

**CONSERVATION COMMISSION
MINUTES OF APRIL 10, 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 Ken Fisher, Walt Haug, Fred Sullivan, Deb Payson, Don Tritschler, Craig Smith 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.

Discussion: Appeared Glenn Chalek, president of the Goldthwait Reservation, to present plans of the governing body for revamping the parking area. The purpose of this discussion was to determine the general opinion of the commission before submitting an NOI. Mr. Chalek submitted a document, "Goldthwait Reservation – Site Improvements" (no date) showing the various phases of intended improvement. The first phase involves only the picnic area with subsequent phases coming in later years. After discussion, the commission indicated general approval of the project and suggested the NOI should cover all phases of the proposed work. In the event that more phases could be accomplished within the three year limit of the OOC, this would avoid added filing fees.

RDA 40-N/A 25 HARBOR AVENUE TEJWANI

Resource Area: BVW

Interest of WPA and Bylaw: Prevention of Pollution, Flood Control and Protection of Wildlife Habitat

Appeared: Dr. Tejwani and Dan Speropolous, representing T Bone Builders

Control Documents and Drawings: Wetlands Restoration Plan, dated October 27, 2003 and house plans, Tejwani Residence, 25 Harbor Ave, Marblehead, MA, Sheet A-5, dated 5/8/1998. Sheet A-5 was submitted in two copies, one showing a second story porch and the other showing a second story room where the porch was previously located.

Note: The above Wetlands Restoration Plan is from the NOI 40-794 filing records. This plan is not the revised plan ultimately used as the governing planting plan for OOC 40-794. The plan dated October 27, 2003 was submitted with this RDA only to show the

various buffer zones with respect to the location of the house. The house lies just at and outside of the 50 foot No Build Zone.

Before addressing the Request for Determination of Applicability, the commission reviewed the history of this site. Regarding OOC 40-574, which issued 11/13/1997, Dr. Tejwani requested a COC in March 2008. This COC was signed by the commission April 10, 2008. Regarding OOC 40-794, which issued 11/20/2003, Dr. Tejwani requested a COC in March 2008. Since conditions numbered 25 and 26 of the OOC for 40-794 were not fulfilled, nor was the planting of the No Disturb Zone completed, no COC was issued. Instead, an Enforcement Order was issued for him to complete the planting of the No Disturb Zone of 40-794. Dr. Tejwani will submit a new planting plan to cover the entire No Disturb Zone and will plant/erect appropriate markers to define the edge of the No Disturb Zone. The planting must be completed satisfactorily before any other work is started and before a COC is issued. The commission told Dr. Tejwani he is liable for a fine but was told none would be issued. In subsequent discussions, however, by the commission, it was pointed out that the infractions of not adhering to the conditions of the OOC for 40-974 are really liable for a fine. The commission decided neither the work nor the location of the work on the RDA would negatively impact the resource area. The commission voted to close this hearing. All voted to issue a negative determination with the following conditions.

Pre Construction:

1. This Determination of Applicability is issued under the Wetlands Protection Act and its Regulations (MGL Chapter 131, Section 40 and 310 CMR 10.00 et. seq.), and under the Town of Marblehead Wetlands Protection Bylaw (Marblehead Bylaws Chapter 194) and its Regulations (Wetlands Protection Bylaw Regulations for Administering Marblehead Bylaws Chapter 194, Sections 194-1 through 194-14). As such this Determination constitutes a wetlands permit both under the Act and under the Bylaw.
2. The project shall be performed in accordance with the Final Approved Plans and Other Documents referenced in Attachment A to this Determination, except as the project may be altered or amended by these Special Conditions.
3. The project shall be performed in accordance with the representations made by the applicant and his/her representative(s) and in accordance with the requirements of the Marblehead Conservation Commission, all as reflected in the public hearing record as documented in the minutes of the Marblehead Conservation Commission referenced in Attachment A to this Determination, except as the project may be specifically altered or amended by these Special Conditions.
4. These Special Conditions relate equally to both the Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw unless herein indicated otherwise.

5. No work on this DOA will be started until the planting of the No Disturb Zone under 40-794 per the plan to be submitted has been satisfactorily completed.

6. No COC for 40-794 will be issued until a report at the end of the second growing season, in the fall 2009, documenting the survival rate of the plantings has been submitted to the commission.

7. No work on this DOA will be started until a fine of \$300 has been paid.

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

9. A "limit of work" fence will be erected between the house and the edge of the No Disturb Zone.

During construction:

10. No heavy equipment and no trucks are allowed in the area defined as between the house and the edge of the No Disturb Zone.

11. 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.).

12. 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.

13. 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:

14. 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 determination.

15. The No Disturb Zone will be permanently marked in an appropriate manner on site to insure no inadvertent encroachment into this zone. The current and future owner of the property is required to maintain the permanent marking. This condition shall survive this determination.

16. 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 or www.newfs.org.

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: William Quigley, trustee of the BH Realty Trust

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.

Note: Sketch SK-4, dated 04/09/08 and signed by Al Dennis Construction LLC was submitted for this hearing. In addition, a memo from Al Dennis, dated March 7, 2008 addressing the issues raised by the commission at the hearing on February 28, 2008 was submitted.

Since all issues raised by the commission on 02/28/08 have been satisfactorily resolved, six members of the commission voted to close this hearing. Five 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. A fine of \$300 will be paid to the commission prior to the start of any work. This fine is levied due to a failure of the applicant to meet the conditions of the Emergency Order, which eventually resulted in the filing of the current NOI.
3. 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:

4. All debris (chipped concrete, paint chips, etc.) from the repair of the underpinnings/footings and the preparation of the bents for painting will be removed immediately so as not to remain in the ocean waters.
5. 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.).
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. 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:

10. 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.
11. 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.

12. 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

40-946 FORT SEWALL TOWN OF MARBLEHEAD

Resource Area: Coastal Bank, LSCSF

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

Appeared: Doug Saal, Town Engineer

Control Documents and Drawings: Fort Sewall Storm Damage Repairs, dated March 2008, prepared by the Marblehead Engineering Department; Typical Mortared Stone Wall Section, dated 03/27/08 and various photographs

Mr. Saal presented the application and explained the various aspects and phases of proposed repair work. Certain work will require a Chapter 91 license and it is anticipated this work will not start until next year. All work which can proceed without the Chapter 91 license will be started this summer. The question arose as to the function of the coastal bank at the northeast corner and what interests of the WPA it serves. The interests of the WPA are storm damage prevention and flood control provided either by a vertical buffer ala a seawall or ledge, or by the bank providing beach nourishment. In the April 2008 coastal storm, a small section of the vegetated bank above the ledge outcroppings was washed out by high waves rushing through a natural gorge. This was a one time event and does not represent a normal source of supply of beach nourishment nor can the soil washed out be considered proper material for beach nourishment.

The commission 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.

During construction:

2. 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.).

3. 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:

4. 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.

5. 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: The minutes of 03/27/08 were approved without change.

Sign Documents: All documents per the agenda, with the exception of COC 40-794, were signed.

The meeting adjourned at 9:50 PM.