

Orleans Conservation Commission
Nauset Room or Via Zoom
Hearing, Tuesday, June 20th, 2023


ORLEANS TOWN CLERK

PRESENT: Chair Ginny Farber, Vice Chair Drusilla Henson, Clerk Jerry Wander, Member Walter North, Member Bob Rothberg (Via Zoom), Associate Member Ken Johnson & Conservation Agent John Jannell

ABSENT: Member Mike Brink, Member Ron Mgrdichian, Associate Member Judith Bruce; Associate Member Maia Ward,

8:30 a.m. Call to Order

Request for Determination

Stephen & Marilyn Bornemeier 100 Monument Rd
By Ryder & Wilcox, Inc. Map 48, parcel 70. The proposed installation of a pump chamber, piping, and soil absorption system to replace an existing failed leaching pit. Work will occur within the 100' buffer zone to a Bordering Vegetated Wetland and Bog, and within the Pleasant Bay ACEC.

Stephanie Sequin, Ryder & Wilcox, was present and reviewed the application. She reviewed the resource areas and the proposed work protocols. Ms. Henson said her preference would be to access the site via the driveway and not through the woods.

No public comment was heard.

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

VOTE: 6-0-0 Unanimous

MOTION: A motion to approve the project at 100 Monument Rd with a negative determination was made by Drusy Henson and seconded by Jerry Wander.

VOTE: 6-0-0 Unanimous

Notice of Intent

Stephen Joseph & Jeanne Grainger Hasenmiller 32 Beach Plum Ln
By Wilkinson Ecological Design. Map 23, parcel 7. The proposed Ecological Restoration Limited Project for invasive species management. Work will occur within a Bordering Vegetated Wetland, on a Coastal Bank, and within the Inner Cape Cod Bay ACEC.

Mat Lautenberger, Wilkinson Ecological Design (WED), was present. He provided the Commission with photos of a similar project. He stated that the project is a limited ecological restoration to manage about 5,000 square feet of marsh and they are looking at late summer or fall removal so they would employ the cut and wipe method. Access will be through Willie Atwood Rd and there will be no need to disturb any wetland vegetation for that.

Ms. Farber asked for clarification on the limited ecological restoration. Mr. Lautenberger responded, more performance standards that need to be included and they had to provide more

detail because it's 5,000 square feet but there's not a lot of difference in this case between a limited ecological project NOI and a normal NOI.

Ms. Henson said it appeared to be a fertilized lawn and that is not allowed. There were also some nonnative plantings close to the edge of the flood zone, there should be no nonnatives planted in the 50' buffer zone. She asked they let the homeowner know.

No public comment was heard.

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

VOTE: 6-0-0 Unanimous

Mr. Jannell said given this is filed as a limited ecological restoration he recommended including a special condition for a contractor change clause. We can also add a note about our existing law on fertilizer. He suggested annual reporting including monitoring reports starting the first year of treatment. Ms. Farber suggested a strong preference for treatment in the fall. Mr. Lautenberger said that would be their preference as well.

MOTION: A motion to approve the project at 32 Beach Plum Lane attaching the Conservation Commission findings and standard conditions and special conditions including a contractor change clause, a note that the fertilizer within the 100' buffer zone it not allowed per Orleans Bylaw, annual monitoring reporting starting the year the treatment begins for a 3 year period and only native plantings in the 0-50' buffer zone was made by Drusy Henson and seconded by Jerry Wander.

VOTE: 6-0-0 Unanimous

GF, DH, WN, BR, JW, KJ

Project narrative 6/11/23; site plan 5/11/23; WED narrative 5/22/23; WED restoration plan 5/8/23

Continuations

David V Lawler, Trustee, 56 Nauset Road Realty Trust 56 Nauset Rd
By Coastal Engineering Co., Map 22 Parcel 24. The proposed removal of an existing dwelling and construction of new dwelling and associated site improvements. Work is proposed within 100 feet from the top of a Coastal Bank.

Ben Zehnder was present on behalf of the property owners; he said you may recall we were in front of you last February and that spurred the homeowners to take a harder look at the project. It's been revised to reduce the scope and push the building back further. It also takes another look at the planting of the property. Sean Riley, Coastal Engineering, was present via Zoom. He reported that they took out a significant portion of the main body of the house. He reviewed the original proposed plan versus the proposal today. There are no fences and no increase in the width of the house that may impact a wildlife corridor. They completely removed the patio and buildings in the 50' buffer zone, the only thing remaining there is the access drive. There is an overall reduction in the 75' buffer. They propose an 8:1 ratio in mitigation for what is proposed for new coverage. Theresa Sprague, Blue Flax Design (BFD),

reviewed her planting plan. The existing cedar trees on site will remain, an existing easement path will remain. They are proposing exclusively native vegetation within the 100' buffer zone including foundation and garden plantings. There is a strip of native vegetation along the southeast portion that will allow for wildlife movement. The lawn will be a fescue clover. All proposed planting is in the existing lawn area, they are not proposing to go over the coastal bank.

Mr. North asked if any trees were proposed to replace the tree removal. Ms. Sprague said it's a really difficult site to get trees established. Mr. North said that on the current plan it appears that between the driveway and the deck there is wall to wall coverage. Ms. Sprague responded, yes.

Mr. Wander requested a walkway coming out of the front of the house.

Ms. Henson requested a volume calculation for the increase in the proposed versus existing. Mr. Jannell clarified they aren't required to provide that since its buffer zone work, not resource area work.

Mr. Johnson asked, how is the easement path maintained? Ms. Sprague responded it will be a mowed path.

Ms. Farber wasn't sure if the Commission had a variance request for the extension of the limit of work in the 50' buffer zone.

Ms. Farber said it would be ideal not to have the patio on the east side of the dwelling so that there is a wildlife corridor there. Mr. Zehnder responded that they've pulled the patio back and added plantings.

Mr. Zehnder said Sean put in the narrative a brief description of the soil type and that it will be sufficient to hold up cars.

Mr. Jannell said we will schedule an on-site and then we will be back in the hearing room on 7/18 with the same set of plans.

Mr. Wander requested specs on the patio.

Mr. Rothberg said maybe they can consider a natural color for the trim on the waterside.

Public comment

Joseph Tinney, 1 Priscilla Ln, said he has had questions answered. He was concerned about the stability of the bank and where the heavy equipment may be stored. He clarified that the vegetation between his property and this one is to remain. Ms. Farber suggested that during construction there be some kind of delineator, so trucks aren't turning around there or sitting there right at the edge of the bank. Ms. Farber said and no stockpiling of material. Mr. Jannell said perhaps some construction fence that prohibits vehicles from parking on the bank side of the driveway.

Beth Juliano, Morningside Circle, stated her daughter is getting married on the Tinney's lawn in September of 2023. She wants to understand what the timing guestimates might be. Mr. Barker responded, that construction will start in the new year.

MOTION: A motion to continue the public hearing to 7/18/23 was made by Drusy Henson and seconded by Jerry Wander.

VOTE: 5-0-0 Unanimous
GF, DH, WN, BR, JW

Town of Orleans Conservation Commission 84 Herring Brook Wy
By LEC Environmental Consultants, Inc. Map 55, Parcel 41. The proposed aquatic vegetation management of the Pilgrim Lake Swim Area to control encroaching nuisance submergent vegetation. Work will occur within the 100' buffer zone to a Bordering Vegetated Wetland, and Bank, and within Land Under Water, Land Subject to Coastal Storm Flowage, and the Pleasant Bay ACEC.

Mr. Jannell spoke about this Town project. After the initial presentation we heard from the public and we continued the hearing to make a few revisions to the site plan. We have a Ryder and Wilcox, revised plan dated 6/14/23. They included a note to remove the 2 pitch pine saplings, keep vegetation free and clear of the handicapped boardwalk, included a note about beach nourishment, dewatering stall, construction notes. Brian Madden, LEC, was present via Zoom.

Mr. Wander said removing the pitch pines and clearing the boardwalk as soon as possible would be good. Mr. Johnson repeated what we talked about at the last meeting regarding biasing the work toward the fall. Mr. Jannell said we will site the project narrative that discusses a time of year restriction.

Public comment:

Jamie Balliet, Great Oak Rd, asked about a large steel rusted post next to the two trees, he asked, can you take the rusted post down as well or put a sign on it. Mr. Balliett said it would be beneficial if the Commission considered the option of a small amount of hand removal in the shallow areas immediately where you enter. That would allow small children to have more space this summer. Ms. Farber said she agreed but the time of year restriction makes that impossible and wouldn't that require another filing because this doesn't approve hand removal?

Mr. Jannell responded that we did not propose hand removal during the summer season for wildlife habitat reasons. The only option now would perhaps be a special condition. The Commissioners weren't comfortable that they would have the proper oversight for the hand removals.

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

VOTE: 5-0-0 Unanimous

MOTION: A motion to approve the project 84 Herring Brook Wy attaching the Conservation Commission findings and standard conditions and with a special condition to remove the rusted post and allow the pine removals was made by Drusy Henson and seconded by Jerry Wander.

VOTE: 5-0-0 Unanimous

GF, DH, BR, JW, KJ

LEC narrative 5/18/23; Ryder site plan 6/14/23; photos included on 6/1/23

Revised Plan

Eastward Companies

76 Rock Harbor Rd

By Eastward Companies Business Trust. Map 16, Parcel 92. The after-the-fact revised plan request to install an additional stone/shell parking space totaling 169 s.f. of coverage in previously proposed lawn area. Work occurred within the 100' buffer zone to a bordering vegetated wetland.

Susan Ladue, Eastward Companies, was present via Zoom. Theresa Sprague, Blue Flax Design, was present. Ms. Ladue reviewed the installation of the unpermitted parking space. We feel it does not impact the adjacent resource area. Ms. Sprague said we did have winterberry and holly in the approximate area of the shelled area, it is very easy to shift those south and then additionally we are adding 7 shrubs.

Mr. Jannell asked where the additional shrubs will be installed. Ms. Sprague responded with their location inside the Commission's jurisdiction. Mr. Jannell clarified that the planting will be denser than what was originally proposed. If you make a motion to accept the as built please include language in your motion of where the 7 additional shrubs should go.

Ms. Farber said given that this is after-the-fact I'd like to know where they go. She stated it bothers her that we got an after-the-fact request. Mr. North shared in Ms. Farber's discomfort about after-the-fact requests. Many other Commissioners expressed frustration with the after-the-fact filings that have been occurring.

Ms. Henson thought it would add disturbance. We are really restricting the space between the property and the neighboring property. Mr. Rothberg said that 169 sf of parking area at the edge of our jurisdiction is probably something he would have voted for but it is offensive that people ask after-the-fact.

Ms. Sprague responded that this site is a severely degraded site. We did a lot of invasive species removal and trash removal. The mitigation in this instance is doing double time. We are providing restoration of vegetation, but we are also removing trash from the area. There was a really great opportunity to do this restoration that wouldn't have happened without this development. Overall, there is a greater protection to the resource area.

MOTION: A motion to approve the revised plan for 76 Rock Harbor Rd dated 6/1/23 indicating that the 7 shrubs in the BFD letter of 6/5/23 should be planted SE of the revised driveway made by Drusy Henson and seconded by Jerry Wander.

VOTE: 3-3-0 Motion Fails

GF, BR, KJ

DH, WN, JW-nay

Certificates of Compliance

Francis L. & Kathryn R. Mustaro

30 Gull Ln

DEP # SE 54-2474: By Ryder & Wilcox, Inc. Map 24, Parcel 58. The demolition of an existing dwelling and construction of a new dwelling with pool, patio, driveway, and grading. Work will take place within 100' to the top of a Coastal Bank and within Land Subject to Coastal Storm Flowage.

Stephanie Sequin, Ryder & Wilcox, was present, and reviewed the plans. She said she noted a walkway from the driveway to the house and some AC units that did not show on the site plan but pointed out that the walkway does show on the approved landscaping plan. Mr. Jannell said the plantings are installed and healthy.

MOTION: A motion to approve the issuance of a Certificate of Compliance for 30 Gull Lane was made by Drusy Henson and seconded by Jerry Wander.

VOTE: 6-0-0 Unanimous

Robert E. Campbell Personal Residence Trust 76 Freeman Ln
DEP # SE 54- 2457: By Coastal Engineering Co., Inc. Map 1, Parcel 4. The installation of a rock revetment with fiber roll array, and planting of coastal grasses. Work occurred on a Coastal Bank, Coastal Dune, Coastal Beach, and Land Subject to Coastal Storm Flowage, and within 100' to a Salt Marsh.

Mr. Jannell said he received a report from Harrow and Seed and he completed a site walk. Mr. Jannell said the project could be found in compliance with the proposed plans.

MOTION: A motion to approve the issuance of a Certificate of Compliance at 76 Freeman Ln was made by Drusy Henson and seconded by Jerry Wander.

VOTE: 6-0-0 Unanimous

Administrator's Business

James & Julie Rainey Welch 92 Tonset Rd
DEP # SE 54-2470 - Discussion of Certificate of Compliance denial

Mr. Jannell reviewed the approved plans versus the as-built plans. He reviewed the options: Leave as is and vote to accept the as-built plan; reject it entirely and require the approved plan be installed; leave the yard basin and remove portions of the unapproved driveway. Mr. Johnson said he'd be reluctant to undo everything and go with the original plan, that seems very disruptive. He supported option 2 to remove the unapproved driveway but leave the catch basin. Ms. Henson agreed. It's the portion along the side of the new addition towards the water. We should have the owner remove and plant fescue or shrubs. The catch basin has merit because we observed water flowing down the hill and it'd be great to catch it before the wetland. Ms. Farber concurred. Mr. Wander agreed but said if you remove the gravel driveway the catch basin won't function. You need to leave the gravel drive to the corner of the garage.

Mr. Jannell said the next step would be a letter and phone call to the homeowner. Modified version of what's on the ground we should be clear in what we want.

Mr. North said there seems to be consensus that we ask them to do what it takes to make the basin appropriate and minimize the parking to minimize impacts to the resource areas.

Mr. Jannell said we could ask them to provide us with a plan that does A, B, and C to keep the basin viable, and removal of as much gravel as possible that's unpermitted.

Correspondence

Letter from Danni and Alex Jesudowich

Mr. Jannell said he didn't have much to add. The resident and abutter pointed out a poison ivy problem on a trail and we are going to follow up.

Ms. Farber asked if the Commission has an appetite to have John reach out to goat companies. Mr. Jannell said he was willing to try that. There was a consensus that John should look into the goats.

Chairman's Business

Meeting minutes of 6/6/23

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

VOTE: 5-0-1 Unanimous

Mr. North abstained

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

VOTE: 6-0-0 Unanimous

The meeting was adjourned at 10:17 a.m.

Submitted by:

Kristyna Smith, Principal Clerk, Orleans Conservation

