

PROVINCETOWN CONSERVATION COMMISSION
JUDGE WELSH ROOM
February 6, 2018
6:00 P.M.

Members Present: Alfred Famiglietti, Nathaniel Mayo, Robert Brock and Kiah Coble.

Members Absent: Gregory Howe (excused).

Others Present: Tim Famulare, Conservation Agent.

Chair Alfred Famiglietti called the meeting to order at 6:05 P.M.

1) **Work Session:**

a) Proposed revisions to Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law: Mr. Famulare explained that the process includes Commission consideration and recommendation of the revisions, followed by an approval by Town Meeting. He reviewed the proposals, including changes in section 12-2, the classification of resource areas, and in section 12-2-5. The changes specifically address the validity of enforcing performance standards in buffer zones to flood plains. He explained that this brings the by-law into conformity with current practice with respect to this jurisdiction. The Commission questioned Mr. Famulare and discussed the revisions. He proposed another work session during the first meeting in March and asked that the Commissioners review the by-law and return to the next hearing with any questions or comments for changes. The Commission would then have a series of work sessions to do a more extensive review and revision. The final revisions would be considered at the 2019 Town Meeting. He reviewed the changes to section 12-5-2, regarding publishing legal notices published in the Banner, bringing the section into conformity with current practice.

Nathaniel Mayo moved to amend section 12-1 to strike the second occurrence of the phrase, 'erosion and sedimentation control', Kiah Coble seconded and it was so voted, 4-0.

There was no public comment on the proposals.

Nathaniel Mayo moved to approve the amendments to the Wetlands Protection By-Law as proposed, Robert Brock seconded and it was so voted, 4-0.

Nathaniel Mayo moved to consider agenda items #5-7 of the Public Hearing out of order, Robert Brock seconded and it was so voted, 4-0.

5) **Emergency Certification:**

a) **CON-18-055 1 Commercial Street**

Ratification of an **Emergency Certification** issued to **Robert B. Our Company** on behalf of **Provincetown Inn LP**, dated January 19, 2018, for repairs to the foundation wall and footing system damaged by the January 4, 2018 winter storm and to replace displaced soils in the immediate impacted area. Work to take place within Land Subject to Coastal Storm Flowage and the 100-foot Buffer Zone to a Coastal Beach. Mr. Famulare reviewed the topic and said he was expecting the filing of a Notice of Intent for the second meeting in February, after the 30-day certification. He and Mr. Famiglietti had conducted a site visit yesterday and they had concerns about some of the erosion control measures that had been specified in the conditions. He has called the project representative to ask that the situation be corrected.

Nathaniel Mayo moved to ratify the Emergency Certification CON-18-055 for repairs to the foundation wall and footing system and to replace displaced soils in an impacted area at the property located at 1 Commercial Street, Robert Brock seconded and it was so voted, 4-0.

6) **Conservation Agent Update:**

Massachusetts Association of Conservation Commissions, Annual Environmental Conference, March 3, 2018, College of the Holy Cross, Worcester, MA. Mr. Famulare informed the Commission about the conference and to let him know if anyone wants to register for the workshops.

7) **Approval of Minutes of January 16, 2018:** The minutes were tabled.

Chair Alfred Famiglietti adjourned the Work Session and called the Public Hearing to order at 6:30 P.M.

2) **Public Comments:**

None.

3) **Public Hearings:**

a) CON-18-058 **46 Shank Painter Road**

Request for Determination of Applicability by **Joseph and Jane Taves** pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law to construct access steps, set into grade, from street side of property into rear yard, through existing retaining wall. Work to take place within Bordering Land Subject to Flooding and Buffer Zone to a Pond and a Bordering Vegetated Wetland.

Presentation: Gordon Peabody, of Safe Harbor Environmental, appeared to present the application. He offered to answer any questions about the project, which involves installing a private access to the property from the road to the yard, a requirement of a conveyance at the property. The access steps would be set into grade from the street side of the property through an existing retaining wall. Construction material would include landscape timbers and stone. All activity is proposed for the street side of the property and will be performed by hand. Any material removed will be taken off site for disposal. The Commission will be notified in writing prior to the start and following the completion of the project.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Peabody. Mr. Famulare recommended the issuance of a Negative #3 Determination and he reviewed draft conditions.

Nathaniel Mayo moved to issue a Negative #3 Determination pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law to construct access steps, set into grade, from street side of property into rear yard, through existing retaining wall, CON-18-058, at the property located at 46 Shank Painter Road subject to the conditions as recommended by the Conservation Agent, Alfred Famiglietti seconded and it was so voted, 4-0.

b) CON-18-059 **66 & 72 West Vine Street**

Request for Determination of Applicability by **Dave Krohn** pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law to confirm the delineation of a Bordering Vegetated Wetland. Mr. Famulare informed the Commission that the applicant had requested to withdraw the application without prejudice and will submit an Abbreviated Notice of Resource Area Delineation. An abutter to the property asked a question about the withdrawal. Mr. Famulare explained the distinction between the Request for a Determination of Applicability and an Abbreviated Notice of Resource Area Delineation.

Mr. Famiglietti announced that the Public Hearing for a Notice of Intent for the project located at 99 Commercial Street, CON-18-060, will not be held due to an error in abutter notification. It will be re-scheduled for the hearing of February 20th at 6:30 P.M.

c) CON-18-056 **315A Commercial Street (Surf Club)**

Notice of Intent by **Leonard Enos, Jr.** pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law for renovations to the existing structure to include construction of two dormers on the second floor, construction of a wooden deck and stairs to the second floor, construction of a covered egress stairway, installation of a new grease trap and the abandonment of an existing grease trap. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to a Coastal Dune and a Coastal Beach.

Presentation: William N. Rogers, II, Paul Shea, Leonard Enos and Attorney Lester J. Murphy appeared to present the application. Attorney Murphy said that the proposed project will include the renovation, reconstruction and expansion of the structure on the site. The end result will be a more attractive building and a more economically feasible property. Mr. Shea said that most of the work will be within the footprint of the existing structure, in areas already disturbed and a new, larger grease trap will be installed in the ground just beyond the structure, replacing a smaller, existing one. He said that the DEP has issued a file number and has no comments about the project. He mentioned that Japanese knotweed growing on the existing coastal dune and that the applicant is willing to endeavor to eradicate it and plant beach grass in its stead. There will be no site alterations to the coastal waters, the coastal beach or the coastal dune, other than the beach grass planting proposal. He briefly reviewed the process for abandoning an existing grease trap. Mr. Rogers explained why a new grease trap had to be installed, including the initial improper installation of the existing trap and to accommodate the proposal to add restaurant seating. He said that two new dormers would be installed and a new wooden deck and stairs on the second floor and the construction of a new covered egress stairway. All construction access will be from Commercial Street and MacMillan Pier. Mr. Enos briefly reviewed the floor plan for the restaurant.

Public Comment: None.

Commission Discussion: The Commission questioned Attorney Murphy, Mr. Shea and Mr. Rogers. Mr. Famulare reviewed draft conditions for the project.

Nathaniel Mayo moved to grant the Notice of Intent pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law for renovations to the existing structure to include construction of two

dormers on the second floor, construction of a wooden deck and stairs to the second floor, construction of a covered egress stairway, installation of a new grease trap and the abandonment of an existing grease trap, CON-18-056, at the property located at 315A Commercial Street with the conditions as discussed, Robert Brock seconded and it was so voted, 4-0.

d) **CON-18-057 177 Commercial Street**

Notice of Intent by **Our Moms, LLC** pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law to construct a deck addition in the rear of an existing building and to remove existing propane tank and generator. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Dune and a Buffer Zone to a Coastal Beach.

Presentation: Tim Klink, Tim Brady and Irv Morgan appeared to present the application. Mr. Brady explained the project, which involves the construction of a deck, constructed on helical anchors 6-7' off the ground, in the rear, or southeast waterside, of the building. The deck and its construction will have no adverse effects on the flood zone or the coastal dune, He said that the area of the proposed deck construction is a coastal dune and within flood zones, however the coastal dune isn't functioning as one because of a stone revetment in the area. An existing propane tank on a concrete slab and a generator will also be removed from the site. He said that the applicant was willing to undertake improvements to onsite drainage and erosion control by re-grading the area. He is proposing the removal of non-indigenous vegetation and the planting of beach grass on the site. The project does not yet have a DEP File number and he requested a continuance to the February 20, 2018 Public Hearing, however he welcomes any comments the Commission might have about the project.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Brady and Mr. Klink. A sectional view drawing and a planting plan was requested to be submitted.

Nathaniel Mayo moved to grant the request to continue CON-18-057 to the February 20, 2018 Public Hearing at 6:30 P.M., Robert Brock seconded and it was so voted, 4-0.

e) **CON-18-060 99 Commercial Street**

Notice of Intent by **Sioban Carew** pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law for the construction of a pile-supported deck. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Dune, a Coastal Beach and a Buffer Zone to a Coastal Beach. This matter is postponed to the February 20, 2018 Public Hearing at 6:30 P.M. due to an error in abutter notification. *Nathaniel Mayo moved to postpone CON-18-060, 99 Commercial Street, to the Public Hearing of February 20, 2018 at 6:30 P.M., Kiah Coble seconded and it was so voted, 4-0.*

4) **Approval of Plans**

a) **CON-17-129 – 76R Bayberry Avenue (Coastal Acres Campground)**

Pre-construction approval by the Conservation Commission of design plans, operation and maintenance plans and other plans and protocols pursuant to the Final Order of Conditions (DEP

File No. SE 058-0563) for the utility infrastructure project at the Coastal Acres Campground, issued on August 28, 2017.

Presentation: Attorney Lester J. Murphy, Gordon Peabody and Chris Wise appeared to present the plans for the project to upgrade utilities and providing water, electrical and sewer connections at each campsite. Attorney Murphy said that Mr. Peabody will be serving as the Town's agent, protecting the concerns of the Commission while overseeing the project. Mr. Wise, his assistant Aydra and Mr. Peabody have created an operations and maintenance procedures guide for the project. He said that the engineering work is being performed and the applicant wants to start working to obtain permits for the project. The applicant will be returning to the Commission for an update on the status of the project and at the end of the project when an as-built will be submitted to the Commission for its review.

Commission Discussion: The Commission questioned Attorney Murphy, Mr. Peabody and Mr. Wise. The location of 'No Disturb' signs was discussed.

Kiah Coble moved that the Commission approve the revised plan for 76 R Bayberry Avenue, CON-17-129, to show the location of the 'No Disturb' signs at the present landward limit of wetlands vegetation on the pond side of the existing sites or the landward edge of the vegetated buffer to be planted 10' from the pond's edge, whichever is greater from the pond, and pursuant to the Order of Conditions, and to present language for rules and regulations to be given to campers regarding the 'no disturb' zone and access to the pond and wetlands, Nathaniel Mayo seconded and it was so voted, 4-0.

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

ADJOURNMENT: *Nathaniel Mayo moved to adjourn the Public Hearing at 7:45 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2018
Alfred Famiglietti, Chair