

**CONSERVATION COMMISSION
MINUTES OF JULY 9, 2009**

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

Meeting was called to order at 7:00 PM

Present were: Commission Members Walt Haug, Fred Sullivan, Brian LeClair, Craig Smith, Deb Payson, Ken Fisher and Don Tritschler. Also present were Willy Lanphear, Conservation Administrator and Jan Smith, Associate Member.

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: The minutes of 06/11/09 were approved by all members.

Sign Documents: All documents per the agenda were signed.

Discussion: 40-880 Black Joe's Pond: Appeared Craig Campbell to request an extension of this OOC under the local bylaw. He was informed that the Marblehead Assistant Town Counsel, Lisa Mead, advised the ConCom to grant an extension. This is based on the finding that the wording of the published and posted 2004 revised section of our local bylaw, 194-7C, did not mention a thirty (30) day period before expiration date of a current OOC. All members of the commission voted to extend OOC 40-880 for a period of one year, until June 22, 2010.

40-966 FORT SEWALL TERRACE KNICKREHM

Resource Area: Coastal Bank

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

Appeared: Mr. Glenn Knickrehm (owner), S. Hynes, landscape designer and Richard Fitzgerald of Childs Engineering Corp

Control Drawing: Seawall Rehabilitation, 7 Fort Sewall Terrace, dated 07/01/09, prepared by Childs Engineering Corp. (based on original site plan by Hayes Engineering) and Define Planting, 7 Fort Sewall, dated 06/06/-9, prepared by The Home & Garden Design Group

Reference: Memo from Glenn Knickrehm and Kathleen Fay, Owners, dated July 9, 2009,

This was a continuance from 12/11/08, 01/08/09, 01/22/09, 02/12/09, 03/12/09 and 05/14/09. Stairs #1 and stairs # 2 will both have granite caps on the treads. There will be a two year monitoring period to insure a minimum survival rate of 75% of all vegetation to be planted.

Filter socks will be used as an erosion barrier. No bluestone patio will be built. The Old and Historic District Commission has approved the plans. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Special Conditions:

19. This Order of Conditions 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 Order constitutes a wetlands permit both under the Act and under the Bylaw.

20. The project shall be performed in accordance with the Final Approved Plans and Other Documents referenced in Attachment A to this Order of Conditions, except as the project may be altered or amended by these Special Conditions.

21. 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 Order of Conditions, except as the project may be specifically altered or amended by these Special Conditions.

22. These Special Conditions relate equally to both the Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw unless herein indicated otherwise.

23. 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.

24. Any land disturbance of an area less than 40,000 square feet requires that Section II.C of the regulations pertaining to the Stormwater Management and Erosion Control Bylaw, Chapter 195 of the Marblehead Code must be followed and implemented.

Pre-construction:

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

26. 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. Filter socks will be used as an erosion barrier.

27. Prior to commencement of construction activities, the Applicant shall obtain all federal, state and local permits (in addition to this OOC) that may be required for the proposed project.

28. No blue stone patio is included with this OOC.

During construction:

29. 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.).
30. To the maximum extent possible, all terraces, patios or similar ground-level surfaces will be constructed as permeable surfaces to allow water to infiltrate through their surfaces into the ground on site
31. 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.
32. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.
33. Both stairs no. 1 and stairs no. 2 will be capped with granite treads.

Post-construction/in perpetuity:

34. 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.
35. 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.
36. 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.
37. After completion of the landscaping plan, a report will be submitted to the commission at the end of each growing season for a period of two growing seasons. The plantings must achieve a minimum survival rate of 75% at the end of this period. If this survival rate is not achieved, new plantings must be introduced to achieve this rate and monitored again for a period of one more growing season with report submitted.
38. 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, Sec 11E.

40-975 27 TICEHURST LANE HAMMOND

Resource Area: BVW, Pond, Land Under Water

Interests of the WPA and Bylaw: Prevention of Pollution, Protection of Wildlife Habitat

Appeared: No one

Control Drawing: Site of Plan, 27 Ticehurst Lane, Henry Hammond dated February 26, 2009, prepared by North Shore Survey Corporation.

This was a continuance from 04/19/09 and 05/14/09. Mr. Patrowicz sent an email dated June 30, 2009 wherein the applicant requested a continuance. All members voted to continue this hearing to September 10, 2009.

40-980 14 SHUMAN ROAD KOH

Resource Area: Coastal Bank

Interests of the WPA and Bylaw: Prevention of Pollution, Flood Control and Storm Damage Protection

Appeared: David Koh & Elaine Koh

Control Drawing: Proposed Seawall Repairs, 14 Shuman Road, dated June 24, 2009, prepared by David Koh

Dr. Koh presented his plans to repair the seawall. He was informed that the commission normally waits for any comments from the DEP when work is to be performed in a resource area before issuing an OOC. However, because the work under this NOI is for repair only and does not involve any major work or re-building, the commission decided it could proceed with the OOC. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Special Conditions:

19. This Order of Conditions 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 Order constitutes a wetlands permit both under the Act and under the Bylaw.

20. The project shall be performed in accordance with the Final Approved Plans and Other Documents referenced in Attachment A to this Order of Conditions, except as the project may be altered or amended by these Special Conditions.

21. 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 Order of Conditions, except as the project may be specifically altered or amended by these Special Conditions.

22. These Special Conditions relate equally to both the Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw unless herein indicated otherwise.

23. 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.

Pre-construction:

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

25. All dislodged and removed mortar/cement will be immediately contained and removed from the work site to prevent any such material from entering the resource waters.

During construction:

26. 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.).

27. 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:

28. 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 Lawn care 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.

29. 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.

30. 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, Sec 11E.

Discussion: 40-953 28 Crestwood Road Miller

Appeared Mr. Miller to discuss deviations on his project as observed by the commission. He was reminded by the commission that any deviations from the approved control drawing must be reviewed with the commission for approval before any deviations are made. He has now erected a sign with the DEP number. He also submitted a revised landscape plan, The Miller Residence, dated 07/09/09, prepared by Keith LeBlanc Landscape Architecture, Inc. The actual work to date has the following deviations. (1) Rather than pea stone, the walkway down to the No Disturb Zone (NDZ) has been constructed of solid stone blocks interspersed with stone dust. (2) The aforementioned walkway now extends further into the NDZ. (3) Three trees [2 cedars and 1 pine] at the base of the rip rap have been removed. (4) The retaining wall has been split into three separate sections. The final height of this wall will be within a tolerance of +/- one foot. (5) The proposed deck is slightly reduced in area and does not intrude any further into the bank. (6) The deck stairs are now located under the deck.

Mr. Miller asked to possibly replace the stone blocks at the very top of the walkway along the side of the house with pea stone. He is allowed this alternative.

Mr. Miller was told to prepare revised drawings including a new landscape plan to be submitted as “as built” drawings, with the extent of the rip rap to be determined by a licensed surveyor. These drawings are needed for the COC.

Discussion: 321 Ocean Avenue Rosenthal

Appeared Peter Ogren of Hayes Engineering, Inc., Mr. Rosenthal and Jay Connolly, contractor to request work to re-build a section of collapsed seawall. The commission had earlier visited this site and could not conclude there was any immediate public or health danger. Mr. Ogren will contact the Marblehead Building Department to see if they will classify the wall as a danger. In the meantime, the commission agreed to meet on July 21 at 7 PM to review this as an NOI which has already been filed by the applicant with the DEP. The members who are available to attend are Fred Sullivan, Craig Smith, Don Tritschler and Walt Haug.

Old/New Business:

Approve Minutes: see above

Request for Extension: see above

Sign Documents: see above

The meeting was adjourned at 9:15 PM.