

**PROVINCETOWN CONSERVATION COMMISSION**  
**AUDITORIUM**  
**March 3, 2020**  
**6:00 P.M.**

**Members Present:** Alfred Famiglietti, Nathaniel Mayo, Robert Brock, and Brett McNeilly.

**Members Absent:** Joseph Cooper (excused), Oriana Conklin (excused), and Dani Niedzielski (excused).

**Others Present:** Tim Famulare, Conservation Agent.

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

1) **Public Comments:** on any item not on the agenda below: Ted Jones reviewed an article he has proposed for Town Meeting on April 6, 2020, regarding banning the commercial sale of plastic water bottles. The Commission questioned Mr. Jones about the article.

2) **Public Hearings:**

a) CON-20-042 361 Commercial Street *(continued from the meeting of February 4, 2020)*  
*(TO BE CONTINUED TO 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 Coastal Storm Flowage, a Coastal Dune, a Coastal Beach, and a Buffer Zone to a Coastal Dune and a Coastal Beach. Mr. Famulare corrected the agenda and, saying that the applicant had requested a continuance to the meeting of April 21, 2020. *Nathaniel Mayo moved to grant the request to continue CON-20-042 to the Public Hearing of April 21, 2020 at 6:30 P.M., Brett McNeilly seconded and it was so voted, 4-0.*

b) CON-20-044 53 Commercial Street *(continued from the meeting of February 18, 2020)*  
**Notice of Intent** filed by **Jay Anderson, 53 Commercial Provincetown, LLC**, 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 raze an existing building and construct two proposed buildings pursuant to FEMA regulations and associated site improvements. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to a Coastal Beach.  
**Presentation:** Attorney Lester J. Murphy and Stacy Kanaga appeared to discuss the application. Ms. Kanaga said that the applicant had submitted a revised site plan, as requested by the Commission, showing the new location of the stairs, and an updated planting plan. Attorney Murphy briefly reviewed the last hearing of the matter and the issues that were discussed. He said that all plantings within the 50' buffer zone on the new planting plan were those on the Commission's list of approved plantings for that resource area. The plans that had originally been submitted had proposed stairs to be situated directly off a deck and the Commission had had concerns about its location and the viability of the stairs withstanding coastal storm events. He said that as a result the stairs have been relocated to the west side of the deck, running parallel to

it, a location where they could more easily be removed in the event of a pending storm event. He added that the project also has been given a Department of Environmental Protection file number. Ms. Kanaga reviewed the details of the new deck location. She reviewed the changes on the site plan, including the fact that a cobble apron associated with a garage on the site had been removed.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Attorney Murphy and Ms. Kanaga. Mr. Famulare reviewed the draft conditions, which were the same as he had reviewed at the last hearing, but with revisions based upon the new plans. He indicated that condition #19 had been deleted, as the plantings have been revised to meet the Commission's approved native planting list, and the statement requiring the submission of a copy of the Chapter 91 authorization was removed, as the present work is outside that jurisdiction.

***Nathaniel Mayo moved to approve the Notice of Intent, CON-20-044, 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 raze an existing building and construct two proposed buildings pursuant to FEMA regulations and associated site improvement at the property located at 53 Commercial Street, subject to the conditions as amended and presented, Alfred Famiglietti seconded and it was so voted, 4-0.***

c) CON-20-047 **7 Commercial Street** (continued from the meeting of February 18, 2020) (TO BE CONTINUED TO THE MEETING OF MARCH 17, 2020)

**Notice of Intent** application by **Delft Haven II 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 raise buildings and floor elevations of six existing structures and associated improvements. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to a Coastal Dune and a Coastal Beach. Mr. Famulare said that the applicant had requested a continuance to the meeting of March 17, 2020. ***Nathaniel Mayo moved to grant the request to continue CON-20-047 to the meeting of March 17, 2020 at 6:30 P.M., Brett McNeilly seconded and it was so voted, 4-0.***

d) CON-20-048 **2 Pilgrims Landing** (continued from the meeting of February 18, 2020) **Request for a Determination of Applicability** filed by **Kevin Bazarian & John DeMatteis** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law regarding a residential lot with defined setback envelope. All proposed work is outside jurisdiction.

e) CON-20-049 **3 Pilgrims Landing** (continued from the meeting of February 18, 2020) **Request for a Determination of Applicability** filed by **Kevin Bazarian & John DeMatteis** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law regarding a residential lot with defined setback envelope. All proposed work is outside jurisdiction.

f) CON-20-050 **4 Pilgrims Landing** (continued from the meeting of February 18, 2020) **Request for a Determination of Applicability** filed by **Kevin Bazarian & John DeMatteis** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law regarding a residential lot with defined setback envelope. All proposed work is outside jurisdiction. The Commission heard the three cases together.

**Presentation:** Gordon Peabody and Kristyna Smith, both of Safe Harbor Environmental, appeared to present the applications. Mr. Peabody reviewed the reason why these properties are being reviewed, as they are technically situated outside the Commission's jurisdiction, and none are located in any resource area or buffer zone. At the time of the conveyance of the entire property, which included the three lots under review, a Memorandum of Understanding with the Town was signed by the new property owner. It included the requirement that a Notice of Intent be filed with the Commission for the three lots under consideration. This was negotiated because at the time the properties were located in a buffer zone to a flood zone that was designated as a resource area in the Conservation regulations. That designation has since been deleted. Currently, a 60' roadway and a 40' property line place the properties outside the 100' marsh buffer zone, so the projects to develop the lots no longer need Commission review. However, the applicant is submitting an RDA to maintain compliance with, and to honor, the intent of the MOU, even with the understanding that the previous jurisdictional areas no longer exist. Mr. Peabody said that after the sites were re-surveyed to find out where the buffer zone was located, it was discovered that a portion of the proposed building envelopes on Lots 3 and 4 were located in the 100' buffer zone. He said that the proposal was revised to shrink the relevant building envelopes slightly so they are outside of the buffer zone. An environmental management plan has been submitted to assure the Commission that the activity will conform to proper conservation protocols.

**Public Comment:** Rachel White spoke in support of the application.

**Commission Discussion:** The Commission questioned Mr. Peabody. Mr. Famulare reminded the Commission that if construction protocols are not monitored and maintained and erosion into the resource area takes place on the site, it can take enforcement action. In the revised site plans that were passed out by Ms. Smith showing the location of the 100' buffer zone line, Lots 3 and 4 show the original building envelopes as being inside that zone. Mr. Famulare said that if the Commission agreed with Mr. Peabody's presentation and analysis, its decision would be classified as a Negative #1 and #6 Determination. He reviewed the definition of each. Mr. Peabody addressed the issue of whether the dune in question was a performing dune, stating that it was his opinion that soon after it was formed about 1,500 years ago, it stopped performing as a dune and was no longer subject to coastal geomorphological forces and no longer transmigrates in response to natural wind and water flow. In addition, it exhibits sustainable, stable terrestrial vegetation, no longer has the ability to move landward and, is unable to contribute to nourishment or be nourished. It is thus not subject to the Coastal Dune performance standards set forth in the Wetlands Protection Act. He added that there will be no construction activity in the buffer zone, and access will only be from the land above the site. Mr. Famulare said that a negative determination by the Commission would mean that the applicant would not have to come back to the Commission with the development plans for the lots. He reviewed the relevant section of the MOU.

**CON-20-048:** *Nathaniel Mayo moved to grant a Negative #1 and #6 Determination of Applicability pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law regarding a residential lot with defined setback envelope for the property located at 2 Pilgrims Landing, Robert Brock seconded and it was so voted, 4-0.*

**CON-20-049:** *Nathaniel Mayo moved to grant a Negative #1 and #6 Determination of Applicability pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and*

*Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law regarding a residential lot with defined setback envelope for the property located at 3 Pilgrims Landing, Brett McNeilly seconded and it was so voted, 4-0.*

**CON-20-050:** *Nathaniel Mayo moved to grant a Negative #1 and #6 Determination of Applicability pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40) and Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law regarding a residential lot with defined setback envelope for the property located at 4 Pilgrims Landing, Robert Brock seconded and it was so voted, 4-0.*

g) CON-20-054 22-R Nelson Avenue

**Local By-Law Filing** by **Thomas Tannariello, Tri-T, LLC**, pursuant to the Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law for the construction of a community residential project (8 units). Work to take place within NHESP Estimated and Priority Habitat.

**Presentation:** Gordon Peabody and Kristyna Smith appeared to present the application. He said that NHESP has reviewed the project and determined that the project would not affect any endangered wild species. There are no state guidelines or performance standards, as the application is pursuant to the local wetlands by-law, so Safe Harbor Environmental used their own, including for stormwater management, planting, and erosion controls. There are two lots involved in this project, however only one, a triangular-shaped piece of land, is within the Commission's jurisdiction. The lot is adjacent to National Seashore property. The proposal is for a development of 8 residential units. The existing lot is lightly wooded and previously disturbed with two paved boundary roads and a creosoted, railroad-tie retaining wall, the latter of which will be removed. Mr. Peabody said that he has proposed native plantings on the site. The reviewed the project, which will include the use of green building protocols, permeable parking area, erosion and stormwater controls, concrete management, habitat restoration, including robust mitigation plantings of 61 native trees, 88 native bushes, and 34 grouped plantings of tall native grasses. Mr. Famulare reviewed the site plan for the Commission and the audience. Access will be off of Nelson Avenue. In the file is a letter, about a year old, from the Division of Fisheries and Wildlife stating that the project would not constitute a 'take' of endangered species.

**Public Comment:** Vernon Porter, an abutter, had questions about the project. Herbie Hintze, an abutter, had a question about Cape deer and whether they were an endangered species. Deborah Meadows, the president of the Race Point Condominiums that abut the property, on behalf of the condominium unit owners, had several questions about the project. Michael Gaucher, an abutter, asked a question about the roadway and the removal of trees. Sue Jungi, an abutter, spoke in opposition to the application and spoke about the emotional effect of the project on the abutters. Larry Young, an abutter, asked about access to the area for the public. There was a letter from an abutter who was in opposition to the application.

**Commission Discussion:** The Commission questioned Mr. Peabody and Ms. Smith. Mr. Peabody said that he was in agreement with the draft Order of Conditions that he has received. Mr. Famulare reviewed the draft Order of Conditions. The Commission suggested that any changes to the plans in writing since those submitted to MESA in 2018, be submitted to the Agent for review. Mr. Peabody agreed. Mr. Famulare suggested that it be made a pre-construction condition.

*Nathaniel Mayo moved to approve the Local By-Law order of conditions*

**CON-20-054, pursuant to the Provincetown General By-Laws, Chapter 12, Wetlands Protection By-Law, for the construction of a community residential project (8 units) on the property located at 22R Nelson Avenue with the revised language to the conditions as discussed, Robert Brock seconded, and it was so voted, 4-0.**

3) **Request for Extensions of Orders of Conditions:**

a) **CON-17-138 176 Race Point Road (Airport)**

Request to Extend Order of Conditions issued March 28, 2017, filed by the Provincetown Airport Commission (vegetation management plan). Mr. Famulare said the vegetation management plan for regular maintenance to clear vegetation from around the approaches to the runways, which are in a buffer zone to a salt marsh and a coastal dune, has not been started. ***Nathaniel Mayo moved to extend the Order of Conditions for CON-17-138, 176 Race Point Road, for a period of three years to March 28, 2023, Alfred Famiglietti seconded and it was so voted, 4-0.***

4) **Request for Certificate of Compliance:**

a) **CON-20-051 7 Creek Round Hill Road** (landscaping improvements, including new decks, boardwalks, concrete and timber retaining walls). Mr. Famulare said he had not yet received the statement of substantial compliance with the approved plans from the engineer for the project. He will bring the issue back when he receives confirmation of compliance.

5) **B Street Garden Advisory Group:**

a) Appointment of Anthony Iannacci: Mr. Famiglietti said that Mr. Iannacci seems qualified and Mr. Famulare urged the Commission to appoint him. ***Nathaniel Mayo moved to appoint Anthony Iannacci to the B Street Garden Advisory Group, Alfred Famiglietti seconded and it was so voted, 4-0.***

6) **Conservation Agent Update:** Mr. Famulare said that the next meeting will begin with a consideration of articles for the Spring Town Meeting and the Commission should think about what should be considered.

7) **Approval of Minutes of February 4, 2020:** The minutes were postponed.

8) **Information:**

a) **CON-20-053 27 Commercial Street** (installation of a mature tree by barge-mounted crane). Mr. Famulare said that a dead pine tree was taken down and will replace it with a mature tree by barge.

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

**ADJOURNMENT: Robert Brock moved to adjourn the Public Hearing at 7:40 P.M., Brett McNeilly seconded and it was so voted unanimously.**

Respectfully submitted,

Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2020  
Alfred Famiglietti, Chair