

Orleans Conservation Commission
Town Hall, Nauset Room
Work Meeting, Tuesday, August 27, 2013

KDarcy, Ass
13 SEP 3 10:02AM
ORLEANS TOWN CLERK

PRESENT: Judith Bruce, Chairwoman; Steve Phillips, Vice-Chairman; Bob Royce; James Trainor; Judy Brainerd; Philips Marshall, Associate; Jane Hussey, Associate; Rich Nadler, Associate; John Jannell, Conservation Administrator

ABSENT: Jim O'Brien

8:30 a.m. Call to Order

For the purpose of this meeting, Philips Marshall and Jane Hussey will be voting members.

Continuations

Last Heard 8/20/13

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. All those present at the first hearing will vote, leaving 6 members to vote.* John Lavelle of Baxter-Nye Engineering & Surveying, Andrew Singer of Singer & Singer, legal representation for the applicant, and Van Haides, applicant, were present. Judith Bruce recalled that the Commission was waiting to receive input from the Eastham Conservation Commission about any additional concerns they had for the proposed work. John Jannell explained that he spoke with Jeff Thibodeau, Conservation Agent for the Town of Eastham, who explained that their Commission was looking for a cross section of the patio to demonstrate that it was truly pervious, that the guardrail not be pressure treated, and for the submittal of a Construction Protocol, something which was a standard requirement for all of their Orders. John Jannell said that a denitrification system was also discussed as a recommendation for the Board of Health in Eastham, and Andrew Singer explained that it would be discussed later on this week at the Eastham Board of Health meeting. Jane Hussey inquired about the parking area and restaurant entrance which showed planting areas, and whether or not fertilizer would be used in this area. Jane Hussey was concerned that runoff from the fertilizer could impact the interests of both Orleans and Eastham. Van Haides said that the beach grass areas to be planted along the side and front of the building would not have fertilizer. Judith Bruce was concerned that this was more of an Eastham issue, and Andrew Singer noted on the plan that there were planting areas in Orleans which could commit to no fertilizer use. John Jannell reported that there was a DEP number for this filing and recommended that if the Commission chose to act on the application today, that they include that an Order of Conditions was subject to Board of Health approval. Judith Bruce made a request that the applicant also consider a denitrification system, and understood that this could not be made a condition of any Order. John Jannell suggested a letter to the Board of Health with this recommendation, and Judith Bruce noted that this proposal was a huge improvement to the property.

MOTION: A motion to close the hearing was made by Judy Brainerd and seconded by Bob Royce.

VOTE: Unanimous.

MOTION: A motion to approve the site plan dated 7-31-13, with the Standard Conditions to apply, that no fertilizers be used on any plantings on site, and that this Order be subject to the Board of Health approval was made by Steve Phillips and seconded by Philips Marshall.

VOTE: Unanimous.

James Trainor returned.

Last Heard 8/20/13

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. was present. Jay Norton explained that the hearing was continued pending the receipt of a DEP number. This number had since been received, and Jay Norton explained that he was available to answer any additional questions which may not have been addressed at the last hearing. Judith Bruce inquired if anyone from the Commission or the audience had any questions or concerns. John Jannell recommended that the Special Conditions which were attached to 25 Weeset Proprietors Way's revetment project be included in any Order of Conditions issued for revetment work on 24 Weeset Proprietors Way. John Jannell read into record the Special Conditions page 10a from SE 54-2124. John Jannell recommended that Special Conditions for CES's also be included with any Order of Condition issued.

MOTION: A motion to close the hearing was made by Bob Royce and seconded by Judy Brainerd.

VOTE: Unanimous.

MOTION: A motion to approve the site plan dated 8-5-13, including the Re-Vegetation Plan dated 8-2-13, including the conditions read into record and the Special Conditions for CES's was made by Steve Phillips and seconded by Philips Marshall.

VOTE: Unanimous

Last Heard 8/20/13 (JO1)

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. John Jannell explained that the Conservation Department was waiting on revised materials which had just been received by the Conservation Department, and had a letter requesting that the hearing be continued to September 3, 2013.

MOTION: A motion to continue the hearing to September 3, 2013, was made by Bob Royce and seconded by Judy Brainerd.

VOTE: Unanimous

Certificate of Compliance

Brick Hill Nominee Trust (2000), 171 Brick Hill Road. The request for a Certificate of Compliance for an Order of Conditions for the demolition and removal of existing dilapidated buildings and construction of tennis court, widening of existing driveway, clearing, grading, and landscaping/revegetation. *James Trainor recused himself*. John Jannell said that in 2003 this Certificate of Compliance was held until an As-Built showing the existing changes to the approved plans, including the changes to the retaining walls, was submitted for the record. An As-Built plan has since been submitted with this Certificate of Compliance request, and John Jannell reported that the Order was in substantial compliance.

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

VOTE: Unanimous

James Trainor returned.

Joy Fopiano (2007), 16 Honeysuckle Lane. The request for a Certificate of Compliance for an Order of Conditions for the removal, reconstruction, and additions to an existing dwelling and the construction of a garage, shell driveway, and mitigation plantings. John Jannell reported that the applicant wanted to be present for this hearing and asked the Commission to hold this application for one week.

Administrative Reviews

Stanley Charm, 17 Marsh Lane. The proposed installation of a 6' stockade fence 88' long, installation of native plantings, and the removal of one pine tree. Work to be done by Dennis Dwyer. John Jannell explained that this application had been revised to reduce the size of the privacy fence to remove it from the 50' buffer and outside of the A.C.E.C. The applicant now proposed to install three 6' white pines at the edge of the 50' buffer, and the privacy screening in the form of the stockade fence would not impact the Commission's interests.

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

VOTE: Unanimous

Kathy Gordon, 3 Skaket Circle. The proposed removal of the top of a leaning locust, removal of one locust, and trimming of overgrown privet. Work to be done by A to Z Treez. John Jannell explained that this application was last heard in July and held for modification. The applicant had since eliminated from the project the removal of a locust cluster by the marsh edge, and it is now just complete the removals by the house.

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

VOTE: Unanimous

Christopher Frey, 71 Briar Springs Road. The proposed removal of a leaning cedar tree, removal of a dead choke cherry, removal of privet hedges by pool, and removal of lower right branches of a cedar tree to open view by pool. Work to be done by applicant. John Jannell went over the proposed work, noting that the privet hedge to be removed would be replaced by a lawn area. Judith Bruce noted that the property had an unusual regulatory history, and based on the current open view was not sure that the cedar tree branches needed to be removed. Steve Phillips inquired if the Cherry tree to be removed would remove screening from the resource area, and John Jannell showed Steve Phillips a site plan noting that the cherry tree was located alongside the house. Steve Phillips asked about the type of fence surrounding the pool, and John Jannell recalled that it was a chain link fence. Judith Bruce asked if the limbing of the cedar branches would provide less screening of the house from the resource area. John Jannell noted that the branches were 2-3' off of the ground, James Trainor was concerned that the branches shown to be trimmed seemed higher in the picture. Judith Bruce did not think that the Commission should encourage additional modification to an already maintained property, and Rich Nadler asked how the cedars had been previously managed in the past. Judith Bruce and John Jannell went over the regulatory history of the property, explaining that topping of cedars resulting in unusual growth patterns had led to the current tree growth configuration. Judy Brainerd liked the removal of the privet, but was concerned that this area should be mitigated with something other than lawn area. Judith Bruce suggested that the Commission could hold the application and speak with the applicant about replanting as opposed to reseeding, and the only major cause of concern for her were the branches from the cedar tree. Rich Nadler agreed that while the lower branches may not be an issue, combined with the other work proposed on site, this may cause concern. James Trainor said that he would like to find out the height of the cedar branches to be cut, since the top one was quite high and provided screening. Judith Bruce asked if it was ok with the lower branches to be removed from the application, and James Trainor said yes. Judith Bruce felt the remainder of the work was fine.

MOTION: A motion to approve this work with the omission of the view pruning work on the cedar tree was made by Bob Royce and seconded by Judy Brainerd.

VOTE: Unanimous.

Cindy Kawie, 36 Gibson Road. The abandonment of an existing sewage disposal system and the installation of a new sewage disposal system, gas line, underground utilities, and removal of cedar tree. Judy Bersin of Ryder & Wilcox, Inc., was present. John Jannell explained that this was previously approved with a different location for the septic components, and this application now included the removal of a cedar tree which had already been removed. John Jannell reported that after a site visit yesterday, he noted that there was work being done on the existing house. Judy Bersin told the Commission that once they had started work on site, they noted that the cedar tree had split in half, was rotted inside, and removed it. Judith Bruce asked if this house in fact was being completely rebuilt. Judy Bersin said that the owner originally wanted to build a second story and move the garage, but was now renovating the house within the existing footprint. Judith Bruce felt that the work on site was typically filed for under a Notice of Intent, and inquired about additional structure including but not limited to AC pads, porches, outdoor showers, etc. Judy Bersin was told that the work to be done on the house was within the same footprint. John Jannell noted that the chimney had been

taken down and bricks placed in the driveway, and asked if that would be rebuilt in place, or if this was a footprint reduction. Judy Bersin said she was not sure. Judith Bruce looked at the site plan which Judy Bersin had provided to the Commission, commenting that the work listed on both this Administrative Review and the following one listed on the agenda was within the 50' buffer. Judith Bruce wanted to have a Notice of Intent so the resource area could be protected, and was uncomfortable with this work being filed for as an Administrative Review. Judy Bersin said that she was unaware of the extent of the proposed work, and only knew that the owner proposed this work within the existing footprint. Steve Phillips asked about the size of the septic system, and Judy Bersin said that it would be increasing from a 2 to a 3 bedroom septic system. Steve Phillips was concerned with the expanded use of the property, and John Jannell noted that at the July 2, 2013 hearing, the Commission voted to approve the pumping and filling of the existing septic system and replacement with a new system outside of the resource area. Judy Bersin commented that this was the leaching pit which would be pumped and filled. John Jannell noted that the original plan approved was for work within existing lawn and driveway. John Jannell explained that he was asked by Tom Evers, Assistant Building Inspector, about re-siding and new windows, and decided to conduct a site visit. When he went out on site, John Jannell saw a lot of activity, noting that the deck had already been torn up. Judith Bruce felt that the site needed a siltfence, and Judy Bersin thought the area was flat and did not need a siltfence. Judith Bruce noted that this ensured that construction was kept outside of the buffer, materials were not stored within the buffer, and that construction debris did not end up in the resource area. Judy Bersin commented that there was a limit of work shown on the plan, and Judith Bruce was still concerned that this was a lot of work under an Administrative Review. James Trainor asked if elevations had been submitted, and whether it was to remain a one-story building. John Jannell asked the Commission how they would like to proceed, and noted that they had already approved a variation of this septic upgrade in July. Judy Bersin asked if this could be re-submitted as an RDA, and Judith Bruce noted that this would not allow the Commission to include additional plantings and more of a buffer. John Jannell noted that they could put some conditions on an RDA, but that it would not be recorded as an Order of Conditions was done. Judith Bruce asked if the house was screened from the resource area, and John Jannell said that he had a few pictures by where the existing leaching pit was located. Judith Bruce clarified that she was concerned about the Coastal Bank, and John Jannell noted that there was a shrub layer where the Top of Bank line was located. Judith Bruce commented that if this had come in as a modification to the already approved Administrative Review for the replacement of the septic she would have accepted the plan, but the proposed work was now for the complete replacement of the house and the deck. Judy Bersin noted that it was in the existing footprint, and James Trainor asked if it was a two-story house right now. Judy Bersin said it was a one-level house with a drive-in garage underneath, and James Trainor asked if the proposed work would create a second floor. Judy Bersin passed around a plan which she had received which did not show a second floor, and Judy Brainerd pointed out that the house was going from 2 bedrooms to 3 bedrooms. Philips Marshall asked how much had been done, and what the concern of the Commission was if the applicant was building within the same footprint. Judith Bruce explained that an Administrative Review asks for permission of something which is not followed up on, whereas a Notice of Intent allows for the Commission to visit the site, to potentially improve the buffer zone

by asking for mitigation, and following up once work is complete to determine that work was done per plan. Jane Hussey asked if this house was being completely torn down, and Judy Bersin said that it was re-siding and new windows on the outside, with the remainder of the work occurring inside the building. Jane Hussey asked if the only tree removal was the split tree, and Judith Bruce said that if this was an increase in use the Commission may require additional filings, but that she did not want to implement additional regulations if it was not warranted. John Jannell explained that the initial filings had his support because it was for the upgrading of a septic system, and there was no mention of a reconstruction effort and no tree removal was proposed. The application following this was for the replacement of a deck to bring up to building code: something which the Commission typically addressed under an Administrative Review for footprint replacement. John Jannell noted that a limit of work is helpful to contain any disturbance to the site, and asked the Commission how they wanted to proceed. Judy Bersin said that she could put a siltfence on the plan, and Judith Bruce explained that while she could offer, the Commission could not condition an Administrative Review. Steve Phillips asked why this proposed work was not considered new construction when the number of bedrooms was increasing. John read into record the definition of reconstruction, and noted that if this was a rebuild where the proposed increase of volume and square footage was greater than 25%, then new construction would be triggered. Bob Royce noted that siding was not new construction, and Jane Hussey asked if siding was repair and windows were considered new construction. James Trainor said that the building department uses dollar value to determine if the work is new construction, and John Jannell said that the Commission used square footage and cubic volume as a trigger for new construction. Rich Nadler said that right now the Commission was guessing whether or not this would trigger new construction, and asked if any plans had been provided. Judith Bruce felt that when there was the addition of rooms and increased use that new construction could be triggered, and Judy Brainerd did not think that the interior work was of significance. Judith Bruce pointed out that this could result in increased use and nitrogen increase, and Judy Bersin said that this was probably correct. Philips Marshall felt that all of the work, with an exception of the additional bedroom, was a repair, and Judith Bruce noted that without plans the Commission did not know if this was the case. Judy Bersin handed a proposed floor plan to John Jannell, and James Trainor recalled that the initial Administrative Review was approved because it was the relocation of the septic outside of the buffer to the resource area. Judith Bruce agreed, and Steve Phillips recalled that when the previous application came in there was a question of increased use, and the answer was no. Judith Bruce noted that the upgrade of a septic system did not give the impression of any renovations being done, and James Trainor asked if they were replacing the chimney. Judy Bersin said that there was not a fireplace shown on the plan, and Judith Bruce thought that she was the only person who had a problem with the application. Judith Bruce said she would happily take up the offer for the siltfence, and asked that the applicant be made aware that this work was a grey area, and any additional work would trigger a more comprehensive filing. Judith Bruce reminded Judy Bersin that any increase in square footage, such as an outdoor shower, AC pads, or any change in footprint would require the applicant to return to the Commission. Judy Bersin said that the applicant had spoken with David Lyttle about replacing the coastal stairs, and John Jannell said that it would require a Notice of Intent. Steve Phillips noted that a Notice provided the owners with additional benefits which an Administrative

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Review did not, and John Jannell pointed out that this included the opportunity to have 3 years to complete the work and apply for changes throughout its active life.

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

VOTE: 6-0-1; Steve Phillips was against this work, and felt that a Notice of Intent would be a better instrument for this filing. Judith Bruce said that any additional work, including landscaping, must come in front of the Commission.

Cindy Kawie, 36 Gibson Road. The proposed replacement of the existing deck within the same footprint. Work to be done by Stanley Gove. John Jannell recommended that this application be put on hold until a silt fence could be installed, and would conduct an inspection within the next two days.

David Dunford, 11 Portside Lane. The proposed removal of large oak branch and dead cedar tree. Work to be done by After Hours Tree Service. David Dunford, applicant, was present. John Jannell recommended approval of this work.

MOTION: A motion to approve this application was made by Jane Hussey and seconded by Steve Phillips.

VOTE: Unanimous.

Tom Healy, 36 Areys Lane. The proposed removal of invasive vegetation, removal of dead trees, removal of small shrubbery, and vista pruning as needed. Work to be done by J.H. Daley Landscapes. John Jannell passed around photos of the site, noting that this was a new owner who wanted to manage the overgrown area which was comprised of ornamental trees and shrubs. John Jannell explained that during an initial on-site he and the applicant spoke about view, and John Jannell recommended that the applicant flag the invasive species on site. The proposed tree removals are adjacent to Arey's Lane, and are topped and standing dead as a result of line-work done by NStar. Judith Bruce asked if the proposed removals were only those which were flagged, and John Jannell said yes. Judith Bruce inquired about the invasives on site, and John Jannell said these included autumn olive and trimming of arbor vitae. Judith Bruce asked that the last portion of the application which read "vista pruning as needed" be removed, and Judy Brainerd suggested that the applicant could return once they had done the initial work listed on the application. John Jannell thought that the applicant would return to the Commission for a second phase of work which would involve replanting.

MOTION: A motion to approve this work and remove the "vista pruning as needed" from the application was made by Bob Royce and seconded by Judy Brainerd.

VOTE: Unanimous

Elizabeth & Dale Smith, 41 Towhee Lane. The proposed removal of a dead pitch pine and replant with 4 1-gallon beach plums. Work to be done by Namskaket Farms. John Jannell said this was a large standing dead tree adjacent to another pitch pine, and recommended approval.

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

VOTE: Unanimous.

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Colleen Young, 10 Towhee Lane. The proposed removal of 3 dead trees threatening house and the trimming of branches hanging over deck and garage. Work to be done by Cape Organics. John Jannell explained that the applicant changed the proposed work from 3 trees to 2, leaving the one standing dead in the woods for habitat. The remaining two trees were in a bad position in relation to the house, and the trimming was for low hanging branches over the deck.

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

VOTE: Unanimous.

Stanley Snow, 22 Gibson Road. The proposed removal of 3 trees, stumps to be ground. Work to be done by The Tree Wizard. John Jannell explained that the area where the trees were to be removed was well trees, and was in support of this proposed work.

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

VOTE: Unanimous.

Other Member's Business

Administrator's Business

John Jannell welcomed the new Associate members of the Orleans Conservation Commission, and noted that all of the board members were also members of the MACC. Erin Shupenis explained that there were two webinars available for training, and would e-mail the Commission this information. Phillips Marshall was concerned that a majority of the trainings were located off Cape, and Judith Bruce and Steve Phillips reassured him that these courses were worth the drive and typically lasted all day. Judy Brainerd commended the webinars, noting that she was able to do it from the comfort of her home and able to talk to the instructor. John Jannell noted that some training is located closer to the Cape, and said that the Commissioners should be getting e-mails from MACC about upcoming workshops.

Correspondence

Complaint and appeal of the decision of the Orleans Conservation Commission
RE: 4 Duck Pond Lane.

The Commission discussed the site visits.

The meeting was adjourned at 9:47am

Respectfully submitted,

Erin C. Shupenis, Principal Clerk, Orleans Conservation Department