

Orleans Conservation Commission
Via Zoom
Hearing, Tuesday, March 1, 2022

ORLEANS TOWN CLERK
Julie Higgins
Principal Clerk
22 MAR 15 2:11PM

PRESENT: Chair Ginny Farber, Vice Chair Mike Brink, Clerk Drusilla Henson, Member Walter North, Member Ron Mgrdichian, Member Jerry Wander, Associate Member Alan Carrier, Associate Member Maia Ward & Conservation Agent John Jannell

ABSENT: Member Bob Rothberg, Associate Member Judith Bruce

8:30 a.m. Call to Order

Remand Notice of Intent

Pleasant Bay Ranch, LLC 71 Towhee Ln
By Attorney Sarah A. Turano-Flores of Nutter, McClennen & Fish, LLP. Map 92, Parcel 60.
Pursuant to an Order of Remand issued by the Orleans District Court in Docket No. 2126CV0095, the Commission will reopen the public hearing regarding this matter for the purpose of review of a Reconfigured Design. The raze and replacement of the existing single-family dwelling, landscaping, and site restoration. Work will occur on a Coastal Bank, within the Pleasant Bay ACEC, and within the 100' buffer zone to the top of a Coastal Bank.

Sarah Turano-Flores was present and reviewed the application. She listed the documents that the Commission should have. She reviewed the changes made to the site plans since the April plans. The reworked proposal gets the existing structures and improvements to the site away from the Coastal Bank on the south and west of the property.

Theresa Sprague, Blue Flax Design, gave an overview and discussed the changes that were made to the restoration plan since April 2021.

Ms. Farber asked if there are details for the management of the drive going from the 50' down to the boathouse. David Lyttle, Ryder & Wilcox, said the driveway is gravel that has been overgrown over time and it provides access to the boathouse. There is no plan to change the condition of the existing drive. What will change is the area to the east of the drive, it will be planted with fescue. Ms. Farber said she was looking for a commitment to no formal improvement to the driveway to the boathouse, perhaps as a special condition. Ms. Turano-Flores stated that the driveway would be left in its existing condition with no improvement. Ms. Farber asked for specifications on the patio/hardscape, and asked how the will stormwater be handled coming off these areas? David Lyttle said it's on the Sudbury Design plan that was submitted in April 2021, the patio is going to be pervious. Mr. Jannell said the office can source that plan from the denial and make it part of this application today if its pertinent. Ms. Farber asked how they intend to save the English Oaks. Ms. Sprague said they would be under an arborist's care during construction. The tree is outside of the secondary LOW and it will be protected in that way as well. There was a previous assessment of the tree. Mr. Jannell said this assessment, that was also provided with the previous denied filing, is more of a health assessment and not a protection plan. The Commission would like to see a protection plan. Ms. Turano-Flores suggested a special condition requiring this tree protection plan be submitted to the Conservation Administrator prior to pulling a building permit. Ms. Farber said, in your

planting plan you talk about replacement trees, some are 1:2 and some are 2:3, is that a nursery designation? She stated that she would prefer bigger and taller trees. Ms. Sprague said they want to put trees in at different age classes, not just size classes. It provides different wildlife habitat values; smaller trees have a higher survival rate; we like to think of it in terms of succession so as they mature, they don't all die at the same rate. Ms. Sprague reviewed how tall the proposed tree plantings will be.

Mr. Brink asked if the Commission needs a revised elevation plan? Ms. Turano-Flores said it does follow the same design as the previous filing, it is the same height but has gotten narrower. Christopher Salomon screen shared the elevation plans.

Ms. Henson agreed with the previous comments about the driveway. Perhaps they could take the word gravel out of the plan note. She said that on-site they had discussed keeping saplings in the SE wooded area, she didn't see a plan note for that. Ms. Sprague said there is no management in this area other than light invasive removal. The only thing we are proposing is to plant shrubs to create a more vertical buffer. Ms. Henson said she thinks they should choose 3" caliper instead of 2" caliper, in the SE area, to provide more canopy, if they can. Ms. Sprague said, ok.

Mr. North asked, in a situation where there's a possibility of additional work done on the site, in this case work on the boathouse, are there any implications for our approvals? Mr. Jannell said none right now. The applicant has the right to engage the Commission for more work at any time. There might be implications during a future hearing, perhaps cumulative impacts to wetlands interests due to construction. Mr. North said, from a regulatory perspective it more or less meets our requirements, but it's another example of why, with a project of this scale on a lot of this size, our regulations are insufficiently protective.

Ms. Farber asked about the timeframe for starting construction. If they intend to start work this coming spring or summer we will start running into bird nesting season. Ms. Sprague said the work schedule could be adjusted to begin "Fall 1", we can update that as we find out when the project will start. She continued that they kept it vague because the permitting process can take time. Generally, we like to start this type of project in fall or winter. We would never start an invasives species removal in spring.

Ms. Farber wanted an assurance that the restoration will take place. Mr. Jannell said the Commission, under its bylaw, can require a performance guarantee so it's successfully completed and followed. If the Commission would like to do that, we can discuss a dollar amount. The reason you do it is to ensure success for a large-scale project. Ms. Turano-Flores argued against the surety bond. Ms. Henson argued that based on sheer scale and screening that a surety bond is a good idea. Mr. Wander didn't have any thoughts on the surety, but he thought they should have up to date drawings and elevations. Mr. North stated he is neutral on the surety bond issue.

Mr. Jannell said he is sensing the Commission is ready to act on this project. He said he would like the opportunity to prepare some findings and special conditions on this. He could provide those by the 15th. He suggested the Commission close the public hearing and direct staff to prepare a draft finding. We can get together again to review the draft findings and special conditions. In that time the applicant can firm up a few of the things discussed today: the detail from the arborist on the BFD staff for the protection of the English Oaks; a firmer schedule from BFD given an Order may be voted on the 15th. He'd like to hear from the

applicant if in fact we are correctly leaning on the Sudbury patio spec of 3/21/21. Ms. Farber said they'd like to lean on the Nutter letter as a plan reference but include the Ryder & Wilcox project narrative. Mr. Jannell said he could draft a finding that leaned on the old elevation, in keeping with the previous design.

No public comment was heard.

MOTION: A motion to close the public hearing was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

MB, GF, DH, RM, WN, JW, MW

MOTION: A motion to direct staff to draft an Order of Conditions with findings and special conditions for the Commission to review on 3/15/22 was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

MB, GF, DH, RM, WN, JW, MW

Continuations

Carlton Builders, LLC

20 Camp Rd

By Ryder & Wilcox, Inc. Map 12, Parcel 73. The proposed construction of a single-family dwelling, including driveway, patio, and pool, installation of a septic system, and underground utilities. Work will occur within a Riverfront Area.

Stephanie Sequin, Ryder & Wilcox, reviewed the revised plan she submitted based on previous Commissioner comments. The new plan shows the septic moved away from the river and she included a spec for the pervious patio. The Commission was very happy with all the changes.

Ms. Sequin asked if there could be gaps in the fence so someone could walk through it. Many Commissioners thought that would be ok. Ms. Farber said they would like the fence to discourage mowing more than anything. Ms. Henson preferred continuous because she thought a mower could fit through an opening.

No public comment was heard.

MOTION: A motion to close the public hearing was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

MOTION: A motion to approve the project at 20 Camp Rd attaching the Conservation Commission findings and standard conditions and with the special condition that allows the low post and rail fence to have an opening of less than 4' to allow foot traffic was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

Hugo & Kara Brown

64 Freeman Ln

By Ryder & Wilcox, Inc. Map 5, Parcel 30. DEP #SE 54-2529. The proposed construction of a screen porch within a portion of the footprint of the previously approved deck. Work will occur within the 100' buffer zone to the top of a Coastal Bank.

Stephanie Sequin, Ryder & Wilcox, was present to review the application. Ms. Sequin was unable to complete a revised plan by the deadline. She confirmed the homeowner would plant the garden bed referenced at the previous hearing with native vegetation and downspouts to drywells can be shown on the plan. She stated the construction of the screen porch would not result in tree removal. Ms. Sequin said she will follow-up with all of these notes on a revised plan.

Ms. Sequin asked the Commission if they could approve the project subject to receipt of a revised plan. The Commission felt more comfortable continuing the hearing to review the revised plan before voting.

No public comment was heard.

MOTION: A motion to continue the public hearing to 3/15/22 was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

MB< GF, DH, RM, JW, MW, AC

Town of Orleans

141 Portanimicut Rd

By the Town of Orleans. Map 76, Parcel 24. The proposed site restoration and installation of gravel parking. Work will occur within the 100' buffer zone to the Edge of Marsh, on a Coastal Bank, within Land Subject to Coastal Storm Flowage, and within the Pleasant Bay ACEC.

John Jannell reported that since the previous hearing more information was provided on the: kayak rack spec; dingy storage; and English oak. He stated that the Town is leaning on the preferred design of the Rec Advisory Committee's kayak rack initiative. He continued that the kayak rack will only go there if the Town successfully develops this program.

No public comment was heard.

MOTION: A motion to close the public hearing was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

MOTION: A motion to approve the project at 141 Portanimicut Rd attaching the Conservation Commission findings and standard conditions was made by Mike Brink and seconded by Drusy Henson.

References: Project narrative by the Town of Orleans Conservation Dept. dated 2/28/22; Ryder & Wilcox Site Plan dated 2/15/22

VOTE: 7-0-0 Unanimous

Revised Plan

Polly Keener

50 Nauset Heights Rd

By Crawford Land Management. Map 21, Parcel 52. The proposed removal of two Eastern red cedar trees.

Nick Crawford, Crawford Land Management, was present and reviewed the request. Mr. Brink asked for replacement of the trees. Mr. Jannell said the proposal called for 2:1 replacement so he is expecting 4 trees to be planted. Mr. Jannell pointed out that the proposed removals are significant trees providing screening. The proposed replacements are not shown on a plan, but he assumes they would be on the water side of the home. Mr. Crawford proposed tree replacements within 10' of the stump. Ms. Henson would like to see the actual placement of the trees and she'd expect them to be cedars. Mr. Crawford said they can mark the location of those in the field. Ms. Henson said she just wanted to make sure they were still screening.

MOTION: A motion to approve the revised plan request with replanting in the same general area as the removals was made by Mike Brink and seconded by Drusy Henson.

VOTE: 6-0-0

Ms. Ward did not respond to the roll call vote.

Enforcement

Shawn Christian & Hannah Wyman

207 Brick Hill Rd

Map 12, Parcel 61. The unpermitted alteration of trees and removal of understory vegetation within the 100' buffer zone to a Pond.

Mr. Jannell reviewed the process including notification attempts. They were able to get work stopped and Mr. Jannell was able to meet the homeowner on site. There were 3 specific unauthorized work items: the understory was cleared in the 100' buffer zone; BVW vegetation was cleared; installation of outdoor lighting in the trees. The Commission received a draft enforcement order (EO) late yesterday. Mr. Jannell reviewed the EO Form 9. It's an Order to restore the area. Mr. Jannell read elements of the draft into the record. He recommended the Commission ratify this today putting the homeowner under Order. The Commission provided a couple of edits: Ms. Farber said #5 should include *temporary* irrigation. Ms. Henson asked in terms of restoration plan, could they condition it to start taking place at the soonest opportunity. Mr. Jannell's suggestion would be to start planting in the spring as soon as restoration plan comes in. Mr. Jannell pointed out some of the windthrown trees in the area. Mr. Brink said he thought it makes sense to clean out the windthrown trees but not to remove the rhododendron. Mr. Mgrdichian agreed, they should remove nothing more than the fallen trees removed. Mr. Carrier said he thinks we should clarify exactly what is coming out so there's no overstepping.

Chris Klaehn, owner of 205 Brick Hill Rd and abutter to 207 Brick Hill Rd, was present to comment on the unpermitted work. Ms. Klaehn expressed her concerns of the activity that took place. Ms. Klaehn endorsed the replacement of what was taken out, but old growth is irreplaceable. She advocated for the lights to come down completely, not just out of the buffer zone. She wanted the record to show she made a formal request to have the lights taken down. The combination of the cutting and the lights immediately impacted nature and the property.

Neal Finkelstein, owner of 211 Brick Hill Rd, reiterated and reinforced how seriously concerned they are about what's occurred at #207. He was concerned about the long-term outcome. He wondered how long can the enforcement take place and how to make sure it occurs in a thoughtful way to bring us back to where we were.

Mr. Jannell said this is a detailed and firm process and there are fines associated with noncompliance to the milestones. He stated he is also aware the homeowners were informed of jurisdiction because they submitted and Administrative Review for work in their backyard.

Mike Brink stated he had clarification for #4 of the EO, he thinks we should put a 3-year monitoring plan. Ms. Henson stated that for the restoration plan she would be looking for more than a 1:1 replacement.

Hannah Wyman, property owner, spoke to the concerns of abutters and Commissioners. She reported that they've engaged the process and have reached out to ecological restoration companies.

Jon Evans, abutter, thanked Ms. Wyman for her willingness to engage the process and echoed Chris and Neal's comments.

MOTION: A motion to ratify the Enforcement Order with the modifications as discussed during this hearing was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

MB, DH, WN, JW, MW, GF, RM

Administrative Review

Mazzarese Family

80 Tom's Hollow Ln

The proposed repair by replacing an upper portion of existing timber stairway.

Mr. Jannell reviewed the request. Mr. Brink said since there is an Order outstanding, he'd encourage the administrator to send a note to the owner that once the stairway is complete to close the open order.

MOTION: A motion to approve with the instruction to ask the homeowner to request a Certificate of Compliance once the stairway is completed was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

Administrator's Business

Vote to authorize the spending of up the \$8,000 out of the Wetland's Protection Fund for educational brochures

MOTION: A motion to approve the spending out of the Wetland's Protection Fund for educational brochures was made by Mike Brink and seconded by Drusy Henson.

Mr. North asked if we'd looked at updating. He asked specifically about Pollinator Pathway and fertilizer. Mr. Jannell said it's more driven toward providing the rules of the state and the town. Mr. Mgrdichian said perhaps what Mr. North was discussing could be in a different pamphlet. Ms. North thought we shouldn't lose opportunities to educate people. He agrees that now is not the time to do this, but we should be looking for opportunities to do this. Mr. Jannell went

over the elements of the brochures. Ms. Henson suggested that we go ahead with purchasing the brochures and then offer another insert that could be added to the brochures later.

VOTE: 7-0-0 Unanimous

Review proposed changes to the Putnam Farm Rules & Regulations document.

Mr. Jannell reviewed the rules and regulations document.

Mr. North suggested spelling out LAND and CSA. Mr. Jannell said he would change LAND to Conservation Property and CSA will become Community Supported Agriculture.

Mr. North asked for clarification on the high ground water situation. Mr. Jannell stated that the property is low, when there is frozen ground and a significant rain event, we have flooding on this property. Mr. Jannell wasn't sure we disclosed this to some of our most recent growers, so we want to be up front about that in our regulations document.

Mr. Jannell reported on some of the requests of the Agricultural Advisory Council. There was ample discussion regarding whether a security deposit may be required for those growers who choose not to return to ensure that they clean up their plots. Perhaps the insertion of a sentence that the Conservation Commission reserves the right to issue a citation for any post activity clean up. They want a confidence level that if left unclean the Commission would have the resources to do whatever is necessary to clean it up. Growers preferred the approach of volunteering to help clear neighboring plots over requiring a security deposit. Mr. Brink asked if there is a way of doing a citation in case volunteers can't come in.

Mr. Jannell and the Commission discussed some of the issues with spreading off plot and how they can correct it. There was discussion of providing a 1-year grace period to the growers who have gone off-plot. Ms. Henson asked, is the Commission in agreement that we will give them a year to get it in order? The Commission said yes, as long as when they come back the next year, they are in compliance.

MOTION: A motion to support the changes and finalize this for the 2022 season with the edits as discussed during this meeting was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

JW, WN, MB, DH, MW, AC, GF

AC voted in RMs place.

Discussion

Ms. Farber announced she'd been in touch with the planning department regarding a meeting to discuss their economic development.

Mr. North brought up the walk that he and others went on in Rock Harbor.

Mr. Jannell reported that the 141 Portanimitcut Rd dwelling had been removed.

Chairman's Business

Meeting minutes of 2/15/22

MOTION: A motion to approve the minutes was made by Mike Brink and seconded by Drusy Henson.

VOTE: 6-0-0 Unanimous

AC did not vote

MOTION: A motion to adjourn the public hearing was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

The meeting adjourned at 11:23 a.m.

Submitted by:

Kristyna Smith, Principal Clerk, Orleans Conservation