

Orleans Conservation Commission
Town Hall, Nauset Room
Hearing Meeting, Tuesday, August 6, 2013

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K. Dery Assessor
ORLEANS TOWN CLERK

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

ABSENT: Nancy O'Mara, Associate.

8:30 a.m. Call to Order

Continuations

Last Heard 7/2/13 (NO1, JT1)

Edward & Elizabeth Daly, 20 Driftwood Lane. by Coastal Engineering Company, Inc. Assessor's Map 27, Parcel 28. The proposed construction of fiber roll shorefront protection. Work will occur within 100' of the Edge of Salt Marsh, on a Coastal Bank, & in Land Subject to Coastal Storm Flowage. Roger Michniewicz of Coastal Engineering Company, Inc., was present. Roger Michniewicz explained that this was a revised submittal from the previous hearing, pointing out the elimination of the wire cages from the fiber rolls, and the description of the vegetation over the proposed fiber rolls. Roger Michniewicz explained that the applicant had installed these fiber rolls 20 years ago, and wanted to replace the 16" rolls with 20" rolls at the same height, in the same location, and the same design. Roger Michniewicz pointed out that they did offer more salt tolerant plants, grasses, and shrubs, and Judith Bruce confirmed that the applicant was willing to install these plantings. Roger Michniewicz said yes, and Judith Bruce felt that the applicant had provided everything that the Commission had requested. Steve Phillips inquired about the work time period, and Roger Michniewicz noted that the letter from NHESP indicated that all work must occur from October 15-March 31st. Judith Bruce said that the Commission would have required a similar time constraint to protect the marsh, and John Jannell confirmed the dates which Roger Michniewicz cited from NHESP, whose reasoning was to protect the American Sea Blight. John Jannell felt that the applicant provided everything that the Commission had requested.

MOTION: A motion to close the hearing was made by Jim O'Brien and seconded by Judy Brainerd.

VOTE: Unanimous

MOTION: A motion to approve the site plan dated 7-29-13, with the condition that work was restricted to October 15-March 31st, was made by Steve Phillips and seconded by Jim O'Brien.

VOTE: Unanimous.

Last Heard 7/23/13 (BR1)

Thomas & Diane Burnham, 70 Captain Linnell Road. by Ryder & Wilcox, Inc. Assessor's Map 32, Parcel 49. The proposed construction of a single-family dwelling; installation of a septic system & utilities; & grading & landscaping. Work will occur within 100' of the Edge of Wetland. Stephanie Sequin of Ryder & Wilcox, Inc. was present. Stephanie Sequin explained that the hearing was last continued pending

receipt of a letter from NHESP. Since that time, NHESP responded that the proposed work would not result in a prohibitive take, and that this was the last piece of information the Commission had needed.

MOTION: A motion to close the hearing was made by Jim O'Brien and seconded by Judy Brainerd.

VOTE: Unanimous.

MOTION: A motion to approve the site plan dated 7-16-13 with the condition that the brush was to be cleared first and trees marked to be either removed or trimmed to be approved prior to their removal by the Conservation Agent was made by Steve Phillips and seconded by Jim O'Brien.

VOTE: Unanimous.

Last Heard 7/23/13 (BR1)

Burton G. Herman, 9 Windswept Lane. by Ryder & Wilcox, Inc. Assessor's Map 38, Parcel 6. The proposed construction of an addition to an existing single family dwelling has been amended to expand an existing deck. Work will occur within 100' of the Top of a Coastal Bank. David Lyttle of Ryder & Wilcox, Inc. was present. David Lyttle explained that since the last hearing the addition to the deck was much smaller, resulting in no ground disturbance, with the connection of the house to the gazebo increasing, and a connection from the gazebo to the driveway. This connection could be stepped similar to the other steps from the driveway and therefore no disturbance to the ground. Judith Bruce confirmed that there would be no grading, and David Lyttle confirmed this, noting that a plan note indicated that they would revegetate all disturbed and bare areas with native plants, 1-3 gallons, 3' on center. Judith Bruce inquired if this included the area by the A/C Units, and David Lyttle said yes. Judith Bruce commented that while this was additional hard structure on a Coastal Bank, the Commission all agreed that the decking had saved the area because it restricted use to a specific area thus protecting the natural resource areas. John Jannell noted that this was a request to Amend an Order of Conditions, which required 3 votes; one to accept that this work could be accepted under this type of filing, two to close the hearing, and three a motion on the project.

MOTION: A motion to accept this request to Amend the Order of Conditions was made by Philips Marshall and seconded by Judy Brainerd.

VOTE: Unanimous.

MOTION: A motion to close the hearing was made by Jim O'Brien and seconded by Bob Royce.

VOTE: Unanimous.

MOTION: A motion to approve the site plan dated 7-29-13 with the condition that the disturbed areas be planted was made by Steve Phillips and seconded by Jim O'Brien.

VOTE: Unanimous.

Judith: additional hard structure on coastal bank, all agreed the decking has saved the

Notice of Intent

Richard A. Collison, 189 Skaket Beach Road. by Ryder & Wilcox, Inc. Assessor's Map 23, Parcel 17. The proposed upgrading of an existing septic system including the pumping & abandonment &/or removal of the existing system, & the installation of a

water service to serve an existing single-family dwelling. Work will occur within 100' of a Coastal Dune System. Stephanie Sequin went over the existing site conditions, noting that this house was within the Coastal Dune System but the extent of the Coastal Dune had not been delineated, and for the purpose of the proposed septic upgrade, was referenced as being located within a Coastal Dune System, with any work going forward requiring a further extended delineation of the resource areas on site. The proposed leaching area was in the highest topographical location of the site, and no containment walls needed to be built at this time. A Variance from Board of Health regulations for the construction of a septic system within the buffer to a Coastal Dune had been requested, and would be discussed at the upcoming Board of Health meeting on August 15th. Judith Bruce inquired how many bedrooms currently existed and how many the system would be designed for, and Stephanie Sequin explained it was a 2 bedroom house to remain a 2 bedroom house. Judith Bruce asked if the resource area was similar to the condos located in front of this property on the waterfront side, and Stephanie Sequin said yes, as well as the town bathhouse. Judith Bruce recalled that the town bathhouse had been a good learning tool for the Commission, since they had thought that tight tanks would have been a preferable option given its proximity to the resource area. The Commission learned that DEP almost never permitted the installation of a tight tank, especially when there was the ability to install a new septic system. Stephanie Sequin pointed out that during the upgrade of the condos additional variances were requested due to the proximity to the bay, the limited area, and the number of bedrooms. Judith Bruce inquired if a denitrification system had been considered, and Stephanie Sequin said while they were not proposing one, they would leave it up to the Board of Health to determine if it was something they would require. Steve Phillips noted that on the second page, there was a note for the washer and utility sink in the shed to be removed. Stephanie Sequin explained that on the southerly end there was an attached shed which had a washing machine and utility sink that dumped onto the ground, and it would be either connected to plumbing in the house or eliminated altogether. Steve Phillips asked if this was the stand along shed, and Stephanie Sequin clarified that it was the bump out attached to the house. Steve Phillips inquired if the existing shed shown was just for storage, and Stephanie Sequin said yes. James Trainor felt this proposed work was an improvement, and Judith Bruce concurred, noting that the applicant was not looking to expand upon the house and would not potentially be anything which the Commission would approve in the future. Steve Phillips asked if the oak tree would be lost due to the leaching field location, and Stephanie Sequin said it would have to be removed. John Jannell recalled that it was actually a Cherry tree. Carter Buckley of 10 Wildflower Lane, Abutter, explained that he had always trusted the Commission to place environmental concerns first and foremost in their decisions, and understood that a septic system was better than a cesspool. Carter Buckley explained that their concern was the small parcel of land located within the Coastal Dune System, and was concerned that this fragile ecosystem be protected, and that any Variances requested only be granted as a last resort after careful consideration of the facts. John Jannell stated that while the applicant had received a DEP number, a letter from NHESP had not been issued. John Jannell noted that some people had brought up previous filings within this Dune system, and while they were not considering asking a Coastal Geologist to be hired at this time, the applicant was aware

that the work could be within a Coastal Dune System. John Jannell did not recommend that the Commission close the hearing until correspondence from NHESP had been received, and suggested that if an Order was issued for the property, that it carry a special condition that this approval would be for the upgrade of the septic system only. Any expansion of the dwelling the Commission would want to see the extent of the Dune system, as the Commission has a regulation of Dune Systems. Judith Bruce agreed with the suggested language, and noted that the proposed work was a vast improvement to groundwater, and that they wanted to protect the resource areas with the highest standards. Stephanie Sequin agreed that the suggested conditions were fine, and Judith Bruce asked if she would speak with the owners about a potential denitrification system. Stephanie Sequin noted that NHESP received the application on July 17th, and asked that the hearing be continued to August 13, 2013, to have one additional meeting prior to the Board of Health hearing.

MOTION: A motion to continue to August 13, 2013, was made by Bob Royce and seconded by Judy Brainerd.

VOTE: Unanimous.

Timothy F. Geithner, 158 Tonset Road. by Ryder & Wilcox, Inc. Assessor's Map 27, Parcel 7. The proposed repair of a timber stairway & the construction of a landing & steps onto an existing boathouse. Work will occur on a Coastal Bank, on Land Subject to Coastal Storm Flowage, & a Coastal Beach. David Lyttle explained that during the recent northeast storms the timber stairs located at the bottom extending onto the beach had become severely damaged and pulled away from the Bank. David Lyttle provided the Commission with a photo, showing that the stairs were literally pulled seaward. David Lyttle noted that the beach had a lot of cobble, and did not think vegetation would be disturbed. David Lyttle pointed out that there used to be timbers to provide access to the boathouse, and as a result of the spring storms, was no longer adequate access. David Lyttle explained that the limit of work did not extend beyond 3' from the footprint of the stairway, and included standard construction notes asking for 1/2" minimum spacing. David Lyttle did not feel that the proposed work would cause significant disturbance to the site, and although a DEP number had been issued, they had not received a letter from NHESP. Judith Bruce inquired if the oak up against the boathouse with the undermined roots was proposed to be taken down, and David Lyttle said not at this time. Judith Bruce explained that the Commission did not generally encourage the removal of large trees, and David Lyttle was hopeful that the oak may survive. Steve Phillips inquired if fill would be brought in, and thought that with the landing there was opportunity to add some fill. David Lyttle said that Jeff Norgeot had been contracted, and that if they were successful, could also include an erosion control blanket. David Lyttle explained that he could add a note to provide protection to the roots of the oak, and Judith Bruce wanted to make sure that they would not smother the fringe marsh. John Jannell noted that during the on-site, the Commission saw the remains of the elevated stair, and felt that the proposed retreat was a benefit. John Jannell pointed out that even with the addition of stairs there would be a net reduction of coverage on site, and that the proposed application met the rules and regulations of elevated stairs. John Jannell noted the potential for a time of year restriction for the work to be done, and that they had not received comments from NHESP at this time.

John Jannell explained that although the repair was minor, NHESP may find priority habitat, and the Commission should wait to receive their letter. Judith Bruce did not think that the amount of work proposed warranted a time of year restriction, and John Jannell agreed. David Lyttle pointed out that the only disturbance would be the removal of the stairs, and all of the other work would be over the beach and cobble. David Lyttle asked to continue the hearing to August 13, 2013.

MOTION: A motion to continue the hearing to August 13, 2013, was made by Jim O'Brien and seconded by Philips Marshall.

VOTE: Unanimous.

Revised Plan

Hamish & Kathryn Wilkinson, 45 Bridge Road. The proposed construction of an addition to a single family dwelling has been revised to change the proposed building plan to 1.5 stories. Work will occur within 100' of the Edge of Salt Marsh and Land Subject to Coastal Storm Flowage. John Jannell had expected the owner to attend the hearing, and passed around the elevations submitted to the Commission. John Jannell went over the history of the filing, noting that the proposed work outside of the 50' buffer, and the proposed mitigation to be the removal of phragmites. Judith Bruce commented that the 75' buffer had not been shown on the plan. John Jannell explained that all of the work was within the 75' buffer, and the reason the applicant was here today was that the Notice of Intent had been for a one story addition, and the applicant now wanted it to be one and a half stories. Judith Bruce voiced that while it was outside of the 50' buffer, that the Commission needed to see a comparison of the square footage calculations, and asked what the other Commissioners thought of the proposal. Judy Brainerd asked if there would be a change in the number of bedrooms, and Steve Phillips wanted to get a clear idea of the impact of usable square footage. Judith Bruce agreed that additional information was needed, and John Jannell noted that while building plans were not included in the original Order of Conditions, he wanted to be clear to the applicant what the Commission was seeking. Judith Bruce summarized that the Commission wanted to know what the living space would be used for, if additional bedrooms were proposed, and the before and after square footage calculations. Judith Bruce did not feel that volume calculations were necessary, and John Jannell explained that he would call the applicant. Judith Bruce noted that this was not a hearing, and asked that it be put back on the agenda when the applicant was available.

Administrative Reviews

Nancy O'Leary, 24 Franz Road. The proposed flush cut and removal of a dead Cherry tree. Work to be done by Wilkinson Ecological Design. John Jannell explained that this was a standing dead Cherry Tree that they tried to save under the Order of Conditions, and was otherwise a well planted mitigated area. Judith Bruce asked if there was need for additional plantings, and John Jannell said no.

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

VOTE: Unanimous.

Edmund Pitcher, 4 Harborview East. The proposed removal of a dead mature oak. Work to be done by Tom Coburn Landscape Company. John Jannell reported that there were two standing dead oaks, one of which the applicant was trying to keep, and may apply to remove at a later time. John Jannell explained that it was dead due to the Gall Wasp, and Judith Bruce appreciated the applicant's willingness to try and save the trees. John Jannell noted that there was a good understory under the second tree, and a change for succession to occur naturally.

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

VOTE: Unanimous.

John Ostman, 106 Bakers Pond Road. The proposed repair of an existing septic system by installing a new distribution box, leaching facility, and the relocation of underground utilities. David Lyttle explained that the septic system on site had failed, and in an effort to expedite the process, the applicant had been pumping his system regularly and test holes had been done on site. The new proposed leaching area would be spread out and more shallow, all within the driveway. David Lyttle pointed out that while it was not outside of the 100' buffer, it provided environmental benefits being more spread out and shallow, therefore providing a significant benefit to groundwater. Judith Bruce inquired if the proposed system would be installed where the existing was one located, and David Lyttle said yes. David Lyttle noted that they were trying to disturb the least amount of area, and Judith Bruce commented that Bakers Pond had high water quality, and David Lyttle noted that the old system would be removed and replaced with clean sand. David Lyttle pointed out that the proposed Cultec system was environmentally sensitive, and that while the system installation would be overseen by the Orleans Health Department, an As-Built was required to be submitted for the proposed work. Judith Bruce noted that the Commission was normally concerned about this type of work proposed under an Administrative Review, but that the proposed system was located between the house and the road, enclosed by a walled driveway. Jim O'Brien, Steve Phillips, and Bob Royce were all in favor of the application, and Judy Brainerd agreed, noting that initially she had thought this was a much larger project that proposed. John Jannell asked if materials would be removed and trucked off site, and David Lyttle said immediately. John Jannell pointed out that there would be no natural disturbance other than the driveway, and felt that this application could be approved under this type of filing.

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

VOTE: Unanimous.

Judith Ryon/Walter North, 178 Barley Neck Road. The proposed removal of 4-6 dead trees. Work to be done by Bruce White of Bravo Landscaping. John Jannell explained that this was work that had been previously approved but had not been completed prior to the expiration of the Administrative Review.

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

VOTE: 6-0-1; Motion approved, Steve Phillips abstained.

John F. McCoy, Jr., 20-23 Preservation Path. The proposed test holes for the upgrading of an existing septic system. Stephanie Sequin passed around copies of a portion of a plan showing the site, explaining that this was a 78 code septic system showing signs of failure, and the existing site was surrounded by an inland marsh. Judith Bruce asked if this was located in Little Namskaket, and Stephanie Sequin said yes, the entire property was within 100' of a resource area. John Jannell passed around pictures of the site, noting that the peninsula had been well described, and assumed that the applicant would hopefully be back with a Notice of Intent for the upgrading of the system. Judy Bruce suggested that the highest elevated area be used, and Stephanie Sequin said that it would be located in the general area of the existing system. Judith Bruce inquired if this was just for the upgrading of the failed system, and would not be looking for an increase in square footage to the proposed building with a Notice of Intent. Stephanie Sequin explained that this upgrade was for the sale of the property.

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

VOTE: Unanimous.

Michael Martin, 7 Jones Road. The proposed removal of English ivy adjacent to driveway and grape vines on the property. John Jannell explained that he met with the applicant on-site who had a significant amount of fox grape located on the property. John Jannell felt that the removal of the ivy and vines may be outside of jurisdiction, and wanted to carry a note that no shrub removal on the left hand side of the site, where the wetland was located, would be permitted. Judith Bruce inquired if work had been done previously on site, and John Jannell said no, that the last filing for the site was 1977. Judith Bruce inquired if John Jannell had discussed with the owners the difference between the native species and invasive species on site. John Jannell noted that he had walked on site with the applicant, and felt the vines would be easy to determine. The two native vines, poison ivy and Virginia creeper were not bad to remove, and Judith Bruce inquired about how large of an area would be worked upon. John Jannell felt the work area was not very large, and that his discussion with the applicant was more about native and invasive shrubs. Judith Bruce confirmed that no shrubs were permitted to be removed, and John Jannell said that he would make a note that no shrubs removal was permitted, and that the proposed work was for hand-work only.

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

VOTE: Unanimous.

Judith Kelly, 46 Pershing Lane. The proposed of a multi-stem oak adjacent to the house. Work to be done by S&L Tree Services. John Jannell explained that the Commission had given the application previous approval for a stem towering over the house, and now two tree companies had informed the applicant that the tree needed to be removed. John Jannell pointed out that the applicant had offered to replace the removed oak with a red maple, nursery stock, and explained that the two tree companies felt that the tree was a hazard to the house. Judy Brainerd was pleased that

the applicant was willing to replace the existing tree, and Bob Royce felt that the application should be approved since two separate companies had recommended the tree's removal for safety reasons.

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 May 21, 2013.

Erin Shupenis reported that they were not ready at this time.

Other Member's Business

Administrator's Business

John Jannell reported that there was one application received for the Sea Call Farm Caretaker position, and that the applicant met all of the qualifications. John Jannell announced that it was Nathan Sears, who worked for the Department of Public Works and Natural Resources, and that they were taking steps to complete caretaker agreements with Mr. Sears. John Jannell would address the replacement of the oil tank at a future meeting.

The meeting was adjourned at 9:40am.

Respectfully submitted,

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