

Orleans Conservation Commission
Town Hall, Skaket Room
Hearing Meeting, Tuesday, February 7, 2012

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C. May
ORLEANS TOWN CLERK

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

ABSENT: Jamie Balliett

8:30 a.m. Call to Order

Continuation

Last Heard 1/3/12 (SP1, JB2)

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. John Jannell reported a letter had been received asking to continue the hearing to March 6, 2012.

MOTION: A motion to continue the hearing to March 6, 2012, was made by Adrienne Pfluger and seconded by Bob Royce.

VOTE: Unanimous

Last Heard 1/17/12 (JO1)

Philip Metzidakis et al, 64 Tonset Road. by Schofield Brothers of Cape Cod, Assessor's Map 34, Parcel 35-2-r. The after the fact filing of the construction of a deck and the establishment of a trail to the beach. Work has occurred on a Coastal Bank, on Land Subject to Coastal Storm Flowage, and within 100' of the Top of a Coastal Bank, Coastal Beach, Edge of Marsh, Land Subject to Coastal Storm Flowage, and the Edge of Wetland. Laura Schofield of Schofield Brothers of Cape Cod, Philip Metzidakis, and Ruth Waldman, were present. Laura Schofield reviewed the scope of the project explaining that since the last hearing, a site visit with the Commission was conducted to highlight that the best location for the proposed path would be alongside the property line resulting in a mowed path. This path would be demarcated by stakes to ensure that the correct area would be mowed, and a split rail fence installed for the landscapers reference. The second issue, the after the fact construction of a deck, would be mitigated by the removal of invasive species and the replanting with native species within the 50' buffer area. The 50-100' buffer zone would also have additional plantings, and the applicant wanted to work with the neighbor to replace their existing chain link fence with a combination of a split rail fence and plantings to allow for wildlife passage. Steve Phillips concurred that the site visit confirmed that the proposed location for the path was agreed upon, and asked what the landscaper would do with the phragmites cuttings, as re-colonization was a concern. Laura Schofield stated that the phragmites cuttings would be left on site, and Judith Bruce stated that the cuttings must be removed. Steve Phillips explained that in terms of the deck, it was a significant change to the area, from an open area to a structure. Steve Phillips explained that the Commission was told to approach the deck as though it did not exist, to determine whether or not it would be permitted. Laura Schofield said that the area had historically been disturbed under a previous Notice of Intent for the installation of a driveway, and although a deck and driveway were not in the same category, the Conservation regulations allowed the Commission to

make certain allowances. Judith Bruce said that the regulations clearly allow for variances, but in most cases a variance is granted due to an extenuating circumstance. James Trainor stated that he had a hard time comparing a garden to a deck, given that there is an existing deck which goes the length of the house to allow the owner to enjoy the outdoors. Adrienne Pfluger felt that the pathway was fine, but that the deck was quite intrusive given its size and lighting. John Jannell updated the Commission on the existing chain link fence along the property line. John Jannell reported that there was no permit applied for or granted for the installation of the Fence by Mrs. Downs. John Jannell explained that the Commission should treat the application as if the deck did not exist, and if the Commission ordered it to be removed, that he would prepare an Enforcement Order with a date certain for its removal. Ruth Waldman, the owner of 64 Tonset Road, was concerned about how the deck was intrusive when it was not a vehicle parked within the resource area dripping oil or a garden using insecticide. Judith Bruce explained that wooden decks are considered structures, and that they are not permitted within the 100' buffer to a resource area without prior approval from the Conservation Commission. Judith Bruce explained that the house predated the Conservation Commission regulations. Steve Phillips agreed, and Judith Bruce asked why a building permit had not been filed for by the applicant. Ruth Waldman said that Phillip Metzidakis thought that since it did not have walls it was not considered a structure. Laura Schofield felt that this was the first step in rectifying this situation, and felt that the proposed mitigation in exchange for the deck would provide a significant environmental benefit to the area. Laura Schofield also stated that the deck was used for the applicant to enjoy the view from their property, and Judith Bruce reminded the applicant that there was presently a deck the length of the house so that the applicant may enjoy their view of the water. Phillip Metzidakis stated that he built the deck as a quiet location in addition to the existing deck off of the house. James Trainor asked if the new deck still allowed a vehicle to turn around in the lower driveway, and Phillip Metzidakis said yes. Phillip Metzidakis explained that through the construction of the deck he had taken down a branch which came down during the fall storm events. Judith Bruce stated that any work within the 100' buffer zone to the resource area required filing with the Conservation Commission. Judith Bruce stated that the Commission was moving towards an Enforcement Order for the removal of the deck or moving it outside of the buffer zone. Phillip Metzidakis asked if he would be able to cut a portion of the deck to remove it outside of part of the buffer zone. Phillip Metzidakis was concerned how the house could be within the buffer zone and not the new deck, and Judith Bruce reminded the applicant that the house construction predated the Orleans Wetlands Bylaw. Laura Schofield asked if the Commission would agree to the proposed location of the footpath, and the Commission concurred that the proposed clearing and location of the footpath would be fine. Adrienne Pfluger asked what would happen to the chain link fence with the installation of the path, and John Jannell said that the fence would be dealt with in a similar fashion as the Commission was dealing with this un-permitted activity. Laura Schofield asked if an Amended Order of Conditions would be an appropriate filing should the applicant wish to relocate the deck. John Jannell explained that a revised plan could be submitted showing only the path in order to approve the footpath, and that an Amended Order would not be the correct filing or needed at this time. Laura Schofield asked that her clients have time to consider their options for either relocation or complete removal of the deck, and asked that the hearing be continued to give them ample time to do this. Ruth Waldman and Phillip Metzidakis discussed their schedule, and asked that the hearing be continued to March 13, 2012, so that they may discuss their options. Judith Bruce was concerned as this was an unpermitted structure which would now be allowed for an additional 6 weeks, and John Jannell stated that the Commission currently had voluntary compliance up until this point with

the applicant. Judith Bruce stated that the hearing would be continued to March 13th, with action to move quickly thereafter.

MOTION: A motion to continue the hearing to March 13, 2012, was made by Steve Phillips and seconded by James Trainor.

VOTE: Unanimous

Last Heard 1/3/12 (SP1, JB1)

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 of Ryder & Wilcox, Inc. asked to continue the hearing to February 14, 2012, to make corrections to the plan.

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

VOTE: Unanimous

Last Heard 1/24/12

Stephen Brodeur, 25 Weeset Proprietors Way. by Coastal Engineering Company, Inc. Assessor's Map 6, Parcel 4. The proposed reconstruction of a stone revetment, installation of stone retaining walls, removal of existing patio areas, and mitigation plantings. Work will occur on the Top of a Coastal Bank, within Land Subject to Coastal Storm Flowage, and within 100' of the Top of a Coastal Bank, Edge of Salt Marsh, Coastal Beach, Land Subject to Coastal Storm Flowage, and the Nauset Estuary. Jason Norton of Coastal Engineering Company, Inc. and Phil Cheney, landscape designer, went over the changes to the proposed plan, which included the removal of the wooden stairway permitted under a different Order of Conditions, and the installation of granite steps under the present Notice of Intent. Phil Cheney explained that he added 3 additional cedar trees, a white oak to replace the invasive maple tree, and spartina patens plugs will be put in place of the hand removed chink stones. Steve Phillips asked if mulch was still being used for the first year as suggested by Sarah Turano Flores, legal representation from Nutter, McLennen, & Fish. John Jannell asked that the plan notes be incorporated in the Order under the local bylaw approval, such as the requirement of the construction protocol, chinkstone removal, and the marsh restoration. John Jannell also stated that this plan showed a new stairway, and Jason Norton asked if the revised plan proposed later on in the agenda could be discussed in conjunction with this approval, and the Commission felt that it could be discussed once the hearing for the revetment was closed. Judith Bruce asked if additional conditions were necessary in addition to the ones John Jannell had proposed. John Jannell asked that the basic special conditions for coastal structures, which included that the rock have a rough face, the construction protocol be the governing body, the construction season be limited from November 1st to April 1st, a photo record be maintained, and, additionally, the cedar trees adjacent to the construction access be protected with mats and replaced in kind additionally be incorporated with the approval. Jason Norton announced that the applicant was also considering renovations to the house, and if they decide to go ahead with them, would bring this proposed work under a new Notice of Intent.

MOTION: A motion to approve the site plan dated January 18, 2012, landscape plan dated January 31, 2012, and incorporate all of the conditions John Jannell had suggested as part of this application was made by Steve Phillips and seconded by Jim O'Brien.

VOTE: Unanimous

Revised Plan

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, the construction of a stone retaining wall, and access steps has been revised to remove the wooden stairway and replace it with a granite step under a different filing. 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. Steve Phillips asked if the extension of the driveway had been permitted under this filing, and John Jannell said yes.

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

VOTE: Unanimous

Notice of Intent

Max & Anne Makowsky, 5 Deep Pond Circle. by Ryder & Wilcox, Inc. Assessor's Map 87, Parcel 111. The proposed rebuilding of an existing dock. Work will occur on a Bordering Vegetation Wetland and Land Under Water Bodies. David Lyttle explained that the work would be done during the dormant season, with the cinder blocks removed and locust to be used for the posts. Steve Phillips asked about the dimensions of the dock, both present and proposed. David Lyttle said the dock was 23', the ramp 10', and this would be the dimensions when it was rebuilt. John Jannell reminded the Commission that a letter from Natural Heritage was required for this site, and Judith Bruce asked when David Lyttle should receive his letter. David Lyttle asked that the hearing be continued for one week to February 14, 2012, as a letter should be received by that time.

MOTION: A motion to continue the hearing to February 14, 2012, was made by Adrienne Pfluger and seconded by Steve Phillips.

VOTE: Unanimous

Burton G. Herman, 9 Windswept Lane. by Ryder & Wilcox, Inc. Assessor's Map 38, Parcel 6. The proposed construction of an addition to an existing single family dwelling. Work will occur within 100' of the Top of a Coastal Bank and the Pleasant Bay A.C.E.C. David Lyttle explained that a majority of the work would be inside, with the newly proposed wall moving to be in line with the existing wall. Adrienne Pfluger asked where the outdoor shower would be relocated, and Bob Royce asked if the outdoor shower was permitted. David Lyttle explained that at this time the outdoor shower was being removed, and would be proposed in a new filing for additional building work. Judith Bruce confirmed for the purpose of this filing the outdoor shower was being removed, and David Lyttle said yes. Steve Phillips asked about the purpose of the bump-out for the wall, and asked if the roof line would be new. David Lyttle stated that the purpose of the moving of the wall would be to increase the interior of the kitchen, and the roof would line up and extend out roughly 2'. David Lyttle explained that the work would require an excavation with a 4' frost wall, and Judith Bruce asked about the presence of a limit of work. David Lyttle said that a limit of work was shown to provide access for the mini excavator, and a silt fence would be installed on the work limit. James Trainor asked if the new wood stairs would be in line with what presently existed, and David Lyttle said yes.

MOTION: A motion to approve this plan dated December 28, 2011, with the elevation plan accompanying the approval was made by Steve Phillips and seconded by Jim O'Brien.

VOTE: Unanimous

Philip & Claire Ruggieri, 106 & 110 Beach Road. by Ryder & Wilcox, Inc. Assessor's Map 37, Parcel 8-2 & 8-1. The proposed removal of invasive species, replanting with native species, creation of walking paths, and hardscaping, including pervious patios, walks, and the expansion of gravel driveway. Work will occur within 100' to the Edge of a Bordering Vegetated Wetland and two Isolated Wetlands. Jen Exner of Wilkinson Ecological Design went over the existing conditions on site, noting that during the house construction access throughout the property in the form of patios and walkways had not been incorporated in the building plans. Jen Exner explained that the property would be approached in two phases, with the treatment of the invasives and replanting of natives as part of phase one, and the establishment of pathways and patios as phase two. John Jannell asked for clarification if all of the proposed plantings would be taking place during phase one, and Jen Exner confirmed this, stating that any additional plantings would be filed for administratively. John Jannell noted that the proposed mowing may occur during the life of the Order of Conditions, but that any additional mowing to take place on site thereafter should be requested as a maintenance item in any future Certificate of Compliance request. Steve Phillips asked if any additional changes to the buildings were shown which had not been approved under the previous filings. John Jannell explained that the buildings remained the same as the previous approval, and that a Revised Plan was going to be submitted asking for the installation of underground utilities.

MOTION: A motion to approve the site plan dated January 12, 2012, which included the installation of new patios and pathways, was made by Steve Phillips and seconded by Adrienne Pfluger.

VOTE: Unanimous

176 Quanset LLC, 176 Quanset Road. by Ryder & Wilcox, Inc. Assessor's Map 94, Parcel 4. The proposed re-installation of a licensed pier. Work will occur on Land Subject to Coastal Storm Flowage, over Land Under the Ocean, in the Pleasant Bay A.C.E.C., and within 100' of the Top of a Coastal Bank and Edge of Salt Marsh. David Lyttle went over the history of the wharf license issued in 1924, and explained that the site plan indicated where evidence of the piers, now in the form of stub piles, were installed on a seasonal basis. David Lyttle explained that the applicant wanted to install the seasonal licensed pier per the approved 1924 plan, and not deviate from the licensed plan. Judith Bruce asked about potential changes to the pier, and David Lyttle explained that since the pier had been licensed by the state already, any deviation from the plan of record would require new permits from a variety of state agencies. Max Makowsky, the applicant, explained that it was his intention to replace what had been licensed by the state. Judith Bruce was concerned whether or not abandonment would be a concern. Roger Reed, abutter for the property, explained that his family recalled the pier being in the water, but was not sure whether or not the pier was installed the entire 124' indicated on the wharf license. John Jannell said that on the 2005 GIS town maps a dock was shown, and therefore did not feel abandonment was a concern. David Lyttle explained that the dock itself would be stored outside of the buffer, and Max Makowsky felt that an offsite storage location would be best. John Jannell noted the request for an eelgrass study suggested by the Department of Marine Fisheries. Judith Bruce asked if the site had any eelgrass beds surrounding the location. David Lyttle stated that the entire area was covered with eelgrass, and that the survey could not be done until the summer when the eelgrass was thriving. Judith Bruce did not feel that the eelgrass survey would be necessary given the area had a healthy eelgrass population surrounding it. John Jannell asked if the dock was 9' above substrate. David Lyttle stated that the dock elevation was at 6.8', with the seaward half of the structure closer to 8 or 9', but that shading was not

an issue because the structure would be seasonal. Judith Bruce asked if there would be spacing between the decking, and James Trainor asked what the height above the water would be at mean high tide. David Lyttle said there would be half-inch spacing between decking, and the dock elevation would be 6.8'. Judith Bruce asked if anyone wished to comment from the audience. Roger Reed, an abutter of the property, voiced his concern that any rebuild of the pier would not result in it being located closer to his property line. David Lyttle suggested that there could be a condition that the dock was shorter, but Judith Bruce stated that the dock needed to be the 124' in length to get to the 2.5' of depth required. James Trainor asked if there would be a float at the end of the pier, and Max Makowsky explained that there would neither be a float nor would boats be moored at the end of the pier. Max Makowsky said that the pier would be for drop off and pick up of passengers, and that at no time would boats be tied to the end of it. John Jannell recommended that "no float or no berthing" be included as a condition of the Order. Roger Reed asked if the property was sold, would it be clear to the new owner where the dock should be located each season. David Lyttle explained that this would make the location of the dock very clear to anyone who would install it.

MOTION: A motion to approve the plan dated January 9, 2012, with the condition that the dock be stored in an offsite location was made by Steve Phillips and seconded by Adrienne Pfluger.

VOTE: Unanimous

Jim Obrien left at 10:32am

Administrative Reviews

Elizabeth Curtis, 108 Arey's Lane. The proposed removal of 1 downed pine tree. Work will occur within 100' of a Bordering Vegetated Wetland, Arey's Pond, and the Pleasant Bay A.C.E.C. Work to be done by Covell Brothers Landscaping. John Jannell explained that this application had expired and the applicant now wished to remove the tree.

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

VOTE: Unanimous

Alan Carrier, 22 Tonset Road. The proposed testing of soils for a Title V septic system. Work will occur within 100' of the Edge of Wetland. Work to be done by Schofield Brothers. John Jannell stated that this work was exploratory only, and did not guarantee the lot buildable

MOTION: A motion to approve this application was made by James Trainor and seconded by Bob Royce.

VOTE: Unanimous

Priscilla Bloomfield, 51 Hopkins Lane. The proposed removal of 2 locusts and installation of white cedar privacy fence. Work will occur within 100' of the Edge of Wetland. Work to be done by Nauset Landscapes. John Jannell clarified that this would be the removal of two locust trees and the installation of a live fence of Northern White Cedars. Steve Phillips asked if the abutters would be impacted by the live fence installation. John Jannell explained that the property owner abutted the road, and the live fence would be put behind an existing split rail fence.

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

VOTE: Unanimous

Chairman's Business

Approval of the Minutes from the Meeting on January 24, 2012

MOTION: A motion to approve the minutes pending changes was made by Steve Phillips and seconded by James Trainor.

VOTE: Unanimous

Other Member's Business

Administrator's Business

John Jannell commended and thanked the AmeriCorps workers and other volunteers for a job well done cleaning the Putnam Farm Property; the next time the AmeriCorps volunteers would be there would be in April.

Site Visits

The meeting was adjourned at 10:45am

Respectfully submitted,

Erin C. Shupenis, Principal Clerk, Orleans Conservation Department