

PROVINCETOWN CONSERVATION COMMISSION
JUDGE WELSH ROOM
September 18, 2018
6:30 P.M.

Members Present: Alfred Famiglietti, Nathaniel Mayo, Kiah Coble and Carolyn Clough.
Members Absent: Robert Brock (excused) and Joseph Cooper (excused).
Others Present: Tim Famulare, Conservation Agent, and Ellen C. Battaglini, Permit Coordinator.

Chair Alfred Famiglietti called the Public Hearing to order at 6:34 P.M. He reminded those present that the duty and mission of the Commission was to uphold the state Wetlands Protect Act and the Town's Wetlands Regulation, Chapter 12.

1) **Public Comments:**

None.

2) **Public Hearings:**

a) CON-19-012 **51 Commercial Street** (*to be postponed from the meeting of September 4, 2018*)

Request to Amend an Order of Conditions (DEP File No. SE 058-0576) filed by **Jay Anderson/53 Commercial Provincetown, 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 relocate proposed buildings, previously approved under the current Order of Conditions, in order to move the rear building outside of Chapter 91 jurisdiction and to reconfigure associated decks, walks, patios and other site features around the building relocation. Work to take place within Land Subject to Coastal Storm Flowage and the Buffer Zone to a Coastal Beach.

Presentation: Attorney Lester J. Murphy, representing the applicant, and Stacy Kanega, of Coastal Engineering, appeared to present the application. Attorney Murphy provided background about the project. The Commission had approved an Order of Conditions in 2017 allowing the relocation, renovation and additions to the shore-side building at 51 Commercial Street. The structure was located in the velocity zone and would have required a lift of about 5'. The proposal approved by the Commission was to take it out of the velocity zone and allow a smaller lift of the building. The Department of Environmental Protection subsequently determined that the proposal would require the building to be moved out of the Chapter 91 jurisdiction. Consequently, Attorney Murphy said, the plans were then revised and those now before the Commission show the structure moved 21' farther away from the resource area, out of the Chap. 91 jurisdiction. He argued that this was a better alternative. Ms. Kanega reviewed the proposal that will bring the existing buildings on the property at 51 and 53 Commercial Street into conformity with the 8th edition of the State Building Code. She said that no alterations to the resource area adjacent to the back deck at 51 Commercial Street are being proposed. She reviewed the sketch plan showing the master plan for both properties, indicating a new rear building location, different than the location approved by the Commission in 2017. A shack and pergola originally proposed to be sited on 51 Commercial Street will be moved to 53 Commercial Street to accommodate the new location of

the rear building. Ms. Kanega said that the building will have a decreased footprint in the 50' buffer, but an increased footprint in the 100' buffer zone and the amount of disturbance will be the same as previously proposed improvements on the site. External site features, including decks, driveway, patio and boardwalks, will be re-configured around the two buildings and will meet the original design intent. The rear deck and its framing will be reconstructed in place on top of the existing foundation and bulkhead and should not require access from the coastal beach. The Chap. 91 license will be updated to reflect the new location of the rear building and the existing deck that will remain. There was no damage to the bulkhead and foundation of the deck during last winter's storms. She reiterated that there are no proposed alterations to the coastal beach system wetland resource adjacent to the deck nearest the Harbor. As a construction update on the work being done on the site, she said that the front building has been lifted onto a foundation and is currently being renovated. She referenced in her report to the Commission that portions of the existing footers of the rear building foundation would be used for the relocated structure, however the applicant had agreed to the condition that what material cannot be used for the relocated structure will be removed and not left in place and buried. This will be done in consultation with Town staff to preserve any integrity of the existing footers. She argued that the new proposed changes will less of an impact on the resource areas and will still meet the relevant performance standards pursuant to the WPA and the local wetland regulations.

Public Comment: None.

Commission Discussion: The Commission questioned Attorney Murphy and Ms. Kanega. Based upon a question from Mr. Famulare, Ms. Kanega explained how the landward edge of the coastal beach had been delineated since this area had been eroded by last winter's storm activity. Mr. Famulare reviewed the definition of a coastal beach and then the draft conditions, noting revised dates and documents, and discussed the delineation with Ms. Kanega and the Commission. Draft condition #3 was revised based upon the conversation with the applicant. Attorney Murphy recommended that the removal of the footings take place after consultation about those footings with the contractor and Town staff, including Town building officials and the Conservation Agent, in order to preserve the integrity of the remaining foundation. Mr. Famulare revised the condition to suggest that after the consultation with Town staff, only the footings that are not essential to the integrity of the new foundation shall be removed. He requested that the applicant submit a revised planting plan, consistent with Special Condition #17 in the original Order of Conditions, based upon the new location of the rear building.

Kiah Coble moved to approve the Request to Amend an Order of Conditions (DEP File No. SE 058-05), CON-19-012, 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 relocate proposed buildings, previously approved under the current Order of Conditions, in order to move the rear building outside of Chapter 91 jurisdiction and to reconfigure associated decks, walks, patios and other site features around the building relocation at the property located at 51 Commercial Street, with the revised Order of Conditions as reviewed, Carolyn Clough seconded and it was so voted, 4-0.

b) CON-18-088 **153 Commercial Street** (continued from the meeting of September 4, 2018)

Notice of Intent filed by the **153 Commercial-6, 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 for the construction of a vinyl bulkhead to replace an existing timber retaining wall and reconstruction of access stairways and a lower deck. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach and a Buffer Zone to a Coastal Beach.

c) CON-18-089 **151A Commercial Street** (*continued from the meeting of September 4, 2018*) **Notice of Intent** filed by the **Joseph Smith and Scott A. Popkowski**, 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 vinyl bulkhead to replace an existing timber retaining wall and the reconstruction of access stairways and a walkway. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach and a Buffer Zone to a Coastal Beach. Alfred Famiglietti recused himself from both cases because of a conflict of interest. Nathaniel Mayo, who certified that he had watched the previous hearing session of the matters, chaired the discussion of the two cases, which are being heard together.

Presentation: Attorney Jamie Madea, representing the applicants, and Jay Norton, of Coastal Engineering, appeared to discuss both applications. Mr. Norton reviewed the project for both properties. The project includes constructing a new vinyl bulkhead along the width of the property to replace damaged timber retaining walls seaward of the existing deck and walkways. Since the last hearing of the project, he said that he had been working with Greg Berman, a Coastal Processes Specialist, and Mr. Famulare for design locations and suggestions for improvements in the design. He reviewed changes that were made to the site plan based upon those consultations and provided reasoning regarding the proposed placement of the vinyl bulkhead. He stressed the importance of coordinating the area's protection to prevent catastrophic loss of structures and damage to the environment. One of the recommendations from the consultation was to reposition the bulkhead so it was more of a contiguous structure. This resulted in a landward retreat on 151A Commercial Street to the maximum extent practicable due to the existing 'bigfoot' footings that support a multi-level deck attached to the dwelling. In addition, there was a recommendation to move the wall landward so as not to inhibit the eroding landform that exists on the location. The bulkhead would then continue in a straight line to the northeast of 153 Commercial Street where it would be sited parallel with the contours of the beach and diverge into where the existing timber retaining wall on the property line between the two properties is located. The coastal beach stretches to the foundation of the dwelling at 153 Commercial Street and is subject to tidal action. The proposed bulkhead position will allow for the re-establishment of a soft solution buffer area, which does not now exist, between the proposed bulkhead and the dwelling. This buffer zone, comprised of compatible sand material and beach grass, will afford a separation from over-wash and will help create a habitat area. The proposed position of the bulkhead will also be in line with adjacent structures at 149A Commercial Street and is designed to minimize 'end scour' erosion by the implementation of scour protection below the beach and a drift fence transition to help trap sand and minimize wave action at 151A Commercial Street and 153 Commercial Street. A drift fence will be installed at 151A Commercial Street and the drift fence location at 153 Commercial Street will be preserved so a continuous line of fencing to aid in trapping sand and minimizing wave impact on the bulkhead will be maintained. All affected areas will be returned to pre-construction conditions. Mr. Norton explained the location and structure of the bulkhead, the second tier fencing and how the project would affect the properties to the west. He said that the purpose of the second tier fencing would be to dissipate wave energy and capture aeolian material.

Public Comment: Laura Rood and Lisa Culliver, direct abutters to the two properties, spoke in support of the project and would like a similar project at the 149A Commercial Street property.

Commission Discussion: The Commission questioned Mr. Norton. The Commission discussed if a white pine on 151A Commercial Street could be saved. Attorney Madea suggested that if removed during construction, to the extent practicable and as determined by the Conservation Agent, the applicant should also plant a sustainable native tree in proximity to the location of the existing white pine on the applicant's property. Mr. Famulare reviewed the draft conditions, which are different for each property, and discussed the proposed five-year quarterly reporting requirements on any erosion caused by the new bulkhead for abutting properties with Attorney Madea and the Commission. The question centered on whether the applicants should be responsible for informing their abutters about the reports to be generated or if it would be the responsibility of abutters on their own to check the public record for the reports. It was suggested that the applicants should be on notice that the Commission could hold hearings on the erosion reports. Revisions regarding Condition #12 were made. Mr. Famulare said that a joint report for all properties would be preferred. He suggested an annual presentation to the Commission updating any erosion issues in the area. After more discussion of the issue, it was agreed that upon receipt of four quarterly reports after the completion of the project, the applicants, either individually or collectively with other parties similarly situated, shall present the findings of the reports, and appear annually thereafter, at the discretion of the Commission.

Kiah Coble moved to approve Notice of Intent, CON-18-088, 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 vinyl bulkhead to replace an existing timber retaining wall and reconstruction of access stairways and a lower deck at the property located at 153 Commercial Street, with the conditions as amended and discussed with the Commission, the applicant and the public, Carolyn Clough seconded and it was so voted, 3-0.

Kiah Coble moved to approve the Notice of Intent, CON-18-089, 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 vinyl bulkhead to replace an existing timber retaining wall and the reconstruction of access stairways and a walkway at the property located at 151A Commercial Street, with conditions as amended and discussed by the Commission, the applicant and the public, Carolyn Clough seconded and it was so voted, 3-0.

d) CON-19-006 **106 Bradford Street (Bas Relief Park)** (continued from the meeting of September 4, 2018)

Notice of Intent application by **Ray Dunetz Landscape Architecture**, on behalf of the **Town of Provincetown** 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 landscaping and site improvements, including Bas Relief restoration. Work to take place within Land Subject to Coastal Storm Flowage. Alfred Famiglietti, Kiah Coble and Carolyn Clough sat on the case.

Presentation: Jay Norton, of Coastal Engineering, appeared to discuss the application. Mr. Famulare reviewed what had transpired since the last hearing of the matter in regard to the DEP issue concerning a stormwater management report being issued. He said that the DEP had deferred to the decision of the Commission that a stormwater management report is not needed for this project. There are certain exemptions for those reports. Mr. Famulare said he added a

condition to the Order requiring a second litter bag location, but not another trash receptacle as discussed at the previous hearing. He also added a finding that due to the previous development of the site and the fact that the proposed project will not increase impervious surface area or significantly re-grade the site, a stormwater report was not necessary.

Kiah Coble moved to approve the Notice of Intent, CON-19-006, 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 landscaping and site improvements, including Bas Relief restoration at the property located at 106 Bradford Street (Bas Relief Park) with the conditions as discussed, Carolyn Clough seconded and it was so voted, 3-0

e) CON-19-007 **381-383 Commercial Street** (*continued from the meeting of August 21, 2018*)

Notice of Intent filed by the **Bull Ring Condominium Association** 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 proposed pile addition for structural support of a building and deck. Work to take place within a Coastal Beach and Land Subject to Coastal Storm Flowage. Nathaniel Mayo, who certified that he had watched the previous hearing session of the matter, sat on the case along with Alfred Famiglietti and Carolyn Clough.

Presentation: Jay Norton, of Coastal Engineering, and Ken Okun, a Trustee of Bull Ring Wharf Condominium Association, appeared to discuss the application. Mr. Okun said that conversations with the eastern abutters of the project had occurred and an agreement reached about the location of four pilings on the east elevation, a concern that had been voiced by them at a previous hearing. In addition, the abutters were concerned about the fate of the sand that would be removed during construction and the potential change in grading on the beach. Mr. Norton reviewed several mechanisms to save the sand removed during the pile installation in order to re-use it to re-grade the beach. He was not in favor of implementing any of them. Mr. Okun reviewed the locations of the four pilings in question, one of which will be inside the structure with the other three close to the eastern property line, on a revised site plan. Mr. Norton said that a common condition of such a project is to restore the area to pre-construction conditions, however he was willing to accept any additional conditions that the Commission thought reasonable to address the concern of the abutter about the sand retention issue. He said that the total amount of sand that would be removed would fit into a pick-up truck, about 3 cubic yards, and further, that in order to close out the project and obtain a Certificate of Compliance, the engineer has to certify that the conditions are in substantial compliance with the design and final plans for the project.

Public Comment: Ronnie Szeszler, an abutter, spoke about her concerns regarding the sand, the equipment to be used for the work timeline for construction and the agreement with the applicant.

Commission Discussion: The Commission questioned Mr. Norton and Mr. Okun. The Commission discussed the sand retention issue with Mr. Norton and Ms. Szeszler and agreed that the options suggested were not practical. Mr. Famulare reviewed his draft conditions, in particular draft condition #10 that relates to the sand issue. It was discussed and amended by the Commission to read, "Any disturbance of the surface of the beach during the project shall be returned to its original, pre-construction contours within the limit of work and along the access to the site." The type of machinery to be used for the installation of the helical piles was discussed. Condition #11 about work during tidal height fluctuations was reviewed and revised. Vehicles cannot be left on the site because of entrapment by the tide, however work can continue until such

time as equipment can be safely removed. Equipment must be taken off the beach. Condition #11 was amended to read, “The applicant shall monitor tidal heights and shall not conduct work on the beach to the northeast of the property at times when tidewater is within 10’ of the seaward edge of the deck structure and shall not conduct work on other portions of the site when tidewater is within 10’ of active work.”

Nathaniel Mayo moved to approve Notice of Intent, CON-19-007, 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 proposed pile addition for structural support of a building and deck at the property located at 381-383 Commercial Street with the Order of Conditions as amended by staff, Carolyn Clough seconded and it was so voted, 3-0.

f) CON-19-015 963 Commercial Street, Unit 10

Request for Determination of Applicability by **Michael and Donna Piliere** 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 demolish an existing 2-bedroom cottage and construct a new 2-bedroom cottage in an existing footprint with a new screened porch and deck. Work to take place within Land Subject to Coastal Storm Flowage.

Presentation: Alan Cabral, of Felco Engineering and ARC Designs, and Michael and Donna Piliere appeared to present the application. Mr. Cabral reviewed the project that includes the construction of a proposed second floor, which necessitated the need to add a flood-compliant crawl space foundation with breakaway panels, or storm vents. Mr. Cabral submitted a new plan showing the foundation. The vents will allow floodwaters to flow under the structure. The footprint of the existing structure will remain the same.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Cabral. Mr. Famulare reviewed how the storm vents would function. He recommended a Negative #2 Determination because the location is not in a buffer zone, as with a Negative #3 Determination, but in a flood plain and a developed barrier beach. He said that there would be no negative impacts and added several conditions for the project. He said that one of the conditions would be the submission of a stamped and signed plan, when it has been finalized, before any work begins.

Nathaniel Mayo moved to grant a Negative #2 Determination, CON-19-015, 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 demolish an existing 2-bedroom cottage and construct a new 2-bedroom cottage in an existing footprint with a new screened porch and deck at the property located at 963 Commercial Street, Unit 10 subject to conditions as amended, Alfred Famiglietti seconded and it was so voted, 4-0.

g) CON-19-017 66 & 72 West Vine Street

Abbreviated Notice of Resource Area Delineation by **David Krohn, DTODD, LLC**, pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) for the delineation of a Bordering Vegetated Wetland and Wet Meadow. Mr. Famulare briefly reviewed the definition of a ‘wet meadow’, which has the same performance standards as a bordering vegetated wetland.

Presentation: David Krohn appeared to present the application. Also submitted was an environmental assessment report by Paul Shea and information concerning his delineation of the wetland. Mr. Krohn reviewed his request and the delineation process. Mr. Famulare said that

normally the application would have been submitted to DEP, which reviews the delineation, makes comments and sends those comments to the Commission, at the same time that it is submitted to the Commission. However, he said that Mr. Krohn had not done that and so DEP has not yet been able to review the delineation. Mr. Famulare said that DEP is concerned about whether this is the appropriate process, so he recommends that the Commission continue the matter until its comments and concerns are received. Mr. Krohn argued that the Commission could approve the delineation contingent upon DEP comments. He reviewed Mr. Shea's report. Mr. Krohn said that he had hired an independent geologist and wetlands delineator to review Mr. Shea's work and whose conclusion and opinion supported Mr. Shea's delineation.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Krohn and discussed whether the matter should be continued until DEP comments were received. Mr. Krohn gave the Commission background information on the property and the existing working farm, the improvements that he has made since he purchased the property and his future plans for it.

Nathaniel Mayo moved to continue CON-19-017 to the October 2, 2018 Public Hearing at 6:30 P.M., Alfred Famiglietti seconded and it was so voted, 4-0.

3) **Conservation Agent Update:**

Appointment of David Gardner as agent of the Conservation Commission.

Alfred Famiglietti moved to appoint David Gardner as an agent of the Conservation Commission, Carolyn Clough seconded and it was so voted, 4-0.

4) **Approval of Minutes of September 4, 2018:**

Alfred Famiglietti moved to approve the minutes as amended, Kiah Coble seconded and it was so voted, 3-0-1 (Nathaniel Mayo abstaining).

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

ADJOURNMENT: *Alfred Famiglietti moved to adjourn the Public Hearing at 10:00 P.M. and it was so voted unanimously.*

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2018
Alfred Famiglietti, Chair