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Orleans Conservation Commission
Town Hall, Nauset Room
Work Meeting, May 14, 2013

PRESENT: Judith Bruce, Chairwoman; Steve Phillips, Vice-Chairman; Bob Royce; James Trainor; Jamie Balliett; Judy Brainerd; Nancy O'Mara, Associate; Philips Marshall, Associate; John Jannell, Conservation Administrator.

8:30 a.m. Call to Order

Certificate of Compliance

Bayberry Condominium Association (2002), 55 Old Colony Way. The request for a Certificate of Compliance for an Order of Conditions for the removal of a failing timber retaining wall and replacement with 142 linear feet of a concrete retaining wall within 50' of an Inland Bordering Vegetated Wetland. *Jim O'Brien recused himself. Philips Marshall became a voting member.* John Jannell reported that this was a request due to a real estate closing, and the Order for the wall replacement was complete and in compliance. Judith Bruce confirmed that there were not any concerns, and John Jannell said the work had been completed.

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

VOTE: Unanimous.

Edward & Anna Filardi (2008), 29 Payson Lane. The request for a Certificate of Compliance for an Order of Conditions for the removal of invasive species and replanting of native species. John Jannell explained that this Order of Conditions was issued in response to clearing done on property which had a Conservation Restriction. The work required an annual report which has not been received from 2012 at this time, and during the site visit it was determined that the irrigation was still in place and replacement of species which had not survived the necessary 3 years was in need. John Jannell explained that the project itself was seeing some progress, and that winter storm damage could be resolved by filing a separate Administrative Review. John Jannell said that Russ Holden of Ryder & Wilcox, who had applied for the Certificate of Compliance, had the benefit of his comments. John Jannell felt that additional work needed to be completed prior to the issuance of a Certificate of Compliance. Judith Bruce felt that storm damage work to be filed under Administrative Review would be something which the Commission could support, and John Jannell suggested that the Commission leave the Order of Conditions open at this time. Steve Phillips suggested that with a denial John Jannell should draft a letter going over what Special Conditions needed to be met prior to the issuance of a Certificate of Compliance. Jamie Balliett inquired if this was something which could be held or required a vote, and John Jannell recommended formally turning down the request.

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

VOTE: 0-7-0; Motion Denied.

Administrative Reviews

Jonathan & Judith Chester, 124 Namequoit Road. The proposed construction off a 22'x32' patio, front step, and the removal of an existing patio. Work to be done by Nicholas Sparrow. The proposed new patio would be within the A.C.E.C., and the removal of the existing patio would be outside of the A.C.E.C. Judith Bruce was concerned about construction within a resource area, the A.C.E.C., under an Administrative Review filing. Judy Brainerd asked if the new deck would be going over the old deck to be removed, and John Jannell clarified that the deck to be removed was outside the ACEC facing Namequoit Road, and the proposed 22'x32' patio was facing the water and within the A.C.E.C. James Trainor asked if the patio to be removed was the same size as the one to be built, and John Jannell said no. Philips Marshall asked if there was a reason the applicant was not replacing the existing patio within the current footprint, and John Jannell thought it was the change in location which the applicant sought. Judith Bruce felt this type of work within the resource area required a more formal Notice of Intent filing, and the Commission nodded in agreement.

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

VOTE: 0-7-0; Motion Denied.

Steve Phillips pointed out that the Commission would need to see the square footage details to determine if this was something which would be approved, and Judy Brainerd felt that work within the resource area also required a mitigation plan.

Dorothy Pershing, 42 Pershing Lane. The proposed removal of 2 locusts. Work to be done by The Tree Wizard. John Jannell explained that this application was for storm damage and the area was otherwise left natural and well treed.

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

VOTE: Unanimous.

Rachia Heyelman, 109 Portanimiticut Road. The proposed removal of 2 storm damaged trees. Work to be done by Bravo Tree Company. Rachia Heyelman, applicant, was present. John Jannell explained that one tree had come down and the other was severely damaged during the winter storm events, and recommended approval. Judith Bruce commended the applicant on keeping the area well naturalized, and Rachia Heyelman said she wanted to keep the site that way.

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

VOTE: Unanimous.

William Brotherton, 17 Blue Rock Road. The proposed installation of a generator. Work to be done by Moore Security. John Jannell explained that this was a small generator pad located around the 90' buffer line, and there was an open OOC on this property which was making progress. Jamie Balliett inquired about the fuel source for the generator, and Judith Bruce noted that on the approved site plan an underground

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gas tank was located in the vicinity of the proposed generator pad. Jamie Balliett asked if this was a natural gas tank, and Judith Bruce noted that it was a propane tank.

MOTION: A motion to approve this Administrative Review was made by Jamie Balliett and seconded by Jim O'Brien.

VOTE: Unanimous.

Katharine Harris, 41 Chestnut Drive. The proposed installation of a new water service. Work to be done by All Cape Well Drilling. John Jannell said this was straightforward work which was located in the outer buffer of the resource area on the street side of the house and in the driveway. John Jannell explained that it would be trenched in, and then backfilled.

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

VOTE: Unanimous.

Edward Bagdonas, 54 Beach Road. The proposed removal of a storm damaged tree. John Jannell explained that this was a storm damaged tree and recommended approval.

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

VOTE: Unanimous.

Cheryl & David Dickerson, 68 Gibson Road. The proposed removal of 2 dead sycamore maples and bittersweet and pruning of 1 oak tree. Work to be done by Conquest Landscaping. John Jannell explained that the two Sycamore Maples were completely overtopped with bittersweet, and the oak, which had been previously pruned for a view. John Jannell stated no further removals are approved with this application.

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

VOTE: Unanimous.

Bruce M Wolf, 17 Weeset Proprietors Way. The proposed re-planting/replacement of foundation shrubs in front of the house. Work to be done by Phil Cheney. John Jannell explained that this work was between the house and Weeset Proprietors Way. John Jannell explained this was the replacement of overgrown foundation shrubs outside the 50' buffer, and that while the Commission did not allow invasives, he thought the species to be planted would be ornamental. Judith Bruce asked that John Jannell suggest the use of native shrubs, and John Jannell stated the Phil Cheney is aware of the Commission's appreciation of the planting of native shrubs within the buffer zone.

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

VOTE: Unanimous.

Chairman's Business

Approval of the minutes from April 2, 2013.

Erin Shupenis reported that these minutes were not available at this time.

Other Business

Report on Resource Area Delineation, 47 Nauset Road. Discussion of the final report from Greg Berman, Coastal Process Specialist, Woods Hole Sea Grant CCCE. David Lyttle of Ryder & Wilcox representing Frank Csongor, owner of 47 Nauset Road, and Robert Cunningham of 85 Nauset Heights Road were present. David Lyttle passed to the Commission a copy of the approved plan. John Jannell explained that the last time the Commission spoke about this issue, the Commission had advised John Jannell to reach out to Greg Berman, Coastal Processes Specialist for Woods Hole Sea Grant and the Cape Cod Cooperative Extension to provide an independent review and provide some commentary on the jurisdictional limits of the resource areas. John Jannell reported that while this document was circulated electronically to the Commission as well as put in their packets, he explained that Greg Berman found that there is a Coastal Bank located on the property at 47 Nauset Road under the Orleans Conservation local by-law. John Jannell hoped that the Commission could discuss the report and determine whether the Commission agrees or disagrees with the findings. The current open OOC on the property does not assert jurisdiction over the slope, and if the Commission is in agreement with the report, the Conservation Department would need to take steps to modify the Order for jurisdiction over the slope. This would involve re-advertising, notifying abutters, and then holding a hearing to consider modification of the OOC. John Jannell said he had his regulations to answer any questions or concerns the Commission had regarding this decision. Judith Bruce commended Greg Berman on clearly outlining the technical aspects of the state and local jurisdiction, and agreed that under the Orleans local definition the slope is a Coastal Bank. Steve Phillips concurred that Greg Berman's work was very thorough, and agreed with him that there is a Coastal Bank under the local definition at this site. Judy Brainerd concurred, and Judith Bruce asked for additional comments, and felt that everyone was in agreement with Greg Berman's findings. Jamie Balliett said that before the Commission started talking about possible ramifications under the local bylaw, the Commission may want to hear from the two parties present in the audience, and determine what possible ramifications the reopening of the OOC would be for either party. Judith Bruce asked if there was any disagreement from the audience with the report, and noted that while this was not a hearing, both gentlemen were welcome to speak regarding this matter. David Lyttle said he did not disagree with Greg Berman's report, and explained that what had been provided to the Commission at the beginning of the discussion was a site plan showing two highlighted buffer lines, one of which was the approved delineation under the OOC and the other which was a potentially revised delineation per Greg Berman's report. David Lyttle pointed out that the majority of the dwelling was 75' from the revised location of the Top of the Coastal Bank. David Lyttle pointed out that an interdepartmental memo had been sent out to halt all permits for work on this site, and the applicant wanted to build a swimming pool within what is now existing patio. The applicant has been working within the existing Limit of Work, and was seeking clarification from the Commission regarding this issue as the applicant was waiting in limbo until it could be resolved. David Lyttle noted that a lot of work took place outside of the Conservation Commission's jurisdiction, and explained that he needed clarification for his client. David Lyttle invited the Commission to return to the site to look at the work which had been done. Judith Bruce agreed this was a complicated

matter, and asked that John Jannell lay out a strategy on how to deal with it. Robert Cunningham felt it was important to note that if the delineation accepted by the Commission in May of 2012 had been different, there was a chance that the house may have been smaller or that it may have been set back further from the now Top of Coastal Bank. Robert Cunningham explained that the now large house would block the view of other homeowners for many years. Robert Cunningham also thought that the site plan dated 2/25//2013 showed a 16'x32' pool which now came as close as 55' from the Top of the Coastal Bank, and the proposed pool shed would now be located within 50' of the Top of the Coastal Bank. John Jannell said the Commission would need to vote whether to take steps to consider the modification of the Order for 47 Nauset Road, SE 54-2147, and its resource areas. Steve Phillips asked what the OOC referenced, and John Jannell said this was the Order for the removal of invasive species and replanting with native species. Judith Bruce noted that this work would have more than likely been approved regardless of the change in resource areas as the Commission encouraged bank restoration work. John Jannell concurred, and noted that the applicant was awaiting the Commission's decision. The RDA for the installation of a pool had been withdrawn, and if the Commission proceeded with modifying the existing Order, the Conservation Department would advertise and notify abutters at our expense. John Jannell explained that under the Standard Conditions on all Orders included in OOC's the Commission maintained the right to modify the Order. John Jannell said they were not asking for the applicant to file and receive an OOC for the construction of the house.

MOTION: A motion to authorize the Conservation Department to take steps to consider the modification of the Order at 47 Nauset Road was made by Steve Phillips and seconded by Judy Brainerd.

VOTE: Unanimous.

Steve Phillips said the best the Commission could offer was the next available hearing date of June 4, 2013, and David Lyttle asked who would prepare the new site plan. John Jannell hoped that the Conservation Department may have the applicant's permission to use the current plan. David Lyttle said while he was speaking out of place, he felt there was a chance that his client would want to file an NOI for a pool to be located within the existing patio. David Lyttle noted that all of the construction on site had occurred outside of the 50' buffer and therefore would have not required a variance request. Judy Brainerd pointed out that the previous proposed pool was partially located within the 75' buffer, and Judith Bruce said the Commission would be looking for no new construction within the 75' buffer. David Lyttle explained that there was patio up to the 50' buffer line, and Steve Phillips said this was not shown on the plan provided. David Lyttle said this plan was for the bank restoration work done by Wilkinson Ecological Design. David Lyttle was concerned about the ramifications of this re-opening, and Judith Bruce concurred that this was an awkward situation. David Lyttle noted that the applicant had prepared a legal team to determine what would be done, and thanked the Commission for their time and consideration. John Jannell noted that with the Commission's support he would prepare a letter describing the vote to the applicant and explaining the next steps, and the Commission agreed.

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Administrator's Business

Site Visits

The Commission discussed the site visits.

The meeting was adjourned at 9:13am

Respectfully submitted,

Erin C. Shupenis, Principal Clerk, Orleans Conservation Department