

PROVINCETOWN CONSERVATION COMMISSION

November 23, 2004
6:30 P.M.

Members Present: Dieter Groll, Elaine Anderson, John Santos, George Bryant and Paul Tasha.

Members Absent: None

Others Present: David McLean-Perkins (Conservation Commission Secretary) and Ellen C. Battaglini (Recording Secretary).

Co-Chair Dieter Groll called the meeting to order at 6:37 P.M.

PUBLIC STATEMENTS:

None.

OLD BUSINESS:

Notice of Intent (continued from 9/28/04, 10/12/04, 10/26/04 and 11/09/04)

Application by Felco, Inc., representing Blueberry Realty Trust, Brian T. Morris, Trustee, for Notice of Intent under the Provincetown Wetlands By-law, Chapter 12 of the Provincetown General By-Laws, and under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40. The applicant seeks approval for the construction of a single-family dwelling within the buffer zone of a fresh water wetland on the property located at **20 Blueberry Avenue** in Provincetown.

Presentation: Alan Cabral, of Felco Engineering, Inc., and Robert Valois appeared to present the application. The property has been staked, including where the straw bale work line will be located, and plans showing elevations were submitted. Further mitigation procedures will include re-vegetation with native grass as a sediment barrier and to stabilization of the embankment on the property.

Public Comment: None.

Commission Discussion: The Commission briefly discusses the application.

John Santos moved to grant a Notice of Intent under the Provincetown Wetlands By-law, Chapter 12 of the Provincetown General By-Laws, and under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40 for the construction of a single-family dwelling within the buffer zone of a fresh water wetland on the property located at 20 Blueberry Avenue in Provincetown, with the following conditions that:

- ***The work line be staked and a double row of straw bales be placed along that work line;***
- ***A siltation fence be used on the property during construction; and***
- ***Re-vegetation with native beach grass will occur after construction is completed.***

Elaine Anderson seconded and it was so voted, 4-1-0 (PT opposed).

Determination of Applicability

Application by David Nicolau for Request for Determination of Applicability under the Provincetown Wetlands By-Law, Chapter 12 of the Provincetown General By-Laws, and under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40. The applicant seeks approval for the installation of a pool in the 100' buffer zone at the property located at **5 Maple Court** in Provincetown.

The applicant has requested a continuance until the December 14, 2004 hearing.

NEW BUSINESS

PUBLIC HEARING:

Notice of Intent

Application by Felco, Inc., representing Lester Heller, for Notice of Intent under the Provincetown Wetlands By-law, Chapter 12 of the Provincetown General By-Laws, and under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40. The applicant seeks approval for the removal of an existing retail building and its replacement with a new mixed-use building elevated on a new foundation, per building code requirements, within land subject to coastal storm flowage and within historic tidelands for the property located at **253A Commercial Street** in Provincetown. Dieter Groll recused himself because of a conflict of interest and Co-Chair Elaine Anderson chaired the hearing of the application. The application was re-filed by the applicant and is being re-presented to the Commission because of a clarification by Town Counsel regarding the question of which Commissioners were qualified to hear and to vote on the application when it was initially presented.

Presentation: Alan Cabral, of Felco, Inc., Ginny Binder and Neal Kimball appeared to present the application. The project has no modifications and a construction protocol that was used when Whaler's Wharf was re-built was submitted to the Commission.

Public Comment: Lester Heller spoke in support of the project and applauded the work of the Commission.

Commission Discussion: The Commission questioned Mr. Cabral, Ms. Binder and Mr. Kimball.

John Santos moved to grant a Notice of Intent under the Provincetown Wetlands By-law, Chapter 12 of the Provincetown General By-Laws, and under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40 for the removal of an existing retail building and its replacement with a new mixed-use building elevated on a new foundation, per building code requirements, within land subject to coastal storm flowage and within historic tidelands for the property located at 253A Commercial Street in Provincetown, George Bryant seconded and it was denied, 2-1-1 (PT opposed, EA abstain).

Motion does not pass

At the request of the applicant, John Santos moved that the application be reconsidered and then tabled for several minutes while a clearer map of the area was studied by the Commission, George Bryant seconded and it was so voted, 3-1 (PT opposed).

Motion Passed

At the behest of the applicant, Peter Markunas, of Coastal Engineering, spoke to the Commission about the application. He explained that the Chapter 91 review process would address the concerns and reservations expressed by some of the Commissioners about the project.

John Santos moved to grant a Notice of Intent under the Provincetown Wetlands By-law, Chapter 12 of the Provincetown General By-Laws, and under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40 for the removal of an existing retail building and its replacement with a new mixed-use building elevated on a new foundation, per building code requirements, within land subject to coastal storm flowage and within historic tidelands for the property located at 253A Commercial Street in Provincetown and would further like to state for the record that the Commission has concerns and reservations about the project and would like further clarification about the following issues:

- *Flood zones in the area;*
- *Historic tidelands; and*
- *The construction protocol submitted by the applicant.*

George Bryant seconded and it was so voted, 3-1 (PT opposed).

Motion to approve passed

Notice of Intent

Application by Coastal Engineering, representing the Salvan Family Revocable Trust, Florence Salvan, Trustee, for a Notice of Intent under the Provincetown Wetlands By-law, Chapter 12 of the Provincetown General By-Laws, and under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40. The applicant seeks approval for the replacement of an existing deck on a single-family dwelling for the property located at **109 Commercial Street** in Provincetown.

Presentation: Pete Markunas, of Coastal Engineering, appeared to present the application. The applicant has already applied for, and been granted, amnesty from Chapter 91. The timber structures will be removed via the Franklin Street town landing and any debris on site and on the beach will be removed daily. There is a tank under the deck structure that will be removed and the void will be filled with compatible sand. Heavy machinery will be brought onto the beach via the Franklin Street town landing and the beach will be re-graded after that machinery is removed.

Public Comment: None. There was one letter from an abutter who supported the project.

Commission Discussion: The Commission questioned Mr. Markunas.

Paul Tasha moved to grant a Notice of Intent under the Provincetown Wetlands By-law, Chapter 12 of the Provincetown General By-Laws, and under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40 for the approval of the replacement of an existing deck on a single family dwelling for the property located at 109 Commercial Street in Provincetown with the following conditions that:

- *Debris be cleared from the site daily;*
- *The order of conditions submitted for construction on the beach at 253A Commercial Street be followed;*
- *Green heart wood be used as material in the construction of the deck; and*
- *The performance standards narrative, excluding the use of marine grade 2.5 psi CCA pressure-treated piles (see previous bullet), submitted by Coastal Engineering be followed.*

Elaine Anderson seconded and it was so voted, 5-0.

Notice of Intent

Application by Coastal Engineering, representing Robert Duffy, for a Notice of Intent under the Provincetown Wetlands By-law, Chapter 12 of the Provincetown General By-Laws, and under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40. The applicant seeks approval for proposed renovations to an existing single-family dwelling and site improvements for the property located at **27 Commercial Street** in Provincetown.

Presentation: Peter Markunas, of Coastal Engineering, appeared to present the application. The scope of work was outlined in the performance standards narrative submitted by Mr. Markunas.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Markunas.

George Bryant moved to grant a Notice of Intent under the Provincetown Wetlands By-law, Chapter 12 of the Provincetown General By-Laws, and under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40 for the approval of proposed renovations to an existing single-family dwelling and site improvements for the property located at 27 Commercial Street in Provincetown, with the additional condition that the 253A Commercial Street order of conditions as well as those outlined in the performance standards narrative submitted by Coastal Engineering be followed, John Santos seconded and it was so voted, 5-0.

PUBLIC MEETING:

Determination of Applicability

Application by Kimball Residential Designs, representing Anton Van Dereck, for Request for Determination of Applicability under the Provincetown Wetlands By-Law, Chapter 12 of the

Provincetown General By-Laws, and under the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40. The applicant seeks approval to remove and reconstruct an existing west-facing shed dormer and to remove, reconstruct and extend an existing damaged boardwalk along west side and extend to and wrap around the south (ocean) side to connect to a new egress door. The applicant also seeks approval to replace south-facing windows on the second floor with three double-hung windows on the property located at **463 Commercial Street** in Provincetown. Dieter Groll and George Bryant recused themselves because of conflicts of interest.

Presentation: Neal Kimball and Mike Czyowski appeared to present the application. The applicant seeks to replace the dormer with a simpler style and enlarge the boardwalk to 4 feet to allow handicap egress.

Public Comment: None. There was one letter in the file from the Beachcombers Club who opposes the project.

Commission Discussion: The Commission questioned Mr. Kimball and Mr. Czyowski. The Commission requested more information from the applicant, including a site plan with the mean high water mark more clearly delineated and showing elevations above sea level. The applicant requested a continuance until the December 14, 2004 hearing.

Paul Tasha moved to accept the request for a continuance until the December 14, 2004 hearing, John Santos seconded and it was so voted, 3-0.

DISCUSSION:

The Commission had a discussion with Brian Carlson, who is interested in joining the Commission.

The Commission discussed the issue of their jurisdiction over water, and any land beneath it, up to a depth of 40 feet.

The Commission discussed the squirt invasion just starting to take over juvenile cod habitats and the dredging and destruction of eelgrass in the waters surrounding Provincetown. The Commission felt the issue of invasive species in general should be put on their agenda.

The Commission would also like to put the issue of beach nourishment on their agenda.

MINUTES: October 12, 2004 – Elaine Anderson moved to approve the language as written, Paul Tasha seconded and it was so voted, 5-0.

November 5, 2004 – Elaine Anderson moved to approve the language as written, Paul Tasha seconded and it was so voted, 5-0.

ADJOURNMENT:

John Santos moved to adjourn the meeting at 9:45 P.M. and it was so voted unanimously.

These minutes were approved by a vote of the Conservation Commission at their meeting on December 14, 2004.

NEXT MEETING

The next meeting will be on December 14, 2004.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2004

Dieter Groll and Elaine Anderson, Co-Chairs