

Orleans Conservation Commission
Town Hall, Nauset Room
Hearing Meeting, Tuesday, December 17, 2013

ORLEANS TOWN CLERK
K. Dery, ASST
'14 AUG 6 8:51AM

PRESENT: Judith Bruce, Chairwoman; Steve Phillips, Vice-Chairman; Bob Royce; James Trainor; Judy Brainerd; Jim O'Brien; Rich Nadler, Associate; Jane Hussey; Associate; Kevin Galligan, Associate; John Jannell, Conservation Administrator.
ABSENT: Jim O'Brien.

For the purpose of this meeting, Jane Hussey & Kevin Galligan will be voting members.

8:30 a.m. Call to Order

Continuations

Last Heard 11/19/13 (SP1, RN1, KG1)

Daniel & Andrea Schmieg, 13 Kingsbury Lane. by Ryder & Wilcox, Inc. Assessor's Map 71, Parcel 1. The proposed reconstruction of an existing boathouse; stabilization of an eroding bank; replacement of failing fiber rolls with gabion/fiber roll toe protection; removal of invasive plant species, & plant with native species. Work will occur on a Coastal Bank, on a Coastal Beach, on Land Subject to Coastal Storm Flowage, & within the Pleasant Bay A.C.E.C. John Jannell announced that a written request had been received asking to continue the hearing to January 7, 2014.

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

VOTE: Unanimous.

Last Heard 11/12/13 (SP1, JO1)

Elizabeth Ann Sanders Irrevocable Trust of April 9, 1999, & Charles A. Sanders, 3 South Little Bay Road. by East Cape Engineering, Inc. Assessor's Map 82, Parcel 6. The proposed stabilization of a Coastal Bank. Work will occur on a Coastal Bank, Land Subject to Coastal Storm Flowage, & the Pleasant Bay A.C.E.C. Tim Brady of East Cape Engineering was present. Tim Brady went over the revisions to the proposed work, noting that the wire baskets were no longer to be replaced, and the southerly property line where there was erosion would have sand brought over the yard, dumped over the Top of the Coastal Bank, and Judith Bruce inquired if this work was far enough from the abutting property to prevent erosion from occurring on their property. Judith Bruce noted that this had been mentioned in the Greg Berman report, and inquired if there were specific distances from property lines suggested when working on Coastal Banks. John Jannell said no, and Tim Brady commented that the neighbor to the south was not interested in doing any bank protection work at this time. Tim Brady noted there had been a planting scheme from Cape Organics which could become part of the Order of Conditions. Tim Brady went over the proposed plantings, and also brought up that the equipment would be brought in by barge and left until the work was done, with minimal traversing. Judith Bruce felt that the proposed changes were an improvement to the site, and inquired about the drain in the lawn which was heavily fertilized. Judith Bruce asked if the applicant would either continue fertilizing and install a rain garden at the end of the drain, or discontinue fertilizing and leave the lawn drain.

Tim Brady stated that the applicants were aware of the Commission's position on fertilizer, and that the proposed work had been reduced in response to the Commission's concerns. The applicants wanted to leave the lawn as it was at this time, and Steve Phillips inquired if the applicants had considered using organic fertilizers on the lawn. Tim Brady said that the applicant had used organics before, but was not sure if they would be willing to make this transformation. Steve Phillips inquired about the amount of sand anticipated to be brought on site, and Tim Brady estimated 100 yards, 5-8 truckloads. Steve Phillips asked if there would only be one area receiving the nourishment, and if the rolls would be covered. Tim Brady confirmed that the area for access for nourishment would be the one area, and that the fiber rolls would be covered. Steve Phillips questioned the new potential flood zones for this area, and Tim Brady assumed that this area's FIRM map would change in the future. Rich Nadler asked if the invasives to be treated on site were limited to the work area, and Tim Brady confirmed that work area. Rich Nadler was concerned about the invasives taking over the new planting area, and that it could cause additional erosion. Tim Brady commented that the erosion at this site was due to wave action and that once the fiber roll protection was installed, the bank would stay even without the plantings. Rich Nadler inquired about the formation of a sandbar within this area, and Tim Brady noted that there were sand drifts to the north discussed in Greg Berman's report. Kevin Galligan brought up the town ordinance on fertilizers, and Judith Bruce commented that the original plan showed dense vegetation at the catch basin. Tim Brady noted that the catch basin was within the lawn area, and the stairway was slightly to the right of the catch basin, with lawn removed from the stairway to the catch basin. Judith Bruce felt that the applicant could either continue to fertilize and install a rain garden as a buffer to uptake the nutrients, or discontinue fertilizing. Tim Brady suggested that they could provide additional vegetation so that the nutrients did not go directly into the catch basin, and Judith Bruce was agreeable to this as long as it up took the nutrients. Jane Hussey requested that a revised plan be provided showing the changes, and Judy Brainerd commented that Greg Berman's report made a reference that fiber rolls should be 10-20' from a property line before the return. Tim Brady said that he would take these matters into advisement, and inquired if he could continue the hearing to January 7th. John Jannell pointed out that the January 7th hearing date was full, and asked for the applicant to consider the January 14th deadline, to which Tim Brady agreed.

MOTION: A motion to continue the hearing to January 14, 2014, was made by James Trainor and seconded by Jane Hussey.

VOTE: Unanimous

Steve Phillips asked that Cape Organics also update their planting scheme for the Commission.

Notice of Intent

Gregory M & Patricia McGauley, 1 Sandbar Lane. by Ryder & Wilcox, Inc. Assessor's Map 56, Parcel 14. The proposed replacement of dug-in timber steps with new dug-in timber steps & an elevated stairway on a Coastal Bank. Work will occur on a Coastal Bank, Land Subject to Coastal Storm Flowage, & in the Pleasant Bay A.C.E.C. David Lyttle of Ryder & Wilcox, Inc, and Greg McGauley, applicant, were present. David Lyttle went over the existing conditions on site, as well as the proposed work, and Jane Hussey inquired about a discrepancy between the presentation and the

proposed decking spacing. John Jannell clarified that the plan proposed $\frac{3}{4}$ " minimum spacing, and Judith Bruce inquired if any trees were to be removed. Judith Bruce noted that further up there may be a benefit to using wood chips to stop some of the erosion, and Greg McGauley noted that he would ensure the path was covered with them. Kevin Galligan commended the applicant on the natural state of the property, and confirmed that no florescent stone would be used. Greg McGauley confirmed this, and Kevin Galligan asked about the shared property line. David Lyttle explained that the owners share the use of the dock, and Kevin Galligan wanted to make sure that there were not any issues. Judith Bruce noted that the dock should not be stored on the beach, and John Jannell stated that it was the neighbors dock. Greg McGauley noted that Cape Cod Docks secured the floats on the shoreline, with the pieces floated in and out on high tides in order to avoid disturbance. David Lyttle suggested elevated racks, and Judith Bruce explained that all of the parts of the dock needed to be stored outside of the resource area. David Lyttle commented that he would speak with the owners of the dock, and that a Notice of Intent had been filed for the January 7th hearing. John Jannell pointed out that a DEP number had not been issued for this filing, and that NHESP had not provided a comment letter on the proposed work. Steve Phillip pointed out erosion at the base, and inquired if it would benefit from the addition of fill. David Lyttle felt that the scarp line was typical of the area, would heal on its own, and that fill was no necessary. David Lyttle asked the Commission if besides the comments regarding the floats, if they were comfortable with the proposed plan. The Commission agreed that the plan was satisfactory, and Judy Brainerd commended the applicant on keeping the area natural. John Jannell noted that the wood chipping could be incorporated as a special condition, and Judith Bruce noted that while they were trying to minimize the amount of items on the agenda, this application could be continued to the January 7th meeting.

MOTION: A motion to continue the hearing to January 7, 2014, was made by Kevin Galligan and seconded by Bob Royce.

VOTE: Unanimous.

Karen & Marilyn Watson-Etsell, 156 Rock Harbor Road. by JC Ellis Design Co, Inc. Assessor's Map 17, Parcel 51. The proposed upgrade of an existing septic system. Work will occur within 100' of a Bordering Vegetated Wetland, Salt Marsh & within Land Subject to Coastal Storm Flowage & the Inner Cape Cod Bay A.C.E.C. Jason Ellis of JC Ellis Design, Inc., was present. Jason Ellis went over the existing conditions on site as well as the proposed work, noting that it would also need variances from the Board of Health. Judith Bruce commended the applicants on being good stewards of the area, and Kevin Galligan asked if the small ornamental tree where the septic was proposed could be relocated. Jason Ellis noted that it was their intention to relocate that tree either north west of the septic tank or in the front yard. Judith Bruce pointed out the brush in the wetland behind the compost, and Jason Ellis said that a condition could be incorporated into any Order of Conditions regarding its removal. John Jannell pointed out that a DEP number had not been issued for this filing, but inquired what the requirements were for a cesspool that was abandoned in a BVW. Jason Ellis explained that you were required to pump it prior to abandonment, and either mechanically remove it or fill it with sand. Jason Ellis pointed out that it was currently full of clean water, and that they would more than likely fill it with sand, compact it with a light compactor so that it neither collapsed nor settled over time, and put in wood chips.

Judy Brainerd inquired if the applicant would be held to two bedrooms or would be looking to expand, and Jason Ellis said that the Board of Health would likely put a 2 bedroom restriction on the system, but that the property only supported a 2 bedroom system. Kevin Galligan inquired who was maintaining the ditch adjacent to the site, and John Jannell said he would do some research. James Trainor asked if all tanks were required to be 1500 gallons, and Jason Ellis explained that while all new Title 5 Systems were required to have, at a minimum, a 1500 gallon tank, an older system was able to keep its 1000 existing tank if it has capacity at least equal to 200% of the daily flow. John Jannell said the hearing would have to be continued until a DEP number was issued, and Jason Ellis inquired if he could continue the hearing to January 7th, although he would not be in attendance to the meeting. Judith Bruce noted that since the Commission was not looking for any revisions to the proposed plan that they should be able to act without the Engineer present.

MOTION: A motion to continue the hearing to January 7, 2014, was made by Jane Hussey and seconded by Kevin Galligan.

VOTE: Unanimous.

Certificate of Compliance

Lee Cable (2010), 9 Baxter Lane. The request for a Certificate of Compliance for an Order of Conditions for the upgrade of a septic system and construction of a driveway. John Jannell reported that the work had been completed and the Commission could find this in compliance.

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

VOTE: Unanimous.

Pamela Peedin (2010), 40 Gibson Road. The request for a Certificate of Compliance for an Order of Conditions for the renovations to an existing single-family dwelling to include second story dormers, installation of new doors & windows, replace windows, construction of a stone retaining wall, & replacing Coastal Bank stairs. John Jannell went over the work which had been done under the Order of Conditions, and brought up a special condition within the Order requiring on-going maintenance work. Judith Bruce and Steve Phillips did not recall the application. Judith Bruce suggested a letter urging the applicant to maintain the area would be beneficial.

MOTION: A motion to issue this Certificate of Compliance with a letter noting that any future maintenance work needed to be filed for was made by Judy Brainerd and seconded by Bob Royce.

VOTE: Unanimous.

Ken Eisner, Countryside Building & Development (2013), 8 High Street. The request for a Partial Certificate of Compliance for an Order of Conditions for the construction of a single family dwelling; installation of a septic system and utilities; construction of a driveway; culvert installation; and landscaping. David Lyttle of Ryder & Wilcox, Inc. and Ken Eisner, applicant, were present. David Lyttle explained that the property was under agreement and the applicant was looking for a partial Certificate of Compliance for the construction so that the buyer could have a level of comfort, although the new owner would be in charge of the maintenance, plantings, etc. David Lyttle provided the Commission with a copy of the invoice of the plants to be installed,

and noted that the Order of Conditions would continue to act as a lien on the deed until a full Certificate of Compliance was issued. David Lyttle pointed out that the house and driveway had been built per plan, and that the new owners were on board with the Land Management Plan. Judith Bruce inquired if the new owners were aware of the 5 year management plan, and David Lyttle said yes, and that he would be their representative. Steve Phillips inquired if there was a bond posted for the property, and John Jannell reported that one had not been taken in with the Order of Conditions. Steve Phillips wanted to make sure that the new owners understood that the Land Management Plan was required as part of the Order of Conditions, and David Lyttle said that Wilkinson Ecological Design would continue to supply reports to the Conservation Commission. James Trainor felt that the concerns of the Conservation Commission had been addressed by the attorneys, and John Jannell reported the site conditions he had observed when he went to the site. John Jannell pointed out that this was not a complete certification but more of a milestone as work progressed, and noted that they could further affirm the Conditions to remain in a letter attached to the Commission's decision. Rich Nadler pointed out that while the Commission does not set a precedent by its individual decisions on specific projects, there may need to be a more formal procedure as the real estate market increased. Steve Phillips noted that this partial request was from the attorneys involved in the closing, and that it was not necessary to change procedure. John Jannell noted that the issuance of a Partial Certificate of Compliance required a vote, and that the items listed which were not complete included the plant work and maintenance.

MOTION: A motion to issue a Partial Certificate of Compliance was made by Bob Royce and seconded by Jane Hussey.

VOTE: Unanimous.

Jane Hussey inquired if it had been determined if there was an intermittent stream present on site, and John Jannell noted that it was determined that an intermittent stream was not present but the area in question was considered Land Subject to Flooding.

Revised Plan

George Najarian, 33 Bufflehead Road. The applicant would like to request a second passing of the hydrorake to remove re-growth of the cattails within the approved work area. Jeff Castellani, Project Manager and Field Biologist for Lycott Environmental, was present. Jeff Najarian went over the approved plan work which had been done on site to control the cattail population, and Judith Bruce noted that this was the removal of a native species. The previous work provided plenty of open water, and the approved work was for a one-time removal of the cattails. Steve Phillips inquired if the plan provided showing the green hatched area was where they proposed to do the work, and Jeff Castellani explained that since they did not get all of the rhizomes, there was regrowth from the existing litter. Steve Phillips asked why the applicant had not suggested a condition in their proposal to return to ensure that all of the rhizomes had been removed, and Jeff Castellani understood that he was working under the constraints of an already approved Order of Conditions. Steve Phillips questioned if the Commission went out on site whether or not a change could be observed, and Jeff Castellani said that pictures of the site had been submitted, and there was one section which looked like it was well recovered. Steve Phillips inquired if when the rake was

used it resulted in a denser population, and Jeff Castellani compared the cattail growth to that of Eurasian Milfoil, a freshwater species whose fragments needed to be entirely removed to prevent spreading through fragmentation. Judith Bruce recalled a cleanup effort at Pilgrim Lake which resulted in a population surge of the treated aquatic species, and Steve Phillips asked if maintenance should be considered. Jeff Castellani pointed out that if the Order were to be Amended, it would not be approved. Judith Bruce went over the history of the filing for this work for those members who were not present for the hearings on this site, and Jeff Castellani explained that if enough of the rhizome was left behind, it would regenerate unless treated with an herbicide. Jane Hussey inquired if the Commission approved this work for a second passing, if the applicant would be back the following year, and if this was a plant that the Commission wanted to see removed from the site. Jeff Castellani stated that once management of a species began, it would continue to grow. Steve Phillips asked if the phragmites had been contained, and Jeff Castellani thought that Stephanie Sequin of Ryder & Wilcox, Inc., was working on a Land Management Plan. John Jannell asked how many treatments were proposed, and Jeff Castellani replied one cut and wipe. Judith Bruce noted that if they were willing to get rid of the phragmites that she would be in favor of the proposed work. John Jannell went over the file history for the Commission including what had been approved for work on the site, and explained that the applicants had changed over the years and would therefore recommend that any new work be under a new Notice. Kevin Galligan did not support any additional work taking place on site, and Steve Phillips inquired if there was anything in the approved Order of Conditions which required on-going maintenance. Jeff Castellani explained that he had not been with the project during the entire permitting process, and did not know the history. John Jannell pointed out that not all of the Commission had been to the site, and that any new work would require notification of the current abutters. John Jannell pointed out that the initial project to replace the culvert had been paired down significantly, and that they were still under order for the phragmites work. Jeff Castellani commented that new growth was imminent, and Judith Bruce hoped that they would be able to see the work through to the eradication of the phragmites. Judith Bruce was not comfortable recommending that the applicant file a new Notice of Intent when this was work that the Commission may not support, and Jane Hussey noted that one passing of the hydrorake did not slow down the growth of cattails. Judith Bruce noted that if all of the cattails and rhizomes were removed, it provided an opportunity for additional plant species to establish themselves, and potentially turn the pond into an upland community. Jeff Castellani stated that they were asking to complete the second and third ring originally proposed for cattail removal, and Rich Nadler was concerned about the expansion of the pond as a result, as well as the machinery impact to wildlife. Jeff Castellani noted that he would check with Stephanie Sequin on the phragmite removal as well as bittersweet removal, and the Commission asked how they should proceed. John Jannell explained that the representative could withdraw the application without prejudice or vote to deny the proposed Revised Plan, but that action had to take place. Jeff Castellani did not have an opinion of withdrawing versus having the Commission vote to deny the proposed work.

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

VOTE: 0-7-0; Motion Denied.

Administrative Reviews

Paul Heanue, 3 Herring Brook Way. The proposed removal of 2 wind thrown trees. John Jannell reported that these two trees came down on the walkway, and could be removed under this type of filing.

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

VOTE: Unanimous.

Chairman's Business

Other Member's Business

Administrator's Business

The meeting was adjourned at 9:50am

Respectfully submitted,

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