

ORLEANS TOWN CLERK
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Orleans Conservation Commission
Town Hall, Nauset Room
Work Meeting, Tuesday, October 23, 2012

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

8:30 a.m. Call to Order

Continuations

Last Heard 10/9/12 (JO1)

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. Donald Munroe of Coastal Engineering Company, Inc. said that he was satisfied with the prepared draft Findings of Fact to accompany the Order of Conditions. John Jannell noted that Donald Munroe had a full packet of the draft Conditions to accompany the Order, which included but were not limited to the draft Findings of Fact, draft Special Conditions for all Docks, and draft On-going Conditions for Existing Docks. John Jannell noted any Special Conditions approved for all Docks would accompany the Order of Conditions, and any On-going Conditions approved for Existing Docks would accompany the Order of Conditions and any future Certificate of Compliance as guidelines to be adhered to in accordance. Donald Munroe looked over the draft Special Conditions and draft On-Going Conditions after which he said they appeared to be acceptable to the applicant and that he had no questions regarding them. John Jannell noted that on both the draft Special Conditions and the draft Ongoing Conditions a limit to the size of boat was suggested, and a condition that the boat be berthed bow in as per Massachusetts Division of Marine Fisheries recommendation. Donald Munroe thought the applicant already parked his boat accordingly, and Judith Bruce and Steve Phillips said this was a condition which had not been met in the past and would be best to include on both Conditional documents. John Jannell felt the modification of the pier provided an environmental benefit by preventing the boat from bottoming out. Donald Munroe was unsure of the current length of the applicant's boat, and did not think the applicant wanted to increase the size of the current boat docked at the pier. John Jannell said that according to Dawson Farber, Harbormaster, the boat registered to Michael Panio was a 26' Pacific. John Jannell suggested the hearing could be continued so that the applicant could be called to determine if this was correct. Donald Munroe said if that was the boat registered a condition that the boat be no more than 26' would be fine. Bob Royce felt the 26' limit and condition that the boat parked bow in were suitable conditions for this Order.

MOTION: A motion to approve the plan dated September 11, 2012, with the conditions that the Special Conditions for all Docks, Ongoing Conditions for all Docks, and Findings of Facts be incorporated into the Order of Conditions was made by Steve Phillips and seconded by Bob Royce.

VOTE: Unanimous.

Last Heard 10/16/12

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 of Ryder & Wilcox, Inc. and Peter Rozema, applicant, were present. David Lyttle went over the changes to the plan which included the removal of 10 Japanese Barberry, 4 Winged Euonymus, and 1 Miscanthus, and that prior to construction, any native plants within the path will be relocated and replanted. Judith Bruce asked that the use of pesticides and fertilizers be incorporated, and Steve Phillips asked that the brushpile be removed. David Lyttle said both of those conditions would be fine. David Lyttle inquired about a dead pitch pine currently located on the Coastal Bank, and whether or not it could be incorporated into an Order of Conditions, or if it would have to be filed for separately under Administrative Review. John Jannell said the tree was located in the center of the Coastal Bank standing dead, and Jamie Balliett felt its approved removal could be incorporated into an Order of Conditions.

MOTION: A motion to approve the plan dated October 17, 2012, with the conditions that the standing dead pitch pine could be removed; the discontinuance of the use of pesticides and fertilizers; and the removal of the brush pile was made by Steve Phillips and seconded by Bob Royce.

VOTE: Unanimous.

Enforcement Order

Last Heard 10/9/12

Bruce Carey, 1 Ruggles Road. The proposed issuance of an Enforcement Order for the removal of trees and vegetation on Town Land and within Conservation Commission jurisdiction. John Jannell explained that a continuance e-mail had been received by the Conservation Department and circulated to the Commission. John Jannell spoke with John Schnaible of Coastal Engineering Company, Inc., and said the target would be to meet at the end of November. Judith Bruce stated the e-mail said late November/early December, and John Jannell said it was up to the Commission what action they wanted to take. Judith Bruce asked what type of Enforcement action should be executed should the Commission wish to issue an Enforcement Order. John Jannell explained the last time an Enforcement Order was issued for this type of violation it required a restoration plan to be received by a date certain to be reviewed by the Commission. Jamie Balliett recalled that Ryder & Wilcox, Inc. had been referenced as an Engineer working on the project. John Jannell explained that Ryder & Wilcox had been contacted by the applicant, but the Engineer from the open Order of Conditions was Coastal Engineering Company, Inc. Coastal Engineering has been since retained by the applicant to provide the Restoration Plan. Judith Bruce empathized that the applicant found that the local engineering firms were busy, but that this issue had been on-going for two months. Steve Phillips brought up that this issue incorporated other town departments, NStar, and the applicant himself, and the applicant was doing what was reasonably expected of him. Steve Phillips felt that by the Commission requiring engineered plans, it was expected the process would take longer than anticipated. Jamie Balliett felt the line of haybales and secondary siltfence in addition with the

seeding were the minimum response which had been met, and a letter should be sent to the applicant requesting a date certain for a Restoration Plan to be received by the Conservation Department. James Trainor suggested November 20, 2012, and Judith Bruce said the Commission could consider fines as of November 20, 2012, if no progress had been made. John Jannell suggested that this would be listed on the agenda still as an Enforcement Order, and mentioned that Coastal Engineering said on the phone it was looking for November 27, 2012. The Commission felt November 20, 2012, was ample time for the applicant to provide a Restoration Plan. Jamie Balliett asked that Mark Budnick be invited to the meeting on November 20, 2012, to make sure that everyone was on the same page.

MOTION: A motion to continue the Enforcement Order discussion was made by Steve Phillips and seconded by Jamie Balliett.

VOTE: Unanimous

Certificate of Compliance

Last Heard 10/16/12

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. David Lyttle explained that he was unable to move and/or remove the hot tub prior to the continuation of the hearing, and that the applicants were aware that this would mean the Certificate of Compliance would be denied.

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

VOTE: 0-7-0; Motion Denied.

Revised Plan

Patricia & Peter Bishop, Jr., 1 Morningside Circle. by Ryder & Wilcox, Inc.

Assessor's Map 29, Parcel 23. The proposed removal of a portion of an existing dwelling & the construction of additions had been revised to increase the ceiling height of the first floor. Work will occur within 100' of the Edge of a Freshwater Wetland. Stephanie Sequin of Ryder & Wilcox, Inc, Peter Bishop, owner, and Dan Davis, builder, were present. Stephanie Sequin explained that after the existing roof had been removed, the builder Dan Davis discovered that the first floor framing was not in compliance with current building codes. After a meeting with the building inspector, it was recommended that the first floor walls be removed and re-build. The applicants wanted to take this opportunity to increase the first floor elevation by 4 inches. Judith Bruce asked if this would be within the same footprint and same elevation, and just a slight increase in volume, and Stephanie Sequin said yes. James Trainor and Steve Phillips felt this was a non-issue, and Judith Bruce commended the applicant on revising the plan to ensure there were no misunderstandings when a Certificate of Compliance was sought. John Jannell noted that there was significant mitigation proposed on site, and that the applicant be able to continue to work under this existing order with this plan revision.

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

VOTE: Unanimous.

Administrative Reviews

George Tazzini, 42 Loomis Lane. The proposed removal of 5 standing dead cedar trees. Work will occur within 100' of the Top of a Coastal Bank, Edge of Salt Marsh, and within the Pleasant Bay A.C.E.C. John Jannell noted that these trees were located between the house and the water, and had been standing dead for some time. Four of the five trees had died as a result of being shaded by a mature oak, the fifth being located by the gazebo. Judith Bruce asked if replanting was needed. John Jannell said the applicants planted a lot of native species throughout their property, and thought the removal of these 5 standing dead were in hopes of reducing the impact of the cedar borer on their property.

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

VOTE: Unanimous

Robert & Sandra Clark, 184 Tonset Road. The proposed creation of a public walking path. Work will occur within 100' of the Top of a Coastal Bank, Land Subject to Coastal Storm Flowage, and Salt Marsh. John Jannell noted that this was a path which went from the applicant's home to a beach which they owned. James Trainor and Judith Bruce were concerned about the use of the word public, and John Jannell explained that several people along the path had rights to use it. Judy Brainerd asked if this was a path she would have access to, and John Jannell said no. John Jannell clarified that this was a private path that served several homeowners. Judith Bruce asked that the motion be clarified that this would be the creation of a walking path, and eliminate the word public. Steve Phillips confirmed that this path would not be wider than 4'. John Jannell said yes, there would not be any tree removal, and the majority of the mowing of this path would be outside of Conservation Commission jurisdiction.

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

VOTE: Unanimous.

David Patterson, 44 Nichols Road. The proposed annual request for maintenance of the top of coastal bank and buffer pruning. Work will occur on a Coastal Bank, on Land Subject to Coastal Storm Flowage, and the Pleasant Bay A.C.E.C. John Jannell explained this annual work dated back to 2005.

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

VOTE: Unanimous.

Bruce Wolf, 17 Weeset Proprietors Way. The proposed construction of a 4'x4' stone base rinse area. Work will occur within 100' of the Top of a Coastal Bank, Salt Marsh, and Land Subject to Coastal Storm Flowage. John Jannell noted that this would be located outside of the 50' buffer. Judith Bruce asked if there was the potential for wash into Nauset Harbor and the need for drainage. John Jannell said no, and between the rinse area and the harbor were a deck, lawn area, vegetated bank, and a revetment.

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

VOTE: Unanimous

Kevin Doherty, 4 Duck Pond Lane. The proposed hand removal of wild grape and the trimming of trees. Work will occur within 100' of the Edge of Wetland and Edge of Critchett's Pond. Judith Bruce explained that she was familiar with this pond, and that the wild grape, while native, was taking over the area. John Jannell explained the applicant wanted get some of the wild grape under control, and that replanting would not be necessary due to the amount of wetland vegetation located around the pond.

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

VOTE: Unanimous

Jacqueline Stowell, 8 Crystal Lake Drive. The proposed pruning of a red maple, a red oak, and viburnum. Work will occur within 100' of the Top of a Coastal Bank and the Pleasant Bay A.C.E.C. John Jannell noted that the red maple and oak were very mature, and would benefit from a pruning. Judith Bruce asked if this would allow the tree to grow back healthy. John Jannell said yes, and that a standard note of pruning would be only for wind resistance and deadwood.

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

VOTE: Unanimous.

Patrick Punch, 23 Monument Road. The proposed removal of a locust tree. Work will occur within 100' of the Edge of Wetland. John Jannell noted that this was a tree leaning towards the house, and asked that the stump be left because of its location on the bank. Steve Phillips inquired if a John Jannell suggested putting a fungicide on the stump to prevent it from resprouting, and John Jannell said no. Steve Phillips suggested that future applicants be made aware that certain options were available.

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

VOTE: Unanimous.

Chairman's Business

Approval of the Minutes from the Meeting on October 16, 2012. Judith Bruce asked that the words "fertilizers and" be included prior to the word pesticides on page 2. Steve Phillips noted that prior to the meeting changes were made to page 4 and distributed accordingly to the rest of the Commission.

MOTION: A motion to approve the minutes as amended was made by James Trainor and seconded by Jamie Balliett

VOTE: Unanimous.

The Commission discussed the site visits.

The meeting was adjourned at 9:16am

Respectfully submitted,

Erin C. Shupenis, Principal Clerk, Orleans Conservation Department