

# PROVINCETOWN CONSERVATION COMMISSION

September 4, 2007

6:30 P.M.

**Members Present:** Dennis Minsky, Elaine Anderson, Lynne Martin and David Hale.

**Members Absent:** Dieter Groll (excused) and Paul Tasha.

**Others Present:** Brian Carlson (Health Inspector) and Ellen C. Battaglini (Recording Secretary).

## PUBLIC HEARING

Chair Dennis Minsky called the Public Hearing to order at 6:32 P.M.

### PUBLIC COMMENTS:

None.

**MINUTES: August 21, 2007 – Regular Session – Elaine Anderson moved to approve the language as written, David Hale seconded and it was so voted, 4-0.**

**August 21, 2007 – Executive Session – Elaine Anderson moved to approve the language as amended, David Hale seconded and it was so voted, 4-0.**

### OLD BUSINESS:

Notice of Intent: (continued from August 21, 2007)

Application by **WK Red Clay**, represented by Coastal Engineering, for a Notice of Intent under the Massachusetts Wetlands Protection Act M.G.L. c. 131, § 40 and the Provincetown Wetlands By-Law Chapter 12 for the property located at **21 Bradford Street Extension**, in Provincetown. The Commission has re-opened the hearing to accept and consider new information for a residential development project.

**Presentation:** David Krohn, Attorney Lester J. Murphy and Jim Watkins appeared to discuss a modified draft conservation restriction that was submitted to the Commission by the applicant.

**Commission Discussion:** The Commission had received comments from Attorney Brian J. Winner, Town Counsel, who had vetted the document. The Commission proceeded to discuss the Restriction and Easement with Mr. Watkins, Mr. Krohn and Attorney Murphy. Several changes were made that were agreed to by both the applicants and the Commission.

**Public Comment:** None.

*Elaine Anderson moved to accept the Restriction and Easement as amended, David Hale seconded and it was so voted, 4-0.*

*Elaine Anderson moved to close the public hearing and impose an Order of Conditions consisting of what had been agreed upon over the last 6 month of Conservation Commission hearings on the matter, Lynne Martin seconded and it was so voted, 4-0.*

### NEW BUSINESS:

Notice of Intent

Application by **Dr. Jerome and Lorraine Harris** for a Notice of Intent under the Massachusetts Wetlands Protection Act M.G.L. c. 131, § 40 and the Provincetown Wetlands By-Law Chapter 12. The applicant seeks to create a footpath for beach access across a deeded easement on the property located at **781 Commercial Street**, in Provincetown.

**Presentation:** Dr. Jerome and Lorraine Harris appeared to present the application. Mrs. Harris proceeded to give a brief history of the situation that led to the filing of this application. In 1992, Michael Winstanley, an abutter, requested that the Harris' move a deeded 6' pathway leading to the beach from the west side to the east side of their property. The Harris' agreed and Mr. Winstanley proceeded to put down a boardwalk, with the promise to amend both deeds to reflect the change. In 2005, Mr. Winstanley took up the boardwalk and piled the boards at the head of the path, obstructing the use of the pathway and put up a "No Trespassing" sign. Over the years, the west side pathway became overgrown with rosa rugosa, poison ivy and bayberry bushes. According to his attorney, Mr. Winstanley didn't have to maintain the east side pathway and should, in fact, block it, as the Harris' could claim adverse possession. In 2006, Mr. Winstanley informed the Harris' that they could remove the barrier and use the east side pathway, but insisted that the Harris' must ask his permission each season to use it. In 2007, the pathway was again closed because the Harris' contested the proposed building project on Mr. Winstanley's property. The Commission subsequently granted the Harris' daughter, who appeared before them, to clear the west side pathway. They assured the Commission that the clearing would only involve pruning. Mr. Winstanley appealed that decision, claiming that the Harris' needed to file a Notice of Intent in order to perform the pruning work. The DEP requested that a Notice of Intent be filed for the project.

**Public Comment:** A letter from E. James Veara, representing Michael Winstanley in opposition to the application was in the file. The letter alleges that the Harris' application is incomplete, inadequate and vague. The letter further requests that the Commission impose the same conditions on the Harris' project that were imposed on Mr. Winstanley's when he was planning the building project on his property, including making the footpath in question elevated in order to accommodate any sand migration. Bob Fodor, an abutter, spoke in support of the application. Craig Lyon also spoke in support of the application.

**Commission Discussion:** The Commission questioned Dr. and Mrs. Harris. There is no DEP number for this project yet. The Commission would suggest that the Harris' contact Brian Carlson after the work is completed in order confirm that what the Commission has requested of them has been implemented.

*Elaine Anderson moved to approve the application for a Notice of Intent, which includes a request to remove a dead tree, and prune rosa rugosa and bayberry bushes in order to re-establish a footpath on the west side of the property located at 781 Commercial Street, using a stone marker and stake to mark out that footpath, with the condition that the Conservation Agent inspect the footpath when the work has been completed, Lynne Martin seconded and it was so voted, 4-0. The approval will also be contingent upon the issuance of a DEP number and no opposition from DEP.*

### Notice of Intent

Application by **Ronald Chapman**, represented by Coastal Engineering, for a Notice of Intent under the Massachusetts Wetlands Protection Act M.G.L. c. 131, § 40 and the Provincetown Wetlands By-Law Chapter 12. The applicant seeks to install a bulkhead for shorefront protection at the property located at **157A Commercial Street**, in Provincetown.

**Presentation:** Roy E. Okurowski, of Coastal Engineering, appeared to present the application. The applicant seeks to build a 3' high vinyl and steel bulkhead on the beach in front of the property for erosion control.

**Public Comment:** Patricia Rieker, representing the West Beach Condominium Association, read a letter opposing the application. Patrick Buben and Eileen Roland, both abutters, also spoke against the application.

**Commission Discussion:** The Commission questioned Mr. Okurowski. Mr. Okurowski offered to submit an alternatives analysis to the Commission. The Commission also discussed hiring a consultant to advise and further inform them about the issues raised by the application. Brian Carlson will research the issue of hiring a consultant for the Commission. The applicant requested a continuance to the October 2, 2007 hearing.

*Elaine Anderson moved to accept the request for a continuance until the October 2, 2007 hearing,*

*David Hale seconded and it was so voted, 4-0.*

**Request for Determination of Applicability**

Application by **Richard Siclari** and **William Ritzi**, represented by **Kimball Designs**, for a Determination of Applicability under the Provincetown Wetlands By-Law, Chapter 12 of the Provincetown General By-Laws, and under the Massachusetts Wetland Protection Act M.G.L. c. 131, § 40. The applicant seeks a determination on the following scope of work: remove an existing roof and framing; reconstruct and add one shed dormer; increase roof pitch from 10" in 12" to 14" in 12"; add a second floor to have knee walls of 2' 0" in height; install seamless gutters along drip edges; increase overall height from average grade of 15' 11" to 23' 3"; replace all existing windows and add windows per plan; add roof deck, to be 8' 10" by 16' 1", at south elevation at the property located at **523**

**Commercial Street, Unit 2**, in Provincetown.

**Presentation:** Neal Kimball and Richard Siclari appeared to present the application.

**Public Comment:** There was 1 letter in the file from several abutters to the west of the property with concerns about the proximity of the project to their property and concerns about the movement of construction materials and the control of construction debris at the site.

**Commission Discussion:** The Commission questioned Mr. Kimball and Mr. Siclari.

*Elaine Anderson moved to grant a Negative #3 Determination with the Standard Order of Conditions, including no heavy equipment on the beach and no storage of construction materials on the beach, Lynne Martin seconded and it was so voted, 4-0.*

**Ratification of Enforcement Order**

The Commission will take up the ratification of an enforcement order under the Massachusetts Wetlands Protection Act M.G.L. c. 131, Section 40 and the Provincetown Wetlands Protection By-Law Chapter 12 issued to **Greg Morris, Sr.** for the unauthorized removal of vegetation within a buffer to a coastal dune and within the local 100' buffer to land subject to coastal storm flowage at the property located at **2 Commercial Street**, in Provincetown. Brian Carlson issued the Enforcement Order on behalf of the Conservation Commission.

**Presentation:** Nick Brown, agent for the trustee of the property, and Rose Kennedy, agent for the trustee of the property and for Mr. Morris, appeared to discuss the Order. The trustee sought to restore the condition of the property to what it was in 1959, when the current house was built, and did not have knowledge that what was being done was contrary to the local wetlands regulations. Mr. Brown and Ms. Kennedy stated that only invasive species of plants, which had moved in and replaced the original plantings on the property, were being cleared.

**Commission Discussion:** The Commission questioned Mr. Brown and Ms. Kennedy. The Commission requested that a Notice of Intent be filed with the Commission in order to complete the work at the site. The application should be filed by September 25, 2007 in order to be heard by the Commission at the October 16, 2007 hearing. The Commission also discussed the imposition of a fine against the trustee of the property for the illegal clearing that had already been done.

*David Hale moved to ratify the Enforcement Order for the property located at 2 Commercial Street, requiring that a Notice of Intent be filed on or before September 25, 2007 and to levy a fine of \$200.00 against the trustee of the Murchison estate, Elaine Anderson seconded and it was so voted, 4-0.*

**APPOINTMENTS:**

The CPC appointment is still pending. Brian Carlson cannot fill the seat on an interim basis. Elaine Anderson will look into having the meetings moved to the evening hours.

**ANY OTHER BUSINESS:**

Blueberry Avenue: There is debris blowing around the property. Brian Carlson will investigate.

Lynne Martin raised the issue of pruning on Ted Malone's property.

Brian Carlson met with Michael and Joan O'Neill concerning the Oceanside Condominiums and suggested that the Condominium association come up with a management plan for beach grass.

**ADJOURNMENT:** *Elaine Anderson moved to adjourn at 10:00 P.M. and it was so voted unanimously.*

These minutes were approved by a vote of the Conservation Commission at their meeting on \_\_\_\_\_, 2007.

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2007  
Dennis Minsky and Elaine Anderson, Co-Chairs