

Orleans Conservation Commission
Town Hall, Nauset Room
Work Meeting, Tuesday, December 11, 2012

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C. M. [Signature]
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

Please note: the minutes reflect the order in which each filings were addressed, and is different than the published Agenda. This change was to accommodate the applicants for the proposed projects.

Continuations

Last Heard 12/4/12

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, Inc., and Richard Nolin, applicant, were present. Tim Brady explained that he, the applicants, and John Jannell sat down to discuss the construction protocol for the site. A temporary Limit of Work would be installed for the removal of the garage, the vegetation adjacent to the bulkhead, the removal of the bulkhead, and the reshaping of the new slope. The new slope would be planted with grass and covered with erosion control fabric for protection. Tim Brady anticipated this work would not take longer than a week, and once this work was complete, a second Limit of Work would be installed closer to the proposed house and farther away from the resource areas. Judith Bruce felt a pre-construction meeting prior to the commencement of the work and doing the work in small sections would be a good thing, and Tim Brady said they were planning on a pre-construction meeting. John Jannell said that during the meeting with the applicants and Tim Brady a pre-construction meeting had been discussed, and that John Jannell would incorporate this as part of the Special Conditions as a requirement for the Order of Conditions. John Jannell said that additional Special Conditions would include the removal of the bulkhead in phases as to not have an exposed bank, and the planting of a seed mix on the exposed area. Judith Bruce asked if the applicant was able to speak with Bob Prescott of the Wellfleet Audubon Society in regards to creating turtle habitat, and Tim Brady said they were working with him. Tim Brady pointed out that the platform had been moved back per the previous Commission request, the Ponderosa Planting Plan showed the secondary limit of work, a roof drain note was added, and the construction decking was to be 3/4" spacing. Steve Phillips asked about the revised date for the Planting Plan as one was not on the plan, and Tim Brady explained that although Clint Kanaga of Ponderosa Landscaping had not written it in,

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Tim Brady wrote a note in reference on his plan to the Planting Plan dated December 6, 2012. Tim Brady said he would write in the revised date on the plan. Jim O'Brien asked if the garden fence had been changed to ground level to prevent critter disturbance and Tim Brady said yes.

MOTION: A motion to approve the site plan dated 12/6/12, Planting Plan hand-written revised date 12/6/12, and with the condition that the construction protocol be reviewed by the Conservation Commission Administrator was made by Steve Phillips and seconded by James Trainor.

VOTE: Unanimous.

Last Heard 11/20/12

Ken Eisner, Countryside Building & Development, 8 High Street. by Ryder & Wilcox, Inc. Assessor's Map 37, Parcel 12. The proposed construction of a single family dwelling; installation of a septic system and utilities; construction of a driveway; grading; landscaping; and mitigation. Work will occur within 100' of an Intermittent Stream and the Edge of Two Wetlands. David Lyttle of Ryder & Wilcox, Inc, Seth Wilkinson, Tabitha Kaigle, Jen Exner, and Erin Hilley of Wilkinson Ecological Design, and Don Shall of ENSR were present. David Lyttle presented the changes to the revised plan, which included the relocation of two wetland flags resulting in a change to the proposed dwelling of squeezing it from the east to the west, and expanding the girth from the north to the south. The house itself would be a Cape-style house with a one-car garage. David Lyttle addressed the questions about the proposed culvert and if it would be sufficient during major storm events. David Lyttle provided storm drainage calculations for the proposed 8" Ductile Iron Pipe, which was suitable for a 50-100 year flood event. This type of piping was typically used on water mains, and was strong enough to allow vehicle traversing that minimal fill would be required for the top dressing of the pipe. Based on the site visits conducted since the last hearing, David Lyttle changed the resource area referenced as a Swale to Land Subject to Flooding. In the previous application this area had been referred to as an intermittent stream, but based on the soil analysis done by Don Shall and Erin Hilley during a site visit with John Jannell and Steve Phillips, it was agreed that the area was better classified as LSF. The buffer zone has since been changed to reflect the resource area reclassification. The garage has been pulled away farther from the 50' buffer zone, and the turnaround reconfigured so that it does not extend into the 50' buffer, although this change results in the removal of 2 cedar trees. David Lyttle said a suitable location for tree replacement would be found. David Lyttle addressed the issue of drywells versus a gravel dripline, which he said would be up to Ken Eisner, the builder, once the foundation was dug and clean permeable material was brought onto site due to the amount of clay present. David Lyttle said the amount of fill needed for the SAS would be 135 cubic yards, and evergreens would be planted around this mounded system to protect the neighbor's views from the north and west. David Lyttle noted that the previous 2000 Notice of Intent had been denied due to the absence of a wildlife habitat survey and mitigation plan. Don Shall and Erin Hilley provided a wildlife habitat survey for the Commission and Wilkinson Ecological Design created a mitigation plan which also addresses the food and shelter to be provided for wildlife. Don Shall explained that 12 years ago he delineated the wetlands at this site and determined that the now LSF

was an Intermittent Stream. Don Shall said that DEP has offered 3 decisions and issued 2 Superseding Orders of Conditions determining what a drainage swale could be, and based on those decisions, Don Shall changed his classification. Don Shall said the area was much more heavily invaded with invasive species than it had been in 2000, so much so that Wilkinson Ecological Design had to cut paths so that the site could be accessed. Several test pits were dug, going from 16-24" in depth, and no groundwater was encountered. Judith Bruce was comfortable with this resource area no longer being an intermittent stream, but noted that this area continues to be a difficult site, as there was wetland covering most of the area and water levels have been historically low for the past ten years. Judith Bruce said she was comfortable with the wetland and buffer lines now drawn. Don Shall said the culvert on the adjacent property controlled stormwater, displacing the water from the two catch basins and discharging into a third. David Lyttle pointed out that the area had been altered, and the water was directed to the wetland at the end of the cul-de-sac. David Lyttle was not sure if the catch basin had been installed to send water to the other wetland, but based on older site photos, this wetland had been significantly altered throughout the past years. John Moran, father and representative for Kathryn Collins of 130 Beach Road, said that he would not like to address the technical components of the plan but rather the proposed mitigation for the site. John Moran passed to the Commission a prepared statement about the work, saying that there was concern if this was good mitigation which did not eliminate food and protection for overwintering birds and small mammals. John Moran asserted that the applicant, Per Chapter 196A-3 of the Orleans Wetland Regulations, must assert Burden of Proof. John Moran passed around photos of Red Tailed Hawks which perched at 130 Beach Road, and used the field area as hunting grounds. John Moran pointed out that the opening up of the wetland area around 8 High Street would create a "Killing Field" without a safe haven for smaller wildlife. John Moran suggested creating an area similar to the Grandview complex, which provided a dense habitat buffer for wildlife. John Moran noted that the proposed nursery stock often ended up food for deer and failing, and suggested using more trees, shrubs, and additional evergreen species, as well as more substantial sized plantings. Judith Bruce thanked John Moran for providing the written statement and photos, and said that there are both advantages and disadvantages to large mitigation projects such as this. While the removal of the invasive species was a positive, Judith Bruce asked that the applicants address the abutters concerns. Seth Wilkinson explained that the abutters concerns were something which Wilkinson Ecological Design tried to address through their planting plan, with 800 nursery plants to be installed. Seth Wilkinson said the proposed plantings were conservation sized, and over a 3 year period it was difficult to distinguish between a 1 gallon shrub from a 5 gallon shrub because they typically catch up and grow rapidly. In terms of deer predation, the first year is the most difficult, with the contractor typically applying deer preventatives to ensure the survivability of the plantings. Judith Bruce noted that within the Order of Conditions it was not a requirement that the plants just be planted, but they succeed and if not, have to be replaced in kind. Bob Royce asked to clarify that not all of the cedar trees are to be removed, and Jamie Balliett asked if a one to one replacement of the ones to be removed was proposed. Tabitha Kaigle said there was a one to one replacement proposed. Don Shall said that when the delineation was done, there were several

young cedars found roughly 24" in height. Judith Bruce said this was a difficult lot to permit due to the wetland concerns, but that there was equal concern that this lot was a seed community for invasive species. There was concern that if this lot was not developed, the mitigation work would not be done. Judith Bruce asked what type of assurance was in place that this area would be maintained once the house was built and the Order of Conditions was signed off in 3 years. Judith Bruce was concerned that the area had the potential for the invasive community to return and there would now be a house within an invasive community. Judith Bruce suggested that a Conservation Restriction to require maintenance may be an option. The area itself could not be used since there was not a backyard proposed that would be outside of the buffer zone. Judith Bruce noted that the limit of work could not encroach into the 50' buffer, and that this would have to be pulled back. David Lyttle said there was a raised sitting wall between the mounded septic system and the back of the house proposed, which would create a lawn. Judith Bruce asked about the size of this proposed area, and David Lyttle said it would be an 11' by 30' area. David Lyttle noted that not all applicants wanted to create a lawn, and Judith Bruce was concerned about the Commission being assured that the area will become a lawn. Seth Wilkinson noted that while 3 years was a short period of time, some towns on the Cape had been writing 5 year Order of Conditions. Seth Wilkinson explained that Conservation Restrictions required the governor to sign off, and another option may be speaking with the Orleans Conservation Trust. Judith Bruce asked if there was a deed restriction possibility, and said that she would benefit from Town Council's opinion. Steve Phillips did not think that Town Council or a deed restriction was necessary, and felt that the Commission could not reasonably expect the applicant to stay outside of the 50' buffer since a front walk could not be installed without going over this buffer line. Steve Phillips cited 196A7-2(C) which was very specific about new construction. Steve Phillips asked if fill was proposed within the new driveway, and David Lyttle said there would be fill put in by the proposed pipe. Steve Phillips said that would be considered alteration, and that while he did not have a good grasp of the water on the site, the previous Commission was concerned that any construction work would alter the water table. David Lyttle said that they could not access the site without going through the 50' buffer, and the WPA allowed for driveways to be created for access. Steve Phillips asked John Moran if his daughter had a sump pump in the basement of the abutting house had a sump pump. John Moran said there was a sump pump, and that groundwater was hit about 2 years ago during the installation of a pool. David Lyttle explained that in Nauset Heights the clay layer is punched through, and Steve Phillips noted that in the past filling wetlands and building houses was a common practice, and that older photos showed the area as a wetland. David Lyttle said High Street was built on a wetland, and the cedar grove on the proposed site was shown in the older site photos. Steve Phillips explained that the question is always to demonstrate no adverse impacts, and that his concerns were that the water table would be impacted through the development of this parcel. David Lyttle argued that the hydrology had been altered on this site due to other development on the road, and that if a hole was dug for the foundation, water may travel along the clay layer. Steve Phillips explained these were some of the concerns from the previous filing, and was not sure what the Commission would conclude from these previous concerns. David Lyttle suggested that the Commission could employ its own consultant

to look at the resource area. Steve Phillips said due to the specificity of the local regulations, he was not sure if a Variance Request could be accepted by the Commission. Steve Phillips was concerned that by making this area habitable, the owners may nibble away at the buffer zone to the resource areas. Judith Bruce said that this could be addressed by pulling the work back further from the resource area, and that a driveway would be a possibility as long as the interests of the Commission were protected. David Lyttle asked if this meant the limit of work around the dwelling, and Judith Bruce said yes, Steve Phillips stated that the homeowners could not use the property without going into the resource area. Judith Bruce felt this spoke to a proposed smaller house, and Jamie Balliett asked if any calculations had been made for the proposed fill for the driveway, and if there was a reason that new test holes had not been done. David Lyttle said he did not have the calculations, and that while the Board of Health would require two additional test holes should this proposal pass through Conservation, he did not feel that there would be a significant difference between the old and new test holes. Judith Bruce asked where these new test holes would be located, and David Lyttle said exactly where the proposed septic system would be installed. Judith Bruce felt there were more important issues than the test holes for this proposal. Jamie Balliett noted the corner of the garage and the corner of the house were located at the 50' buffer, and that reshaping the house would be best since the owners may want to store a boat on their site or create a lawn which would encroach upon the resource areas. Jamie Balliett suggested a smaller house, and David Lyttle asked if the Commission wanted two additional test holes. Steve Phillips said that he would take David Lyttle's word that new test holes would not show a significant change to the resource area, and suggested to go back to the earlier Commission's concerns when a house was proposed in 2000. James Trainor said that he recalled this lot when it was the Mayo Duck Farm, and that when the Commission issues any Certificate of Compliances, there is no guarantee that an applicant will continue to maintain the property. James Trainor was not concerned about the storage of boats since any potential buyer would have to maintain this area, and that he would like to see the invasive species removed, and the house moved outside of the 50' buffer. Judith Bruce understood his point, and noted that longer assurance would be a better option. Jim O'Brien suggested the Commission look at a 5 year approach for the Order of Conditions. David Lyttle asked if in addition to moving or reducing the size of the house, if a natural buffer to the resource area or something on the ground where the 50' buffer would be delineated. Jamie Balliett asked if this meant a rock wall or living fence, and Seth Wilkinson suggested something to what had been done in other projects to delineate the buffer. David Lyttle suggested boulders, and Judy Brainerd asked if a garage was necessary. David Lyttle said he would look at the possibility of eliminating the garage. Steve Phillips asked if the garage would be on a slab foundation, and Judith Brainerd asked what addition portions of the proposed dwelling would be a slab foundation. David Lyttle said the garage and a portion of the house would be on a slab foundation. Judy Brainerd inquired about where the utilities would be located on site, and Jamie Balliett asked if they would be above or underground. David Lyttle said the utilities would be along the driveway to the house and would be below ground. John Jannell said that the Commission had brought up most of his concerns. John Jannell suggested a revised planting plan include more than 2" caliper species, and providing

more substantial plantings in the upland meadow area. John Jannell also asked why the applicant proposed the usage of DIP, and the amount of fill proposed. David Lyttle asked that the hearing be continued to January 8, 2012, to allow for him to review the Commission's concerns.

MOTION: A motion to continue the hearing to January 8, 2013, was made by Jamie Balliett and seconded by Jim O'Brien.

VOTE: Unanimous.

Jim O'Brien left at 9:43am

Certificate of Compliance

Mark Adorney (1995), 47 Twiss Road. The request for a Certificate of Compliance for an Order of Conditions for the licensing and maintenance of a seasonal pier, ramp, and floats. John Jannell reported the applicant was in compliance. John Jannell reported that the Order of Conditions was in substantial compliance, and a Certificate of Compliance would include On-Going conditions for the existing dock.

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

VOTE: Unanimous.

Orleans Conservation Trust: Twinings CR Baseline Documentation Approval

James Trainor recused himself. Kris Ramsay of the Orleans Conservation Trust introduced Meghan Quirk, AmeriCorps volunteer for the Orleans Conservation Trust. Kris Ramsay explained that documentation had been circulated showing the Conservation Restriction to be held by the Town of Orleans, which had been approved by the Selectmen and the state. Kris Ramsay explained that while the state grants did not come through for this purchase, the Orleans Conservation Trust had planned for the funding to not come through for this purchase. The Commission commended Kris Ramsay on this document preparation, and John Jannell explained a signature page would be passed for the Commission to sign.

MOTION: A motion to approve this Conservation Restriction Baseline Documentation Approval was made by Bob Royce and seconded by Steve Phillips.

VOTE: Unanimous.

Administrative Reviews

Robert & Judith Wilkinson, 20 Pershing Lane. The proposed removal of 2 standing dead cherry trees near the existing house. Work will occur within 100' of the Top of a Coastal Bank. Work to be done by applicant. John Jannell reported that the applicant had a stand of dead pin cherries, two of which he would like to remove.

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

VOTE: Unanimous

Pamela Adam & Bernd Zeller, 654 S. Orleans Road. The proposed removal of a tree which fell into the pond on site during the recent storm event. Work will occur in a Pond, within the Pleasant Bay A.C.E.C., in Land Subject to Coastal Storm Flowage, and

within 100' of the Top of a Coastal Bank and an Active Cranberry Bog. John Jannell explained that this tree came down in a storm event after Hurricane Sandy. Judith Bruce noted that this tree went into the pond after Pleasant Bay washed over Rt 28, and it was providing additional nutrients that the pond did not need.

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

VOTE: Unanimous.

D. Beth McCartney, 135-137 Portanimicut Road. The proposed removal of 4 dead pines, one oak leaning towards the house, and pine trees on side street of the house. 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. John Jannell explained that he walked the property with the applicant, and noted that there was some storm damage. John Jannell recommended the removal of the dead pines, as well as the removal of the pine trees street side to allow the release of cedar trees in this area. John Jannell was undecided about the removal of the oak tree, and passed around photos of it. Steve Phillips asked if the tree was to fall, would it fall on the house. John Jannell said he was not sure, and the property itself was under Order for the reconstruction of one of the houses on site. Judith Bruce asked what would happen to the view once the tree was removed, and John Jannell said there was a stand of pitch pines and a mature maple tree on site. Jamie Balliett asked if replanting was proposed, and how close to the deck the tree was located. John Jannell said tree replacement was not proposed at this time, and the tree was roughly 8' from the deck. Jamie Balliett asked if trimming had been suggested, and John Jannell said he had not gone over it with the applicant. Judith Bruce understood that there were lots of trees on site, and understood the applicants desire to remove the tree to prevent future damage, but on the other hand, wanted to know if the applicant would be willing to replant. Bob Royce said he would like to see a better picture depicting the trees proximity to the house. Steve Phillips was concerned about the screening from the resource areas. John Jannell suggested that he hold the application for a week so that he could speak with the applicant to see if replanting would be an option, and to take a better picture to show the Commission the proximity to the house. The Commission agreed to hold the application so that John Jannell could consult with the applicant about their concerns.

Chairman's Business

Approval of the Minutes from the Meeting on December 4, 2012

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

VOTE: Unanimous.

Other Business

Filing Fees discussion: Modified for After the Fact Filing Fees.

Erin Shupenis presented the legal ad for the proposed changes to the filing fees, which now included the After the Fact filing fee discussed at the October 2, 2012. Erin Shupenis explained that a tentative date of January 15, 2012, had been put on this legal ad, and inquired if there would be a quorum present at this meeting. The previous

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hearing to change the filing fees had been cancelled due to a lack of a quorum, and Erin Shupenis said that she hoped that by voting on the proposed changes at the January 15, 2012 hearing that the Commission may choose to implement them around mid-February. The majority of the Commission said that they would be present for this meeting, and Erin Shupenis said she would advertise the filing fee changes accordingly.

The Commission discussed the site visits.

The meeting was adjourned at 10am

Respectfully submitted,

Erin C. Shupenis, Principal Clerk, Orleans Conservation Department