

**PROVINCETOWN CONSERVATION COMMISSION
VIRTUAL MEETING**

April 21, 2020

6:00 P.M.

Members Present Virtually: Alfred Famiglietti, Nathaniel Mayo, Robert Brock, Oriana Conklin, and Brett McNeilly.

Members Absent: Joseph Cooper (excused).

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

Conservation Agent Tim Famulare introduced the remote participation meeting and explained how applicants and the public could participate. He reviewed the protocol of the meeting.

Chair Alfred Famiglietti called the Public Meeting to order at 6:00 P.M. and reviewed the purview of the Commission.

1) **Public Comments:** None.

2) **Public Hearings:**

a) **CON-20-056 Pilgrims First Landing Park (0 Commercial Street)**

Request for a Determination of Applicability by the **Town of Provincetown** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law for landscaping and site improvements. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to a Coastal Beach.

Presentation: Rich Waldo, Department of Public Works Director, and Ray Dunetz, of Ray Dunetz Landscape Architecture, Inc., were participating in the meeting and presented the application. Mr. Waldo said that modest site improvements in the center island of the roundabout would be undertaken, including the removal and re-setting of stone pavers, memorial benches, and the installation of a granite staircase. In addition, some existing vegetation work will take place, including stump removal, the replanting of low groundcover and the planting of two elm trees. Stockpiles for all materials and equipment will be off-site and prior to beginning the work, the contractor will submit a plan indicating the locations of such areas to the landscape architect for review and approval. The Massachusetts Department of Transportation has done recent improvements in the area such as redoing sidewalks around the perimeter of the roundabout and installing a pedestrian handrail along most of the perimeter. Some electrical improvements will be done on the island as well. Mr. Dunetz said he was working in conjunction with the Public Landscape Committee and reviewed the clean-up of the area, which is being done in anticipation of the 2020 Provincetown 400 festivities. He called the Commission's attention to the list of the salt- and drought-tolerant plantings that are being proposed.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Waldo and Mr. Dunetz. Mr. Famulare reviewed the draft Order of Conditions. He recommended that the Commission grant a Negative #2 and Negative #3 Determination of Applicability.

Nathaniel Mayo moved to grant a Negative #2 and Negative #3 Determination of Applicability for CON-20-056 pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law for landscaping and site improvements at the property located at 0 Commercial Street, Pilgrims First Landing Park, subject to the draft Order of Conditions as drafted, Robert Brock seconded and it was so voted by roll call, 5-0.

Mr. Famulare requested that the Commission authorize him to sign documents on its behalf. *Nathaniel Mayo moved to authorize the Conservation Agent, Tim Famulare, to sign documents on behalf of the Provincetown Conservation Commission, Oriana Conklin seconded and it was so voted by roll call, 5-0.*

The Commission agreed to take CON-20-061 out of order.

e) CON-20-061 6-R Browne Street (B Street Garden)

Administrative Review Application filed by the **Town of Provincetown** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, to install a tool rinse station. Work to take place within a Buffer Zone to a Bordering Vegetated Wetland.

Presentation: Mr. Famulare reviewed the request. Gordon Peabody was participating in the meeting. The request is to institute measures recommended by the Board of Health to keep gardeners safe while tending their garden plots. He said that there was a shed where common tools were available to gardeners. Mr. Famulare said that gardeners were being encouraged to bring their own tools to the site, but in lieu of that a rinse station where tools could be washed will be installed. It will be located next to a spigot and in close proximity to the shed, 60' away from the bordering vegetated wetland. He said that he had consulted with Gordon Peabody and Safe Harbor Environmental, which will be performing the work and reviewed what that would entail. Access will be through existing pathways. The area will be restored to its original condition once the rinse station is no longer needed and any soap products used will be biodegradable. The system is a simple, low profile, gravity-driven and will require minimal maintenance. The beach grass in the area will be transplanted to other restoration sites on the Outer Cape where Safe Harbor is working. He recommended the standard Order of Conditions be imposed. Mr. Peabody reviewed the project, stating that the water from the rinse station would drain vertically and into the water table that flows southward towards Shank Painter Pond.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Famulare and Mr. Peabody.

Nathaniel Mayo moved to approve the Administrative Review, CON-20-061, pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, to install a tool rinse station at the property located at 6-R Browne Street (B Street Garden) subject to the Standard Order of Conditions, Oriana Conklin seconded and it was so voted by roll call 5-0.

b) CON-20-042 361 Commercial Street (continued from the meeting of March 17, 2020)

Notice of Intent filed by **Todd Perry** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-

Law to replace existing timber pile supports beneath an existing structure, renovate and elevate an existing structure, and replace an existing deck and beach access stairs. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Dune, a Coastal Beach, and a Buffer Zone to a Coastal Dune and a Coastal Beach. Mr. Famulare said that there was a request to continue CON-20-042 to the Public Hearing of May 19, 2020 at 6:00 P.M. *Nathaniel Mayo moved to grant the request to continue CON-20-042 to the Public Hearing of May 19, 2020 at 6:00 P.M., Oriana Conklin seconded and it was so voted by roll call, 5-0.*

c) CON-20-057 397 & 401A Commercial Street

Notice of Intent filed by **Elena Hall** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law to elevate and renovate an existing residential building on a pile foundation and associated site improvements. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to a Coastal Beach.

Presentation: Ryan Campbell, the designer of the project, and Brad Malo, from Coastal Engineering, Co., were participating in the meeting. Mr. Malo reviewed the project, which is located in the FEMA-mapped AE Flood Zone with a base flood elevation of 13'. The site improvements include elevating an existing residential cottage on a new hybrid helical pile and concrete foundation and renovating the building and a harborside deck in their existing footprints. The lowest floor elevation will be above the FEMA-established design flood elevation as required by the Massachusetts State Building Code. The north and south access stairs will be reconfigured to accommodate access to the raised building. The existing cesspool(s) serving the buildings on the property, including an office/retail structure on Commercial Street, will be removed or abandoned in accordance with Mass. Department of Environmental Protection Title 5 requirements and the buildings will be connected via a pump system to the Town sewer system. All new utilities will be run underground and tie into the existing utilities near Commercial Street. Roof runoff from the cottage will be managed through the use of downspouts connected to drywells. The disturbed portions of the site are proposed to be restored in-kind to the existing conditions and elevations found on the property. A straw wattle siltation barrier and siltation fence will follow the timber bulkhead on the south elevation to prevent any disturbance or adverse impacts during the construction phase of the project. Access will be from Commercial Street. A shell surface surrounds the cottage to provide for adequate access for workers and equipment. Mr. Malo said that a native species tree will be planted on the east side of the property where an evergreen tree was previously located. Mr. Campbell said that Ms. Hall would like an evergreen tree planted, similar to the tree on the west side. No selection has been proposed, but it would be given to Mr. Famulare for approval. Mr. Campbell said that a deck was being added to accommodate 3 stairs for access to the raised structure and did not constitute a change to the footprint of the building. He reviewed the hybrid helical/concrete foundation. Flood vents will be added to the south elevation, as well as the east and west elevations. Mr. Famulare said that there was a proposed condition that the final foundation plan be submitted to him.

Public Comment: Douglas Robson, an abutter, asked a question about whether any bedrooms would be relocated to the Commercial Street building. The answer was no.

Commission Discussion: The Commission questioned Mr. Campbell and Mr. Malo. The Commission was concerned about the stairs on the south elevation and the possibility of making them (re)movable. Mr. Campbell said that he would check with the Building Commissioner

regarding compliance with the State Building Code, as the stairs were technically a second means of egress. Mr. Campbell also requested that the Commission accept a wood stairway, as the project has already been approved by the Historic District Commission. He would be willing to do a removable wood stair rather than an aluminum stair. If it were not able to be removed, Mr. Famulare requested that Mr. Campbell submit a plan as to how the stair would be firmly anchored in the ground. Mr. Campbell suggested possibly tethering the stringers to the structure of the building. Mr. Famulare pointed out some information contained in the applicant's narrative regarding work previously done on the property that had not been permitted, including the removal of a tree, the installation of a fence along a property line, and the replacement of the surface of a deck that allows access to the beach, which would have required an administrative review applications before the Commission. He said that it is too late for an Enforcement Order to be issued for that work. He said that the applicant has requested that these changes be authorized under this permit as an after-the-fact filing, requiring the submission of an additional fee of \$100. He reviewed the draft Special Conditions for the project, the other proposed conditions are standard. He has added condition #6 requiring a final foundation plan, approved by the Building Commissioner, be submitted to him and to become part of the record. He has included additional language in Condition #9 regarding the stabilization of material stockpiles that are in place for an extended period of time to prevent migration of sediment. He also added a requirement in Condition #13 that the existing cesspool(s) be pumped, filled, and abandoned or removed in accordance with Title 5 regulations. He has added Condition #14 that proposed driveways and parking areas consist of crushed stone, shell or gravel and not surfaced with asphalt as a perpetual maintenance condition and which will not expire upon the issuance of a Certificate of Compliance. He reviewed Condition #15 about roof runoff being directed to gravel-filled dripline trenches or dry wells to facilitate groundwater recharge, which would also be a perpetual maintenance condition. Per Condition #17, any hardscape materials proposed for the site shall be wood decks and dry-laid stone walkways and patio areas to promote infiltration in place, again a perpetual maintenance condition. He reviewed Condition #18 about the stairs and he proposed a modification that if the stairs are required to remain fixed that the applicant provide plans indicating how they will be secured. He suggested adding a condition about the replacement tree, to be approved by the Conservation Agent and that the existing evergreen tree on the site be preserved, if possible, and, if not, that a tree to be approved by the Agent be planted in its place. Mr. Malo volunteered to look into how to protect the existing tree during construction and submit a protocol. Mr. Famulare said that the applicant must submit a Chapter 91 authorization for the approved work before a Certificate of Compliance is issued and that a spill kit be kept on the site to remediate any leaks or spills from equipment or vehicles used during construction.

Nathaniel Mayo moved to approve the Notice of Intent, CON-20-057, pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law to elevate and renovate an existing residential building on a pile foundation and associated site improvements at the properties located at 397 & 401A Commercial Street subject to the draft conditions as presented, Oriana Conklin seconded and it was so voted by roll call, 5-0.

d) CON-20-058 **345A Commercial Street**
After-the-Fact Notice of Intent filed by **Richard Baker**, on behalf of **Fish and Yee Condominium Association**, pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c.

131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law to reconstruct an existing deck and install new concrete footings. Work to take place within Land Subject to Coastal Storm Flowage and a Coastal Dune.

Presentation: Richard Baker, the contractor, and Robert Nee, a unit owner, were participating in the meeting to discuss the project. Mr. Famulare reviewed the Enforcement Order and the circumstances of the matter regarding the reconstruction of an existing deck without a permit. He received an application and plans, and worked with the contractor to get a construction protocol, a project description, and an environmental assessment, however there were additional documents and fees missing. Mr. Baker explained the replacement of the decking. He said that he did have a building permit to replace the decking, however when it was discovered that the sill under the house was rotted and the wooden deck supports were deteriorated and unsafe. He had filed for an amendment to the permit to include the additional work, however some work, including the installation of the footings, did occur before the amendment was granted. The Administrative Review was for the sill and the decking, but not for the excavation of concrete footings. The deck was supposed to be shored up with cinder blocks. Mr. Famulare said that Paul Shea was participating in the meeting and was representing Mr. Baker. Mr. Shea said that the applicant still has to file an After-the-Fact Notice of Intent with Commission, including submitting a plan showing the location of the concrete footings, file with the DEP and pay the required fees. He is requesting a continuance to the May 5, 2020 Public Hearing. If the missing material is not submitted to the Commission or the DEP in a timely manner for the next hearing, Mr. Famulare said that the Commission should consider imposing additional fees.

Nathaniel Mayo moved to grant a continuance of CON-20-058 to the Public Hearing of May 5, 2020 at 6:00 P.M., Oriana Conklin seconded and it was so voted by roll call, 5-0.

3) **Request for Extension of Order of Conditions:**

a) **CON-18-017 67 Harry Kemp Way**

Request to Extend Local By-Law Order of Conditions issued November 28, 2017, filed by Demetrios Daphnis (construction of four residential buildings, walkways, a driveway, parking spaces, a septic system, grading, landscaping, and native plantings). Mr. Famulare briefly reviewed the history of the project. Attorney Lester J. Murphy and Paul Shea were participating in the meeting. Attorney Murphy explained the it was personal and financial issues that were holding up the project, including the amount of permitting required and the difficulty of the phragmites eradication program on the site, which Mr. Daphnis has done in good faith. He added that the project will now be subject to the Town's Inclusionary By-Law, so an affordable housing unit will be created as a result. Attorney Murphy said his client is asking for a three-year extension. The Commission briefly discussed the matter. *Nathaniel Mayo moved to extend the Order of Conditions for CON-18-017 for a period of three years, Oriana Conklin seconded and it was so voted by roll call, 5-0.*

4) **Conservation Agent Update:**

a) Review of B Street Garden safety practices and approval of expenses. Mr. Famulare reviewed the safety precautions that the B Street Garden Advisory Group had developed in conjunction with the Board of Health, including encouraging social distancing when at the

Garden, the wearing of gloves at all times when gardening, and if needed, the development of a schedule of alternating days of the week for gardeners to work in order to provide for additional distancing. If social distancing is not possible at the site, gardeners will have to wear masks. All shared garden gloves will be removed from the shed and gardeners will be required to bring their own and gardeners will be encouraged to bring their own tools. If shared tools have to be used, they are required to be washed with biodegradable soap, which will be provided, after each use.

Nathaniel Mayo moved to approve the safety practices for gardeners developed by the B Street Garden Advisory Group, Oriana Conklin seconded and it was so voted by roll call, 5-0.

Mr. Famulare reviewed the budget request, including for the services of Gordon Peabody, and for the purchase of biodegradable soap and repair items for hoses in the amount up to \$850.

Nathaniel Mayo moved to approve the request for up to \$850 for the B Street Garden, Oriana Conklin seconded and it was so voted by roll call, 5-0.

5) **Approval of Minutes of February 4, March 3, and 17, 2020:** The approval of the minutes was postponed. ***Nathaniel Mayo moved to postpone the approval of the minutes, Oriana Conklin seconded and it was so voted by roll call, 5-0.***

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

ADJOURNMENT: ***Nathaniel Mayo moved to adjourn the Public Hearing at 8:00 P.M., Oriana Conklin seconded and it was so voted unanimously.***

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2020
Alfred Famiglietti, Chair