



ORLEANS TOWN CLERK

K. Carey, Asst

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ORLEANS PLANNING BOARD

SEPTEMBER 25, 2012 - Minutes

A meeting of the Orleans Planning Board was called to order at 7:00 p.m. in the Nauset Meeting Room at the Orleans Town Hall. **Present:** **Chairman:** Chet Crabtree; **Vice-Chairman:** Steve Bornemeier; **Clerk:** Charles Bechtold; Kenneth McKusick and John Fallender. **Associate:** Paul McNulty. **Planning Department Staff:** George Meservey; and **Secretary:** Karen Sharpless. **Also Present:** **Board of Selectmen Liaison:** Jon Fuller. **Absent:** **Associate:** Andrea Reed

7:00 P.M. - PUBLIC SHADE TREE HEARING - BRUCE CAREY - 1 RUGGLES ROAD

Chip Bechtold read the legal ad into the record.

Bruce Carey stated that he purchased the property ten years ago and then gave a summary of the numerous tree cuttings that took place on his property and within the town layout at 1 Ruggles Road by NSTAR subcontractors and subsequent tree cutters. Meservey stated this is an "after the fact" application for a public shade tree/scenic road hearing, it is difficult to determine the correct value of the trees that were cut and removed without town permission on the scenic road known as Tonset Road. Meservey reminded Planning Board members of the Public Shade Tree Bylaw (Chapter 127) which was overwhelmingly approved at town meeting that has a provision for remediation for the loss of public shade trees cut and removed without prior town permission.

Dan Connolly (Tree Warden) agreed that there were trees poorly trimmed on the property and within the town layout, but stated that the homeowner is responsible for fines and must provide restitution and replacement for the trees that are cut and removed, which is consistent with the Public Shade Tree Bylaw. Connolly expressed disappointment that Bruce Carey did not provide any plan for replacement of the improperly cut trees. Carey stated he has spoken with Ryder & Wilcox and J.Z. Smith Landscaping, but there is no available replanting plan at this time. Carey stated there is a problem with runoff from Tonset Road and a catchbasin needs to be installed.

Connolly referred to the following section of the Public Shade Tree Bylaw:

§127-9. Tree Replacement

The removal of a public tree shall require its replacement, which shall be provided as follows.

- A. The replacement tree shall be of the same or similar species or such other species as deemed advisable by the Tree Warden and shall have the same or equivalent size as measured in DBH inches as that of the public tree that was removed. Installation shall be included.*
- B. In the event that a tree of equivalent size cannot be obtained or is not appropriate, multiple smaller replacement tree may be used if approved by the Tree Warden.*
- C. If multiple smaller trees are not approved, a payment to the Town of the value of the tree, as determined by a qualified arborist, shall be made.*

Replacement may be waived if the Tree Warden finds it is in the interest of the Town to remove the subject tree(s).

§127-11. Enforcement and penalties

Any person who violates any of the provisions of this bylaw shall be notified by the Tree Warden of the specific violation, including a time frame to address the violation and penalties.

Any person who removes or alters a public tree without a permit shall be assessed a penalty equal to the cost of replacing the tree in addition to the fixed penalty amount described below:

- A. Removal without a permit or performing prohibited activities - \$300 per instance.*
- B. Failure to obtain a permit for activities requiring a permit, or prohibited activities other than removal of a tree - \$300 per instance.*

Connolly reiterated the need for the homeowner, Bruce Carey, to produce a restitution and replacement agreement plan for the town trees that were cut down, especially the spruce tree. Planning Board members discussed the process NSTAR uses for trimming and cutting town and private trees. Connolly indicated he was not made aware of any plan by NSTAR to trim or cut trees at this location. Connolly stated that Carey was the one who authorized cutting the trees down without town permission. Meserve noted the difficulty in determining the adequate cost of replacing trees after they have been cut down and removed. Dan Connolly (Tree Warden) stated that a common measurement is to determine the diameter (at breast height) of the tree and (i.e. 24") and replace it with twelve 2" trees. Carey stated that a regrading plan will have to be obtained from Ryder & Wilcox due to the slant of the grade which would not be conducive to the growth of new trees.

Planning Board members agreed with Connolly that the public hearing needs to be continued to another Planning Board meeting in order for Carey to provide the Tree Warden and Planning Board with adequate information on restitution and a replacement plan. McKusick requested clarification of actions by NSTAR to mark the trees and what was requested vs. what was performed.

Comments:

Jon Fuller noted it was unfortunate that the trees were cut down without proper authority and questioned whether it would be prudent for the town to consider requiring tree companies to register with the town and be informed of the regulations for tree cutting and removal, particularly on scenic roads.

Planning Board members discussed whether the homeowner is solely responsible for the penalties for infractions or if the tree companies should bear some of the burden. Connolly stated that in this case, after some discussion with the contractor, he did not feel the contractor acted irresponsibly and therefore the dispute is between the town and the homeowner, not the contractor.

Planning Board members discussed the need for an education program in town for homeowners, as well as tree companies, in order for them to obtain clarification of the permissions required in order for town trees to be cut and removed.

Chris Wyler (Tonset Road) stated that the trees were destroyed due to the severe trimming done by NSTAR representatives which caused the trees to resemble a cactus rather than thriving trees. Wyler stated that the trimming was done irresponsibly and the company should be held responsible, not the homeowner, since the trees were left in worthless shape.

MOTION: On a motion by **Kenneth McKusick**, seconded by **John Fallender**, the Board voted to continue the Public Shade Tree Hearing for Bruce Carey to October 23, 2012 at 7:00 p.m. for property located at 1 Ruggles Road.

VOTE: 5-0-0 The motion passed unanimously.

TREE CUTTING IN TOWN:

Planning Board members discussed concerns with tree trimming casualties around power lines in town which have left dangerous appearing tree limbs overhanging roads and causing potentially hazardous conditions. McKusick showed Planning Board members pictures of unsightly tree limbs over roads and noted that the town must protect the health and safety of trees and preserve the road canopy, whenever possible. Fallender questioned health of oak trees in town and Connolly responded that there are many stresses on trees such as bugs, and bad weather which has caused a decline in the tree population in town. Connolly informed Planning Board members that some of the roads in town belong to the State and can only be maintained by the State. Connolly stated that NSTAR has a perpetual tree maintenance program to keep power lines clear and will do additional trimming upon request.

RESIDENTIAL FERTILIZER USE

Planning Board members discussed town proposed fertilizer bylaw options and with the help of Meservy's contact with Bill Clark of the Cooperative Extension noted that House Bill No. 04306 which passed into law on August 29, 2012 has provisions to cover many of the concerns expressed for potential town fertilizer control regulations such as:

1. Seasonal fertilizer restriction
2. Soils test required before applying fertilizer
3. Licensing of landscapers and fertilizer applicators
4. Restrict fertilizers to organic only
5. Require minimum depth of topsoil for turf areas
6. Encourage Cape Cod lawn

Crabtree noted that the House Bill applies to fertilizers on lawns, not gardens. McKusick suggested an ongoing education program, possibly through the Board of Water and Sewer Commissioners and could be covered as an article in the Water Department Annual Water Quality Report. Planning Board members discussed the possibility of holding public hearings or workshops regarding fertilizer use in town. Fuller noted that Board of Selectmen hold bylaw public hearings and could include one on fertilizer use as it is a integral part of the wastewater program.

SPECIAL PERMIT CRITERIA FOR LARGE HOMES

Planning Board members discussed a potential bylaw amendment to Chapter 164-21 to add a subsection covering proposing the use of a Special Permit Criteria for large homes, as well as a bylaw amendment for Chapter 164-4 amending the definition of buildable upland. Planning Board members agreed to forward the proposal to the Zoning Bylaw Task Force for review and recommendation.

POTENTIAL ZONING AMENDMENTS FOR 2013 ANNUAL TOWN MEETING

Planning Board members reviewed the following potential zoning issues and agreed to forward them to the Zoning Bylaw Task Force for review and recommendation:

1. Amend Floodplain District F. 164-19 to update reference to FIRM maps (effective July 1, 201X).
2. Restaurants should be prohibited from the Industrial District.
3. Large Home Bylaw to protect neighborhood character where large homes are proposed.
4. Fertilizer Bylaw.
5. Kennel - Clarify definition that it does not include non-commercial keeping of animals.
6. Nonconforming uses. Amendment may be needed to make the bylaw consistent with recent case law that allows extensions to nonconforming structures through a Special Permit process, regardless of whether a new nonconformity is created.

COMMITTEE UPDATES

Orleans Community Partnership (John Fallender)

John Fallender gave a summary of Orleans Community Partnership events over the past year and noted that the Orleans Community Partnership has now been in existence for a year. Fallender recommended that people stop by the old firehouse to review the renovation and art that has been hung on the wall.

PLANNING BOARD FALL MEETING SCHEDULE

Planning Board members discussed the upcoming Planning Board meeting schedule and made the following motion:

MOTION: On a motion by **Steve Bornemeier**, seconded by **Kenneth McKusick**, the Board voted to hold Planning Board meetings on the following dates due to upcoming holidays: October 23, 2012, November 13, 2012 and December 11, 2012.

VOTE: 5-0-0 The motion passed unanimously.

CORRESPONDENCE

Citizen Planner Training Collaborative

Planning Board members noted that on October 30, 2012 there will be a course entitled, "Vested Rights & Nonconforming Uses & Structures" at the Orleans Town Hall at 7:00 p.m. in the Skaket Room.

Chapter 91 Waterways License Application

Planning Board members were informed of a Chapter 92 Waterways License Application from Cove Condominium Trust to remove and replace a permanent pier and seasonally removable ramp and float to Town Cove.

APPROVAL OF MINUTES: August 28, 2012

MOTION: On a motion by **John Fallender**, seconded by **Kenneth McKusick**, the Board voted to approve the minutes of August 28, 2012, as amended.

VOTE: 5-0-0 The motion passed unanimously.

ADJOURNMENT

MOTION: On a motion by **Steve Bornemeier**, seconded by **John Fallender**, the Board voted to adjourn at 9:00 p.m.

VOTE: 5-0-0 The motion passed unanimously.

SIGNED:


(Charles Bechtold, Clerk)

DATE:

10/23/12

LIST OF HANDOUTS FOR SEPTEMBER 25, 2012 PLANNING BOARD MEETING:

1. Memorandum entitled, "1 Ruggles Road, Scenic Road Hearing", dated September 18, 2012
2. Memorandum entitled, "Regulating Large Homes", dated September 17, 2012
3. Memorandum entitled, "Refined Proposal on Fertilizer Regulation, dated September 17, 2012
4. Commonwealth of Massachusetts, House No. 04306 regarding Fertilizer
5. Town of Orleans, Fertilizer Policy
6. 2013 Potential Zoning Amendments
7. Chapter 91 Waterways License Application – Cove Condominium Trust
8. Citizen Planner Training Collaborative, Fall 2012 Course Schedule
9. Planning Board Minutes for August 28, 2012