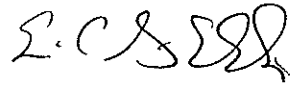


ASST

ORLEANS TOWN CLERK



22 APR 20 10:05am

Orleans Conservation Commission  
Hybrid, Nauset Room or via Zoom  
Hearing, Tuesday, April 5<sup>th</sup>, 2022

**PRESENT:** Chair Ginny Farber, Vice Chair Mike Brink, Clerk Drusilla Henson, Member Walter North, Member Bob Rothberg, Member Ron Mgrdichian, Member Jerry Wander, Associate Member Judith Bruce, & Conservation Agent John Jannell

**ABSENT:** Associate Member Alan Carrier, Associate Member Maia Ward

8:30 a.m. Call to Order

**Notices of Intent**

Stephen B. & Cynthia A. Boothby 82 Captain Linnell Rd  
By Ryder & Wilcox, Inc. Map 32, Parcel 52. The proposed construction of a swimming pool and patio. Work will occur within the 100' buffer zone to the top of a Coastal Bank and within a Riverfront Area.

Russell Holden, Ryder & Wilcox, was present to review the application. Tim Klink, Coastal Companies, contractor for the project, was also present. Mr. Holden reviewed the existing conditions including the resource areas. He described how they delineated the stream; it shows as blue on the USGS map. He reviewed the proposal.

Ms. Farber asked Mr. Holden to talk about the upgraded leeching field and whether it can go further landward? Mr. Holden said they have about 2' to play with because of all the required setbacks. Ms. Farber suggested the backwash pit should be moved. Mr. Holden pointed out that one of the cherry trees shown on the plan is actually a locust and they will likely remove it. Ms. Farber asked if it is possible to make the patio smaller and asked if that will help save any tree. Mr. Klink described the constraints on the property. Mr. North asked if it is possible to move the septic to the northeast and push the pool back? Mr. Holden said no and explained why. Mr. Klink said they looked at putting the septic in the front yard but that would require completely redoing the plumbing in the house. Ms. Bruce requested detail on the patio, including spacing. Mr. Klink said he will provide a spec on the material proposed between the pavers.

Ms. Henson asked for some sort of demarcation, so the homeowners don't go into the Riverfront area and disturb it, perhaps where the edge of clearing/lawn is shown. You could continue with the cedars to the property line or small, low shrubs. We should keep people out of that area as much as we can

Ms. Farber preferred that anything reseeded should be reseeded with fescue clover, no mow, and then you don't need irrigation.

Ms. Henson requested mitigation for the tree removals, native plantings preferred as replacement.

**Public comment:**

Ken Gandolfi, abutter, resides at 84 Capt. Linnell Rd, expressed concern for permitting a pool, patio and fencing. It is proposed on conservation land that is well used and inhabited by wildlife. He said, we have noticed that the river has been getting wider over the years and

holding more water. We have seen more eastern box and snapping turtles. He was concerned that installation would have a detrimental effect on these species to forage and nest. He doesn't want to set a precedent in the neighborhood. He wondered if they build without encroaching on this conservation land.

Gale Garfield Schwartz, lives on Mayflower point, said she does not live in the neighborhood. Under what regulation or law can a variance be given to build on a conservation property? Mr. Jannell responded to her question at length.

Mr. Jannell suggested looking into an alternative that pushes this closer to the field and doesn't cut into the undisturbed portion of the site.

The applicant requested a continuance to 4/19/22.

**MOTION:** A motion to continue the public hearing to 4/19/22 was made by Mike Brink and seconded by Drusy Henson.

**VOTE:** 7-0-0 Unanimous

Karen Cichowski & Pasi Janne

17 Portside Ln

By Ryder & Wilcox, Inc. Map 63, Parcel 49. The proposed construction of a single-family dwelling. Work will occur within the 100' buffer zone to the top of a Coastal Bank and within the Pleasant Bay ACEC.

David Lyttle, Ryder & Wilcox, was present to review the application. Katelyn Manfredo, SV Design, was present via Zoom to discuss any design questions. Mr. Lyttle reviewed the Resource Areas and the proposed activity. The dwelling and deck have been located landward of the 75' buffer zone. All proposed construction is located landward of the ACEC designation. They have worked to push this house as landward as possible, and they've oriented the dwelling in this location because it gives us the most area outside of jurisdiction. He discussed how the grade would change on the site. He reviewed some of his revisions made since the original submission. He reported they are requesting to remove the downed trees only.

Ms. Farber said she was concerned about the regrading and the fill near the ACEC, it will create enough of a slope that there will be a need for the stairs. Mr. Lyttle responded that the site is driving the need for fill, and he described the details. Ms. Farber requested a volume calculation for the fill. The Commission and Mr. Lyttle discussed the grade increases. The Commission expressed concerns about the grading. Mr. Lyttle said if the Conservation Commission doesn't like the grading scheme, he can tighten it up, so we don't fill as much but they are just trying to provide access to the proposed patio and then the existing path. Ms. Farber said she would like to see what this would look like without the grading. Mr. Lyttle asked, how does this little area of fill have an impact on the ACEC resources? Ms. Farber would like to know what happens to runoff.

Mr. Mgrdichian said this is a very substantial structure, a good portion is in the 75-100' BZ. The patios are being installed in the 75-100' BZ in addition to the deck and parts of the house. He stated he has an issue with the necessity for the patios to be in that area along with the more essential parts of the home. If you want all of that, this piece of land may not be right for the owners.

Mr. Wander said he had no issue with the steps and patio. He was concerned about the lower patio and the potential runoff. Mr. Brink agreed with Mr. Wander, he wasn't concerned with the amount of grading but with a way of capturing runoff. Ms. Henson was concerned with the runoff and protecting the river from any runoff.

Mr. Rothberg pointed out that the timber steps weren't in the photo, but he doesn't have any issues with the steps otherwise. Mr. Lyttle said he can address drainage issues and look into moving the steps, but he was trying to address access to an existing path. Ms. Bruce said she appreciated keeping the building, deck, and patio outside of the ACEC. She said she doesn't understand the need for a change in terrain and she is concerned about the amount of hardscape. She hoped there's not a turf lawn connecting all that hardscape. She'd like to see what's left naturalized and perhaps with some additional native species.

Mr. Brink would like a plan note that the path be natural with no improvements.

Ms. Farber said that Mr. Lyttle has asked to remove deadfall. Mr. Brink said there was not a lot so he would be ok with its removal as long as we recognize it's just two trees and some deadfall. Mr. Lyttle is ok with a condition that all work be done by hand and removed via the path. Ms. Farber said her concern about the deadfall was that it provides habitat. Ms. Bruce said perhaps some of the deadfall be removed but not all of it, if possible.

Mr. Lyttle said he wished more Commissioners had come down to assess the deadfall.

Ms. Henson agreed with removing one of the dead pines, it is posing a hazard to other vegetation. Mr. Lyttle said he'd mark the area on the plan.

Mr. Wander said, as explanation for not going down the bank, in the project narrative there was no work proposed on the Coastal Bank.

#### Public Comment:

David Dunford, abutter at 11 Portside Ln, property immediately to the east. Mr. Dunford thought the Commission had excellent points. This is a wildlife corridor. He'd like to see as much of this property maintained in its natural state as possible. He asked that the applicants consider moving things away from his property line. He recommended that at a minimum there be some screening vegetation put up between the 50-100' buffer zone.

Mr. Lyttle said screening is an excellent idea for Mr. Dunford and his clients as well. He will address that.

Mr. Jannell asked is it all going to be turf lawn, He suggested harmony mix as a good option. He asked, could they incorporate some other vegetation to address some of the runoff and wildlife habitat concerns.

Mr. Lyttle requested a continuance to 5/3/22.

**MOTION:** A motion to continue the public hearing to 5/3/22 was made by Mike Brink and seconded by Drusy Henson.

**VOTE:** 7-0-0 Unanimous

MB, GF, DH, RM, BR, WN, JW

Sarah W. & David L. Brassard, Trustees

14 Deacon's Wy

By Ryder & Wilcox, Inc. Map 76, Parcel 39. The proposed construction of an addition onto a single-family dwelling, installation of a swimming pool, and hardscaping. Work will occur within the 100' buffer zone to the top of a Coastal Bank, and within the Pleasant Bay ACEC.

Stephanie Sequin, Ryder & Wilcox, was present and reviewed the application. Dave Brassard, property owner was also present. Ms. Sequin reviewed the resource areas, existing conditions, and proposed activity. She reviewed the mitigation plans.

Ms. Bruce thought this was a small project that has been kept mostly outside of the ACEC in a previously disturbed area. However, she has issue with the fact that the property is being mowed not just to the marsh but actually into the marsh. It would be much better to have this area left to naturalize. Ms. Farber agreed and requested they establish a vegetated buffer at the top of bank and then everything left below that should be left to naturalize. The goal is to keep activity out of the resource area. Mr. North asked what the additional coverage is in the 75' buffer zone. Ms. Sequin said he plan doesn't show the 75' BZ but it's very close to the ACEC.

Mr. Jannell asked if someone was cutting the marsh in front of your property. Is that a practice you are doing without permits? Mr. Brassard responded that their neighbors had permits next door and the neighbors told them to do it. Mr. Jannell told him they had permits for a different area of the mash and it does not extend to your property. Mr. Jannell said this practice needs to stop until you permit it.

The Commission brought up a no mow area that would be from the Top of Bank down to the salt marsh. Mr. Brassard requested continuing to manage the area as it has been historically, as lawn. Ms. Farber said they would like to help him maintain the property using best practices and work to protect the marsh. They are not trying to be punitive but trying to educate. The best practice is to keep the Coastal Bank as native and undisturbed as possible.

Ms. Bruce said its important distinguish between removing the phragmites and maintaining the Coastal Bank as lawn. Mr. Jannell said there's a low area where you can abandon the practice of mowing and there may be other options for improving this area.

No public comment was heard.

Ms. Sequin requested a continuance to 4/19/22

**MOTION:** A motion to continue the public hearing to 4/19/22 was made by Mike Brink and seconded by Drusy Henson.

**VOTE:** 7-0-0 Unanimous

MB, GF, DH, RM, WN, BR, JW

### **Continuations**

Craig Muzilla & Sharon Berka

49 Chestnut Dr

By Ryder & Wilcox, Inc. Map 64, Parcel 9. The proposed construction of timber stairs, installation of a kayak rack, invasive plant species removal and site management and restoration. Work will occur within the 100' buffer zone to the Top of a Coastal Bank, on a

Coastal Beach, on a Coastal Bank, within Land Subject to Coastal Storm Flowage, and within the Pleasant Bay ACEC.

David Lyttle, Ryder & Wilcox, was present and reviewed the documents he submitted since the previous hearing. He described the anchoring system they are proposing to keep the kayak rack in place. Caitrin Higgins, Wilkinson Ecological Design, was also present. Ms. Farber asked if the bench was going to be dug in. Mr. Lyttle responded that the applicants intend to build a new bench and place it on the lawn. Mr. Jannell reported on his kayak rack research and who owns the one existing on site. Mr. Jannell and Mr. Lyttle agreed to work together to figure out who owns the rack and try to get it removed.

Nathan Sears, Harbormaster, spoke about his recommendations for kayak racks.

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 49 Chestnut Drive with the Conservation Commission Findings and Standard Conditions and the special condition that there be a contractor change clause was made by Mike Brink and seconded by Drusy Henson.

References: Ryder & Wilcox Project narrative 2/24; Ryder & Wilcox Site Plan 2/24; WED Restoration Plan 2/24; Kayak rack photo undated; WED LMP 2/24

**VOTE:** 7-0-0 Unanimous

Orleans Conservation Trust 4 Braddocks Wy  
By Coastal Engineering Co., Inc. Map 49, Parcel 50. The proposed vegetation management.  
Work will occur within the 100' buffer zone to the Edge of Wetland and a Coastal Bank, on a Coastal Bank, within Land Subject to Coastal Storm Flowage, and within the Pleasant Bay ACEC.

The representative requested a continuance to 4/19/22 via a letter received by the office on 4/4/22.

No public comment was heard.

**MOTION:** A motion to continue the public hearing to 4/19/22 was made by Mike Brink and seconded by Drusy Henson.

**VOTE:** 7-0-0 Unanimous

MB, GF, DH, RM, WN, BR, JW

## Revised Plan

Paul & Jane Harrity

57 Kenneth Ln

The proposed revised plan showing the addition of 3 trees and native plantings to replace two 8" oaks.

Mr. Jannell reviewed the unauthorized work that took place on site, the removals are noted on the revised plan for which they were required to submit. He reported that the office is not in receipt of the acknowledgement of contractor form. They are now required to show the replacement trees and the removals on a revised plan. Mr. North was very concerned that they'd had a number of public hearings about the trees and two on-sites, and this action still occurred. Mr. North asked if we were considering enforcement action. Mr. Jannell said we did take enforcement action by way of a stop work order and citations to the property owner and the contractor.

Mr. Harrity, property owner, was present and apologized for having to come in front of the Commission for this issue. He reported that unbeknownst to everyone, this contractor went into this area and removed the trees. It was only when our landscaper showed up that we knew it occurred and he called Mr. Jannell immediately. We were baffled as to what he was thinking or why he would do that.

Mr. Mulcahy described the unauthorized trees that were removed, he said the trees were 20-30' tall and they did not have a fully established canopy. They are proposing replanting in an identical location to the disturbance and even coming into the view corridor.

Commissioners expressed frustration. Ms. Bruce said she thinks it's essential for homeowners to talk with all contractors on the property. Ms. Bruce thought the removals should be replaced with the same size trees.

Ms. Farber asked, have you chosen a buffer zone contractor, we have not received the required paperwork. Mr. Jannell reiterated that the office had not received the paperwork and it is required before work start. There is a sense of urgency to get these plantings in, now is the time of year.

Mr. Jannell said the like-for-like size replacements is a challenging ask, there are probably access considerations that Mr. Mulcahy would have to talk about. He is proposing the largest commonly available nursery stock and there is a mortality risk associated with a tree of larger size.

Mr. Brink suggested a 2:1 replacement at the smaller size with a continuing condition that they be survived over 3-5 years. Many other Commissioners liked this idea. He asked, is there space where a 4<sup>th</sup> tree can be accommodated? Mr. Mulcahy said that with a fourth tree they'd have to go into an existing vegetated area. Ms. Bruce suggested less lawn or less view corridor. Ms. Henson said the issue is the loss of canopy, and 4 trees will provide more canopy. A fourth tree somewhere on the property. Mr. North asked if the Commission could delegate John to work with the contractor to place a fourth tree? Ms. Henson we can agree to the 3 trees in the proposed location, and then Mr. Jannell can work with the applicant for a fourth.

**MOTION:** A motion to approve the revised plan at 57 Kenneth Ln subject to the addition of 1 tree (4 total) placed within jurisdiction was made by Mike Brink and seconded by Drusy Henson.

**VOTE:** 7-0-0 Unanimous

## Certificates of Compliance

Dana Eldridge

12 Tides End Ln

DEP # SE 054-900: The licensing, installation, and maintenance of an existing dock.

Mr. Jannell reviewed the application, the project is in compliance.

**MOTION:** A motion to approve the issuance of a Certificate of Compliance at 12 Tides End Ln with the standard conditions on all docks and piers was made by Mike Brink and seconded by Drusy Henson.

**VOTE:** 7-0-0 Unanimous

Marsha C Salett

100 Freeman Ln

DEP # SE 054-2461: The installation of dug-in timber steps, construction of a kayak rack, and invasive plant removal. Work occurred within 100' of a Salt Marsh, within Land Subject to Coastal Storm Flowage, and on a Coastal Bank.

Mr. Jannell reviewed the application and said the project can be found in compliance with the ongoing condition requested.

**MOTION:** A motion to approve the issuance of a Certificate of Compliance at 100 Freeman Ln with an ongoing condition that allows invasive plant management follow-up treatments by a license applicator after notice to the office was made by Mike Brink and seconded by Drusy Henson.

**VOTE:** 7-0-0 Unanimous

## Administrative Reviews

Robert Palumbo

8 Alewife Wy

The proposed removal of an existing brick walkway and brick steps and replacement with a bluestone patio (24'x24') and natural bluestone treads, and the extension of an existing deck.

Mr. Jannell reviewed the email correspondence between him and the property owner. He owner agreed it would be pitched away from the herring run and he would install a French drain. He will lay down gravel under the deck, so no runoff occurs.

The Commissioners asked about some vegetation that had been cut on the property. Mr. Jannell described his communications with the owner about this.

Ms. Bruce thought some mitigation was warranted for the proposal. Ms. Farber was concerned about the amount of hardscaping and the fact that there was a lot of lawn on the property.

Ms. Farber polled the Commission regarding whether they thought this application required a Notice of Intent or they could approve it with an Administrative Review. Mr. Wander, Mr. Brink, Ms. Farber, Ms. Henson, Ms. Bruce, and Mr. North thought the applicant should file a Notice of Intent.

Ms. Bruce requested Mr. Jannell please express some of their concerns to the homeowner.

**MOTION:** A motion to deny the project at 8 Alewife and request they apply via a Notice of Intent was made by Mike Brink and seconded by Drusy Henson.

**VOTE:** 7-0-0 Unanimous

Andy Cooper

8 Kescayogansett Rd

The proposed removal of one window, installation of a door, and infill of a transom opening of the existing door on an existing boathouse.

Mr. Jannell reviewed the request and said this proposal makes a lot of sense because by putting the door in the proposed location they will avoid walking on the marsh. There is no expansion or change in footprint of the structure.

Ms. Henson asked about controlling debris. Mr. Jannell said since there is an open order he has right to access and he isn't very concerned about that but he will let the contractor know.

**MOTION:** A motion to approve the project at 8 Kescayogansett Rd with no expansion of the footprint was made by Mike Brink and seconded by Drusy Henson.

**VOTE:** 7-0-0 Unanimous

### **Other Business**

Meet with the Natural Resources Director for an annual beach update as required under DEP #s SE 054-723 and SE 054-2246

Mr. Jannell introduced the agenda item. This meeting is required under the above referenced orders.

Nathan Sears, Natural Resources Director, was present. Keegan Burke, Natural Resource Officer, introduced himself and reviewed his previous experience.

Mr. Sears provided some background and some requirements of the Order. He described their initiative to educate about the public about what low beach driving is. He described Mr. Burke's responsibilities on the beach in season and off season. He gave updated on: Piping Plovers; dogs; general beach conditions.

Mr. Sears will be looking for allowance of a temporary alternative route, as he has requested in the past from the commission. They need to direct traffic 150' away from nesting shorebirds. Mr. Jannell reiterated that the Natural Resource dept will be looking for action from the Commission today. They have it built into the Order that they can allow and act on temporary alternate routes. Mr. Sears said it's just a slight bump out. It will be modest and avoid vegetation.

Mr. Sears reviewed the Habitat Conservation Plan. It allows driving by up to two broods of unfledged plover chicks. He described the restricted access periods and required self-escorts out in front of vehicles. The goal is to minimize late nesting to minimize beach closures.

Mr. Burke reviewed the endangered species and their productivity on the site, both present and historic. He reviewed Tern colonies and terrapin protocols. Nauset's productivity levels have been above average for the state.

Mr. Brink requested we send Dick Hilmer a letter for his years of service and good years on the beach.



**MOTION:** A motion to allow Natural Resources Manager to establish a temporary alternative route, if necessary, was made by Mike Brink and seconded by Drusy Henson.

**VOTE:** 7-0-0 Unanimous

*Vote to authorize sticker parking at 141 Portanimicut Rd consistent with adjacent town landing rules*

Mr. Jannell reported that in the approval for undeveloping this lot and establishing parking, we had carried a recommendation to dovetail with any parking restrictions that came along with the adjacent town landing. The adjacent town landing will be requiring sticker parking.

Nathan Sears, Natural Resources Director, identified key locations in town for parking restrictions where access to water that have been overburdened in the past. This location is one of them. A sticker enforcement officer will be able to enforce sticker parking at the landing and the conservation property. Mr. North asked what resources were used to purchase the property and if we are allowed to restrict parking. The seasonal restriction will be June 15 to Sept 15, and we think it will prioritize residents.

**MOTION:** A motion to authorize sticker parking at 141 Portanimicut Rd, consistent with the adjacent Town landing, and to confirm this is not in conflict with the funding was made by Mike Brink and seconded by Drusy Henson.

**VOTE:** 7-0-0 Unanimous

### **Administrator's Business**

*Update on Land Subject to Coastal Storm Flowage performance standards*

*Discussion of Model Coastal Resiliency Article*

Ms. Farber asked if the Commission wanted to postpone due to the late hour. Mr. Jannell said he was ready to talk about this.

Mr. North said that we are an enforcement agency, and we aren't taking our responsibilities as a regulatory guardian as seriously as other items. Our regulations are insufficiently protective of our natural resources and the character of the community. He doesn't favor continuing the agenda when the most important topics are at the end, when the Commission is most tired and least able to deal with them effectively.

There was some discussion amongst all Commissioners about how and when we can discuss these important topics. The Commission decided these will be items #2 & #3 on the 4/19 agenda.

### **Chairman's Business**

Meeting minutes of 3/15/22

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

**VOTE:** 7-0-0 Unanimous

**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 11:42 a.m.

Submitted by:

Kristyna Smith, Principal Clerk, Orleans Conservation