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**Orleans Conservation Commission**  
**Town Hall, Nauset Room**  
**Hearing Meeting, Tuesday, April 19, 2011**

**PRESENT:** Judith Bruce, Vice-Chairman; Bob Royce; Steve Phillips; James Trainor; Jamie Balliett; Jim O'Brien (Associate Member); John Jannell, Conservation Administrator.

**ABSENT:** Arnold Henson, Chairman; Adrienne Pfluger.

8:30 a.m. Call to Order

**Notice of Intent**

**Steve Simon, 8 & 10 Beach Road.** by East Cape Engineering, Inc. Assessor's Map 36, Parcel 23 & 24. The proposed establishment of a 4' path through a right of way over 8 & 10 Beach Road, the removal of invasive species, and the planting of native species. Work will occur within 25' of the Edge of Wetland. Judith Bruce explained that the Commission was in receipt of a letter from Attorney Garner, representing 8 and 10 Beach Road. Attorney Garner has requested the Commission postpone the opening of the public hearing for insufficient information. Judith Bruce explained that Town Counsel has been consulted and there are sufficient facts and standing to open the public hearing. Judith Bruce opened the public hearing. Tim Brady of East Cape Engineering introduced the application and explained that the challenge from Attorney Garner was a result of a box which had been incorrectly checked as part of the Notice of Intent application. Tim Brady explained that the application itself was for the clearing of a 12' Right of Way, with the establishment of a 4' wide path, and the removal of invasive species within the Right of Way. Steve Simon, the applicant, provided the Commission with his planting plan (distributed as a hand out), and explained that when he purchased his home in 1993, he recalled a path through the right of way though it was not properly maintained. Steve Simon would be executing the planting plan himself, with the aid of David Chalker of Bartlett Tree Experts and Craig Panaccione of Crossroads Landscapes for pesticide application. Steve Simon asked that the path be created so that his children may cross Beach Road at the Cole Road entrance as opposed to the end of his driveway due to safety concerns. John Jannell said that he had several detailed comments regarding site plan. John Jannell explained no wetland delineation was completed for the wetland on 10 Beach Road. John Jannell reported that no the limit of work for the proposed clearing was shown on the plan. Tim Brady explained the limit of work was the 12' way. John Jannell asked if the Limit of Work then did not extend to meet Cole Plane. Tim Brady said it is intended to and needs to be revised. John Jannell asked if there were any additional topographical shots showing the elevations around wetland flag 5, where erosion control was a concern. Tim Brady explained that he had used the Town topographical maps for a portion of the plan's elevations. John Jannell asked for actual elevations to be shown not Town GIS information. He also recommended a cross section detail for the path to be submitted. John Jannell asked what type of surface would be used on the path, and Tim Brady said it would be wood chips. John Jannell asked if any pictures from the 1993 path were available. Steve Simon said no, he did not have any. John Jannell was concerned because according to the Wetlands Regulations in 196A-7.f, the maintenance of a path,

not the establishment, is mentioned. John Jannell advised that the Commission has the authority to vote proposed paths up or down on their own merit. James Trainor asked about the existence of the right of way, and John Jannell asked that the hearing not become a legal discussion. Ben Zehnder, representation for the applicant, passed out copies of the easement recoded with the Registry of Deeds in 1965. John Jannell said that Town Council had established the legal right of way as valid. Jay Haynie, an abutter from 18 Cole Place, spoke in opposition of the application. Jay Haynie was concerned about the abutters of Cole Place, a private right of way, being responsible for children crossing the street where he felt access across Beach Road was more dangerous than at the entrance to 24 Beach Road. Judith Bruce felt the Commission should not be debating the legal issue of access for Cole Place. Jay Haynie said that as of 1972 when he had moved to the area, he had not recalled an established path through the right of way. There was also concern that all of the abutters of Cole Place were not properly notified of the hearing. Jamie Balliett asked if all of the abutters had been properly notified. Tim Brady said that he notified abutters within 100' of 8, 10, & 24 Beach Road, and not all of the abutters that had the right to use Cole Place. John Jannell said he would speak with Town Council regarding the proper abutter notification, and Ben Zehnder asked John Jannell to clarify if an abutter showed up to the hearing if that was deemed sufficient notice. Laura Scheel of 2 Beach Road spoke in opposition to crossing the road at Cole Place, as she felt it was much more dangerous than crossing at the entrance of 24 Beach Road. Judith Bruce was concerned about establishing a path straight through the resource area, and Tim Brady said that if the path was permitted, they would be adjusting the location of the path depending on the site. The Commission was concerned about approving a plan when the location of the path was not definitive and the overall impacts to the resource area unknown. John Jannell was concerned about approving a plan when the topography was not indicated on the plan, and work was being proposed in a highly sensitive area. John Jannell advised the Commission that under 196A-7.5 that it is the intent that no work occur in the buffer strip other than habitat improvement. James Trainor asked if the applicant would be clearing to the Edge of the Bog, and Steve Simon said yes. Jamie Balliett asked if any native species would remain after this clearing, and Tim Brady said very few native species were present. John Jannell was concerned about the effectiveness of the proposed planting plan in a 12' way and clearing causing an exposed ground layer. Judith Bruce was concerned about setting precedence for paths to be established through the woods, and was disappointed that all of the abutters had not come to an agreement to clear the entire area surrounding the bog of invasives. Tim Brady requested that the hearing be continued to May 24<sup>th</sup>.

**MOTION:** A motion to continue the hearing to May 24<sup>th</sup>, 2011, was made by Jamie Balliett and seconded by James Trainor.

**VOTE:** Unanimous

**Robert & Nancy Munson, 7 Alden Road.** by Coastal Engineering Company, Inc. Assessor's Map 21, Parcel 75. The proposed addition to a single family dwelling and revegetation of a proposed access way. Work will occur within 50' of the Edge of Two Wetlands. Steve Phillips stated that after the site visit, access for construction would be best through the existing driveway. John Schnaible of Coastal Engineering Company,

Inc. said the applicant was fine with using the existing driveway, thereby eliminating the proposed access way and subsequent proposed mitigation. Steve Phillips asked that the gutters and downspouts be drained into a drywell, and Judith Bruce said that currently on site there was a pipe by the outdoor shower which emptied into the wetland. John Schnaible said that they could install a drywell in the existing driveway to address these issues and additionally catch the runoff from vehicles. Judith Bruce was concerned about the amount of lawn on site, and Steve Phillips noted that the entire front lawn was located within the 50' buffer. John Schnaible remarked that the applicant was also looking to install a hot tub on site, and would be installing a dry well for the water. Judith Bruce said the Commission typically required pool water to be trucked off site when it was located in a sensitive area. Jamie Balliett asked if John Schnaible could prove that the proposed dry well could accommodate the water from the hot tub without having any adverse impact on the surrounding wetlands. John Schnaible asked the Commission what else they would be looking for in a revised plan. Bob Royce suggested a 10' buffer of the lawn to be removed and replanted as mitigation. Steve Phillips asked for a planting plan for this area, and suggested that the applicant look at removing some of the invasives located at the southwest corner of the site. James Trainor asked for gutters and downspouts to be connected to the drywells, as most of the soil on site was clay. John Schnaible asked to be continued to the May 3<sup>rd</sup>, 2011 hearing to comply with the Commission's requests.

**MOTION:** A motion to continue the hearing to May 3, 2011 was made by James Trainor and seconded by Jim O'Brien.

**VOTE:** Unanimous

**John C. Davidow & Diane Schluman Davidow, 29 Beach Plum Lane.** by Ryder & Wilcox, Inc. Assessor's May 23, Page 4. The proposed vista pruning, removal of invasive species, replanting of native species, and establishment of 3 view corridors. Work will occur within the A.C.E.C, and within 100' of the Edge of Salt Marsh and Land Subject to Coastal Storm Flowage. Judith Bruce asked if the black cherry trees would be removed. Theresa Sprague of Wilkinson Ecological Design explained that two black cherry trees outside of the 100' buffer zone would be removed, and the ones within the buffer would remain. Steve Phillips asked whether or not the footpaths located at this site were public or private. Theresa Sprague said that other people used the footpaths besides the applicant, and James Trainor said the path was a private way for the residents in the area. Steve Phillips asked if in Area B where some cherry trees were located in the middle of the view corridor would be removed. Theresa Sprague said that they would only be removing the vine honeysuckle and leaving a small window for a view corridor. John Jannell asked if the viburnum would be removed, and Theresa Sprague said no. Jamie Balliett asked if new cedar trees would be planted in place of the 5 cedars to be removed. Theresa Sprague explained that cedar trees would be replanted on the southern side to provide screening, and tupelos would be planted in the location of the removed cedars.

**MOTION:** A motion to approve this project was made by Steve Phillips and seconded by Jim O'Brien.

**VOTE:** Unanimous

**Stephen Brodeur, 25 Weeset Proprietor's Way.** by Coastal Engineering Company, Inc. Assessor's Map 6, Parcel 4. The proposed extension of an existing driveway and the construction of a stone retaining wall and access steps. Work will occur on the Top of a Coastal Bank and within 100' of the Top of a Coastal Bank, Edge of Salt Marsh, Land Subject to Coastal Storm Flowage, and the A.C.E.C. Jason Norton of Coastal Engineering Company, Inc., explained the material proposed for the stairway would be a fiberglass through-flow design, which allowed for better light penetration for vegetation to grow underneath. Judith Bruce asked why the stairway could not be reduced to 4' wide as per the regulations. Jason Norton explained that the applicant wanted to have a 6' wide access step-way without a railing to bring up both kayaks and a small boat. Steve Phillips was uncomfortable setting a precedence for paths being widened under a variance request. Jason Norton went over the design of the driveway and retaining wall, remarking that the proposed stone wall would be 2' high. Steve Phillips was concerned because the plan indicated an increase in height from 9.5 to 12.5, an increase of 3' as opposed to 2' discussed, and about the amount of fill which would be required for the new driveway. Steve Phillips reminded the Commission that the wall was considered a structure per the Orleans Conservation Regulations. Phil Cheney, Landscape designer for the applicant, explained that erosion control was a concern for the applicant and additional Rosa Rugosa would be planted. Judith Bruce asked about the mowed area, and Phil Cheney explained that the mowed area would be removed. Steve Phillips asked that they stop piling branches and cuttings on the beach. Jason Norton asked the Commission what they would recommend for revisions for the plan. Steve Phillips was concerned about setting precedence by allowing a 6' wide stairway, and asked that it be reduced to the regulatory standard 4' width. Steve Phillips suggested that alternative driveway sites be explored outside of the 50' buffer zone, and that an accurate dimension of the proposed wall be provided. Jason Norton requested to be continued to May 3<sup>rd</sup>, 2011, to speak with the applicant and revise the plan.

**MOTION:** A motion to continue the hearing to May 3, 2011 was made by James Trainor and seconded by Jim O'Brien.

**VOTE:** Unanimous

#### **Amended Order of Conditions**

**Stephen Ellis, 210 Rock Harbor Road.** by Ryder & Wilcox, Inc. Assessor's Map 17, Parcel 91. The proposed installation of a new septic system to serve an existing dwelling, & the pumping & abandonment of an existing cesspool has been amended to include the construction of an addition and deck to an existing garage and the removal of invasive species and replacement with native species. Work will occur within 100' of the Edge of Wetland, Rock Harbor Creek, and the A.C.E.C.. Judith Bruce asked that the proposed path be changed from 5' wide to 4' wide. Steve Phillips asked if there was an existing driveway on site, as the site plan did not show one. David Lyttle said he could provide the Commission with a revised plan. Jamie Balliett asked if the proposed addition would have a bathroom, and if it would be supported by the septic system on site. Steve Ellis said that he would be going in front of both the Historical Commission and the Board of Health for approval, but that the existing system would support it. The Commission asked that in addition to the driveway, the revised plan show the proposed utility and septage lines to the proposed addition.

**MOTION:** A motion to approve this Amended Order was made by Steve Phillips pending the submittal of a revised plan showing the existing driveway, and proposed utility and septage lines was made by Steve Phillips and seconded by Jim O'Brien.

**VOTE:** Unanimous

### **Revised Plan**

**Rick Dupont, 18 Sages Way.** The plan has been revised to include the proposed elimination of the proposed stone steps (106 square feet) to be replaced by a proposed hot tub (82 square feet). A kayak rack with a storage box at the Base of the Coastal Bank is also proposed. Work will occur at the Base of the Coastal Bank and within 100' of the Top of a Coastal Bank and Edge of Wetland. Steve Phillips asked if the kayak rack was anchored below grade, and David Lyttle explained that the rack would have posts to secure it from being tipped over. James Trainor asked if the storage box would be located on the rack, and David Lyttle said yes. Jamie Balliett asked about the new hot tub area and if the original proposed stairs would now become a grass area. David Lyttle explained that this area would remain naturalized, with access from the patio to the lower level eliminated.

**MOTION:** A motion to approve this Revised Plan was made by Steve Phillips and seconded by Jamie Balliett.

**VOTE:** Unanimous

### **Administrative Reviews**

**Peter Nix, 14 Lewis Road.** The proposed replacement of a driveway retaining wall, installation of steps from the driveway to the back yard, and the re-setting and leveling of a brick front walkway. Work will occur within 100' of the Top of a Coastal Bank, Salt Marsh, and the A.C.E.C. James Trainor asked if this was an after the fact filing. John Jannell confirmed it is. The applicant was sent a letter requiring them to file for the work. John Jannell stated he has met with the owners and although this work had started, this would be a project which he would recommend approval under an Administrative Review.

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

**VOTE:** Unanimous

**Robert & Christina Mulligan, 18 Towhee Lane.** The proposed replacement of an existing H-10 septic tank and D-box with H-20 components. All work to take place within the existing driveway. Work will occur within 100' of the Edge of Deep Pond. Work to be done by J.M. O'Reilly. Keith Fernandez of J.M. O'Reilly explained that the tank had to be replaced as a result of a septic inspection report. John Jannell while on site noted an un-permitted dock at the property on the bank in the buffer strip. Keith Fernandez explained that he removed the dock, placed it outside the 100' buffer zone, and explained to the realtor in order to have a dock on site the owner must go through the proper application process.

**MOTION:** A motion to approve the installation of an H-20 component septic tank and D-Box was made by Jim O'Brien and seconded by Steve Phillips.

**VOTE:** Unanimous

**Chairman's Business**

Approval of the Minutes from the Work Meeting on April 12, 2011.

**MOTION**: A motion to approve the minutes was made by Jamie Balliett and seconded by Bob Royce.

**VOTE**: Unanimous

The meeting was adjourned at 10:29am.

Respectfully Submitted,

Erin C. Shupenis, Principal Clerk, Orleans Conservation Department