

ORLEANS TOWN CLERK  
K. Derby, Asst.  
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**Orleans Conservation Commission**  
**Town Hall, Skaket Room**  
**Hearing Meeting, Tuesday, February 19, 2013**

**PRESENT:** Judith Bruce, Chairwoman; Steve Phillips, Vice-Chairman; Bob Royce; James Trainor; Jamie Balliett; Jim O'Brien; Judy Brainerd; Nancy O'Mara, Associate.

**ABSENT:** John Jannell, Conservation Administrator

8:30 a.m. Call to Order

**Continuations**

Last Heard 2/5/13

**John F. Whitesides, 22 Franz Road.** by Ryder & Wilcox, Inc. Assessor's Map 16, Parcel 4. The proposed construction of a new foundation & first floor, the reuse of the existing house as the second floor & roof, & the construction of a patio. Work will occur within 100' of a Coastal Dune. David Lyttle of Ryder & Wilcox, Inc. and Kristen Rufo of LaTanzi, Spaulding, & Landreth, were present. David Lyttle went over the revised site plans, which included the submission of a planting plan and a letter from the building mover stating his protocol. David Lyttle also explained that two of the abutters who were opposed to the project were now in favor, and provided a letter to the Commission of their support of the project as well as a second letter from the applicant regarding the proposed work. Judith Bruce suggested that to provide an accurate record that David Lyttle read the letters to the Commission. David Lyttle read into record the letters of support, noting that the applicant had reached out to Peter and Timothy Hollingsworth of 14 Franz Road, and they were now in support of the project. David Lyttle explained that the time frame of the project would be to commence work after Columbus Day and end prior to Memorial Day. George Ellis, the house mover for the proposed project, said in his letter that the house would sit in the road layout of Franz Road for 4-6 weeks while the foundation work was being done. David Lyttle spoke with the Orleans Building Inspector and the Orleans Highway Manager who were both ok with the proposed temporary location of the house, and he would be meeting with the Orleans Fire Department later on today to discuss the proposed temporary location of the house. David Lyttle went over the proposed planting plan, noting that it would be similar to the property on the west side of the applicant. Judith Bruce inquired about the presence of a lawn on site, and David Lyttle said there was one north of the limit of work. Judith Bruce asked if this currently functioned as a lawn, and David Lyttle clarified that while it was not a turf lawn surface, the area was where the fire pit was historically located and enjoyed accordingly. Steve Phillips clarified that the red cloud areas shown on the plan were areas to remain undisturbed. David Lyttle said these areas were existing beach plums and cedars which would be augmented with additional plantings. David Lyttle explained that a revised Variance Request had been submitted which went over these points. Judith Bruce apologized for the confusion regarding the resource area definition at the previous hearing, and said that while the applicant was moving the work further away from its current footprint in the 50' buffer, there was a need for extensive mitigation. Judith Bruce asked that the Commission be provided with current and proposed usable square footage, as this was new construction, but that volume was not

needed. Steve Phillips agreed that this was new construction, and David Lyttle also concurred. David Lyttle said the building coverage would be going from 1,171 square feet to 1,395 square feet, with the interior usable square footage, when finished, roughly 2,800 square feet. David Lyttle understood the Commission's concern about the 50' buffer, and noted that the while existing gravel driveway and walkway to the house were located within it, the applicant wanted to continue to use this area. David Lyttle explained that due to setback requirements, the house could not be pulled back further from the resource area, and the plan had been modified to remove the deck from the side of the house and replace it with a pervious patio. David Lyttle asked to hear from other Commissioners, and Steve Phillips asked if there were additional concerns by the abutters which had not been addressed. David Lyttle pointed out that council for one of the abutters was present, and Steve Phillips asked if the equipment used to lift the house had been provided enough room within the Limit of Work. David Lyttle said there was enough room, and Steve Phillips asked about the material for the proposed path. David Lyttle said this would be a sand path. James Trainor was comfortable with the plan because they were moving it back from its current location and the area where the building would be temporarily stored would be mitigated. Judith Bruce felt the unmanicured lawn in front of the house would be better as the Cape Cod Lawn, and David Lyttle suggested that they could bring the limit of work closer back giving the applicant enough space to walk around the house. Judith Bruce noted that would be fine, and that she was comfortable with the path to the dune. Bob Royce felt the revised plans were a thoughtful and responsible solution, and Kristen Rufo inquired if there were additional attachments which she had not received. David Lyttle explained that what was submitted to the Commission was 3 letters of support, a revised site plan, revised variance letter, and a revised planting plan. David Lyttle noted that Kristen Rufo's request was only for a revised variance request, and could provide her with additional materials. Kristen Rufo addressed the Commission, explaining she represented Barry Jacobs of 8 Franz Road, who remained opposed to the proposed work. Kristen Rufo pointed out that the Assessor's card for 22 Franz Road showed the existing dwelling to have 869' of living space, and where roughly 2800' was proposed, this would be a net increase of 176% in living space, and 240' currently in the buffer zone to 400' in the buffer zone. Kristen Rufo submitted that the applicant had not supplied reasonable alternatives, and that the house could be pulled outside of Conservation Commission jurisdiction. Judith Bruce pointed out that only 10' of the lot was outside of Conservation Commission jurisdiction, and Kristen Rufo corrected her statement and said outside of the 50' buffer zone. Kristen Rufo said that because the house is already non-conforming, a special permit could be sought to push the house back as far as possible and be outside of Conservation Commission jurisdiction. Judith Bruce corrected her stating that the proposed house would still be within the 75' buffer in this case, and Steve Phillips pointed out that the buffer zone extended to the 100-foot line. Judith Bruce explained that a proposed building envelope within the 75' buffer zone would not make the applicant exempt from filing with the Conservation Commission. Kristen Rufo said it was her understanding that the recent storm had caused damage to the area, and inquired if it was worthy of additional protection. Kristen Rufo inquired if the septic system would need to be upgraded, and concluded that her client felt that a smaller option should be explored. David Lyttle asked to

address Kristen Rufo's concerns, explaining that the limit of work shown on the plan demonstrated that nothing outside of this perimeter would be impacted. In terms of the special permit, David Lyttle explained that they would be able to gain an additional 2' further from the buffer zone to the resource area, but that the site itself was relatively undisturbed. Jamie Balliett asked if the number of bedrooms would increase, and whether or not a Title V system was currently on site. David Lyttle said they would not be increasing the number of bedrooms, and although the system would have to be inspected, it was a Ryder & Wilcox designed system. Jamie Balliett inquired if Kristen Rufo's 176% increase figure was correct, and David Lyttle said he would have to take time to complete the calculations. Steve Phillips asked about the 869 square footage number, and Kristen Rufo explained that was the number indicated on the Assessor's Card. David Lyttle explained that his numbers showed existing coverage, and Steve Phillips asked if Kristen Rufo was suggesting the applicant use the existing foundation. Kristen Rufo suggested determining the cost to repair the existing block foundation or dig a full foundation where the existing block foundation is located and build a one-story house. Judith Bruce said that this would result in an expanded foundation, and Steve Phillips pointed out that this would be a more significant impact within the 50' buffer zone than going to a second floor configuration. Steve Phillips asked what the proposed scope of work would be, and Kristen Rufo said that while she was unsure of what the scope of work would be for this proposed one-story building, the current proposal required an excavator to overdig in a sensitive area. Steve Phillips asked if she was questioning the limit of work, and Kristen Rufo pointed out that the limit of work was 23' from the Edge of the Coastal Dune. Kristen Rufo said the work would require an overdig, and Judith Bruce pointed out that the limit of work was the boundary by which the excavator was bound. The storage of materials and equipment outside of this limit of work was not something which would be permitted. James Trainor asked if Kristen Rufo's client, Barry Jacobs, had a two story home, and Jim O'Brien asked if her client had a view over the Whiteside's house, and if they were concerned about their view being blocked. Kristen Rufo said her client did have a two-story home, and that they were concerned about their view. Judith Bruce explained that the Commission could not be concerned about private viewsheds, and it was the Commission's responsibility to address the resource areas and the impact to those and their subsequent buffer zones. Steve Phillips concurred, stating that a view consideration from a neighbor was not an issue which the Commission could address. David Lyttle explained that during the on-site he took everyone to the top of the dune to demonstrate the public viewshed from the resource area, which would be minimal in comparison to surrounding homes. Kristen Rufo agreed that there would not be arguing about the view, and Judith Bruce clarified that the outdoor shower was in fact a rinse area. David Lyttle said yes, and Judith Bruce asked if the patio was pervious and if there would be restoration of the temporary location for the house. David Lyttle said the patio would be pervious, and the temporary location should be restored. Steve Phillips noted that David Lyttle mentioned the letter submitted by the house lifter, and asked for more details on the proposed work. David Lyttle explained that the structure would have to be placed on cribbing, and asked what would have to be restored if it remained off of the ground. Jamie Balliett pointed out that the ground at this location may need to be made level for the house storage. David Lyttle explained the focus had not been that

area, and would look into what needed to be done. Jamie Balliett asked if any inquiries had been made to the Orleans Board of Health if there would be a trigger to upgrade the existing septic system. David Lyttle explained that if a system was up to date, it would only require upgrading if the existing bedroom count was to change. Judith Bruce confirmed that the system serving this property was Title V. David Lyttle said yes, and when it was filed for it was done with the same delineation as the abutting properties. When the application for the house came in front of the Commission to install the deck, the previous Conservation Administrator questioned the delineation resulting in LEC going out to determine the Edge of Dune. Judith Bruce asked that they return with clarification on the existing and proposed square footage, and Bob Royce wanted the temporary location of the house to be replanted. David Lyttle said he was meeting with the Orleans Fire Department and would report on whether or not the storage of the house in the proposed location would be suitable. Jamie Balliett asked for the plan to show the defined lawn area in the front of the house, suggesting that the area be naturalized and no green lawn installed. David Lyttle said they had not historically mowed the area, and could move the limit of work after the house was moved to be further away from the resource area. Judy Brainerd said she was not sure how making a new foundation for a one story house was better than making a smaller footprint further from the resource area. Judith Bruce agreed, stating that she would not be in favor of a larger footprint in order to eliminate the second story. Judy Brainerd concurred, and Judith Bruce asked if council had any other concerns she wished to address. Kristen Rufo said she did not, and David Lyttle asked to continue the hearing for one week to provide the Commission with the requested information.

**MOTION:** A motion to continue one week to February 26, 2013, was made by Jamie Balliett and seconded by Jim O'Brien.

**VOTE:** Unanimous.

### **Notice of Intent**

**Charles Silbert, 34 Viking Road.** by Coastal Engineering Company, Inc. Assessor's Map 70, Parcel 24. The proposed upgrading of an existing sewage disposal system. Work will occur within 50' of the Top of a Coastal Bank & within the Pleasant Bay A.C.E.C. Tarja McGrail of Coastal Engineering Company was present. Tarja McGrail went over the existing site conditions, explaining that the proposed sewer manhole within the existing tank location was to minimize site disturbance, Judith Bruce asked if it was possible to move the tank and pump chamber outside of the A.C.E.C., and Tarja McGrail explained that the further it was moved up, the deeper it would have to be in the ground, which would require variances from the Board of Health and make it more difficult to maintain. Steve Phillips asked if it was pumped between, and Tarja McGrail explained it was a gravity system from the sewer manhole to the tank. Judith Bruce was concerned about the number of trees to be removed on site, and Tarja McGrail explained that they would replace in kind what existed on site. Judith Bruce asked if it would be a 1 to 1 replacement, and Tarja McGrail said there may be some flexibility to realign the components. Judith Bruce said the Commission would want that indicated on the site plan, and Steve Phillips inquired about the construction access. Tarja McGrail said the existing driveway would be used, and Steve Phillips thought there was an opportunity to stay outside of the A.C.E.C. by staying north of the shed. Tarja

McGrail explained there were two driveways on site, one of which was not active. Steve Phillips asked that a note be included that the construction access would be only permitted to the east side of the shed outside of the A.C.E.C. Jamie Balliett noted that this was an upgrade from the existing system, and asked if there wasn't a limit of work on the north side because of the gain in elevation. Tarja McGrail said this was correct, and James Trainor felt the proposed location of the components was more beneficial then moving it further away and causing it be to 3-4' below the surface.

**MOTION:** A motion to approve the site plan dated 1-31-13 with the conditions that construction access be limited to the east side of the shed and a 1 to 1 tree replacement was made by Steve Phillips and seconded by Jim O'Brien.

**VOTE:** Unanimous.

**Denise D. and John P. McGeough, Jr., 11 Gull Lane.** by FELCO Inc. Assessor's Map 24, Parcel 65. The proposed renovations to an existing dwelling including the conversion of an existing deck to a screened in porch, the construction of a deck above it, the construction of a second floor addition, & the construction of a shed. Work will occur within 100' of the Edge of Wetland, Edge of Salt Marsh, & within 200' of Edge of Riverfront. Dave Lajoie of FELCO Inc. and Jim Hadley, designer for the project, was present. David Lajoie confirmed that the Commission had received the revised plans. Dave Lajoie went over the proposed project, explaining that there would be a planting strip landward of the Bordering Vegetated Wetland to prevent further encroachment, and ensure there would not be an increase in lawn area. Judith Bruce asked about contours of the property, and Dave Lajoie explained that the elevation of the property went up as you went from the Bordering Vegetated Wetland to the road. Judith Bruce asked for clarification of the A.C.E.C. line, and Dave Lajoie said it ran close to the house. Judith Bruce asked to have the proposed shed moved outside of the 50' buffer, and that because this was new construction within the A.C.E.C., the area below the proposed work within the A.C.E.C. naturalized. Judith Bruce did not feel the proposed 4' strip as adequate mitigation, and asked about the current usable square footage and proposed square footage. Jim Hadley said the current house had roughly 1200 square feet of usable space, and Judith Bruce inquired how much would be usable space when it was complete. Jim Hadley said it would be about 1700 square feet, and Steve Phillips asked if this included porches. Jim Hadley said that would add an additional 140 square feet, and Judith Bruce asked if this would be a 3 season porch. Jim Hadley said this would be a 1 season porch, and Steve Phillips pointed out that the proposed work came in just under the cutoff for new construction. Dave Lajoie confirmed the proposed increase was 24%. Steve Phillips asked about the delineation of the wetland, as he recalled a low area that bumped out that should have been included. Dave Lajoie said the contour swept in, vegetation had been mowed, and the wetland indicator shrubs had been shown as the wetland line. Steve Phillips asked whether there would be a change to the roof elevation, and if it would be possible to relocate the proposed shed to the west corner of the lot. Jim Hadley said the roof elevation would not be higher than the existing ridge height, and Dave Lajoie said that while there was some room to move a shed, there were large evergreens on the west side. James Trainor noted that the shed needed to be moved someplace outside of the 50' buffer, and Judith Bruce said either that or take it off of the plan. Judy Brainerd asked if the site would be losing a garage,



and Dave Lajoie said the proposed shed would be for storage. Judith Bruce did not feel that a 4' buffer strip was significant mitigation, and suggested that a more permanent no-mow line such as a split rail fence be installed. Judy Brainerd and Nancy O'Mara were opposed to a split rail fence, and Judith Bruce pointed out that the low area which had been mowed needed to stop being mowed, as it appeared to be an extension of the wetland. Dave Lajoie asked if a no mow zone label would be sufficient or the Commission would prefer a physical barrier. Judith Bruce thought that plantings would be sufficient. James Trainor pointed out that it was a small area which required mitigating, and asked for the applicant to return with a planting plan for the entire area. Dave Lajoie asked if the Commission was ok with the proposed construction work, and Judith Bruce said as long as there was mitigation for it. Steve Phillips asked if there would be a change in the number of existing bedrooms, and Dave Lajoie said no. Judith Bruce asked if anyone in the audience wished to speak regarding the application, and Dave Lajoie asked to continue the hearing for two weeks to March 5, 2013.

**MOTION:** A motion to continue the hearing to March 5, 2013, was made by Jamie Balliett and seconded by Judy Brainerd.

**VOTE:** Unanimous.

**John V. & Loraine E. O'Hanlon, 28 Thayer Lane.** by Ryder & Wilcox, Inc. Assessor's Map 63, Parcel 45. The proposed removal of invasive species & planting of native species, & the removal of 4 trees. Work will occur with the buffer zone to & on a Coastal Bank, in Land Subject to Coastal Storm Flowage, within the Pleasant Bay A.C.E.C., and within 100' of the Edge of Salt Marsh. Doug Guey-Lee and Mike Ball of Wilkinson Ecological Design were present. Mike Ball went over the proposed project, explaining that the application was an attempt to approve a long term plan to preserve view windows. Mike Ball explained that none of the canopy species were to be removed, but rather the focus was to remove sapling oak and cherry trees, and preserve the scrub oak. Mike Ball passed around photos of the site to demonstrate the proposed work, including the removal of trees damaged by recent erosion, and the existing pathway the applicants wished to maintain. Judith Bruce said that while on site it was difficult to determine what was staying and what was proposed to be removed because nothing was flagged. Judith Bruce confirmed that no trees were to be removed within the view corridor, and Mike Ball said this was correct. Judith Bruce asked if trees were being removed outside of the view corridor, and Mike Ball said previously managed trees were being removed. Judith Bruce asked why these trees had been managed in the past. Judith Bruce asked why these trees had been managed in the past. Mike Ball said that the property owner received permission in 2012 to do some trimming, but that prior to that the owner may have done work without Conservation Commission approval. Judith Bruce pointed out that the Commission typically approved view corridors to provide views, with the areas outside of the proposed corridors remaining unmanaged. Judith Bruce pointed out the maintained Cape Cod lawn within the 50' buffer, and Mike Ball showed the Commission photos of this area which was occasionally mowed. Judith Bruce explained that these are supposed to be undisturbed areas, and Mike Ball said the owners would like to continue to use this area by maintaining the green brier and keeping the vegetation low. Judith Bruce apologized for not knowing the filing history, and said that she would like to find out whether or not

there were previously approved view corridors on site, and whether or not past filings existed showing plantings as well. Doug Guey-Lee said it was his understanding that the owners wanted a view to be preserved. Judith Bruce was concerned about the management of trees outside of the view corridor, but she felt that the removal of the trees which had been damaged by recent erosion was acceptable. Mike Ball pointed out that a DEP number had not been issued for this work. Judy Brainerd asked for clarification on the plan because the Notice of Intent asked for the removal of 4 trees but 9 were shown on the plan. Mike Ball explained the scarlet and black oaks had been cut previously, and the goal was to remove these and leave the scrub oak. Judith Bruce asked why the scarlet and black oak would be removed to preserve the scrub oak, and Mike Ball explained that over time the scrub oaks would have a better survivability, and that by removing the saplings they would be able to provide a more diverse habitat. Judith Bruce asked if the cutting would be within the A.C.E.C. and within the buffer to the A.C.E.C., and Mike Ball said there was cutting on the Coastal Bank. Steve Phillips noted that there was scouring along the shoreline, and asked if there was any proposal to address it. Doug Guey-Lee said there was no current plan to stabilize it, and the proposed work on the bank was to plant in areas void of vegetation. Steve Phillips asked if machinery would be brought in to change the bank on the left side of the oak, and Mike Ball explained that any work done below that area would be done by hand. Within the restoration plan itself, it was indicated that the scrub oak would not be cut. Steve Phillips indicated that the current plan implied that the scrub oak would be cut, and wanted it to be changed. Steve Phillips asked about the path and whether or not it was currently used. Mike Ball said the path could be used once the greenbrier was removed. Steve Phillips asked if there was an opportunity to combine access with the neighbor to the shoreline, and Judith Bruce asked if the Association path ran alongside. Doug Guey-Lee explained that the trail shown was essentially a trail through existing vegetation, and Steve Phillips commented that the path could become an erosion issue. James Trainor asked that the flagpole be shown on the site plan so that the Commission would have a point of reference, and Mike Ball asked if a second site visit would be helpful. Judith Bruce said a site visit could be scheduled for the following meeting, and the public hearing could be continued to March 5, 2013.

**MOTION:** A motion to continue the public hearing to March 5, 2013, with a site visit scheduled for February 26, 2013, was made by Jamie Balliett and seconded by Jim O'Brien.

**VOTE:** Unanimous.

*Jim O'Brien left at 10:03am; Nancy O'Mara became a voting member.*

### **Request for Determination**

**William N. Kubsch, 9 Lewis Road.** by FELCO Inc. Assessor's Map 36, Parcel 156.

The proposed replacement of wooden piles for an existing licensed dock. Work will occur within Land Subject to Coastal Storm Flowage, Land Under Water, Land Containing Shellfish, Salt Marsh, & the Pleasant Bay A.C.E.C. David Lajoie of FELCO Inc. was present. David Lajoie explained that the application was for the replacement of the support piles for an existing licensed dock, and Judith Bruce asked if the spacing between the decks could be changed from  $\frac{3}{4}$ " to 1". David Lajoie explained that the

only thing to be replaced would be the pilings. Judith Bruce asked if the height of the dock could be raised or if this would create an issue for the existing license. David Lajoie said that if the pilings at the far end were raised, it could be raised as needed. David Lajoie asked if the Commission was concerned about the high water depth, and Judith Bruce explained that by taking the dock and ramp off of the marsh it allowed it to grow better. David Lajoie explained this was not what the applicant was proposing to replace, and Judith Bruce said that the replacement of the pilings may provide the opportunity to raise the structure. David Lajoie said he could speak with his client, and asked what the Commission would like to see for a height. Steve Phillips suggested 4' above Mean High Water, and James Trainor suggested that he meet with his client to discuss this possibility. Jamie Balliett pointed out that this application was a Request for Determination not a Notice of Intent, and therefore could not be conditioned. Steve Phillips pointed out the cross-outs on the plan from 1994, and asked whether or not this was altered to be brought up to date. David Lajoie explained that when the license was issued, the licensing authority asked them to include the notes made on the plan. Jamie Balliett inquired how many pilings were proposed to be replaced, and David Lajoie said 4. Jamie Balliett asked if the applicant was willing to replace 12 pilings instead of 4. David Lajoie indicated that the applicant was not planning on doing that amount of work, and Jamie Balliett noted that it would be to the applicant's benefit. Steve Phillips asked if the posts to be replaced were the ones the float rode on, and David Lajoie said yes. Judith Bruce asked that when the applicant returned a no-mow zone was established to eliminate mowing in the marsh. David Lajoie asked to continue the hearing to March 5, 2013, to discuss the Commission's concerns with his applicant.

**MOTION:** A motion to continue the hearing to March 5, 2013, was made by James Trainor and seconded by Jamie Balliett.

**VOTE:** Unanimous.

### **Certificate of Compliance**

**William Kubsch, 9 Lewis Road.** The request for a Certificate of Compliance for an Order of Conditions for the maintenance of a pier and floats. David Lajoie suggested that this be continued along with the RDA. Judith Bruce noted that the Conservation Administrator's notes indicated that this pier and float was in substantial compliance, and a Certificate of Compliance including the On-Going Conditions for Existing Docks attached could be issued.

**MOTION:** A motion to issue this Certificate of Compliance was made by Steve Phillips and seconded by James Trainor.

**VOTE:** Unanimous.

### **Revised Plan**

Last Heard 2/12/13

**Town of Orleans/Parks Department, 192 Skaket Beach Road.** The removal & reconstruction of a snack bar within an existing parking area; installation of a septic system for bath house & snack bar, & the pumping, abandonment, & removal of the existing system has been revised to eliminate the grease trap. Work will occur within 100' of a Coastal Beach, Coastal Bank, Coastal Dune, & within Land Subject to Coastal Storm Flowage. Judith Bruce announced that the application had been withdrawn.



*Judith Bruce announced that the Administrative Reviews would be postponed until the Conservation Administrator returned to present his findings on these applications.*

**Correspondence**

Conservation Department Letter, 67 Uncle Israel's Road.

Judith Bruce announced that there was correspondence from the Conservation Department regarding 67 Uncle Israel's Road.

The meeting was adjourned at 10:14am.

Respectfully submitted,

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