

Orleans Conservation Commission
Town Hall, Nauset Room
Work Meeting, Tuesday, November 19, 2013

K. Darling, Asst.
14 MAY 13 10:27AM
ORLEANS TOWN CLERK

PRESENT: Judith Bruce, Chair; Bob Royce; James Trainor; Jim O'Brien; Judy Brainerd; Jane Hussey; Associate; John Jannell, Conservation Administrator.

ABSENT: Steve Phillips, Vice-Chairman; Rich Nadler, Associate; Kevin Galligan, Associate.

For the purpose of this hearing, Jane Hussey will be voting.

8:30 a.m. Call to Order

Continuations

Last Heard 11/5/13

Cynthia A. Kawie, 36 Gibson Road. by Ryder & Wilcox, Inc. Assessor's Map 19, Parcel 22. The proposed construction of a screen porch on an existing deck; proposed extension of a deck; installation of an outdoor rinse area; & removal & replacement of existing stairs on a Coastal Bank. Work will occur within 100' of a Coastal Bank, & on a Coastal Bank & on Land Subject to Coastal Storm Flowage. John Jannell announced that a continuation request had been received asking for the hearing to be continued to November 26, 2013.

MOTION: A motion to continue the hearing to November 26th was made by Bob Royce and seconded by Jim O'Brien.

VOTE: Unanimous

Last Heard 11/5/13

Daniel & Andrea Schmieg, 13 Kingsbury Lane. by Ryder & Wilcox, Inc. Assessor's Map 71, Parcel 1. The proposed reconstruction of an existing boathouse; stabilization of an eroding bank; replacement of failing fiber rolls with gabion/fiber roll toe protection; removal of invasive plant species, & plant with native species. Work will occur on a Coastal Bank, on a Coastal Beach, on Land Subject to Coastal Storm Flowage, & within the Pleasant Bay A.C.E.C. David Lyttle of Ryder & Wilcox, Inc., Jen Exner of Wilkinson Ecological Design, and Daniel and Andrea Schmieg, applicants, were present. David Lyttle explained that a work protocol had been submitted as requested, and that since the last hearing, spoke with the homeowners about the signs on the beach, which they were willing to reduce in size and be more in line with what the Commission had approved for the previous owner. David Lyttle recalled the question by Judith Bruce on whether or not this property could by right have a Coastal Engineering Structure (CES) since the house had been re-built, but it was his understanding that since the house existed prior to 1978, it maintained its grandfathering status. David Lyttle went over two additional projects, once of which for the Krouse Family of 42 Old Field Road in Orleans, and the other outside of Orleans, in which the applicants were permitted a CES. David Lyttle pointed out that Town Counsel had received this documentation, which explained that the burden had been upon the applicant to determine that the work done to the existing dwelling was reconstruction and not new construction. David Lyttle commented that the DEP circuit rider, Christine Odiaga, asked for a copy of the approved house plan prior to issuing a DEP number. Judith Bruce felt that the issue

became state versus local, thus why the Commission debated the definition of new construction versus reconstruction. Judith Bruce noted that the application referred to new construction not reconstruction, and that the house was also located greater than 40' of the Top of the Coastal Bank. David Lyttle asked why the Commission did not put a special condition on the Order which was issued for the house stating that a CES would not be permitted at this site, and felt that they were creating a hardship for the applicant. John Jannell pointed out that the hearing had been continued pending receipt of a report from Greg Berman, and that at this time they did not have a report. John Jannell said that Greg Berman was also concerned about the eligibility of this property for a CES, and received an e-mail from him stating this which in turn was circulated to both the Commission as well as the applicant's representative. David Lyttle confirmed receipt, and John Jannell said that Town Counsel pointed out that reconstruction was not part of the initial Notice of Intent, Order of Conditions, or Amended Order of Conditions. John Jannell stated that Town Counsel recommended the Commission make a finding whether the open Order of Conditions for the house was either reconstruction or new construction. John Jannell suggested that the Commission could review the Krouse property information provided by David Lyttle, and wanted to make sure that the entire Commission had a chance to review the material. Judith Bruce wanted Town Counsel to weigh in on reconstruction versus new construction and whether or not this property qualified, and David Lyttle wanted to make sure that the Commission read all of the correspondence on this matter as well as Greg Berman's report. Judith Bruce concurred, and Judy Brainerd inquired about the Krouse Property filing. David Lyttle pointed out that it was a large filing in which the Commission removed the prohibition, and asked that the hearing be continued. Judith Bruce questioned whether not the Commission wanted to see any additional information from the applicant, and Judy Brainerd wanted to know that if the Commission did not permit the CES, what the impact would be to the Coastal Bank. Judith Bruce also asked about a soft solution versus a hard solution, and John Jannell said that he could circulate all of the correspondence. James Trainor did not recall speaking about CES's during the hearing process for the house, but did not want to penalize a homeowner for moving their house further from the bank only to not allow them to protect it. Judith Bruce was in favor of regrading and planting, and David Lyttle wanted to continue the hearing for at least two weeks to provide the Commission with the additional information. John Jannell suggested that they give Greg Berman ample time to prepare the report for this property, and suggested the hearing either be continued to the 10th or 17th of December.

MOTION: A motion to continue the hearing to December 17th was made by James Trainor and seconded by Jane Hussey.

VOTE: Unanimous.

Last Heard 11/12/13 (SP1, JO1)

Jean & Thomas Russell, 74 & 75 Viking Road. by East Cape Engineering, Inc. Assessor's Map 63, Parcel 54, & Assessor's Map 70, Parcel 31. The proposed nourishment and stabilization of a Coastal Bank. Work will occur on a Coastal Bank, Coastal Beach, Land Subject to Coastal Storm Flowage, & in the Pleasant Bay A.C.E.C. Judith Bruce commented that the applicants were not present and revised plans had not been submitted. Erin Shupenis pointed out that the applicant would be at the next

hearing for 3 South Little Bay Road, and the Commission decided to continue the hearing for one week pending receipt of revised materials.

MOTION: A motion to continue the hearing to November 26th was made by Jim O'Brien and seconded by Bob Royce.

VOTE: Unanimous.

Notice of Intent

Todd & Mary Shipman, 25B Doane Road. by FELCO, Inc. Assessor's Map 21, Parcel 67. The proposed elevating of an existing dwelling onto a new foundation, & removal & reconstruction of an existing patio. Work will occur within 100' of an Isolated Wetland. Dave Lajoie of FELCO, Inc. was present. Dave went over the existing conditions and proposed work for the site, and Judith Bruce inquired if a full foundation was proposed. David Lajoie said that it would be a 6' deep foundation, with the slab to be around elevation 8'. Judith Bruce brought up the concern over the linden tree, and John Jannell asked if the Limit of Work could be adjusted to provide more protection of the tree. Dave Lajoie asked for clarification on which tree the Commission wanted to save, and Judith Bruce showed the Engineer where on the plan the tree to be protected was located. Bob Royce inquired how much the house was being elevated, and Dave Lajoie said 1.5'. John Jannell pointed out that this was a local filing only so a DEP number was not needed, and suggested that the Commission could either continue the hearing pending receipt of a revised plan showing an adjustment of the Limit of Work to protect the linden tree, or approve subject receipt of such a plan. Judith Bruce felt that they could approve this subject to receipt of the revised plan.

MOTION: A motion to close the hearing was made by Jim O'Brien and seconded by Jane Hussey.

VOTE: Unanimous.

MOTION: A motion to approve this work pending receipt of a Revised Plan showing the adjustment of the Limit of Work was made by Jim O'Brien and seconded by Bob Royce.

VOTE: Unanimous.

Charles Silbert, Viking Road. by Coastal Engineering Company, Inc. Assessor Map 70, Parcel N/A. Proposed roadway improvement & construction of a stormwater management system on Viking Road. Work will occur within 100' of the Top of a Coastal Bank & within the Pleasant Bay A.C.E.C. Tarja McGrail of Coastal Engineering Company, Inc., and Charles Silbert, applicant, were present. Tarja McGrail went over the proposed work, pointing out the proposed benefits to stormwater treatment as well as creating an overall width for Viking Road of 10'. Judith Bruce inquired about the specific areas to be widened, and if this was the entire length from Namequoit Road. Tarja McGrail said that only work within the 100' buffer zone was shown; the road would be widened anywhere from 1-1 1/2'. Charles Silbert explained that he was looking at the area shown on the plan heading towards Namequoit fixing potholes, and John Jannell noted that the site plan did not include the area all the way to Namequoit since only jurisdiction was shown. Judith Bruce inquired about the possibility of a rain garden, and Tarja McGrail went over the benefits to the proposed stormwater treatment proposed. John Jannell inquired about the number of shade trees to be removed, and Tarja McGrail explained that every effort was going to be made to not remove any trees. Charles Silbert did not see why any trees would be removed. Kris Ramsay of the

Orleans Conservation Trust was pleased to hear that no trees were to be removed, and appreciated that the proposed work would be sloping away from the A.C.E.C. Kris Ramsay pointed out that if the applicant chose to move in the direction of tree removal, it may have a negative impact on the vernal pool within the area and its species. David Dunford, abutter at 11 Portside Lane, inquired if the work needed to be done, since this was a sensitive wildlife area. David Dunford asked whether or not it would be best to wait until the last house was built on this road before work commenced, since he did not want to see the road work completed only to have it be damaged and re-done. John Jannell pointed out that a file number had not been issued for this proposed work, and Tarja McGrail asked to continue the hearing for one week.

MOTION: A motion to continue the hearing to November 26th was made by Jim O'Brien and seconded by Judy Brainerd.

VOTE: Unanimous.

Warren C. & Carol Marsh, 30 Tides End Lane. by Ryder & Wilcox, Inc. Assessor's Map 43, Parcel 28. The proposed removal of an existing dwelling; construction of a new dwelling; upgrading of a septic system; connection to utilities; removal of existing paved driveway; construction of a new gravel driveway; grading; landscaping; & the removal of invasive plants & trees & the planting of native plants. Work will occur on a Coastal Bank, in Land Subject to Coastal Storm Flowage, & within the Pleasant Bay A.C.E.C. David Lyttle, Jen Exner, and Warren C. and Carol Marsh, applicants, were present. David Lyttle went over the package put together for the Conservation Commission, and went over the details of the proposed work. Judith Bruce commented that this work was a significant increase in the size of the building, and questioned whether or not it was possible to either bring the proposed dwelling further back from the buffer to the resource area, or to reduce the size of the proposed dwelling. David Lyttle pointed out that the paved driveway was becoming a gravel driveway, the foundation would be at the 73' buffer, and that there was a significant amount of mitigation proposed. Judith Bruce suggested that the access to the driveway be from the proposed gravel driveway. David Lyttle pointed out that the house was 38' from the side of the road, and by reducing this to 25', the homeowners would lose their front yard. Judith Bruce's biggest concern was the proposed increase of the size of the house, and David Lyttle pointed out that no established vegetation was proposed to be removed. Jen Exner went over the proposed Land Management Plan, stating that the footpath down to the water would remain, and that invasive species were to be removed and allow for the revegetation of the buffer. Judith Bruce suggested that additional cedar trees be considered, and inquired if the entire 50' buffer could become a naturalized area. David Lyttle felt that the mitigation proposed was substantial given the proposed work, and Jen Exner concurred that the removal of the bittersweet would have a net benefit to the area. James Trainor agreed with the current proposed garage location, citing the potential danger for a homeowner to back onto the road, and Judith Bruce commented that this would provide the applicant with two driveways. David Lyttle noted that one of the driveways was located outside of Conservation Commission jurisdiction, and the other driveway also served for an entrance for the abutter. Jim O'Brien pointed out that if the applicant had chosen to reconstruct in the existing footprint, there would be a lot more structure within the A.C.E.C. than what was currently being proposed. Jane Hussey pointed out that the amount of structure went from 1286' to 849', and where it increased was within the 75-100' buffer, which with

permission was allowable. Judith Bruce was concerned about the visibility from the water, and Jen Exner commented that the 3 canopy trees on site were significant. Judy Brainerd agreed with Jim O'Brien that the proposed work was an improvement to the area, and Jen Exner pointed out that the owner wanted to do the right thing. John Jannell recalled the site visit, commenting that the majority of the discussion was over the Coastal Bank and the buffer zone. Judith Bruce inquired if the burning bush was to be removed, and John Jannell inquired about the horse chestnut tree on site, and whether the limbs to be removed would be flagged. David Lyttle confirmed that the burning bush was to be removed, and Jen Exner explained that the lower pieces of the horse chestnut were to be selectively removed to allow more light to the salt marsh. John Jannell pointed out that this species typically had crown to ground growth, and Jen Exner said that they had not determined how much of the horse chestnut was to be pruned. Judith Bruce asked that it be left off the proposal for now, and that it could be something they looked at after the removal of the invasive species. John Jannell confirmed that there would not be any canopy removal, and Jen Exner explained that black locusts were to be removed. Judith Bruce recalled during the on-site that the Commission was informed that no canopy species were to be removed, and Jen Exner clarified that no native canopy species were to be removed. John Jannell pointed out that these removals were located within the proposed view window, and Judith Bruce was concerned about the removal of canopy. David Lyttle asked the Commission to look at page 3 of the Land Management Plan to provide clarification. John Jannell inquired if the stone stepper staircase was to remain, and David Lyttle said that they had not discussed it with his clients. John Jannell announced that John and Helen Page of 26 Tides End Lane had provided abutter correspondence about the proposed work, which had been circulated to the Commission. John Jannell inquired about addressing the concerns of the abutters which included the planting of the natives to be done as quickly as possible, as well as protecting the Right of Way. David Lyttle said that they had spoken on 3 occasions, and commented that the applicants had not purchased this property yet. Marty Verdina of 32 Tides End Lane stated that with an exception of the Page's, the other abutters were looking forward to seeing this work be done. Marty Verdina pointed out that this had been a rental property, and hoped that the Commission would permit the proposed work. John Jannell pointed out that a file number had not been issued for this project, and Judith Bruce asked that the pruning of the horse chestnut also be addressed. David Lyttle asked that the hearing be continued for one week.

MOTION: A motion to continue the hearing to November 26th was made by James Trainor and seconded by Jim O'Brien.

VOTE: Unanimous.

Amended Order of Conditions

Michael & Denise Bernatchez, 30-31 Beach Plum Lane. by Wilkinson Ecological Design, Assessor's Map 23, Parcels 5 & 6. The proposed removal & management of invasive phragmites has been Amended to conduct invasive plant management within an additional 17,000SF of woodland on 31 Beach Plum Lane; pruning & management of native plants within a proposed view corridor; & supplemental planting with native shrubs & groundcover. Work will occur in a Salt Marsh, on a Coastal Bank, in Land Subject to Coastal Storm Flowage, & in the Inner Cape Cod Bay A.C.E.C. David Lyttle and Jen Exner were present. Jen Exner went over the proposed work for the site, and

Orleans Conservation Commission Hearing Meeting 11-19-13

Judith Bruce commended the applicants on the success at this site. Jen Exner commented that their goal was to manage the invasives, with replanting to occur with the help of the Conservation Agent once the invasive work was completed.

MOTION: A motion to find this as a suitable filing under an Amended Order was made by James Trainor and seconded by Jim O'Brien.

VOTE: Unanimous.

MOTION: A motion to close the hearing was made by James Trainor and seconded by Jane Hussey.

VOTE: Unanimous.

MOTION: A motion to approve this project was made by James Trainor and seconded by Jim O'Brien.

VOTE: Unanimous.

James Trainor left at 10:02am

Robert Adamo, C/O Robert Michael LLC, 47 Briar Springs Road. by Ryder & Wilcox, Inc. Assessor's Map 51, Parcel 12. The proposed construction of a single-family dwelling; the installation of a Title V septic system & utilities; construction of a driveway; grading & landscaping; the pumping & abandonment of an existing cesspool; & the abandonment of the existing water line servicing the adjacent parcel has been Amended to include the proposed removal of the invasive understory & vines, & the removal of dead & dying limbs from the existing cedar trees. Work will occur within 100' of a Coastal Bank & Ditch, & within the Pleasant Bay A.C.E.C. Russ Holden of Ryder & Wilcox, Inc and Adrian Punch of Harrow & Seed were present. Judith Bruce pointed out that the silt fence was down at the site and the soil was eroded going down the bank. Adrian Punch noted that he called the applicant who had said this would be taken care of, and John Jannell explained that while this filing was something for which he was in support, given the initial hearing process and the abutter concern, he wanted to make sure that the abutters were aware of the proposed work. Jim Roberts, abutter at 51 Briar Springs Road, asked for additional details about the plantings to be done under this proposed work. Adrian Punch went over the proposed work, and Jim Roberts confirmed that Adrian Punch was the installer of the Leyland trees. Jim Roberts inquired if they would be going into the brook and whether or not any pruning would be done, and wanted to make sure that the work proposed was within the owner's property. Judith Bruce pointed out that this was a conversation which should be held outside of the meeting room, but the concerns regarding the limbing of trees was not addressed in the plan submitted to the Conservation Commission. Adrian Punch commented that where the existing limit of work was located there was a drastic change in the grade where a 12 month erosion control fabric was to be installed, and planted with native grasses and Forbes. Judith Bruce asked for clarification on the plan where the area to be naturalized was limited to, and Russ Holden showed on the plan that the dotted area was the proposed area of work. John Jannell clarified for the abutter that the new work proposed was to stabilize the lawn with a meadow mix and, beyond the limit of work, do hand removal of invasives. Judith Bruce inquired about an annual mow of the meadow, and Adrian Punch stated that this would be done. Judith Bruce asked about any shrubby plantings, and Russ Holden explained that it was difficult to see since the area

was filled with invasives. Judith Bruce brought up the abutter's concern about the need for additional shrubs, and Adrian Punch did not think that this would be an issue. Jim Roberts pointed out that there concern had been the planting of the cypress trees between the two properties to provide screening, and Judith Bruce commented that additional plantings may be required. John Jannell commented that the cypress trees planted were outside of Conservation Commission jurisdiction.

MOTION: A motion to find this as a suitable filing under an Amended Order was made by Judy Brainerd and seconded by Jim O'Brien.

VOTE: Unanimous.

MOTION: A motion to close the hearing was made by Jane Hussey and seconded by Jim O'Brien.

VOTE: Unanimous.

MOTION: A motion to approve the Amended Order of Conditions plan was made by Judy Brainerd and seconded by Jim O'Brien.

VOTE: Unanimous.

Bob Royce reiterated that the applicants needed to fix the siltfence.

Certificate of Compliance

Peter Rozema (1989), 1 Little Cove Lane. The request for a Certificate of Compliance for an Order of Conditions for the removal of 11 trees from within the 100' buffer of a Coastal Bank. John Jannell reported that this work was in substantial compliance, and the Commission could support this request with a vote.

MOTION: A motion to issue this Certificate of Compliance was made by Bob Royce and seconded by Jane Hussey/

VOTE: Unanimous.

Robert C. III & Debra Caddell (2003), 56 Bakers Pond Road. The request for a Certificate of Compliance for an Order of Conditions for the addition to an existing single family dwelling; the abandonment and removal of an existing septic system; the installation of a new septic system; the construction of a paved drive; the installation of a leaching catch basin; and the construction of retaining walls. John Jannell noted that this was in substantial compliance, and carried a special condition that the debris and brush are to be cleared.

MOTION: A motion to issue this Certificate of Compliance was made by Bob Royce and seconded by Judy Brainerd.

VOTE: Unanimous.

Request to Change Contractor

Edward & Anna Filardi, 29 Payson Lane. The request to change the contractor on the approved Order of Conditions SE 54-1981 from Uncommon Ground to Adrian Punch of Harrow & Seed Sustainable Landscape Design. Adrian Punch was present. John Jannell went over the history of this filing, and commented that per the Order of Conditions, a new contractor had to come in front of the Commission to be approved to take over the work. Judith Bruce asked if the contractor was aware of all of the conditions associated with this Order. Adrian Punch inquired about the missing annual

report from 2012, and whether or not the Commission would be looking for an annual report. John Jannell explained that a Certificate of Compliance request which had previously been filed for by Ryder & Wilcox, Inc. had been turned down, and that he was comfortable with receiving a final report, since there was modest work to be completed. Judith Bruce stated that the Commission would not look for a report during a time when the new contractor was not working on that site, but suggested a report of what needed to be done to bring this project into compliance. John Jannell concurred, stating that this would be beneficial for the file.

MOTION: A motion to accept this change in contractor was made by Jim O'Brien and seconded by Judy Brainerd.

VOTE:

Administrative Reviews

Captain Harry Hunt House LLC, 40 Toms Hollow Lane. Proposed vista pruning.

Work to be done by owner. John Jannell recommended that no action be taken on this filing at this time, since the applicant needed to flag the site to determine what work was to be done.

Captain Harry Hunt House LLC, 40 Toms Hollow Lane. The proposed lifting of an existing boat house and adding length to the existing pilings. John Jannell reported that this application had been since withdrawn, and the Commission did not need to take any action at this time.

Harvey & Muriel Gross, 60 Briar Springs Road. The proposed request for the bi-annual mowing of town landing area to prevent reoccurrence of invasive species, maintain 4' wide path, and lower surrounding bramble to a height of 3'. Mowing to take place in the Winter and Spring. John Jannell reported that this was an annual request, and the applicant had permission from the town for invasive plant management.

MOTION: A motion to approve this work was made by Bob Royce and seconded by Jim O'Brien.

Judith Bruce asked that the work be completed by the end of March to avoid nesting bird season, and John Jannell stated that he had spoken with the applicant about timing, and would specify the time of year in his comment section.

VOTE: Unanimous.

Richard & Wendy Cohen, 74 Freeman Lane. The proposed construction of a dormer closet. Work to be done by Safe Harbor Environmental. John Jannell explained that there was an open OOC on the property, and the proposed work did not increase the floor area of the existing structure. Judy Brainerd inquired if this was the addition of a second story, and Judith Bruce inquired if this work would require additional screening from the resource area. John Jannell passed around the information provided by the applicant, and Jim O'Brien did not feel that the proposed work was significant.

MOTION: A motion to approve this application was made by Judy Brainerd and seconded by Jane Hussey.

VOTE: Unanimous.

Tarrant Cutler, 68 Barley Neck Road. The proposed removal of 2 cedars, pruning of pathway areas around house, and pruning or ornamental grasses and shrubs. Work to

Orleans Conservation Commission Hearing Meeting 11-19-13

be done by Earthworm Landscaping. John Jannell explained that these were junipers to be removed and located on the house.

MOTION: A motion to approve this Administrative Review was made by Bob Royce and seconded by Jane Hussey.

VOTE: Unanimous.

Vote of Support

Kris Ramsay/OCT, 5 Morgan's Way. The Orleans Conservation Trust is looking for a vote of support from the Orleans Conservation Commission relating to the gift of a perpetual Conservation Restriction at 5 Morgan's Way from The Compact of Cape Cod Conservation Trusts, Inc. to the Orleans Conservation Trust. Kris Ramsay of the Orleans Conservation Trust was present. Kris Ramsay went over the filing process for this Conservation Restriction, noting that this would tie into adjacent Conservation Restrictions. John Jannell explained that this would need a vote of support, and Kris Ramsay explained that the state required that the Commission sign a municipal certificate.

MOTION: A motion to have a vote of support was made by Jim O'Brien and seconded by Bob Royce.

VOTE: Unanimous.

Chairman's Business

Approval of the Minutes from the Meeting on October 22, 2013

Erin Shupenis noted there was a correction to be made & they needed to be held a week

The meeting was adjourned at 10:33am.

Respectfully submitted,

Erin C. Shupenis, Principal Clerk, Orleans Conservation Department.