

Orleans Conservation Commission
Town Hall, Nauset Room
Work Meeting, Tuesday, July 5, 2011

ORLEANS TOWN CLERK
C. May
'11 JUL 12 9:03AM

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

8:30 a.m. Call to Order

Continuations

Last Heard 6/21/11 (JO1)

Paul & Mary Bosley, 34 Viking Road. by Ryder & Wilcox, Inc. Assessor's Map 70, Parcel 24. The proposed licensing of an existing pier, ramp, and float in Namequoit River. The pier is located over a Beach, over a Salt Marsh, on Land Subject to Coastal Storm Flowage, on Land Under the Ocean, and in an A.C.E.C. (Pleasant Bay). David Lyttle of Ryder & Wilcox, Inc., went over the revised plan which called for a float stop system to address the prop scour brought up by the Commission at the previous hearing. This system would stop the float at a height of 30 inches. The pier was proposed to be extended to the north side, and the two floats to be replaced by one 10x20' float. David Lyttle suggested a condition be put on the dock that any boats which utilized the dock berthed bow in to avoid prop scour. Arnold Henson voiced his concern as to why would the public bother meeting the deadline from the DEP amnesty period for docks when they would be allowed to license their illegal docks now. Judith Bruce agreed with Arnold Henson, and again voiced her opinion against issuing an Order of Conditions for a dock which missed the amnesty period and was in receipt of letters from the Orleans Conservation Department asking for a Notice of Intent. Judith Bruce felt the Commission would be setting precedence for docks which did not conform to the Commission's regulations regarding dock size and depth. David Lyttle explained that the applicant was willing to alter the existing structure to create more conformity, and reminded the Commission that the Conservation Department was one of several steps which the applicant would need to take before being in receipt of a Chapter 91 Waterways license. Judith Bruce brought up her concern regarding the shellfish beds and asked if the harbormaster had been consulted. David Lyttle said that per his discussion with the harbormaster, he did not have any concerns regarding the navigation at this site. Adrienne Pfluger read into record the Conservation Commission's regulations regarding docks. Adrienne Pfluger said that while on site she found a very healthy marsh, and did not find anything egregious about this dock which had been in existence since 1968. Arnold Henson was concerned about setting precedence on dock approvals. Jim O'Brien felt that the power of the Commission lay in its ability to look at each application which came before the Board on a case by case basis, and felt that an issuance of an Order of Conditions would not set precedence. Bob Royce felt that the regulations gave the Commission the leeway for approval of this application, since the damage to the resource area appeared minimal. James Trainor felt that since the dock had been in place for over 40 years, the dock was not detrimental to the environment. Jamie Balliett asked if the Commission had the ability to put a more stringent timeline for the seasonal dock installation and removal, and the Commission discussed time lines which included the removal of the dock as early as October 1st. Judith Bruce asked about storage of the dock during the off season and her concern for the marsh. Mike Bosley, representing the applicant, explained that his family did not

store the float on the marsh. The Commission was concerned about the future owner, as the property was on the market. John Jannell passed around to the Commission a draft Findings of Fact which went over several of the points that the Commission brought up during the first hearing. Arnold Henson suggested that the Conservation Department create an Order of Conditions which tailored itself specifically to this pier and float. The Commission went over the draft findings, and asked that John Jannell cite source of the reference from condition number 1, cite that the dock was modified in 1978 on number 3, and date the document. Jim O'Brien and Judith Bruce debated whether or not the standards of the Conservation Commission would be challenged by the installation of a new dock. John Jannell reminded the Commission that a new dock would not be allowed within the A.C.E.C., and that this application, as all past and future applications, has its own set of issues which must be weighed and debated by the Commission. Jim O'Brien felt the Commission was holding the applicant to the same standards as any applicant, and felt that the Engineer was trying to bring the pier and float into conformity. Arnold Henson asked if there was any way the dock could be brought into compliance with the required standards. David Lyttle explained that if the pier was shortened the required depth of water which was required would be reduce even further the float's depth to water. Steve Phillips asked John Jannell about his conversation with the harbormaster. John Jannell said that his conversation regarding the pier and float was a confirmation regarding navigational impacts, which the harbormaster felt were minimal. James Trainor said that although the Commission does not permit new construction within 25-50' of a resource area, they do permit the rebuilt and reconstruction of properties where existing structures are located within this buffer area. David Lyttle reminded the Commission that an on-site would be performed by DEP, and several additional state agencies would be present. David Lyttle encouraged the Commission to attend this site visit to ask about additional shellfish impacts and the agencies overall opinion of the existing pier and float. The Commission discussed the various conditions which it would require should the Order of Conditions be issued. These conditions included that all boats be berthed bow in, that a date be included for the required installation and removal of the seasonal float, that the float be stored off of the resource area, that the approval of this dock will not set a precedent for future applicants to reference, and if at any time the applicant receives a denial, after the appeal period the dock must be removed. Steve Phillips felt the dates to be installed and removed were already part of the Standard Conditions for Docks, and asked that if the findings were incorporated into the Order of Conditions, the necessary changes mentioned earlier be incorporated. Jamie Balliett asked if the size of the boat could also be regulated, and the Commission determined that although the length of the boat could be limited, the main concern would be the engine and whether or not prop scour would occur. The Commission determined that they would incorporate a condition that at no time would their be prop scour.

MOTION: A motion to approve the Order of Conditions with the conditions that the boat be berthed bow in, that the float be stored outside of the resource area, that this dock will not set a precedent for future applicants, that the Findings of Fact read into record with the necessary changes as such required by the Commission be incorporated into the Order, and that if at any time the applicant receives a denial, after the appeal period has ended the dock must be removed, was made by Steve Phillips and seconded by Adrienne Pfluger.

VOTE: 5-2-0; Judith Bruce and Arnold Henson opposed, motion passes.

Administrative Reviews

Wayne Richardson, 26 Defiance Lane. The proposed removal of an existing leaching field within 100' of the Top of a Coastal Bank and replacement with a new leaching field outside 100' of the Top of a Coastal Bank. Work to be done by Daniels Recycling.

MOTION: A motion to approve this work was made by Bob Royce and seconded by Adrienne Pfluger.

VOTE: Unanimous

Harold C. Meyer, 61 Kenneth Lane. The proposed pruning of vegetation and shrubs. Work will occur on and within 100' of the Top of a Coastal Bank and within the A.C.E.C. Work to be done by Stephen Craffey. John Jannell went over the history of this property, which included a previous filing for the same maintenance. Judith Bruce asked if the plan had a definitive view corridor. John Jannell said the application included a specific location for the pruning, from the existing stair to the existing deck.

MOTION: A motion to approve this work was made by Judith Bruce and seconded by James Trainor.

VOTE: Unanimous

G. Howard Hayes, 33 Granny's Lane. The proposed expansion of a kitchen, an entry patio, and installation of a new exterior wall. Work will occur within 100' of the Edge of a Wetland. Work to be done by G. Howard Hayes. John Jannell explained that when he went out on his site visit, he discovered the work had already been completed without either approval from the Conservation Department or a Building Permit. John Jannell asked the applicant for an additional \$10 for an after-the-fact filing fee which the applicant paid. Judith Bruce was concerned because based on the history of this property, this was not the first time that the applicant had completed work without prior approval. John Jannell agreed with Judith Bruce, and said that he felt the work would have received approval if it had not taken place prior to the Commission's approval. Arnold Henson suggested that the Commission could fine the applicant, and Jamie Balliett suggested that the Commission require a Notice of Intent. Arnold Henson asked if the footprint of the dwelling was being expanded, and John Jannell said it was exterior area going to interior area. Steve Phillips felt a fine would be appropriate versus asking the applicant to file a Notice of Intent.

9:30am James Trainor recused himself and subsequently left the meeting.

MOTION: A motion to approve this application was made by Judith Bruce and seconded by Jim O'Brien.

VOTE: Unanimous

The Commission decided to issue a fine of \$100 for the work that had been done without prior approval from the Conservation Commission and given the applicants history of doing illegal work in the resource area.

MOTION: A motion to issue a fine of \$100 was made by Steve Phillips and seconded by Judith Bruce.

VOTE: Unanimous

Chairman's Business

Approval of the Minutes from the Meeting on June 28, 2011.

MOTION: A motion to approve the minutes was made by Judith Bruce and seconded by Adrienne Pfluger.

VOTE: Unanimous

Other Member's Business

Administrator's Business

Site Visits

The Commission discussed the site visits. The meeting was adjourned at 9:33am.

Respectfully submitted,

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