

Town Hall, Nauset Room
Work Meeting, Tuesday, March 18, 2014

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ORLEANS TOWN CLERK

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

ABSENT: Jane Hussey, Associate.

For the purpose of today's hearing, Kevin Galligan will be voting members.

8:30 a.m. Call to Order

Continuations

Last Heard 3/4/14 (JB1)

Kenneth J. & Albarosa Cuccina Gandolfi, 84 Captain Linnell Road. by Ryder & Wilcox, Inc. Assessor's Map 32, Parcel 53. The proposed removal of an existing deck & construction of a screened porch attached to an existing single-family dwelling. Work will occur within 100' of the Top of a Coastal Bank, Edge of Wetland, Stream, & Land Subject to Coastal Storm Flowage. *For the purpose of this hearing, Judith Bruce will abstain from voting. Rich Nadler will be a voting member.* David Lyttle of Ryder & Wilcox, Inc, was present. David Lyttle explained that since the last hearing, David Lyttle went out to the site to determine where a drywell could be installed to direct the water from the basement sump pump. David Lyttle explained that they were not proposing a rain garden or for the drywell to be located further away from the site, but rather allow the water, which was in fact groundwater, to percolate and return to the water table. David Lyttle pointed out that the filter fabric which the Commission had seen on site was something which could also be removed, and Steve Phillips inquired about the downspouts on the southeast corner of the property. David Lyttle stated that they can connect this to a drywell, and Rich Nadler inquired what would happen if there was to be an oil leak in the basement. David Lyttle supposed that there was a risk if you had a leak, of it going into the groundwater, and Rich Nadler wanted to know if there was any type of filtering system which could be used. David Lyttle was not sure that there was something available, and Judith Bruce inquired if it was an automatic sump pump. David Lyttle said yes, and that the property was unheated during the winter. David Lyttle noted that the oil tank was double walled, and could bring the concerns of the Commission up to his clients, with the possibility that a concrete moat could be installed. Steve Phillips asked if a letter from NHESP had been received for the project, and David Lyttle said no. Rich Nadler asked who was responsible in the event of an oil leak, and David Lyttle stated that the only time he had heard of it occurring was when a tank was being filled. David Lyttle asked for the hearing to be continued for one week to March 25th.

MOTION: A motion to continue the hearing to March 25th was made by Jim O'Brien and seconded by Judy Brainerd.

VOTE: Unanimous.

Notice of Intent

Francis & Susan Kelly, 50 Arey's Lane. by JM O'Reilly & Associates, Inc. Assessor's Map 70, Parcel 1. The proposed renovation of an existing dwelling including a second

floor addition & installation of a new sewage disposal system. Work will occur within 100' of a Coastal Bank, Riverfront Area, & within the Pleasant Bay A.C.E.C. Matt Farrell of JM O'Reilly & Associates, Inc., was present. Matt Farrell went over the existing site conditions, commenting that the exceedence of the 25% new construction rule was the difference of 27 feet, which he felt would not make a significant impact. Judith Bruce pointed out that this proposed work would increase visibility from the resource area, and suggested mitigation which included but was not limited to the elimination of the garage, altering the driveway to become a pervious surface, and the consideration of a denitrification septic system. Judith Bruce commended the applicants on being good stewards of the area given the minimal amount of invasives on site, and suggested that the Vinca could also be removed. Kevin Galligan concurred with Judith Bruce's suggestions, and had a difficult time with the plans since the Limit of Work had not been defined. Matt Farrell said that the Limit of Work was indicated to mitigate for any erosion or siltation during the installation of the new septic system, and could add a Limit of Work to the entire site. Judith Bruce inquired if the existing cinder block foundation could support a second floor, and Matt Farrell noted that the foundation was in good condition but would need to deal with the building department. Judith Bruce explained that if a new foundation was required, it must first be permitted by the Conservation Department, and Matt Farrell reassured the Commission that he would return. Kevin Galligan reiterated that the Limit of Work needs to be better described, and Judith Bruce pointed out that no activity outside of the Limit of Work is permitted. Steve Phillips inquired about the increase in building height, and Matt Farrell explained that it would be approximately 6'. Steve Phillips questioned if the number of bedrooms would be existing, and Matt Farrell said the current house had 3 bedrooms, and while the number would not increase, the floor plan configuration would change. Rich Nadler asked if the scrub pines close to the house would be saved, and Matt Farrell explained that there were 4-5 dead pines which posed a safety hazard, and could either be added to the plan or dealt with administratively. Rich Nadler pointed out that the removal of the trees in conjunction with the construction would increase the exposure of the house to the resource area, and Matt Farrell stated that they were not proposing to take down any trees or any vegetation, and that the property was well hidden during the summer. Rich Nadler asked if the deck was to be removed, and Matt Farrell explained that the walkway extension for the new doorway was the only one. Rich Nadler was concerned about the potential loss of the homeowners rights with new construction, and John Jannell explained that the application required a variance request because the footprint was located within the existing 50' buffer zone. Rich Nadler pointed out that the garage and driveway were great opportunities for mitigation, and Matt Farrell stated that the existing driveway was quite steep, and by installing stone they may have problems. Matt Farrell was uncomfortable recommending to his clients to remove the existing garage. Judith Bruce pointed out that there were pervious materials other than stone such as pervious concrete, pavers, and that the removal of the garage was a suggestion. Judith Bruce explained that the upgrading of a cesspool to a Title V septic system was not enough for mitigation, and Judy Brainerd inquired about the use of the existing garage. Matt Farrell commented that it was used for boat storage, and Judy Brainerd noted that the garage was not in good shape, and that there were no downspouts or ways to contain water. Matt Farrell reiterated his unwillingness to suggest to the applicants that they remove the garage, and Steve Phillips pointed out that it was Matt Farrell's responsibility to demonstrate no adverse effect, and suggested

that he strongly consider the garage's removal as mitigation. John Jannell noted that a DEP number had not been issued for this application, and recommended that the Commission not close the hearing. John Jannell felt that the applicant needed to address the increase beyond 25% of new construction, as well as the work within the 50' buffer, and felt that the Commission substantially conveyed those concerns. Matt Farrell asked that the hearing be continued for two weeks to April 1st.

MOTION: A motion to continue the hearing to April 1st was made by Jim O'Brien and seconded by Kevin Galligan.

VOTE: Unanimous.

Revised Plans

Stephen Brodeur: SE# 54-2179, 25 Weeset Proprietors Way. The Order for the demolition & reconstruction of existing dwelling; installation of a new septic system; and the enlargement of buffer planting areas has been revised to include a proposed revised driveway layout and landscape improvements around the house. Work will occur within 100' of the Top of a Coastal Bank and within Land Subject to Coastal Storm Flowage. Tarja McGrail of Coastal Engineering Company, Inc, Sarah Turano-Flores of Nutter, McClennen, & Fish LLP, and Dan Soline, Landscape Architect for the applicant, were present. Sarah Turano-Flores explained that this and the following agenda item, while under two separate Orders of Conditions, had overlapping components, and went over them accordingly. John Jannell asked that the proposed changes to the two Orders be kept separate to ensure that the Commission was aware of what was being proposed, and Sarah Turano-Flores wanted to have Dan Soline address the revised landscape management plan. Judith Bruce commented that the Commission had not received many details about the proposing plantings prior to receipt of this new plan. The Commission was concerned that they did not have copies of the revised plans to have a better understanding of the proposed changes, and John Jannell passed around the 3 copies of the site and landscape plans which he had. Tarja McGrail went over the proposed changes, and Steve Phillips inquired about the changes to the driveway, and Tarja McGrail explained that the driveway alignment was changing to save additional trees as well as removing the farmer track which had been previously approved. Steve Phillips inquired if some of the driveway was to be removed and replaced with walkway, and Tarja McGrail said that a portion of the driveway was being taken away to be stone step paths. Dan Soline went over the proposed changes to the landscape plan, emphasizing that the garden where non-native species were located was located between the garden area and driveway, confined. Steve Phillips inquired about the cedar trees which were to be replaced, and Dan Soline stated that to his knowledge, Phil Cheney would still be involved with the work on site. Sarah Turano-Flores interjected that the screening had not changed and would be as originally designed. Kevin Galligan asked that the applicant also consider the use of milkweed on site, and John Jannell suggested that if the Commission found the proposed revision acceptable, that they could vote to accept them.

MOTION: A motion to approve that this request was acceptable under a Revised Plan request was made by Bob Royce and seconded by Jim O'Brien.

VOTE: Unanimous.

MOTION: A motion to accept this Site Plan Showing Proposed Landscape Modifications, dated 3/12/14, was made by Steve Phillips and seconded by Jim O'Brien.

VOTE: Unanimous.

Stephen Brodeur: SE# 54-2124, 25 Weeset Proprietors Way. The Order for the reconstruction of a stone revetment, installation of stone retaining walls, removal of existing patio areas, and mitigation plantings has been revised to include proposed modification to the retaining wall and inclusion of proposed landscape plan improvements around the house. Work will occur within 100' of the Top of a Coastal Bank and within Land Subject to Coastal Storm Flowage. Sarah Turano Flores went over the proposed revision to this Order of Conditions, and Tarja McGrail explained that the wall was 2' at its highest point. Judith Bruce inquired if it was dry laid or mortar, and Tarja McGrail clarified that it would be dry-laid, with the corner of the house to the South's wall to be mortared as previously approved. John Jannell explained that during his meeting with the representatives, they had suggested that the changes to this Order of Conditions would be mitigated by the planting work which the Commission had just approved under the other Order of Conditions. Kevin Galligan was in support of the proposed work, and James Trainor inquired if this was an increase within the 50' buffer zone. Tarja McGrail said yes, but felt that this was not going to have an impact because it was dry-laid, and Sarah Turano-Flores commented that it was something which had been taken out during the initial hearing process. Dan Soline noted that the walls would hold the plantings, and James Trainor pointed out that the approved for the previous changes were based on the wall being removed. Judith Bruce stated that the ornamentals which were originally going to stay were now going to be removed, and the new proposed plantings were an improvement to the area. Steve Phillips recalled the previous wall being higher, and that it would be less of an impact. Steve Phillips explained that this was one place where volume calculations would have been beneficial, and Sarah Turano-Flores said that the overall reduction would be 147'. John Jannell said that there was a second set of landscape plans included with this site plan, and Sarah Turano-Flores asked that they be included along with the site plan as part of this Order.

MOTION: A motion to approve the site plan dated 3-12-14 and landscape plan dated 3-7-14 was made by Steve Phillips and seconded by Bob Royce.

VOTE: 6-1-0; James Trainor opposed, motion approved.

Proposed Maintenance Work

Stop & Shop, 10 Route 6A. The Proposed Filter Dam Maintenance Work under the On-Going Maintenance Condition for the Certificate of Compliance for Order SE 54-878. John Jannell provided the Commission with an update of the progress since the previous meeting, explaining that there was a letter issued to the property owner and caretaker about the deficiency of maintenance at this property, and anticipated hearing back from them soon. Additionally, Dave Michniewicz of Coastal Engineering Company notified DMF, and has also heard from Keypoint Property Management Group. Judith Bruce inquired if Coastal Engineering Company had been retained by the Management Group, and John Jannell said that this was in the process. John Jannell pointed out that Mark Budnick, Highway Department Manager, provided the Commission with the Windmill BMP plan. John Jannell recommended the Commission keeping this item on the agenda.

MOTION: A motion to continue to list this on the agenda was made by Steve Phillips and seconded by Judy Brainerd.

VOTE: Unanimous

Certificate of Compliance

Eugene & Jennifer Nesbeda (2005), 27 Cheney Road. The request for a Certificate of Compliance for an Order of Conditions for the installation of a new septic system; replumbing of existing sewer pipes; and pumping dry and filling of the existing tank & leach pits. John Jannell reported that this was in substantial compliance.

MOTION: A motion to issue a Certificate of Compliance was made by Steve Phillips and seconded by Kevin Galligan.

VOTE: Unanimous

Michael & Tracey Roberge (2007), 27 Cheney Road. The request for a Certificate of Compliance for an Order of Conditions for the after the fact installation of a cobblestone apron driveway edging & a gate. John Jannell said that this work was also in substantial compliance, and reported to the Commission that they would be back on site for additional work on this property.

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

VOTE: Unanimous.

Other Business

Areys Pond LLC (2011), 10 Sparrow Lane. Request release of performance guarantee of \$5,000 for replanting. Order SE 54-2097. John Jannell explained that there was an Order of Conditions on this property in response to an Enforcement Order, and the Commission had taken in as surety for the planting work to be done. The escrow agreement required a 3 year hold which would either roll over into another 3 year period or could be released with the permission of the Conservation Commission. John Jannell explained that the applicant wanted to have the funds released, and reported that the plantings had been established. Judith Bruce inquired if all of the plantings were healthy, and John Jannell went over the site details, commenting that the property would remain under Order.

MOTION: A motion to release this performance guarantee was made by Bob Royce and seconded by Kevin Galligan.

VOTE: Unanimous.

John Jannell explained that the Order of Conditions was still open, and the Commission could visit the site.

Administrative Reviews

Orleans Yacht Club, 39 Cove Road. The proposed placement of 2 kayak racks and the installation of a light pole. *Bob Royce, Judy Brainerd, and Rich Nadler-Associate, recused themselves.* John Jannell went over the proposed Administrative Review, explaining that due to theft problems, the Orleans Yacht Club wished to install a motion activated light pole. Steve Phillips asked if it would be on all of the time and therefore cause problems for the abutters, and Kevin Galligan asked if it would comply with the town lighting code. Steve Phillips brought up that since this would be put near a town landing, they may need some reassurance that it would be contained, versus becoming a disruptive situation for neighbors. Kevin Galligan thought that would be something

which they could confirm with the optical display, and John Jannell understood that it was to be installed in the back corner by the club members. James Trainor felt that the kayak rack would be an improvement versus storing them on the ground. John Jannell said that he would convey the Commission's concerns to the applicants regarding the motion light.

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

VOTE: 5-0-2; motion approved.

Herbert Gullquist, 22 Indian Fort Hill. The proposed removal of 2 oak trees. Work to be done by Avellar Brothers Excavating. John Jannell explained that these two trees were located outside the 50' buffer, may be outside of the 75' buffer, and had died because of the gall wasp. John Jannell recommended that the applicants replace the trees, and the applicant had brought up spading in a significant tree.

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

VOTE: Unanimous.

Judith Bruce noted that a study presented at the Cape Cod Natural History Conference reported success in treating for gall wasps by injecting plugs placed in infected trees. Rich Nadler inquired about the time of year this work was being proposed, and Judith Bruce explained that while she was not sure, the Wellfleet Bay Wildlife Center may have all of the materials from the presentation.

Christina Nichols & Arthur B. Nichols IV, 62 & 45 Old Field Road. The after the fact removal of an oak tree. John Jannell commented that this was observed during a recent site visit to this property for another filing, and since that time the Conservation Department wrote a letter inquiring about the reason for the tree's removal. John Jannell stated that the homeowner and the contractor had since contacted the Conservation Department, explaining that due to the tree's location in the lawn area, thought that it was outside of Conservation Commission jurisdiction. John Jannell did not feel that this work rose to the level of requiring a fine, since the homeowner tried to save the tree, and injection ports were noted during the on-site. Judith Bruce asked if a formal vote not to take enforcement action was necessary, and John Jannell suggested a vote accepting the after the fact filing for the proposed work was suitable for this application.

MOTION: A motion to approve this after the fact work was made by Steve Phillips and seconded by Jim O'Brien.

VOTE: Unanimous.

Brian Bates, 15 Cross Road. The proposed removal of vines from one Oak tree in right rear yard. Work to be done by Tree Fellers. John Jannell noted that this work could be approved under this type of filing.

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

VOTE: Unanimous.

Orleans Conservation Commission Hearing Meeting 3-18-14

Chairman's Business

Approval of the Minutes from the Meeting on January 21, 2014.

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

VOTE: Unanimous.

Other Member's Business

Administrator's Business

The meeting was adjourned at 10:05am.

Respectfully submitted,

Erin C. Shupenis, Principal Clerk, Orleans Conservation Department