

**Orleans Conservation Commission**  
**Town Hall, Nauset Room**  
**Hearing Meeting, Tuesday, January 3, 2012**

'12 JAN 10 10:03AM  
K. Darling, Asst  
ORLEANS TOWN CLERK

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

**ABSENT:** Steve Phillips; Jamie Balliett.

8:30 a.m.      Call to Order

Arnold Henson formally announced his resignation from the Orleans Conservation Commission. Judith Bruce Chaired the hearing.

**Continuation**

Last Heard 12/6/11 (JB1, JO1)

**Charles Silbert, 40 Gesner Road.** by East Cape Engineering, Inc., Assessor's Map 42, Parcel 91. The proposed removal of an existing dwelling, construction of a single family dwelling, garage, and installation of a new water line and paved driveway. Work will occur within 100' of the Edge of Wetland, Top of a Coastal Bank, Salt Marsh, Land Subject to Coastal Storm Flowage, and the Pleasant Bay A.C.E.C. Tim Brady of East Cape Engineering went over the revisions to the site plan, explaining that the garage was reduced to move the majority of it outside of the 50' buffer zone and the driveway was now pervious. The current cubic volume of the two buildings is 18,000, and the proposed would be between 35-40,000 cubic feet. Judith Bruce stated that when the Commission looked at proposals within the A.C.E.C., they looked for the applicant to either stay within the existing footprint, or move outside of the buffer zone as much as possible. Judith Bruce was concerned that an accurate footprint size had not been provided, as the design of the house had not been finalized, to ensure accurate screening from the resource area would be provided in a planting plan. James Trainor asked what the change would be in the livable square footage. Charles Silbert, the applicant, said the livable space would be going from 1600 to 2800 with the installation of the second floor, but a house design had yet to be finalized. James Trainor asked about the existing trees located on the site and whether or not they would remain with the new planting plan. Judith Bruce asked if the conservation mix would be a no mow zone. Tim Brady said the plantings would be increased outside of the limit of work, and Charles Silbert said he wanted to mow the conservation mix area to be maintained as a lawn. Judith Bruce reminded the applicant that the 50' buffer zone was a no contact zone, and could not be maintained as a lawn area. Tim Brady suggested that the applicant may consider building in the existing footprint, which would involve foundation work. Judith Bruce stated that work within the existing footprint would require no increase in the height of the structure. Charles Silbert said that he wanted to have a second floor, and would prefer to build a taller structure further away from the resource area. Charles Silbert asked if lawn outside of the 50' buffer would be permitted. Judith Bruce said lawn outside of the 50' buffer was permitted, but could not weigh in on it until a plan showing what was proposed was provided. John Jannell stated that several non-native species were proposed on the landscape plan which was prohibited within the 50' buffer zone, and the planting plan was largely comprised of ornamental shrubs in the

ACEC. No screening trees were proposed on the planting plan. John Jannell asked about the drip line of the linden tree in relation to the limit of work proposed for the garage, and if the root system would be compromised. Charles Silbert asked if a note stating that trees would be planted without indicating where would be sufficient, and the Commission said no. Adrienne Pfluger asked about the buffer at the top of the bank, and if the oak tree would be either saved or replaced. Charles Silbert said the buffer at the top of the bank would be around 20', and Tim Brady said the oak tree was located in the middle of the proposed garage; replacement plantings could be offered for the oak tree. Adrienne Pfluger asked if the utilities would be underground, and Tim Brady said yes. John Jannell asked that a revised plan showing the limit of work for both the plantings and the house be provided, in addition to demonstrating the location of the drip line for the linden tree. James Trainor asked that the house be moved back outside of the 50' buffer zone entirely. Tim Brady asked to continue the hearing to January 17, 2012, to go over the Commission's suggestions.

**MOTION:** A motion to continue the hearing was made by James Trainor and seconded by Bob Royce.

**VOTE:** 4-0-1; Jim O'Brien abstained.

### **Notice of Intent**

**Molly L. Hidden, 10 Bufflehead Lane.** by Ryder & Wilcox, Inc, Assessor's Map 1 Parcel 25. The proposed installation of a ground mounted Solar Array. Work will occur within 100 feet of a Coastal Bank, and Land Subject to Coastal Storm Flowage. David Lyttle of Ryder & Wilcox explained the solar array would be 3 rows of solar panels, installed in the ground on 4x4' posts. David Lyttle stated that Wilkinson Ecological Design had been consulted, and they felt the type of grasses located within this mitigation area could handle runoff from the solar panels. Judith Bruce asked how tall the panels would be, and David Lyttle said at the highest point in the back the panels would be 4-5' off of the ground. Judith Bruce asked if they would touch, and if there was ample room for wildlife to go underneath. David Lyttle explained that the solar panels now allowed for ample light and space underneath, though there would be some shading impacts due to their installation, and the underground conduit was in place. David Lyttle suggested that the Commission could condition an Order of Conditions to require that the ground underneath the solar array be maintained and planted. Adrienne Pfluger asked if the installation of the solar array would impact the open Order of Conditions for the planting of the locus area. John Jannell stated that the areas underneath the panels would be subject to the same conditions as the other Order of Conditions, and that at this time a majority of the work under the older Order had been completed. John Jannell asked if any of the Black Cherry trees would be taken down as a result of the solar panel installation. Molly Hidden, the applicant, said she was not aware of any removal of the Black Cherry trees.

**MOTION:** A motion to issue an Order of Conditions with the condition that any erosion as a result of the installation of the ground mounted solar array be mitigated by the applicant was made by Jim O'Brien and seconded by Adrienne Pfluger.

**VOTE:** Unanimous

**Raymond P. Ormerod, 101 Brick Hill Road.** by Ryder & Wilcox, Inc, Assessor's Map 28 Parcel 154. The proposed replacement and extension of an existing deck onto a

single family home. Work will occur within 100 feet of Edge of Wetland and an Inland Pond. David Lyttle explained that the rebuild and extension of this deck would result in 9 new sonotubes to the ground below the deck. Adrienne Pfluger was concerned about the path beside the walkway acting as a sluiceway, and inquired if a drywell was present. Judith Bruce was concerned that this area was showing signs of runoff. David Lyttle said he was unsure if this area had a drywell. Judith Bruce asked about evidence she saw of cutting within the resource area, and John Jannell concurred that he saw evidence of cutting of the viburnum. Judith Bruce felt this was a sensitive area, and potential for an overall improvement to the area. John Jannell suggested that the applicant propose plantings to mitigate for the work proposed, and that the mowing of the area to the water stop. David Lyttle asked that the hearing be continued for two weeks to put together the Commissions suggestions into a revised plan.

**MOTION:** A motion to continue the hearing to January 17, 2012, was made by James Trainor and seconded by Bob Royce.

**VOTE:** Unanimous

**Kenneth M Johnson, 19 Gosnold Road.** by Ryder & Wilcox, Inc, Assessors Map 45 Parcel 12. The proposed stabilization of a Coastal Bank. Work will be within the Pleasant Bay ACEC, and on a Coastal Bank. *Jim O'Brien recused himself.* David Lyttle went over the proposed stabilization, stating that the landscaper of the applicant would remove the vegetation to the limit of work and replant the area with viburnum and bayberry on one side, and create a wall with tie backs into the bank on the other side to protect the existing pool. Judith Bruce asked how far off of the pool they were looking to install the limit of work, and David Lyttle said 8-9' off of the fence. Judith Bruce asked if the work limit could be moved to the 50' contour line. David Lyttle said in order to do the project properly, the landscaper would have to go down to the 48' contour line, but that a fabric siltfence could be dug into place. James Trainor asked what the proposed height of the timber wall would be, and David Lyttle said between 3' and 3.5'. Adrienne Pfluger asked if the haybales currently on site would be removed, and Judith Bruce asked how long they had been in place. Ken Johnson, the applicant, said the haybales had been on site for 12 to 18 months, and David Lyttle said the haybales would be removed. John Jannell asked how much fill would be brought in to recontour the bank. David Lyttle said around 1' of fill would be needed, and that he did not want to recontour the area, but rather expose the edge of the wall, fill it, and match it close to the existing grade. James Trainor asked if the proposed grasses would be mowed or allowed to grow, and Judith Bruce asked if mulch would be used. David Lyttle said the grasses were to stabilize the new plants to allow them to grow, and no mulch would be used. John Jannell stated there were additional regulatory issues on site, and David Lyttle stated for the record that the applicant's neighbor had a view easement over the applicant's property. John Jannell discussed an unpermitted cutting which had occurred without permission from the Conservation Commission on 19 Gosnold Road. Ken Johnson explained that he was quite surprised by the cuttings, as he had neither hired his landscaper to do them nor had done them himself. David Lyttle asked that the proposed retaining wall be kept separate from the regulatory issue, and John Jannell asked if the applicant had reached out to his neighbor regarding this issue. Ken Johnson stated that he had reached out to his neighbor, and David Lyttle suggested that a Notice of Intent for the view corridor be filed by the neighbor, with Ken Johnson signing his permission for work to occur on his property. David Lyttle asked to meet

with John Jannell and Ken Johnson to discuss the best course of action to address the illegal cuttings.

James Trainor asked that the plan for the retaining wall show how many plants would be installed, and David Lyttle asked for the hearing to be continued for one week to provide this revised plan.

**MOTION**: A motion to continue the hearing to January 10, 2012, was made by James Trainor and seconded by Bob Royce.

**VOTE**: 4-0-1; Jim O'Brien abstained.

**William H. and Kim C. VonThaden, 7,13 &19 Vernon Road.** by Ryder & Wilcox, Inc, Assessors Map 12 Parcel 98,99&100. The proposed construction of a tree house. Work will occur within 100 feet to an Isolated Wetland. David Lyttle explained that this proposed project would not impact the open Order of Conditions which included a restoration plan to the landscape within this area. David Lyttle explained that the circular tree house, located within one oak tree and one maple tree, would be connected by a rope plank way and installed to avoid damaging the trees. Bob Royce asked how high above ground the circular tree house would be located. Bill VonThaden, applicant, explained that the tree house would be between 8-10' in height, at a level which would not cause damage to the tree but at the same time would be safe for young children to play upon. Adrienne Pfluger inquired if an apiary was located on site, and Judith Bruce asked if tree limbs were to be removed. Bill VonThaden said there was an apiary present, and David Lyttle said only dead branches were to be removed for safety. John Jannell recommended that the Commission hold the Notice of Intent as a DEP number had not been issued for the filing.

**MOTION**: A motion to continue the hearing to January 10, 2012, was made by Jim O'Brien and seconded by James Trainor.

**VOTE**: Unanimous

***Jim O'Brien left at 9:36am***

### **Request for Determination of Applicability**

**Richard and Lisa Pell, 114 &118 Barley Neck Road.** by Ryder & Wilcox, Inc, Assessor's Map 50, Parcel 51,52,&53. The proposed removal and rebuilding of an accessory structure. Work will occur within 100 feet to a Bordering Vegetated Wetland. David Lyttle, Dan Davis, contractor. David Lyttle explained that the barn would be torn down and rebuilt within the existing footprint. Judith Bruce asked what portion of the dwelling was within the 100' buffer. David Lyttle explained that the corner of the bulkhead and a corner of the building were located within the buffer zone. Judith Bruce asked if the same foundation would be used, and John Jannell asked if the present foundation was either partial or full. David Lyttle said that the foundation was full, would be new, and built in the same footprint. Judith Bruce asked if the barn could be rebuilt outside of the buffer zone. David Lyttle said the applicant would run into problems with the Zoning Board of Appeals concerning setbacks from the property lines, and thought it best to rebuild in the same location. James Trainor asked if there was a kitchen in the garage, and Judith Bruce inquired whether there was a half or full bathroom. David Lyttle explained that there was no kitchen, and Dan Davis, builder for the applicant, said there presently was a half bath and would remain a half bath during the renovation.

**MOTION:** A motion to issue a Negative Determination was made by James Trainor and seconded by Adrienne Pfluger.

**VOTE:** Unanimous

### **Certificate of Compliance**

**Edward Ghory & Anne Ghory-Goodman (2010), 19 Brick Hill Road.** The request for a Certificate of Compliance for an Order of Conditions for the construction of a second-story addition & patio onto an existing dwelling. No work occurred under this Order of Conditions. The applicant, Edward Ghory, was present.

**MOTION:** A motion to issue this Certificate of Compliance was made by James Trainor and seconded by Adrienne Pfluger.

**VOTE:** Unanimous

**Joanne Broderick (2009), 11 Seaside Drive.** The request for a Certificate of Compliance for an Order of Conditions for the construction of an addition to an existing dwelling and execution of a restoration plan. John Jannell reported the addition had been built according to plan and the shed relocated and the area re-planted as part of the mitigation.

**MOTION:** A motion to issue this Certificate of Compliance was made by Adrienne Pfluger and seconded by James Trainor.

**VOTE:** Unanimous

**Charles Carlson (2010), 23 Doane Road.** The request for a Certificate of Compliance for an Order of Conditions for the construction of an addition to a single family dwelling. John Jannell reported that during his site visit, he did not see the proposed 40 plantings to be used for mitigation. Gordon Peabody of Safe Harbor Environmental stated that the buffer strip had been planted. Judith Bruce stated that in order for the Conservation Commission to sign off on the Certificate of Compliance, the plantings should be growing and thriving. Gordon Peabody asked to meet with the Conservation Agent on site to look at the plantings which had been done. John Jannell stated that the application could be held for one week, and Gordon Peabody asked that the hearing be continued to January 10, 2012.

**MOTION:** A motion to continue was made by James Trainor and seconded by Adrienne Pfluger.

**VOTE:** Unanimous

**Mary Galloway (1977), 25 Cheney Road.** The request for a Certificate of Compliance for an order of Conditions for the construction of an addition to an existing dwelling and construction of stairs to the beach.

**MOTION:** A motion to issue the Certificate of Compliance was made by Adrienne Pfluger and seconded by Bob Royce.

**VOTE:** Unanimous

### **Chairman's Business**

Approval of the Minutes from the Meeting on December 20, 2011

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

**VOTE:** Unanimous

The Commission discussed the site visits.

The meeting was adjourned at 9:56am

Respectfully submitted,

Erin C. Shupenis, Principal Clerk, Orleans Conservation Department