

**CONSERVATION COMMISSION  
MINUTES OF MARCH 27, 2008**

Meeting was held in the lower conference room at the Mary A. Alley Building, 7 Widger Road

Meeting was called to order at 7:00 PM

Present were: Commission Members Walt Haug, Fred Sullivan, Deb Payson, Don Tritschler and Brian LeClair Also present was Doug Saal, Conservation Administrator.

The hearings were conducted under the Massachusetts Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw.

Note: The commission currently has seven members. Per the MACC Handbook, section 4.1.2, most lawyers agree that a quorum is "...a majority of commissioners currently serving". The quorum for this meeting is therefore four members.

**Approve Minutes:** Four members voted to approve the minutes of 03/13/08 as presented.

**Sign Documents:** The COC for 40-867, 46 Pinecliff Drive was approved by all members.

**NOI 40-942 81 NAUGUS AVENUE CARLTON**

Resource Area: Coastal Bank, LSCSF

Interest of WPA and Bylaw: Prevention of Pollution, Flood Control and Storm Damage Prevention

Appeared: Peter Carlton, Dan Lynch and Lauren Lautner (landscape designer)

Control Documents and Drawings: Land of Carlton, Proposed Pier, Ramp and Floats, 81 Naugus Avenue, dated Nov. 30, 2007, revised 03/18/08 prepared by Lynch Engineers; landscape plan, Carlton Residence, dated January 08, no name of author; list of plantings, dated 01/26/08, no name of author and landscape plan dated March 2008, prepared by For Seasons Ecological Landscape Design.

Note: D. Lynch will submit a further revision of the drawing "Land of Carlton, Proposed Pier, Ramp and Floats, 81 Naugus Avenue, to show the fence on top of the proposed wall and to remove the 16 x 16 ft. deck.

This was a continuance from 02/14/08 and 02/28/08. The commission pointed out a mistake in the NOI, viz., on page 5 of 7, a letter to the Division of Marine Fisheries is required. During the 02/14/08 hearing a letter from the Harbormaster dated January 29,

2008 approving the project was submitted. The commission told D. Lynch a chapter 91 license is required. In compliance with the concerns the commission had during the 02/14/08 hearing: 1. the proposed fence in the coastal bank has been re-located to the top of coastal bank. 2. The path in the coastal bank has been eliminated. 3. The 16 x 16 ft. deck has been reduced to 10 ft. x 10 ft. There remained two concerns, viz., 4. The OOC 40-806 for this property has expired and no application for a COC has been filed. 5. The requirement of a ten (10) foot vegetated buffer strip at the top of coastal bank per OOC 40-806 has not been fulfilled.

With regard to “4”, a condition under this NOI, 40-942, will be the submission of an application for the COC. The applicant was informed that any future violations of this condition will be subject to a possible fine.

With regard to “5”, an alternative design to prevent storm water with lawn chemicals from flowing into the resource waters has been achieved as shown on the control drawings.

There are eel grass beds in this area but, per D. Lynch, the eel grass beds per the DEP Eelgrass Mapping Project are located ca. 200 feet from the toe of the coastal bank and therefore, the proposed pier will not impact these beds.

All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

**Pre-construction:**

1. Before any work is started, a further revision of the drawing “Land of Carlton, Proposed Pier, Ramp and Floats, 81 Naugus Avenue, to show the fence on top of the proposed wall and to remove the 16 x 16 ft. deck will be submitted.
2. The plantings landward of and adjacent to the proposed retaining wall at the top of coastal bank will average a minimum of two (2) feet in width. The plantings will be done in accordance with the landscape plan dated March 2008.
3. Before any work is started, proof of mailing to the Division of Marine Fisheries will be submitted to the commission.
4. Before any work is started, a copy of the Chapter 91 license will be provided to the commission.
5. Before any work is started, the applicant must obtain a COC for 40-806.
6. In accordance with General Condition No. 8 contained in this Order of Conditions, the applicant shall record this Order at the Registry of Deeds and shall submit the recording information to the Conservation Commission on the form for said information found at the end of the Order prior to the commencement of any work authorized by this Order.

Failure to submit said recording information prior to the commencement of work may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

7. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.

8. A drawing of the erosion control techniques to be used on site shall be included in the construction contracts between the applicant and his/her contractor.

**During construction:**

9. There shall be no cleaning or rinsing of cement concrete ready-mix trucks, or cement concrete mixing equipment, such that the byproduct of the cleaning or rinsing operation finds its way to any resource area by any means, especially, but not limited to, by means of a storm drainage system (catch basins, pipes, drainage ditches, etc.).

10. All demolition debris will be removed from the site ASAP and not stored within a resource area or a buffer zone. If a dumpster is used to contain the debris, the dumpster shall be covered. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.

11. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

12. The construction of the pier/dock and any structure over the water permanently secured to the earth shall withstand a 100-year storm without damage to the integrity of the structure. All piers/docks will conform to the requirements of Chapter 91.

13. Any pressure-treated wood proposed to be used in the construction of a structure for land-based use shall be arsenic-free. Any pressure-treated wood proposed to be used in the construction of a structure for salt water contact shall be treated with Chromated Copper Arsenate (CCA) or other preservative approved by the EPA and/or the MADEP which is less polluting and harmful to the salt water and its environment.

14. All piers, docks and floats must follow the guidelines established in the document, "Small Docks and Piers – A Guide to Permitting Small Pile-Supported Docks and Piers" dated November 2003. Float stops are permitted provided they meet the aforementioned guidelines.

**Post-construction/in perpetuity:**

15. By voluntary agreement with the applicant, only organic fertilizers are to be used on the property landward of the resource areas. Fertilizers should not contain pesticides or herbicides; should contain slow release nitrogen and should not contain more than 3%

phosphorous. To mitigate chemical runoff, do not fertilize directly before a rainstorm and do not over fertilize. Apply fertilizer in late April and in September (refer to: A Homeowner's Guide to Environmentally Sound Lawncare published by the Massachusetts Department of Food and Agriculture and the booklet, Don't Trash Grass, published by the Massachusetts Department of Environmental Protection). This condition shall survive this order.

16. Maintenance pointing of existing stone masonry walls including the replacement of occasional, missing stones in the wall is allowed as a surviving condition to the Order of Conditions. The future razing, any rebuilding of entire wall sections or enlarging of the subject wall(s) will require the filing of a new Notice of Intent. This condition shall survive this order.

17. All gangways, docks or other items not permanently secured to the earth shall be stored during the "off season" (late fall, winter, early spring) so as to prevent them from causing any damage to other structures or resource area. This condition shall survive this order.

18. All gangways, docks or other items not permanently secured to the earth shall be properly secured and/or removed in the event of a major storm so as to prevent them from causing any damage to other structures or to the resource area. This condition shall survive this order.

19. All floats/docks will be so constructed so as not to bottom out (rest) on the ocean floor at low tides. This condition shall survive this order.

20. Invasive plants shall not be used nor maintained in the landscape of the project site. This applies to the existing landscape as well as to any proposed landscape. A list of invasive plants in Massachusetts can be found in the latest update of The Evaluation of Non-Native Plant Species for Invasiveness in Massachusetts (with annotated list) produced by the Massachusetts Invasive Plant Advisory Group. For most recent update, visit [www.mnla.com](http://www.mnla.com) or [www.newfs.org](http://www.newfs.org).

21. Minor maintenance repairs to the superstructure only of the pier are allowed as a surviving condition of this order. Minor maintenance repairs are, typically, replacement of occasional deck boards, sections of hand rails, etc. Complete new decking, complete new hand rails or other such large repairs require an NOI. Minor maintenance repairs do not apply to the main support structure (stringers, bents, etc.) and do require an NOI. This condition shall survive this order.

22. Upon completion of the work allowed under this Order of Conditions, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit an "as built" drawing (signed and stamped by a Registered Professional Engineer) with the application for the COC. Failure to submit said application within 30 days may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E

## **NOI 40-941 26 HARBOR AVENUE QUIGLEY**

Resource Area: Coastal Bank, LSCSF

Interest of WPA and Bylaw: Prevention of Pollution, Flood Control and Storm Damage Prevention

Appeared: No one

Control Documents and Drawings: Site Plan, 26 Harbor Avenue, Land of BH Realty Trust, dated November 14, 2007 (revised 01/17/08), prepared by Kane Land Surveyors. Also, see sketches "Marblehead Marine Construction, Pier Repair 26 Harbor Avenue, SK-1 and SK-2, dated 03/28/06.

This was a continuance from 02/28/08. A letter from William Quigley, dated March 20, 2008 requesting a further continuance to April 10, 2008 was read into the file. All members voted to continue this hearing to April 10, 2008.

## **NOI 40-943 89 FRONT STREET M'HD TRADING COMPANY**

Resource Area: LSCSF, Land Under the Ocean

Interest of WPA and Bylaw: Prevention of Pollution, Flood Control and Storm Damage Prevention

Appeared: Ralph Anderson of the Marblehead Trading Company

Control Documents and Drawings: Photographs of the crane base

This was a continuance from 02/28/08. To insure a sound bond between the old concrete column and its new outer concrete shell, the corrugated casing presently on the old concrete column will be removed. Mr. Anderson said the new concrete will be poured in such a manner as to prevent any leakage into the ocean. A drawing showing the existing crane concrete base with dimensions and superimposed on this base, the location and final diameter of the proposed new concrete column was submitted to the commission. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

### **Pre-construction:**

1. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.
2. Proof of mailing to the Natural Heritage and Endangered Species Program and to the

Division of Marine Fisheries must be submitted to the commission before any work is started.

**During construction:**

3. There shall be no cleaning or rinsing of cement concrete ready-mix trucks, or cement concrete mixing equipment, such that the byproduct of the cleaning or rinsing operation finds its way to any resource area by any means, especially, but not limited to, by means of a storm drainage system (catch basins, pipes, drainage ditches, etc.).

4. All demolition debris will be removed from the site ASAP and not stored within a resource area or a buffer zone. If a dumpster is used to contain the debris, the dumpster shall be covered. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.

5. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

**Post-construction/in perpetuity:**

6. Upon completion of the work allowed under this OOC, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit an "as built" drawing with the application for the COC.

**NOI 40-945 83 NAUGUS AVENUE HERRING**

Resource Area: Coastal Bank, LSCSF

Interest of WPA and Bylaw: Prevention of Pollution, Flood Control and Storm Damage Prevention

Appeared: Mathew Herring and Dan Lynch

Control Documents and Drawings: Land of Herring, Proposed Pier, Ramp and Floats, 83 Naugus Avenue, dated February 6, 2008, prepared by Lynch Engineers; landscape plan, Herring Residence, dated July 2006, prepared by For Seasons Ecological Landscape Design. Note: This plan was revised by Mr. Herring. The name "For Seasons" was removed and no new date was entered. All changes required by the commission during its site visit on March 13, 2008 are incorporated in the new landscape design. See the minutes of 03/13/08.

This was a continuance from 03/13/08. All changes as required by the commission during its site visit on March 13, 2008 have been met by the applicant. See the March 13, 2008 minutes. A drawing showing the proposed lifting mechanism for the gangway will be submitted as will a detail of how the stairs will tie into the coastal bank. All members

voted to close this hearing. All members voted to issue an OOC with the following special conditions.

**Pre-construction:**

1. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.
2. In accordance with General Condition No. 8 contained in this Order of Conditions, the applicant shall record this Order at the Registry of Deeds and shall submit the recording information to the Conservation Commission on the form for said information found at the end of the Order. This form must be submitted prior to the commencement of any work authorized by this Order. Failure to submit said recording information prior to the commencement of work may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.
3. A letter from the Marblehead Harbormaster approving this project must be submitted to the Commission before any work is started.
4. A copy of the Chapter 91 license must be submitted to the Commission before any work is started.
5. Before any work is started, proof of mailing to the Division of Marine Fisheries will be submitted to the commission.

**During construction:**

6. All demolition debris will be removed from the site ASAP and not stored within a resource area or a buffer zone. If a dumpster is used to contain the debris, the dumpster shall be covered. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.
7. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.
8. The construction of the pier/dock and any structure over the water permanently secured to the earth shall withstand a 100-year storm without damage to the integrity of the structure. All piers/docks will conform to the requirements of Chapter 91.
9. Any pressure-treated wood proposed to be used in the construction of a structure for land -based use (contacting with soil) shall be arsenic-free. Any pressure-treated wood proposed to be used in the construction of a structure for salt water contact shall be treated with Chromated Copper Arsenate (CCA) or other preservative approved by the EPA and/or MADEP which is less polluting and harmful to the salt water and its environment.

10. All piers, docks and floats must follow the guidelines established in the document, “Small Docks and Piers – A Guide to Permitting Small Pile-Supported Docks and Piers” dated November 2003. Float stops are permitted provided they meet the aforementioned guidelines. All floats/docks will be so constructed so as not to bottom out (rest) on the ocean floor at mean low tides. This condition shall survive this order.

**Post-construction/in perpetuity:**

11. By voluntary agreement with the applicant, only organic fertilizers are to be used on the property landward of the resource areas. Fertilizers should not contain pesticides or herbicides; should contain slow release nitrogen and should not contain more than 3% phosphorous. To mitigate chemical runoff, do not fertilize directly before a rainstorm and do not over fertilize. Apply fertilizer in late April and in September (refer to: A Homeowner’s Guide to Environmentally Sound Lawncare published by the Massachusetts Department of Food and Agriculture and the booklet, Don’t Trash Grass, published by the Massachusetts Department of Environmental Protection). This condition shall survive this order.

12. Maintenance pointing of existing stone masonry walls including the replacement of occasional, missing stones in the wall is allowed as a surviving condition to the Order of Conditions. The future razing, any rebuilding of entire wall sections or enlarging of the subject wall(s) will require the filing of a new Notice of Intent. This condition shall survive this order.

13. All gangways, docks or other items not permanently secured to the earth shall be stored during the “off season” (late fall, winter, early spring) so as to prevent them from causing any damage to other structures or resource area. This condition shall survive this order.

14. All gangways, docks or other items not permanently secured to the earth shall be properly secured and/or removed in the event of a major storm so as to prevent them from causing any damage to other structures or to the resource area. This condition shall survive this order.

15. Invasive plants shall not be used nor maintained in the landscape of the project site. This applies to the existing landscape as well as to any proposed landscape. A list of invasive plants in Massachusetts can be found in the latest update of The Evaluation of Non-Native Plant Species for Invasiveness in Massachusetts (with annotated list) produced by the Massachusetts Invasive Plant Advisory Group. For most recent update, visit [www.mnla.com](http://www.mnla.com) or [www.newfs.org](http://www.newfs.org).

16. Minor maintenance repairs to the superstructure only of the pier are allowed as a surviving condition of this order. Minor maintenance repairs are, typically, replacement of occasional deck boards, sections of hand rails, etc. Complete new decking, complete new hand rails or other such large repairs require an NOI. Minor maintenance repairs do



not apply to the main support structure (stringers, bents, etc.) and do require an NOI. This condition shall survive this order.

17. Upon completion of the work allowed under this Order of Conditions, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit an “as built” drawing (signed and stamped by a Registered Professional Engineer) with the application for the COC. Failure to submit said application within 30 days may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E

**Old/New Business:**

**Approve Minutes:** See above.

**Sign Documents:** All documents per the agenda were signed.

The meeting was adjourned at 8:35 PM