

**PROVINCETOWN CONSERVATION COMMISSION**  
**JUDGE WELSH ROOM**  
**February 20, 2018**  
**6:30 P.M.**

**Members Present:** Alfred Famiglietti, Nathaniel Mayo, Robert Brock, Kiah Coble and Gregory Howe

**Members Absent:** None.

**Others Present:** Tim Famulare, Conservation Agent and Ellen C. Battaglini, Permit Coordinator.

Chair Alfred Famiglietti called the meeting to order at 6:36 P.M.

1) **Public Comments:**  
None.

2) **Public Hearings:**

a) CON-18-057 **177 Commercial Street** (*continued from the meeting of February 6, 2018*)  
**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 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 Brady, of East Cape Engineering, Tim Klink, of Coastal Custom Builders, and Irv Morgan, proprietor of Bayside Betsy's, appeared to present the application. Mr. Brady reviewed the revised site plan, which includes the installation of a drainage swale. The site will be re-vegetated with bayberry and beach grass as shown on the plan. He said that the plan had originally included the removal of a propane tank, however the tank will remain and only the generator will be removed. The deck will be extended 6' west to allow a new access from the main dining room. He added that all cutting of material would be done off site.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Messrs. Brady and Klink. Mr. Famulare reviewed draft conditions.

*Nathaniel Mayo moved to approve Notice of Intent by Our Moms, LLC, CON-18-057, 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 generator at the property located at 177 Commercial Street subject to the draft Order of Conditions, Robert Brock seconded and it was so voted, 5-0.*

b) ENFCON-18-003 **183-185 Commercial Street**

**Enforcement Order and After the Fact Administrative Review** application 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 replacement of the existing patio in front of Bubala's by the Bay restaurant and the installation of a sewer connection. Work to take place within a Buffer Zone to a Coastal Beach and Land Subject to Coastal Storm Flowage.

**Presentation:** Oriana Conklin, representing the owners of the property, appeared to present the application. She apologized on behalf of the owners who were not aware that they needed an administrative approval by the Commission before starting the work. The property is in the process of hooking up to the Town sewer and resurfacing the patio area, which is tar, never had adequate drainage. The area will be replaced with pervious driveway stone and will be sloped away from the street and towards the parking lot.

**Public Comment:** None.

**Commission Discussion:** Mr. Famulare reviewed draft conditions for the work.

*Nathaniel Mayo moved to ratify the Enforcement Order, ENFCON-18-003, and to approve the Administrative Review Determination with the draft conditions 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 replacement of the existing patio in front of Bubala's by the Bay at 183-185 Commercial Street, Gregory Howe seconded and it was so voted, 5-0.*

c) 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. Mr. Famiglietti briefly reviewed the history of the project, which had been previously approved by the Commission, however upon appeal by an abutter to the property, the Department of Environmental Protection overturned the decision in December. In its superseding order of applicability, the DEP required that the applicant re-file with a Notice of Intent and that the Commission review the case using specific guidelines as outlined in the order. The Commission will need to determine whether the applicant has met the requirements of the order and, if so, reach a decision that holds up to the scrutiny of the DEP.

**Presentation:** Michela Carew-Murphy, the general manager of the restaurant on the premises, Attorney Ed Patten, representing the applicant, William Ashmore, a builder, and David Bennett and Kanaya Lala, both engineers, appeared to present the application. Attorney Patten reviewed the project, which involves the reconstruction of a decking system between the property and an abutting property. The deck has historically existed and has allowed seating for outdoor dining for the restaurant. In 2015, the decking system was removed, however, he noted, not by the applicant. The stamped, fully-engineered plans submitted by the applicant include an indication of the temporary staging area and more detail of the proposed deck. A construction sequence was included as well as a mechanical drawing indicating the components of the supporting understructure of the deck, a cross-section of the decking and a boundary of the coastal beach resource area. Attorney Patten argued that this complies with the requirements of the DEP's superseding determination. He said that the applicant has defined the resource area and contended that the interests of the Wetland Protections Act have been protected. Mr. Lala reviewed the structure of the decking system.

**Public Comment:** Dave Crispin, civil engineer and land surveyor with the BSC Group, speaking at the request of an attorney for an abutter, gave his opinion of the issue being discussed, including his concerns regarding whether the deck would be structurally stable and able to survive uplift forces from the potential wave action resulting from a major storm. Ian Leahy asked a question about the height of the proposed deck to which Mr. Bennett responded that FEMA

allows for the reconstruction or the renovation of existing structures that are below flood zone elevation and Mr. Ashmore indicated that the hardware had been upgraded and the plan re-engineered and improved based upon Mr. Crispin's calculations and structural evaluations regarding the deck. T.J. Walton made a personal statement about the flooding issues in Town and the removal of the deck, Jon Sinaiko asked a question about the old deck, including how long it existed and how it was engineered, Romolo Del Deo and Jennifer Cabral spoke in support of the application and Ms. Cabral noted that she thought there were more than 100 people in the audience, Joe Centrella commented about how the deck would perform in a storm event, Rachel White expressed her concern about the effects of future tidal surges, Louise Venden commented about the Commission's process and Phillip Cozzi commented about his observed effects on the property of the storm surge in January. Nathan Harkins had a question about conditions for decks in other parts of Town. Mr. Famulare said that he had at gotten at least 50-60 emails in support of the application and read a sampling of them.

**Commission Discussion:** The Commission questioned Attorney Patten, Mr. Ashmore, Mr. Bennett and Mr. Lala. The Commission discussed the issues raised. Mr. Famulare reviewed proposed conditions and briefly reviewed the mission of the Commission and what falls into it jurisdiction. He requested that if the Commission approved the revised plan, the applicant would need to submit a final plan with revisions shown and generated by computer software, not hand-drawn, and specify the elevation of the deck as 9.12'. He commented about the FEMA regulations, which are enforced by the Building Dept., regarding decks. He said that the conditions he has drafted were similar to the conditions issued by the Commission when the deck application for a Determination of Applicability was reviewed. The Commission discussed the draft conditions with the applicant, specifically #16, related to the proposed removal of deck sections and the secure storage of those sections indoors as an on-going maintenance condition. Mr. Mayo suggested striking post-construction condition #16.

*Nathaniel Mayo moved to revise the order of conditions by striking post-construction condition #16, Robert Brock seconded and it was so voted, 4-0-1 (Alfred Famiglietti abstained).*

*Nathaniel Mayo moved to approve 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 the construction of a pile-supported deck at the property located at 99 Commercial Street, CON-18-060, with the Special Conditions as amended, Robert Brock seconded and it was so voted, 5-0.*

3) **Approval of Minutes of January 16, 2018 and February 6, 2018:** The minutes were tabled until the March 6, 2018 Public Hearing.

4) **Information:**

Administrative Review Applications by Agent: Mr. Famulare briefly reviewed the projects.

a) **CON-18-061 320R Bradford Street** – Fill ruts and potholes in driveway easement along Old Colony Nature Path.

b) **CON-18-062 571 Commercial Street** – Fill an abandoned septic tank.

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

**ADJOURNMENT:** *Nathaniel Mayo moved to adjourn the Public Hearing at 8:30 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2018  
Alfred Famiglietti, Chair