

Orleans Conservation Commission
Town Hall, Nauset Room
Work Meeting, Tuesday, October 8, 2013

K. Devry, Asst
'13 NOV 5 11:23AM
ORLEANS TOWN CLERK

PRESENT: Judith Bruce, Chairwoman; Bob Royce; James Trainor; Jim O'Brien; Judy Brainerd; Philips Marshall; Rich Nadler, Associate; Jane Hussey; Associate; Kevin Galligan, Associate; John Jannell, Conservation Administrator

ABSENT: Steve Phillips, Vice-Chairman.

8:30 a.m. Call to Order

Continuations

Last Heard 9/17/13

Edward & Natalie Bagdonas, 54 Beach Road. by Ryder & Wilcox, Inc. Assessor's Map 36, Parcel 45. The proposed construction of a detached garage with artist studio above; extension of deck on existing single-family dwelling; & replacement of existing septic tank & D-box (if present). Work will occur within 100' of the Edge of an Inland Wetland. David Lyttle of Ryder & Wilcox, Inc. was present. David Lyttle explained that he was working with the application to put together potentially moving the septic system. David Lyttle asked that the hearing be continued for one month to November 12, 2013.

MOTION: A motion to continue the hearing to November 12, 2013, was made by Jim O'Brien and seconded by Bob Royce.

VOTE: Unanimous.

Revised Plan

Michael Levangie & Sandra Lucchesi, 55 Freemans Lane. by Ryder & Wilcox, Inc. and Assessor's Map 5, Parcel 31. The proposed construction of a sunroom, swimming pool, and patio has been revised to show a larger sunroom, a reduction in the patio size, and a proposed kitchen addition. Work will occur within 100 feet of a Coastal Bank and Land Subject to Coastal Storm Flowage. David Lyttle explained that since 2010 when the applicant was issued an Order of Conditions for work on this site, they had met with several architects and had changed what they wanted to do on site. David Lyttle explained that original sunroom had gotten larger and therefore increased the coverage within the 50-75' buffer, but 295' of patio within the 50-75' buffer was proposed to be removed as mitigation. The applicant also wished to expand the kitchen, which was located within the 75-100' buffer and was proposed over existing gravel driveway. David Lyttle noted that the expansion would be first floor only, and the drive under would remain a drive under. Judith Bruce stated that while she did not recall the previous hearings, this seemed like a tremendous amount of hardscape within the buffer zone. David Lyttle pointed out that this plan had been approved, and was valid for another 4 years because of the Permit Extension Act. David Lyttle explained that this had not been an easy project to permit, and noted that there was also a detailed mitigation plan which had proposed plantings on Top of the Coastal Bank. David Lyttle felt the proposed removal of patio mitigated for the increase in the sunroom and kitchen. Judith Bruce felt that while this Revised Plan may not be a problem, this was a lot of change under this type of filing. Judith Bruce thought a different avenue of filing may be more suitable to allow abutters to be notified of the proposed changes, and John Jannell inquired if the proposed work extended outside of jurisdiction. David Lyttle

noted that work on the southeast side was outside of jurisdiction. John Jannell was not sure how the proposed work would impact the mitigation plan, which showed the hardscape that was now proposed to be removed. John Jannell noted that there was a condition in the Order mentioning that the fence shown on the approved plan dated 9-30-10 must be located outside of the 50' buffer, and there needed to be a seed mix/groundcover between the shrubs proposed within the buffer zone. Judy Brainerd commented that she went out to the site and since she did not have a copy of the original approved mitigation plan, could not determine how much lawn was to remain. Judy Brainerd thought the view to the house needed to be softened, and Judith Bruce felt that a site visit by the Commission would be beneficial, as well as an opportunity for the abutters to be properly notified and comment accordingly. David Lyttle noted that the proposed fence within the 50' buffer was no larger than the table and was a minor change, and Judy Brainerd inquired if the remaining proposed patio was to be pervious. David Lyttle said yes, and John Jannell suggested that the Commission could turn down the Revised Plan request and direct the applicant to file an Amended Order of Conditions. David Lyttle asked that he instead withdraw the request to revise the plan without prejudice, and asked if it would be beneficial to provide copies of the approved plan to the Commission with an Amended Order of Conditions request. John Jannell felt the mitigation plan should be provided, and inquired if the applicant would be able to get together with Crossroads Landscape to revise the mitigation plan. David Lyttle said there was an opportunity to work with Crossroads, and asked that the Commission formally accept the withdrawal.

MOTION: A motion to accept the withdrawal without prejudice of the proposed Revised Plan was made by Philips Marshall and seconded by Judy Brainerd.

VOTE: Unanimous.

Administrative Reviews

Christina Nichols, 62 Old Field Road. The proposed abandonment of an existing well and installation of a new potable well. Work to be done by Shaun Harrington. John Jannell explained the applicant proposed to drill adjacent to the existing well, that there would not be a lot of disturbance, and recommended approval.

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

VOTE: Unanimous.

Discussion

Timothy & Andrea Howell, 25 Cheney Road. David Lyttle of Ryder & Wilcox, Inc. has requested a discussion regarding the pile size for the recently approved rebuild of the existing pier under DEP # SE 54-2109. David Lyttle passed around a copy of the approve Site Plan Showing Proposed Pier Reconstruction and Reconfigured Float dated 3/21/13, which had a revised date of 10/8/13 showing the change in pile size from 8" to 10". David Lyttle explained that one of the Special Conditions for Existing Docks dated 4/13 which was attached to the Order of Conditions required that "All replaced hardware must be galvanized. Use of CCA treated wood is prohibited for any portion of the structure..." David Lyttle explained that Cape Cod Docks, who had been retained to do the work, was unable to find anything smaller than 10" which would be appropriate. David Lyttle asked that rather than this be treated as a discussion that the Commission address this as a minor modification to the approved site plan and accept this as a

Revised Plan. Judith Bruce inquired if locust trees could be used, and David Lyttle said that while he had proposed locust trees for stub piles in the past, the 10" pilings would require less work and the piles would be minimally invasive. Judith Bruce asked if a smaller pile would be appropriate, and David Lyttle explained that Cape Cod Docks had not found any other size which would be suitable. Judith Bruce felt that this would be better than having the existing CCA treated wood on site, and James Trainor noted that this was only a 20' pier and the change was not huge. John Jannell asked if something in writing could be provided from Dave Hill of the Mass DEP Waterways Regulation Program stating that this change would be acceptable. John Jannell suggested that the Commission could accept this change and require the correspondence from DEP Waterways.

MOTION: A motion to accept this change subject to receipt of approval from Mass DEP Waterways Regulations Program was made by Bob Royce and seconded by Judy Brainerd.

VOTE: Unanimous.

Chairman's Business

Approval of the Minutes from the Meeting on October 1, 2013

MOTION: A motion to approve the minutes from October 1, 2013, was made by James Trainor and seconded by Jim O'Brien.

VOTE: Unanimous

Judith Bruce announced that it had been recently discovered that someone was emptying their aquarium into Pilgrim Lake, and reminded the public that this was how Eurasian Milfoil had taken over in lakes throughout the U.S. Judith Bruce asked that whoever was doing this to please stop, and that this could cause significant damage to the native population.

Other Member's Business

Carol Ridley, Pleasant Bay Alliance:

Guidelines for Permitting Shoreline Structures on Freshwater Lakes and Ponds in the Pleasant Bay Area of Critical Environmental Concern (ACEC)

Carol Ridley of the Pleasant Bay Alliance was present. Judith Bruce noted that there were 4 towns in the Pleasant Bay Alliance: Orleans, Brewster, Harwich, and Chatham, and the goal of the guidelines are to have the Commission adopt the same regulations as the other 3 towns. Judith Bruce pointed out that these guidelines were only for freshwater bodies with the A.C.E.C., of which there were 6 ponds in Orleans. John Jannell explained that at this time someone applying for a Chapter 91 Waterways license would not be able to receive one, but with these proposed regulations may be able to receive a Chapter 91 waterways license. Judith Bruce pointed out that a Chapter 91 license was needed for a "Great Pond," of which there were two in Orleans: Pilgrim Lake and Crystal Lake. Carol Ridley thanked Judith Bruce and John Jannell for their initial summary of the guidelines, and provided a more detailed background of the guidelines, noting that an outside survey had been conducted of the shoreline by Horsley-Witten Group of Sandwich, Massachusetts. During this determination, there were two significant habitats to protect, one of which was the Atlantic White Cedar Swap, and the other was Coastal Plain Pondshore. Carol Ridley explained that it was the hope of the Pleasant Bay Alliance to have the four towns endorse and use these

guidelines. Once this was accomplished, the Pleasant Bay Alliance would go to DEP and ask them to adopt these regulations. Carol Ridley went over the guidelines which an applicant would have to meet in order to be considered for a permit, and noted that there were additional depth requirements for motorized vehicles. Judith Bruce pointed out that motorized vehicles were not permitted on the Freshwater Lakes and Ponds within the Orleans A.C.E.C. boundaries. Carol Ridley noted that there were additional limitations including no handrails and no lighting, and that no other towns had taken action on the proposed regulations at this time. Judith Bruce said that John Jannell had provided the Commission with the current regulations, and inquired if a comparison between the existing and proposed had been conducted. John Jannell said he had not at this time, but that there was a similar prohibition with Coastal Plan Pondshore areas. John Jannell said the Commission should look to ultimately look to adopt these regulations, leave the current regulations in place, and make reference to the Pleasant Bay Alliance rules and regulations presented. Judith Bruce inquired if the Conservation Commission had previously modified their criteria for Saltwater Docks and Piers to match that of the alliance, and John Jannell explained that the Conservation Commission Rules and Regulations on Docks and Piers was a blend of the two. Judith Bruce suggested that this would strengthen the rules for all for towns, and Bob Royce inquired about the piling requirements. Bob Royce pointed out that the Orleans Regulations required 4x4" posts whereas the Pleasant Bay Guidelines suggested 2x4" posts which seemed rather small. Judith Bruce pointed out that these docks were not jetted into the bottom like Saltwater Docks and Piers, and would come out seasonally. James Trainor inquired why the use of railings was not permitted, and Carol Ridley explained that unless there was a safety issue necessitating their use, it was for visual purposes that they were not permitted. Philips Marshall felt that they should be permitted given that the proposed Docks and Piers were only allowed to be 3' wide, and the lack of handrails could be a safety issue. Kevin Galligan read the regulations to say that while they were not prohibited, they should be avoided unless necessary. Judith Bruce agreed, noting that it did not create a prohibition. Jane Hussey noted that as she read the requirements, she did not see how someone would be able to obtain a permit for a Dock or Pier within the A.C.E.C. Judith Bruce stated that most of the Orleans Lakes and Ponds are Coastal Plan Ponds, and Jane Hussey felt that the issue of railings became unimportant. James Trainor felt that the Commission could not say no if someone wanted one for safety reasons, and Jim O'Brien did not feel that the regulation said a railing could not ever be permitted. Kevin Galligan inquired if the Water Commissioners had looked at this proposal, as Gould Pond was in the watershed and within the A.C.E.C. Judith Bruce commented that there were a couple of residences that looked over the pond, but was unsure if they had access to this waterbody. Jane Hussey inquired about the handicapped access at Pilgrim Lake and if it was accessible all year round. Carol Ridley explained that walkways and stairways had separate guidelines. Carol Ridley pointed out that there were certain aspects of the Orleans Wetland Regulations which were more stringent, and Carol Ridley did not think that the Alliance would have a problem adhering to the more stringent regulations. Carol Ridley suggested a meshing of the two regulations, and Judith Bruce asked where this needed to go from today's meeting. Judith Bruce noted that there were a number of regulations to be considered for public hearing to be addressed during the winter months, and that this could be included if that was the direction which the Commission wanted to go. John Jannell inquired if the other towns in the Alliance were

looking to have these regulations adopted for all of their ponds or just their ponds within the A.C.E.C. Carol Ridley explained that in Harwich they were looking to adopt these regulations for all of their ponds, since none of their ponds were located within the A.C.E.C. Chatham had not given the Alliance a response, and Judith Bruce inquired about Brewster. Carol Ridley said that she had met with the Commission and they had taken it under advisement. Judith Bruce noted that Brewster tended not to approve docks and piers but rather approve shoreline decks for properties abutting Ponds and Lakes. Judy Brainerd commented that Ocean Edge Resort was applying for substantial piers in Brewster. John Jannell explained for the Commission's benefit that the Alliance had a copy of the Orleans Guidelines, and utilized it while drafting these proposed guidelines. John Jannell felt that it was important to consider that if an applicant came in today proposing to install a dock or pier on either Crystal Lake or Pilgrim Lake they would be unable, but that if these were adopted, an applicant could have a structure in one of these ponds. John Jannell noted that the Water Commissioners may not want a dock within Gould Pond, and that the Commission had time to look over the proposed Guidelines. John Jannell asked what the Pleasant Bay Alliance was looking for today, and Carol Ridley said a vote of support. Carol Ridley explained that the Alliance understood that adjustments may need to be made, but that it was their goal to submit these Guidelines to DEP by the end of the year. Carol Ridley said that if it was the intent of the Commission to put these regulations out to public hearing, a vote of endorsement with intent to put it into regulation should be enough for DEP. Judith Bruce asked the Commission what they would like to do, and Kevin Galligan confirmed that the August 2012 draft circulated to the Commission was the latest draft. Carol Ridley said yes, and Kevin Galligan noted that at some point a comparison between what was already in existence for regulations versus what was proposed in terms of standards and designs would be best. Carol Ridley explained that it was circulated to a number of firms with very little feedback. Rich Nadler asked if an applicant was restricted from building a dock or pier now and then the Commission was going to adopt a regulation which opened a door only for an applicant to get denied, why they should adopt these guidelines. Judith Bruce noted that while there may be some incidents where the guidelines would permit a dock or pier, but that overall these guidelines provided a good explanation as to why they are not permitted within these Waterbodies.

MOTION: A motion to endorse the Guidelines for Permitting Shoreline Structures on Freshwater Lakes and Ponds in the Pleasant Bay Area of Critical Environmental Concern (ACEC) with a more thorough examination of the existing regulations was made by Jim O'Brien and seconded by Judy Brainerd.

VOTE: Unanimous.

Carol Ridley stated that if there were any additional questions or concerns that the Commission should contact her accordingly. The Commission thanked her for her time.

Administrator's Business

John Jannell noted that several of the Conservation Commissioners attended the Annual Committee Orientation Meeting, where it was explained that they were required to take the Conflict of Interest test. John Jannell explained that this was something that could be done at home, and each Commissioner needed to print out the Certificate at the end of the test and submit it to the Town Clerk. Judith Bruce asked if the information was still available, and John Jannell said that he could e-mail the link to the

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Commission. Jane Hussey asked about how access to the state site was available, and Rich Nadler explained that the training was a combination of video and questions. John Jannell noted that anyone with computer concerns could take the test on a town computer with proper notice to the Conservation Department.

Judith Bruce noted that the Orleans Pond Coalition had a nice thank you for all of the hard work which had been done. Judy Brainerd wanted to thank Nate Sears and the Orleans Parks and Beaches crew for their hard work at Kent's Point on repairing the steps.

The Commission discussed the site visits.

The meeting was adjourned at 9:38am

Respectfully submitted,

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