

R. E. J. J.

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Orleans Conservation Commission
Nauset Room or Via Zoom
Hearing, Tuesday, June 7th, 2022

PRESENT: Chair Ginny Farber, Vice Chair Mike Brink, Clerk Drusilla Henson, Member Walter North (via Zoom), 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 Ward

8:30 a.m. Call to Order

Notices of Intent

Matthew & Kathleen Cole 12 Prides Path
By Matthew Cole. Map 12, Parcel 20. The proposed construction of a swimming pool. Work will occur within the 100' buffer zone to the top of a Coastal Bank and within Land Subject to Coastal Storm Flowage.

David Lyttle, Ryder & Wilcox, and Matthew Cole, homeowner, were present to review the application. Mr. Cole described the work that had been previously approved and detailed what work had and had not occurred under that Order. The pool, while previously approved, was never constructed. The project received a Certificate of Compliance. Mr. Cole said they are reapplying for the work that was not completed with the original Order including the pool, patio, pool utilities, and fence work shown on the plan. He presented the exact same plans they presented previously.

Mr. Wander was not on the Commission at the time of the original approval. He asked, do we honor legacy of something from 7 years ago or do we look at it as a completely new project? He said no to the proposal, stating they don't allow something like this in the 50' buffer.

Mr. Brink stated that he was on the Commission at the time of the original approval. The property at that time had a large house right at the top of the Coastal Bank. At the time the applicant proposed to move the house back and that was why the Commission allowed the installation of the pool.

Ms. Henson asked about the two fences. Ms. Henson thought there was not enough buffer between the top of Coastal Bank and the pool. She applauded moving the house out of the 50' buffer zone but she was concerned about the secondary fence. She stated she understands needing a fence around the pool, but she didn't understand the need for the secondary fence.

Mr. Rothberg pointed out that before we had the mitigation of moving the house, he asked, what mitigation do we have now?

Mr. North asked Mr. Jannell to explain the procedural way in which we should look at this. He asked if it was a de novo matter and if it could be offset with mitigation? Mr. Jannell responded yes, but it is still important to look at the history and they can ask for mitigation.

Ms. Bruce said the area that was mitigated looks terrific, but she had concerns about the amount of lawn right up to the resource area. She said there should be no fertilizer within the 100' buffer zone. A pool within 50' buffer zone is not something we usually approve but a pool

over lawn is less egregious than a pool over undisturbed area. There would have to be some mitigation including screening for her to approve this.

Ms. Farber said as is, it's not a project she could approve. She suggested some options for moving forward: remove secondary fencing; tighten up pool fence; screening; vegetated buffer.

Mr. Lyttle asked if it would be worthwhile for Mr. Cole to come up with a mitigation plan and come back.

Mr. Wander said he cannot approve the proposal as is but with mitigation he would entertain approval.

Mr. Cole pointed out that with the previous project they did substantial work to restore the Coastal Bank and remove invasives, it wasn't just the moving back of the house as mitigation. They completed the entirety of the mitigation plans despite not doing all the hardscape work.

Mr. Jannell stated that their regulations ask for a filter strip in first 25' of the buffer zone where none exist. That could be the area of mitigation where the homeowner can focus. Fences should be out of the first 50' where possible.

Ms. Henson said she could approve the project if they provide a buffer and screening. Ms. Bruce concurred; she would like mitigation including significant naturalization of that area that would provide canopy. Mr. Rothberg said yes, he could approve with mitigation.

Mr. Cole requested a continuance to 6/21/22

No public comment was heard.

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

VOTE: 7-0-0 Unanimous
GF, MB, DH, JW, BR, WN, JB

The SC Cape Cod Real Estate Trust 17 Marsh Ln
By Ryder & Wilcox, Inc. Map 38, Parcel 12. The proposed upgrade to an existing septic system. 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. Ms. Farber asked if there were tree removals proposed. Ms. Sequin said yes, a large scrub pine that looks dead, a small white pine in poor condition, a cedar, an oak, and a cherry will need to be removed to facilitate the installation. Mr. Brink was concerned about the number of trees coming out. He requested some mitigation be offered in order to approve a variance. Ms. Henson agreed. Ms. Bruce thought it might be worthwhile to consider a different system that would be in the 50' buffer zone and in the ACEC but would avoid removing the trees.

Ms. Sequin requested a continuance to 6/21/22.

No public comment was heard.

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

VOTE: 7-0-0 Unanimous

GF, MB, DH, JW, BR, WN, JB

Phil Tinmouth & Brit Dewey 36 Old Field Rd
By Ryder & Wilcox, Inc. Map 64, Parcel 1. The proposed renovations to and existing dwelling, swimming pool replacement, landscaping, and site restoration. Work will occur on a Coastal Bank, within Land Subject to Coastal Storm Flowage, within the Pleasant Bay ACEC, and in the 100' buffer to the top of Bank.

Ms. Henson recused because she is an abutter, and she joined the public. Mr. Carrier joined the meeting.

David Lyttle, Ryder & Wilcox, and Caitrin Higgins, Wilkinson Ecological Design (WED) were present and reviewed the application. Mr. Lyttle reviewed the resource areas on site and the proposed project. He stated that they made every effort to limit the activities to previously altered areas and within the footprint of the existing dwelling. The proposal focused on mitigation for the proposed enhancements to existing patio and pool. Ms. Higgins reviewed the restoration plan including invasive removals. There is some work proposed on the neighboring property and they are waiting on communication from the abutter on that. They intend to maintain the established view to the water.

Phil Tinmouth, property owner and applicant, introduced himself and described their plan is to bring the property back to what it should be naturally. They are working within the existing footprint and focusing their efforts on modernizing the dwelling and bringing the land back to its natural state.

Kimberly Mercurio, landscape architect, spoke generally about the intention of her work and her proposed plan.

Ms. Farber asked if the retaining wall that's existing on the west side of the pool is a CES. Mr. Lyttle said no, it was not built for the purposes of stabilizing a Coastal Bank or preventing storm damage, it was built as a retaining wall.

Mr. Lyttle highlighted the changes to the house. Ms. Farber requested calculations for any increase. Mr. Lyttle said he will provide the calculation, but he can guarantee that it's well under the new construction threshold.

Ms. Farber and Mr. Brink thought there were no aesthetic issues for the home. All Commissioners were ok with the house.

The Commission moved on to discuss the pool and patio area. The requested more information on the walls and retaining walls including a spec and cross section. Mr. Jannell agreed, more information is needed, he would like more specifics on hardscaping north to the pool, is there regrading there?

Ms. Bruce requested more information on the steppers.

Mr. North requested an independent assessment of whether the retaining wall is a CES. Mr. Jannell said he could reach out to Greg Berman to seek more information from him on that.

Mr. Jannell stated they could ask for information on how the wall is to be replaced and carry conditions for tree removal if necessary.

Mr. Wander and Mr. Jannell requested showing the view corridor on the plan.

Ms. Ward joined the meeting.

Mr. Carrier asked about a backwash pit.

Mr. Wander asked if they're proposing to take out 8,000 sf of paved drive and replace with 10,000 sf of gravel. Mr. Lyttle responded, yes, there is additional gravel, they tried to implement more parking further from the resource area. Mr. Wander asked, are you taking down any trees by adding driveway/parking? Mr. Lyttle said, no, just some rhododendrons.

Mr. Brink was worried about the amount of disturbance that would occur as a result of the rhododendron removal. He thought it might diminish the wildlife habitat.

Ms. Bruce requested a special condition that if the cedars by the pool don't make it, they'll be replaced. She thought the Rhododendrons provide valuable habitat and she doesn't agree with a complete change to grassland habitat. The existing is already established and performing well while the other will take years to establish and perform. Ms. Ward agreed, this is a well-established source of food and habitat. I don't see the benefit in so much disruption so close to sensitive areas.

Ms. Higgins asked if by adding shrubs to this area that would that change their thoughts. Ms. Farber thought there was going to be loss of canopy. Ms. Higgins said none of the surveyed trees will be removed, it's just the rhododendrons, no significant trees in that area would be impacted. The canopy is there, we'd like to establish grass cover and we could add the shrub layer.

Public Comment:

Drusy Henson, representing her family as an abutter to the north and east side of the property. She stated that habitat is a major concern for the whole family and a lot her comments will be directed to preserving that. We have full faith that they are trying to do the best for this property. She said they haven't come to agreement regarding the area of proposed work on her family's property, but we do intend to work together. She expressed her concerns about wildlife habitat, erosion, run off, and vista pruning.

Mr. Lyttle requested a continuance to 6/21/22

MOTION: A motion to continue the public hearing was made by Mike Brink and seconded by Bob Rothberg.

VOTE: 7-0-0 Unanimous
GF, MB, JW, BR, WN, JB, MW

Greg Gotta 320 Tonset Rd
By Ryder & Wilcox, Inc. Map 5, Parcel 49. The proposed construction of a detached garage. Work will occur within the 100' buffer zone to a Wetland.

David Lyttle, Ryder & Wilcox, was present and reviewed the application. Greg Gotta, homeowner, was also present. He reported that there are a couple of tree removals associated with this project. Mr. Brink didn't have an issue with the project but wanted to see some tree replacements. Ms. Henson concurred. Ms. Bruce pointed out that on site there were some brush pilings and lawn clippings near the wetland. Mr. Lyttle suggested planting 2 Eastern Red

Cedars to replace the proposed removals, he said there isn't a lot of room for any tree plantings but proposed one north and one west of the garage.

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 320 Tonset Rd attaching the Conservation Commission Findings and Standard Conditions and with the special condition that two Eastern Red Cedars replace the trees that are coming down and that the brush piles and lawn clippings will be removed from the jurisdiction was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

References: Project Narrative dated 5/16/22; Site Plan dated 5/19/22

GF, MB, DH, WN, BR, JW, JB

Amended Order of Conditions

Eastward MBT LLC Trustee

76 Rock Harbor Rd

By Blue Flax Design. Map 16, Parcel 92. The proposed land management plan including invasive plant management and installation of native vegetation. Work will occur within the 100' buffer zone to a Bordering Vegetated Wetland.

Ms. Sprague, Blue Flax Design (BFD), was present and reviewed the land management plan. Ms. Farber was concerned because there is a great deal of height in that area, and she wouldn't want to see it changed dramatically. Ms. Sprague said they could add tupelo and shad.

Ms. Bruce asked, how can we ensure that the lawn area won't migrate into the 50' BZ? Ms. Sprague felt comfortable that the density would be able to prevent this. Ms. Henson remained concerned about the canopy. She'd like at least an approximate amount of what's being removed. Ms. Henson would like to see more tree plantings or an indication of how many native trees are remaining. Ms. Farber agreed that she'd be more comfortable having more information.

Mr. Jannell asked, how many red maples in the 0-50' and what's their diameter? If they were a good size that might alleviate some of the concerns.

Ms. Sprague reported that vegetation transitions quickly into native once you move toward the wetland.

Mr. Jannell was in agreement that this is a good proposal but regarding the tree cover the should demonstrate that either significant natives are being left behind or provide additional trees in their planting plan.

Public comment:

Jim Richardson, abutter, was concerned that troublesome methods might be used to eliminate the unwanted vegetation. He thought he heard a reference to chemicals used to remove the current invasive vegetation. I am very much opposed to that. He requested some clarification of what's to be removed and how. Ms. Sprague responded to his concerns and

agreed to follow-up with him to provide him with the literature on herbicide application on invasive vegetation.

Ms. Ladue continued the project to 6/21/22.

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

VOTE: 7-0-0 Unanimous
GF, MB, DH, WN, BR, JW, JB

Fred & Terri Clark 14 Prides Path
By Ryder & Wilcox, Inc. Map 12, Parcel 21. The proposal to replace an approved patio with a deck. Work will occur within the 100' buffer zone to the top of a Coastal Bank.

David Lyttle, Ryder & Wilcox, was present and reviewed the request. Mr. North asked for some clarification on the increase in coverage. The Commission thought this proposal was an improvement to the original plan.

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 14 Prides Path with the Conservation Commission findings and standard conditions was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

References: Ryder & Wilcox site plan 5/16/22; Hawk Design Landscape Plan dated 4/22/22; Coverage calculations 5/16/22

Continuations

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.

Ms. Farber read in the agenda item and reported that the Commission was in receipt of a continuance request to 6/21/22.

No public comment was heard.

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

VOTE: 7-0-0 Unanimous
MB, DH, GF, WN, BR, JW, JB

Revised Plan Request

Joel & Sally Hughes

16 Sheep's Pasture Pt

By Wilkinson Ecological Design. Map 13, Parcel 40. The plan is proposed to be revised to show additional invasive plant management.

Steve LaBranche and Caitrin Higgins, WED, were present to review the request. They've added all the changes to their plan. Mr. Jannell said this clearly addresses what is proposed as new. We have the abutter's permission and commitment letter to do his own AR plantings for woody shrubs once this work is completed.

MOTION: A motion to approve the revised plan request for 16 Sheep's Pasture Pt was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

References: WED plan dated 6/1/22

Certificate of Compliance

Elizabeth Cryer

52 Willie Atwood Rd

DEP # SE 054-2541: The installation of a new Title 5 Septic System including a connecting sewer line to the existing garage. Work occurred within the 100' buffer zone to Top of a Coastal Bank.

Mr. Jannell reviewed his site inspection and said the project is in compliance. We acted on a revised plan that eliminated the septic connection to the garage. He did reach out to Ryder & Wilcox to close out some of the older Orders.

MOTION: A motion to approve the issuance of a Certificate of Compliance at 52 Willie Atwood 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 said that we issued an Enforcement Order requiring the filing of a NOI for restoration of the areas altered. That Order made its way to general counsel for Jiffy Lube, and they have requested a 30 day extension. Mr. North asked if the site is stabilized currently. Mr. Jannell reported that it is.

MOTION: A motion to grant a continuance for 251 Route 6A with the understanding that an NOI would be turned in no later than June 17 was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

Administrative Review

Residents of Blueberry Ln

Blueberry Ln

The proposed removal of existing asphalt, regrading of road, and replacement with t-base.

Mr. Jannell reviewed the application and his site visit with the applicant. Many Commissioners were concerned about the t-base product. They thought this project may warrant the filing of a Notice of Intent.

MOTION: A motion to deny the project at Blueberry Lane and recommend a Notice of Intent was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

Other Business

Ms. Henson reported that the liaisons made their first official inspection at Putnam Farm. She said that things are booming and looking great. There were a few minor issues for which we sent warning letters. Activity still seems very contained and the growers are doing a great job.

Mr. Jannell said he will track the town meeting approval of the CPA grant for utility install. CPA will contact our liaison once they have their awards organized.

Mr. Jannell also said thank you to DPW for all of the land work. We got a lot of projects done this past winter. He started to review our land management list and his goal is to bring it back to review as a group and then flesh out a new work list for September. If you see work needs at your assigned properties, please jot them down to share at a future meeting.

Chairman's Business

Meeting minutes of 5/17/22

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

VOTE: 7-0-0 Unanimous

MB, GF, BR, JW, JB, MW, WN

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