

*Jerry Wander*  
ORLEANS TOWN CLERK

**Orleans Conservation Commission**  
**Nauset Room or Via Zoom**  
**Hearing, Tuesday, October 17, 2023**

**PRESENT:** Vice Chair Jerry Wander, Clerk Ginny Farber, Member Bob Rothberg, Member Mike Brink, Associate Member Judith Bruce, Associate Member Maia Ward (Via Zoom), Associate Member Ken Johnson & Conservation Agent John Jannell

**ABSENT:** Chair Drusilla Henson, Member Walter North

8:30 a.m. Call to Order

**Request for Determination**

Susan Dickson 64 Captain Linnell Rd  
By J.C. Ellis Design Co., Inc. Map 32, Parcel 36. The proposed upgrade to an existing septic system. Work will occur within the 100' buffer zone to the Top of a Coastal Bank.

Jason Ellis, J.C. Ellis Design Co., was present and reviewed the application. The only area to site the septic system is in the northeast side of the property and that's the furthest away from the resource areas. Mr. Jannell said they could add a condition to the determination to remove the shed.

No public comment was heard.

**MOTION:** A motion to close the public hearing was made by Ginny Farber and seconded by Judith Bruce.

**VOTE:** 7-0-0 Unanimous

**MOTION:** A motion to issue a negative determination with the condition that the shed be removed by the end of the life of the project for 64 Capt. Linnell Rd was made by Ginny Farber and seconded by Judith Bruce.

References: J.C. Ellis Site Plan dated 9/5/23

**VOTE:** 7-0-0 Unanimous

**Notice of Intent**

Harold Tubman 9 Meadow Wy  
By Ryder & Wilcox, Inc. Map 37, Parcel 7. The proposed construction of a detached garage. Work will occur within the 100' buffer zone to a Vegetated Wetland.

Mr. Wander recused.

David Lyttle, Ryder & Wilcox, was present and reviewed the application. Harold Tubman, the property owner, was also present. Mr. Tubman reported the dumped vegetation had been removed from the edge of the wetland. Mr. Lyttle reviewed the proposal, he stated that half the garage is located in the outer buffer and the project is not going to result in a lot of disturbance in jurisdiction. The driveway and parking area are located outside of jurisdiction.

No public comment was heard.

**MOTION:** A motion to close the public hearing was made by Mike Brink and seconded by Jerry Wander.

**VOTE:** 6-0-0 Unanimous

**MOTION:** A motion to approve the project at 9 Meadow Way attaching the Conservation Commission Findings and Standard Conditions was made by Mike Brink and seconded by Judith Bruce.

References: Ryder & Wilcox Project Narrative 9/18/23; Ryder & Wilcox Site plan 9/18/23

**VOTE:** 6-0-0 Unanimous

**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.

Mr. Wander reported that the applicant requested a continuation to 11/7/23.

No public comment was heard.

**MOTION:** A motion to continue the public hearing to 11/7/23 was made by Ginny Farber and seconded by Judith Bruce.

**VOTE:** 7-0-0 Unanimous

Paul E. Stanzler, Trustee 29 Hayward Ln  
By Ryder & Wilcox, Inc. Map 50, Parcel 11. The proposed construction of an attached garage. Work will take place within the 100' buffer zone to the Top of a Coastal Bank and within the Pleasant Bay ACEC.

Mr. Lyttle reported that they adjusted the Limit of Work (LOW) to be 4' out from the proposed work, which will be the minimum amount available to work. Mr. Lyttle said he submitted the arborist report and he said that the arborist said via text message that he expected the tree to survive.

Some Commissioner were concerned about the wording in the report. Mr. Lyttle said there is a good and substantial program here for caring and protecting for the tree. Bartlett's plan battles some of the compaction issues due to the driveway that may be causing the tree stress. Mr. Jannell said requiring the tree care should allow the tree to survive the construction.

Ms. Farber pointed out that on page 2 there's a note that says this will only be performed if it is determined that that proposed construction will not cause excessive damage to the tree. Ms. Farber asked how a slab foundation is installed. Mr. Lyttle described the process.

Mr. Brink said it sounds to him as though they are confident the tree will survive because most of the roots will not be impacted. Mr. Brink said they aren't doing much digging but using an air spade which allows them to find the roots without damaging them.

Ms. Farber asked, could we have a special condition that if something happens with the tree that we require replacement.

Mr. Jannell said they could require tree replacement if something happens to the tree during the life of the Order. It is a significant piece of canopy that would be difficult to replace but he thinks that the tree will survive. Mr. Jannell reviewed Bartlett's treatment plan.

Ms. Bruce said we don't want to encourage replacement over saving. We can ask for a report on the tree care elements every year. Ms. Bruce pointed out that the tree treatment must precede the construction. Ms. Bruce suggested treatment could start asap before you get building permits.

No public comment was heard.

**MOTION:** A motion to close the public hearing was made by Ginny Farber and seconded by Judith Bruce

**VOTE:** 7-0-0 Unanimous

**MOTION:** A motion to approve the project at 29 Hayward Ln with Conservation Commission findings and standard conditions and with special conditions that we call out town bylaw for no fertilizer within 100' of the resource area; treatment of the oak occur per the Bartlett Tree Plan and that during the life of the Order (3 years) they assess the health of the tree and whether it needs to be replaced; annual reporting be required by Bartlett on its tree care plan and the tree's condition beginning 12/2024 then annually 12/2025 and 12/2026; and that the construction schedule coordinate with the tree schedule was made by Ginny Farber and seconded by Judith Bruce.

References: Ryder & Wilcox narrative dated 9/12/23; Ryder & Wilcox Site Plan dated 10/3/23; Tree Assessment by Bartlett dated 10/6/23.

**VOTE:** 7-0-0 Unanimous

Archer-Gosnold LLC 16 Archer Ln  
By Ryder & Wilcox, Inc. Map 52, Parcel 4. The proposed construction of a swimming pool and landscaping. Work will occur within the 100' buffer zone to the Top of a Coastal Bank and within the Pleasant Bay ACEC.

Mr. Wander reported that the Commission was in receipt of the MESA letter and Mr. Jannell followed up by saying the letter said the project would result in "no take", so that is authorization to act on the project. Mr. Lyttle reviewed the changes made to the Ryder & Wilcox plan since the previous hearing. He said they tightened the Limit of Work up to avoid requesting a variance. Ms. Cronin stated that she added compost into the loam mix and that's stated in a plan note. She said the lower edge of the fescue mix will be delineated with stone markers. She provided some additional information on the pruning area and 50' buffer zone. They updated the vista pruning diagram to represent more accurately what is going and what is staying. She reviewed the "zones" on her plan, the plantings proposed, and the removals. The

pine tree is not to be pruned. She said she showed a couple of spot elevations and with the bayberry and beach plum going in that will aid in screening the wall.

The Commission felt the applicant had accommodated all of their comments made at the previous hearing.

No public comment was heard.

**MOTION:** A motion to close the public hearing was made by Ginny Farber and seconded by Judith Bruce.

**VOTE:** 7-0-0 Unanimous

Mr. Jannell requested a preconstruction meeting for the removals.

**MOTION:** A motion to approve the project attaching the Conservation Commission findings and standard conditions and a special condition for a preconstruction meeting was made by Ginny Farber and seconded by Judith Bruce.

References: Project narrative 9/12/23; Ryder & Wilcox Site Plan 10/9/23; Gregory Lombardi Landscape plan 10/9/23; vista pruning diagram 10/9/23; coverage calcs 9/12/23

**VOTE:** 7-0-0 Unanimous

Eastward Companies

64 Pershing Ln

By Ryder & Wilcox, Inc. Map 56, Parcel 6. The proposed removal of an existing dwelling and detached garage and construction of new dwelling, swimming pool, the replacement of a timber stairway, landscaping, and site restoration. Work will occur within the 100' buffer zone to the Top of a Coastal Bank, on a Coastal Beach, on a Coastal Bank, in Land Subject to Coastal Storm Flowage and within the Pleasant Bay ACEC.

David Lyttle, Ryder & Wilcox, Theresa Sprague, Blue Flax Design, and Andrew Garalay, Yarmouthport Design Group were present. Mr. Lyttle said the significant change to the site plan was pulling the entire proposal back 5' further from the resources. They were unable to get it completely outside of the ACEC. The pool fence was previously located along the south boundary, that has been pulled in to create an area for wildlife.

Mr. Garalay said they moved the pool and wall away from the property line. We moved the pool equipment so it's more than 10' away from the property line and reduced the reveal of the edge of the patio.

Ms. Sprague said with the shift further from the resource area we were able to increase the naturalized planting area. She said the entire 75' buffer will be vegetated with only a small sliver of fescue that allows for circulation around the pool. We were able to increase the meadow and vegetated buffer to 8,027 sq. ft. They removed the sitting area on the south portion of the property and now are only proposing one at the top of the stairs.

Mr. Johnson asked about the construction sequencing. Ms. Sprague said they would remove the stairs when they are doing the bank restoration.

Mr. Bruce asked if they could require a conservation restriction outside of their jurisdiction. Mr. Jannell said not without a willing applicant.

Ms. Farber asked Ms. Sprague to change the plan note from “set in grass” to “set in fescue clover”.

Mr. Wander asked about the height of the pool wall. Ms. Garalay said the whole patio is roughly elevation 19 and there are proposed plantings for screening.

Mr. Jannell said we can't close the public portion of the hearing because we have no DEP number and no MESA letter.

No public comment was heard.

Mr. Lyttle requested a continuance to 11/7/23.

**MOTION:** A motion to continue the public hearing was made by Ginny Farber and seconded by Judith Bruce.

**VOTE:** 7-0-0 Unanimous

### **Revised Plan Request**

Karen Cichowski & Pasi Janne

17 Portside Ln

DEP # SE-2576: The proposed revisions include changes to the configuration of the patios and steps and the submission of a mitigation planting plan.

David Lyttle, Ryder & Wilcox, was present and reviewed the revisions made to the plan. He said everything occurs within the original proposed limit of work. He said the planting notes were generic in the original filing and now he has included a robust planting plan. He reviewed the coverage calculations and said as you can see within the ACEC boundary the patio has been reduced and within the 75-100' buffer there is no net change. They are providing more wildlife habitat.

**MOTION:** A motion to approve the revised plan that includes the Mulcahy Design Plan for 17 Portside Ln subject to receipt of a revised plan showing the elimination of all elements related to the dug-in timber stairs on the coastal bank was made by Ginny Farber and seconded by Judith Bruce.

References: Ryder & Wilcox Site plan 8/23/23; coverage calculations 8/8/23; Mulcahy Design Mitigation Restoration plan 7/18/23

**VOTE:** 7-0-0 Unanimous

### **Administrative Reviews**

Wendy Harrington

67 River Rd

The proposed pool fence, stone wall, and wire fence around boathouse.

Mr. Jannell said this was held up at previous meetings to get some detail of the wire fence around the boathouse. He said you have a photo in your packet. He had previously recommended they approve the pool fence and the boulder wall. The Commission had requested the boulder wall be dry laid and the applicant was amendable to that.

Ms. Farber said in the area of the proposed stone wall she has a very high fence that needs to be removed immediately. It wasn't there when we first visited the site.

Ms. Bruce said she doesn't see a need for the wire fence around the boathouse, she suggested shrubs to stop people from trespassing.

Mr. Brink said while vegetation would be better, he doesn't have a problem with the fence in that small area as long as its elevated.

**MOTION:** A motion to approve the project at 67 River Rd was made by Ginny Farber and seconded by Judith Bruce.

Mr. Bruce requested a revision, that it's ok to install the boulder wall but not the 19' run of 4' high wire fence.

Mr. Wander suggested voting on the original proposal and motion.

Mr. Jannell said the plan does show she still has gaps for larger wildlife in the fence.

Ms. Bruce withdrew her revision.

Ms. Farber withdrew her original motion.

**MOTION:** A motion to approve Administrative Review for 67 River Rd in three different parts, the first will be the proposed pool fence was made by Ginny Farber and seconded by Judith Bruce

**VOTE:** 7-0-0 Unanimous

**MOTION:** A motion to approve the Administrative Review to accommodate the dry laid stone wall was made by Ginny Faber and seconded by Judith Bruce.

**VOTE:** 7-0-0 Unanimous

**MOTION:** Motion to approve the Administrative for 67 River Rd for the wire fence around the boathouse 4' tall 6" off the ground was made by Ginny Farber and seconded by Judith Bruce.

**VOTE:** 4-3-0

Mark & Cathy Hollinger

149 Namequoit Rd

The proposed removal of existing coastal bank stairs and replacement in kind with new ACQ treated stairs.

Mr. Jannell reviewed the proposal. Mr. Wander asked if they were doing the dock or just the stairs. Mr. Jannell responded just the stairs, the contractor does most of the work off site, minimizing his disturbance and time on site.

**MOTION:** A motion to approve the project at 149 Namequoit Rd was made by Ginny Farber and seconded by Judith Bruce.

**VOTE:** 7-0-0 Unanimous

### **Monitoring Reports**

John H. Hax Trust

9 Archer Ln

DEP # 54-2549

Joel & Sally Hughes

16 Sheep's Pasture Pt

DEP # 54-2497

Sherry Floren  
DEP # 54-2484

29/35 Uncle Marks Wy & 14 Twitchknot Farm Way

Mr. Brink said he appreciated that we get to see the monitoring reports and thanked the applicants and representatives for following up.

### **Administrator's Business**

Hear a request from Orleans Conservation Trust to support their CPC application for protection of 37 Eli Rogers Road

Stephen O'Grady, Executive Director of the Orleans Conservation Trust (OCT), was present to review the application. He said they are requesting support for the CPC application for OCT's purchase and protection of 4.5 acres in south Orleans. The land is across from the watershed and adjacent to protected land in Brewster. The land is recognized by the State as a groundwater protection district. The project will result in the removal of two cottages in disrepair where the demolition is well outside of the Commissions' jurisdiction. We intend to certify the vernal pool on site.

Mr. Wander asked if OCT already owns the land. Mr. O'Grady said yes, we worked with the Compact of Cape Cod to acquire the property. He said, for the partnership we're asking you to form today, the Conservation Commission will hold a CR, protecting in perpetuity, the land we would like to protect.

**MOTION:** A motion to ask staff to write a letter to the CPC supporting the OCT application for protection of 37 Eli Rogers rd. was made by Ginny Farber and seconded by Judith Bruce.

**VOTE:** 7-0-0 Unanimous

### **Chairman's Business**

Meeting minutes of 9/19/23

The Commission already voted on the 9/19 meeting minutes, they will vote on the 10/3/23 minutes on the hearing on 11/7/23.

**MOTION:** A motion to adjourn the public hearing was made by Ginny Farber and seconded by Judith Bruce.

**VOTE:** 6-0-0 Unanimous

The meeting adjourned at 10:14 a.m.

Submitted by:

Kristyna Smith, Principal Clerk, Orleans Conservation

