

**CONSERVATION COMMISSION
MINUTES OF AUGUST 28, 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, Craig Smith, 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.

Discussion: Letter to Dr. David Koh dated August 18, 2008 from D. Saal and letter from Barbara Goldman to the M'hd Conservation Commission dated August 21, 2008. Koh and Goldman are abutters and the letters refer to alleged violations and one actual violation of Dr. Koh regarding permits for work performed by him. Based on the research of D. Saal, it appears the Town (the Building Department) was partly responsible for a miscommunication regarding the required Conservation permit for the work currently being performed for Dr. Koh. The Commission has no knowledge or records of the alleged violations. The Commission reminded Dr. Koh that any violation is subject to a fine and that he must abide by the permit requirements in the future. No fine was levied for this matter. Dr. Koh is continuing his work under a Minor Activities Permit.

Approve Minutes: The minutes of August 28, 2008 were approved by four members; two members abstained due to previous absence.

Site Visit: Per the letter from H. Davis of DEP dated August 13, 2008, there will be a site visit for 40-948, 26 Stramski Way on Thursday, September 4 at 10:30 AM.

40-955 22 COOLIDGE ROAD ZION

Resource Area: Coastal Bank

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

Appeared: Mr. Zion and P. Lynch, atty.

Control Drawing: Site Plan of Land, 22 Coolidge Road, David J. Zion, dated May 28, 2008, prepared by North Shore Survey Corporation

After reviewing the control drawing, the commission decided that the proposed two story addition at the street side of the existing house would not impact the resource area. The existing house is already in the No Build Zone and only about 10-15% of the proposed two story addition is also in the N.B.Z., even further removed from the resource area.

The proposed reinforced concrete retaining wall was discussed. The existing house was built before August 1978. The commission (Haug) visited the site to observe the coastal bank. The major part of the bank is rocky outcropping. Near the top of the bank is some well established vegetation. The difference in elevation between the FEMA 100 year flood elevation (34) and the top of the coastal bank (50) is ca. 16 feet and this is primarily rocky outcropping. Haug observed no erosion on any part of the bank.

The applicant stated he wants to construct the proposed retaining wall to protect his property. Since the existing coastal bank already protects the property, and apparently has for many years, the commission could find no rationale for the proposed wall. The commission asked the applicant to engage a coastal geologist/engineer to verify the stability of the existing bank and to submit a written report. The commission also asked for an evaluation of potential wave reflection from the proposed wall.

The applicant decided to withdraw the proposed retaining wall from this NOI so that he could proceed with the required reviews by other boards and start re-construction of the house. The proposed retaining wall is therefore not a part of this NOI.

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. 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. This drawing shall be submitted to the commission for approval before any work is started.
3. A letter from the Applicant indicating that the proposed retaining wall has been withdrawn from consideration and will not be built under this Order of Conditions must be received by the Commission prior to commencement of construction.

During construction:

4. 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.).
5. 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.
6. 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:

7. 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.
8. 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.
9. 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

40-861 436 ATLANTIC AVENUE GOLDMAN

Control Drawing: Amended NOI, 436 Atlantic Avenue, Barbara Goldman, dated 10/20/06, prepared by Hayes Engineering, Inc. (marked in red, Area of Damage).

The commission at its hearing on August 14, 2008 had decided to review the request of Ms. Goldman as an amendment. At this current hearing she submitted a letter (with control drawing) to the commission dated August 11, 2008 detailing the proposed work on the seawall in front of 1 Pig Rock Lane. The ownership of the seawall in front of 1 Pig Rock Lane (as well as in front of other abutting houses to the north of Pig Rock Lane) is in question, having originated from the Ware estate many years ago. The Town does not own this seawall. Ms. Goldman owns the seawall in front of her house. The current owners of 1 Pig Rock Lane (Evans and Webster) obtained an OOC (40-929) on August 1, 2007 to repair the seawall in front of their house. To date, no work has been started by them. The seawall, at the juncture of the seawall belonging to Ms. Goldman and that in front of 1 Pig Rock Lane, is deteriorating and needs repairing to protect the repairs already made to the seawall of Ms. Goldman. The commission told Ms. Goldman to review her proposed repairs for the aforementioned juncture with those proposed in 40-929 with Mr. Saal. If both repairs are compatible and will not interfere with the proposed repairs by Evans-Webster, the commission will amend 40-861 to allow Ms. Goldman to repair the portion of the seawall per the control drawing in front of 1 Pig Rock Lane.

Carl King, attorney representing Evans-Webster, said they have no objections to repairs proposed by Ms. Goldman. All members voted to continue this hearing to September 11, 2008.

40-956 2 GAS HOUSE LANE KASS

Resource Area: Coastal Bank, Coastal Beach

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

Appeared: R. Erbetta.

Control Drawing: Conservation Plan, 2 Gas House Lane, dated July 28, 2008, prepared by Lynch Engineers and Plant Schedule-2 Gas House Lane, dated July 2008, prepared by James K. Emmanuel Associates.

From the minutes on this matter at the hearing July 10, 2008, "The applicant will submit an NOI and was informed it should include a delineation of the resource areas and buffer zones on the site plan and a drawing of the new deck". Mr. Erbetta submitted a drawing showing the resource area but no drawing of the deck. At the aforementioned hearing, the applicant indicated the new deck would be a duplicate in size of the current deck (to be removed). As a result of a meeting of the applicant with the Old and Historic Marblehead District Commission, per the request of the Old and Historic Marblehead District Commission, the applicant said he had increased the deck width. Mr. Erbetta was told to supply a drawing of the intended deck, showing its size and method of support.

Mr. P. Kingsley questioned the final size of the deck new vs. old. Mr. J. Grady questioned whether any plantings in the future would require a new NOI. He was told any major landscaping would require a new NOI. All members voted to continue this hearing to September, 11, 2008.

New/Old Business:

Approve Minutes: See above

Sign Documents: All documents per the agenda were signed.

The meeting was adjourned at 8:40 PM.