

**Orleans Conservation Commission**  
**Town Hall, Nauset Room**  
**Hearing Meeting, Tuesday, November 6, 2012**

12 NOV 14 8:37AM

K. Derly Asst.  
ORLEANS TOWN CLERK

**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 10/16/12

**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. John Jannell reported a letter dated November 4, 2012 had been received requesting the application be formally withdrawn without prejudice.

**MOTION:** A motion to accept the formal withdrawal of the Notice of Intent without prejudice was made by Steve Phillips and seconded by Jamie Balliett.

**VOTE:** Unanimous

**Notice of Intent**

**Richard & Geraldine Nolin, 125 Rock Harbor Road.** by East Cape Engineering, Inc. Assessor's Map 16, Parcel 70. The proposed removal of an existing garage and slab, construction of additions to an existing dwelling, construction of an attached garage, revisions to the existing septic system, removal of an existing paved driveway and replacement with shell, and the creation of a 25' vegetated buffer. 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 Cape Cod Bay A.C.E.C. Tim Brady of East Cape Engineering, Clint Kanaga of Ponderosa Landscaping, and Richard and Geraldine Nolin, applicants, were present. Tim Brady went over the proposed changes to the existing house, noting that the proposed changes would not result in an increase in ridge height from the current house. Tim Brady explained that he met with John Jannell and went over the site visit conducted by the Commission, and understood that the Commission wanted both the bulkhead and the pier addressed. Tim Brady said the applicants were willing to remove the bulkhead and in turn regrade the slope. Tim Brady noted that the removal of the bulkhead would require the removal and replanting of vegetation along that area. Judith Bruce asked where the Mean High Water line was on the site, and if it could be shown on the plan. Tim Brady thought it was 5', but would do some research and confirm this. Clint Kanaga went over the proposed landscaping plan, noting that 2 Norway Maples not shown on the site plan were to be removed and replaced with Red Maples. Steve Phillips asked if these trees not shown on the plan could be flagged on site, and Clint Kanaga said yes. Clint Kanaga noted that once the concrete slab was removed, additional rip rap and block would need to be removed, the area stabilized, and erosion control blankets used. Clint Kanaga said that landward of the house non-native species would be planted. Judith Bruce asked if these plantings would be invasives, and Clint Kanaga said they would not be invasive non-natives.

Judith Bruce suggested working with the neighbors to remove the additional Norway Maples, and Mr. and Mrs. Nolin said they would attempt to contact them. Judith Bruce asked the Commission if reaching out to the neighbors was suitable, and if the planting plan was suitable. The Commission noted that the planting plan and suggestion to speak with the neighbors was acceptable. Judy Brainerd asked if the Siberian Elm removed under an Administrative Review would be replaced, and Clint Kanaga said it would be replaced with a Red Maple. Steve Phillips asked if the pier would be removed along with the bulkhead. Tim Brady stated that while nothing could be filed for which required a Chapter 91 Waterways License, the Nolins wanted to have some type of structure which they could walk on and birds could perch. Steve Phillips noted that the structure was not licensed, and Judith Bruce pointed out that this structure had not been previously approved by the Conservation Commission. Steve Phillips asked for Tim Brady to return to the Commission with the exact plans proposed for the walkway. Tim Brady asked if the Commission had any recommendations, and Steve Phillips said he was unsure of how you would apply for a walkway. Tim Brady noted the structure had more than likely been present since prior to the implementation of dock and pier regulations, and hoped that it had some status as a pre-existing structure. Steve Phillips asked about a limit of work for the project, and Tim Brady explained on the westerly side there was one, and the remainder of the work was actually to the edge of the bulkhead. Steve Phillips asked if the number of bedrooms would remain the same, and if the garage could be moved outside of the 50' buffer and closer to the street. Tim Brady said the number of bedrooms would remain the same. The moving of the garage would limit the driveway, limit the view, and there were flood concerns on the westerly side of the property. Steve Phillips inquired about the view, and Tim Brady explained that the master suite would be located above the garage. Judith Bruce asked if there was currently living space above the garage, and Tim Brady said it was storage space. Judith Bruce commended the applicants for removing structure from the 25' buffer, and felt the moving of the garage from the 50' buffer would also be an improvement. Tim Brady said he would speak with the applicants and look over additional improvement. Judith Bruce asked if there were any elevations provided, and Steve Phillips asked if the ridge height of the garage would remain the same. Tim Brady said he had not provided elevations, and although the dormers would be worked on, the remaining heights would remain the same. Jamie Balliett asked if square footage numbers could be provided, along with the proposed footprint, and asked if any fill would be brought on site. Tim Brady said there would be a grade change up one side and a cut on the other side. Jamie Balliett asked about what portion of the site was in the buffer zone of the riverfront area, and Tim Brady explained the river was measured from the edge of the creek, making the entire site within the riverfront area. James Trainor said while the planting plan was a great improvement to the site, it was difficult to determine the effect of the slope once the bulkhead was removed and would like to see the plan provided for that. James Trainor asked what the height of the riprap wall was, and what the proposed slope would be once it was removed and regraded. Tim Brady recalled the height of the wall to be around 3', and estimated that the slope would be 3 to 1 extending 9' back. John Jannell asked about the function of the stone block wall covered in English Ivy, and noted that there was a regulatory history for this site as well as an unlicensed dock and pier. John Jannell asked if it was known what type of material was behind the bulkhead, and if the recontouring would result in a Coastal Bank creation and alteration of delineation setback lines. Judith Bruce commented that they would not want to penalize the applicant in the future for doing the right thing now,

and Tim Brady did not feel that man could make a Coastal Bank but rather a slope adjacent to a Salt Marsh. Judith Bruce read off a list of items which she felt the Commission wanted addressed: the comparison of square footage of what is there now and what is proposed, the location of mean high water, remodeling and or relocating the proposed garage, and a revised planting plan with the bank restoration and details on the slope provided. Steve Phillips added that a new limit of work be provided, and what would be done to remove and/or address the existing unlicensed pier. John Jannell noted that the Mean High Water mark would aid in defining what was acceptable in terms of any pier or walkway. Tim Brady asked that the meeting be continued for 30 days to December 4, 2012, to address the Commission's concerns.

**MOTION:** A motion to continue the hearing to December 4, 2012, was made by James Trainor and seconded by Jim O'Brien.

**VOTE:** Unanimous.

**Aldo N. & Pamela L. Giacco, 4 Champlain Road.** by Ryder & Wilcox, Inc. Assessor's Map 20, Parcel 65. The proposed landscaping to include the removal of existing retaining walls and steps, regrading, seeding, removal of 2 trees, the planting of two trees and native plant species, and the construction of new stairs to grade. Work will occur within 100' of the Edge of Wetland. Stephanie Sequin of Ryder & Wilcox, Inc. and Aldo and Pamela Giacco, applicants, were present. Stephanie Sequin went over the proposed site plan, noting that the area underneath the deck was to be restored to a flagstone patio with a pervious base, and that the access for the work would be from the gravel driveway. Stephanie Sequin explained that a note on the site plan explained a Restoration Plan would be provided to the Conservation Administrator for approval prior to the commencement of work. Judith Bruce asked how far into the buffer the regrading would occur. Stephanie Sequin explained that while the limit of work terminated at the 50' buffer line, the regrading would end around the 53' buffer line. Judith Bruce noted an abundance of English Ivy on the property, and asked if it would be removed. Stephanie Sequin said the ivy within the work area in the back yard would be removed. Steve Phillips asked if the downspouts in the back would be connected to drywells. Aldo Giacco said the area underneath the deck may be filled with pea stone, and Stephanie Sequin noted that the discharge would then be in the pea stone area. Judith Bruce asked if this area was flat, and Aldo Giacco said yes. Steve Phillips inquired about another area along the side which he thought functioned as a downspout. Aldo Giacco said this was off of the foundation, and had since been removed. Steve Phillips asked how the drainage for the outdoor shower would be handled, and Aldo Giacco said there was stone underneath. Judith Bruce noted that the outdoor shower was not shown on the plan, and Stephanie Sequin said it was located on the northeast corner. Judith Bruce thought it would be best to show it on the plan so that there was an accurate record of what was presently on-site. John Jannell asked if a lot of fill had to be brought on site. Stephanie Sequin said that while she did not have a number of the fill to be used, some material would have to be brought in. John Jannell was concerned about the trees to replace the removed cedar and maple, as a specific genus and species had not been identified. John Jannell suggested that a condition that the replacement trees specifically be a Red Maple and an Eastern Red Cedar. Robert and Melinda Oleksiak, abutters to the property, commended the applicants on fixing up the property, but were concerned about where the irrigation system in the front yard drained. Melinda Oleksiak asked if the irrigation would drain into the newly proposed stairs, and what type of vegetation would be present to prevent erosion. Judith Bruce

explained it was currently grass to be replaced by grass. Melinda Oleksiak asked if there was any irrigation proposed in the back yard, and Stephanie Sequin said no. Judith Bruce asked that no fertilizers or pesticides be used within Conservation Commission jurisdiction, and Steve Phillips added that no irrigation system be used in the back yard. Judith Bruce asked the applicant if these conditions were acceptable, and Aldo and Pamela Giacco said these conditions were fine. Steve Phillips asked that the plan show the location of the outdoor shower to have an accurate record of what was present. Stephanie Sequin said she could write it on the plans to hopefully be approved today, and the Commission felt that would be suitable.

**MOTION:** A motion to approve the site plan dated 10/15/12, with the conditions that the replacement trees specifically be a Red Maple and an Eastern Red Cedar, no pesticides, fertilizers, or irrigation be used in the back yard, and a native grass mix be used was made by Steve Phillips and seconded by Jamie Balliett.

**VOTE:** Unanimous

### **Certificate of Compliance**

**Steve & Debra Scheibel (2003), 8 Windswept Lane.** The request for a Certificate of Compliance for an Order of Conditions for the construction of a single family dwelling; installation of a septic system; utilities, construction of a driveway; retaining walls; and pool. John Jannell said he had asked the applicant to plant an area left bare by construction. This area was planted with 9-3 gallon plants and is in substantial compliance.

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

**VOTE:** Unanimous.

### **Administrative Reviews**

**William Reiher, 7 Richwood Farm Lane.** The proposed removal of 6 trees threatening house. Work will occur within 100' of the Edge of Wetland. John Jannell reported that he wanted to speak with the applicant before the Commission reviewed the application, as the area where the trees were to be removed was supposed to be a natural area per the original Order of Conditions. The Commission agreed to hold the application and have John Jannell put it on the agenda after he spoke with the applicant.

**Bruce & Amy Albert, 49 Sparrowhawk Road.** The proposed trimming of 10 trees 4' off of the top. Work will occur within 100' of the Top of a Coastal Bank, Salt Marsh, and the Pleasant Bay A.C.E.C. Work to be done by Baker & Sons Tree Service. John Jannell reported that this was proposed work which initially was turned down due to a lack of detail on the proposed work. This new Administrative Review outlined that the work proposed was for a 4' trim only, the trees to be trimmed had been marked accordingly, and consent from the other owners where the work was proposed was received.

**MOTION:** A motion to approve this work was made by Bob Royce and seconded by Judy Brainerd.

**VOTE:** Unanimous

**Joel Williams, 82 Captain Linnell Road.** The proposed construction of a new deck and renovation work including new windows, siding, hand dug sonotubes, and trim work. Work will occur within 100' of the Edge of Wetland. John Jannell reported that

the proposed work only extended 1' into Conservation Commission jurisdiction. Judith Bruce commended the applicant for doing their due diligence and filing.

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

**VOTE:** Unanimous.

**Nick Mazzaresse, 80 Toms Hollow Lane.** The proposed removal of 2-3 wind damaged trees. Work will occur on a Coastal Bank, in the Pleasant Bay A.C.E.C., and within 100' of Land Subject to Coastal Storm Flowage. John Jannell reported the applicant had slumping along the Coastal Bank from the storm. The root masses from the proposed trees to be removed would be left to hopefully fall back into the bank, and the trees removed from the beach.

**MOTION:** A motion to approve this Administrative Review was made by Jim O'Brien and seconded by Bob Royce.

**VOTE:** Unanimous.

### **Chairman's Business**

Approval of the Minutes from the Meeting on October 23, 2012

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

**VOTE:** Unanimous

### **Other Business**

Request to sign the Emergency Certification Form for MassDOT, Rt 28 South Orleans Road.

Work to be allowed: removal of debris, full depth reconstruction of 65' of roadway, placing of rip rap-erosion repair along 85' of shoreline, placing of rip rap erosion repair along 20' of pond shoreline. Plans and Emergency Certification Form are on file with the Conservation Department.

John Jannell explained that this filing came under the DEP Emergency Storm Regulations CMR 310 10.61 in aftermath of Hurricane Sandy. The street was closed, and Mass DOT took measures to fix the road as quickly as possible. John Jannell recommended that the Emergency Certification Form be signed, but that a note suggesting that any further work require Conservation Commission filing be included. Judith Bruce was concerned that the work done created impacts on private property. Judith Bruce thought that the placement of the rip rap was part of the reason why the pond was deteriorating in front of A Little Inn. Judith Bruce was concerned about the end scour, and asked if there was something that could be done to make Mass DOT aware of this problem. James Trainor asked if John Jannell was notified of the work on the road prior to its start. John Jannell said he received a call the day the work was to commence, and that he was out on site to see the work being done. James Trainor asked if the work was a quick fix or if it would stand up to another storm event. Jamie Balliett pointed out that this section of roadway repeatedly received damage from storm events, and Judith Bruce noted that most recently the water washed over the road. Judith Bruce was concerned that the culvert from the pond to Pleasant Bay would collapse, and James Trainor asked if a larger pipe or road raising would be a solution. Jamie Balliett felt reconstruction would be a good option, but was not aware of when

this issue would be addressed by the town. Jamie Balliett asked if there was any additional data on the health of the pond and the wetland, and Judith Bruce said that she would try to get some information. John Jannell noted the owners of A Little Inn expressed the desire to install something which would provide aeration to the pond. Jamie Balliett asked what type of approval would be needed from the Conservation Commission. John Jannell said the Emergency Certification form can be signed by the Chair, and recommend that correspondence can accompany the Form detailing Commission concerns. Judith Bruce stated that if Mass DOT had applied for the work, it may have been possible for Greg Berman to look at it to determine the best possible solution. Judith Bruce suggested an environmental assessment accompany any further filings.

James: what measures should be taken

**MOTION**: A motion to approve the Chairwoman to sign the Emergency Certification Form with the condition that a letter be sent requesting an Environmental Assessment of the area and that any additional work required Conservation Commission approval was made by Jamie Balliett and seconded by Bob Royce.

Vote to Suspend Emergency Storm Regulations CMR 310 10.61

Judith Bruce felt that at this point and time the storm was over, and commended the town on a job well done notifying the town residents of hazardous conditions throughout the storm event. John Jannell noted that he would notify DEP of the vote to revoke the Emergency Storm Regulations.

**MOTION**: A motion to revoke the Emergency Storm Regulations CMR 310 10.61 was made by Jim O'Brien and seconded by Judy Brainerd.

**VOTE**: Unanimous

### **Administrator's Business**

The meeting was adjourned at 9:40am

Respectfully submitted,

Erin C. Shupenis, Principal Clerk, Orleans Conservation Department