

Asst.

ORLEANS TOWN CLERK

ECS

22 MAY 18 11:00AM

Orleans Conservation Commission
Nauset Room or Via Zoom
Hearing, Tuesday, May 3rd, 2022

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

ABSENT: Member Walter North

8:30 a.m. Call to Order

Notices of Intent

Heather Day 45 Bridge Rd
By Schofield Brothers of Cape Cod. Map 17, Parcel 87. The proposed construction of an addition and patio to a single-family dwelling, and enclosure of an existing greenhouse. Work will occur within the 100' buffer zone to a Bordering Vegetated Wetland.

Laura Schofield, Schofield Brothers, was present and reviewed the application. She reviewed the proposal and the resource areas that affect the property. She pointed out that there is a Certificate of Compliance request for this property for a proposal that was much larger than what was approved in the past. Mr. Brink said that in 2012 a larger project was approved by the Commission, so he doesn't have an issue with what is proposed, he thinks it's a good project.

Ms. Henson asked about a fence that goes into the edge of wetland. She requested space under the fence for critter passage. She'd like to see some space behind the fence allowed to revegetate naturally. Ms. Schofield responded that she'd talk to the homeowner about lifting the fence a little bit without allowing coyotes in. Mr. Rothberg asked about the spacing between the patio pavers, Ms. Schofield responded that they'd probably be spaced about a half inch. He requested a special condition that the spacing between the patio pavers be called out in the Order.

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 45 Bridge Rd attaching the Conservation Commission Findings and Standard Conditions with the special condition that the existing fence be 4" above ground; the dry laid patio will have half inch spacing between the pavers; no mowing will occur behind the fence was made by Mike Brink and seconded by Drusy Henson.

References: Schofield Brothers Project Summary and Narrative, undated; Schofield Brothers Site Plan 4/14/22; Ryder & Wilcox proposed additions and renovations, dated 8/27/22.

VOTE: 7-0-0 Unanimous

Continuations

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 and reviewed the revisions made since the last hearing. They include: a reduction in the size of the lower patio by 124 sf; a tightened-up limit of work; timber step detail; a 5' planted buffer along the toe of the proposed slope. He reviewed the plantings and noted where 3 trees are proposed to be removed. They intend to work with the neighbor Dave Dunford to install screening plantings. He reported that the fill amount is 76 yards to create the new slope, and that they are removing 1,500 yards for the installation of the dwelling.

Mr. Brink said he thought all issues discussed at the previous hearing were covered by the revisions. Mr. Wander asked about the upper patio. Mr. Lyttle said the upper patio increased by 5 s.f. but there was an overall reduction in coverage from the previous hearing. He included a patio detail showing spacing and impervious material.

Mr. Jannell said he heard a concept about bringing in additional plantings for screening, how would they like to handle that? Mr. Lyttle said they'd like to build the dwelling before determining where they may need screening plantings. The Commission decided that the applicant shall revise the plan to show screenings when the time comes.

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 17 Portside Ln attaching the Conservation Commission Findings and Standard Conditions with the special condition that after the building has gone up, a revised plan be submitted to show additional screening within jurisdiction was made by Mike Brink and seconded by Drusy Henson.

References: Ryder & Wilcox Site Plan dated 4/25/22; picture representation of house, undated; pervious patio detail dated 3/17/22.

GF, MB, DH, JW, RM, BR, AC

Orleans Conservation Trust

4 Braddock's 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.

Caitrin Higgins, Wilkinson Ecological Design (WED), representing Orleans Conservation Trust (OCT), was present to review the proposal and the changes made since the last hearing. She reviewed the documents they provided including the letter from NHESP that considered this an exempt project. They've provided additional information on sediment barriers; protocol for boathouse removal; details on installation; coppicing of several existing nonnative and/or native trees. This project is about providing new habitat areas for an endangered species, and it will provide enhanced habitat for nonthreatened species.

Seth Wilkinson, WED, spoke to the consulting level items which were brought up in the Independent Environmental Consulting (IEC). He thought IEC was making an argument to take action on a pending application based on a perception of noncompliance at a different lot in common ownership. That is not consistent with any guidance I've ever seen locally, from DEP, or from MACC. The letter incorrectly stated nesting goals were not met. He questioned IEC's knowledge of this area. He pointed out IEC's noted preferred alternative and that their project could not be any more like this preference unless they leave invasive trees but leaving invasives is not part of a normal restoration project. Mr. Wilkinson stated that in Massachusetts some habitats are ranked over another. They are proposing a habitat that has the highest value ranking.

Mr. Jannell said that in the performance standards document from WED, Coastal Bank stability was not addressed, you didn't get into 10:30 (4) and 10:30 (5). Mr. Wilkinson said what's proposed will improve the soil structure with roots. Removing shallow roots associated with a plant like bittersweet is beneficial, the area will be converted from predominantly woody vines to a dense and diverse matrix of root systems. Mr. Jannell doesn't doubt this, but he would like to see it in the narrative. There are a couple of difference banks on site because of interactions with the flood zone. He requested they take a look at this and consult the different landforms and address them in the document.

He asked the protocols for identifying den and nesting trees. Ms. Higgins discussed the logistics of how that would work.

Mr. Jannell reviewed the correspondence received by the office: a memo from Sarah Turano-Flores dated 3/15/22; a letter from NHESP noting the project exemption; Independent Environmental Consultants memo dated 4/7/22; and an administrative continuance request. We have not talked publicly about all the correspondence since we've gotten them so now is the time to ask questions about any of these.

Mr. Jannell referenced the second page of the NHESP letter where it says any changes or additions to the plans may require a refiling. It doesn't seem like any of the changes you've made since the original filing are significant, but you did add a path and made some other minor changes. Ms. Higgins said they have sent the changes to both DEP and NHESP but have not heard back yet. Mr. Jannell said we'd like to hear back from them.

Mr. Wander had questions about the herbicides to remove black locust. Ms. Higgins reviewed the protocols. Pretreatment you'd go in after about 2 weeks to remove the vegetation. Mr. Wilkinson added that this strategy helps with black locust in particular.

Ms. Henson wondered about the location of the turtle nesting site furthest west, why is it located there, and could you save canopy as result of moving that nest? She asked what if a locust falls down? Could you address our definition of clear cutting?

Ms. Higgins answered the questions about trees. There could be a condition to keep fallen tree in place for additional habitat. Leaving piles of woody debris for nesting or critters to use overwinter. We added High Tide Bush clusters because Bob Prescott identified that as protection for smaller turtles.

Mr. Wilkinson said regarding the definition of clear cutting, the regulation does say all trees. We aren't removing all trees and the vegetation and trees we are removing are invasive. The regulation goes on to support invasive plant removal. You must look at those two together.

Bob Prescott, OCT, came up to the podium to speak. He described the reason for the location of the turtle nest. They are using this area because of the footprint of the boat house since its already sand and unvegetated. He further described why a turtle might end up in this location and they'd like to be able to provide a nest there if it does.

Mr. Jannell asked Mr. Prescott about paths and their potential impacts on the habitat. The paths are put in to allow volunteers to monitor. At White's Ln the paths don't have any bare ground even though it's walked up to twice a day. If there were bare ground, they'd nest in them. Terrapins are easily disturbed but the nesting success and number of turtles using the site speak for themselves.

Paul Shea, Independent Environmental Consultants, had comments on the current proposal. He said it makes sense to propose turtle nesting sites in the area where the current boathouse is. He said the Commission should look at the whole project, saving natives should be part of their objective and they should replace invasives with native species. The Commission should make sure that the proposal that's before them that follows the original approved plan by DEP, NHESP, and the Commission. He stated that the nesting habitats of the turtles are towards the Coastal Bank, not 300' away.

Sarah Turano-Flores, was present. She stated that she represents Charlie and Faye Ruopp, who own adjacent property and have an easement that crosses this property. Overall, the creation of turtle habitat is a laudable goal. She stated that this project goes well beyond what's needed for turtle nesting habitat, and that this point is what she hopes will be the Commission's biggest takeaway. She said this proposal is lacking details including a reason why the canopy removal has to extend as far as it does. We've heard over and over that they like site lines to the water so why does the clearing of invasive species without the planting of natives occur so far inland. If there is a secondary goal of native restoration, they should remove invasives and plant them with natives. Additional missing information is that there is no inventory of what's coming out and what wildlife value they have. Where are the plant species in relation to the buffer zone and Land Subject to Coastal Storm Flowage. You are creating a flood hazard when you remove all the vegetation. This landform is protecting the upland properties including my client's property. To achieve the primary goal of creating turtle habitat you don't need to clearcut all the distance behind the nesting sites. They requested a revised plan showing the fourth nesting site to be moved further east and then the canopy could be extended further east either by letting the invasives remain or if you're going to remove them the replacement with native species should be proposed. She summarized their requests and concerns: The supplemental filing should include the species of trees to be removed and their location; for the removal work in the ACEC, there is a no adverse effect standard and it is not discussed in their performance standards; a habitat inventory should occur so they can understand if there is an adverse impact on any species; there should be verification that this is truly a restoration and is it truly exempt with NHESP; the proposal should minimize canopy removal; a surveyed delineation of the top of Coastal Bank should be done and shown on the plan; local performance standards for Coastal Bank should be discussed in the narrative; a variance request should be required which would trigger an alternative's analysis.

Steve McEvoy, abutter and resident off Henson's Wy, said we were told this was open to the public with parking spaces would be made available to the public. This is advertised on their website as a place for the public to go to. The public do not take care of the land. It's impossible

to tell when a nest has been made, it even takes the volunteers time to learn how to identify them. He thought inviting more public to the property was not fair to the wildlife and the public.

Jason Weaver, resident, 11 Mayo Wy. He is learning how aggressive OCT is in their pursuit to turn conservation land into recreation land. This is habitat and the project doesn't mesh with what conservation should be, to benefit the wildlife. Seems like there are two sets of rules and OCT is undermining our town.

Mr. Wilkinson responded to some of the speaker's concerns. We are trying to create an S1 habitat, a sandplain grassland does not have trees and shrubs. There are no shortage of trees and shrubs in Orleans but there are few of these grassland habitats. He stated that they are not going to submit all of the information the abutters request unless it's requested by the Commission. He requested the Commission give us some direction on the information they'd like to see.

Mr. Wander asked why area 3 of the proposal must be an s1 area? If you look at where the nesting areas are it's only halfway into area 3 so, why are you doing the other half. Mr. Jannell added onto Mr. Wander's question asking why aren't you replanting that area differently? Mr. Jannell thought at the previous hearing Mr. Prescott spoke to the fact that in order to commit to coming up out of the estuary the turtles don't like to see the tree backdrop.

Ms. Henson would like to see the exact location of the Coastal Bank and echoed Mr. Wander's question.

Mr. Prescott came up to the podium to clarify why area 3 is as large as it is. He stated that the boathouse footprint is very low and with sea level rise we are afraid we may lose that site. Part of the planning process is so that the turtle gardens can migrate with sea level rise and future turtle gardens can be installed.

Mr. Bruce said that sand plain grasslands are great habitat for other wildlife, not just the turtles, and she'd love to see more of these areas. While some bird like thick canopy, some like open grasslands. This will provide more diversity in Orleans. In the long wrong it's a tremendous project.

Ms. Ward commented that we should look at this through a lens of biodiversity and support the species that are struggling, like turtles, and less focus on ones that are not, like rabbits.

Ms. Farber requested more detail about a planting plan for the north side.

Mr. Jannell said he did not flag this for needing a variance. He asked, the Commission, do you view this as needing relief from the clear-cutting definition? Ms. Farber said perhaps a narrative from the applicant describing why they believe they don't need a variance. Ms. Farber asked the applicant to address the ACEC performance standard and potential impacts to bank stability and LSCSF.

Ms. Higgins requested a continuance to 6/7/22

MOTION: A motion to continue the public hearing to 6/7/22 was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous
GF, MB, DH, JW, RM, BR, AC

Certificate of Compliance

Robert & Vaughn Rowley

138 Tonset Rd

DEP # SE 054-1987: The construction of 4' wide footpath & a dug-in timber stairway. Work occurred on a Coastal Bank & within the 100' buffer zone to the top of a Coastal Bank.

Mr. Jannell reviewed his inspection and stated that this project can be found in compliance.

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

VOTE: 7-0-0 Unanimous

Hamish & Kathryn Wilkinson

45 Bridge Rd

DEP # SE 054-2172: The construction of an addition to a single-family dwelling. Work will occur within 100' of the Edge of Salt Marsh and Land Subject to Coastal Storm Flowage.

Mr. Jannell reported that the work never occurred and was never recorded at the Registry of Deeds. The Commission should close this out by striking the Order invalid, and that way we have it on file.

MOTION: A motion to approve the Certificate of Compliance, striking the Order invalid, for 45 Bridge Rd was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

Peter D. & Joan P. Nix, Trustees

14 Lewis Rd

DEP # SE 054-2556: The construction of dug-in timber steps and installation of a kayak storage rack. Work will occur on a Coastal Bank, within Land Subject to Coastal Storm Flowage, and within the Pleasant Bay ACEC.

Mr. Jannell reviewed his inspection and stated that this project can be found in compliance.

MOTION: A motion to approve the issuance of a Certificate of Compliance at 14 Lewis Rd was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

Enforcement

New Surf Properties LLC

251 Route 6A

The unpermitted removal of trees, shrubs, and vines within the 100' buffer zone to an Inland Bank, Wetland, and Intermittent Stream.

Mr. Jannell stated that it came to the attention of the department that some unpermitted cutting had occurred on this site. He reported that the area was cleared of everything including vines and a few trees. He met with the management company for the owner of the property and issued a verbal stop work order and followed it up with the

Enforcement Order (EO) Form 9 that was sent to the owners. He required a few immediate remediations including removal of woodchips and the installation of erosion control.

MOTION: A motion to ratify the Enforcement Order Form 9 with the specifications a listed and ask for a Notice of Intent filing was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

Administrative Reviews

Rich Boyle

89 Brick Hill Rd

The proposed removal of 3 trees, including one dead tree.

Mr. Jannell reviewed the application. He shared photos of the trees with the Commission. The Commission reviewed the 3 trees and provided Mr. Jannell with feedback. They took no action on the project.

Judith Scanlon

40 Monument Rd

The proposed removal of non-native maple trees and locust trees.

Mr. Jannell reviewed the application and his site visit.

MOTION: A motion to approve the Administrative Review for 40 Monument Rd was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

Margot Mineau

53 Towhee Ln

The proposed pruning of 5 English oaks.

Mr. Jannell reviewed the application and his site visit with the property owner. Ms. Bruce said those trees were intended to screen the house in a previous filing. It should be pruned only to maintain the health of the tree. Mr. Jannell said he would relay the message that there should be no stress from excessive pruning.

Mr. Brink said it make sense to recommend Mr. Jannell talk to the arborist to relay their concerns and make sure they understand the pruning should be minimal.

MOTION: A motion to approve the Administrative Review for 53 Towhee Ln with the comment that Mr. Jannell relay their request to avoid excessive pruning to the arborist was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

120 Freeman Ln LLC

120 Freeman Ln

The proposed replacement of existing beach stairs.

Mr. Jannell reviewed the request, it's a complete rebuild in the originally approved design.

MOTION: A motion to approve the Administrative Review for 120 Freeman Ln was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

Other Business

Putnam Farm – Draft Conservation Plan from NRCS

Ms. Henson reviewed the plan. She summarized the document and what we might need to do with it. Natural Resources Conservation Service (NRCS) has been partnering with us on an irrigation plan as well as other needs for the property and what we can do to get there. A lot of the recommendations with the plan are not something we could do unless we enforce it on the growers. The plan goes over soil health, crop rotation, different types of mulch, water conservation, irrigation.

NRCS asked that we register our land, it helps the NRCS, who has given us a lot of free time, track the land and the amount of time they spend working on it. She made sure we weren't required to adhere to any of their plans, timeframes, etc. We can pass this along to Town Counsel to make sure.

MOTION: A motion to ask town counsel if we can register for a farm and track number with the farm services agency was made by Drusy Henson and seconded by Mike Brink.

VOTE: 7-0-0 Unanimous

Chairman's Business

SMAST 2021 Semi Annual Report & 2020 Annual Report for Cedar Pond Adaptive Management Monitoring Program

Ms. Farber said that the reports are in packets for future discussion. Some Conservation Commission members joined the Water Quality Committee and did a visit to Rock Harbor Creek and Cedar Pond. The thought was there might be a chance to discuss further but a Certificate of Compliance has been issued that has continuing conditions around the boards. There are ongoing discussions about land management practices out there.

Meeting minutes of 4/19/22

MOTION: A motion to approve the minutes of 4/19/22 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 11:14 a.m.

Submitted by:

Kristyna Smith, Principal Clerk, Orleans Conservation