

**PROVINCETOWN CONSERVATION COMMISSION
JUDGE WELSH ROOM
VIRTUAL MEETING
March 17, 2020
6:00 P.M.**

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

Members Absent: Joseph Cooper (excused) and Dani Niedzielski (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. All votes will be by roll call.

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

1) **Public Comments:** Ted Jones asked a question about commenting on the April 6, 2020 Annual Town Meeting warrant articles.

2) **Public Hearings:**

a) In accordance with §2-3-g-1 of the Provincetown Charter, the Provincetown Conservation Commission will review and vote to determine the number of Board members in favor or opposed to the articles relating to the natural environment on the warrant of the April 6, 2020 Annual Town Meeting and Special Town Meeting. Mr. Famulare explained that the Town Manager is going to be making a recommendation to the Town Moderator that this Annual Town Meeting be postponed due the prevailing circumstances related to the COVID-19 virus.

ATM Article 12: Ted Jones, who is sponsoring this Article regarding single-use plastic bottles, reviewed it. The Commission questioned Mr. Jones. *Nathaniel Mayo moved that the Commission recommend ATM Article 12, Robert Brock seconded and it was so voted by roll call, 5-0.*

ATM Article 6: Mr. Famulare reviewed the Article, which he will be presenting at Town Meeting. It has to do with the Ryder Street Dune Enhancement project. *Nathaniel Mayo moved that the Commission recommend ATM Article 6, Alfred Famiglietti seconded and it was so voted by roll call, 5-0.*

ATM Article 7, 3. I: Mr. Famulare reviewed the Article regarding the Community Preservation budget for the category of Open Space/Recreation, which is related to the preliminary design and development of Waterfront Park. The Commission questioned Mr. Famulare. *Nathaniel Mayo moved that the Commission recommend ATM Article 7, 3. I, Robert Brock seconded and it was so voted by roll call, 5-0.*

Mr. Famulare suggested that the Commission postpone the consideration and recommendation of ATM warrant articles until the end of the hearing and take the next agenda item out of order, given that there were participants waiting for it and other agenda items. Chair Alfred Famiglietti asked if there was anyone participating in the virtual meeting that would like to comment on ATM warrant articles and no one responded. ***Nathaniel Mayo moved to postpone further discussion of the ATM Warrant until the end of the meeting, Robert Brock seconded and it was so voted by roll call, 5-0.***

b) CON-20-047 7 Commercial Street (continued from the meeting of March 3, 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.

Presentation: Brad Malo, of Coastal Engineering, was in the meeting to discuss the application. He reviewed the project, which seeks to reduce the frequency of flood water intrusion into the structures and flood damage on the site by elevating floors by about 2.5' - 2.8' over their existing elevations. Decks and landings that allow access to the structures will be modified/elevated to meet the floor elevation changes. The existing structures will be raised on jacks in place with temporary supports on the existing footprint, which will allow the construction of wooden stem walls and minor foundation repairs to occur to elevate the floors. There will be no changes to the footprints of the structures or decks. There are proposed exterior changes to the stairs and landings in order to provide appropriate access into the existing doorways of the elevated structures. This will entail the re-structuring of the stairs, which will be anchored to the building, and have added treads. No grade changes are proposed and there will be no changes to the impervious coverage or drainage patterns on the site, therefore no new drainage structures or the submission of a stormwater report are proposed. Any disturbed areas will be stabilized and re-vegetated in-kind with native, drought-resistant grasses or shrubs. The project will be no impact on the interests of the Local By-Law or the state Wetlands Protection Act.

Public Comment: None.

Commission Discussion: The Commission questioned Mr. Malo, who indicated that no stairways or landings will be pointed towards the beach. Mr. Famulare reviewed the draft Conditions, the bolded of which are Special Conditions. He explained several changes that he is recommending based upon a conversation he had with Mr. Malo. He suggested that #9 be deleted, as there are currently no downspouts and none are going to be installed. Most roof runoff goes to landscaped areas or brick walkways. Also deleted will be condition #11, as the elevation of the structures will not be compliant for construction in a flood plain, as that would mean an even higher lifting of the buildings and they are not required to conform to this regulation given the proposed improvements. In addition, he noted post-construction conditions #18 and #23. Mr. Malo said that access will be from Commercial Street for construction vehicles and the limit of work is shown on the site plan with a bolded line. Mr. Famulare said he added a phrase to condition #12 that the staging of materials shall be at the existing parking areas and open space lawn areas and recommended adding, "and shall not be on the coastal beach or the coastal dune". Mr. Famulare said that the Commission would normally have to issue an Order of Conditions within 21 days,

however given the existing situation, it would not be feasible to collect signatures from Commissioners, therefore the applicant has signed a waiver of the time constraints to issuance within 21 days and it will be issued as soon as it is feasible to collect the required signatures.

Nathaniel Mayo moved to approve the Notice of Intent, CON-20-047, 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 at the property located at 7 Commercial Street with the Special Conditions as amended, Alfred Famiglietti seconded and it was so voted by roll call, 5-0.

3) **Enforcement Order**

a) **ENFCON-20-004 345A Commercial Street** – Unauthorized reconstruction of deck within a Coastal Dune. Mr. Famulare reviewed the Enforcement Order, which involved the unauthorized reconstruction of an existing timber deck at the rear of the property, including excavation for new concrete footings, and for the storage of construction materials and debris within a Coastal Dune and Land Subject to Coastal Storm Flowage. The activity was also in violation and outside the scope of an Administrative Review Determination for the removal of a rotten sill, issued on March 10, 2020. Remedial actions included a cease and desist of all activity affecting wetland resource areas; removal of construction materials and debris from the coastal dune; and the filing of an after-the-fact Notice of Intent by April 6, 2020, to be heard at the April 21, 2020 public hearing, for the reconstruction of the outdoor deck and restoration of coastal dune vegetation damaged by the unauthorized activity. Mr. Famulare said that he had also issued a \$300 citation for a violation of the local wetlands protection regulations. He said if Richard Baker, the general contractor, wants to appeal the fine, he can do so in an appropriate court of law. He also said that in addition to the approval of the Commission and the issuance of an Order of Conditions, Mr. Baker would need to submit an engineer's plan and report for the deck construction certifying that the proposed construction is appropriate for the velocity zone before any work can continue.

Robert Nee, a Trustee of the Condominium Association, was in the meeting, as was Oscar Millan, a construction worker on the project. Mr. Baker could not attend the hearing. Mr. Nee explained the series of events that happened at the site as a result of the removal of the deck. Mr. Famulare asked for a ratification of the Enforcement Order and said that the Mr. Baker would have to file an after-the-fact Notice of Intent with the Commission.

Nathaniel Mayo moved to ratify the Enforcement Order ENFCON-20-004, Robert Brock seconded and it was so voted by roll call, 5-0.

4) **Request for Extensions of Orders 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 asked that this matter be postponed to the Public Hearing of April 21, 2020, until normal Commission meetings can be resumed. ***Nathaniel Mayo moved to postpone the Request for an Extension of an Order***

of Conditions for CON-18-017, 67 Harry Kemp Way, Oriana Conklin seconded and it was so voted by roll call, 5-0.

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

a) CON-20-051 7 Creek Round Hill Road (DEP File No. SE 058-0555) (landscaping improvements, including new decks, boardwalks, concrete and timber retaining walls). Mr. Famulare said that the Engineer's certification has not yet received. When he has received it, he will put the Request on the next available agenda.

a) In accordance with §2-3-g-1 of the Provincetown Charter, the Provincetown Conservation Commission will review and vote to determine the number of Board members in favor or opposed to the articles relating to the natural environment on the warrant of the April 6, 2020 Annual Town Meeting and Special Town Meeting. The Commission continued the consideration and recommendation of ATM warrant articles. Mr. Famulare said that the Commission can continue to the next public hearing, given that the ATM may be postponed.

ATM Article 13: Mr. Famulare reviewed the petitioned Article involving climate policy. *Nathaniel Mayo moved that the Commission recommend ATM Article 13, Robert Brock seconded and it was so voted by roll call, 5-0.*

ATM Article 15: Mr. Famulare reviewed the Article regarding a General Bylaw Amendment to Chapter 13 prohibiting the discharge of fire arms or hunting on public property. The Commission briefly discussed the Article. There was no recommendation.

ATM Article 16: Mr. Famulare reviewed the Article regarding the control of dogs on Town property. The Commission briefly discussed the Article. There was no recommendation.

ATM Article 19: Mr. Famulare reviewed the Article regarding the acquisition of the property located at 668R Commercial Street. He said that the Open Space Committee has not yet reached an agreement with the owner of the property and may not before Annual Town Meeting. The Commission briefly discussed the Article. *Oriana Conklin moved that the Commission recommend ATM Article 19, Robert Brock seconded and it was so voted by roll call, 5-0.*

ATM Article 23: Mr. Famulare reviewed the Article regarding the Town's policy on coastal resilience and natural resource protection. The Commission briefly discussed the Article. *Nathaniel Mayo moved that the Commission recommend ATM Article 23, Oriana Conklin seconded and it was so voted by roll call, 5-0.*

Mr. Famulare recommended that the Commission vote to continue the hearing until the April 21, 2020 Public Hearing. *Nathaniel Mayo moved to continue the hearing to consider ATM Warrant Articles in the event that the Town Meeting is postponed, to the April 21, 2020 Conservation Commission Public Meeting, Oriana Conklin seconded and it was so voted by roll call, 5-0.*

6) **Conservation Agent Update:** Mr. Famulare said that on March 9th the Select Board approved his plan to create a new committee called the Coastal Resiliency Advisory Committee to

recommend a coastal resiliency plan for the Town. He said that appointments to the Committee would include members from certain Town Boards, however he said that this would be postponed until after the threat of the corona virus has subsided. The Commission will hear from him at a later date regarding the issue.

7) **Approval of Minutes of February 4 and March 3, 2020**: The approval of the minutes was postponed.

8) **Information**:

a) **CON-20-055 345A Commercial Street** (deck repair)

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