaced with wood posts. Concrete tends to degrade, and the stairs could experience uplifting and posts with buried treads are much more stable. Tey Meadow, a unit owner in the applicant's condominium, said that the unit owners did not know about the prohibition of concrete on the beach or that permitting was needed to replace the stairs.

**Public Comment:** None.

**Commission Discussion:** The Commission discussed whether to levy an extra charge for an after-the-fact filing, which would double the permit fee.

*Mark Adams moved to issue a Negative #2 and #3 Determination of Applicability for CON-23-98, 555 Commercial Street, and to double the permit fee for an after-the-fact filing, Oriana Conklin seconded, and it was so voted, 3-0.*

b) CON-23-99 659 Commercial Street

**Request for Determination of Applicability** filed by **Jane Schuette and Rich Stiles** 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 in Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach.

**Presentation:** Jane Schuette and Rich Stiles appeared to present the application. Ms. Millett said that the design submitted by Mr. Colburn was the same as a neighbor's, with several treads in the sand and wood posts. The stringer will be a 3" by 12" and through bolted. The stairs will be connected to the seawall with stainless steel mounting hardware. The stringers, treads, railings, and posts will be pressure-treated lumber with stainless steel connectors and fasteners.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Ms. Schuette. Ms. Millett said that this design conformed to what the Commission has been requiring for beach access stair replacement. She informed the applicants that the new stairs had to be labeled with a name and an address indelibly applied in case the stairs are lost in a future storm.

*Mark Adams moved to issue a Negative #2 and #3 Determination of Applicability subject to the conditions as drafted, Oriana Conklin seconded, and it was so voted, 3-0.*

c) 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 and to install a pool. Work to take place in Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach. Continued from previous hearings.

**Presentation:** Roy Okurowski, the project engineer, and Tarak Shak and Brennan Bilberry, the property owners, appeared to present the application. Mr. Bilberry and Mr. Shah both spoke about their intent in renovating the structure on the property. Mr. Okurowski reviewed the site plan and the project. The purpose of the project is to replace an existing dwelling, bulkhead, and deck. The existing dwelling does not meet current requirements for flooding and the timber foundation is substandard and does not meet FEMA standards. The applicants propose to rebuild the structure as approved by both the Historic District Commission and the Zoning Board of Appeals. The only change is the addition of a larger deck with a reinforced 8' by 20' pool. It will be constructed on a FEMA-compliant wood pile foundation with the lowest structural member at elevation 14'. The deck will be raised and constructed on a wood pile foundation. The pool is a self-contained Conex box that will be attached to helical piles with a solid connection. This design will ensure that the pool will not be impacted by major storm tides. The existing dwelling, bulkhead and deck are to be reconstructed within their existing footprints, except for the extended deck and bulkhead returns. The existing dwelling, bulkhead, and deck will be demolished, and all piles and timber are to be removed and disposed of at an approved facility. Work will be accomplished from the upland and coastal beach with an excavator or crane and vibratory hammer to install the pilings.

Piles or helical piles for the deck supports can also be installed with the excavator. Once the existing dwelling, bulkhead, and deck are removed the new piles for the entire project will be driven into the sand. Mr. Okurowski reviewed how debris would be removed from the site. The pool will be brought in by an excavator or crane and attached to the helical piles and then the dwelling and deck will be constructed by hand. A crane or excavator will be used to assist in bringing the heavy timber and roof trusses to the site. The work is expected to take place in the off-season so as not to disrupt any abutters or abutting businesses. He reviewed the performance standards that needed to be met. The bulkhead and deck are located above, or landward, of Mean High Water. Therefore, these structures can be rebuilt with local permitting only.

**Public Comment:** None.

**Commission Discussion:** The Commission and Ms. Millett questioned Mr. Okurowski. He said the pool will cover an area of the beach that is under the structure and was not functioning as a beach. Ms. Millett said that she had reached out to Greg Berman, a coastal processes scientist, for his opinion on the project and whether it would impact the coastal beach. She said that in her opinion, adding pilings, or shading, is adding structure and therefore an alteration of the coastal beach. She is concerned with the vertical buffer of the pool, even though it is located above mean high water and the wrack line. The latter is directly below where the pool will be located. The pool is technically an obstruction in the V flood zone. The recommendation from FEMA, and the National Flood Insurance Program, for V flood zones is that the lowest structural member of the pool as well be elevated to the design flood elevation. For the pool to be considered, in her opinion, the lowest level of the pool should be at the same elevation as the deck. In other words, it would be an above-ground pool on top of the deck. Mr. Okurowski noted that the decks are not attached to the structure. Ms. Millett said that if the Commission were to approve the project as presented, as part of the building permit process, a V zone design certificate would have to be submitted, which would verify that the project would not have an impact on the property or surrounding properties. Mr. Okurowski said that he would work with the Shellfish Warden to make sure no areas of shellfish growth would be impacted and follow the proper protocols. Ms. Millett said she would like an opinion from Steve Wisbauer, the Shellfish Warden, and Mr. Berman regarding that issue. She informed Mr. Okurowski that all screening should be flood-compliant if the project were approved. The screening on neighboring properties would not have to be flood-compliant, pursuant to FEMA requirements. Mr. Okurowski, based upon the discussions, posited that the deck could be pulled back and that the pool seemed to be of greatest concern to the Commission. The Commission discussed the proposed slatted boards beneath the structure. Ms. Millett said she would like to read Mr. Berman's report. Mr. Okurowski said he would not withdraw the extended deck part of the proposal. Ms. Millett reminded Mr. Okurowski that the extended deck is technically considered an alteration of the resource area and not allowed. Mr. Okurowski requested a continuance to the meeting of August 1, 2023.

***Mark Adams moved to grant the request to continue CON-23-67 to the Public Hearing of August 1, 2023 at 6:00 P.M., Oriana Conklin seconded, and it was so voted, 3-0.***

d) CON-23-95 583A Commercial Street

**Notice of Intent** filed by **Christopher Snow** 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/replace storm-damaged decks, stairs, and pilings. Work to take place

within Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach.

**Presentation:** Paul Shea, of Independent Environmental Consultants, Christopher J. Snow, the applicant, William N. Rogers II, the project engineer, and Ezra Ambrose, the project contractor, were online to present the application. Mr. Shea reviewed the project, which includes the repair of two decks on an existing cottage on the property; one which is located on the southern side/seaward side of the existing cottage, and the other deck within the southwest corner of an existing cottage. The two wooden decks, pilings, and stairs to be repaired are located adjacent to an existing timber bulkhead next to a coastal beach and Provincetown Harbor. The wooden decks will be rebuilt on pilings with stairs that will provide residents and guests with safe deck structures. The repaired wooden decks will be located higher than the past damaged deck structures and the proposed wooden pilings will allow for the movement of flood waters and storm surges under the new deck structure. The repaired wooden decks on pilings, and with stairs, will be located within areas of past site alterations on the property. The existing timber bulkhead acts as a stable coastal bank feature to protect the property from coastal flooding, tidal flooding, storm flowage, storm damage, inundation, and coastal erosion. Mr. Snow commented on the request and reviewed photographs of the damage. He indicated that he just wanted to replace what was there previously, except that both decks would be raised 2'. He said the deck would be at the grade of the upland area of the property. He pointed out the deck on a site plan. Mr. Ambrose said that the deck would be independent of the cottage structure.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Mr. Shea, Mr. Snow, and Mr. Ambrose. Ms. Millett said that both decks were not shown on the site plan, no Chapter 91 license was submitted, and the site plan shows that historic mean high-water line of 1939 goes through the project area, whereas there is a note that says it is located seaward of the project. She requested that the site plan be revised to show the two decks on the site plan, and the Chapter 91 license submitted. Ms. Millett said she thought the note about the mean high-water mark was incorrect and was correctly labeled on the site plan. Mr. Rogers commented on the site plan and the high-water mark. Ms. Millett reiterated to Mr. Snow that the Commission needed to see the second deck on the site plan, or an overlay of the Chapter 91 plan showing the second deck. She said whichever mean-high water mark is more landward is what needs to be shown as well. Mr. Snow said he would submit the licensed plan. The Commission had no other concerns. Mr. Ambrose said that he would need access to the beach via Kendall Lane. Mr. Snow said that a reinforced stair is proposed from the deck to the beach in the same location. Ms. Millett briefly reviewed conditions, including that upon completion of construction, the applicant will submit written notification thereof to the Conservation Agent, who shall promptly schedule a site visit to confirm that the work has been substantially completed in accordance with the approved plans, and the applicant will thereafter submit a Request for a Certificate of Compliance to the Commission. The Certificate of Compliance will not be issued until the applicant has submitted to the Conservation Agent a copy of any required Chapter 91 authorization for the work approved under this Order of Conditions. She said at most, the project would be a minor modification of the existing license.

**Mark Adams moved to approve CON-23-95, 583A Commercial Street, with the Order of Conditions as discussed, Oriana Conklin seconded, and it was so voted, 3-0.**

e) CON-23-97 73 Commercial Street

**Notice of Intent** filed by **James Iker** 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 make improvements to the existing structure and raise it for flood compliance. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to a Coastal Beach. The applicant has requested a continuance to the Public Hearing of August 1, 2023.

**Mark Adams moved to grant the request to continue CON-23-97, 73 Commercial Street, to the Public Hearing of August 1, 2023 at 6:00 P.M., Oriana Conklin seconded, and it was so voted, 3-0.**

3) Request for Certificate of Compliance:

a) CON-23-101 641 Commercial Street Request for a Certificate of Compliance by Gordon Peabody for OOC SE 058-0683, to repair and replace a storm-damaged deck and framing. Ms. Millett said that this project was recently approved by the Commission as a removal of debris initially, and the applicant then came back for an NOI to replace the deck, as there were structural changes being made. The deck is on top of the bulkhead. She noted that the project was complete, and all conditions were fulfilled. There were no on-going conditions, and the project is outside of Chapter 91 jurisdiction. **Alfred Famiglietti moved to issue a complete Certificate of Compliance for CON-23-101, 641 Commercial Street, Mark Adams seconded, and it was so voted, 3-0.**

4) Approval of Meeting Minutes:

a) June 20, 2023: **Oriana Conklin moved to approve the minutes of June 20, 2023 as written, Alfred Famiglietti seconded, and it was so voted, 3-0.**

5) Administrative Approvals:

a) Agent Review:

i. CON-23-91 66 West Vine Street Temporary tent in a disturbed area: Ms. Millett said that there had been some enforcement issues at this property in the past, however this is an application to erect a tent in an already disturbed fenced-in field, which is used as a horse pasture. The tent is for a wedding event, and she said she did issue conditions.

ii. CON-23-100 179 Commercial Street Expanded outdoor seating – extension of a previous approval: Ms. Millett said that Tim Famulare, the former Conservation Agent, had previously approved an Administrative Review to allow the use of a small, vegetated area with a walkway during the COVID-19 pandemic, with the stipulation that it would be re-vegetated after the pandemic ended. She said that she issued the establishment a temporary approval for expanded seating until October 1<sup>st</sup> and informed the applicant that an NOI must be submitted to continue its use as such next season, which would include a permanent plan for the area re seating or a plan to re-vegetate the area, as originally required.

6) **Conservation Agent Update:** Ms. Millett said that she and Mr. Famulare had chatted with Town Counsel about the Herring Cove hydraulic dredging issue. They discussed having a public hearing and decided to draft an update memo with information that the Commission would need and will be vetted by Town Counsel. There are jurisdictional issues with the Dept. of Environmental Protection and the Division of Marine Fisheries still to be worked out.

Ms. Millett said that she is meeting next week with the Association to Preserve Cape Cod, which does the cyanobacteria testing in Shank Painter Pond. The sampling person has been having a hard time accessing the Pond because of dense vegetation. They will discuss access and trimming of the vegetation.

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

*Mark Adams moved to adjourn the meeting at 7:39 P.M., Oriana Conklin seconded, and it was so voted, 3-0.*

Respectfully submitted,

Ellen C. Battaglini

Approved on August 1, 2023

Alfred Famiglietti, Chair