

Orleans Conservation Commission
Town Hall, Nauset Room
Hearing Meeting, Tuesday, August 20, 2013

14 JAN 21 11:32AM
K. D. Kelly, Asst.
ORLEANS TOWN CLERK

PRESENT: Judith Bruce, Chairwoman; Steve Phillips, Vice-Chairman; Bob Royce; James Trainor; Jim O'Brien; Judy Brainerd; Philips Marshall, Associate; John Jannell, Conservation Administrator
8:30 a.m. Call to Order

Notice of Intent

The Whole Clam LLC, 5 Route 6A. by Baxter-Nye Engineering & Surveying. Assessor's Map 18, Parcel 52. The proposed renovation of the existing restaurant, construction of a new septic system & stormwater management facility, rebuilding of a retaining wall, & landscaping. Work will occur within 100' of Land Subject to Flooding. *James Trainor recused himself.* John Lavelle of Baxter-Nye Engineering & Surveying, Andrew Singer of Singer & Singer, legal representation for the applicant, and Steve Cook, of Cotuit Bay Design, were present. John Lavelle went over the existing conditions on site, noting that a portion of the property was within the Flood Zone. John Lavelle summarized the proposed drainage work to be done, and went over the seating arrangement and design of the new restaurant. John Lavelle pointed out that this parcel was located in both Orleans and Eastham, and the applicants had to go in front of various boards in both towns. John Lavelle explained that part of the landscaping was currently located in the roadway layout, and would be pulled back with the new design. Judith Bruce inquired about the seating arrangement, confirming that the seating would go from being located on the road layout of Route 6A to the corner of the property, and John Lavelle said yes. Judith Bruce inquired about the trees and vegetation on site, and Steve Cook explained that the trees were to remain, and the vegetation would be expanded back to the property line. Judith Bruce asked about inside seating, and Steve Cook explained that there would be none. Andrew Singer explained that there were benches proposed to be put on the property line, with additional benches in the front and seating with stools on the side. Andrew Singer noted that some of the parking and the existing awning were located in the state layout, and Judith Bruce thought that the proposed septic system was to be located in the Town of Eastham. John Lavelle explained that the sewer line started in Orleans, crosses to the grease trap, with the sanitary sewer located in Orleans and going into Eastham. John Lavelle noted that 15% of the leaching was located in Orleans, and therefore there were septic components in both towns. John Lavelle pointed out that all of the stormwater controls were located in Orleans, and Judith Bruce asked if this was designed to filter the nutrients. John Lavelle explained that it would remove nutrients, and Judith Bruce explained she was concerned about nutrient loading into Town Cove. John Lavelle explained that the catch basins on site would remove a certain amount of nutrients, 87% of the TSS prior to exfiltration. Judith Bruce noted that when there was a concern about nutrient loading the Conservation Commission typically passed along their concern to the Board of Health, and wanted to pass along a suggestion that a denitrification component be considered. Judith Bruce understood that the applicant was dealing with multiple boards from two different towns, and Andrew Singer pointed out that they would

be in front of both Orleans and Eastham's Boards of Health in the near future. Steve Phillips inquired if there would be any stormwater that would run off the property, and John Lavelle noted that there may be a slight amount coming off. Steve Phillips brought up the erosion control blankets referenced on the submitted plan, and inquired if they were of biodegradable material. John Lavelle explained that this was his standard plan note, and Andrew Singer commented that the use of the fabric may not be necessary. Steve Phillips wanted to make sure that, if any was used, that it be biodegradable. John Jannell asked about the status of their application with the Eastham Conservation Commission, and whether or not they had any conditions or concerns. John Lavelle explained that they wanted more information on the retaining wall, and the plan to be revised so that there was no pressure treated wall on the guardrail. John Lavelle said that their hearing with Eastham had been continued to September 10th, and Andrew Singer stated that they had agreed to go with non-pressure treated wood. Andrew Singer pointed out that 1/8th of the retaining wall was located in Orleans, and John Jannell noted that they had discussed the possibility of a joint meeting between towns. John Jannell asked if they had quantified the benefits to stormwater within the 0-25' buffer, and John Lavelle commented that only a small portion of the 100' buffer zone to the Flood Zone was located within the Town of Orleans. John Lavelle explained that there would be a significant reduction because all of the materials proposed were pervious pavers. Judith Bruce inquired if the buffer zone shown was for the current or soon to be updated flood zone maps, and Andrew Singer explained that the proposed changes to the site should not be impacted by the updating of the flood zone maps. John Jannell asked about the timber retaining wall, and John Lavelle explained that there would be a concrete retaining wall with a footing, and Steve Cook pointed out that it was 4' below grade. John Jannell inquired if a liner was necessary, and John Lavelle explained that the retaining wall was necessary to contain the parking lot. Steve Cook went over the stormwater details of the detaining wall, and Judith Bruce asked if its purpose was to stabilize the area for parking, as well as retaining and holding stormwater. Steve Cook said this was correct, and explained that the 6-8" lip which contained the stormwater coming from 6A would go into the drains, and any stormwater going towards the west would remain on site. Judith Bruce felt that the proposed work was an improvement to the site, and inquired whether or not the Commission should continue the hearing for one week to allow for feedback from the Town of Eastham. John Jannell explained that he had attempted to contact the Eastham Conservation Agent but was unable to connect with him, and Andrew Singer understood that both boards would be communicating about this application. Judith Bruce felt that continuing the hearing for one week to allow for input from the Town of Eastham would be best, and John Lavelle pointed out that they were continued with the Town of Eastham until September 10th. Steve Cook noted that the plans submitted to John Jannell solved the architectural concerns brought up by the Town of Eastham, and John Jannell inquired about the direction of the roof drainage. John Lavelle clarified that it would be contained in the same stormwater controls as explained earlier. Bob Royce inquired if it would be better to approve the application now, and Judith Bruce felt that it would be best to connect with the Town of Eastham to ensure that all concerns had been addressed. Steve Phillips suggested that the applicants could continue to the August 27, 2013 meeting, and Andrew Singer felt that this would be fine.

MOTION: A motion to continue the hearing to August 27, 2013, was made by Jim O'Brien and seconded by Bob Royce.

VOTE: Unanimous.

James Trainor returned, and the Commission welcomed Jane Hussey, the newest Associate for the Orleans Conservation Commission.

Jonathan S. Weiss & Susan Lee Bruce, 24 Weeset Proprietors Way. by Coastal Engineering Company, Inc. Assessor's Map 6, Parcel 3. The proposed repair of existing revetment. Work will occur on a Coastal Bank, within Land Subject to Coastal Storm Flowage, within Land Subject to Flooding, & within 100' of a Coastal Bank, Edge of Salt Marsh, Coastal Beach, Land Subject to Coastal Storm Flowage, & the Nauset Estuary. Jay Norton of Coastal Engineering Company, Inc, Sarah Turano-Flores of Nutter, McClellan, & Fish, legal representation for the applicant, and Phil Cheney, landscape designer, were present. Sarah Turano Flores explained that for those not involved in 2011 Conservation Filings for this address, she and Jay Norton presented the Notice of Intent for the original revetment reconstruction which took place during the fall of 2011 to 2012. Sarah Turano-Flores explained that the proposed work was for the south end which suffered damage from the storms in early 2013, revealing that this portion of the revetment needed to be reconstructed. This proposed work would connect to the following application to be heard by the Commission, which was to extend the revetment reconstruction and restore the bank from recent storm event damage at 25 Weeset Proprietors Way. Judith Bruce announced that there was no connection between Judith Bruce, Conservation Commissioner, and the applicants. Sarah Turano-Flores explained the history of the revetment, noting that it was built in two parts, one in 1957, and the other in the early 1990's. It was the goal of the applicants to reconstruct parts of the 1957 work, connect to the 1990 portion, and finally to revise the site plan for 25 Weeset Proprietors, which would be discussed, last. Jay Norton thanked Sarah Turano-Flores for her summary, and reiterated that this extension of the revetment could carry the same conditions, work protocol, works access, and design as 24 Weeset Proprietors Way. Jay Norton pointed out that they may have to bring in additional toe stones, steel sheeting was to be used, but that no machinery would be on the marsh. Any disturbance of the area would involve replanting with plugs, and the existing slope would be going from 2 to 1 to 1.5 to 1. Phil Cheney noted that 3 small cedar trees as well as bayberry and arrowwood had been lost, and he would repopulate with cedar trees comparable in size, as well as bayberry and arrowwood. Phil Cheney noted that switch grass was at the toe of the bank, a majority of which that was growing in clumps at the toe of the bank. Steve Phillips inquired about the change in elevation, and Jay Norton explained that it would be the same elevation as the Brodeur revetment, with just the slope changing. Steve Phillips noted that the area detail of the stones stops at the line, and Jay Norton explained that this was the transition of the hatch. James Trainor asked if they were using all of the stones, adding a little, and changing the angle, and Jay Norton added that they were also adding filter fabric. Judith Bruce recalled that the lack of filter fabric had caused problems the last time the work was done, and Jay Norton confirmed this. John Jannell explained that he had spoken with the applicants regarding this work, noting that the

Construction Protocol dated 1-18-12 be applied to this work, as well as require a pre-construction meeting and have post-construction photos documenting the work. John Jannell read into the record the conditions to be associated with any Order of Conditions issued for this project, and concurrent with those conditions for the revetment work at 25 Weeset Proprietors Way. John Jannell asked if the Commission wanted to carry Condition 6 which discussed chink stone, since it was not observed during the on-site. Judith Bruce did not notice any during the on-site, and Sarah Turano-Flores felt that it was much more obvious at the Brodeur site. Judith Bruce inquired if the applicant was amenable to these conditions, and Sarah Turano-Flores felt these conditions were fine. John Jannell noted that additional conditions such as replacement of the cedar trees and Coastal Engineering Structure Conditions would also be incorporated with any Order of Conditions issued for this work. Judith Bruce commented that a DEP number had not been issued, and asked if the applicant wanted to continue for one week. Sarah Turano-Flores understood that this was for permitting reasons only, and there were no requests for any plan revision. The applicants agreed to continue the hearing for one week.

MOTION: A motion to continue the hearing to August 27, 2013, was made by Jim O'Brien and seconded by Judy Brainerd.

VOTE: Unanimous.

Amended Order of Conditions

Stephen Brodeur, 25 Weeset Proprietors Way. by Coastal Engineering Company, Inc. Assessor's Map 6, Parcel 4. The proposed reconstruction of a stone revetment, installation of stone retaining walls, removal of existing patio areas, and mitigation plantings has been Amended to extend the revetment reconstruction and restore the bank from recent storm event damage. Work will occur on the Top of a Coastal Bank, within Land Subject to Coastal Storm Flowage, and within 100' of the Top of a Coastal Bank, Edge of Salt Marsh, Coastal Beach, Land Subject to Coastal Storm Flowage, and the Nauset Estuary. Jay Norton passed out a handout, explaining that it reflected section CC, which was the proposed Bank Restoration area. This showed what it looked like in a cross section, and that during the 2012-2013 storms, the area which became exposed was greater than what had been anticipated. Jay Norton noted that they were basically reconstructing, and Judith Bruce inquired if this work would be under the steps. Jay Norton said this was correct, with the wooden stairway to be removed, and the granite stairway within the revetment. Judith Bruce asked if the wooden stairway was being replaced with the granite stairway, and Sarah Turano Flores explained that the installation of granite steps was part of the original Order of Conditions. Sarah Turano-Flores explained that the homeowner wanted to add material, and once it was replaced, vegetate it with beach grass, and have the ability to add material if the following winter storms expose the bank. Judith Bruce thought this was a repair of fiber rolls, and Jay Norton noted that there were no fiber rolls. Judith Bruce asked if they were proposing to nourish and replant now, or for the future. Jay Norton explained they wanted to have the ability to put sand in if needed, and Judith Bruce explained that if they were planning on putting in sand, the Commission needed to know how much, and if they were planning for the future, the applicant would have to apply at that time. Judith Bruce commented that the Commission did not permit open

ended nourishment, and Sarah Turano-Flores explained they were hoping to have an on-going condition that should nourishment be needed, that the Conservation Administrator needed to approve it. Sarah Turano-Flores explained that the applicant did not want to have to file an Administrative Review every time nourishment was needed, and that if more comprehensive work, such as fiber rolls, were needed, a more formal filing would be done. John Jannell said that the Commission visited the site which was not staked, and that the handout provided helped better illustrate the proposed work. John Jannell thought that the applicant wanted to fill to the scarp line, and Jay Norton said that a note had been added to the plan that before any type of nourishment was to occur they would have to determine the actual location and volume required. John Jannell said that if the applicant was looking to amend the Order, this would be subject to the 3 year timeline of the current Order of Conditions. John Jannell explained that this would have to be a 3-part vote where the Commission would have to agree that the filing was appropriate as an Amended Order, then close the hearing, and finally note on the proposed site plan. John Jannell noted that the existing Order had two sheets, and asked that the Commission not accept the current plan until the cross-section CC was included in sheet two. John Jannell recommended a complete set of plans before the Commission voted accordingly, and Judith Bruce felt that the Commission could vote on the appropriateness of the Amended Order request. Steve Phillips explained that while he was on site, he noted the area of erosion to the south stairs was almost a vertical drop, with bare soil, and asked if this was the area where fill was proposed. Jay Norton stated that this was the area of concerns at the moment, where they thought the existing fiber rolls were located, and wanted to prolong the longevity of them. Steve Phillips thought it looked just like clay, and that with 50 yards of fill, what would change. Jay Norton said that the picture documentation of the fiber rolls that they had showed that this spot was where they were located, and that the fill would create a gentle slope to be filled with beach grass. Sarah Turano-Flores interjected that they were trying to tie in the hard structure with the existing fiber rolls, joining the hard and soft solutions. Steve Phillips felt that a kayak rack could be used on site, since there were 6 or more water kayaks observed on the grass, and the purpose of a rack would be to preserve the beach grass. Stephen Brodeur, applicant, agreed that he was trying to preserve the beach grass, and Judith Bruce suggested coming back with an Administrative Review application for a kayak rack installation. Steve Phillips suggested that it could be rolled into this application, and John Jannell recommended whatever was easiest for the applicant. Jay Norton said that since he needed to provide new plans to the Commission, this would be something that he could make a note for on the revised plan. John Jannell said that a detailed work protocol was originally required explaining how the work was to take place, and although they knew they were not going to have a sheet pile, how work the work be completed. Jay Norton said a bobcat would be placing material from the bank, then a wheelbarrow would be used, and John Jannell asked if they could commit to no machines on the beach. Jay Norton did not anticipate any additional machinery, and could add that to the plan.

MOTION: A motion to approve that this work was appropriate as an Amended Order of Conditions filing was made by James Trainor and seconded by Bob Royce.

VOTE: Unanimous.

Judith Bruce asked if a week's continuance would be enough time for the applicant, and Jay Norton said a continuation to August 27, 2013, was fine.

MOTION: A motion to continue the hearing to August 27, 2013, was made by Bob Royce and seconded by Jim O'Brien.

VOTE: Unanimous.

Revised Plan

Stephen Brodeur, 25 Weeset Prop Way. The proposed property redevelopment including select structural & site demolition; reconstruction and reconfiguration of the existing dwelling; installation of a new septic system; and the enlargement of buffer planting areas has been Amended to include the proposed location of 4 A.C. units, a propane tank, generator, and associated utilities. Work will occur within 100' of the Top of a Coastal Bank and within Land Subject to Coastal Storm Flowage. Dave Michniewicz of Coastal Engineering Company, Inc, and Sarah Turano-Flores of Nutter, McClellan, & Fish, were present. Dave Michniewicz explained that there were 4 AC units within the buffer zone located 4' from the foundation, with the pads being 2' square. John Jannell noted that this Revised Plan was for the open Order of Conditions for the house reconstruction, and that the site had an accepted mitigation plan which would remain as part of the Order of Conditions. Sarah Turano Flores explained that they wanted to make sure there was consistency with the work to be done on site.

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

VOTE: Unanimous.

Jim O'Brien left at 9:37am

Certificate of Compliance

Thomas Miller (2003), 5 Pond Road. The request for a Certificate of Compliance for an Order of Conditions for the installation of a leaching field to serve an existing two-family duplex; existing septic tank to remain in use. John Jannell explained that this work had been long completed and the Commission could find in compliance.

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

VOTE: Unanimous

Restoration Plan

Forrester Quinn, 4 Overland Way. The proposed restoration plan for operations that have encroached onto town property. Work has occurred within 100' of the Edge of Wetland and the Cape Cod Bay A.C.E.C. Forrester Quinn, applicant, was present. Forrester Quinn went over the changes to the proposed plan, highlighting that the rocks placed on town property were taken off, and Ryder & Wilcox, Inc. showed where proposed drainage would be installed on the land that he hoped to come into agreement to lease from the Town. Judith Bruce stated that there were multiple discussions of this property, and inquired if this revised plan reflected all of the proposed work the Commission had requested. John Jannell noted that there were two on-sites conducted, two voluntary meetings, and at this point it would be best to schedule an

Enforcement Hearing. Judith Bruce noted that so far they had been just discussing plans, and that they needed to give him a permit to do the work. Judith Bruce did not want the applicant to have to return multiple times, and John Jannell noted that the Conservation Commission could not give the applicant permission to install drainage on town property. John Jannell inquired if a rock wall was still proposed, and Forrester Quinn said no. John Jannell inquired how the property line would be delineated since it was not shown on the plan, and Forrester Quinn said there would be a loam barrier, with a parking area and then grass. Judith Bruce explained that while the Commission did not generally argue for hard structure, given that this was an encroachment problem, perhaps it would be best to install some boulders or a split rail fence. Forrester Quinn said he would prefer a fence, and Judith Bruce asked that it be located on the property line. John Jannell noted that when some things were not shown on a plan that the Commission carried special conditions requiring that certain work such as a fence along the southerly line, be installed. Judith Bruce felt the Commission needed to transition into the permit process, and asked that the Commission provide clarity to the applicant so that he would not have to continue to return to the Commission for plan revisions. James Trainor inquired if a curb would work better, thinking that a vehicle may back into a fence. Forrester Quinn said that while a curb may work, a fence would be best since boulders would result in a 3-4' loss of property along its line. John Jannell noted that this was not a hearing and the Commission did not need to vote to continue, but noted that the next two hearing dates were September 3rd and September 17th to schedule the Enforcement Hearing. John Jannell explained that the Commission had a letter outlining the proposed work to be completed under this Enforcement Order, and asked the Commission to be clear about any additional changes they would want to see on the plan. Judith Bruce felt that it was clear that the Commission needed some kind of barrier to delineate the property line, and suggested that the applicant speak with the Town Administrator. Forrester Quinn said the Revised Plan would show either boulders or a fence, and asked to schedule the hearing for September 17, 2013. John Jannell reminded the applicant that the Revised materials be submitted to the Conservation Department the Wednesday prior to the Enforcement Hearing.

MOTION: A motion to schedule the Enforcement Hearing for September 17, 2013, was made by James Trainor and seconded by Bob Royce.

VOTE: Unanimous.

Bond Release Request

Kevin Wise (2010), 14 Surf Path. The request to release a \$5,000.00 bond for the purpose of landscape up-keeping. John Jannell explained that this property had been found in compliance for a property transfer, but that the Commission held \$5,000 for the survivability of the cedar trees. John Jannell recommended that the Commission not approve the release of the funds, since some of the trees had died and needed to be replaced and survive as part of a condition of the Bond. Steve Phillips inquired why they had died, and John Jannell was not sure if they were properly maintained, commenting that he had not been a part of the original issuance of this Bond. John Jannell explained that the Bond required that the funds be held until the plants survived.

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

VOTE: 0-7-0; Motion denied.

Administrative Reviews

Jeffrey & Karen LaVoie, 6 Skymeadow Drive. The proposed removal of 9 dead oak and pine trees. John Jannell noted that this was a standing dead oak in an otherwise well treed lot, and noted that the application had left these trees standing until it was determined that they would not leaf out.

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

VOTE: Unanimous.

Page McMahan, 13 Morgans Way. The proposed removal of 3 dead oaks and replacement with Maples. John Jannell asked to hold the application so that he could make sure that the replanting proposed under the original Administrative Review was to take place.

Sarah Fisher, 29 Henson's Way. The proposed removal of dead locust and bittersweet vines. Work to be done by applicant. John Jannell recommended approval.

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

VOTE: unanimous

Stanley Charm, 17 Marsh Lane. The proposed installation of a 6' stockade fence 112' long and the removal of one pine tree. Work to be done by Dennis Dwyer. John Jannell passed around photos of the site, explaining that while he was fine with the removal of the small 6" pine, he was not sure about the proposed fence, which went into the 50' buffer. Judith Bruce inquired why 6' stockade fence was needed beyond the 50' buffer, and John Jannell said it was to provide screening between two houses. Steve Phillips inquired if this was a neighbor issue, and John Jannell said it was a privacy issue between neighbors. Judy Brainerd felt that a well planted cedar tree would provide the same type of screening, and Bob Royce did not understand why the fence would have to go beyond the 50' buffer line. Steve Phillips pointed out that they could not condition the application, and Judith Bruce noted that the Commission could approve the installation of the fence to the 50' line. John Jannell said that he would call the applicant to ask if the fence could be stopped at the 50' buffer/A.C.E.C. line. Judy Brainerd asked about the other fences shown in the site photos, and John Jannell said that they were outside of jurisdiction.

Louise Ayer, 22 Horseshoe Lane. The proposed removal of 3 trees, pruning, fertilizing, and mulching of native Oaks and Cherry trees. Use existing topsoil to cover exposed roots of one Cherry. Work to be done by Betsy Furtney and Bartlett Tree Experts. John Jannell noted that the Cherry Tree was outside of the 100' buffer, and that this property would soon be coming in with a Notice of Intent application. John Jannell explained that the fertilizing proposed is with biochar organic, in an attempt to prevent the mature oak canopy from gall wasp. John Jannell recommended approval of this work, noting that the applicant was also planting Pennsylvania Sedge Plugs.

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

VOTE: Unanimous.

Judy Brainerd inquired if biochar had proved to be an effective treatment for gall wasp, and John Jannell said that this was a new method being tested to feed the tree so it can better fight the pest, with results to be determined.

Michael Tonis, 29 Sparrowhawk Road. The proposed crown reduction pruning of 4-5 trees by 5-6' for Marsh View for abutter. Work to be done by Peter Fishbein. John Jannell noted that this would be pruning from outside of jurisdiction to a property within, and wanted to speak with the applicant further since he did not feel that this work was a good idea. John Jannell noted that the two trees adjacent to the salt marsh were the only specimens there, and did not feel that this work would benefit his view. John Jannell recommended holding the application until he could speak with the applicant, and the Commission concurred.

Chairman's Business

Approval of the Minutes from the Meeting on June 4, 2013 and July 16, 2013
Erin Shupenis announced that the minutes from the June 4, 2013 meeting were not ready at this time.

Approval of the minutes from July 16, 2013.

MOTION: A motion to approve these minutes was made by Judy Brainerd and seconded by James Trainor.

VOTE: Unanimous

Other Member's Business

Administrator's Business

The meeting was adjourned at 10:01am

Respectfully submitted,

Erin C. Shupenis, Principal Clerk, Orleans Conservation Department