

PROVINCETOWN CONSERVATION COMMISSION

October 3, 2023

6:00 P.M

Members Present: Oriana Conklin, Emma Fillion, and Joseph Cooper.

Members Absent: Alfred Famiglietti (excused), Nathaniel Mayo (excused), and Mark Adams (excused).

Others Present: Melyssa Millett (Conservation Agent).

Oriana Conklin moved to designate Joseph Cooper as Acting Chair for the meeting, Emma Fillion seconded, and it was so voted, 3-0 by roll call.

Acting Chair Joseph Cooper called the meeting to order at 6:00 P.M.

Melyssa Millett explained how that remote participation in the meeting 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. 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.

1) **Public Comments:** None.

2) **Public Hearings:**

a) **CON-23-120 1 MacMillan Wharf**

Request for a Determination of Applicability filed by **Jamie Demetriou** 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 an existing water main. Work to take place within the existing pier over Open Water and within Land Subject to Coastal Storm Flowage.

Public Comment: Craig Curtin, from GHD Engineering, was online to present the application. He said the existing water main on MacMillan Pier has had breaks in recent years and needs repair. He reviewed the plans for the project, which include replacing the water main with seasonal and year-round use mains, as well as additional fire protection infrastructure for the Pier. He reviewed the site plan. The water main is installed in open cavities underneath the main Pier, the finger piers, a private residence, the Harbormaster's Office, and the ice machine. The insulation has started to fail in some of these locations and heat tracing has occasionally failed, which has resulted in some water main breaks due to freezing temperatures and the marine environment. The existing fire protection on the Pier consists of some dry hydrants that are set up to pull water from the ocean to assist with firefighting efforts. The new main will be installed in the open cavities underneath the main Pier where the existing is located. During construction, a temporary water main will be installed off of a new hydrant at the head of the Pier to provide water service. After the temporary main is installed and functional, the existing water main will be removed and replaced with a new one. He reviewed photographs of the water system above and underneath the Pier.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Curtin. The concern was about the proposed remediation and debris given the location of the work. Mr. Curtin said that a marine contractor who has experience working in such an environment will be hired to perform the replacement. He noted that some of the work can be done above the Pier, such as removing decking as needed, but he emphasized that all necessary precautions due to the work environment will be taken.

Ms. Millett reviewed the conditions, stating that one of her main concerns was the possibility of degraded insulation getting into the water. For the pre-construction meeting, the project engineer, the project contractor, a representative from the Dept. of Public Works, as well as herself, will attend. Mr. Curtin said that no beach access would be needed. Ms. Millett said that another condition would be that an emergency spill kit be on site during the construction phase. All material, debris or equipment shall be stored above the Pier. Mr. Curtin agreed and said some storage will take place in the Municipal Parking Lot. The work will be performed during the winter months when the MPL is not very full. Additional conditions include that all materials, debris, and equipment be properly stored and secured on the site, and in the MPL, in case of high winds or an inclement weather event. Ms. Millett said the debris should be contained during demolition of the existing main, with the concern being the prevention of old insulation falling into the water. She would like more details about that process when the pre-construction meeting is held. Post construction, all debris should be cleaned up and the Conservation Agent should be notified of the completion of the work. No fueling or repairs of equipment shall occur on site, although it is different if a barge is used, but the concern is fuel spill prevention.

Oriana Conklin moved to grant a Negative #2 Determination of Applicability for CON-23-120, 1 MacMillan Wharf, Joseph Cooper seconded, and it was so voted, 3-0 by roll call.

b) CON-23-118 **253A Commercial Street**

Notice of Intent filed by **Julie Heller** 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 remove invasive species and replant. Work to take place within a Coastal Beach, a Buffer Zone to a Coastal Beach, and Land Subject to Coastal Storm Flowage.

Oriana Conklin moved to postpone CON-23-118, 253A Commercial Street, to the Public Hearing of October 17, 2023 at 6:00 P.M., Joseph Cooper seconded, and it was so voted, 3-0 by roll call.

c) CON-23-119 **541 Commercial Street**

Notice of Intent filed by **Heath Gatlin** 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 extend an existing bulkhead and walkway. Work to take place within a Coastal Beach, a Buffer Zone to a Coastal Beach, and Land Subject to Coastal Storm Flowage.

Presentation: Cole Bateman, of Coastal Engineering Co., was online to present the application. He said that in December of 2022, the property was inundated with a fierce winter storm and as a result, structures and damage to the site were incurred. The majority of the damage included severe erosion along the eastern end of the site, between 541 and 543 Commercial Street, and damage to an existing wood-framed deck and a timber bulkhead. The intent of this project is to re-establish and improve the coastal resiliency of an existing waterfront structure that was

damaged, including by repairing an existing coastal bulkhead structure by constructing a new fiber-reinforced polymer sheet pile bulkhead in the location of the existing timber bulkhead, constructing new bulkhead extensions landward, attaching to the bulkhead with the neighboring concrete seawall to the east, and raising the height of the bulkhead to a reasonable projected mean seal level rise compatible with flood risk-modeling in the area. In addition, the proposed wooden deck structure will be rebuilt in the same footprint and an existing brick walkway along the east side of the dwelling will also be repaired in the same footprint. New beach access stairs will be installed to fit the raised bulkhead that will be flood-damage resistant. There will be a short step on the landward side down in order to access the deck.

Public Comment: There were no verbal comments from the public and 1 letter from an abutter in support of the project.

Commission Discussion: The Commission questioned Mr. Bateman. Ms. Millett commented that there will be no expansion of the bulkhead seaward, but there will be an expansion of the section that will connect the existing to the concrete seawall to the east of the site. She has no objection about it being made higher to meet new flood plain projections to make it more resilient. Mr. Bateman reviewed how the beach access stairs will be constructed to make them hardier than the ones that were damaged in the storm. There will be a deep foundation element for the toe of the stairs, posts embedded into the sand, making it stronger than the sonotubes that were previously used to anchor the stairs, open risers, a direct connection to the bulkhead, and three sets of doubled 2" by 12" stringers with stainless steel fastening hardware. Ms. Millett asked Mr. Bateman about the need for beach access. He said that access from Kendall Lane will be needed. She asked about fill behind the new wall; where it would be sourced from and how much would be needed. He said that the sand would be compatible with what is on the beach now. He didn't know how much would be needed but would have a number by the pre-construction meeting. She asked about a brick walkway that will be replaced on the east side. He said it would maintain the existing style using clay bricks with polymeric sand fill. She said that it should be dry-laid. Mr. Bateman was asked about the construction schedule. As to that issue, Ms. Millet said that there is a condition that the applicant monitor tidal heights and shall not conduct work on the beach when the level of the tide is within 15' of the toe of the existing seawall. She mentioned other conditions, such as the final approved plans shall comply with the flood plain building regulations of the MA State Building Code and FEMA, the deck shall be constructed using flood-resistant materials, all fasteners shall be made of corrosion-resistant material, and the deck shall be designed to resist uplift and lateral loads between the footings and the deck frame. She said she added the standard conditions for these kinds of projects, such as proper and regular maintenance for the bulkhead deck and stairs, that the beach access stairs be permanently labeled with the address of the site, and that they shall comply with the Commission's standards for the construction of that type of stair.

Oriana Conklin moved to issue an Order of Conditions for CON-23-119, 541 Commercial Street, Joseph Cooper seconded, and it was so voted, 3-0 by roll call.

d) CON-23-121 543-545 Commercial Street

Request for a Determination of Applicability filed by **Provincetown Hospitality, 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 reconstruct beach

access stairs. Work to take place within a Coastal Beach, a Buffer Zone to a Coastal Beach, and Land Subject to Coastal Storm Flowage.

Presentation: Cole Bateman was online to present the application. He said that between December of 2022 and January of 2023, the subject property was inundated by winter storms. The storms destroyed two timber beach access stairs. They will be rebuilt with increased flood resiliency. He reviewed photographs of the previous conditions, from 2015, and compared them with the existing conditions of the stairs. He reviewed the site plan. Neither this project nor the previous project involves land seaward of the historic or contemporary mean highwater mark. The bulkhead that the stairs will be attached to on this site is concrete. The design is similar to the previous project, except for the concrete bulkhead, with a deep foundation element for the toe of the stairs, posts embedded into the sand, open risers, three sets of doubled 2” by 12” stringers with stainless steel hardware. The stairs will be labeled with the site’s address. He noted a stair detail that was submitted.

Public Comment: None.

Commission Discussion: The Commission discussed the project. Ms. Millett explained that the design was consistent with the previous project and met the Commission’s requirements for the construction of beach access stairs. Mr. Bateman said that beach access would be needed as with the previous project.

Oriana Conklin moved to grant a Negative #2 and #3 Determination of Applicability for CON-23-121, 543-545 Commercial Street, Joseph Cooper seconded, and it was so voted, 3-0 by roll call.

e) CON-23-122 12 Commercial Street

Notice of Intent filed by **Graham Carr** 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 decks and egress stairs. Work to take place within a Bordering Vegetated Wetland, a Buffer Zone to a Bordering Vegetated Wetland, and Land Subject to Coastal Storm Flowage.

Presentation: Graham Carr, an engineer with Vital Structures, was online to present the application. He reviewed the project, which includes constructing new wood-framed decks located at the first and second floors, along the south-facing (rear) elevation of the building, new stairs connecting the ground level to first floor decks, first floor to second floor decks, and second floor to the existing third floor decks, and new wood-framed walkways suspended from existing timber piles in a vegetative area to the south of the building, located below the first-floor decks on the site. The proposed exterior stairs will serve as a means of egress for the fifteen residential units, consistent with their current function. The placement of two helical pile foundations will be required in the hardened/crushed stone walkway area between the building foundation wall and the vegetation area, to support one of the four wood-framed walkways. The decks, stairs, and timber piles are original construction from the mid-1980s. The project aims to minimize the impact to the vegetation and wetland resource areas, as the proposed work will be performed within the footprint of current structures, as an “in-kind” replacement. He reviewed photographs of the site. He said that no excavating or driving of new piles in the wetlands will be needed. The existing timber piles will be utilized for the support of the replaced walkways. Two new foundations will be needed, and two new helical piers will be driven just outside the wetland for

those walkways. He reviewed the site, ground level walkways, and deck plans showing where the dumpster and materials storage will be located.

Public Comment: None.

Commission Discussion: Ms. Millett gave a brief review of the project. She said that this site is a unique one, and this building could not be built today given its proximity to the wetland. There would be more of a disturbance if the existing pilings were to be removed and then the question would be where those required second means of egress would be located. Some square footage that is within the wetland will be removed, with the slight change in footprint, but with the reconfiguration of the decks and stairs, including the posts that have failed, there will be a restoration of a small amount wetland habitat. She is not concerned about the two proposed helical piles and this plan would be less impactful on the wetland given the intent to replace the deck, stairs and walkways in kind. The Commission can ask for greater spacing between the deck boards to help the wetland thrive. She said the vegetation is very hardy in the wetland and the Condominium Association has had to trim it back annually, especially around the stairways and decks. Some trimming will need to be done to get access during construction. She said that one of the conditions of the Order would be that in the future any additional cutting of vegetation would require the Association to return to the Commission for permission. Her main concern would be how the construction of the decks, stairs, and walkways that need replacing would take place and how the debris, given their location above a wetland, would be kept out of the resource area. Mr. Carr said he expected some combination of some type of baker, or similar, staging and utilizing the walkways and beams at the lower level would be used. When an initial frameup is built, the work will proceed upwards. Ms. Millett said that if the construction were to take place in the winter months, the vegetation in the wetland would be dormant and it would not be affected. Mr. Cooper recommended a condition that an annual site visit be held to monitor any trimming of vegetation. Ms. Millett said that she had a condition that all trimming around the egress stairs and walkways must receive prior approval by the Conservation Agent and no vegetation could be dumped into the wetland if trimming was approved. The site visits would start once construction was completed and last for the life of the permit. Ms. Millett reviewed the Order of Conditions, which include a pre-construction meeting with a member of the engineering team, the project contractor, a representative of the Condominium Association, and the Conservation Agent, the submission of information about how the debris will be handled by the contractor before the pre-construction meeting, that no equipment, materials, or debris shall be stored within the wetland, that debris shall either be removed from the work site daily or stored in covered dumpsters to prevent it from blowing into the wetland, that debris shall be removed from the wetland as best as possible by the contractor if any enters the resource area, and that the standard FEMA and MA Building Code building requirements for activity in a floodplain are complied with.

Oriana Conklin moved to approve an Order of Conditions for CON-23-122, 12 Commercial Street, as discussed, Joseph Cooper seconded, and it was so voted, 3-0 by roll call. Ms. Millett said that the applicant is still waiting for a Dept. of Environmental Protection file number so the Order will not be issued until that is obtained.

f) CON-23-97 73 Commercial Street

Request for an Amended Order of Conditions filed by **Regina Binder** to permit the movement of the existing deck further seaward. Work to take place within a Buffer Zone to a Coastal Beach and Land Subject to a Coastal Beach and Land Subject to Coastal Storm Flowage.

Presentation: Ginny Binder was online, and the property owner, James Iker, was in the room to present the application. Ms. Binder said that she had submitted a proposed site plan for the project that includes moving a structure and deck 25.2” to the south towards an area that looks like brick but is actually pea gravel and bluestone. She reviewed the site plan. Moving the structure and deck will allow the historic front stairs to be accommodated. She said that she had already provided an existing site plan. The remaining bluestone and pea gravel will be replaced with native grasses. The deck will be on pilings and the building will be raised by 4.7’.

Ms. Millett gave an overview of what was previously approved and what the changes have been. She said that originally, the approved plan and narrative did not mention the movement of the deck, only the dwelling. The goal is to move the dwelling along with the deck 2.1’ towards the seawall in order to accommodate a stair at the front of structure that would allow access to the front door on Commercial Street when the structure is elevated. The original interpretation, as well as what was presented at the Historic District Commission hearing, was that the dwelling would be taking up 2.1’ of the deck when it was moved. There was a question as to what would happen to the hardscape area to the south of the deck. It would not be ideal to expand the walkway and have less of an area between the proposed new location and the seawall. Now there will be less hardscape and more plantings close to the seawall, as there will be removal of more structure from the site, which can turn into potential debris in storms. She said it is not usually a good idea to move dwellings farther towards the water, but the access issue of the front door made it necessary in this instance. She said that since the movement of the structure has already been approved, the only issue before the Commission is the 2.1’ movement of the deck southward over a hardscaped area. Ms. Binder said that planting would be taking place under the deck as well as in front of it. This will result in better flood management and drainage.

Public Comment: None.

Commission Discussion: The Commission questioned Ms. Binder. There will be skirting around the dwelling, but not the deck. Ms. Binder agreed to ½” - ¾” spacing between the deck boards to allow the vegetation under the deck to get more light for growth. Ms. Millett said one condition of the Order is that a benchmark to establish grade would be required, so any loss in grade can be monitored. An additional condition is that construction of the deck be subject to final approval by the Building Commissioner, that the deck be constructed using flood-resistant materials, corrosion-resistant fasteners, and deck boards that have at least a ½”, preferably ¾”, separation, and that the deck be designed to resist uplift and lateral loads between the footings and deck frame. She asked for a planting plan specifying the types of grasses that will be planted to be delivered at the pre-construction meeting.

Oriana Conklin moved to approve the Amended Order of Conditions for CON-23-97, 73 Commercial Street, Joseph Cooper seconded, and it was so voted, 3-0 by roll call.

3) Administrative Determinations:

a) CON-23-124 119 Commercial Street Administrative Review – Demolition of an existing wood roof deck and stairs down to grade, including structural columns with footings at grade – no replacement to be constructed. Ms. Millett said that she has approved this project already. The applicants have already been approved for landscaping work and part of it will now include the demolition of a roof deck and stairs. The property owners will be coming back to the Commission

with an NOI to renovate the structure. They were told to put erosion controls in place and to make sure that the site is stabilized before those controls are removed.

4) **Approval of Meeting Minutes:**

a) September 19, 2023: *Oriana Conklin moved to approve the minutes of September 19, 2023 as written, Joseph Cooper seconded, and it was so voted, 3-0 by roll call.*

5) **Conservation Agent Update:** Ms. Millett said that the Board training will occur at the next meeting. She has an AmeriCorps person starting next week to help with open space and coastal resiliency projects. That individual will work on Wednesdays and Thursdays until July. The Dept. of Community Development will be closed this Friday and the Tuesday after the Columbus Day holiday. New carpeting is being installed and there will be some reorganization of staff in the office area.

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

Oriana Conklin moved to adjourn the meeting at 7:25 P.M., Joseph Cooper seconded, and it was so voted, 3-0 by roll call.

Respectfully submitted,
Ellen C. Battaglini

Approved on October 17, 2023
Alfred Famiglietti, Chair