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ORLEANS TOWN CLERK

Orleans Conservation Commission
Town Hall, Nauset Room
Hearing Meeting, Tuesday, October 2, 2012

PRESENT:: Judith Bruce, Chairwoman; Steve Phillips, Vice-Chairman; Bob Royce; James Trainor; Jamie Balliett; John Jannell, Conservation Administrator

ABSENT: Adrienne Pfluger; Jim O'Brien

8:30 a.m. Call to Order

Notice of Intent

Michael W. & Rosanne D. Panio, 197 Quanset Road. by Coastal Engineering Company, Inc. Assessor's Map 93, Parcel 11. The proposed reconfiguring of an existing licensed float. Work will occur on Land Under the Ocean, in Quanset Pond, and within the Pleasant Bay A.C.E.C. Jay Norton of Coastal Engineering Company, Inc., presented the application for Donald Munroe. Jay Norton went over the existing conditions on site, noting that while the overall square footage of the float would not increase, the length of the float would extend an additional 4' into the pond. No machinery would be required in order to complete this work, and the float itself would be installed by hand. Judith Bruce was concerned that this was a float and pier which was already non-conforming per the Conservation Commission's regulations, and any approval would be for more non-compliance. Jay Norton noted that the increase would not impact navigational patterns. Bob Royce asked what the permitted length was for this pier, and James Trainor said that this was a licensed dock which existed prior to the current regulations limiting the length of a pier and float. Jamie Balliett asked if the Conservation Commission historically looked to bring existing licensed piers into compliance with existing regulations when modifications were requested. Judith Bruce noted that exceptions were made for docks and piers which sought changes that were beneficial to the resource areas. John Jannell reported that this is a licensed pier which has a Chapter 91 Waterways license, but during the on-site the float had already been removed. John Jannell noted that the Commission had the guidelines for docks and piers, and this area was currently a prohibited area for new docks and piers. John Jannell addressed Jamie Balliett's concern, stating that the previous dock modification applications in front of the Conservation Commission provided a side-by-side comparison demonstrating the proposed non-conformities become more compliant than the current licensed one. John Jannell asked why an identical application received by the Conservation Commission in 2010 was withdrawn, and whether or not bathymetry data had been reviewed to determine if there were any changes to the sea floor elevations. John Jannell explained the previous application was received in February of 2010, continued to July of 2010, and withdrawn without prejudice. Jay Norton said that he was unsure of the history of the previous filing, and the questions would be best answered by Donald Munroe. John Jannell stated that a letter of support had been received from Ken and Judy Winslow for the proposed work. A comment letter from the Division of Marine Fisheries was received saying the project site was within soft-shell crab and quahog habitat, and recommended boats to be berthed bow in. John Jannell said a DEP number had not been issued for this filing. Steve Phillips asked if float stops existed. Jay Norton said this dock was 120 feet, and there was sufficient water depth.

Judith Bruce said while this was a licensed dock, the current regulations state the length is to not exceed 80'. James Trainor noted that the Conservation Commission allows houses to be renovated within the 50' buffer, and Judith Bruce said that expansion within the 50' is not typically allowed. James Trainor replied that with substantial mitigation, expansion has been permitted. Jay Norton inquired about alternative decking to provide light penetration as an option, and John Jannell said the length was the most significant change. Judith Bruce suggested a reduction of the overall float size and a condition that the boat is parked berth in. Judith Bruce said that the application should be an improvement at the end of the day. John Jannell recommended a side by side comparison be prepared for the proposed float versus the existing float to determine how the change in configuration would impact the resource areas. Jay Norton asked to continue to hearing to October 9, 2012, to allow for a DEP number to be issued and to incorporate the Commission's suggestions.

MOTION: A motion to continue the hearing to October 9, 2012, was made by Jamie Balliett and seconded by Bob Royce.

VOTE: Unanimous

Joyce & Steven Davis, 12 Mill Race. by Lucas Environmental, Assessor's Map 29, Parcel 42. The proposed conversion and expansion of an existing shed on sonotube footings to living space and the hand digging and installation of one sonotube. Work will occur within 100' of the Top of a Bank, Edge of Mill Pond, and Bordering Vegetated Wetland. Chris Lucas of Lucas Environmental and Roger Hoit, Architect, were present. Chris Lucas reported a DEP number had been issued for this property. Judith Bruce asked if the work would be within the 75' buffer, and Chris Lucas said the closest work would be around the 60' buffer line. Judith Bruce asked if this proposed studio would become a bedroom as defined by the Orleans Health Department, and Roger Hoit said no. Steve Phillips asked if any mitigation was proposed, and Chris Lucas said at this time there no mitigation was proposed. Steve Phillips noted there was invasive burning bush on the rock wall, and asked if the applicant would consider removing and replacing it. Roger Hoit said they would be amenable to doing that work as mitigation. Steve Phillips noted steps coming from the north side, and inquired if a landing would be poured. Roger Hoit said there was currently existing bluestone, and the steps would come out onto the existing bluestone. John Jannell said the site recently completed a well-executed bank restoration.

MOTION: A motion to approve the site plan dated September 24, 2012, with the condition that the invasive Burning Bush plants be removed and or replaced was made by Steve Phillips and seconded by James Trainor.

VOTE: Unanimous

Julian T. & Elaine F. Baird, 4 Mayflower Circle. by Ryder & Wilcox, Inc. Assessor's Map 56, Parcel 15-2. The proposed replacement of dug-in steps with new dug-in steps and an elevated stairway, and the removal of 2 locust trees on a Coastal Bank. Work will occur on a Coastal Bank, on a Beach, on Land Subject to Coastal Storm Flowage, and within the Pleasant Bay A.C.E.C. David Lyttle of Ryder & Wilcox, Inc. explained the applicant wished to replace their existing stairs, as the original construction had been done incorrectly, thus resulting in a very steep path. David Lyttle noted the applicant also wished to install a rope handrail to aid in traversing up and down the stairway,

remove three locusts, and prune one cherry tree to create a view window without opening up the bank. David Lyttle suggested an arborist come on site to determine how the crown reduction on the cherry could be done. Bob Royce noted the area was well treed, and Judith Bruce asked how the removal of the three trees and reduction in the cherry tree canopy would impact the view from the water. David Lyttle explained while he did not feel this work would impact the view, he could go to Kent's Point and take a picture looking at the house to better determine how it may look from the resource areas. Judith Bruce noted that she was unable to attend the on-site, and Steve Phillips felt the removal of the locusts would not have a significant impact on the view. Steve Phillips asked if additional trees would be damaged by the removal of the locusts, and David Lyttle said no. James Trainor noted that the house was well set back, and Judith Bruce thanked the Commission for their help to better visualize the site. Judith Bruce asked if more specifics were needed for the work on the Cherry tree, and David Lyttle said he would make an effort to define how it would be pruned. John Jannell asked if risers were proposed, and if it would be a stone or gravel tread base. David Lyttle said no risers were proposed, and it would be either gravel or pea stone. David Lyttle said the previous design was not made to be safe, and James Trainor asked if a rope handrail would be the best option for the steep slope. David Lyttle said the rope handrail had been at his suggestion, and would talk to the applicants to determine if they would like to change it. John Jannell said a DEP number had not been issued for this project, and David Lyttle asked to continue the hearing to October 9, 2012, in hopes of receiving a DEP number.

MOTION: A motion to continue the hearing to October 9, 2012, was made by Jamie Balliett and seconded by James Trainor.

VOTE: Unanimous.

Revised Plan

Per John Ostman, 106 Bakers Pond Road. The proposed construction of a 4' cantilevered deck extension to an existing single-family dwelling has been revised to include the installation of 6 hand dug sonotubes. Work will occur within 100' of an Inland Pond (Baker's Pond) and Edge of Wetland. David Lyttle explained that when the plan had been presented, it had been the intention to cantilever the deck and use the existing posts. Due to a new building code, this type of construction is no longer permitted. Since there is a concrete pad located underneath the deck, the applicant is proposing the installation of 6 sonotubes immediately adjacent to the pad and dug by hand. Steve Phillips inquired about the drainage located underneath the outdoor shower, and read into record an e-mail from John Ostman stating that adequate drainage was already in place. John Jannell stated that this was not being addressed at this time, and David Lyttle said that he would provide sufficient evidence if this drainage was present. James Trainor asked if there were drywell regulations, and David Lyttle said drywell installation was usually not an issue given the presence of sandy soil.

MOTION: A motion to approve the Revised Plan dated September 24, 2012, and receive confirmation of the drywell working under the outdoor shower was made by Steve Phillips and seconded by Bob Royce.

VOTE: Unanimous

Certificate of Compliance

Charles Calkins (1995), 25 High Tide Lane. The request for a Certificate of Compliance for an Order of Conditions for the licensing of an existing dock. John Jannell reported that the dock had not been in the water for a couple of years, and said that while the dock was in compliance, a letter accompany the Certificate of Compliance stating that any rebuilding of the existing dock will require Conservation Commission filing would accompany this approval. Judith Bruce confirmed that this letter would not threaten the applicant's ability to keep their license. John Jannell said this would not threaten the license, and the letter would be to make the applicant aware that any rebuild must be done with Conservation Commission approval.

MOTION: A motion to issue this Certificate of Compliance was made by Jamie Balliett and seconded by Bob Royce.

VOTE: Unanimous.

Administrative Reviews

John O'Hanlon, 28 Thayer Lane. The proposed cutting of trees for a view corridor, removal of 2 black locusts, and trimming of neighboring oak limbs. Work will occur within 100' of the Top of a Coastal Bank, Land Subject to Coastal Storm Flowage, and within the Pleasant Bay A.C.E.C. Work to be done by Bartlett Tree Company. David Chalker of Bartlett Tree Company was present. David Chalker explained that the applicant was currently working with another company to put together a more comprehensive filing, and this proposed work would be to create a smaller view corridor from a second story deck. The two oak branches were from the neighbor's property and leaning into this proposed view. Judith Bruce asked about the proposed height to be cut, and David Chalker said most of the trees would be cut to no more than 8-10' in height. Judith Bruce asked if this meant nothing would be cut shorter than 8', whether or not the neighbor had given permission for their branches to be cut, and if a letter could be provided stating permission had been granted by the neighbor. Judith Bruce asked that those limbs be marked, and James Trainor felt it would be best to have a copy of the consent to provide an accurate record. James Trainor asked what John Jannell thought after conducting his on-site. John Jannell said that in general he would recommend approval, but the width of the area was not specified. Judith Bruce was concerned about the lack of specificity, and John Jannell noted that the trees proposed to be cut had previously been topped. David Chalker explained the topping was done by the previous owners. Steve Phillips was concerned because he was not sure what the impact to the resource area would be, and David Chalker said he was trying to take some height out of the trees. Judith Bruce was concerned about the screening from the resource area and how it would be impacted by the trimming, and suggested that just the two locust trees be removed. Steve Phillips asked if the applicant considered incorporating this trimming work into a Notice of Intent. David Chalker said the applicant wanted to do this preliminary work to be able to utilize the second floor deck. Steve Phillips asked if John Jannell was comfortable with the proposed work, and John Jannell said that while he had a general idea, the Commission may be concerned about the overall proposed work to be done. David Chalker suggested that he flag and take photos of the area to be cut. Steve Phillips asked where the trees to be cut were located, and David Chalker said they were on the Top of the Bank. John Jannell asked if all of the pine canopy was to remain, and David Chalker said the mature canopy was

to remain. James Trainor suggested that if this work was proposed, no additional work could be done without a Notice of Intent. Judith Bruce reminded David Chalker that the work done under this Administrative Review would be seen during future site visits with a Notice of Intent filing. John Jannell was concerned that the Commission would go out on site once a Notice of Intent was filed and be surprised by the amount of work done under this Administrative Review. David Chalker said he would bring in photos to demonstrate what work was proposed, and return to the Commission the following meeting. The Commission agreed to wait to take action on this Administrative Review until David Chalker returned with photos showing the proposed work.

Dorothy Root, 15 Mayo Way. The after the fact filing for the pruning of trees. Work occurred within 100' of the Edge of a Bog. John Jannell recommended approval of this after the fact work.

MOTION: A motion to approve this After the Fact work was made by Jamie Balliett and seconded by Bob Royce.

VOTE: Unanimous

George Brescia, 15 Packett Lading. The proposed removal of 2 dead cedars, 2 dead pines, and the pruning of two oaks. Work will occur within 100' of the Top of a Coastal Bank and Salt Marsh, and within Land Subject to Coastal Storm Flowage and the Pleasant Bay A.C.E.C. Work to be done by A to Z Treez. Judith Bruce asked if this application included the request to remove a mature oak tree, and John Jannell said yes. John Jannell said while the pruning and removal of the dead trees he was in support of, there was no opinion from an arborist that the oak tree was diseased or dead. Judith Bruce asked if this tree was threatening the house, and John Jannell said while it was close, he hoped it would not topple and cause a problem. Judith Bruce suggested the applicant wait until the spring to determine if the oak tree was in fact beyond help and a standing dead tree. Judith Bruce asked if a request to stop fertilizing their lawn could be made, and Steve Phillips asked if replacement trees would be needed. John Jannell noted that the trees in the driveway area were dying due to competition, and the area itself was well treed. Steve Phillips suggested a letter be written regarding the oak tree concerns, and John Jannell noted that in the comment section of the Administrative Review he would recommend approval of all of the work with the exception of the oak tree removal.

MOTION: A motion to approve this work with the exception of the removal of the oak tree was made by Jamie Balliett and seconded by Bob Royce.

VOTE: Unanimous

Snow Point Association, Freeman Lane. The proposed trimming of invasive roadside vegetation from 6' to 4'. Work will occur within 50' of the Top of a Coastal Bank. John Jannell said this was a public view open from the roadway, and the plants to be pruned were all invasives.

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

VOTE: Unanimous.

Conservation Restriction: Vote

Winslow Meadow Bog CR, 176 Quanset Road. Discussion of a proposed Orleans Conservation Trust Conservation Restriction. Vote required. *James Trainor recused himself.* Kris Ramsay of the Orleans Conservation Trust explained they were looking for a positive recommendation of this Conservation Restriction because the state required that the Conservation Commission sign the municipal certificate. The Commission would not be responsible for any holding or purchasing of the property, but asked that the Commission simply support the purchase of this property. John Jannell said he had a copy of the municipal certificate for the Commission to sign, which he would then be able to take to the Board of Selectmen for approval.

MOTION: A motion to approve a Conservation Restriction at 176 Quanset Road was made by Jamie Balliett and seconded by Bob Royce.

VOTE: Unanimous

Chairman's Business

Approval of the Minutes from the Meeting on September 25, 2012.

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

VOTE: 4-0-1; Judith Bruce abstained.

Other Member's Business

Administrator's Business

Discussion of After the Fact Filing Fees

John Jannell said after speaking with several of the Commission members, prior to re-advertising the proposed filing fees, he did not know if the after the fact filing fee was another item which the Commission would like to address to be incorporated into this legal ad. Judith Bruce said that while she was originally in support of increasing the Administrative Review for Vegetation work filing fee, the benefit to keeping it low outweighed the need to increase. However, given the amount of recent after the fact filing, Judith Bruce suggested that the After the Fact fee for an Administrative Review for Vegetation Work be increased to \$50 provided motivation for filing for work prior to its commencement. Steve Phillips suggested wording the increase to something which said the fee was quadruple the filing fee for an Administrative Review for Vegetation Work, so that in the future if the fee for this application increased, the After the Fact filing fee would not need to be re-adjusted. The Commission inquired what other towns did for After the Fact filing Fees. Erin Shupenis said a majority of the towns which she had contacted doubled their filing fees for after the fact filings, although Nantucket quadrupled theirs, and Eastham did not change the fee for an After the Fact filing. James Trainor felt a \$50 fee for After the Fact Administrative Reviews for Vegetation Work was suitable, and agreed with Judith Bruce that keeping the Administrative Review for Vegetation Work filing fee low as it allowed people to come in to file with the Conservation Commission without spending a large sum of money. John Jannell said he would work on modifying the language for such a fee, and Jamie Balliett asked that John Jannell consider the amount of additional time which was taken up with because of After the Fact filings.

Discussion 34&40 Horseshoe Lane, View pruning work per a special condition from the Order of Conditions. Requires a vote before the additional removal of vegetation can commence. John Jannell reported that this item was both an agenda item and a site visit. John Jannell explained that as condition of the Order of Conditions, a site visit was required before the removal of trees under 6" DBH could be removed. John Jannell wanted to make sure a minimum of 4 Commissioners were on site to approve the second phase of work to commence. The Commission determined a majority of the Commission would be on-site to vote accordingly.

The Commission discussed the remainder of the site visits.

The meeting was adjourned at 9:57am.

Respectfully submitted,

Erin C. Shupenis, Principal Clerk, Orleans Conservation Department