

MARBLEHEAD CONSERVATION COMMISSION
MINUTES OF NOVEMBER 12, 2009

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

Meeting was called to order at 7:00 PM

Present were: Commission Members Walt Haug, Fred Sullivan, Brian LeClair, Don Tritschler, Craig Smith and Ken Fisher. Also present was Willy Lanphear, 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: The minutes of 10/8/09 were approved by all members.

Old/New Business:

40-903/40-923 3 Davenport Road: K. Bradford had rescheduled her appearance for a final landscape plan and to request a one year extension to December 10, 2009.

40-983 7 Mooring Road: See Haug memo dated October 27, 2009 on this subject. Special condition No. 30 of the OOC will now read: "A vegetated buffer strip, measuring on average six (6) feet in width, immediately adjacent to and abutting the top of coastal bank, will be planted along that entire perimeter of the site that is adjacent to the top of coastal bank with the exception of two non-planted areas (each ca. 3 feet wide) to allow for access to the beach. The applicant will consult a landscape designer who is familiar with this type of ocean environment to determine the most suitable plants for adsorbing/absorbing fertilizers and any other lawn chemicals. A type of "grass" as mentioned by Mrs. Greene may be included among the plantings in the buffer strip. This "grass", as well as any of the other plantings, will not require any mowing or maintenance. No fertilizers or lawn chemicals will be applied in the vegetated buffer strip. The landscape plan with identified plantings must be approved by the commission before any planting is started. The existence and maintenance of the vegetated buffer strip as described in this condition and per the final approved landscape plan is a surviving condition." All members voted to accept this change.

Haug had explained that this change perhaps should not be defined as an amendment. Per the MACC Handbook, neither the WPA nor its regulations, 310 CMR, specifically address amendments. The Handbook says minor changes like grammar, clerical, etc. should not be regarded as amendments and can be adopted without a full hearing. Haug suggests the commission can interpret this change of special condition No. 30 as not significant enough to warrant a full hearing even though it is not quite as mundane as defined in the Handbook. This change will not impact the wetland or abutters. Therefore, he suggests it be reviewed as a change, not an amendment. The choice of words is specific to distinguish between an amendment requiring a hearing and such minor changes as this one. The commission agreed to follow this interpretation.

40-971 21 Sargent Road: See memo from Haug dated October 26, 2009 on this subject. The commission agreed to review this as a change and not an amendment. All voted to accept this additional work as a change.

40-976 25 Marion Road: See letter from Patrowicz Land Development Engineering dated October 27, 2009. The commission agreed to review this as a change and not an amendment. All voted to accept this additional work as a change. For the future, the commission will attempt to determine if geothermal wells fall under its jurisdiction, within or outside the buffer zone.

RDA GOLDTHWAIT RESERVATION

Resource Area: Coastal Beach and Cobble Dune

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

Appeared: Geoffrey Lubbock, Daniel Shea and Jean Verbridge

Control Drawing: Goldthwait Reservation, Sign Location, dated 9 October 2009 prepared by Siemasko+Verbridge

Considering the work and the location, all members voted to issue a negative determination without and special conditions.

40-986 2 & 4 Eustis Road Stutz

Resource Area: Coastal Beach and Coastal Bank

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

Appeared: Cornelia Stutz, Dave Peach and Peter Ogren of Hayes Engineering, Inc.

Control Drawing: Plan to accompany NOI, Eustis Road, Proposed Conditions, dated October 9, 2009, prepared by Hayes Engineering, Inc.

No comments had been received from the DEP on this application. The commission informed the applicant the hearing cannot be closed until such comments are received. The applicant informed the commission that a large amount of the beach and bank had been removed by the state after an oil spill, which occurred during the blizzard of 1978. She said the beach and bank have continued to seriously erode since that year, due in part to the removal of protecting rocks. The Marblehead Water & Sewer Commission submitted a letter dated November 10, 2009 reminding the commission there is a sewer manhole and sewer pipe partially in the coastal bank. A site visit was made by some members of the commission to verify the erosion and the current state of the beach. The proposed armoring of the bank will entail a distance of ca. 490 feet. Hayes Engineering addressed the bank only from the perspective of 310 CMR 10.30 (6) and (8) [vertical barrier]. The commission said 310 CMR 10.30 (3) and (4) [beach nourishment] must also be considered. The commission agreed measures must be taken to protect the sewer line

(public safety and health) but it felt the scope of the proposed rip rap could be reduced. It wants to insure any proposed solution does not negatively impact neighboring properties. In addition, it wants alternative soft solutions to be considered. It told the applicant to engage an independent consultant (such as a coastal geologist) to review the application.

Mr. Cushman reiterated the history dealing with the oil spill. Mr. Barrows expressed concern about any effects on other properties, especially on the western side of the beach. It was agreed with the applicant and voted by all members to continue this hearing to December 10, 2009.

40-958 22 CROWNINSHIELD ROAD RANDOLPH

Resource Area: Coastal Bank

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

Appeared: Scott Patrowicz of Patrowicz Land Development Engineering

Control Drawing: (additional drawing) 22 Crowninshield Road, Revised Site Plan, dated 03/24/09, revised 10/22/09, prepared by Keith LeBlanc Landscape Architecture, Inc.

See letter from Patrowicz Land Development Engineering dated October 27, 2009. The commission, at a previous hearing, had voted to review these changes as amendments. After discussion at this hearing, all members voted to incorporate the changes as amendments to the OOC, adding the following additional special condition. "The emergency generator and all fuel lines feeding to it will be protected to prevent any fuel spillage/leakage into the environment. The manner in which this will be accomplished will be shown in a drawing submitted to the commission for approval." Note that the driveway will be a pea stone surface.

RDA 21 HARBOR AVENUE JACOBY

Resource Area: BVW

Interests of the WPA and Bylaw: Protection of Wildlife Habitat

Appeared: George Jacoby

Control Drawing: Site Plan, 21 Harbor Avenue, dated October 28, 2009, prepared by james k. emmanuel associates

After reviewing the work and location, all members voted to issue a negative determination without any special conditions.

40-987 11 KENNETH ROAD DRAGONAS

Resource: Coastal Bank

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

Appeared: D. Smith of Vine Associates, Inc. and Ms. Hyman

Control Drawing: Proposed Site Plan and Sections, Dragonas/Hyman Residence, dated October 2009, prepared by Vine Associates, Inc.

The commission had no reservation with the pier and its construction. However, it requested a more detailed and clearer drawing of the resource area and its buffer zones. It also requires a vegetated buffer strip (6-10 feet in width) along the entire top of coastal bank. The applicant will also submit a letter from the Marblehead Harbormaster approving the project. The applicant was reminded to apply for a chapter 91 license. All members voted to continue this hearing to December 10, 2009.

Old/New Business:

Approve Minutes: see above

Requests for COC:

40-643 96 Beacon Street: All members voted to approve this COC.

40-483 6 Pig Rock Lane: All members voted to approve this COC.

40-755 6 Pig Rock Lane: All members voted to approve this COC.

40-892 6 Pig Rock Lane: All members voted to approve this COC.

(Note: For 6 Pig Rock Lane, see Haug memo dated 11/04/09. The applicant was fined and agreed to pay \$2,500 for the violations as defined in the Haug memo.)

Requests for Amendments: see above

Sign Documents: All documents per the agenda were signed.

Other Matters:

Vegetated Buffer Strips: Lanphear pointed out that the COC form has a section wherein surviving conditions can be included. Therefore, as of this date, the commission can include the following special condition.

The OOC for this COC specifies a vegetated buffer strip be planted along and abutting the coastal bank and/or the BVW. After the vegetated buffer strip has been planted, at the end of the second growing season, the applicant must submit a report to the commission evidencing that the plantings have reached a minimum 75% survival rate. If the 75% rate has not been achieved, the applicant will re-plant/replace all non-surviving plants at the start of the third growing season and verify such replanting by appropriate evidence to the commission. After the third growing season, the maintaining of a 75% survival rate, but not the reporting, is a surviving condition.

40-981 321 Ocean Avenue: The planting plan for this site was accepted by the commission. The planting will be made in the spring of 2010.

The meeting was adjourned at 9:20 PM.