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ORLEANS TOWN CLERK

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Orleans Conservation Commission
Nauset Room or Via Zoom
Hearing, Tuesday, April 19th, 2022

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

ABSENT: Member Ron Mgrdichian, Associate Member Alan Carrier, Associate Member Maia

8:30 a.m. Call to Order

Notices of Intent

Morgan Lackenbauer 21 Tanglewood Terrace
By Coastal Engineering Co., Inc. Map 20, Parcel 82. The proposed installation of a Coastal Bank stairway, kayak rack, vista pruning, and land management plan. Work will occur on a Coastal Beach, on a Coastal Bank, and within Land Subject to Coastal Storm Flowage.

Caitrin Higgins, Wilkinson Ecological Design (WED), was present and reviewed the application. Catherine Ricks, Coastal Engineering, was also present to review the application. She reviewed DEP Policy 92-1 to describe how they delineated the Top of Coastal Bank. Mr. Jannell further described this logic. Ms. Higgins reviewed the Restoration Plan. She reviewed the work that WED had done previously on the property but that has since been inundated with invasive vegetation. They are requesting the opportunity to remove invasives by hand and expand the work along the western property line. Essentially, they are restoring a previous mitigation plan with a new homeowner.

Ms. Henson requested that, because the new definition of the bank puts the pool patio right on top of the Coastal Bank, the applicant put another foot or two of woody shrubs near the pool edge. She knows there needs to be access but anything they could provide to mitigate runoff from the pool patio.

Ms. Farber requested the WED plan accurately show the TOB. Ms. Farber requested a spec for the kayak rack.

Ms. Higgins pointed out the kayak rack will be behind the High Tide Bush so it won't be visible.

Mr. North said he didn't see evidence of previous mitigation. Mr. Jannell and Ms. Higgins said that is a good thing, that means they did their job right. It's because its really established and doing well.

Ms. Bruce asked if there's a way to require invasive management long term. Mr. Jannell said the only way would be to require them with continuing conditions at time of issuance of a Certificate of Compliance.

Public comment:

Mark Matheson, abutter 20 Tanglewood Terrace, thought the stairway and kayak rack would save a lot of wear and tear on the bank and he is in favor of the project.

The Commission and representative reviewed the Commission requests: The WED plan will be revised to show the Top of Bank delineation consistent with the Coastal Engineering Plan; the extension of woody shrubs along the path; and eliminate the plan note on the cedar.

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, WN, BR, JW, JB

MOTION: A motion to approve the project at 21 Tanglewood Terrace with the Conservation Commission Findings and Standard Conditions subject to receipt of a kayak rack spec, revised plan from WED, and with a special condition there be a contractor change clause was made by Mike Brink and seconded by Drusy Henson.

References: Coastal Engineering NOI package; Coastal Engineering Coastal Bank Mitigation and Access plan dated 3/31/22 (Sheets 1-3); WED Restoration Plan dated 4/19/22

VOTE: 7-0-0 Unanimous

Ms. Farber stated they will take 14 Deacon's out of order because the applicant and homeowner are in the room.

Sarah W. & David L. Brassard, Trustees
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 and the revisions made since the last hearing. David Brassard, homeowner

Mr. Rothberg asked if they'd considered a delineator for the no mow area. Mr. Brassard and Ms. Sequin said they would delineate with stone. Mr. Brink suggested woody shrubs instead of stone. Ms. Farber was concerned that the work being proposed is still in a Resource Area. The Commission discussed wanting a vegetated buffer. Ms. Sequin argued that this is how the landscape has been kept historically. Ms. Henson said we are asking for more mitigation because you are adding living area, hardscape, and therefore additional usage.

The Commission discussed the no-mow area and how they'd like to see what vegetation comes up naturally. Any mowing would require prior notification to and approval from the office. Many Commissioners stated they would like to see an additional 5' added to the No-Mow-Zone for a total of 25'. Ms. Farber polled the Commission; a quorum would require this for approval.

Ms. Sequin asked the Commission if they would approve today subject to a 25' buffer strip with stone delineator.

Mr. Jannell suggested a special condition for annual mowing and to add that mowing be further reviewed at request for COC with ongoing condition. The approval should be subject to receipt of a revised plan showing no mow zone at 25' from edge of Salt Marsh and delineation with stone.

zones. Natural systems don't have those kinds of borderlines. He hopes they will be able to have a broader discussion about our regulations and their efficacy.

Continuations

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.

Mr. Jannell reported that the applicant requested a continuance to 5/3/22 via a letter to the Conservation office.

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

Stephen B. & Cynthia A. Boothby 82 Captain Linnell Rd
This application was withdrawn on 4/8/2022

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.

Mr. Jannell said that for the record the Commission should make a motion to accept the withdrawal.

MOTION: A motion to accept the withdrawal of the NOI application was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

Revised Plan

Andrew & Maria LeStage 14 Hayward Ln
By Blue Flax Design, Map 50, Parcel 2-1. The proposed removal and replacement of standing dead cedars and the installation of a secondary limit of work to protect two oak trees.

Mr. Jannell reported that the office received a request to withdraw the revised plan request by the applicant's representative. For now, they are going to let that stand of trees stay and we will deal with them as they fall or don't fall.

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.

See letter dated 3/22/22 requesting a continuance to 5/17/22.

Mr. Jannell said this was supposed to be on the agenda today, but we got a letter a couple weeks ago requesting a continuance. They've asked for a continuance to 5/17/22.

Mr. Jannell said he wants to review the area so we're not mowing out any maritime shrubs.

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, WN, BR, JW, JB

MOTION: A motion to approve the project at 14 Deacon's Way with the Conservation Commission findings and standard conditions with the special conditions that there be no mowing of the "No-Mow-Zone" for 3 years; the applicant expand the No-Mow-Zone to 25' and be delineated with stone; and any mowing requires notice to the office 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 read in both agenda items. Mr. Jannell reviewed Land Subject to Coastal Storm Flowage (LSCSF) performance standard. There may be a June adoption of performance standards for LSCSF by the state. So far there is no draft for DEP's anticipated adoption. He pointed out that Orleans is one of the rare towns that has regulations on LSCSF (196A – 9A). Sometimes they get challenged because they read like they are based on still water flood zones.

He continued, LSCSF performance standards from the state would be your new required minimum. Once the performance standards are implemented, we need to talk about it and adopt them as part of our local bylaw. We would likely have a regulation change to be, at a minimum, consistent with what the state adopts.

Regarding the Coastal Resiliency Article, it uses the term Coastal Resiliency Zone. He reviewed their definition. What it consists of may change based on your town's coast. Mr. Jannell said he will track and let the Commission know once there is something official to look at. We may have actions to take once something comes down from the state.

Ms. Bruce said they'd have to have extensive discussions with the planning board. There will be conflicts with height restrictions as buildings go up in the flood zone. It may be better environmentally but perhaps in conflict with existing laws.

Ms. Henson asked if they will be able to regulate the buffer zones in these new transition zones. Mr. Jannell said yes, the buffer zone is on the table. You may not need to do anything with the buffer zone if it gets exceeded by LSCSF.

Mr. North thanked Mr. Jannell for his due diligence. It will be very challenging to get a handle on this and then explain it to a wider audience of our fellow residents. He has broader concerns about the effectiveness of our overall regulations in sustaining the natural base we are working to protect. He was specifically concerned about the deforestation up to our buffer

The proposed installation of 100 High Tide Bush in the area that was previously a walking path.

Mr. Jannell reviewed the application for High Tide Bush (HTB) plantings. He pointed out that all the activity is proposed in Salt Marsh. Mr. Brodeur said the plantings are proposed within the pathway and landward. Ms. Farber would prefer to see this as an NOI with a set contractor involved. There is a lot of HTB already in that area, and it propagates very easily. She thinks it should be allowed to naturalize. She was concerned about all the digging in the marsh. Ms. Bruce said she didn't see any negative impact to installing HTB there.

Mr. Brodeur said in the future he hopes the HTB will create a natural barrier so they can remove the fence.

Mr. Jannell pointed out that 100, 3-4-gallon holes is a lot of disturbance and may disturb what is there. Ms. Bruce suggested small plugs and limit them to 20 on each property/

Ms. Henson suggested a NOI on this so we can have a proper discussion and condition it with a landscaper and see the delineations, etc.

Mr. Rothberg said getting an NOI would be great but maybe if we cut it down to 25 each side and plug size it would be ok.

Mr. Jannell said the plugs get to his only concern, which is the digging.

MOTION: A motion to approve the Administrative Review at 24 & 25 with the conditions that the plantings be 25 small plugs on each property, and installation be trowel work only was made by Mike Brink and seconded by Drusy Henson

VOTE: 7-0-0 Unanimous

Other Business

Discussion

Chairman's Business

Meeting minutes of 4/5/22

MOTION: A motion to approve the minutes of 4/5/22 was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

MOTION: A motion to adjourn at 10:18 a.m. was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

The meeting adjourned at 10:18 a.m.

Submitted by:

Kristyna Smith, Principal Clerk, Orleans Conservation

Mr. Jannell reported that he'd been on site, and they are moving forward in good faith. They have taken down the lights in the buffer zone. Delays are due to the schedule of the professionals they have engaged.

Ms. Farber pointed out that they still reserve the right to fine.

MOTION: A motion to continue the Enforcement Order to 5/17/22 was made by Mike Brink and seconded by Drusy Henson

VOTE: 7-0-0 Unanimous

Administrative Review

Anne Sigsbee

35 Keziahs Ln

The proposed installation of an Osprey platform.

Ms. Counihan could not get her Zoom audio to work so Mr. Jannell reviewed the request. Mr. North said his only concern was maintenance, sometimes there is a lack of follow up maintenance. Ms. Bruce said in her experience, MA Audubon is very good about maintenance.

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

VOTE: 7-0-0 Unanimous

George Smith

31 Great Oak Rd

The proposed second story addition to an existing garage.

Mr. Jannell reviewed the proposal. The garage sits right at the 100' buffer zone, the majority is outside the 100'. There is no ground disturbance, the roof comes off and the garage goes up. Considering a lot of it is outside of the BZ he thought and Administrative Review would be appropriate. To get to the apartment there are stairs, but they are proposed outside of the BZ.

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

VOTE: 7-0-0 Unanimous

Stephen & Andrea Brodeur

25 Weeset Proprietor's Wy

The proposed replacement of exterior windows and doors with adjoining repair work and the enclosure of an existing breezeway between the house and garage.

Mr. Jannell reviewed the application. Mr. Brodeur was present via Zoom, he said they are proposing to enclose it with windows. Most of the work will occur within the house.

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

VOTE: 7-0-0 Unanimous

Public Art

Identification and Approval Process

1. Project concept and location identified
2. Identify funding source
3. Orleans Cultural District Committee (CDC) develops scope of work
4. Town issues RFP/RFQ for qualified artist
5. CDC reviews and ranks proposals in accordance with RFP/RFQ
6. Recommendation by CDC to Town Administrator
7. Town Administrator negotiates final contract with selected artist
8. Artist completes work under contract