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

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

ABSENT: Jamie Balliett.

8:30 a.m. Call to Order

Continuations

Last Heard 7/3/12

Cove Condominium Trust, 13 South Orleans Road. by East Cape Engineering, Inc. Assessor's Map 26, Parcel 64. The proposed replacement of a seasonally removed pier, ramp, and float with a permanent pier and seasonally removed ramp and float. Work will occur in Land Subject to Coastal Storm Flowage, on a Salt Marsh, and in Land Containing Shellfish. Tim Brady of East Cape Engineering went over the comparison table which showed the existing versus proposed dock and pier, and the improvements versus downsides of the proposed application. Judith Bruce asked if a kayak rack had been discussed, and Tim Brady said the association did not want one installed. Tim Brady inquired about the 4' height requirement, and Judith Bruce said the Commission looked for that as a maximum height for a pier. Tim Brady explained the proposed height of 4'4" was picked because it was the same as the Town Pier at Cove Road. Tim Brady explained the biggest change to this application was the permanent piles as opposed to seasonal, but that the pier itself would be shorter and the pilings would be spaced further apart, resulting in fewer pilings than what existed. Judith Bruce felt that while the Commission did not encourage permanent structures in the resource area, the proposal would reduce the size of the pier which was a benefit to the resource area. Judith Bruce inquired about the width of the pier, and that it needed to be reduced to 4'. Tim Brady said the posts on the outside cause the increase in width, and there was the potential for several people using this structure as opposed to a private dock. Judith Bruce asked if the pilings themselves needed to be 8", and Tim Brady said this was a typical size used. James Trainor felt that due to the potential increased usage of the pier, the 8" pilings would be more structurally sound. Steve Phillips asked if the applicants would be amenable to reducing the height and width to 4', and Tim Brady said the applicant currently had a width of 4'. Judith Bruce confirmed that eelgrass beds were located greater than 50' from this site, and Tim Brady said yes. Steve Phillips inquired about the cleaning of catch basins, whether or not they were cleaned on a regular basis, and how the system itself drained. Tim Brady explained the catch basins were cleaned, but was not aware of a regular program. Tim Brady thought the system drained into leaching basins, and Bob Royce inquired if during a significant storm event the system would fill up and overflow. Tim Brady said yes, and that a majority of the older systems did not have a specific design standard. Adrienne Pfluger asked about the access stairs, and Tim Brady said the applicants would be looking at the current condition of the stairs and the potential need to replace them. John Jannell asked if the number of pilings would increase, and Tim Brady said the number would only increase if smaller pilings were incorporated into a revised plan. John Jannell noted the comments from DNF were very vague, and suggested that the Conservation Department would prepare findings for the Commission to incorporate into any issued Order of Conditions.

John Jannell asked if the applicants were comfortable with the proposed length, or if they would look to modify their Chapter 91 waterways license again to lengthen the proposed permanent pier. Tim Brady felt the applicants would prefer a shorter more permanent pier, as they were the ones that took the seasonal dock in and out of the water every year. John Jannell noted that this reduction would potentially open more area for shell fishing. Steve Phillips pointed out that the plan showed the decking on the pier to be $\frac{3}{4}$ " on one part of the plan and within the details portion 1" was indicated. Tim Brady said the regulations required 1" spacing, and would revise the plan accordingly. Judith Bruce said the Commission would like to see a regular schedule for cleaning out the catch basins. Tim Brady asked to return on August 21, 2012, to incorporate the Commission's requests in a revised plan.

MOTION: A motion to continue the hearing to August 21, 2012, was made by Steve Phillips and seconded by Bob Royce.

VOTE: Unanimous

Last Heard 7/24/24 (JO1)

George & Carolann Najarian, 33 Bufflehead Lane. by Ryder & Wilcox, Inc.

Assessor's Map 1, Parcel 27. The proposed replacement of an existing culvert, removal of cattails, and phragmites, has been amended to remove the culvert replacement from the proposed plan. Work will occur within a Salt Marsh, in a Bordering Vegetated Wetland, on Land Subject to Coastal Storm Flowage, and within 100' of the Edge of a Salt Marsh. John Jannell reported a letter had been received asking the hearing to be continued to August 14, 2012.

MOTION: A motion to continue the hearing to August 14, 2012, was made by Adrienne Pfluger and seconded by James Trainor.

VOTE: Unanimous

Notice of Intent

Eric & Reva Gold Fischman, 27 Ruggles Road. by Ryder & Wilcox, Inc. Assessor's Map 11, Parcel 21. The proposed installation of dug-in steps to replace an existing paved walk & to provide access to Town Cove. Work will occur on a Coastal Bank, in Land Subject to Coastal Storm Flowage, and within the buffer zone of the Top of a Coastal Bank. David Lyttle of Ryder & Wilcox, Inc. and Reva Gold Fischman, applicant, were present. David Lyttle went over the scope of the project, and asked whether or not vista pruning of the 14" cedar tree located on the plan would be permissible. Judith Bruce pointed out that the only screening on site was the existing cedar tree, and David Lyttle asked if the burning bush could be removed. Judith Bruce felt the removal of the burning bush would be fine. Judith Bruce felt that while the removal of the asphalt was a benefit to the resource area, there were questions about the pipes at the top of the bank. Reva Gold Fischman said the previous owners had put them in place to bring electricity down to the boathouse, and they had no intention of doing this. Judith Bruce said they were fine to leave, and John Jannell said as long as it did not result in runoff down the bank. Steve Phillips inquired about the dock on the marsh, and if it was the applicant's property. David Lyttle explained there was a file history which explained a failed attempt to license the dock. Judith Bruce recalled an order to remove the dock, and David Lyttle said it could be included as a condition for the Order. Bob Royce wanted to make sure that the cedar tree shown on the plan would not be pruned.

MOTION: A motion to approve the plan dated June 16, 2012, with the condition that the abandoned dock be removed and no pruning was permitted of the 14" cedar tree shown

on the plan under this Order of Conditions was made by Steve Phillips and seconded by Adrienne Pfluger.

VOTE: Unanimous

Franklin & Kimberly Moss, 46 Old Field Road. by Ryder & Wilcox, Inc. Assessor's Map 64, Parcel 3. Proposed landscaping; the rebuilding of stairs & second floor deck attached to an existing single family dwelling; & mitigation plantings. Work will occur within 100' of a Coastal Bank, Salt Marsh, Land Subject to Coastal Storm Flowage, and within the Pleasant Bay A.C.E.C. David Lyttle submitted and passed around a revised plan which had the planting specifications, expanded the second floor deck, and removed the stairs to the second floor deck. Rice stone will be used to make the patio pervious, and the mitigation area will be 600 square feet comprised of plantings such as inkberry and bayberry. David Lyttle pointed out that the house would be going from a 6 bedroom to a 5 bedroom house, resulting in a decrease in usage within the A.C.E.C. Judith Bruce commended the applicant on being good stewards to the area, and felt the mitigation proposed was a net improvement to the site. James Trainor and Bob Royce concurred, and Steve Phillips confirmed that the only change to the exterior of the building would be the removal of the stairs and expansion of the deck. John Jannell asked if the chain link fence was required because of the pool, and asked if the cedar trees drip line was located within the limit of work line. David Lyttle said the chain link fence was a pool requirement, and the limit of work could be moved to protect the cedar tree. Judith Bruce recommended that the bittersweet be removed from the canopy. John Jannell noted the application had neither received a DEP number nor a letter from Natural Heritage. David Lyttle asked the meeting be continued for one week to August 14, 2012, in hopes of receiving both a DEP number and a letter from Natural Heritage.

MOTION: A motion to continue the hearing to August 14, 2012, was made by James Trainor and seconded by Steve Phillips.

VOTE: Unanimous

Bathing beaches out of order

John Jannell announced that the Orleans Health Agent, Robert Canning, would be presenting the Orleans Bathing Beaches regulations out of order to accommodate a scheduling concern. Robert Canning went over the history of bathing beaches, explaining that in 2001 the state amended bathing beach regulations to require that they be tested on a weekly basis for indicator organisms. In 2001, the Orleans Board of Health performed a survey and comprised a list of 12 freshwater and saltwater properties which were to be licensed as a bathing beach. 4 of these properties, Crystal Lake, Pilgrim Lake, Paw Wah Point, and Kent's Point, are Conservation Properties. Robert Canning showed the Conservation Commission a sign which would be posted licensing these beaches as bathing beaches, and explained that these beaches would have to be closed when bacteriological testing exceeded the limit of indicator organisms. Robert Canning explained that certain properties were exempt from being referred to as bathing beaches due to their proximity to a boat launch. Robert Canning explained there is a conflicting CMR which caused confusion over the definition of a bathing beach within the proximity of a boat launch. John Jannell explained that the management plans for certain properties could be modified to change their definition as a bathing beach. The Commission agreed that Pilgrim Lake and Crystal Lake were clearly bathing beaches, but that Paw Wah Point and Kent's Point did not appear to fall under the same caliper. The Commission determined that while they did not want to

prevent people from accessing Paw Wah and Kent's Point for bathing that it would be at their own risk and therefore did not need to be licensed as a bathing beach. The Commission inquired about other properties which were Conservation Properties, and Robert Canning explained that direct water access was needed for it to be deemed a bathing beach. John Jannell explained that two motions could be made, one which would license Crystal Lake and Pilgrim Lake as bathing beaches, and one which would authorize the Conservation Administrator to modify the Land Management Plan for Paw Wah and Kent's Point to remove swimming/bathing as referenced.

MOTION: A motion to authorize Pilgrim Lake and Crystal Lake as Public Bathing Beaches and to apply to the Orleans Board of Health for all necessary permits related to bathing beaches was made by James Trainor and seconded by Steve Phillips.

VOTE: Unanimous

MOTION: A motion to authorize the Conservation Administrator to modify the Land Management Plans for Paw Way Point and Kent's Point to remove swimming/bathing as endorsed use in the Management Plans for the area was made by James Trainor and seconded by Bob Royce.

VOTE: Unanimous

Robert Canning announced the Board of Health had already voted to approve these applications, and thanked the Conservation Commission for allowing him to be taken out of order.

Administrative Reviews

Last Heard 7/24/12

Gerry Nolin, 125 Rock Harbor Road. The proposed removal of one tree and installation of underground utilities. Work will occur within 100' of the Edge of a Salt Marsh and Edge of Wetland. Tim Brady stated that Rick and Gerry Nolin, the new owners of 125 Rock Harbor Road, were present. Tim Brady explained that a Notice of Intent filing for the bulkhead and planting of a new buffer was presently being developed, and in the meantime the applicants were looking to install underground utilities to start some of their interior renovations. After speaking with Ponderosa Landscaping and Wilkinson Ecological Design about the health of the Siberian Elm proposed to be removed, both companies felt the tree was not a significant specimen, but would damage the house should a limb come down. Judith Bruce asked if it would be possible to remove just the limb going towards the house. Tim Brady said while he was not sure if that would be a possibility, there was still the concern that the roots of the tree would be damaged by the installation of the underground utilities. Judith Bruce asked if the underground utilities had to go where they were proposed, and Steve Phillips asked what other trees were located on this site. Tim Brady said that based on what was in the basement, the underground utilities were proposed in the best location. The trees located on site included cedar, cherry, and a maple tree which would be opened up once the Siberian Elm was removed. Tim Brady suggested that once the applicant returned with a Notice of Intent, a planting plan would be included, and replacement trees could be offered at that time. Bob Royce felt the removal of the tree was fine, and James Trainor concurred. Adrienne Pfluger felt the planting plan which would come in would be able to offer replacement for the lost tree. John Jannell said that while the Tree Warden wanted to keep the tree as it functioned as a street tree, the tree itself was located at the 90' line to the buffer zone, and the offer for a replacement tree could come at a later time with the future Notice of Intent filing.

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

VOTE: Unanimous

Jim O'Brien and James Trainor left at 9:41am

Roberta Hurlburt, 41 Nauset Road. The proposed installation of a storage shed and removal of rosa rugosa. Work will occur within 100' of the Top of a Coastal Bank. Work to be done by Pine Harbor. Judith Bruce was concerned that the resource area listed was not the resource area of concern. John Jannell reported this Coastal Bank started at the flood elevation which resulted in the Top of the Coastal Bank being located lower than the top of the slope on the property. Judith Bruce felt that this shed could be categorized as new construction, and asked if it could be moved outside of the 75' buffer. Steve Phillips asked about the size of the shed, and whether or not the lot was large enough that it could be relocated. John Jannell stated the proposed shed was 10'x12', and the lot was over an acre. Judith Bruce felt the shed could be relocated, and John Jannell suggested that he contact Pine Harbor. Steve Phillips thought the proposed location for the shed could block the applicant's view and asked if there would be screening from the beach. John Jannell reminded the Commission that an Administrative Review could not be conditioned. The Commission tabled the application so that John Jannell could speak with the applicant.

Gail Lindsay Iliff, 33 Bufflehead Lane. The proposed removal of a dead cedar tree. Work will occur within 100' of the Top of a Coastal Bank, Land Subject to Coastal Storm Flowage, and the Edge of Wetland. Work to be done by S & L Tree Service. John Jannell recommended approval of this tree to be removed.

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

VOTE: Unanimous

Aldo Giacco, 4 Champlain Road. The proposed replacement of existing steps, wall, regrading of existing steps, and removal of a tree. Work will occur within 100' of the Edge of Wetland. Judith Bruce felt this was a lot of work proposed under an Administrative Review. John Jannell explained that the entire property was being worked on, and an attempt to contact the homeowner had not warranted a response prior to the hearing. John Jannell felt the scope of work warranted a Notice of Intent, and the Commission concurred.

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

VOTE: 0-4-0; Motion Denied; Please file a Notice of Intent.

Ann Stevens/Peter Henry, 29/30 Gull Lane. The proposed removal of phragmites. Work will occur on a Coastal Bank, Land Subject to Coastal Storm Flowage, and within Cape Cod Bay A.C.E.C. Work to be done by Wilkinson Ecological Design. Jen Exner of Wilkinson Ecological Design was in the audience. John Jannell explained this was a small stand of phragmites to be approached over two to three years with an annual request as an Administrative Review. Judith Bruce asked if this work would be done by hand, and John Jannell confirmed that it would, with no trimming of trees proposed.

MOTION: A motion to approve this application was made by Adrienne Pfluger and seconded by Steve Phillips.

VOTE: Unanimous

The VS Realty Trust, 17 Weeset Proprietors Way. The after the fact upgrading of an existing septic tank. Work occurred within 100' of the Top of a Coastal Bank. John Jannell reported the applicant replaced the tank in the exact same location as the existing one. Judith Bruce asked if fines should be levied since it was coming in after the fact, and if the proposed work warranted a more stringent filing. John Jannell said the applicant paid twice the normal fee for an Administrative Review because it was coming in front of the Commission after the fact, and that he felt comfortable with the application proceeding as an Administrative Review.

MOTION: A motion to approve this Administrative Review was made by Steve Phillips and seconded by Adrienne Pfluger.

VOTE: Unanimous

Doug & Jennie Jacoby, 10 Nauset Road. The proposed installation of underground utilities with trenches to be backfilled. Work will occur within 100' of the Edge of Wetland. David Lyttle was in the audience. John Jannell reported the trenches would be located in lawn area.

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

VOTE: Unanimous

Request to Use Conservation Properties

Windmill Baptizm 8/19/12 Swidzinski 11am-2pm 30 People

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

VOTE: unanimous

Chairman's Business

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

MOTION: A motion to approve the minutes was made by Steve Phillips and seconded by Bob Royce.

VOTE: Unanimous

The meeting was adjourned at 9:55am

Respectfully submitted,

Erin C. Shupenis, Principal Clerk, Orleans Conservation Department