

PROVINCETOWN CONSERVATION COMMISSION

August 1, 2023

6:00 P.M

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

Members Absent: 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 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 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: Robin B. Reid, Esq. representing the applicants, and Roy Okurowski, the project's engineer, were online, and Tarak Shak and Brennan Bilberry, the property owners, were in the room to discuss the application. Mr. Shah commented that the project had been revised, including removing the proposed pool and re-engineering the deck to address concerns of the Commission and the public. He said they had spoken to their neighbors again to reaffirm their support for the project and none of the immediate neighbors were in opposition.

Attorney Reid asked if the Commission had concerns about raising the structure in accordance with FEMA regulations. Commissioners responded that they were not concerned about that aspect of the proposal. She then reviewed the changes to the project. The pile support system is being replaced with a cantilevered beam system requiring no new additional piles. The structure will be raised from grade and the bulkhead will be removed, allowing for the absorption of wave energy along the beach and under the entire length of the renovated structure. She reviewed an aerial photograph of the deck in comparison to abutting decks in the neighborhood. The revised plan eliminates the vertical buffer and batten boards of the proposed pool and eliminates the source of potential scouring with the removal of the eight additional piles that were originally proposed. She said that the applicants' team disagrees with some of the assertions made by Greg Berman in his report on the project, as well as Commissioners' comments at the previous hearing. She said

that they do not concede that the original project as proposed poses a risk of erosion. She said there is no evidence of coastal erosion in this area despite the presence of many similar structures with the same design. She said that in fact there was evidence of accretion on this stretch of the beach. She added that there was no evidence of pile scouring given the large number of pile-supported structures in the area. She said that they also do not concede that the elevation of the structure pursuant to FEMA regulations poses any flooding risks to structures in the neighborhood. She pointed out that there are no local regulations which prohibit the creation of 'shading' over a coastal beach above the mean highwater mark and no evidence of any vegetation growing on this part of the beach whether there are decks present or no decks present. Further, there is ample evidence of sand accretion in this area of the beach. She said the original and the revised proposal are a significant improvement over the existing conditions and the reflected wave energy created by the structure and the existing wood bulkhead. She said that the structure was in a state of deplorable disrepair and the applicants, and she guessed the neighbors would agree, are worried that it will not survive another winter. The applicants have agreed with their neighbors that they will refrain from construction activities during the summer season. She concluded that the project would have no adverse effects on the coastal beach due to an increase in erosion, no adverse effect on the coastal beach by decreasing the volume of the coastal beach, no adverse effect by changing the form of the coastal beach, no adverse impact by changing the form of an adjacent or downdraft coastal beach, and no adverse flooding impact on adjacent properties.

Public Comment: There were 11 letters of support from neighbors. Jamie Staniscia spoke in opposition to the project. Elise Cozzi, an abutter, spoke in support of the application.

Commission Discussion: The Commission questioned Attorney Reid and Mr. Okurowski and commented on the project. Ms. Millett commented on the revised plans, stating that the deck being cantilevered would remove the threat of erosion and the scouring potential, but there would still be an issue with shading. While shading is not specifically mentioned in the local regulations, it has an impact on the local beach and is technically an alteration. The local by-law does mention that unless permitted by the Commission, no person may build in, or alter a resource area. She said it was ultimately up to the Commission to decide whether the deck expansion was permissible. She questioned Mr. Okurowski about the expanded size of the proposed deck. She wanted to know if it would come apart more easily, or become more damaged, in a severe coastal storm than a deck placed on pilings. He said he believed that the design of the deck, made in consultation with Dan Webb, a structural engineer, was robust enough to withstand storm and wind damage. He said he worked on the foundation and proposed helical piles for the rear of the deck so no uplift would occur. Ms. Millett asked if for the grade under the structure, the applicants would be willing to put a benchmark on the pilings to make sure the elevation is not changing too substantially after construction and that too much sand would not be lost. The applicants agreed to that condition. She said that by expanding the deck seaward of an existing structure, the applicants would be subject to the Commission's "no new structure within 80' of a buffer zone" regulation. Even though it was technically for buffer zones, it does also apply to resource areas in general. But in general, for the Dept. of Environmental Protection and Conservation Commissions, allowing new, or expanded, structures to be built within resource areas is very difficult. She said that it is impossible to say that the expanded deck would not have an impact on the beach, even though it may not directly impact scouring or erosion. Just because neighboring properties may not be impacted, the coastal beach may be impacted. She agreed that

the project was a substantial improvement over the existing situation and that the lifting of the structure and deck would have no impact on the resource area. Attorney Reid said that the applicants would be willing to build the deck with ½” spacing between deck boards to allow for more light to penetrate beneath the deck but reiterated that there was no vegetation in that area. Ms. Millett said that increasing the light would make it more likely that vegetation could possibly appear. Mark Adams commented that the Commission tries to have uniform standards for waterfront properties to make sure the Town has a resilient shoreline, and it is protected as it evolves. Conditions can change and a one-time observation doesn't mean it won't change in the future. Attorney Reid said that many of the abutters' letters indicate that this area has not changed significantly for many years.

Ms. Millett said that a lot of the decks in the neighborhood pre-exist the Wetlands Protection Act and the local by-law. If all those decks were held to the same standard today, most likely a dune would be formed in the area since the sand is accreting. To make areas on the beach more resilient, this could be done by elevating the structures or retreating farther landward, however the latter is not a viable possibility, so eventually the former will be the option. She said there was evidence that once seawalls are removed, dunes form under decks and structures because wave reflection is removed, sand does not get dragged back down and flattened on the beach. She can't say it would happen on this property, but once this structure is raised, it is feasible that a dune could form.

Attorney Reid reiterated that it would be hard to articulate an adverse impact as a result of the expansion of the deck because of the improvement of the reflection of wave energy that would occur by raising the structure and cantilevering the deck. There is no blanket or direct prohibition on moving decks seaward or on shading.

The Commission discussed whether the incursion, which is relatively minor, is a situation that it wants to approve and permit, notwithstanding the cooperation of the applicants in revising the original application. And even though it would not cause more erosion or shading. The amount of the expansion is 360 sq. ft., or 16' farther seaward.

Mr. Okurowski said that no one was taking into consideration the effect of sea level rise. He emphasized the positive changes that are being made because of this project, which is designed for a 10' loss in beach sand, which will be coming in the future.

The applicants said that they had asked, throughout the process of developing this project, their engineers, and architects to design the project so it would be low impact and resilient.

Mr. Famiglietti polled the Commission. There were 3 Commissioners in opposition to the project and 1 Commissioner abstained. Attorney Reid said the applicants request to withdraw the portion of the proposal that seeks to expand the deck. Mr. Hassan asked what evidence the Commission would need to approve the proposal that was presented this evening. Mr. Famiglietti said that the Commission was looking to the future, and no one can forecast unpredictable weather events that could destroy the structure and deck. Ms. Millett said that she was not sure if evidence existed now that would convince the Commission that the expanded deck would not have an adverse

impact on the resource area. The Commission was concerned about the precedent of allowing cantilevered decks to expand over resource areas and what effect they would have on the beach and abutting properties, particularly if a destructive storm were to blow in and remove the deck. Attorney Reid said that the applicants would marshal more scientific evidence to support the request to expand the deck.

Ms. Millett said she had prepared a draft Order of Conditions without the pool, and she could easily remove the expansion of the deck as well. A new Notice of Intent would have to be filed if the deck expansion were to be pursued. ***Mark Adams moved to grant the request to withdraw the portion of the application that requests to expand the deck and pool without prejudice, Alfred Famiglietti seconded, and it was voted, 4-0 by roll call.*** Ms. Millett reviewed the draft conditions to rebuild and raise the structure and replace the existing deck in the same footprint, which includes placing a benchmark on a piling, maintaining grade under the structure, and standard conditions.

Joseph Cooper moved to approve the Order of Conditions for CON-23-67, 61A Commercial Street, for the elevation of the dwelling and the replacement of the existing deck in the same footprint, Mark Adams seconded, and it was so voted, 4-0 by roll call.

b) 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. **Continued from a previous hearing.**

Presentation: Paul Shea, from Independent Environmental Consultants, and Regina Binder, representing the applicant, were online to present the application. Mr. Shea said that the applicant seeks to make substantial improvements to the structure. It is in the FEMA Velocity Zone, elevation 12. The existing structure will be raised in elevation by 4.7' and moved 2' 1" to the south, to allow for the required rise in elevation of the structure, making the structure flood complaint; and to accommodate additional risers to the front stairs that serve as an entrance to the structure on Commercial Street. The building improvements in this project reduce flooding and storm damage impacts to this structure and property. The property has an existing bulkhead located seaward of the structure. A coastal beach is located at the seaward limit of the existing bulkhead, and the coastal beach is contiguous with the marine/tidal waters of Provincetown Harbor. The property and the existing structure are subject to coastal storm flowage, coastal flooding, and storm damage. The existing bulkhead area functions as a coastal bank within the property and serves to reduce flooding impacts, storm surge impacts, coastal flooding impacts, tidal flooding impacts, and erosion impacts from coastal storm events. These changes will make the structure safer for its residents and more flood-compliant, in addition to protecting abutting properties. It will meet the Massachusetts Building Code for structures in the V Zone. The DEP File No. is SE 058-0692 without comments. Ms. Binder said that the applicant had bought the house in 2018 and it has flooded 3 times and added that this is a voluntary raising of the structure. **Public Comment:** None.

Commission Discussion: The Commission questioned Ms. Binder and Mr. Shea. The work will be accessed through the driveway on the property. There will be no changes to the seawall. Ms. Millett requested that the design flood elevation of the lowest horizontal member be added to an elevation drawing and a condition that the existing grade beneath the structure be maintained post-construction.

Mark Adams moved to issue an Order of Conditions for CON-23-97, 73 Commercial Street, Joseph Cooper seconded, and it was so voted, 4-0 by roll call.

c) CON-23-104 **9-11 Commercial Street**

Notice of Intent filed by **Mullin House, 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 repair an existing seawall and install pervious pavers. 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 reviewed the site plan. The property is in the FEMA VE 14 Zone. The purpose of this application is to permit the proposed repair and heightening of the existing seawall located on the property. The seawall in the rear of the property is comprised of brick on top of concrete with a staircase to the beach. Prior to the start of work, a mulch sock will be installed to contain any potential excess sediment from impacting the wetland resource areas. The proposed seawall work is associated with the seawall along the eastern property line and the wingwalls to the north and south. This portion of the seawall is partially dilapidated and selective demolition/repair is required. The raising of the height of the wall is an effort to protect against and minimize future damage from increased storm frequencies and damage to the property. The wall will be partially demolished to elevation 10, then raised using slip forms or a plexiglas system, mounted to the top of the seawall, to FEMA flood heights. There will be no changes to the footprint of the seawall. The current rear patio floods due to the grade being sloped toward the house. The grade will be removed, and the patio will be regraded using pervious pavers for greater percolation. Downspouts will be added to each of the house corners below grade 4' and will include 3/4" stone percolation detail as shown on the drawing. All disturbed areas landward of the repaired/rebuilt seawall will be restored and stabilized to their pre-existing condition. The area immediately landward of the seawall currently exists as maintained lawn. Disturbed areas will be loamed and seeded by hand with a salt-tolerant seed mix suitable for the coastal environment.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Hannon. Ms. Millett asked Mr. Hannon what the panels to be placed on top of the seawall would be made of. This information should be conveyed to her before any construction begins. He agreed to that condition. There would be base plates to hold the plexiglas panels and posts to keep them rigid. Ms. Millett said that additional conditions would be that marine-grade hardware be used to secure the framing for the paneling and posts and the pavers would have to be dry-laid, even if they are permeable pavers. In addition, no stone dust can be used or any other material that can be compacted to make an impermeable surface.

Mark Adams moved to issue an Order of Conditions for CON-23-104, 9-11 Commercial Street, Joseph Cooper seconded, and it was so voted, 4-0 by roll call.

d) CON-23-105 625-627 Commercial Street

Notice of Intent filed by **Tatiana Von Furstenburg** 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 permanently repair a bulkhead previously repaired under emergency certification. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach.

Presentation: Eric Larsen, of Aline Architecture, Gordon Peabody, of Safe Harbor Environmental, and Camille Smoakland, an intern with Safe Harbor Environment, appeared to present the application. Mr. Larsen said that the damage was done to the bulkhead during the December, 2022 winter storm. After completing the interior repairs to the existing bulkhead, a similar approach is being proposed to laminate the existing exterior timber lagging of the existing bulkhead with 3” by 8” marine-grade timbers. These timbers will be affixed to the repaired interior and create a cross-lamination, which creates a composite barrier that will last longer than the existing compromised components within. Deteriorated timbers will be spot repaired to not encapsulate unsuitable material. The work will be performed landward of the bulkhead, on the existing deck and yard areas. Staging will be from Commercial Street. The work will be performed by hand and with portable hand tools along the bulkhead wall. Areas below the lowest wale will be hand-excavated for the purpose of attaching the filter fabric backing and timber below the scour line of the beach. Once the timbers are mechanically fastened to the existing timber lagging and repaired substrate, the area will be restored. All work will be performed during the ebb/flow before and after high tide. Prior to high tide, all disturbed areas will be restored, materials removed, and work will not commence again until the tide recedes. When the emergency repair was approved, a condition required that the applicant submit an NOI with a more permanent solution. The permanent solution for the seawall that is the subject of this NOI is to apply 3” by 8” timbers between the wales of the wall to create a three-piece lamination of the bulkhead. The timber lamination will be installed in between and behind the vertical soldier piles along the length of the seawall.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Larsen. No access to the beach is needed. Ms. Millett said that the project did not yet have a DEP File No. She said the project could be approved, but the Order of Conditions would not be issued until the DEP File No. was issued. The Order does contain some of the same conditions as the Emergency Certification.

Mark Adams moved to issue an Order of Conditions once the DEP File No. has been received for CON-23-105, 625-627 Commercial Street, Alfred Famiglietti seconded, and it was so voted, 3-0.

e) CON-23-34 629 Commercial Street

Request for an Amended Order of Conditions filed by **Eric Larsen** 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 an approved bulkhead design. DEP File # 058-0677. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach.

Presentation: Eric Larsen appeared to present the application. He said that this originally started with an Emergency Certification. The interior repairs to the existing bulkhead were completed. This project proposes to utilize a similar approach to laminate the existing exterior timber lagging of the existing bulkhead with marine-grade 3” by 8” timbers. They will be affixed to the newly repaired interior, creating a timber cross-lamination, which creates a composite barrier that is more suitable and longer-lasting than the existing compromised components within. Highly deteriorated timbers will be spot repaired so as not to encapsulate unsuitable material. The proposed stair will be located within the footprint of the existing stair; however, it will be affixed more securely to the bulkhead and at a suitable and safe elevation. After the deck was reconstructed and the concrete poured, the top of wall elevation was 1” higher than what was planned. Consequently, an awkward step condition was created from the deck surface to the top of the bulkhead and then down to the first step of the existing stairs. The intent is to replace the stairs in kind and match the rise/run better, creating even steps down to the beach, to the top of the bulkhead wall and then onto the deck. Existing soldier piles will be used as the primary structural connection point. Approximately 18” of stairs will be buried in the sand and anchored in a five-gallon bucket of concrete. This would allow the stairs to be tethered to the ground in case a storm or wave action would rip them away from the soldier piles. He said the stairs would mimic those at 645 Commercial Street.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Larsen.

Joseph Cooper moved to approve the Amended Order of Conditions for CON-23-34, 629 Commercial Street, Mark Adams seconded, and it was so voted, 3-0.

f) CON-17-58 **635 Commercial Street**

Request for an Amended Order of Conditions and Extension filed by **Eric Larsen** 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 an approved bulkhead design. DEP File #058-0573. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach.

Presentation: Eric Larsen appeared to present the application. He said he was requesting to extend an Order of Conditions for repairs to an existing concrete bulkhead wall for one additional year. The wall has been further damaged by the December, 2022 storm. Because of the storm, an extended deadline of August 14, 2023 has now been pushed to January 18, 2024. He would like this to be extended by a year. The request will be followed by proposed amendments as the extension is critical to ensure that there will be sufficient time to complete the work and to ensure that the project is able to be certified, inspected, and subsequently issued a Certificate of Compliance once it has been completed. The extension request is primarily intended to account for any weather delays or administrative delays. He said the work will be started after the summer season, however in light of recent structural evaluation at the end of June, 2023, several areas were identified as being of critical concern. These areas will require an amendment to the original Order of Conditions to reflect anticipated construction methods that may not be clearly expressed in the original filing or have since become more deteriorated. These areas now pose a serious threat to the integrity of the wall structure, not only for this property, but for abutting properties as well. In addition to this, the Commission requested updates and further information regarding the repairs as noted in the Order of Conditions. He reviewed the requested amendments to the Order

of Conditions. He reviewed photographs of the damaged bulkhead wall. He reviewed the process of the repair, which will include shotcrete being installed on the existing base concrete with applied steel and fiberglass reinforcing added. This will alter the dimensions of several areas of the bulkhead. There is also a request to employ high pressure water to successfully repair the bulkhead. The use of power washing equipment to de-scale and prepare the existing concrete substrate is necessary. This will leave the existing aggregate in a naturally abrasive condition so that the new shotcrete material can bond to the pores of the stone and create an integrated repair.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Larsen. He said that the project requires beach access with a small excavator. Ms. Millett reviewed the amended conditions, including decreasing the width of the beach that is required for work to take place on it, with the current distance being when the tidewater is 15' from the toe of the bulkhead as specified in the Order of Conditions. Mr. Larsen is suggesting that this be amended to allow for a more situational or as observed/anticipated high water. Since the work will take place between late summer and fall, the ebb and flow to or from high tide may end up encroaching on that line. He is asking for some leniency or active monitoring in this area to expedite the work. There will be no sand-blasting occurring as had been originally proposed, but pressure-washing will be utilized.

Mark Adams moved to approve a one-year extension of CON-17-58, 635 Commercial Street, to August of 2024, Alfred Famiglietti seconded, and it was so voted, 3-0.

Mark Adams moved to approve the Amended Order of Conditions for CON-17-58, 635 Commercial Street, as discussed, Alfred Famiglietti seconded, and it was so voted, 3-0.

3) **Request for Certificate of Compliance:**

a) CON-23-102 551 Commercial Street Request for a Certificate of Compliance by Karen LaVoie, Esq. for OOC SE 058-0209 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 septic system. Ms. Millett said that this project was approved in 1991 and was never closed out. The septic system was installed pursuant to the septic 'as built' that was consistent with the original Order of Conditions. There are no on-going conditions.

Mark Adams moved to issue a Certificate of Compliance for CON-23-102, 551 Commercial Street, with no on-going conditions, Joseph Cooper seconded, and it was so voted, 3-0.

4) **Approval of Meeting Minutes:**

a) July 18, 2023: *Joseph Cooper moved to approve the minutes of July 18, 2023 as written, Alfred Famiglietti seconded, and it was so voted, 3-0.*

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

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

Mark Adams moved to adjourn the meeting at 8:43 P.M., Joseph Cooper seconded, and it was so voted, 3-0.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2023

Alfred Famiglietti, Chair