

Jennifer M. Jannell
ORLEANS TOWN CLERK

Orleans Conservation Commission
Nauset Room or Via Zoom
Hearing, Tuesday, September 5th, 2023

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

ABSENT: Member Walter North

8:30 a.m. Call to Order

Continuations

Towhee Lane, LLC

71 Towhee Ln

By WRS Engineering, LLC. Map 92, Parcel 60. The proposed reconstruction of an existing licensed boathouse and deck in kind, increase in deck elevation of 1 foot, removal of existing walkway and replacement with elevated walkway, installation of aluminum walkway, installation of pile supported boat lifts, restoration of Coastal Bank, and increase in elevation of existing revetment. Work will occur on a Coastal Bank, in Land Subject to Coastal Storm Flowage, and within the Pleasant Bay ACEC.

****Applicant requested a continuance to 9/19/23***

Mr. Jannell reported that the office was in receipt of the report from Greg Berman and that they would get it before the next meeting.

No public comment was heard.

MOTION: A motion to continue the public hearing to 9/19/23 was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Enforcement

Sara Mills

54 Tonset Rd

Discuss and vote on recording the Enforcement Order issued on 8/15/23, amended 8/25/23.

Mr. Jannell reported that at last meeting we issued the Enforcement Order (EO) and they discussed whether or not to record the EO. Mr. Jannell said he has since discussed the recording of the EO with the Town Counsel. We prepared an amended EO which was circulated to the violator and of which the Commission has a copy. The Commission is also in receipt of a letter from Ms. Mills' lawyer. He reviewed his discussion with Town Counsel including the severity of the violation and the practice of recording and EO, and the potential slander of title. They determined that given the severity of the violation, the Commission could record it if you wanted, however, it would be a tremendous distraction to get into a property rights discussion on a sidetrack.

Some Commissioners expressed concern that if the EO was not recorded and Ms. Mills sold her property there would not be any recourse to ensure the restoration of the area. Mr. Jannell responded that the EO is associated with the property, not property owner. Any new owner would be availed of the outstanding EO.

Caroline Smith, McGregor, Legere & Stevens, was present to represent Ms. Mills. As an update, she has retained Brian of Ecosystems Solutions. They will submit proof of the walkway removal by the deadline to the Commission. She said her client has appealed the fines. Lastly, she discouraged the recording of the EO.

MOTION: A motion to approve the language of the amended Enforcement Order of 8/15/23 was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

MOTION: A motion not to act on the amended Enforcement Order and allow the originally ratified Enforcement Order to stand was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Certificates of Compliance

Eastward Companies 36 Sea Mist Dr
DEP # SE 54-2476: The installation of a patio, retaining wall, and landscape plantings. Work occurred within 100' to the edge of a Vegetated Wetland.

Mr. Jannell said he made an inspection, and the Order is in compliance.

MOTION: A motion to approve the issuance of a Certificate of Compliance at 36 Sea Mist Dr was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Mark & Jennifer Herman 9 Windswept Ln
DEP # SE 54-2436: The construction of a garage, additions and renovations and mitigation plantings. Work occurred in the buffer and on the Coastal Bank in the ACEC.

Mr. Jannell said he made an inspection, and the Order is in compliance.

MOTION: A motion to approve the issuance of a Certificate of Compliance at 9 Windswept Lane was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Marc J. Bloostein, Trustee 17 Marsh Ln
DEP # SE 54-2583: The upgrade to an existing septic system. Work occurred within the 100' buffer zone to the top of a Coastal Bank and within the Pleasant Bay ACEC.

Mr. Jannell said he made an inspection, and the Order is in compliance.

MOTION: A motion to approve the issuance of a Certificate of Compliance at 17 Marsh Ln was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Administrative Reviews

Christine Klaehn & Geri Haight

205 Brick Hill Rd

The proposed removal of invasive vegetation.

Mr. Jannell reported on the proposed work. He said the work is located in the outer buffer zone adjacent to Brick Hill Rd. Chris Klahn, property owner, was present via Zoom. She asked if they plant the area, can they put loam in there? Mr. Jannell would recommend compost over loam for better soil amendment and defense against weed seed. She asked, is the entire area conservation? Mr. Jannell responded no and that he can send her a copy of the plan. Mr. Brink asked Mr. Jannell to put a note on the application that the replantings be native.

MOTION: A motion to approve the project at 205 Brick Hill Rd was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Lower Cape Outreach Council, Inc.

19 Brewster Cross Rd

The proposed sewer connection.

Mr. Jannell reviewed the application. The Commission had no questions.

MOTION: A motion to approve the project at 19 Brewster Cross Rd was made by Drusy Henson and seconded by Jerry Wander.

VOTE: 7-0-0 Unanimous

Barbara Campbell

18 Towhee Ln

The proposed removal of dead and floating bladderwort from Deep Pond.

Mr. Jannell reviewed the application. Ms. Farber asked if this project would be limited to the part of the pond the applicant owns. Mr. Jannell responded, it certainly would be limited to her property. Ms. Bruce asked if the Commission would approve the pond area for abutters too or should they apply separately. Mr. Jannell said they just need to notify the office that they are willing participants to the Admin Review that was approved. He directed Ms. Bruce to tell the applicant to notify abutters and get permission from property owners if they intend to participate.

MOTION: A motion to approve the project at 18 Towhee Ln was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Mark & Jennifer Herman

9 Windswept Ln

The proposed second floor renovation to an existing dwelling.

David Lyttle, Ryder & Wilcox, was present and reviewed the application. Mr. Lyttle provided a photograph from the closest public view shed. There is a 4x4' cantilevered expansion on the most easterly portion of the site plan highlighted in yellow. The sq. ft and volume expansion are minimal. Material storage will be in the driveway.

MOTION: A motion to approve the project at 9 Windswept Ln was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Administrator's Business

Conservation Commission Properties Work List for 2023/2024

Mr. Jannell said the work list is a chance to bullet out the work we want to accomplish in the next year. Mr. Jannell reviewed the work list. Mr. Jannell said we will circulate liaison assignments, there are vacancies and if you want you can switch areas.

Mr. Brink asked the office to send a letter to DPW thanking them for their efforts in supporting and maintaining the town property.

David Lyttle, Orleans resident, came to the podium and echoed Mr. Jannell's previous comments about the Window and Meadow on the Cove views. He said they are becoming tunnels. He often represents homeowners so they can appreciate the view, I encourage you to start trimming those two view corridors.

Betsy Furtney, 71 Pochet Rd, was thrilled to see Mr. Jannell's list. She went to open space committee hearing to attempt to get a list of open space properties and I was informed that they only do acquisitions they don't do maintenance. Who is in charge of maintenance of open space properties? Mr. Jannell said if they remain in general municipal control, the request should go to the Select Board or Tom Daley.

Chairman's Business

Discuss preventative maintenance on Conservation Commission properties

Tim Counihan, resident 23 Herring Brook Wy, went to the podium. He said he listened to the previous meeting about the town beach versus the private beach. He said you authorized a significant amount of money to clean up the beach. The DPW guys he spoke to said the removal used to be done regularly by DPW, the cost of that is very low. He asked, why does the removal of weeds require this level of involvement? In Eastham they allow some level of maintenance in these areas. He asked, will the DPW be authorized to perform annual preventative maintenance in the swim area and beaches? He requested something that allows people to be able to maintain these areas on their properties. Ms. Bruce said she believed it was common practice for the DPW to hand pull. She continued, we have had preliminary discussions about how to maintain this after the initial project and its something we can discuss as part of that piece. She explained what and why private homeowners need to apply for. She said the association beach referenced was turned down because we didn't have enough information.

Mr. Counihan pointed out that there are a lot of private landings and beaches that have become overgrown. Ms. Bruce responded that typically you must use it or lose it. Mr. Counihan said everything will get naturalized over time and I find that an extreme position to be taking. There are so few public access areas to the water in this town to say we can't allow pruning of areas that are overgrown.

Mr. Brink said there's a distinction between public, town-owned landings, and associations, and private access. A private homeowner has the right to access the water, as does an association. They can come to the Commission to permit their maintenance.

Mr. Rothberg entered the meeting at 10:02 a.m.

Mr. Jannell said the town is afforded rights in the CMR for maintenance of a public beach.

Hardy Truesdale, 31 Twinings Ln, came up to the podium and said we have a similar problem on Shoal Pond. He asked, can we legally approach the Conservation Commission, ask for a permit, and hire a licensed person to remove an invasive from the Pond? Ms. Henson responded, you can absolutely come to the Commission. You should not go in there on your own.

Putnam Farm discussion

Ms. Henson provided a recap of the work that has been occurring. She started with a discussion about Xerces and the incoming report the Commission received for free.

Mr. Jannell reported that the survey work is done including an existing conditions survey. The other element was to use the existing conditions to show the two areas of wetland included in the report. He said he would be happy to discuss the survey and anything you may need today. Ms. Bruce asked that the plan show where the next group of plots is going so we can see what land is left available. She asked if it would be possible to put in terrapin gardens? Mr. Jannell said when we go to the next step to try to permit the proposal, yes absolutely.

Mr. Wander said he doesn't want to lose focus on what we started here as Putnam Farm, which is agriculture. What about the next phase? Mr. Jannell responded that we are not getting in the way of Phase 4 and we will be starting work on it very soon. The two are not in conflict at all. Ms. Henson said, in fact, the wetland restoration would do a lot to enhance the agricultural aspects.

Mr. Jannell said we are well funded; we have the Truesdale gift and the Conservation Fund was recently enhanced at town meeting. What you guys make a priority, is a priority. This is teed up. Ms. Bruce was concerned about the eastern box turtle, which she said is an upland species. Between expansion of the wetland area and elimination of the upland to convert to plots she was concerned about what's to be left for the box turtle. She would want more input on how we protect them.

Mr. Johnson left the meeting at 10:30 a.m.

Ms. Farber asked about the shrub swamp and if there is a vernal pool. If we are lucky enough to create a vernal pool that has vernal pool inhabitants, it's sitting right next to a parking lot.

Ms. Henson proposed that we get John Jannell to move forward with putting together a permit for the wetland restoration.

MOTION: A motion to direct the conservation office to put together a plan for moving the Putnam project forward on permitting was made by Jerry Wander and seconded by Ginny Farber.

Amendment: Clarify to move forward on permitting

VOTE: 7-0-0 Unanimous

Rick Francolini, 7 Barney Way, came up to the podium and said regarding the turtle questions, we do have Bob Prescott here today if you'd like to have him speak.

Bob Prescott, biologist working for MA Audubon, came up to the podium. HE discussed the preferences of the box turtle. He said box turtles overwinter in the woodland area and like wetlands in the summertime. You're not taking away from their habitat by adding gardens, they will nest right next to them. The gardens are critical for users to report sightings.

Mr. Jannell suggested having two planning sessions with stakeholders, but there can't be a quorum for any given board. The planning sessions would culminate in a final product that would make the RDA.

Meeting minutes of 8/15/23

MOTION: A motion to approve the minutes was made by Judith Bruce and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

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

VOTE: 7-0-0 Unanimous

The meeting adjourned at 10:48 a.m.

Submitted by:

Kristyna Smith, Principal Clerk, Orleans Conservation