

Orleans Conservation Commission
Nauset Room or Via Zoom
Hearing, Tuesday, August 1st, 2023



ORLEANS TOWN CLERK

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

ABSENT: Member Mike Brink

8:30 a.m. Call to Order

Notice of Intent

Cape Associates, Inc.

147 Route 6A

By Merrill Engineers and Land Surveyors. Map 33, Parcel 100. The proposed redevelopment of the property with three workforce housing dwellings totaling five bedrooms, reconfiguration of the existing bituminous paved driveway, installation of utilities and drainage, and the associated grading and landscaping. Work will occur within the 100' buffer zone to a Bordering Vegetated Wetland.

Matt Cole, Cape Associates, and Tim Santos, Merrill Engineers, were present to review the application. Mr. Wander asked about the size and type of native plantings for the proposed buffer strip.

Ms. Farber asked if they had given any thought to managing the invasives that are there. Mr. Cole said they have nothing proposed at this time. Ms. Farber said they are trying to avoid a lot of lawn care; she requested that any lawn be fescue clover mix. Ms. Bruce asked that they specify which natives they are going to use. She was very happy they kept all but a small corner outside of the 100' buffer. Mr. Johnson asked them to go over the sequence of work events.

Mr. Jannell suggested a special condition requiring plants chosen from the county extension list at their spacing requirements; you could further require I authorize whatever it is.

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
JB, GF, DH, WN, BR, JW, MW

MOTION: A motion to approve the project at 147 Route 6A with the special conditions that a planting plan be reviewed and approved by Conservation Agent specifying plantings and spacing for the mitigation area and that the lawn be planted with a fescue clover mix was made by Drusy Henson and seconded by Jerry Wander.

References: Merrill Engineers and Land Surveyors project narrative 7/14/23; layout plan 5/31/23; sewer connection plan 5/31/23; demo and erosion control plan 5/31/23.

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

Revised Plan Requests

David Quinn

8 Judahs Wy

By Ryder & Wilcox, Inc. Map 26, Parcel 43. DEP # SE 54-2593: The proposed revisions to the configuration of the dwelling and its relocation landward of the 75' buffer zone to the top of the Coastal Bank.

David Lyttle, Ryder & Wilcox, was present and reviewed the request. Mr. North asked about aesthetics. Mr. Lyttle responded that the homeowner is committed to all natural.

MOTION: A motion to approve the revised plan request with the special condition that all natural materials be used for the trim at 8 Judahs Wy was made by Drusy Henson and seconded by Jerry Wander.

Site plan 7/25/23; elevations 7/24/23; coverage calculations 7/25/23

VOTE: 7-0-0 Unanimous

Andy & Maria LeStage

14 Hayward Ln

By Ryder & Wilcox, Inc. Map 50, Parcel 2-1. DEP # SE 54-2569: The proposed revisions to the configuration and size of the patio.

Mr. Rothberg recused.

David Lyttle, Ryder & Wilcox, was present and reviewed the request. He said they have provided a revised plan showing a new patio configuration and the planting plan has been revised to include additional mitigation plantings and foundation plantings. Additionally, you now have a record of all utility features and hardscaping features. He reported that within the ACEC boundary there is a significant reduction in the size of the patio.

Mr. North, Mr. Wander, and Ms. Henson were concerned about the amount of canopy loss, they said there were multiple conversations about saving trees outside of their jurisdiction.

MOTION: A motion to approve the revised plan request at 14 Hayward Ln was made by Drusy Henson and seconded by Jerry Wander.

References: Ryder & Wilcox site plan dated 7/25/23; Coverage calculations dated 7/25/23; Blue Flax Design planting plan dated 7/14/23

VOTE: 7-0-0 Unanimous

Towhee Lane, LLC

71 Towhee Ln

By Blueflax Design LLC. Map 93, Parcel 60. DEP # SE 54-2533. The proposed removal and replacement of two standing dead English oak trees.

Mr. Jannell reviewed the proposed revisions in Blue Flax Design's absence. Ms. Bruce stated that all of these trees were discussed at length in the original request. I think we were clear that one snag should remain. She would be amenable to replacement of the other tree at 2:1, 2-3" caliper in substantially the same location. The Commission decided to take no action until a representative was present at the meeting.

Contractor Change Request

John H. Hax Trust

9 Archer Ln

Review and vote on the request to authorize Wilkinson Ecological Design to perform the approved restoration under DEP # SE 54-2549.

Mr. Jannell stated that the applicant is seeking to change from Crawford Land Management to Wilkinson Ecological Design (WED). If the Commission approves, the office will follow up on a new contractor acknowledgement form. He reported that slope stabilization and invasive management were completed but there is some additional planting that is needed.

MOTION: A motion to approve the contractor change request for 9 Archer Ln to authorize WED as the new contractor was made by Drusy Henson and seconded by Jerry Wander.

VOTE: 7-0-0 Unanimous

Enforcement

Sally Mills

54 Tonset Rd

The unpermitted clearing of vegetation in the 100' buffer zone to a salt marsh.

John Jannell reviewed the timeline of events that led to the agenda item today including the Administrative Review (AR) denial, variance denial, letter writing, and complaints. He reviewed fineable offenses and fining options. He also reviewed the option to issue an Enforcement Order. He stated that the letters were clear, the property owner had no permits for work. Ms. Bruce stated this was a complete disregard for our rules. Ms. Henson was supportive of immediate citations and working on an Enforcement Order. The Commission concurred.

MOTION: A motion to issue 2 civil citations for work at 54 Tonset Rd, one in a Resource Area and one in buffer zone, for a total of \$500.00 was made by Drusy Henson and seconded by Jerry Wander.

Discussion: Mr. Rothberg suggested we should let the homeowner speak. Mr. North said despite the denial the applicant did the work, he didn't see a need for additional discussion with her. Ms. Farber invited Sally Mills to come up to the table.

Sally Mills, property owner, reviewed the history of her property and some of the documents she provided. She said she misunderstood the procedure.

Ms. Henson asked Ms. Mills if she had anything new to add today that is not in the paperwork? Ms. Mills asked, are there no exceptions to filing a notice of intent? She said she feels she has a civil right to maintain her property.

VOTE: 6-0-1

JB, GF, DH, WN, JW, MW

BR abstained

Mr. Jannell said we will draft the enforcement order for review and authorization at our next hearing. He reviewed the WPA form 9 with the Commission and asked for input.

MOTION: A motion to have staff prepare a draft Enforcement Order, including daily fining if work continues, a note to keep all activity off the area to start regeneration, and a complete

stop work order, and to ratify the EO on 8/15/23 was made by Drusy Henson and seconded by Jerry Wander.

VOTE: 7-0-0 Unanimous

Administrative Reviews

Joan Morgan & Roger McDaniel

37 Jack Knife Pt Rd

The proposed rebuilding and expansion of an existing deck.

Mr. Rothberg recused.

Mr. Jannell reviewed the application on the fact that we didn't have a complete site plan showing all the jurisdiction. Roger McDaniel and Joan Morgan, property owners, were present at the meeting. Some of the Commissioners had concerns that there wasn't an accurate site plan. They directed the property owner to produce an accurate site plan or file a different application. The Chair suggested they take no action.

Mr. Rothberg returned to the meeting.

Elizabeth & Howard Rappaport

61 Kenneth Ln

The proposed installation of a kayak rack.

Mr. Jannell reviewed the request including the removal of a dead snag. Mr. Jannell said he can make note of the required design including bow out orientation and two posts dug-in. The Commission voted to keep the snag.

MOTION: A motion to approve the project at 61 Kenneth Ln with notes on the kayak design and no vegetation removed and to keep the snag tree was made by Drusy Henson and seconded by Jerry Wander.

VOTE: 7-0-0 Unanimous

Evan & Erin Lagasse

34 Winslow Dr

The proposed after-the-fact filing for the removal of three pine trees. The proposed additional removal of two dead trees, grinding of all stumps, and removal of brush pile.

Mr. Jannell said the office was notified by the tree company doing the work that they may be in jurisdiction so work immediately stopped and everyone went home. At that time, I did not have a copy of the site plan but now all parties have a copy of the plan that shows where jurisdiction is. He reviewed the jurisdiction. On the 2015 plan the ditch was found to have a BVW and as you know since it has a hydraulic connection to Pleasant Bay it is in the ACEC. After reviewing what took place, he suggested the property owner submit the application for the after the fact of 2 dead trees. Mr. Jannell reviewed the work that occurred and where on the ground it occurred using the before and after photos and the site plan.

Ms. Farber asked if the ground was stable. Mr. Jannell responded, yes.

Evan and Erin Lagasse, property owners of 34 Winslow Drive, were present at the meeting. They apologized for not being aware of the Commission's jurisdiction. They reported that their intent was to remove fall risk and make the area safe for their children.

Linda and Tom Budryka, abutters to 34 Winslow Drive, asked to see the site plan that was being shared. Ms. Budryka expressed her concerns over the work that occurred. Mr. Budryka reviewed the pruning he observed being done by the property owner. He then reviewed the work completed by S & L Landscaping.

Ms. Farber requested the property owners put together a replanting plan. Ms. Bruce said she was comfortable with the removal of 1 hazard tree to the garage. The Commission was ok with stump grinding contingent on the restoration plan being completed. Ms. Bruce said given the level of cooperation from the homeowner this would not warrant fines.

MOTION: A motion to approve the Administrative Review with the note that only 1 of the two remaining dead trees be allowed to be removed was made by Drusy Henson and seconded by Jerry Wander.

VOTE: 7-0-0 Unanimous

MOTION: A motion to notify the owners via certified mail that we require an Administrative Review for the planting plan of understory native shrubs in the area where work was done, no stump grinding may occur before the on-site on 8/8/23, that we receive that request within 30 days, and request the homeowner allow us to go there at our next on-site meeting was made by Drusy Henson and seconded by Jerry Wander.

The homeowner granted the Commission permission to put their property on their 8/8 onsite.

VOTE: 7-0-0 Unanimous

Administrator's Business

Review and discussion of Putnam irrigation well

Mr. Jannell gave an update on the decision to enclose the well in a shed instead of the concrete. He shared a photo of the shed.

Annual Re-Organization

Nomination and Election of officers:

Commission Chair

Commission Vice Chair

Commission Clerk

Ms. Bruce nominated Drusy Henson as Commission Chair.

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

VOTE: 7-0-0 Unanimous

MOTION: A motion that Drusy Henson serve as Chair was made by Judith Bruce and seconded by Walter North

VOTE: 7-0-0 Unanimous

Ms. Farber nominated Jerry Wander as Vice Chair.

MOTION: A motion to close nominations was made by Ginny Farber and seconded by Judith Bruce.

VOTE: 7-0-0 Unanimous

MOTION: A motion that Jerry Wander serve as Vice Chair was made by Judith Bruce and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Mr. Wander nominated Ginny Farber as Clerk.

MOTION: A motion to close nominations was made by Ginny Farber and seconded by Walter North.

VOTE: 7-0-0 Unanimous

MOTION: A motion that Ginny Farber serve as Commission Clerk was made by Judith Bruce and seconded by Walter North.

VOTE: 7-0-0 Unanimous

Appointment of Community Preservation Committee representative
Nominate and Vote

Ms. Farber nominated Walter North.

MOTION: A motion to close nominations was made by Ginny Farber and seconded by Judith Bruce.

VOTE: 7-0-0 Unanimous

MOTION: A motion that Walter North serve as CPC representative was made by Ginny Farber and seconded by Judith Bruce.

VOTE: 7-0-0 Unanimous

Appointment of Wastewater Management Advisory Committee representative
Nominate and Vote

Ms. Bruce nominated Ginny Farber.

MOTION: A motion to close nominations was made by Ginny Farber and seconded by Judith Bruce.

VOTE: 7-0-0 Unanimous

MOTION: A motion that Ginny Farber be the Wastewater Management Committee representative was made by Judith Bruce and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Chairman's Business

Review and discussion of updates to Orleans Wetland Regulations Ch. 196A

Mr. Wander reviewed that the Commission had previously established a working committee of consisting of himself, Ms. Henson, and Ms. Ward. We took comments that the office got from everyone and then reviewed the regulations on surrounding towns. Mr. Wander said they formulated some draft changes and are again looking for Commission input.

Ms. Henson said that Mr. Jannell has already observed a few things that would be a bylaw change not a regulation change and therefore would require a vote at town meeting. We will take a copy of the current regulations to show red line changes.

Mr. Rothberg encouraged them to look at the lighting restrictions. We should be clearer on lighting restrictions. The Commission discussed the 500-year flood zone and how you would determine that.

Discuss and vote to support the Pesticide Home Rule Petition

Ms. Farber reviewed the petition.

Mr. Rothberg said we don't know enough about it. We have federal and state fertilizer regulations already. He said he doesn't think our selectboard knows more than the EPA about pesticide and fertilizer use. Not knowing that much about it, he doesn't think we should recommend to other people that they should do it.

Ms. Bruce responded that organics do have nitrogen, but compost doesn't. New pesticide reduction is not a ban. You feel there are effective regulatory controls, I think there is lobbying by large pesticide companies. It's not perfect but we should move forward before it's too late for the beneficial insects.

Mr. Rothberg began to respond. Mr. North called to question.

MOTION: A motion to call the question was made by Walter North and seconded by Judith Bruce.

VOTE: 6-0-1

Mr. Rothberg abstained.

MOTION: A motion to support the pesticide home rule petition was made by Ginny Farber and seconded by Judith Bruce.

VOTE: 5-2-0

Mr. Wander and Mr. Rothberg voted nay.

Chairman's Business

Meeting minutes of 7/18/23

Mr. Johnson said Town Administrator should be changed to Town Manager.

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

VOTE: 7-0-0 Unanimous

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

VOTE: 7-0-0 Unanimous

The meeting adjourned at 11:30 a.m.

Submitted by:

Kristyna Smith, Principal Clerk, Orleans Conservation