

Orleans Conservation Commission
Nauset Room or Via Zoom
Hearing, Tuesday, January 3, 2023

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

ABSENT: Member Ron Mgrdichian, Associate Member Maia Ward

8:30 a.m. Call to Order

Notices of Intent

Philip Dutton 38 Weston Taylor's Ln
By Ryder & Wilcox, Inc. Map 57, Parcel 58. The proposed replacement of existing dug-in timber steps with new dug in steps and a timber stairway and the installation of a kayak rack. Work will occur on a Coastal Beach, on a Coastal Bank, and within Land Subject to Coastal Storm Flowage.

Drusy Henson recused from this meeting and joined the audience.

David Lyttle, Ryder & Wilcox, was present. Mr. Lyttle reported that they had a DEP number but no MESA review. Mr. Lyttle reviewed the application including the proposed work and the resource areas on-site. He reported that the existing steps have become dangerous and need replacement, the new will be installed in the existing footprint.

Ms. Bruce stated that having salt marsh and vegetation in front of the area would reduce scarping and erosion, the large, cleared area in front of the stairs is likely contributing to that. An area this wide without vegetation seems like it has been cleared or suppressed through mats. The area should be restored. Ms. Bruce continued, the single-rail fence along the top of the bank is not acting as a delineator to stop the lawn care. This area should be planted not just left alone to regrow. These things should be fixed before moving forward with a new filing.

Mr. North didn't disagree with the unfortunate outcome, but said the Commission allowed the stairs that allowed the use, that allowed for the marsh degradation.

Mr. Lyttle said he is fully prepped to come back with a planting plan for that part of the lawn care that has gone beyond the delineator. Regarding the marsh, he has plans that date back that show it's no different now than it was 20 years ago. He said he's never been asked to replace marsh in areas that are used for water access.

Ms. Farber said it does seem to be more than just a path to the marsh. Ms. Bruce suggested it may come back on its own if they stop using such a wide swathe.

Mr. Jannell said he didn't see evidence of alteration to salt marsh, I saw an area where people likely walk over the fringe marsh, and we also viewed an eroding coastal bank. The area where people are walking has accumulated some sand likely because of the eroding bank. We did see evidence that the previously committed landscape has some missing pieces.

Mr. Jannell reviewed the file history. A Certificate of Compliance (COC) was requested in 2005 and it was held because they hadn't naturalized the area where the barn had been and it was being mowed. The COC was also held up because the buffer strip along the Top of Bank (TOB) was not allowed to be naturalized. We do have the ability to prohibit new work until

violations are restored but we could correct these things with this current Order. The plan could be revised to include those conditions that need to be restored.

Ms. Farber said there is no question the existing stairs aren't doing the bank any good, water just sheets off them.

Mr. North said, acknowledging the owners right to get to the water and balancing that with the health of the marsh, could we allow some kind of catwalk?

Mr. Jannell said we don't allow a structure that starts in upland and ends below mean high water. Ms. Bruce said we have talked about catwalks but it encourages additional use.

Mr. Lyttle wanted to go on the record to say that his client did not create this damage. Mr. North said he frequently walks that area and has seen mats placed down there. Mr. Lyttle said he was not aware of the use of mats.

Mr. Wander asked how they propose to keep the kayak rack there? Mr. Wander asked for a protocol detailing how they will secure the kayak rack to the beach.

Mr. Rothberg would like to know the height and how many kayak racks it will have. Mr. Lyttle said he would add a construction note about the orientation of the kayak rack to the water.

Ms. Bruce thought the meadow should get fully restored, not just become "no-mow". Mr. Lyttle said he will propose what was previously proposed in the meadow, he will propose some brushy vegetation.

Some Commissioners thought there may have been mat placement on the marsh. Mr. Jannell asked, can you let us know if there is a mat placement? Mr. Lyttle responded he will talk to his client.

Public comment: Drusy Henson, abutter whose family owns property to the north, east and west of this property. She stated the stair project is great to protect the health of the bank. Ms. Henson reiterated the preferred orientation of the kayak rack. She continued, in terms of history of the property, it's a shame that the meadow condition isn't happening, so she'd like to see that happen. Regarding the path at the bottom of the staircase, a very wide and long plastic inflatable docking system was placed there. It was impermeable and went to the beach all the way to low tide. She knows it was there for at least 2 years. She fully agreed that having a footpath is the way of the shoreline on the Cape. The other activity it very destructive, we need healthy marsh to protect the bank and the shoreline. As that gets eroded we are losing property. Any reparations that you can condition would be incredibly beneficial to us as abutters and to the marsh.

Mr. Lyttle requested a continuance to 1/17/23.

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

VOTE: 6-0-0 Unanimous
GF, MB, WN, BR, JW, JB

Ms. Henson returned to the meeting to participate as a commissioner.

Louis C. Morongell

15 Uncle Harvey's Wy

By Ryder & Wilcox, Inc. Map 44, Parcel 141. An after-the-fact filing for the installation of dug-in timber steps. Work occurred in the buffer zone to a Bordering Vegetated Wetland and a Pond.

David Lyttle, Ryder & Wilcox, was present. He stated that he was contacted by Mr. Morongell to follow up with the enforcement order issued to him. Interestingly enough the stairs were installed according to what the Commission likes to see for dug-in timber steps. As you probably saw, the site is in pretty good shape but the edges on either side of the steps need to be seeded better as well as in between the treads.

Mr. Brink was concerned about the bottom of the stairs closest to the water, it looked slightly washed out, how can that be corrected? Ms. Farber asked, would seeding stabilize that? Mr. Jannell said that could be part of the overall seeding effort.

Mr. Jannell stated that the stair did look typical other than some side disturbance. He wanted to understand how the property being cared for. I want to ensure that the meadow in the buffer zone doesn't get mowed during the growing season. I understand it might get an annual mow, but it should not be during the growing season. We can require that through the life of the Order so that if it does take place, it will be a violation. It should be a late fall mow after November 1st. Ms. Farber suggested they require the homeowner file an Administrative Review (AR) for the annual mow. Mr. Jannell agreed.

Ms. Bruce thanked the homeowner for the better condition. Ms. Bruce said since the homeowner knew our rules and that the work needed to be approved by the Commission, this may be an instance where we want to fine.

The Commission discussed whether an AR was necessary for the mowing. Mr. Jannell said if they require the AR for the life of the Order then they can establish the good care of the buffer and then transition to something that's more of a balance. I'd like to work to get this care routine and then transition towards an allowance. Ms. Farber said since this was an enforcement order I like the reinforcement of good behavior.

No public comment was heard.

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

VOTE: 7-0-0 Unanimous

MOTION: A motion to approve the project at 15 Uncle Harvey's Ln attaching the Conservation Commission findings and standard conditions and with the special conditions that seeding of fescue clover mix be seeded in the treads, along and at the bottom of steps and no mowing of the meadow in 50' buffer will occur in the growing season and will require an AR for the mowing after Nov 1 for the life of this Order was made by Drusy Henson and seconded by Jerry Wander. References: Ryder & Wilcox site plan dated 12/15/22; photos received 12/15/22

VOTE: 7-0-0 Unanimous

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

Town of Orleans

Rock Harbor Navigation Channel (adjacent to 46 Anchor Dr & 113 Rock Harbor Rd)

By Foth Infrastructure & Environment, LLC. The proposed maintenance dredging of the Rock Harbor Navigation Channel. Work will occur within Land Under the Ocean, on a Barrier Beach, on a Coastal Beach, and within Land Containing Shellfish.

Applicant has requested a continuance to 1/17/23

Ms. Farber read this agenda item into the record. Mr. Jannell said with the reading of that you have opened the public hearing. We can take public comment today if there is any, but this proposal will be presented on 1/17/23.

No public comment was heard.

MOTION: A motion to continue the public hearing to 1/17/23 was made by Drusy Henson and seconded by Jerry Wander.

VOTE: 7-0-0 Unanimous

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

Administrative Review

Fred & Patty Eppinger

32 Hayward Ln

The proposed addition of support beams and diamond pier footings to existing boat house and replace decking and reinforce frame of existing deck on boathouse.

Mr. Jannell reviewed the proposal and the work protocols. He described the diamond piers and that they are very minimally invasive, and they pass building code. Mr. Jannell said he will specify the like for like material replacement of the timber deck.

MOTION: A motion to approve the project at 32 Hayward Ln with the understanding that the deck be replaced in kind including size and material was made by Drusy Henson and seconded by Jerry Wander.

VOTE: 7-0-0 Unanimous

Monitoring Reports

Hannah Wyman & Shawn Christian

207 Brick Hill Rd

Mr. Jannell said he did an on-site with Wilkinson Ecological Design. The condition is generally pretty good, the herbaceous stuff is the part that looked the worst because it's a tough time of year to look at it. We're all watching that, and they may supplement it as it comes up in the spring. There is strong compliance on the project.

Chairman's Business

Mr. Jannell said he was going to bring a draft letter requesting money for conservation projects, but I asked the Chair for another week to work on that. The letter has transitioned into more of a packet. The extra time has allowed me to find examples of articles that went to Town Meeting for raise and appropriate. It's the first time in a long-time request but we do have a history of asking for the fund to be funded.

Mr. North wanted it to be understood that there is a difference between the maintenance funding and this fund and what we can and can't do with them. We have seriously underfunded maintenance of our properties for a long time. Mr. North asked that the previous hearing's minutes be updated to reflect this clear distinction and our lack of funding.

Meeting minutes of 12/20/22

Ms. Farber asked the Commission to approve the minutes with Mr. North's requested edits.

MOTION: A motion to approve the minutes of 12/20/22 was made by Drusy Henson and seconded by Jerry Wander.

VOTE: 7-0-0 Unanimous

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

VOTE: 7-0-0 Unanimous

The meeting adjourned at 9:34 a.m.

Submitted by:

Kristyna Smith, Principal Clerk, Orleans Conservation

