

Orleans Conservation Commission
Town Hall, Nauset Room
Hearing Meeting, Tuesday, October 16, 2012

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

8:30 a.m. Call to Order

Continuations

Last Heard 10/9/12

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. reported that while a DEP number had been received, a letter from Natural Heritage (NHESP) had not been received. Judith Bruce suggested the hearing could be closed and the Order of Conditions could be issued, but with the contingency that the Order could be subject to all of NHESP comments and recommendations. This would allow the Order to be issued, but would require the applicant to adhere to all of the recommendations made by NHESP. David Lyttle felt such a condition would be fine.

MOTION: A motion to approve the site plan dated September 14, 2012, with the condition that the Order will be subject to all NHESP requirements was made by Steve Phillips and seconded by James Trainor.

VOTE: Unanimous.

Notice of Intent

Peter J. & Janice R. Rozema, 1 Little Cove Road. by Ryder & Wilcox, Inc. Assessor's Map 20, Parcel 101. The proposed construction of dug-in timber steps on a Coastal Bank. Work will occur on a Coastal Bank and within 100' of the Edge of a Salt Marsh and Land Subject to Coastal Storm Flowage. David Lyttle and Peter Rozema, applicant, were present. David Lyttle passed to the Commission the original site plan from 1990 showing the Top of Bank located outside of the buffer zone of the current house. In 1992, changes to Flood Zone elevations resulted in the shift of the location of the Top of the Coastal Bank. A previous walking path was in existence, but it was determined that this path in fact was partially located on the neighbor to the North's property. David Lyttle explained a restoration effort had recently been completed on the Coastal Bank in conjunction with Wilkinson Ecological Design. David Lyttle asked if the Commission could both discuss the proposed dug-in timber steps, and explain their concerns about the potential installation of a pool within the 0-50' buffer, knowing that the Conservation Department did not permit new construction within the 0-50' buffer zone. Peter Rozema explained that the house was for sale, and that buyers had inquired if a pool could be installed. Judith Bruce confirmed David Lyttle's statement that work within the 0-50 buffer zone was not something which the Commission would

look favorably upon, be it a pool, patio, etc. Judith Bruce said that paths to the water were something the Commission typically permitted, and dug in steps were a favorable design. Judith Bruce asked that the state listed invasive bushes now located at the Top of the Bank be removed and the use of fertilizers and pesticides be discontinued as mitigation for the proposed path. David Lyttle asked for clarification for the applicant, and John Jannell explained that this would be the removal of the burning bush and the Japanese barberry. David Lyttle said that he would like to meet with his applicant on site to show which plants the Commission wanted to remove. Steve Phillips asked if a shared path would be an option with the abutters to the north, or if there would be the possibility to share a path with other abutters. Peter Rozema said a shared path was not an opportunity at this time. David Lyttle further explained that the path originated on Peter Rozema's property, and would mean the neighbor would have to create a path onto the Rozema's property in order to access a shared path. Steve Phillips asked about the mulch along the bank, and asked that the dumping of landscape cutting on the bank be relocated outside of the resource areas. David Lyttle said he was unclear as to what Japanese barberry looked like, and John Jannell said he could always conduct a site visit with the engineer and the applicant. John Jannell noted that the record reflected that when the house was built it was outside of Conservation jurisdiction. John Jannell asked that the 50' buffer line be shown on the plan. James Trainor asked if there would be a spot on either side of the property outside of the 50' buffer to potentially locate a pool, and David Lyttle said no. David Lyttle asked that the meeting be continued for one week to October 23, 2012, to conduct an on-site with the applicant to identify the invasive shrubs to be removed.

MOTION: A motion to continue the hearing to October 23, 2012, was made by James Trainor and seconded by Jim O'Brien.

VOTE: Unanimous.

Steven L. Graham, 21 Standish Road. by Ryder & Wilcox, Inc. Assessor's Map 13, Parcel 67. The proposed removal of an existing dwelling & detached garage; the construction of a new single-family dwelling; the pumping & abandoning of an existing cesspool; the installation of a septic system; & grading & landscaping. Work will occur within 100' of the Edge of Wetland and the Top of a Coastal Bank. David Lyttle, Sally Tucker real estate agent for the property, the Snow Family, current owners, and The Grahams, future owners, were present. David Lyttle presented to the Commission elevations showing the proposed change in height with the construction of a new structure. David Lyttle explained the original intention was to restore the existing building and add to the back. The current proposal would be to work within the existing footprint, and an addition outside of the current footprint. David Lyttle explained the current proposed mitigation on the Coastal Bank may be changed due to an e-mail received from John Jannell which recommended the restoration of the wetland on the property as mitigation. Judith Bruce concurred that the wetland restoration would be a benefit. David Lyttle said the proposed increase in elevation would not impact the view of Peter and Stacey Shedden, the abutters at 23 Standish Road. Judith Bruce said the Commission wanted to see the proposed volume and square footage, as this work was new construction within the 50' buffer zone, and typically not looked favorably upon without significant mitigation. Judith Bruce was concerned about the visibility from

Nauset Spit, and David Lyttle said the current house was behind the Shedden's house to the west. David Lyttle noted that if the house was proposed outside of the 50' buffer, the applicant would lose their existing views. John Jannell said the wetland on site was one of the few which had not been filed, and was loaded with winterberry and other good wetland plants. Judith Bruce suggested the applicant come up with a plan to remove the invasive species within this wetland, as its restoration would be more advantageous than plantings along the coastal bank. Judith Bruce suggested that the proposed house may be reduced in size, and Judy Brainerd asked if a garage would be proposed at a later time. David Lyttle said a garage may be constructed, but that it would be built outside of Conservation Commission jurisdiction. Judith Bruce asked that the additional proposed square footage and living space be calculated and presented to the Commission. Jamie Balliett asked if any patios or decks were proposed. David Lyttle said a porch existed on the front, and there was a proposed deck on the second floor. Jamie Balliett said that according to the plan, the existing square footage was 2,190 and the proposed was 2,837. James Trainor asked if the proposed change would be a total of 647 square feet, and if that was all outside of the 50' buffer. David Lyttle said he would have to work on the numbers and return to the Commission with them. David Lyttle asked if the cubic volume was needed only within the 0-50 buffer, and John Jannell requested the current and proposed entire cubic volume be provided. John Jannell noted that the wetland on-site provided good habitat. Steve Phillips suggested that the restoration of the wetland replace the proposed plantings on the Coastal Bank as mitigation, and Bob Royce and Jamie Balliett agreed. John Jannell said the Commission has an interest to protect the view from the resource area, and David Lyttle suggested that he take a picture from the resource area, and said the existing house was 32' wide. Jack McCormick, attorney, explained that he was hired to represent Peter and Stacey Shedden. Jack McCormick asked if the existing house had a full foundation, and whether or not the proposed house would have a full foundation. David Lyttle said the existing house was on cinder blocks, and the proposed house would have a full foundation. Jack McCormick explained there was concern about impact to the area by pouring a full foundation within the 50' buffer, and inquired about the construction protocol for the removal of the current house and cinder blocks, drainage off of the house, and if downspouts would be installed. Jack McCormick asked if the current height of the building was 15', and David Lyttle confirmed that 15' was a good estimate of the current ridge height. Jack McCormick felt the proposed house could be moved outside of the 50' buffer, and retain its views of the resource areas. Jack McCormick suggested that an "upside down house" be built, which would allow for the second floor to be comprised of the kitchen and living space, and still provide views of the resource areas. Jack McCormick asked about the approval process through the different town boards, and David Lyttle explained that the zoning board of appeals had a policy of being the last regulatory board to look over an application. Jack McCormick said his client was concerned about the proposed construction's impact on the wetland and existing wildlife. James Trainor noted that if the applicant moved the house further outside of the resource area, it would eliminate a first floor deck. Jack McCormick noted the applicant would still have a view from the second floor. James Trainor noted that a limit of work and fabric silt fence were some of the typical measures used to prevent impact to the resource areas from ongoing construction. Jack McCormick asked if there

would be a full foundation, and if a walkout would exist. David Lyttle said there would be a full foundation which would be a minimum of 8" from grade as required, similar to the current first floor elevation. Steve Phillips was concerned how the proposed work would impact the abutters, and John Jannell said the neighbor's house was not shown on the plan. David Lyttle explained the Sheddens were close to the property line, and the proposed plan was e-mailed to them on Friday, October 12, 2012. Jack McCormick noted the proximity to the property lines was a zoning concern. Judith Bruce said that the Conservation Commission typically looked at work within the existing footprint without an increase in usage as no change, but that this proposal included an increase in usage which had the potential for a negative impact. Judith Bruce asked that the reduction of the proposed building and extensive mitigation be explored. Jamie Balliett asked if a component of the proposed septic system be moved outside of the 50-75 buffer zone, and David Lyttle said that would be fine. David Lyttle asked that the meeting be continued for three weeks to address the wetland mitigation and the Commission's concerns. Bob Royce asked that a revised plan include the location of the abutter's house, and David Lyttle said this could be provided.

MOTION: A motion to continue the hearing to November 6, 2012, was made by Jamie Balliett and seconded by Jim O'Brien.

VOTE: Unanimous

Certificate of Compliance

Richard & Jo Ann Hinckley (2010), 5 Sparrowhawk Road. The request for a Certificate of Compliance for an Order of Conditions for the construction of an addition and garage. John Jannell reported that the special condition asking for the hot tub to be moved outside of the 75' buffer has not been met; the remainder of the project was otherwise in compliance. Judith Bruce asked if the meeting could be continued and during that time the hot tub relocated. David Lyttle explained the applicant did move the hot tub from its original location, but that the current location was still within the 50-75' buffer zone. Jamie Balliett asked how close to the 75' buffer the hot tub was located, and Judith Bruce said it was between the 50-75 buffer line. John Jannell noted that if the hot tub was not removed within a week's time, the applicant would not be found in compliance. Steve Phillips thought that the new location of the hot tub was approved by the Conservation Commission and asked John Jannell to review the meetings. David Lyttle asked that he continue this for one week to speak with the applicant and address this issue accordingly.

MOTION: A motion to continue to October 23, 2012, was made by Bob Royce and seconded by Jim O'Brien.

VOTE: Unanimous

Administrative Reviews

Harvey & Muriel Gross, 60 Briar Springs Road. The proposed request for the annual mowing of town landing area to prevent reoccurrence of invasive species, maintain 4' wide path, and lower surrounding bramble to a height of 3'. This is maintenance for the work completed under an Administrative Review from April 21, 2009, by Wilkinson Ecological Design. Work will occur within 100' of the Top of a Coastal Bank. John Jannell said this was an annual request dating back to 2007.

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

VOTE: Unanimous

Laura Arnold, 18 Towhee Lane. The proposed removal of one dying tree. Work will occur within 100' of the Edge of Wetland and the Edge of Deep Pond. John Jannell said this was for the removal of a birch in decline between the house and the road, and the property itself was well treed.

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

VOTE: Unanimous.

Helen & Howard Goldstein, 21 Defiance Lane. The proposed pruning of trees on lawn area. Work will occur within 50' of the Edge of a Salt Marsh and within the Cape Cod Bay A.C.E.C. Work to be done by Tim Baker Inc. John Jannell reported that this was for the pruning of 3 Black Cherry trees and 3 Weeping Willows, and the removal of a brush pile. Judith Bruce asked about the marking of the trees. John Jannell said the trees were marked, and the pruning would be only for the deadwood, with a note at the bottom of the application indicating as such.

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

VOTE: Unanimous.

Orleans Parks & Beaches, Hubler Lane. The proposed brushing back by 1' off of existing asphalt driveway. Work will occur within 100' of the Edge of Salt Marsh, Coastal Bank, Land Subject to Coastal Storm Flowage, and the Pleasant Bay A.C.E.C. John Jannell explained this was considered Phase One A approved by NPS, and could be approved under an Administrative Review. A Notice of Intent would be filed for the entirety of the driveway work. Jamie Balliett asked if this proposed brush back should be filed along with the Notice of Intent. John Jannell explained the work would end at the pavement. Jamie Balliett asked if a vehicle would be able to traverse this once it was cleared. John Jannell said the cul de sac went beyond the three cottages owned by the town; the clearing would only be around the asphalt and would terminate at the walking path where the parks service had a right of way.

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

VOTE: Unanimous

Chairman's Business

Approval of the Minutes from the Meeting on October 2, 2012.

MOTION: A motion to approve the minutes as amended was made by Bob Royce and seconded by James Trainor.

VOTE: 6-0-1; Jim O'Brien abstained.

Approval of the Minutes from the Meeting on October 9, 2012.

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

VOTE: 6-0-1; Jamie Balliett abstained.

Other Member's Business

Administrator's Business

The Commission discussed the site visits.

The meeting was adjourned at 9:48am.

Respectfully submitted,

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